

ASIA REGIONAL COOPERATION TO PREVENT PEOPLE TRAFFICKING

GENDER, HUMAN TRAFFICKING, AND THE CRIMINAL JUSTICE SYSTEM IN CAMBODIA

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ABBREVIATIONS AND ACRONYMS

ACIL	ACIL Australian Pty Ltd
ARCPPT	Asia Regional Cooperation to Prevent People Trafficking
AUSAID	Australian Agency for International Development
CCJAP	Cambodian Criminal Justice Assistance Project
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
ILO-IPEC	International Labour Organization – International Program on the Elimination of Child Labour
IO	International Organization
IOM	International Organization for Migration
MoJ	Ministry of Justice
MoI	Ministry of Interior
MoSALVY	Ministry of Social Affairs, Labour, Vocational, Training and Youth
MoWVA	Ministry of Women’s and Veterans’ Affairs
NGO	Non-Governmental Organization
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNIAP	UN Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region
UNICEF	United Nations International Children’s Fund
UNIFEM	United Nations Development Fund for Women
VSA	Victim Support Agency

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The research was conducted and written up by Ly Vichuta, the Director of Legal Support for Children and Women and Menh Navy, Advocacy Coordinator of Gender and Development Cambodia, with the assistance of Janet Ashby, ARCPPT's Country Project Manager for Cambodia. Chapter 2 was written by Anne Gallagher, ARCPPT Team Leader and Mr. Phil Marshall, its Technical Director.

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EXECUTIVE SUMMARY

This study represents the result of two months of research on the theme of “Human Trafficking, Gender, and the Criminal Justice System in Cambodia” carried out at national level and in two provinces: Banteay Meanchey and Kandal. By documenting the situation and analyzing the criminal justice response, the study aims to contribute to an improved legal process - with particular consideration being given to victim protection that is oriented around human rights norms.

The study was undertaken in the context of the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT), an AusAID supported project with the goal of improvements in criminal justice process relating to trafficking in persons which is working in the countries of Cambodia, Thailand, Laos, and Myanmar. It is expected that the results of the study will inform the work of ARCPPT both in Cambodia and in the wider region.

The gender dimensions of trafficking are profound. Gender affects all aspects of the trafficking process: from the factors that contribute to trafficking to the nature of the laws and policies developed to deal with the phenomenon. The integration of a gender perspective into anti-trafficking interventions is therefore not an option but an integral aspect of any meaningful response.

A gendered analysis of trafficking begins with an examination of underlying causes and contributing factors. While information on trafficking patterns is presently inadequate, it appears that the majority of contemporary victims are women and children, particularly girls. Whilst not ignoring the plight of trafficked men, it is important to acknowledge that gender-based violations of human rights, including those implicated in the feminisation of poverty, are part of the root causes of trafficking and a key feature of the trafficking process. Discrimination against women and girls and other forms of gender-based violence further aggravate vulnerabilities.

The phenomenon of human trafficking is relatively new to Cambodia. However, it is increasing at an alarming rate. Trafficking in Cambodia is facilitated by shortfalls in political will and a weak legal system with inadequate laws and enforcement. Strong vertical and horizontal links exist between trafficking networks and other sectors of the crime industry. Organized crime rings are tapping into the lucrative trade in people, where men, women and children are being bought and sold into slavery-like situations.

Trafficking occurs across provincial and national boundaries, and over extremely long distances, creating a flow of people moving from poorer areas to more prosperous ones. Due to the increase in cross-border movement and migration, previously remote areas are now exposed to rapid social changes. This has disrupted traditional lifestyles and made communities especially vulnerable to the problem of trafficking. In the Cambodia context, it can be reasonably argued that women and children are more vulnerable to trafficking, particularly for sexual purposes, because of the socially and culturally condoned ‘relative inequality’ of women and the hierarchical undervaluing of youth. At the same time, other factors which inform individual status in Cambodia (e.g. economic success, social status, education) leave some men vulnerable to trafficking, particularly for the purposes of forced manual labour.

Existing national laws are inadequate to deal with the problem of trafficking in Cambodia. New laws are under development and improved legislation is certainly on the way. However, it is apparent that key factors go beyond the adequacy of national laws to issues of corruption, impunity, and collusion, in a context of generally lax law-enforcement, limited understanding of the complexities of human trafficking, and limited sensitization of law enforcement personnel to the harmful impact of trafficking in humans in particular on women and girls. Law enforcement has been improving with regard to trafficking in humans in Cambodia, but still relatively few traffickers have been apprehended, prosecuted, and convicted.

A gender analysis of the various laws, institutions and practices which together make up the criminal justice response to trafficking in Cambodia reveals both weaknesses and opportunities. The study highlights how political, administrative, judicial, social and financial problems relate to gender and impact on the chances of success in terms of criminal prosecution. Victim protection, in this context, is viewed in its totality; that is, it takes into account the physical and psychological integrity of the “people being trafficked”. For example, a key evidentiary tool - the victim’s willingness to testify as a witness - is dependent on the availability of victim/witness protection. Therefore the question was raised as to how criminal proceedings are affected by national law and the (lack of) provisions to protect victims/witnesses.

The victim-centered approach also considers their needs in terms of social aid and material compensation. Consequently, the resources and qualifications of the victim protection organizations are examined and questions of confiscation of profits and claims for damages addressed.

On the basis of the research findings, recommendations are made for a strengthened gender based response to trafficking in Cambodia. These recommendations address the legal framework, the general criminal justice system, law enforcement, prosecution, the judiciary and victim support agencies. The report concludes that it is only through cooperation and collaboration from all these sectors that impunity for traffickers can be removed and justice for their victims - women and men, boys and girls - can be secured.

INTRODUCTION

This study represents the result of two months of research on the theme of “Human Trafficking, Gender, and the Criminal Justice System in Cambodia” carried out at national level and in two provinces: Banteay Meanchey and Kandal. By documenting the situation and analyzing the criminal justice response, the study aims to contribute to an improved legal process - with particular consideration being given to victim protection that is oriented around human rights norms.

This study was undertaken in the context of the Asia Regional Cooperation to Prevent People Trafficking, an AusAID supported project with the goal of improvements in criminal justice process relating to trafficking in persons which is working in the countries of Cambodia, Thailand, Laos, and Myanmar. Similar studies are being taken for all project countries.¹

The objectives of the study were:

- To conduct a gender-based study on the legal protection and process for trafficking cases by examining: victim’s rights under national laws, social norms, current practices of authorities, and the role of victim protection institutions.
- To examine the criminal prosecution process in order to identify the specific problems involved in the prosecution of trafficking and to indicate possible solutions, with an emphasis on adequate victim protection and gender issues.
- To make new insights available to State authorities, such as those responsible for criminal prosecution, as well as to specialized Non-Governmental-Organizations (NGOs).
- To provide a foundation understanding from which the ARCPPT Project can: (1) promote cross-border co-operation, also with the victims’ countries of origin: and (2) develop joint strategies and measures for prosecution and victim protection.

The Study consists of six Chapters. Chapter 1 contains a broad overview of the links between gender and trafficking. Its purpose is to provide a context and foundation for the more specific analysis of the situation in Cambodia set out in the remainder of the Study. Chapter 2 examines issues of various responses to trafficking from a gender perspective. Chapter 3 examines the phenomenon of trafficking in Cambodia with particular emphasis on trends and perceptions as well as the impact on gender in the various stages of the trafficking cycle. Chapter 4 provides a synopsis of the laws which relate to trafficking, directly and indirectly, in Cambodia. In Chapter 5, the criminal justice system in Cambodia as it relates to trafficking is examined from a gender perspective. The final Chapter contains recommendations for a strengthened gender-based response to trafficking in Cambodia.

¹ It should be noted that there are significant variations in the different country studies. These arise because of different access to qualified discussion partners and different degrees of access to documents/materials.

A note on definitions and methodology

This study adopts the definition of trafficking which is contained in the United Nations Protocol on Trafficking in Persons especially Women and Children:

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 purposes 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 the removal of organs; b) the consent of a victim of trafficking to the intended exploitation set forth in subparagraph (a) shall be irrelevant where any of the means set forth in subparagraph (a) have been used²

In terms of the methodology used in this study, the following information is relevant:

Interviews were conducted throughout the target provinces with various individuals working in the judiciary, humanitarian protection, police and prosecution, local officials, and victims themselves. Basically, two paths were taken when making contact with these persons: one, via official inquiries addressed to authorities in the Ministry of Justice and the police; two, via the respective Non-Governmental-Organizations, specialized victim protection institutions and qualified individuals known from the past research work in the field of trafficking. The second path proved to be the more effective one, as people were more willing to co-operate swiftly.

Due to time restrictions, research was limited to specific regions. Thus the empirical data reflect approaches, procedures and trends in the respective areas, but are only representative of the selected local regions and within the framework of a limited number of interviews.

Two criteria were decisive for the selection of the areas in which information was collected: one, the existence of a victim protection centre in the respective area, so that it could be assumed that victim protection and thus also prosecution of trafficking existed; two, regions were selected in which it was known that the police were particularly dedicated to the work of law enforcement and prosecution.

The interviews were carried out using a guideline questionnaire and with reference to the following thematic areas: investigation (police), investigation and the collection of evidence (public prosecutor's office and investigating judges), judicial system (judges and lawyers), victim protection (shelter and related humanitarian organizations), damages claims/compensation, matters related to national laws and international conventions.

² a). UN Trafficking Protocol, article 3 (a)

CHAPTER 1

AN OVERVIEW OF GENDER AND ITS IMPACT ON TRAFFICKING

The gender dimensions of trafficking are to be found right throughout the trafficking process, both in terms of the factors that contribute to trafficking vulnerability and in the impacts of those factors.

The present chapter does not intend to address all of these gender dimensions but rather focus on gender issues as they relate to or otherwise impact upon the criminal justice process. The purpose of the Chapter is to provide a background and context for the specific examination of the Cambodia situation found in Chapters 3-6 below.

1.1 GENDER AND THE SUPPLY SIDE OF TRAFFICKING ³

There are a range of factors that limit the life options of people at points of origin and lead to a supply of potential trafficking victims: people who are prepared to leave their communities in search of better opportunities or to escape their current situation. These are often referred to as ‘push factors’. While most affect both men and women, many disproportionately affect women both in terms of their magnitude and their consequences. These factors include:

- **Economic disparity** within and between countries, which provides the incentive for people to migrate in search of better opportunities. This disparity is increasing throughout the region;
- **Poverty.** Women make up an increasing majority of the poor. It should be noted, however, that many trafficking victims do not originate from the poorest of the poor, and that a rise in income to above subsistence levels often appears to trigger migration in both communities and individuals;
- **Lack of citizenship** among ethnic minority groups in countries such as Thailand is a major cause of vulnerability. Without legal status, people cannot vote, own land, access welfare services, travel freely or have their education recognised. In addition, the inability to travel freely has implications for the ability of parents to ensure that their children are able to attend school. While this issue affects both men and women, the more limited range and more dangerous nature of women’s options in the informal sector mean the consequences of lack of citizenship can often be relatively more severe;
- **Lack of legitimate and fulfilling employment opportunities** particularly in rural communities. This can actually be exacerbated by skills training programs which provide skills which can be more lucratively used in a different location. In Cambodia, for example, some sewing programs in rural areas have resulted in the beneficiaries travelling to the city, where pay rates in

³ While this term is commonly used in trafficking discourse, it is important to note that it can be somewhat misleading. By definition, individuals cannot consent to their own exploitation. People do not supply themselves to be trafficked but rather for the chance to move in search of better opportunities.

the garment industry are potentially higher but where the risks of exploitation are also greater;

- **Lack of economic security.** This includes lack of security for single-income female heads of households, which has been shown as a contributing factor to women migrating and, in particular, being exposed to the sex trade;
- **Individual family situations** including situations of **domestic violence and abuse.** In addition, there is some evidence of a link between family size and the likelihood of a child ending up in sexual exploitation – the larger the family, the more vulnerable the children. Lack of access to family planning services may therefore be an indirect factor in trafficking vulnerability with special implications for women;
- **Societal attitudes** including differential attitudes to boys and girls. In some communities the lower status of girls interplays with the opportunity for some young women with limited education to earn comparatively large amounts of money through engagement in the sex trade. There is evidence that this provides a draw-card for other young women, many of whom end up in highly exploitative situations;
- **Civil and military conflicts** which push people to flee their countries, often into the hands of traffickers. The breakdown of societal and family structures in such situations exacerbates both individual and community vulnerability to trafficking. Once again, women and children are especially at risk;
- **Lack of access to education** limits the opportunities of women in particular to increase their earnings in more skilled and better protected occupations. However, as with poverty, it should be noted that it is not always those with the lowest levels of education who are trafficked;
- **Lack of information.** Many women, children and men have little understanding of the risks and realities involved in working in a foreign environment. Not only does this make them easy prey for traffickers and exploiters, it leaves them vulnerable to other dangers such as HIV/AIDS. Information channels for women may be narrower and less reliable.

1.2 GENDER AND THE DEMAND SIDE OF TRAFFICKING

Concomitant with the supply-side, a number of factors contribute to creation of the demand for trafficked persons and the goods and services produced through their exploitation. These are often referred to as ‘pull factors’. These factors provide an incentive for people to move, often cross-border, and often illegally, in search of better opportunities.

- **Demand by employers** and enterprises for cheap, exploitative labour. Conservative estimates suggest that Thailand, for example, has at least 1.5 million jobs that will not be filled by Thai nationals, who are increasingly rejecting the ‘dirty, dangerous and difficult’ occupations. This labour can easily be sourced from neighbouring countries. At present, however, few mechanisms exist which provide even the most basic of protections to migrant workers;

- This **lack of respect for human rights of migrants** increases their vulnerability and provides ideal conditions for trafficking to flourish. While men are at risk, **two sectors dominated by migrant women (domestic labour and the “entertainment” industry) are not protected by labour laws** in any of the focus countries for this Project. These two sectors are also low status and relatively invisible, increasing the vulnerability of those working within them.
- At the same time, most countries, including the four directly involved in this Project have **comparatively weak law enforcement mechanisms and measures** to investigate, apprehend, prosecute and penalize offenders. Even where mechanisms are in place, **low levels of understanding by officials** can lead to treatment of trafficking victims, principally women and girls, as criminals. Victims are often charged with entering the country illegally or with working in prostitution. Further, collusion between traffickers and officials can lead to trafficked victims being deported to the border where they are picked up by the traffickers and trafficked again.
- Weak law enforcement can be reinforced by **community attitudes** at points of destination for trafficking. Widespread discriminatory attitudes toward migrants and ethnic minorities, coupled with lower status of women and children generally, often provide little or no social sanction for trafficking activities. Trafficking into the sex trade is particularly susceptible to community acceptance of inadequate or inappropriate responses by the criminal justice system.
- Because of a combination of laws, policies and local practices, trafficked victims often have **no avenues of redress** for what has happened, even if they are able to escape their immediate exploitative situation. There are several known examples of people escaping only to be returned to the traffickers by someone from whom they had sought assistance – including law enforcement authorities.
- Finally, an **expanding commercial sex industry** in the ARCPPT region and increased demand for the services of sex workers. While some of the Project countries tolerate the existence of a flourishing sex trade, those working in the industry are heavily discriminated against and stigmatised. Sex workers in Cambodia, for example, are often arrested by police even though they are not breaking any law. The situation is exacerbated by crack-downs on prostitution in general, rather than on its most exploitative aspects, including child and forced prostitution. Within this already highly exploitative setting, treatment of migrants is even worse. It is migrant women who are most commonly found at the lower end of the trade, often in debt or physical bondage, serving many customers a day, with little room for negotiation on condom use, thus being highly exposed to HIV and other sexually transmitted infections.
- Within this expanding industry, supported by growing sex tourism, **demand for child sex**, both local and international, also appears to be increasing. Both girls and boys are vulnerable in this situation although the issue of commercial

sexual exploitation of boys has received relatively less attention. Strengthened law enforcement and programs to reduce vulnerability of children have had some impact at local level, but overall these interventions appear mainly to be moving the problem around rather than reducing it.

1.3 GENDER AND INSTITUTIONAL FACTORS

- As noted above, the ARCPPT region is characterised by a large supply pool of people in some countries willing to migrate in search of employment or other chances to better their situation. Many such opportunities exist but there remains a **mismatch between labour market realities and immigration policies**. This leads to high levels of irregular cross-border migration as migrants seek to fill employers' demands for low-cost low-skilled labour.⁴ Once again, men and women, boys and girls, experience this phenomenon in different ways.
- There is growing awareness of this problem within the ARCPPT region. ILO-IPEC and UNIAP have been working with governments to look at increasing opportunities for safe migration. Lao PDR, Cambodia and Myanmar have all recently signed **bilateral labour agreements** with Thailand aimed at regularising much of the currently irregular migration. More work needs to be done to insure that the potential protection provided for workers under such agreements is realised in practice, and in a non-discriminatory manner.
- It is important to note that in this region, as in most others, official state-sanctioned **migration policies generally tend to be sex-selective** in the sense of being biased towards typically male-dominated sectors (construction and agriculture work). Work in the “entertainment” trade, for example, an important end-point for trafficking, is rarely covered by migration policy. Domestic work is similarly excluded. In addition, many migration channels that may be safe for individuals do not provide for migration of families, thus adding to **vulnerability of children**, who may be separated from their parents or placed in a situation where they cannot access appropriate education.
- Finally, existing institutional arrangements do not take account of **demographic variations** within the region. As noted elsewhere, there is a shortage of women in rural areas of China and increasing ‘demand’ for brides from nearby countries. The lack of an institutional framework for this ‘market’ helps to create and sustain a large illegal sector which provides opportunities for traffickers to ply their trade.

⁴ This situation in itself is not new. The region is characterised by historical patterns of migration, in some areas going back many centuries, and in some cases bearing little relation to present state boundaries that in most cases are relatively recent, having been stabilized only in the last 100 to 150 years.

CHAPTER 2

GENDER AND THE TRAFFICKING RESPONSE

While many anti-trafficking interventions address women exclusively, this does not mean that they are necessarily gender-sensitive. In particular, such interventions often view differences between men and women as natural and unchangeable, reinforce discriminatory stereotypes, and ultimately further disadvantage women and girls, men and boys. Four areas of particular relevance to the Project are outlined below.

2.1 GENDER AND LAW ENFORCEMENT

Widespread **lack of understanding** of differences between trafficking, smuggling, and prostitution can result in inappropriate targeting of law enforcement efforts. This can lead to examples such as:

- the **arrest of trafficking victims**, principally women and girls, as illegal migrants and/or for their involvement in the sex trade;
- the **targeting and disproportionate punishment of small-scale brokers** or people movers. Evidence suggests that these people are mostly women with little or no connection to those who profit hugely from exploitation of trafficked persons;
- **interventions which seek to restrict movement of people, particularly women**. Discriminatory emigration and immigration policies have been shown throughout the world not only to be unsuccessful in preventing movement but to facilitate trafficking and other forms of exploitation by pushing potential migrants into more and more risky and dangerous forms of migration. There are even examples of women knowingly entering into debt bondage as a risk minimisation strategy, as the cost of any failed migration attempt is met by the would-be employer, rather than by the individual; and
- **crackdowns on the sex trade in general**, rather than on what are widely agreed to be its worst forms – child and forced prostitution, much of which involves trafficking. This pushes the industry further underground and demonstrably tends to make the situation worse rather than better. By failing to distinguish between forced and non-forced sex work, the system is also providing a ‘business incentive’ to the brothel owners to use forced labour on the basis of cheaper cost.

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2.2 GENDER AND RECOGNITION OF ‘AGENCY’⁵

Many anti-trafficking interventions fail to recognise the ‘agency’ of women. In an effort to demonstrate their commitment to countering trafficking, several countries have, for example, implemented policies restricting the movement of unaccompanied

⁵ ‘Agency’ in this sense means choice over life options – that is, the extent to which a person is able to and does make decisions and take action affecting their own life.

young women on the assumption that women who do not move are protected from being trafficked. The policy choice therefore becomes one of controlling women, rather than empowering women by changing discriminatory laws and attitudes and helping them to deal with oppressive environments. Apart from being a breach of fundamental rights, including the prohibition against sex-based discrimination, such policies can actually make women more vulnerable, pushing them towards more organized, more expensive, and riskier forms of migration.

Another common tendency with significant gender implications is to group women and children together in a single category. This does a disservice to both and tends to underestimate women's abilities to make major life choices. The interventions required to address the needs and concerns of women and children in the trafficking sector are very different. It is important, in particular, to recognise the rights of all women, regardless of their sector of employment, to participate in decisions that affect their lives.

Combining women and children in the same group also implies that children are able to make choices for themselves and that they are not dependent on others for their life decisions. The UN Principles and Guidelines on Human Rights and Human Trafficking note that “the particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programs and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.”⁶

2.3 GENDER AND THE TREATMENT OF TRAFFICKING VICTIMS

Considerable advances have been made in the treatment provided to victims to date, particularly in the South-East Asia region. However, the issues of agency identified above do have implications in this area. Most obviously, there is insufficient acknowledgment that reintegration of trafficked persons does not necessarily mean a return of the victim to a pre-trafficked situation/location (often used as a success criteria for reintegration projects). Rather, successful reintegration, or more accurately, successful *social integration*, occurs when a person achieves an amount of agency (choice over life options) that is comparable to people who are not in a trafficking episode.

Another issue that requires closer consideration in terms of victims is the legal status of children of trafficked victims. Some countries do not acknowledge children born of local mothers and foreign fathers as having legal status. For these individuals, mostly girls, their identification, rescue and social integration is especially difficult to pursue and monitor.

⁶ Recommended Principles and Guidelines on Human Rights and Human Trafficking, United Nations High Commissioner for Human Rights, Economic and Social Council (ECOSOC) 2002.

2.4 GENDER AND MEN

Men who are victims of trafficking face the problem that they are not very ‘visible’ – that is, not much attention, in terms of policy, programs, or public awareness, is given to their situation. This limits the assistance and avenues of redress provided for trafficked men and, correspondingly, the disincentives and punishments for traffickers of men. It also reinforces the stereotype that *‘men migrate, but women are trafficked’*. The negative impact of this is felt across the gender spectrum. While men are not protected under laws and policies designed for trafficked women and children, the perception of trafficked women as weak, ignorant and without agency is also reinforced. This omission therefore benefits neither men nor women.

CHAPTER 3

TRAFFICKING IN CAMBODIA

3.1 TRAFFICKING: TRENDS AND PERCEPTIONS

3.1.1 Context

The phenomenon of human trafficking is relatively new to Cambodia. The first instances of trafficking can be dated back to approximately 1970, when cases of trafficking for the purpose of prostitution began to occur after Cambodia's borders opened.⁷ Now, due to a range of factors including the increased mobility of the world's population and the effects of globalization, the problem of trafficking in persons is increasing at an alarming rate.⁸ Trafficking in Cambodia is facilitated by shortfalls in political will and a weak legal system with inadequate laws and enforcement. Strong vertical and horizontal links exist between trafficking networks and other sectors of the crime industry. Organized crime rings are tapping into the lucrative trade in people, where men, women and children are being bought and sold into slavery-like situations.

Trafficking occurs across provincial and national boundaries and over extremely long distances, creating a flow of people moving from poorer areas to more prosperous ones.⁹ Due to the increase in cross-border movement and migration, previously remote areas are now exposed to rapid social changes. This has disrupted traditional lifestyles and made communities especially vulnerable to the problem of trafficking. Victims of trafficking suffer in slavery-like conditions, through various means and for various purposes, including: debt bondage and serfdom, forced or compulsory labor, and sexual exploitation/forced prostitution. While women and children are the main victims of trafficking, especially for the purposes of sexual exploitation, which is reported to be the most dominant form of trafficking in Cambodia, men are also vulnerable to trafficking¹⁰.

3.1.2 Trafficking Trends and Perception

A considerable amount of research has been undertaken into the issue of human trafficking in Cambodia. The typical end purposes of trafficking both to and from Cambodia have been identified as follows:

- a) The sex industry

⁷ Kritya Archavanikul, July 1998 Trafficking in children for forced labour exploitation including child prostitution in the Mekong sub-region.

⁸ UNDP Human Development report 1998, that makes a clear link between trafficking as a criminal activity on the rise as a result of the expansion of globalization

⁹ There is often overlap between source, transit and destination sites. Cited below are sites that dominate each category. In addition to older source and destination sites, emerging source sites in Asia include Laos, Cambodia, Vietnam, China, Taiwan, Malaysia and Myanmar, while Thailand continues to be a source, transit and now important destination country.

¹⁰ Men and boys are also trafficked. Furthermore, the age of trafficked persons appears to be getting younger.

- b) Begging, soliciting business, or selling flowers
- c) Forced or exploited labour
- d) Baby-buying and child trafficking for adoption

a) Trafficking into the sex industry

There are many forms of human trafficking around the world. In Cambodia, when we talk about human trafficking, this is commonly understood to refer to trafficking into the sex industry. Although statistics on trafficking cannot be completely reliable, due to its hidden, criminal, and dynamic nature, research conducted by the Commission on Human Rights and to Receive Complaints of the National Assembly¹¹ has indicated that over 14,000 women are working as prostitutes in brothels throughout the country. Of these, about 15.5% are under 18 years old. The number of trafficking victims within this group is unclear. Nevertheless, it is evident that many women and girls working within the Cambodian sex industry have been or are being subjected to practices which are commonly recognized as being associated with trafficking. For example, many believed they were being recruited for other purposes such as domestic work. Unfortunately, these victims, and others who are kidnapped, are forced into sexual slavery, and end up living under the control of a brothel-owner.

Box 1

Pheap, 19, tells us her story. “One day, my neighbor told me that “Maikchal” (“mother of the wind,” meaning a facilitator who helps people to get work and/or cross borders) was searching for employees to work in a food shop in Thailand. The salary would be 2,500 baht per month. I decide to follow the “Maikchal,” who I didn’t know before, to work in Thailand. I hoped to earn some money to help my older sister who was in trouble.

When I arrived in Thailand, the “Maikchal” left me at the food shop and I started to work as waitress with three others young Lao girls. I was the only Cambodian.

Two months later, the owner of food shop tried to force me to wear a short skirt and work late at night. I didn't agree to wear a short skirt. But after one week of torture from the owner of food shop, being raped by a gang and deceived to lose my virginity, I decide to agree to what the owner said and entertain customers. I felt I could not return home anymore and I was in despair.

One year later, I and my three Laotian friends escaped from the food shop and filed a complaint against the owner at the police station. In the end, I was detained for three months on charges of illegal migration.

b) Trafficking for begging, soliciting business or selling flowers

Trafficking in women and children for begging or to solicit business or sell flowers is rather new, and occurs mostly in big cities in Thailand. Women and children are

¹¹ National Assembly, Commission on Human Rights & Receipt of Complaints 1997, Report on the Problem of Sexual Exploitation and Trafficking in Cambodia.

typically recruited as beggars to fill the following profiles: mothers carrying young babies, young girls carrying flowers, children, and elderly women.

Cambodians from provinces near Thai borders are frequently recruited by organized criminal agents who promise them better jobs. The victims are illegally sent, often under deception and for exploitative purposes. The living conditions of the beggars or flower sellers are extremely poor. They are exploited and controlled by organized crime rings. In many reported cases, they are cheated out of their earnings by the exporting agents. The worst situations are those in which people had mortgaged or sold their land in order to pay in advance for the smuggling fee and then were sent to be stranded in neighboring countries without jobs and a means to live.

Box 2

Proch is a street child who lives by begging in the Poipet area in Cambodia, on the border with Thailand. When he was 8, he left his hometown with his mother to beg in Thailand. After his mother died from taking drugs given to her from the criminal organization in Thailand, he continued to live and beg in Thailand. He told us [the ARCPPT gender researchers] that:

“They beat me a lot because I’m not a good beggar. They injected me with some kind of medicine. After I received the injection, I could beg a whole day and night, with no appetite or sleep. Most of my friends received the injection too. My friend and I tried to escape many times, but it didn’t work. One day I was caught by the Thai police, who put us in detention and deported us to Cambodia. I don’t want return to Thailand, I can beg in Poipet. I am afraid that they will beat me if I can’t achieve the requirements.”

Picture 1



Photo by LSCW, Beggar children

Box 3

Thida, 23, left her hometown in Battambang with her newborn baby to go to Thailand to beg in the City. When she arrived in Poipet, she met a “Maikchal” who took them to beg in Thailand. In exchange, Thida had to pay in advance a traveling fee of 4,500 baht. When she arrived in the city, she was controlled by an organized crime gang. From begging in the street, she collected approximately 200 to 300 baht per day. For the first three weeks, the organized crime gang took almost all her money. They left a small amount for her to buy food for her baby. Her living conditions were inadequate. She slept with her young baby and other friends under an old bridge. One day, a stranger raped her. She was rescued by the police. Then they put her in detention on charges of illegal migration. After three long months in detention, she and her baby were moved to a shelter.

While systems are now in place, and improving, for the identification and support of cross-border trafficking victims, these are not yet sufficient and many still end up being categorized and treated as illegal migrants. According to staff of NGOs (CWCC, IOM, Goutte d’eau) in Poipet, many children, especially young boys, are arrested for begging in the street and are deported by Thai immigration police to the country of origin.

Picture 2**Photo by LSCW, Khmer Children in Thai Police Car*****c) Forced or exploited labour***

Women and children are not only trafficked for prostitution or begging/selling flowers, they are also trafficked for forced or exploited labour. We found that many women, men and children work as construction workers, garment factory workers, fish-processing workers, farm workers, domestic workers, and in other forms of work. Domestic work leaves women and girls vulnerable to the risk of rape by the employer or being forced to work as a slave. Of course, not all such migrant domestic workers end up in situations of trafficking. Some are fortunate enough to be placed in a good family and enjoy a decent standard of living.

Common characteristics of trafficking into forced or exploited labour include situations of: no pay or not enough pay; debt bondage; nice promises about salary and

working conditions which do not get realized after arrival; physical punishment; sexual abuse; due wages withheld for all kinds of reasons; and no control over daily life.¹² Employers often deceive workers abroad. Sometimes, to increase production, the employer will force the workers to take drugs that make them work hard, for long hours and without getting tired.

Box 4

Poy, a young boy of nine, lives in Kampong Speu province. He heard that in Poipet area people can work and earn money. He and his friend decided to travel by train to Phnom-Penh and from Phnom-Penh to Battambang, then by car to Poipet. Poy said: “When I arrived in Poipet, one man came to talk to me. He told me that I can make a lot of money if I follow him. He said he could find a good job for me selling flowers and that I would receive a salary of about 2,500 baht per month. When we arrived in the city, my friend and I were sold to another man. Then he forced us to beg on the street. As I’m not good at begging my boss sent me to clean public toilets. I worked from 9:00 am to 10:00 pm and I never received any salary. He just gave me enough food to survive.”

Picture 3



Photo by LSCW, Labour exploitation of children and women along Cambodian-Thai border

Many men go willingly for work in Thailand without legal papers; of these, an unknown number become trafficking victims when they are held in slavery-like conditions, that is, against their will, in very harsh working environments, and without receiving wages due. It is very common that men are trafficked for purposes of construction and farm work. Our research on trafficking to Thailand found that “the majority of workers recruited for illegal migration or trafficked for work [other than work in the informal sector including the sex industry] are men”. As one source observed, “We know it happens a lot but trafficking in men is not seen as a problem. Numbers show that more men go illegally to Thailand but, with men, there is a grey zone between trafficking and illegal migration. Their vulnerability is not seen as important as women’s and children’s,” according to IOM staff in Poipet area. In fact, as Thailand’s trafficking laws cover only women and children at the present time,

¹² Annuska Derks, IOM, October 1997, Trafficking of Cambodian women and children to Thailand

there is little likelihood of men being identified as victims of trafficking. In this way, the initial precept that men are not trafficked becomes self-fulfilling.

Picture 4



Photo by LSCW, Men, women and child victims of trafficking who were deported as illegal migrants

d) Baby-buying and child trafficking for adoption

Baby selling and baby trafficking are increasing in Cambodia. There is a growing number of orphans due notably to the AIDS outbreak, but in the adoption circuit, there are widespread reports that children are also bought (20 – 100 USD) or tricked away by “adoption facilitators” from very poor parents¹³.

According to a situation report on international adoption in Cambodia¹⁴, the criteria for registration and licensing for orphanages are not clear since there are currently no official minimum standards defined¹⁵. It reportedly all depends then on the under-the-table payment for a centre to obtain its registration and license.

Moreover, numerous agents are acting as “adoption facilitators”: some are duly licensed by their foreign country to process adoptions, some are registered as Cambodian NGOs, some are benevolent foreign staff processing adoptions out of compassion, and some are acting as “freelance” for-profit “facilitators”.

Recruiters systematically target vulnerable families in the countryside, providing food and money in exchange for their babies. They give the false impression that the babies will receive better care in an orphanage or centre for adoption. Then the facilitator or accomplice orphanage director arranges for the paperwork to be signed by the required local officials (mainly chiefs of village) and speed up the process with the child’s picture and a doctored history to attract prospective parents. This is the beginning of baby trafficking in Cambodia.

¹³ The Royal Netherlands Embassy in Bangkok, May 2003, International Child Adoption in Cambodia

¹⁴ See, for example, The Royal Netherlands Embassy in Bangkok, May 2003, International Child Adoption in Cambodia

¹⁵ UNICEF is currently working with MoSALVY on the establishing of Minimum Standards of care and services for orphanages. Meanwhile, inspections – whenever they do take place – are done using a simple checklist.

Law enforcement in adoption is very weak, as it all depends on low-paid and often unmotivated civil servants. The system is reported to be frequently hampered by corrupt practices at all levels.

Box 5

Two impoverished and divorced Cambodian mothers were coerced into giving up their babies by a baby trafficker. The mothers were promised that the babies would be taken to live at a children's center in Phnom-Penh, where the mothers could visit them regularly. The mothers' subsequent attempts to visit the infants were refused. The mothers complained to a human rights organization. After several months of pressuring the Cambodian police and courts, the two infants were eventually found to be in the custody of a private orphanage run by an adoption facilitator who caters to the US market.

3.2 GENDER AND ITS IMPACT ON TRAFFICKING

In the study "Cambodian Women and Violence: Considering NGO Interventions in Cultural Context," researcher Rebecca Surtees has placed the issue of gender and its impact on trafficking in an important context:

"In the Cambodia context, it might reasonably be argued that women and children are more vulnerable to trafficking because of the socially and culturally condoned 'relative inequality' of women and the hierarchical undervaluing of youth. At the same time, other factors which inform one's status in Cambodia (i.e. economic success, social status, education) impact men as well as women and, given the complex range of factors, render some men at least as, or perhaps more, vulnerable to trafficking than some women."¹⁶

"[The] perceived vulnerability of women is central in understanding the focus on women over men in trafficking discourse and intervention. While researchers have found that women are increasingly and independently opting for migration (Wijers & Lap-Chew 1997: 43), the perception remains one of 'female vulnerability'. That is, 'whereas men (who migrate) are viewed as active, adventurous, brave and deserving of admiration, for the same behaviour women are pictured as passive, foolish and naïve deserving either rescue or punishment' (Wijers 1998 as cited in Doezema 1999: 21-2)."¹⁷

"Overlooking that women voluntarily choose migration (and they do so in large numbers throughout Southeast Asia) ignores women's agency as well as the current economic realities in which women and men are active contributors to the family income. The prevalence of trafficking in Cambodia cannot necessarily be read as an indictment of the gender dynamics of the society, although it is certainly one element.

¹⁶ Rebecca Surtees, "Cambodian Women and Violence: Considering NGO Interventions in Cultural Context", page 114

¹⁷ Ibid

Broader social power dynamics facilitate not only the existence but also the proliferation of trafficking in persons."¹⁸

"Trafficking involves a range of interrelated causes and contributors, which are mutually reinforcing and coterminous. Various types of trafficking are differentially affected by a range of factors. That is, family problems and poverty may be particularly salient where women are trafficked for prostitution, while rising economic expectations may lead to men being trafficked for work abroad. Specific risk factors are linked to different types of trafficking. For example, trafficking in women is tied to a gender bias in cultural context as well as the expanding sex industry in the region. Trafficking in men is tied closely to poverty and development policies in tourism and infrastructure, which depend on temporary, low paid workers. Poverty, family environment, the law, inadequate educational and economic opportunities, power dynamics and social disruption are paramount."¹⁹

While poverty, or more accurately, inequality, can be considered a primary vulnerability factor in trafficking, "There is a continuum between 'real poverty', where there is a desperate need of money for basic survival, and 'relative poverty', which is tied to expectations of wealth. At the same time, poverty does not inevitably lead to trafficking."²⁰

"Family stability is also important given the primacy of the family unit in Cambodian society. Conflict and disruption here is significant. At the same time, a negative family environment is not an adequate explanation, leading inevitably to trafficking or the risk thereof. People from 'good families' are also vulnerable to trafficking."²¹

"While trafficking in persons was criminalized in Cambodia in 1996, there is limited understanding and enforcement of the trafficking law by government officials, police or border guards. Likewise, there is extensive corruption and involvement of police and border authorities in trafficking. This not only fails to prevent trafficking but indeed promotes its proliferation."²²

"Inadequate educational and economic opportunities are also significant factors. Women are vulnerable to trafficking and exploitative work as their lower levels of education and skill (due to their relative inequality) renders them less employable than men. Likewise, women are now looking farther afield for economic opportunities, putting them outside protection of family and village. At the same time, numerous men are without education, skills and economic possibilities which, like their female counterparts, renders them vulnerable to trafficking or willing to pursue illegal migration."²³

"Appreciating dynamics of 'relative power' is also important. Trafficking uses power both coercively and more subtly. In an overt way, people may be kidnapped or sold forcibly. They may be bound, guarded or restricted in movement. Arguably more common is that power is exercised more subtly, like a trusted neighbour luring the

¹⁸ Ibid, pages 114-115

¹⁹ Ibid, page 122

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Ibid, page 122-123

person into trafficking or a parent pleading with a child to contribute to the family income. There are various levels of power in this 'trafficking hierarchy', although the trafficked person invariably has less or no power."²⁴ As women in Cambodia have, in general, less social, economic and political power than men, they are in general more vulnerable to trafficking and less able to break free of it than men.

"Social disruption with its accompanying dilemmas – lack of trust, loss of traditional values, trauma, destruction of family/community, and a high level of violence – is considered a major contributor to trafficking. Certainly it merits study. However, too often, past upheavals are used as a singular explanation for contemporary social and interpersonal conflict. An analysis of social disruption must be cognizant of the social context prior to the turmoil and how (if) society has been revolutionized. That bonded labour is a traditional custom seems to, at least at some level, belie assertions of total moral and social decay. Further, too much emphasis should not be given to this explanation, as trafficking is an issue in many places where war and social disruption have not occurred. Perhaps the most vivid example is that in neighbouring Thailand, where war and social disruption have not occurred, trafficking is prolific."²⁵

3.2.1 Context

Since the opening of a free market and related policies in Cambodia, gender has become a major issue for discussion in every aspect of development in the country. This is necessary in order to ensure that both men and women can equally join in the development process as well as to ensure that even vulnerable people are well taken care of so that they can participate in the development.

Cambodian society is hierarchical. Decision-making power and status are important factors in Cambodian society. In the Cambodian social order, women are always thought to hold lower status than men. Now in Khmer traditions and culture, women always hold the role of taking care of children and the household whereas men earn money to support the family.

Even though men and women are fully entitled to equality under the Cambodian Constitution, in reality it is difficult for women to claim their rights because of the power, attitudes, and gender relations of society.²⁶

According to statistics from the Ministry of Education, Youth and Sports, in the 2000-2001 academic years, the real enrollment rate of girls was 80.7% at the primary level, but at the lower secondary level this number fell to 13.7%, and it continued to fall until 5.4% at the upper secondary level. The statistics show that the enrolment at primary school level of girls and boys is nearly the same. However, the gap between girls and boys becomes larger as the level of education becomes higher. This gap occurs because of the attitudes and social order that maintain the belief that women only need to take care of children and households. Girls must often give up schooling because Cambodian parents do not recognize the importance and the value of education for girls.

²⁴ Ibid, page 123

²⁵ Ibid

²⁶ Cambodian Constitution, Article 31, every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.

Under-representation of girls at all levels of education has a direct affect in the labor market and decision-making bodies. According to Cambodia CEDAW NGO report statistics, only 11% of the 122 Members of the National Assembly are women, and only 13% of Senate members are women. This inevitably affects decision-making in legislation relating to the interests of women in society. Even though women are highly represented in some areas of employment, (e.g. the garment sector, which provide the bulk of Cambodia's foreign exports, where more than 90% of the 150,000 workers in 225 registered factories are young women), it still does not follow that women have enough opportunities or decision-making power. Women are doing the jobs that do not require high skills, in substandard conditions with low salaries.

The lack of girl's education also has a direct effect on the health of Cambodians, especially the reproductive health of women. Poor health is the major cause of impoverishment and other forms of social deprivation such as loss of education or employment opportunities. The cycle of poverty, ill health and high health care expenditure per household (11% of GDP) economically cripples Cambodian families.²⁷ Women are often living in poor conditions without good hygiene, especially in rural areas. Therefore women quite often face health problems (e.g. the high birth rate, combined with poor health service delivery, is responsible for Cambodia's high infant and maternal mortality rate. The maternal mortality rate is 473 for every 100,000 births, meaning more then 2000 women per year die from causes related to giving birth. This, in turn, means that 2,000 families in one year lose mothers who are both income earners and family care givers.²⁸)

As noted above, poverty is one of the major factors that cause people to move from one place to another searching for jobs to support the family. Demand for cheap labour has combined with this factor to increase the number of women and children in the labor market. Migration is one of the major factors to change the productive role of women in Cambodian society. Because both women and children are labor resources without skills and with low education, they often fall into traps that are organized by traffickers. Thus, we have found that women and children are most vulnerable among the victims of trafficking.

3.2.2 Roles

Almost all social relations in Cambodia are organized hierarchically, with men holding higher status than women in every aspect of life. Therefore, gender relations in Cambodian society can be understood by examining social relations.²⁹ By examining gender roles in a family, the basic unit of society, the way that gender roles are organized can be precisely understood.

According to a traditional "Code for Women," which strictly limits women's role in daily life, girls are always taught how to behave so as to be a good wife and mother. Based on this Women's Code, the gender role of women has been strictly limited. From an early age, a daughter is always taught to respect her parents as well as to be obedient to them. A daughter is required to help her family's work, both inside and

²⁷ 2nd draft NPRS 2003-2005 (CSD, MoP)

²⁸ UNFPA report 1998

²⁹ Annuska Derks, Perspective on Gender in Cambodia; Myths and Realities, Cambodia Report, Center for Advanced Study, Volume 2, Number 3, 1996, Phnom Penh

outside the house. She is expected to take care of her younger brothers and sisters, to clean the house, to help out on the farm or to take on close-to-home income earning activities such as weaving, and to assist her mother whenever it is necessary. Girls in Cambodia, especially in the countryside, are taught their gender role in such a way³⁰.

In traditional Khmer literature, gender roles, especially a girl's roles in a family, are described clearly. Khmer traditional stories such as "Tum Teav and Phkar Sropaun" which are still widely studied in high school, describe the daughter's role in a family. In those stories, a mother, in the absence of her husband, has the supreme power to decide her daughter's life, including the selection of her daughter's future spouse. Because of gender roles, a daughter is required to repay her obligations to her mother, often by means of getting married to a rich man. This phenomenon can still be found, where a daughter finds it necessary to follow her mother's decision, regardless of how miserable it is for her.

As noted above, according to gender roles, in obedience to her parents' decisions, girls have less access to education as well as less access to good livelihood opportunities. This directly results in more women falling victim to trafficking.

The case of Thida, as described in Box 6, is one example to illustrate how many women are living in very difficult situations because of no education.

Box 6

Thida left for Phnom Penh to work when she was 15 years old, without any schooling. Her father had a large debt to pay for medical treatment for Thida's mother. When her mother passed away, her father sold their small piece of land in order to pay back the debt. Thida needed to help her father to get some income to pay back the debt. Because Thida didn't have any education, it was very difficult for her to get a job. Therefore, she started to work as a domestic servant, but her employer sexually harassed her. Since she did not know how to protect herself, she just ran away from the house, and then finally left for Thailand to work as beggar.

Traditionally, men's role in Cambodian society has been regarded as having much higher value than that of women's, both within family and in society as a whole. Males are highly valued from infancy to adulthood. When a family has a newborn boy, mothers usually breastfeed a boy much longer than a girl. Since society understands that men almost always play roles as breadwinners in a family, they place a high value on boys. One proverb says, "Real men don't live under women's skirts", meaning that it is not necessary for men to listen to their wives, because tradition would not allow men to live under women's control. This way of thinking is taught to Cambodians at an early age. A man is educated not to share household work with his wife, and to believe that he has supreme power over his family. Based on this gender biased value system, men are free to find many sex and romance partners besides their wives, while women must have only one partner. Among other consequences, this double standard helps to create the environment for a significant commercial sex sector.

³⁰ More than 80% of Cambodian people are living in the countryside.

Buddhism also has strong influences on gender roles in Cambodia. Boys can repay their gratitude to their parents by becoming monks for a certain amount of time. To be a monk gives his family a high reputation in the society and his family will gain a huge benefit – merit - from their son through Buddhism. However, girls are not given this option for showing their obedience to their parents in order to repay their gratitude. It often happens that girls need to sacrifice themselves in other ways, which can lead them to fall victim to trafficking.

In Cambodian society, there is discrimination against prostitutes regardless of the reason why the person is/was engaged in the sex industry. In most cases, the parents only hope to get some money to pay back debts when they ask their daughters to work away from home. Even after being rescued, many women continue to suffer from the fear of discrimination because society regards those women as bad women and unacceptable.

Social discrimination against prostitution, even from parents against their daughters, makes it difficult for rescued victims to integrate into their former life. In many cases, this discrimination forces victims to leave their home again. In our interviews with victims of sex-trafficking, most victims explained that they hope that their parents in the village never learn anything about their real situation because they would be ashamed if they knew the truth.

Box 7

Thida ...Box 6 says, "I never wish to go home because I am scared to be criticized behind my back as well as beaten by my husband again". Now she is suffering from HIV/AIDS even though she has not been informed about this. Pheap, described above in Box 1, says she misses home but she does not want to go home because she would be shamed by criticism.

One example showing the social discrimination against girls is Rina, a victim from Banteay Meanchey who is currently living at a shelter of CWCC. She said, "I never attended school, as my parents did not let me go, even though my three brothers all attended. My parents always told me that it was not necessary for me to go to school because my future would be to get married and work on the farm only, regardless of the education I might get."

Her parents told her not to go to school because the school was too far from home, and that they were worried about the distance and her safety. However, her parents let her go to distant places to collect plants in order to earn some income to support her family. Because of her gender, even though she should have received schooling, she did not have any choice but to follow her parents. In the end, Rina was sold to work in Thailand and then forced to work as a prostitute.

The perceptions and traditions around gender in Cambodia are key factors increasing the vulnerability of women as victims of trafficking. Trafficking affects both men and women; however, the manner in which it affects the two sexes is very different. Due to lack of education and exposure to the outside world, many women believe others without any suspicion and are easily cheated.

3.2.3 During Recruitment

The majority of people involved in the sale of children and women in Cambodia can be classified as 'ordinary people'. They may be family members: uncles, aunts, cousins, husbands, in-laws and even parents. They are neighbors and friends. Critically, they are often the very people their victims trust most.

One of the most important factors causing girls to fall as victims of trafficking is the fact that they are totally trusting. People they trust promise to find better jobs for them but ultimately lead them to destruction. One of the roots of this trust and naiveté is the manner in which girls are socialized to respect and to accord people a value that far exceeds the value they place upon themselves.

According to the Department of Anti-Trafficking Police in Banteay Meanchey province, the following stories are illustrative of typical recruitment processes. Some people, men and women, are trafficked because they are attracted by the possibility of money, gold, easier life in the city etc, and therefore they believe traffickers who promise them good jobs and lots of money. However, they unjustly end up being forced into types of work and situations that are exploitative.

a) *Recruitment for Prostitution*

Box 8

Nak said: "I trusted her because she was my mother's friend. One day she had come back to our village with her husband after many years away. She had nice clothes and gold jewelry on her fingers. She told us that she and her husband had good jobs in Phnom-Penh and a beautiful big house. She said to me, "Come to Phnom Penh and I can get you a good job and you can help your family". At first, my mother said no but eventually she agreed because there was nothing else I could do to earn some money. Now I am working as a massage girl and sometimes, to please the rich customers, my boss forces me to have sex with them. How can I go home now? I am too ashamed. If I knew this is what I would be doing, I would never have left. I wish that I had not left my family."

Box 9

Some young girls were cheated by their boyfriends who promised a better life. This is Chenda's story: I was in love and lost my virginity with a handsome man in my village. He promised to marry me if I followed him to Battambang. I was so stupid to follow him. I left one day with my lover without telling my parents that I was leaving. Instead, my boyfriend took me to Poipet and sold me to a brothel for 5000 baht. I was forced to work in the brothel until I escaped with a fellow worker and was rescued by an NGO.

Some young people are also trafficked when they attempt to run away from their home due to quarrels, forced marriage, or other problems. Traffickers are able to find such persons and take advantage of their emotional problems, sell them into sex work or force children into sex trade or crime.

b) *Recruitment for Domestic Work or Debt Bondage*

Box 10

Madam Montha is known in town as an intermediary to help people find work. She solicited Kalyan for work in Phnom-Penh. Madam Montha promised Kalyan's parents that she would be able to send home about 80 000 Riel per month from working in a garment factory, and that they could buy a motorcycle to use as a motorbike taxi.

Madame Montha gave Kalyan's mother in advance 600,000 riel (approximately 150 USD) and Kalyan's mother agreed for Kalyan to work to pay back the debt. Once in Phnom Penh, Kalyan was sent to a restaurant with two other girls. Madam Montha received 300 dollars US from the owner of the restaurant for introducing Kalyan, so she made a nice profit.

At the restaurant, Kalyan and the other girls are forced to work more than 14 hours a day, every day of the week without salary. The owner of the restaurant is an alcoholic who verbally and physically abuses them.

Many victims are trafficked through an organized system of persons who profit from this phenomenon. Recruiters earn large amounts of money by cheating the workers, selling victims and charging employers a commission. Employers profit by getting cheap labour that can be forced to work for long hours and no or little pay and sold or abandoned when no longer needed.

c) *Recruitment for Forced Labour*

For example, when a Thai company needs 30 labourers, the employer will contact the intermediary "Maikchal" in Thailand whom he knows and trusts to arrange the recruitment. This Maikchal will contact his Khmer counterpart, who then will contact the smaller Maikchal who live in the village where they gather the labourers. They will persuade workers to come to Thailand by telling them that if they pay 4,000 baht, they will be brought to Thailand where they can earn a lot of money. They also assure the workers that they are already making arrangements with the employer. The Maikchal is usually someone who lives in the same village, so people trust them. When the Maikchal has recruited the workers, they will bring them together to the big Maikchal. The big Maikchal will bring the people to the Thai border. There they are handed over to the Thai Maikchal, who will bring them to the Thai employer who needs the workers.

Box 11

Nary's story: That night, we were 27 young people (men and women are under 30 years old) gathered so that our neighbor (Min Som who lives in the village) could take us to work in Thailand. She had promised us that we could earn 4,000 baht per month. Then the Maikchal charged us 3,000 baht for traveling fees.

One form of forced labour, about which there has been little formal research, but a growing body of anecdotal evidence, is fisheries. As highlighted by the example below, the lack of opportunities for escape and the ease of disposing of victims without any evidence make fisheries a particularly opportune end point for traffickers.

Box 12

Vannak's story: This is Vannak's story, told to a local NGO, and verified independently by project staff. Similar stories have been heard from returned workers in other countries.

"We were divided over different boats. We were thirteen workers altogether. There were another three of us migrants. The three migrants told us that they had to work day and night, and that the boat driver kicked and beat them if they did not work hard enough. The local workers also had to work 24 hours a day. One day, one of the other migrants got sick and could not work. The boat driver got an AK-47, and shot and killed him. His body was thrown overboard. Two to three weeks later, the others got sick too. The boat driver killed both of them too.

We were afraid that one day we would be killed too. We decided that we preferred to die at sea than on the boat. At 3 o'clock in the morning, we jumped overboard, taking 5-6 lifebuoys with us. We had floated in the sea for three days and nights, when we saw a fishing boat from another country. The boat took us from the water. We stayed in a cell for three months and then we were taken to a detention centre. Nine months later, staff took us to the Embassy, where we stayed for more than a month. Finally, we left for the airport to return home, more than a year after we had escaped".

d) Recruitment for Begging

Special recruitment of old women, children and mothers with newborn babies for begging has become an activity that includes the involvement of several layers of people. A recruiter who wants those profiles of beggars will approach an informant who works as moto-taxi.

Box 13

"I had never met him before. He wanted me to gather old people, children and mothers with newborns. He said that he would be at the moto-taxi station and if I brought those people there, I would receive 500 baht for each person. He said they needed those people for begging. He also asked the other motorbike drivers."

3.2.4 During Transport/Transfer

The routes: Many previously remote areas are now exposed to rapid social changes. This has disrupted traditional lifestyles and made communities especially vulnerable to the problem of human trafficking. There are a number of well-known routes in Cambodia. Most trafficking takes place over land, and there are well known gateways from each country.

Countries of origin

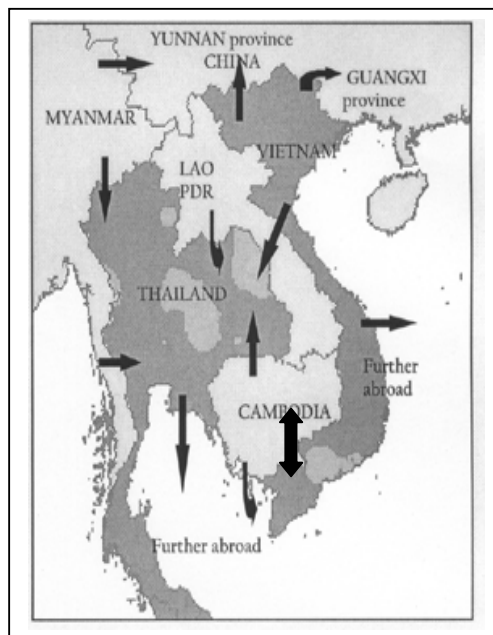
- Cambodia
- China
- Lao PDR
- Myanmar
- Thailand
- Vietnam

Transit countries

- Cambodia
- Myanmar
- Thailand

Countries of destination

- Cambodia
- China
- Hong Kong
- Japan
- Malaysia
- Singapore
- Taiwan
- Thailand
- Vietnam

Main trafficking routes to abroad

There are many means of transportation depending on the circumstances and place, including trucks, cars, taxis, military vehicles, trains, moto-taxis, bicycles, ferries and planes.

Traffickers usually arrange transport in advance and often the drivers of cars, moto-taxis, etc. are involved in the process of trafficking. They stand to gain from the process; they usually charge higher fares and earn commissions. Besides the actual drivers, military or police sometimes abuse their official status and use their vehicles to carry traffickers and their victims. This is especially common in cross-border operations and for activities such as trafficking of children and female sex workers.

Box 14

"Our armed forces are involved in this. They secretly transport in their personal cars and reach the border with Thailand. After the parents find out their children have disappeared, they come to complain to us. But we cannot take action when we only know that a child is inside some car going to Thailand." (IOM 1999:66)

Internally, trafficking takes place from the countryside to cities and from the cities to abroad.

Poipet in northwestern Banteay Meanchey province and the southwestern province of Koh Kong, both on the border with Thailand, are widely thought to be the main transit points, along with Svay Rieng on the border with Vietnam. Inside Cambodia, according to a LICADHO report from 2002, Phnom-Penh is the main receiving point for trafficking victims. Victims have been recruited from a wide number of provinces.

The story of Chanthou shows us how the trafficker moved her from place to place.

I was abandoned by my parents and left to be brought up by my aunt's family in Takeo province. I did not go to school and I had to do all the housework. When I reached puberty, my aunt's husband raped me several times. A few weeks later, my aunt suspected her husband and sent me away. I didn't know where to go. One woman who lives not far from my house told me that I could live on my own if I just went to Phnom Penh. She told me I could find a well-paying job in the City that also would cover the costs of my food and accommodation. She also said that if I didn't know how to go about things, she would introduce me to an intermediary (man) who would help me to secure work in Phnom Penh. I was willing and an appointment was fixed. I was told that I would be working as a waitress in a bar earning approximately 100 USD per month. Intermediary fees and other expenses were to be paid after I received my first wages. I was escorted from Rattanakiri by car and boat; the intermediary instructed me to pretend that he was my father. Once I arrived in Phnom-Penh, he left me with another man and disappeared. I was brought by car to a karaoke bar in Tuol Kork. The owner was married to the mamasan. The bar owner asked me to go into the cubicle at the back of the bar and undress. The owner examined me vaginally and even slept with me before hiring me. I felt like a piece of flesh being inspected. I had to take a blood test for HIV/AIDS. I later learned that if you test HIV positive or are found physically unpleasing, you are bought only by lower class bars where wages are less and conditions much worse.

One day, the bar owner told me that a rich customer wanted to marry me and take me abroad. I was so excited at the possibility for my real freedom. They prepared all the travel documents for me, including my visa to a foreign country.

At the destination, he took care of my immigration procedures with four other girls and he kept our travel documents. When we arrived in our new living quarters, we realized that we were sold for the second time into prostitution.

3.2.5 While at Destination

According to some victims in cases of trafficking for sexual exploitation, they were locked in a room. They were warned not to peep out the windows and not to try to escape. If they did not obey, they were beaten by the brothel owner and the gang. They did not have any external connections except with their customers. It was true detention.

This situation is different from begging or selling flowers or working as hard labourers, all of which provide relatively more freedom. Girls and women being trafficked into the sex industry are packed in small rooms and not allowed to walk around by themselves. In contrast, the beggars and street sellers are brought to their work location and later picked up by car. They can beg and receive up to 500 Baht, or sometimes more, per day. But the agent takes all their money and leaves only a small amount. They are threatened that they will be reported to the police if they try to escape or complain about their wages or living situation. Children are beaten if they do not obey.

Box 16

Neang said: “In the house where I stayed there were 10 or 20 people. But where we went begging there were a lot more. One old woman was 80 years old and didn’t know about money. She was very pitiable. I didn’t dare to say anything because they might accuse me of causing trouble. She always received a lot of money. Every time she could earn 400 or 500 baht. Her pot was always full of money every day. Sometimes when her pot was full, they took the money and put her back at that place to beg more.”

Picture 5



Photo by LSCW, beggar family

Box 17

Nora's story (part of the same group as Nary in Box 11): We were locked in two small rooms (one for men and another for women). We were kept under strict surveillance. We were not allowed to go out at all. We worked long hours (6:00 pm to 6:00 am) with small pay (500 Baht per month – about US\$ 12.00) in the garment factory. We slept at day and worked at night. A few months later, after we finished our work at the garment factory, the police were there and then they arrested us as illegal immigrants. We were deported to Cambodia. We returned back home without money and with many debts.

3.2.6 Upon Return

As shown through Pheap's and Thida's stories (Boxes 1 and 7), neither wanted to return to their families or villages. There are many reasons that the victims of trafficking do not want to be returned home. Our research found that in cases where the victim's own family member was involved in the trafficking, reintegration in the family might only increase the chances of becoming a victim of trafficking again. In some cases the children might not want to return back home because of the family situation: domestic violence or extreme poverty where the family cannot care for the child. Sometimes, children will prefer to live on the street than be at home. Successful reintegration must provide what the victims need: physical, emotional and economic support in a stable environment – these are the main factors that can help victims avoid any risks of repeated trafficking.

Box: 18

Pheap is temporarily staying in a shelter in Thailand. She said: "I don't want to return to my home town. The people there will look down on me if they know that I worked as a prostitute. In my reintegration process, I would rather stay in the Poipet area (she believed that she could find a job as a basket weaver there). The training skills that I am learning from the shelter cannot help me find a proper job in Cambodia because people buy different things there than in Thailand. I do not have any choice to learn the skills I want. I would like to learn how to weave baskets, perhaps it would help me to earn money or find a job in Cambodia.

Support for returnees is crucial. Training skills should match the economic market needs. Sometimes returnees receive proper training and skills, but they do not have any financial support to re-establish their new life. To improve the reintegration process, the government and NGOs should focus more on the needs of the victim, recognizing their ability and right to make decisions on matters which affect their lives. For example: where do they want to go (to their hometown or somewhere else)? What can they do? The training skills should be concordant to the need in their village, or other new location.

Picture 6



Photo by LSCW, victims of trafficking deported as illegal migrants to Poipet

Again, gender is a key factor here because effective job skills training, for jobs that are actually available in the market and pay a living wage, are difficult to identify and provide when the victims have had little access to basic education.

Providing former victims with a truly strong economic condition could have a major impact on their lives. Although, in general, girls or women who have been in sex work are looked down upon, if someone has enough money they can be respected. This is clearly sometimes the case in Thailand. They could also be a role model for other victims trying to recover. It does not have to be accepted that a person who was trafficked into sex work can never be reintegrated as a strong and respected person in their community.

CHAPTER 4

SYNOPSIS OF LAWS OF CAMBODIA IN RELATION TO TRAFFICKING

Although the existing national laws related to trafficking are still inadequate, Cambodia has recently passed new statutes and is in the process of drafting new legislation and amendments to its national laws. The main problem does not lie with the adequacy of national laws but more with issues of corruption, impunity, and collusion, in a context of generally lax law-enforcement and limited sensitization of law enforcement personnel to the harmful impact of trafficking in humans. In Cambodia, laws are not strenuously enforced and punishments are weak. Authorities have been known to accept bribes, especially in western currency, and some are even part owners of brothels and prostitution enterprises.

While law enforcement has been improving with regard to trafficking in humans, few traffickers have been apprehended, prosecuted, and convicted. The unique obstacles to effective criminal-justice intervention can be explained in the context of laws related to human trafficking.

4.1 APPLICABLE LAWS RELATED TO TRAFFICKING

Four main domestic laws which combat kidnapping, trafficking and exploitation in human beings are: the *Constitution of the Kingdom of Cambodia* (September 21, 1993) with amendments (March 8, 1999), the *Law on the Suppression of Kidnapping, Trafficking, Exploitation of Human Persons* (January 1996), the *Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period* (January 31, 1992), and the *Law on Criminal Procedure* (January 28, 1993).

Other related laws exist: *Contract and Other Liabilities* (October 28, 1988), *Labour law* (January 10, 1997), *Marriage and Family law* (July 20, 1989) and *Sub-Decree No. 29 on the Adoption of Orphan Baby or Child by a Foreigner* (March 14, 2001), *Law on Immigration* (August 26, 1994), *Law on Nationality* (August 20, 1996), *Law on Drug Control* (December 09, 1996), *Law on Aggravating Circumstances of Felonies* (November 19, 2001), *Sub-Decree on Status Registration* (December 29, 2000), and many circulars.

In addition, Cambodia has ratified international treaties to protect the rights of women and children: Cambodia ratified the Convention on the Elimination of All Forms of Discrimination against Women (hereafter CEDAW) and the Convention of the Rights of the Child (hereafter CRC) in October 15, 1992. Both Conventions contain specific provisions obliging States parties to act against trafficking and related exploitation. Other relevant international treaties have been ratified, including: the Convention No. 29 on Forced or Compulsory Labor on February 24, 1969, adopted on June 28, 1930 by the International Labor Organization; Cambodia ratified four other International Labor Organization Conventions on August 28, 1999: the Equal Remuneration – C 100, the International Labor Organization Convention Abolition of Forced Labor – C 105, the International Labor Organization Convention on Discrimination – C 111 and the International Labor Organization Convention Minimum Age – C 138; the International Covenant on Civil and Political Rights (ICCPR) on May 26, 1992 which ensures state protection for non-citizens and which prohibits slavery and related

practices, and the International Covenant on Economic, Social and Cultural Right (ICESCR) May 26, 1992.

Cambodia is also party to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (ratified on May 30, 2002); as well as the Optional Protocol to the Convention on the Elimination All Form of Discrimination Against Women which provides a communications procedure for breaches of obligations contained in CEDAW.

Recently (September 29, 2003), the Kingdom of Cambodia ratified the United Nations Convention Against Transnational Organized Crime³¹. This convention is to promote cooperation to prevent and combat transnational organized crime more effectively. The accompanying protocol on trafficking in persons has not yet been ratified by Cambodia.

On May 31, 2003, the Cambodian government concluded a Memorandum of Understanding (MOU) with the Kingdom of Thailand. This instrument is a mutual agreement of both countries to cooperate in the efforts to eliminate the trafficking of women and children and to assist victims of trafficking.

Cambodia is also actively working to improve existing legislation. The Ministry of Justice, in cooperation with the Law Development Institute of Japan, has drafted more comprehensive legislation on human trafficking and sexual exploitation. The draft law will be presented to the National Assembly for adoption. The Ministry of Women's and Veterans' Affairs has cooperated with related NGOs and IOs to draft a Domestic Violence law. Inspired by the "Hague Convention" and the CRC, MoSALVY has drafted a law on foreign adoptions, assisted by UNICEF. Finally, the Ministry of Justice has drafted a new Civil Law and Procedure with support from the Government of Japan and a new Penal Code with the cooperation of the French Government.

4.2 ADEQUACY OF EXISTING LAWS

The *Law on the Suppression of Kidnapping, Trafficking, and the Exploitation of Human Persons*, passed in 1996, has addressed human trafficking by aiming to eradicate "all sexual exploitation or service which is exacted from any person under menace of any form and for which the said person has not offered him/herself voluntarily". This powerful instrument confirms human trafficking as a practice similar to slavery and calls for Cambodian citizens to take immediate action to secure the prohibition and elimination of human trafficking, especially in the form of sexual exploitation.

In addition, the *Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period* adopted in 1992 and the *Law on Criminal Procedure* 1993 were drafted in the same spirit of social justice that had inspired the Constitution of the Kingdom of Cambodia and, indeed, the creation of the Law on the Suppression of Kidnapping, Trafficking, Exploitation of Human Persons. It represents 'social ground rules founded on common values to enable all those

³¹ United Nations Convention Against Transnational Organized Crime, G.A. res. 55/25, annex I, 55 U.N. GAOR Supp. (No. 49) at 44, U.N. Doc. A/45/49 (Vol. I) (2001)

involved to claim their fair share of the wealth they have helped to generate', and it is complemented with mechanisms for follow-up to ensure their implementation.

The Laws embody four imperatives:

- The effective recognition of human rights;
- The elimination of all forms of sexual exploitation;
- The effective elimination of human trafficking;
- The elimination of discrimination in respect of children and women.

CHAPTER 5

GENDER AND CRIMINAL JUSTICE IN CAMBODIA

In this section we examine how the legal system addresses the issue of gender in relation to human trafficking. The section below discusses the various domestic laws and international conventions designed to combat this challenging issue through the criminal justice system. It also describes promising law-enforcement approaches and sets forth some general principles for improvement. The legal analysis addresses the issue of gender and criminal justice based on the current laws and how they are applied.

5.1 GENDER ANALYSIS OF LAWS RELATING TO TRAFFICKING

There are no provisions in Cambodian law that discriminate against either men or women in the family or society. Generally, when gender-based discrimination occurs, it is due to poor implementation of the law and ineffective implementation and monitoring of the regulations stemming from the law.

Many of the issues and legal "gaps" outlined below may be addressed through new legal provisions being drafted in Cambodia, particularly the new "Act On Human Trafficking and Related Matters" which does exist in draft form. However, until this law is enacted, the laws set out above continue to be applied and serious challenges continue to exist.

5.1.1 National Laws

a) *Constitution of the Kingdom of Cambodia*

The Cambodian Constitution is the "Supreme Law of the Kingdom of Cambodia"³². This means that all legislation must comply with the Constitution. For example, under Article 46, the commerce of human beings, exploitation by prostitution and obscenity which affects the reputation of women shall be prohibited; Hence, the buying, selling and trafficking of women and forcing into prostitution violate Cambodia's supreme law.

b) *The Law on Suppression of Kidnapping, Trafficking and Exploitation of Human Persons*

This law focuses on human trafficking for the purposes of prostitution. It fails to specify other purposes of trafficking and to provide for victim/witness protection. Moreover, not enough is included in the definition or in the provisions to cover all situations of human trafficking.

³² Constitution of Kingdom of Cambodia, Article 150

Victims acting as witnesses

There are no provisions relating to the protection of trafficking victims acting as witnesses in a prosecution case. The lack of codification of such provisions has both advantages and disadvantages. There is an advantage in that assistance cannot be denied to a victim simply because she/he cannot or will not help the authorities. However, there is a disadvantage in that a lack of such provision offers no incentive to victims to come forward and participate in prosecution. This is not only lacking in the specific human trafficking law but in almost all relevant domestic laws, and is a very significant omission.

Victims of trafficking frequently have been subjected to tactics that produce fear and intimidation; they will not likely come forward to help prosecutors unless they can be assured of their own and, at times, their family's safety. The key to a successful prosecution is most often a combination of victim's testimony and witness evidence. Without both types of evidence, it is difficult to enforce the domestic legal measures which are in place. This must be addressed and remedied.

Witnesses

Other witnesses or potential witnesses should be also eligible for applicable programs to protect from organized criminal activity or other serious harm, if it is determined that an offense involving a crime of violence directed at the witnesses or potential witnesses is likely to be committed. However, in the Cambodian context this is now possible only in theory (as the government has no such program) or through the services of NGOs.

Trafficking for begging and soliciting

Cambodian children have been trafficked into begging gangs. A provision prohibiting adults from enlisting minors for purposes of begging or solicitation is needed. Unfortunately, this is not in the current draft of the new anti-trafficking law.

Trafficking for other exploitative work:

Some parents force their small children to work in vulnerable situations. There are no provisions to hold parents responsible or to otherwise protect child victims of exploitative work.

Box 19

Nora and Thora (ages 6 and 5) were forced to smuggle goods cross-border. Nora and Thora have to earn money for their parents. Their father is an alcoholic and their mother gambles. Nora and Thora did not have much choice; if they did not go, their parents beat them. If they cross the border and are arrested by the police (see picture 2), they will be put in a detention center. They will be accused of being illegal migrants, without consideration that they are victims of exploitative work. They are only children, and this shouldn't happen to them – their rights under the CRC should be protected.

Picture 7



Photo by LSCW, children smuggling goods at the Thai border

Trafficking in organs

The law has no provision on illegal organ trafficking. To prevent it in the future, a provision against organ trafficking should be added to the trafficking law – again, it is unfortunately not in the current draft law.

Amendments needed

According to our research regarding punishment against traffickers and assistance/protection given to the victims/witnesses, the following provisions need to be amended and/or added as below; some of these issues are addressed in the new draft law:

Criminal offences

- Soliciting by others for sale of sex or labour to be provided by victims of trafficking
- Procurement of prostitution by an intermediary between a prostitute and another
- Inducement to practice prostitution or work as a slave by any person to make profit
- Unlawful withholding of identification papers (for example, during trafficking cross-border into Cambodia)
- Transportation of a trafficked person for any purposes
- Revealing the identity of a minor involved in a case (this is included in the current draft law)
- Revealing the identity of adult victims, particularly women who were trafficked for purposes of sex work
- Illegal custody
- Purchasing sex with a child
- Debt bondage
- Trafficking for purposes of adoption

- Trafficking for purposes of labour exploitation
- Trafficking for purposes of begging
- Trafficking of human organs

There should also be clear provisions for the restitution of unpaid wages, destroyed or stolen property, and compensation for harm suffered.

Assistance and protection for victims

- Protection for the safety of victims
- Witness protection
- Protection for the privacy of victims
- Information to be provided to victims
- Opportunity for presentation of victim's views and concerns
- Support for victims
- Immigration status of victims
- Verification of citizenship/permanent resident status and age
- Return of victims to the country of citizenship/permanent residence
- Services for returned victims of trafficking
- Appropriate protection for child victims
- Opportunities for testimony from child victims to be presented to the court in appropriate ways, without further trauma to the child

c) The Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period

Under this law, no provisions specifically mention trafficking. However, some articles can apply in cases of trafficking: rape³³, illegal confinement³⁴, organized crime³⁵, or battery with injury³⁶.

Rape

The existing article, applied to support trafficking cases, is not clear regarding sexual intercourse with minors. Rape is defined as any sexual act involving penetration carried out through violence, coercion or surprise³⁷. This law is ineffectual; it provides no protection against child sexual abuse. There is no provision regarding the age of sexual consent, no codification between child and adult for sexual intercourse, and no penalty for customers who have sexual relations with a minor.

Box 20

Daroeun (19) is a regular customer at Tuol Kork brothel and Muni (13) is working as prostitute. Daroeun and Muni have formed a friendship. They have sexual intercourse with Muni's consent. When police raided the brothel, Daroeun was arrested for raping a minor. A few days later, with help from his lawyer, the Court released Daroeun. The legalities of this situation are not clear at all.

³³ article 33

³⁴ article 35

³⁵ article 36

³⁶ article 41

³⁷ The Provision relating to the Judiciary and Criminal Law and Procedure applicable

Codes of conduct and liabilities

Inadequate and/or non-existent codes of conducts for judicial bodies and citizens give the opportunity to traffickers to expand their activities. Provisions regarding punishment/penalties should be amended and/or added as follows:

- relating to judicial bodies and police

- Liability in case they do not fulfill the duty imposed on them by law
- Liability for misconduct of officers executing their duties, or making false reports
- Liability for disobeying a statute

- relating to citizens:

- Liability for influencing or negotiating in the commission of an offence including through abuse of authority³⁸
- Liability for obstructing justice: offences relating to the public or peace – wherein one resists or willfully obstructs a judicial person in the execution of his/her duty or any person lawfully acting in aid of such an officer, or where one omits, without reasonable excuse, to assist a judicial authority in the execution of his/her duty in arresting a person or in preserving the peace, after having reasonable notice that s/he is required to do so.

d) Marriage and Family Law

Under the current law, it is unclear when exactly the age of minority ends and adulthood begins with regard to sexual consent. It is also unclear regarding the procedure for child adoption. A clear distinction between adoptive parent and foster parent and legal guardian is also needed.

Forced marriage

Under the law, adulthood is defined for a female from eighteen years of age and for males, from twenty years of age³⁹. However, these stipulations are in contrast to the laws relating to pimping and sexual services which state that special protection for minors ends when they attain fifteen years of age⁴⁰. This represents a serious discrepancy in domestic law in light of the Convention on the Rights of the Child and its Protocol which both stipulate that eighteen is the age of majority. It is all the more serious a discrepancy given that when there is trafficking for the purposes of forced marriage, it is adolescents who are most at risk and yet fifteen to eighteen year olds are currently not protected as “minors”. This provision is also inconsistent with the law which provides the minimum legal age of marriage as eighteen years old. This situation should be remedied in order to enhance the protection afforded to girls, as well as to ensure consistency with the relevant instruments that demand special protection for all children under eighteen years of age.

³⁸ e.g. Sometimes peoples have influenced victims to negotiate with the perpetrators and to accept payment as compensation

³⁹ Marriage and Family Law, article 2

⁴⁰ Law on suppression of Kidnapping, Trafficking and Exploitation of Human, article 3, chapter 2

Box 21

Min Loy (55) came to Dang Tong city, in Koh Kong province. She came under the guise that she is searching for a wife for her son who lives in the United States of America. She solicited the parents of Neang Rat (age 16) to let her marry Min Loy's son. Also, Min Loy provided some money (5,000 Baht – about US\$ 120) as a dowry to Neang Rat's parents. Because of the money, they believed that their daughter could reach the USA. They forced their daughter to marry a stranger without her consent. Neang Rat was unlucky. She was sold to a Thai brothel by Min Loy and a strange man.

Moreover, there is no penalty imposed on the person who forces others to marry.

Adoption

The current relevant law consists mainly of administrative procedures and provides little protection for adopted children. Even so, it would help a great deal if the current laws, especially regarding the recording of adoption contracts⁴¹, were enforced so that even a simple administrative error could prevent an illegal/false adoption from proceeding. In addition, to ensure legal adoptions, applications should be processed in Court⁴². The current procedure for adoption is unclear. The local authorities have the right to decide in adoption cases. In fact, the adoption procedure should be enforced as below, in order to protect children and babies from being trafficked:

1. The situation of the adoptive parent should be established, with criteria to ensure adequate support for the child: living conditions, financial means, etc.
2. The background of the adoptive parent - civil status, stability, health, etc. - should be established:
3. The purposes of adoption should be verified.

Adoptive parent and foster parent

The Cambodian language does not have specific words to distinguish adoptive parents from foster parents⁴³. According to Cambodian Law, an adoptive parent has the obligation to love, bring up and take care and not mistreat their adopted child⁴⁴. The notion of foster parent is not recognized under any law.

e) Labour Law

There are several provisions prohibiting both forced labor and child labor under the labor law. However, the penalty is very weak and the law is hardly implemented.

Forced labour:

In compliance with Article 25 of the ILO Forced Labour Convention, forced labour is prohibited in Cambodia⁴⁵. However, the law is of little use since the penalty imposed is very weak⁴⁶.

⁴¹ Marriage and Family Law, article 113

⁴² Family or youth Court if it is existing

⁴³ Foster parents have no obligation to be responsible to bring up, etc.

⁴⁴ Marriage and Family Law, article 115 and 116

⁴⁵ Labour Law, article 15

Child labour:

Provisions relating to children will be discussed below. However, it is worth noting here that despite significant provisions forbidding and/or imposing requirements on hiring child workers, there is no penalty for infringement of these provisions⁴⁷.

Female labour:

Cambodia was the first country in the Mekong region to expressly prohibit labour involving the exploitation of women⁴⁸ or sexual violation of any sort⁴⁹.

However, again, there is no specific punishment attached to the violation. The law should be amended to include an appropriate penalty in line with the already existent trafficking laws.

f) Immigration Law

It is not a criminal offense to cross a border illegally, but a person may be jailed for crossing with fraudulent papers⁵⁰. An illegal border crossing may occur in either direction, whether entering or leaving a country without correct papers or through an illegal route (entering or leaving the border outside of official checkpoints). This law does not recognize that:

- Those who are trafficked into or out of a country often have no choice about the means or routes by which they are trafficked;
- Cross border trafficking victims should be treated as victims rather than as criminals;
- The perpetrators of the crime remain unpunished while those who are victims are liable under current law. This is particularly the case since there are no corresponding laws concerning:
 - Arranging, facilitating, procuring or inciting the illegal border crossing;
 - The act of illegally transporting someone across the border,
 - Making, obtaining, or providing travel documents to facilitate illegal crossing of the border.

g) Memorandum of Understanding

The Kingdom of Cambodia recently entered into a Memorandum of Understanding with the Kingdom of Thailand to cooperate in working towards the elimination of Trafficking in Women and Children and Assisting Victims of Trafficking.

Article 7 of the Memorandum of Understanding officially establishes that trafficked children and women are "victims" and provides that participating countries should provide assistance to and protection for victims of trafficking.

⁴⁶ Labour Law, article 369

⁴⁷ Labour Law, article 177

⁴⁸ Constitution of Kingdom of Cambodia, article 45

⁴⁹ Labour Law, article 172

⁵⁰ Law on immigration (1994) art 24

Despite this, 921 Cambodians, including children and women victims of trafficking, were deported (not repatriated⁵¹) from Thailand at the end of September and early in October of this year (2003). Implementation of the MOU is clearly just in the beginning stages.

Box 22

This finding focuses on the case of Thorn and 27 other garment workers who were trafficked from Cambodia to Thailand and were held in conditions of slavery in a factory. They were forced to work fifteen hours a day, seven days a week for less than the minimum wage, and were under constant threat of harm to themselves and their families in Cambodia. Some of the garments the workers were employed to sew were for major clothing companies who were making huge profits. Finally, the situation was brought to light only after one of the workers managed to escape.

Despite the terrible conditions these workers had been forced to endure, the immediate reaction of law enforcement and government agencies was to regard them as illegal aliens and to place them in detention without the opportunity for legal redress.

5.1.2 Recommended Additional laws**a) *Corruption law***

Corruption is prevalent in Cambodia and plays a key role in sustaining trafficking. This is a complex issue but it must be assumed that successful implementation of some sort of prison penalty for accepting bribes related to trafficking would be a deterrent for some of the players in the trafficking network. Furthermore, it might be possible to find and prove evidence of corruption in some trafficking cases where there was a lack of sufficient evidence to convict on charges of trafficking.

b) *People smuggling*

In people smuggling cases, generally, a smuggler is paid or promised a sum of money by the person wishing to move from one country to another. The smuggler then provides a service by facilitating the smuggling. The person being moved is a client of the smuggler. There are a range of situations where a smuggler takes advantage of those being moved and extorts them for more money, or fails to deliver the service in a safe manner, but at the end of the day, it is the illegal but essentially commercial relationship between the smuggler and the intending immigrant. In people smuggling, the State is often considered the only victim and the crime is considered to be one against public order⁵².

⁵¹ Repatriation: is a step by step, victim centered approach that is to be used for the victims of trafficking

⁵² Brian Iselin and Melanie Adams, United Nations Office on Drugs and Crime. Note: this understanding does run the risk of failing to appreciate the grey zone between trafficking and smuggling and the fact that those who do indeed fit the profile of 'smuggled migrant' are often exploited, cheated and abused.

People smuggling is a new phenomenon in Cambodia. Most people cannot distinguish between people trafficking and people smuggling, even from the internationally agreed definitions of these crimes. Both are crimes, and it is critical for those responsible for detecting cases, and for those enforcing the relevant laws, to be able to distinguish between the two.

Srey Aun's case illustrates the two situations of people trafficking and people smuggling and some of the complications.

Box 23

Police and NGO rescued Srey Aun as a victim of cross-border trafficking. On her return to her country of origin, she filed a complaint at the court against her neighbor named "Som" for trafficking her to Thailand. Som had been paid a sum by Srey Aun, who wanted to move from Cambodia to Thailand. When she arrived at the destination, she was cheated by organized criminals who sold her into prostitution. Due to a lack of or inadequate interpretation of laws, Som was acquitted and released. He then filed a complaint against Srey Aun and asked for re-compensation.

The terms people trafficking and people smuggling can be confusing. It is important that the government clarify the difference so as not to confuse these two different phenomena.

There are current efforts to develop a law on people smuggling. The law must be written with care and understanding of negative experience with such laws in other countries, where some police and courts find it easier to convict the victims who initially paid to be smuggled than to convict people traffickers. Also, the experience in other countries is that the authorities sometimes convict the low level people movers (even those who had no role or intention to deceive or traffic) in order to prove their commitment to stopping 'people trafficking'. This means that people who are genuinely assisting others to find work are the ones who are punished and stopped.

c) Law on prostitution

Worldwide there are a variety of very different legislative approaches to prostitution, and there is continuing controversy about which approach is best. In Cambodia, there is currently no law on prostitution. This does not prevent harassment of those in the sex trade by some police.

Recently, the Cambodian Government has undertaken serious discussions about this matter. Regardless of what approach is used in any future laws on this, provisions must be included to ensure that any victims of trafficking who are in sex work are cared for and provided protection and justice as victims.

5.2. GENDER ANALYSIS OF THE LAW ENFORCEMENT RESPONSE

Law enforcement is weak in Cambodia. There are few women legal professionals. Police and immigration departments have limited resources to effectively enforce laws on trafficking.

Fragmentation of responsibility for trafficking cases exists in many law-enforcement agencies. Cases involving trafficking may fall under the jurisdiction of a unit other than the one that handles sexual exploitation. In some large jurisdictions, misdemeanor cases may be handled by a different division than felony cases.

5.2.1 Areas of Inadequate Laws and Enforcement

Sexual exploitation and pimping for prostitution

Exploitation and pimping of prostitution is often a hidden crime. Most police departments report that they have only a few cases, although it is likely that many are being overlooked, only viewed as a nuisance crime, or receiving low priority next to street violence and gang activity. Even when police conduct undercover sweeps, these are more likely to result in the arrest of the prostituted than of their customers or pimps, despite there being no actual law against prostitution in Cambodia.

Recently, much of the prostitution of children has moved underground and prostituted youth are more likely to be found in massage parlors or as waiters/waitresses in food shops⁵³. Investigations generally also tend to be labor-intensive and require proactive undercover work. Law enforcement may find it difficult to arrest adults for patronizing prostituted juveniles unless an officer directly overhears the transaction. The child therefore must testify, which many refuse to do. Furthermore, law enforcement officers should not use minors as "bait" in sting operations; Cambodia currently has no regulation on this.

Identity

Some other barriers stem from the nature of the victims themselves. Some juveniles can pass as adults and, when arrested, they know it is better to be booked as an adult because only a parent or family member can release them from a juvenile facility. Many sexually-exploited youth do not view themselves as victims and try to protect the brothel owner. Furthermore, when they do report, many victims may be reluctant to reveal the full extent of their involvement in prostitution activities, making identification of offenders more difficult. The current greater attention to birth registration, combined with strict control so that false Cambodian ID cards are not available, would assist with identifying and assisting minors and victims of trafficking and with prosecuting traffickers.

Begging

As noted above, Cambodia has no law on begging and begging is not a particular focus of law enforcement efforts. However, police could be trained to recognize when people are begging under the forced control of others and to investigate and arrest the exploiters under the Labor Law.

⁵³ Comments from police anti-trafficking department staff at Banteay Meanchey province

Forced labour

Although the MoSALVY is responsible to supervise employment in Cambodia and has an inspection unit, it lacks resources and it must call the police for any intervention. Thus employers have great opportunities to exploit forced labour, particularly of children. Furthermore, there is not yet a structure for investigating and prosecuting forced domestic labor, one of the areas in which young children are most vulnerable. Stronger implementation in the area, along with a law covering domestic work as labor, would be positive steps against trafficking.

Control of drugs

Narcotics are often used by traffickers to increase their power over the victim. While supplying narcotics is a crime, so is possession of narcotics. A victim of trafficking is in a vulnerable victim position where drugs are concerned as he/she has no power over his/her situation. The law should be altered to take account of this vulnerability and provide that where a trafficked victim is in possession of narcotics a lesser or no sentence may be applicable, depending upon the situation.

Conducting investigations

The knowledge of investigation skills of judges, prosecutors, and police is very limited in Cambodia. This is one main reason that few traffickers are convicted and prosecuted.

Our research found that:

- Criminal justice agencies and the individuals working within them, especially in remote areas, do not understand the concepts of kidnapping, smuggling and trafficking;
- There is a lack of material and equipment for investigation, and the networks of professionals are very weak and slow;
- Sometimes the judicial police have forced victims to negotiate with the perpetrators and to accept payment as compensation, rather than taking the perpetrators to court;
- There is a lack of interview rooms to conduct the interview in a private and comfortable setting, to limit the persons present, and to gain the confidence of the victim;
- Small groups with links to political figures have abused their power;
- There is sometimes inadequate or inappropriate cooperation between prosecutor and police;
- There is a lack of female investigators;
- More training on investigation skill is required; and
- There is no tradition or confidence or commitment to prosecute an accused trafficker unless the victim makes a complaint. Moreover, for the reasons of gender, age, power, social hierarchy, and shame mentioned above, as well as a history of few and unsuccessful prosecutions, few victims are willing to testify.

According to the Anti-Trafficking Police Department in Banteay Meanchey, many offenders were arrested by police but released by prosecutors due to a lack of

evidence. "We don't have adequate materials for investigation. Moreover, the cooperation from the victims is weak, because they prefer to make arrangements with the traffickers; some others would like not to file against the traffickers, because the traffickers are their parents or close relatives. In addition, a victim of sexual exploitation often prefers not to file cases against the trafficker, because she wants to protect her and her family's reputation".

5.2.2 General Principles for Effective Intervention

The general principles noted below can help guide a more proactive, informed approach.

- Law enforcement should recognize begging by children as a form of labour exploitation and treat the children as victims;
- Law enforcement should make a commitment to identify the victimized children and work to refer them to services and other assistance to stop forced work as beggars under the control of others. Criminal justice intervention can be the means by which the cycle of abuse is broken;
- Law enforcement should have strong working relationships with service providers for children that are living on the street or have run away from home in order to identify girls and boys involved in or at risk of being beggars or falling into prostitution. Law enforcement should support the development or increase of community treatment and services for at-risk youth including prevention and early intervention;
- Law enforcement should make a commitment to arrest and prosecute pimps, recruiters, procurers, patrons and customers who engage in sexual activity with minors. During the periods when there have been increased arrests, it has usually been attributed to increased attention to enforcement in this area by the police;
- Law enforcement should provide adequate training for all investigators and officers who might come in contact with victims of forced labor, begging, and prostitution. It is very positive that Cambodia already has created a police department for child-abuse and sex-crimes. Increased training can heighten the sensitivity of law enforcement. Specialized units and specially trained staff are needed to respond to and interview the victims;
- Law enforcement should use all investigative techniques available, including videotaping, undercover investigations, and one-party consensual calls, to build strong cases against pimps, recruiters and procurers. Cambodia currently has no clear provisions regulating the collection and use of evidence; developing this in the future would be a positive step;
- The criminal-justice system should encourage cooperative multi-jurisdictional efforts among all disciplines responding to victims of trafficking. Based on the availability of resources, law enforcement should participate in task or strike forces or networks of professionals that share information and collaborate on cases;

- The criminal-justice system should provide protection for witnesses testifying against pimps, recruiters, procurers and other offenders in court. This may include working with social-service agencies to provide safe housing or long-term residential facilities that allow the victims to break free from the control of their exploiters. Cambodian police have, in the past, provided short term protection to shelters that were caring for victims who were to be witnesses in court cases. The arrangements for requesting and approving such protection should be standardized; and
- The criminal-justice system should work on strategies to overcome questions about victims' credibility, including training in interview techniques that overcome their fear and distrust of judicial bodies. Some of the officials in the Cambodian police Anti-Human Trafficking Department have already learned and used such skills, but more can be done. Also, Cambodia can work toward the use of cultural context of rape⁵⁴ statutes.

In addition to improved national legislation and international agreements, investigation of trafficking could be attacked through innovative and comprehensive law-enforcement initiatives that more effectively enforce laws already in place. For example, because collaboration is essential to a comprehensive response, mutual cooperation between countries could aid in such enforcement. Law-enforcement agencies with greater experience in human trafficking could collaborate on investigations or provide expert training, especially on investigative techniques for sexual exploitation, exploitative labour and how to target foreigners. These efforts could also include a network of contacts for the gathering of evidence and monitoring mechanisms, which in turn could provide the basis for the effective imposition of sanctions.

5.3 GENDER ANALYSIS OF THE PROSECUTORIAL RESPONSE

The problem of corruption in the prosecution process was frequently raised. Some judges, prosecutors and police were found to be inexperienced, particularly in human trafficking cases⁵⁵. Because trafficking cases are so complex, and deal with victims who have suffered much trauma, the Cambodian prosecutorial system should attempt to appoint experienced judges to those cases instead of those with little or no legal background. Efforts should also be made to retain experienced judges by improving conditions.

5.3.1 Duties of Judicial Bodies

Judicial Police

Tasks: *The judicial police perform the important task of investigating offences. They are always under the control of the prosecutor. They have no power to settle cases and must send all cases to the prosecutor*⁵⁶.

⁵⁴ The value placed on a woman's virginity and the social controls exerted over her sexuality.

⁵⁵ From discussions in Kandal province

⁵⁶ Court handbook, Cambodian Criminal Justice Project

Police in particular are very poorly resourced. Many judicial police commented, with no trace of irony, that the traffickers were better equipped than they were. Their investigations are mostly focused on trafficking for sexual exploitation. Their investigation knowledge is very limited. Most evidence is based on the assessment of the victims, the perpetrator and witnesses.

Also, although technically the judicial police are under the control of the prosecutor, in practice and employment hierarchy they are also under the Ministry of Interior. This ambiguity has sometimes created conflict.

Legal Representation

Tasks: *It is every person's right to be legally represented by a competent lawyer of their choice. The court should make sure that the accused has a lawyer. Lawyers can be of great assistance to the court because they know the procedure the court follows. This will save the court time in the hearing of the case*⁵⁷.

A great majority of trafficking cases of sexual exploitation were represented by male lawyers. According to our interviews, girl victims prefer women lawyers to represent their cases. They feel more confident to give their testimony against the trafficker, especially when the case involves rape.

The Cambodian Bar Association should promote that female lawyers represent victims in trafficking cases. Also, as there is now a quite limited number of female lawyers, there must also be more effort to encourage the training and qualification of female lawyers.

Prosecutors

Tasks: *The prosecutor has the responsibility of gathering evidence and making an introductory charge and presenting it to the court. The prosecutor must at all times act fairly and strictly follow the procedures set down by law to make sure the rights of all persons, including the victim and accused, are respected*⁵⁸.

There is only one female prosecutor in Cambodia. This carries a heavy implication for gender roles in prosecution cases, especially cases of trafficking for sexual exploitation.

Judges

For each case that comes to court, the Chief Judge of the court appoints one judge to be the Investigating Judge and another judge to be the Trial Judge. This means that judges themselves require the skills for both of these roles. Each judge has their own pool of court clerks to serve them, who are given tasks including investigating, interviewing victims, and taking testimony.

⁵⁷ Court handbook, Cambodian Criminal Justice Project

⁵⁸ Court handbook, Cambodian Criminal Justice Project

Unfortunately, in Cambodia, there are only fourteen (14) women in the pool of judges. Female victims of trafficking usually feel intimidated by male judges and believe that male judges will favor men, such as the perpetrators. Similarly, the proportion of female clerks is low. For example, in Banteay Meanchey there 34 clerks, of whom only 3 were female. Furthermore, they have received a relatively low level of professional development. In the first intake of the new Royal School for Judges and Prosecutors, there are only 6 women out of 55 students.

Investigating Judges

Tasks: *The investigating judge has the important role of deciding whether the accused should be sent to trial by the Court. The investigating judge has a very important task in also making sure that the correct procedures that are set by law are followed when the investigations is conducted and that the rights of the accused are respected*⁵⁹.

To do this work, the investigating judge must review the file presented by the prosecutor and, in some cases, undertake additional investigation. Investigating judges often ask their court clerks to do this. Thus, the same training in investigation and in dealing sensitively with victims that is needed for judicial police assigned to trafficking cases is also needed for court clerks. It would be a good strategy to identify certain judges to whom the Chief Judge would agree to assign trafficking cases, and then provide training to those judges and their clerks on working with children, working with victims of trafficking, and best investigation practices for trafficking cases.

Again, it would be a priority to include women judges and women clerks in that special group.

Trial Judges

Tasks: *The trial judge has the most important task of deciding whether the accused is guilty or not guilty. The trial judge shall only do that by considering the evidence that is put before the court and not by any outside influence. The trial judge must at all times see that the accused has a fair hearing and is given every opportunity to put his/her defense*⁶⁰.

Again, it would be a positive strategy to work with the Chief Judges to ensure that the judges who have the most training on trafficking and working with victims are assigned as trial judges for trafficking cases.

Chief Clerks for the Court

Tasks: *The chief clerk shall have the duty to supervise two sections, those being the general administrative section and the technical section*⁶¹.

⁵⁹ Court handbook, Cambodian Criminal Justice Project

⁶⁰ Court handbook, Cambodian Criminal Justice Project

⁶¹ Court handbook, Cambodian Criminal Justice Project

5.3.2 Legal Procedure

Arrest Power and Procedure

*The power to arrest is one of the most important powers that can be given in the criminal justice system in Cambodia. It enables the court to make sure the accused person comes to court and it also prevents the accused from interfering with the investigation or offending again.*⁶²

Police implement the arrest power. There are two ways to arrest the accused. First, a no-warrant arrest for a flagrant offence or in a case with substantial incriminating evidence. Second, an arrest for which a warrant was issued by a prosecutor or investigating judge.

Bail (Pre-Trial Release)

*The release of an accused person on bail should be considered her/his right unless there are very important reasons for not allowing the accused freedom when waiting for their case to be heard. This helps to prevent overcrowding in prisons and having to escort the accused to court, which saves time and money for the criminal justice system.*⁶³

When the police arrest the accused (with or without warrant), the accused may petition the judge for pre-trial release. Then the judge makes the decision to respond to the accused's petition within five (5) days.

Pre-Trial Detention of the Accused

Pre-trial detention is sometimes necessary to make sure the accused⁶⁴ comes to court. It also stops the accused from interfering with the investigation or committing further offence before the court hearing.

*However, because it takes the pre-trial liberty of the accused away, it should only be ordered if there are very good reasons for the accused to be kept in custody.*⁶⁵

According to 'Provisions Relating to the Judiciary and Criminal Procedure Applicable in Cambodia during the Transitional Period', the duration of a pre-trial detention must in no case exceed six months⁶⁶. And only if there is a risk of escape or non-appearance manifested by the absence of such factors as a job, a family, a home, or if there is reason to believe that the accused will influence witnesses or the conduct of the investigation⁶⁷. In reality, the investigation procedure is very slow; in some cases the accused stays in pre-trial detention more than the maximum period.

⁶² Court handbook, Cambodian Criminal Justice Project

⁶³ Court handbook, Cambodian Criminal Justice Project

⁶⁴ Minors younger than 13 years not to be detained; Minors 13 to 18 years not more than one month detention; Length of detention of minor 13 to 18 years may be doubled if charge is a crime.

⁶⁵ Court handbook, Cambodian Criminal Justice Project.

⁶⁶ Article 14.4

⁶⁷ Article 14.1

Search power

*The power to search is given by the law to enable the investigator to gather evidence of the crime to present to the court. The power to search is also an interference with the privacy of a person; therefore it must be conducted strictly in accordance with the law.*⁶⁸

Evidence

*Evidence is the means by which the court decides if the accused is guilty or not guilty. It can be what a person says about the offence or something physical, like a gun that is shown to the court. The court can only decide a case based on evidence presented to the court.*⁶⁹

Evidence is a very important part of criminal procedure. Lack of evidence, such as inadequate police reports, could damage the prosecution's case. In trafficking cases, the evidence is based almost entirely on victims' testimony and police reports. Because the knowledge of investigation is very limited, few traffickers are prosecuted. It will be important to develop provisions regulating the collection and use of evidence.

Witnesses

*Witness are the most important evidence that the investigator and the court can have in deciding if the accused should be charge or found guilty of an offence. It is important that the investigators record their statements and that they give their evidence in the court before the case is decided by the trial judge.*⁷⁰

All witnesses (including the police) in the report must be called and give their evidence. Witnesses are to be sworn if they did not take an oath during the investigation.

Some witnesses prefer not to show up and/or not to fulfill their responsibility. Sometimes they do not trust the court. The court cannot give them any guarantee for their security and cannot protect them from influence or efforts to persuade them to make a deal with other people.

In general, people of low social status are not good at speaking in front of authorities, and therefore some judges do not regard them as strong witnesses. In trafficking cases, this means that judges who have not had special training or experience would be likely to look down on and discredit witnesses who are children and women – especially those who have been involved in sex work. Furthermore, many victims have developed behaviours, due to their trauma, that make them appear to be unreliable witnesses – for example, sometimes they cannot remember and tell exactly what happened, they tell what happened out of logical or time order, they get weak in the presence of their abuser. Most judges would need to have received special training to be comfortable relying on such testimony.

⁶⁸ Court handbook, Cambodian Criminal Justice Project

⁶⁹ Court handbook, Cambodian Criminal Justice Project

⁷⁰ Court handbook, Cambodian Criminal Justice Project

Techniques for presenting testimony without the actual presence of the victim in the courtroom – such as video tapes or video conferencing – would be especially valuable for trafficking cases.

5.3.4 Prosecutorial Response

Interpretation of the Law

It is sometimes difficult to know what the law means. There can be contradictions or uncertainties. It is important that the court is able to interpret these uncertain or contradictory laws to make sure that there is consistency in applying the law. To interpret the uncertain or contradictory law the court can look at other sources to conclude what these uncertain and contradictory laws mean.⁷¹

This is also one of the main problems of the prosecutorial response. Sometime, they have received little training regarding the amendment, ratification or additions to national laws and International Conventions.

Cambodia has ratified, amended, and added many laws. To update the knowledge of this, the judiciary should receive appropriate training by competent persons.

Sentencing

Sentencing is the procedure by which the law of the Kingdom of Cambodia punishes those who have committed offences in the country. No sentence is to be imposed that is heavier than is suitable for the offence committed, and the individual circumstances of the accused are to be taken into account by the court. Prison should always be the last resort. If the offence can be punished by means other than imprisonment, the court must take that action.⁷²

Almost all sentences for trafficking cases are for the minimum punishment. This highlights the inadequacy of the legal system, mostly due to lack of evidence in the prosecution.

Also, as a key goal is to discourage the perpetrator and others from trafficking in the future, sentencing that includes having the profits of the crime taken away and providing victims with generous compensation for unpaid wages and for physical and mental harm would be important penalties. There are no current provisions in law covering restitution in any criminal cases – which means that often victims chose a negotiated settlement rather than a formal court complaint. However, both the new draft Criminal Code and the new draft Anti-Trafficking law do include provisions for this.

⁷¹ Court handbook, Cambodian Criminal Justice Project

⁷² Court handbook, Cambodian Criminal Justice Project

5.4 GENDER ANALYSIS OF JUDICIAL RESPONSE

In Cambodia, there are three levels of Courts as following:

1. The provincial or municipal Court of which the territorial jurisdiction covers all territory of the province or municipality⁷³;
2. The Appeal Court, located in Phnom-Penh. The competency of the appeal court covers the entire territory of the State of Cambodia⁷⁴. The Appeal Court plays an important role in the re-hearing of cases heard in the lower court (provincial or municipal court). The lower court can sometimes make mistakes and it is important that the Appeal Court be able to look at the cases again so that all parties can have the mistakes remedied⁷⁵.
3. The Supreme Court is also located in Phnom-Penh. The competency of the Supreme Court extends over the whole territory and all jurisdictions in the State of Cambodia⁷⁶. The Supreme Court has the important role of making sure the lower courts apply the law that is applicable to the offence. If this has not been done, it must direct the lower court to do so. All lower courts must accept the direction of the Supreme Court⁷⁷.

The impact of gender in the judicial response can be seen in the environment of the courtroom. After interviewing many judges, prosecutors, and lawyers, we found that there are not enough courtrooms to proceed with trials. Each judge has a duty to carry out eight to ten cases per day. They have to share one courtroom with different divisions. It means that trial are short (approximately twenty minutes to two hours per case) and the decision-making is very quick.. This means that those with more social power and more experience in making public presentations – generally men rather than women – are likely to make a good impression in the short length of time.

Also, there are no special rooms for witnesses, especially for trafficking and felonies cases - sometimes the victims feel intimidated by the presence of the accused. There is no video-conferencing available in the Cambodian Court system. The victims acting as witnesses have to give their testimony in front of the accused and unknown people. Women and girls have difficulty to stand up and identify the perpetrators; they must be very strong mentally and physically to endure the trial.

In addition, the court should have adequate room for young child victims who act as witnesses. In developed countries, there are often special rooms for young victims of criminal acts, together with experts in psychology, medicine and social services that support them during the trial.

There is also a lack of secure archive rooms for evidence; the accused have been acquitted in some cases because the evidence disappeared or was mixed up in other files.

⁷³ Criminal procedure, article 96

⁷⁴ Criminal procedure, article 156

⁷⁵ Court Handbook Cambodian Criminal Justice Project

⁷⁶ Criminal procedure, article 206

⁷⁷ Court Handbook, Cambodian Criminal Justice Project

It takes a great deal of time to fix dates for a trial. Sometimes it takes more than the six months permitted by law to fix the date.

In general, there are not enough female judges and prosecutors - this has an impact on female victims. They believe that male judges will carry prejudice against them.

It would be very helpful if a bailiff group could be created. In Cambodia, due to an inadequate system and lack of a bailiff group, most victims, witnesses and accused persons have never received a subpoena or related information.

The legal and judicial infrastructure in Cambodia is still very weak. By Constitution, the Judicial power is an independent power⁷⁸. The Supreme Council of Magistracy and public prosecution departments have limited legal system resources to enforce laws on trafficking effectively. Often, the organized crime groups can wield significant power and influence in these institutions with their wealth.

5.5 GENDER ANALYSIS OF COOPERATION BETWEEN CRIMINAL JUSTICE AND VICTIMS SUPPORT AGENCIES

Having understood that trafficking is a serious violation of human rights, many organizations, especially VSAs⁷⁹ (victims support agencies) have been working hard to combat trafficking and its effects.

Collaboration among VSAs has been gradually built, with more and more VSAs starting to take action. However, the situation surrounding trafficking has been changing rapidly, and it is necessary to have a more comprehensive framework. Therefore, collaboration among VSAs must be strengthened to combat trafficking and eradicate the problem.

Collaboration among Victim Support Agencies

There are several VSAs that have been actively supporting the victims of trafficking. Their activities mainly focus on legal protection, counseling, shelter, skills training and reintegration. Some of them have well-organized programs, from protection of the victims until social reintegration.

As part of their efforts, VSAs have built links with each other, so there is informal exchange of information on cases, some structured cooperation (such as when one organization provides shelter and skills training and another provides legal service), and strong cooperation in some areas of advocacy, such as for improvements to the legal framework.

However, collaboration among the VSAs in some areas is not effective. For example, the method of referral for victims and standards of operation for shelters could be strengthened.

⁷⁸ The Constitution of the Kingdom of Cambodia, article 128

⁷⁹ VSA in Cambodia include Non-Government Organizations and the Ministry of Social Affairs, Labour, Vocational Training, and Youth Rehabilitation

In addition, it is necessary to improve networks to exchange the experiences and situation of each agency. Since the situation of trafficking is changing all the time, it is necessary to secure and follow the most up-dated information.

Collaboration between Victim Support Agencies and the Criminal Justice System

VSAAs have built links to agencies of the criminal justice system in three special ways. Some – mostly human rights organizations – do preliminary investigations and turn the information over to the police. Others, the shelters, receive and then assist victims referred by the police. Finally, the legal assistance organizations that provide support to victims and to defendants work regularly with the police and courts.

There are sometimes cases when different sides have different expectations about the cooperation they will get from each other. Specific agreements and mechanisms about the roles and responsibilities of each party would be useful. For example, there could be agreed mechanisms for sending victims for medical care and gathering forensic medical evidence, for assisting a victim to file a complaint, etc.

In addition, it will be useful for each side to realize that, in general, the victims and many of the VSA staff are women, while the police and court officials are, in general, men. Trainings, meetings, and agreements between these groups should be aware of this and specifically identify the implications for possible misunderstandings or assumptions.

It is important, in all cases, for VSAAs to understand and respect the appropriate points of division between their work and that of law enforcement agencies. In the end, it is Cambodian law enforcement authorities who have the responsibility and the authority to conduct investigations into trafficking. Assumption by VSAAs of this function, in addition to potential legal and evidentiary implications, risks undermining this authority and responsibility.

5.6 GENDER ANALYSIS OF OTHER RELEVANT ASPECTS OF THE CRIMINAL JUSTICE PROCESS

HIV/AIDS Status

In some other countries there is controversy over the proper role of the criminal justice agencies in assessing the HIV/AIDS status of victims – particularly female – who have been trafficked into the sex industry, and over what the consequences are for a victim who is found to be HIV positive. However, this is not a current issue in Cambodia. The police do not involve themselves in this, and the VSAAs that care for victims have, for the most part, skilled and experienced staff or associates who provide counseling and, when requested, medical testing and follow-up.

Prisons

The conditions in the prison system in Cambodia are substandard. Women and male minors⁸⁰ are found living in the same section. This is contradictory to the Proclamation on Administration of Prisons⁸¹. Young female prisoners are sometimes insulted, sexually harassed, or strong-armed by male prisoners. They are also at risk of sexual assault.

Few female prison officers oversee the women's and minors' section. It is almost always male officers who handle these sections.

The MoSALVY circular (No. 15) dated May 22, 1995, gives instructions regarding prisoners who are mothers with young children in prison. However, this circular is unclear and not much is mentioned on the adequate protection for children.

There is only one youth rehabilitation center in Phnom-Penh, and it receives only males; young female are detained in the adult section even if they are not accused of a felony.

In general, women and girls who are in prison do not enjoy their basic human rights. Due in part to gender issues, women/girls receive weak protection.

⁸⁰Minor is child under 18

⁸¹Proclamation on Administration of Prison, article 4, paragraph 3

CHAPTER 6

RECOMMENDATIONS FOR A STRONGER, GENDER SENSITIVE CRIMINAL JUSTICE RESPONSE TO TRAFFICKING IN CAMBODIA

6.1 RECOMMENDATIONS FOR THE LEGAL FRAMEWORK

- a) Adopt the draft laws on Suppression of Human Trafficking and Sexual Exploitation, Domestic Violence, Adoption, Corruption, Civil Code and Procedures and Penal Code.
- b) Amend or adopt national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national law and detailed guidance is provided as to its various punishable elements. All practices covered by the definition of trafficking such as debt bondage, forced labour, slavery-like conditions, adoption and forced prostitution should be criminalized⁸². It should include both in-country and cross border trafficking. The relevant discussion should be oriented around the concept of human rights and take into account the experience gained in practice. The current draft of the Suppression of Human Trafficking and Sexual Exploitation law addresses some but not all of these issues fully enough.
- c) Make legislative provisions for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation fund for victims of trafficking and the use of confiscated profits to finance such a fund⁸³. The current draft of the Suppression of Human Trafficking and Sexual Exploitation law includes provisions for restitution from the convicted perpetrator to the victim.
- d) Ensure that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked person⁸⁴. The Immigration Law of Cambodia, which stipulates that foreigners who come to Cambodia illegally shall be subject to 3 to 6 months imprisonment before being expelled, notes in Article 29 that this shall not be applied in cases where it is in conflict with international conventions to which Cambodia is a signatory. In addition, consideration should be given to providing temporary or permanent residence permits to non-Cambodian victims of trafficking in an effort to protect them and encourage them to cooperate in trafficking investigations.
- e) Ensure that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law. The law should adequately cover cases such as illegal adoptions and marriage through deception.

⁸² UN Recommended Principle and Guidelines on Human Rights and Human Trafficking

⁸³ UN Recommended Principle and Guidelines on Human Rights and Human Trafficking

⁸⁴ UN Recommended Principle and Guidelines on Human Rights and Human Trafficking

- f) In criminal proceedings, an alignment of the regulations on the age of majority would be desirable for the purposes of international co-operation. The age limit could be set at eighteen (18)⁸⁵, with reference to the 1999 ILO Convention and the Child Rights Convention 182. This age limit of 18 is already incorporated into the draft Suppression of Human Trafficking and Sexual Exploitation law, the draft Marriage and Family Law, and the draft Criminal Code relating to the age of statutory rape.
- g) Continue judicial reform to make the court system more effective and to promote confidence in the judicial system and its capacity to impose appropriate sentences on traffickers.
- h) Guarantee that protection for witnesses is provided for in law, and develop and implement witness protection programs. There must be sensitizing, training and awareness-raising among official authorities (such as police and immigration officials, prosecutors and judges) as well as social workers, lawyers and doctors.
- i) For victims of cross-border trafficking, if the victim decides for repatriation, a reintegration premium for victims should be considered - a payment of compensation which could be supervised by related Ministries and NGO's.
- j) Now that Cambodia has newly ratified the United Nations Convention Against Transnational Organized Crime, develop and evaluate national projects and establish and promote best practices aimed at the prevention of transnational organized crime.

6.2 RECOMMENDATIONS FOR THE CRIMINAL JUSTICE SYSTEM RESPONSE

- a) The rights of the victim during the criminal trial must be recognized and protected. Legal representatives and advocates appointed by the victims should be given the opportunity to participate in a criminal trial and to claim damages in the name of and for the sake of the victim. Financial support, shelter, and medical, psychological and social care should be provided to the victim.
- b) There should be consistent prosecution of the owners of establishments that profit from the exploitation of the work of victims of trafficking. The Labour Law should include more severe penalties in case of forced labor.
- c) A random evaluation of unpublished court judgments clearly shows that the Court applied the laws against trafficking very narrowly, to the disadvantage of the prosecution. A systematic evaluation of Court judgments and court records should be carried out in order to:
- Ascertain the frequency of appeals
 - Establish the frequency of accessory prosecution and the possible effects on Court proceedings
 - Establish if and when payment of compensation was called for and granted
 - Establish what factors lead to a reduction in the penalty handed out to the convicted trafficker

⁸⁵ Suppression of the Kidnapping, Trafficking and Exploitation of Human Person, article 3

- Discover difficulties in the presentation of evidence
- Discover the entire range of criminal and civil offenses which take place in trafficking cases, such as physical assault, rape, forced labor, non-payment of wages, illegal confinement, etc.

This material can then be used as a basis for training judicial police, prosecutors, lawyers, and immigration officials.

d) The existing laws against trafficking have often not been fully utilized by the respective authorities. This was explained by reference to the lack of resources. Sufficient resources should be made available for applying the laws. One precondition for this is the will of those with political responsibility. The need for more resources should be clearly established and demanded by local investigators.

e) Strengthen the knowledge of police officers to make reports and investigate trafficking cases thoroughly.

f) More women police and court officials should be appointed to work in areas related to trafficking cases whenever possible.

g) The police and regulatory authorities who have no designated responsibility for trafficking but who may well recognize evidence of trafficking, due to their proximity to the scene of the crime, should be included in training courses and given further training aimed at promoting their awareness of the crime and of what to do when they suspect trafficking. Such training should fully integrate an appropriate gender perspective and involve female as well as male officers as trainers and students.

h) Binding co-operative structures should be built up among regional police forces and local authorities, with centralized investigation groups for combating trafficking.

i) Greater importance is to be attributed to the further training of male and female investigatory police officers.

j) Successful investigation teams, including both women and men, should demonstrate their knowledge and techniques at police training seminars.

k) Interview methods should be by investigation officers with training and experience in sensitively questioning victims, including women and children, and with understanding of issues of trust, trauma, and the socio-cultural background of the victims.

l) Cambodia should continue its efforts to develop some additional courts divisions, such as Juvenile Court and Family Court, or, if this is not possible, to identify and provide special training to identified judges – with priority for women judges - who will be assigned such cases.

m) Training courses on the current situation in human trafficking in-country and worldwide should be made available for judges, prosecutors, lawyers and police.

- n) Existing inter-agency task forces should be clear in their mandate, strong in their operations, and focused directly on implementation
- o) Police or court officials who are suspected of either benefiting from free sex or gaining financially from the sale of sex from trafficking victims should be immediately investigated, prosecuted if there is evidence, and punished with the full force of the law; professional training courses for new police or court officials should emphasize the government's commitment to implementing all laws in this regard.
- p) Children, parents, teachers, local authorities and professionals in the community should receive training to recognize their potential for involvement in trafficking: as potential victims and as potential interveners to help those who fall into trafficking as perpetrators or victims.
- q) The criminal justice system should pursue greater community involvement in developing prevention efforts and address community responses to the danger that at-risk people face, in order to prevent recruitment. As examples of such efforts, the Legal Support for Children and Women (LSCW), the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), the Cambodian Human Rights And Development Association (ADHOC), and others have all developed booklets or brochures intended to educate the general public about trafficking. The informational booklets request that the people in the communities assist their local police department and NGOs in locating and providing assistance to victims of trafficking and also in identifying those who exploit them. The booklets identify the characteristics of traffickers and of trafficking victims and advise citizens to contact the police or organizations if they believe that they know of people involved in human trafficking.

6.3 RECOMMENDATIONS FOR VICTIM SUPPORT AGENCY COLLABORATION WITH THE CRIMINAL JUSTICE SYSTEM RESPONSES

- a) Appropriate services for victims of trafficking and their dependent accompanying children, provided variously by non-governmental organizations, other elements of civil society, and government, should include:
 - Appropriate housing, taking into account the person's status as a victim of crime and including safe conditions for sleeping, eating and personal hygiene;
 - Psychological counseling in a language the victim understands;
 - Other material assistance as appropriate;
 - Employment, educational, and training opportunities; and
 - Legal assistance or legal information in a language the victim understands.
- b) Residence in shelters or other facilities should be voluntary in all cases, and victims should have the right to decline to stay in shelters.

- c) Victims in shelters should have the right to communicate with and receive visits from family, friends and attorneys.
- d) Except in exceptional circumstances, victims of trafficking, once identified as such, should not be housed in prisons or other detention facilities for accused or convicted criminals. Child victims of trafficking, once identified as such, should not be housed in prisons or other detention facilities for accused or convicted criminals under any circumstances.
- e) Full account should be taken of the age, gender, and special needs of victims and accompanying dependent children in formulating plans to provide services to them and in delivering such services.
- f) VSAs should cooperate with each other and relevant government agencies to develop standards for services provided to victims, ensuring compliance with the requirements of the law and ensuring that all victims are treated with respect for their human rights and dignity.
- g) The Ministry of Foreign Affairs and International Cooperation, through its diplomatic missions and consular offices abroad, where practicable, shall offer assistance to citizens of who are victims of trafficking abroad and to citizens of other countries who are victims locally by providing:
 - Assistance in understanding the laws of the foreign country to which they have been trafficked, including their rights as victims, options for reporting the crime, and opportunities for seeking restitution or other benefits that are available under the laws of that country;
 - Assistance in obtaining emergency services, including but not limited to medical care and counseling;
 - At the request of either the victim or the appropriate authorities in the other country, replacement or provision of passports and other travel documents necessary for the victim to return to country origin without undue or unreasonable delay; and
 - Material assistance in returning to their residence in country of origin;
- h) Victims of trafficking who return from abroad shall have access to educational and training programs provided by any government or private entity without being differentiated from other participants on the basis of having been trafficked.
- i) Diplomatic missions and consular offices in destination countries shall provide assistance to returned victims of trafficking in securing restitution for their losses under the laws of the destination countries.
- j) Appropriate support for child victims, including: whenever safe and possible, children should be reunited with family members; special mental and physical medical care tailored to the child's needs; upon return to the country of origin, child victims of trafficking should be guaranteed education which at least matches the general standards of education in the country.

6.4 RECOMMENDATIONS FOR ARCPPT PROJECT IMPLEMENTATION

- a) ARCPPT should cooperate with the Ministry of Justice to provide appropriate training to relevant ministries, to increase and update the knowledge of law.
- b) ARCPPT should work with the Ministry of Justice and Ministry of Interior to provide appropriate training to relevant ministries, authorities, judicial bodies, to increase the knowledge of investigation skills.
- c) ARCPPT should cooperate with the Ministry of Justice and related NGOs to bring more awareness of the laws against human trafficking.
- d) ARCPPT should undertake to support the development by criminal justice agencies of databases that they can use to improve the monitoring and tracking of human trafficking cases and, over time, to also use the information to improve strategies against trafficking.
- e) ARCPPT should do this work in accordance with its Gender Strategy.

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ANNEX I ⁸⁶

SELECTED RELEVANT LAWS AND ARTICLES RELATED TO TRAFFICKING IN CAMBODIA

THE CONSTITUTION OF KINGDOM OF CAMBODIA -1993

Following are relevant articles of the Constitution:

Article 31

The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations chapter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women's and children's rights.

Every Khmer citizen shall be equal before the law, enjoying the same rights, freedom and fulfilling the same obligations regardless of race, colour, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status.

The exercise of personal rights and freedom by any individual shall not adversely affect the rights and freedom shall be in accordance with the law.

Article 45

All forms of discrimination against women shall be abolished.

The exploitation of women in employment shall be prohibited.

Men and women are equal in all fields especially in marriages and matters of the family

Marriage shall be conducted according to conditions determined by law based on the principle of mutual consent between one husband and one wife.

Article 46 (Paragraph 1)

The commerce of human beings, exploitation by prostitution and obscenity which affect the reputation of women shall be prohibited.

Main point: The buying, selling and trafficking of children violates Cambodia's supreme law. Buying, selling, trafficking and forcing into prostitution are prohibited under the supreme law.

Article 48

The state shall protect the rights of children as stipulated in the Convention on Children, in particular, the right to life, education protection during wartime, and from economic or sexual exploitation.

⁸⁶ Some of the 'main point' explanations are drawn from United Nations Cambodia Office of the High Commissioner for Human Rights, "Human Rights and Law Enforcement", 2002.

Main point: Children, those under 18 years of age, have the same rights as women and men. Children are to be given extra protection because of their vulnerability. Children shall not be put in a work place where they could seriously hurt themselves or under conditions which are harmful (brick factory, construction, prostitution, etc.). Buying, selling, trafficking and forcing children into prostitution shall be strictly prohibited. Paying money to have sex with a child under the age of 18 is considered sexual exploitation.

Article 128

(After amendment on 04-03-1999) = Former article 109)

The judicial power shall be an independent power.

The judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.

The Judiciary power shall cover all lawsuits including administrative ones.

The authority of the Judiciary shall be granted to the Supreme Court and to the lower courts of all sectors and levels.

Article 150

(After amendment on 04-03-1999 = Former article 131) This Constitution shall be the Supreme law of the Kingdom of Cambodia

LAW ON THE SUPPRESSION OF KIDNAPPING, TRAFFICKING, EXPLOITATION OF HUMAN PERSONS

The Cambodian National Assembly passed this law on 16 January 1996. Perpetrators of kidnapping, trafficking and exploitation of human persons are to be arrested and prosecuted in accordance with the following articles:

Article 1

This law has an objective of suppressing the acts of Kidnapping of human persons for trafficking/sale and the exploitation of human persons, in order to rehabilitate and upgrade the respect for good national tradition, protect human dignity and protect the health and welfare of the people.

Main point: This law is for stopping the kidnapping, trafficking, and exploitation of human persons

Article 2

The kidnapping of human persons for trafficking/sale or for prostitution and the exploitation on human persons, inside or outside of the kingdom of Cambodia, shall be strictly prohibited.

Main Point: All purposes of kidnapping are prohibited but this article cites specific purposes.

Article 3

Any person who lures a human person, even male or female, minor or adult of whatever nationality by ways of enticing or any other means, by promising to offer

any money or jewelry, even though upon there is or no consent from the concerned person, by ways of forcing, threatening or using of hypnotic drugs, in order to kidnap him/her for trafficking/sale or for prostitution, shall be subject to imprisonment from ten (10) to fifteen (15) years. Shall be punished to imprisonment from fifteen (15) to twenty (20) years, for the case if the victim is a minor person of less than 15 years old.

Those who are accomplice(s), trafficker(s)/seller(s), buyer(s), shall be subject to the same punishment term as which of the perpetrator(s).

Shall also consider as accomplices, those who provide money or means for committing offences.

All means of transportation, materials and properties which are used during the commission of offences shall be confiscated as State's property.

Main point: Perpetrators of kidnapping, trafficking, exploitation of human persons (forced labour or prostitution) shall be punished in accordance with this article of the law on Kidnapping, Trafficking, and Exploitation of Human Persons.

UNDER CHAPTER III, PIMP(S) (PROCURER / INTERMEDIARY)

Article 4

Shall be considered as a pimp (male or female) or head of prostitutes, any person:

1. Who supports or protects one or more persons, by whatever means with knowledge in advance of the act of prostitution of such person(s) or seeks customers for such person(s) for the purpose of prostitution, or
2. Who regularly shares the benefits obtained from the prostitution acts in any form, or
3. Who brings men or women by whatever means for a training and convincing them to become male or female prostitutes, or
4. Who acts as an intermediary by whatever form, to create relationships between male and female prostitutes with the head/owner of a brothel or with a person who provides benefits on the prostitution of other persons, or
5. Who confines men or women in his/her house or any place, for a purpose of forcing them to commit prostitution to earn money for him/her.

Main point: This article defines persons who support or protect prostitutes or who are engaged in forced prostitution.

Article 5

Any male or female pimp or head of prostitutes shall be punished from five (5) to ten (10) years in prison. In case of repeated offence, double term of the above punishment shall be applied.

Shall be subject to punishment to imprisonment from ten (10) to twenty (20) years, in case if upon a pimp:

- 1- Commits and offence onto a minor person of below 15 years old, or
- 2- Commits an offence by coercion and violence or by threat or weapon, or
- 3- Who is husband, wife, boy/girl friend, father or mother or guardian, forces a man or woman to commit prostitution, or
- 4- Who forces a victim to commit prostitution outside of the country or, a victim who is a foreigner to commit prostitution on the territory of the Kingdom of Cambodia.

Main Point: Persons who support or protect prostitutes or are engaged in forced prostitution are to be punished under this article.

Article 6

The accomplices or those who attempt to commit offenses as stated in the Articles 4 and 5 above, shall also be subject to the same punishment term as which of the perpetrator(s).

Main points: Accomplices can include those who protect the pimp/head of prostitutes or brothel owner, etc.

UNDER CHAPTER IV, DEBAUCHERY

Article 7

Any person who opens a place for committing a debauchery or obscene acts, shall be punished to imprisonment from one (1) to five (5) years and with a fine penalty of from five million (5,000,000) Riels to thirty million (30,000,000) Riels. In case of repeated offence, the above punishment terms shall be doubled.

Main Points: Places of debauchery or obscene acts are establishments that serve the purpose to have sex or watch nude people performing. This article refers to places such as brothels, massage parlors, karaoke cafés, clubs, etc.

Article 8

Any person who commits debauchery acts onto a minor person of below 15 years old, even if there is consent from the concerned minor person or if upon buying such minor person from somebody else or from a head of the prostitutes, shall be subject to punishment from ten (10) to twenty (20) years in prison. In case of not giving up, the maximum punishment term shall be applied.

Main Points: Perpetrators of trafficking, kidnapping, exploitation of human persons must be arrested and prosecuted under provisions of the Law on Suppression of Trafficking, Kidnapping, Exploitation of Human Persons. Also, perpetrators of Trafficking, Kidnapping, Exploitation of Human Persons can be arrested and prosecuted under provisions of the SNC Criminal Law (domestic law) depending on the circumstances of each case.

THE SUPREME NATIONAL COUNCIL CRIMINAL LAW AND PROCEDURE

Perpetrators who commit additional criminal offenses during trafficking, kidnapping and exploitation of human persons must also be arrested and prosecuted under the following provisions SNC Criminal Law and Procedure which is another Cambodian domestic law:

Article 14:

1. No one may be detained more than 48 hours without being brought before a judge, following charges filed by a prosecutor. In the event that it is impossible to abide by this time limit due to prevailing transportation conditions in the region, the time may be extended to the extent strictly necessary to bring the detainee before a judge by the most rapid means available.

4. Within the same time limit of 48 hours after arrest, extended if appropriate for the additional period mentioned in the sub-paragraph (1) above to allow for transportation, counsel must receive a copy of the file of accusation against the suspect.

Article 33: Rape

1. Anyone who rapes or attempts to rape another person of either sex is guilty of rape and shall be liable to imprisonment for a term of five to ten years.

2. Rape is any sexual act involving penetration carried out through violence, coercion or surprise. If rape is accompanied by threats with a weapon, or if it is committed on a pregnant woman or a person suffering from illness or mental or physical infirmity, or by two or more offenders or accomplices, or if it is committed by anyone in a position of authority over the victim, the punishment shall be a term of imprisonment of ten to fifteen years.

Article 35: Illegal Confinement

Anyone who, without orders from the judicial authority, arrests, detains or illegally confines anyone shall be liable to imprisonment:

- For ten years, if the confinement or detention lasts longer than one month;

From three to five years, if the confinement or detention lasts less than one month.

Article 36: Organized Crime

Any individual who has taken part in a formal or informal association set up for the purpose of planning one or more crimes or misdemeanors against persons or property, if specific acts of preparation of these offenses have taken place, shall be liable to a term of imprisonment of from three to fifteen years.

Article 41: Battery with Injury

1. Anyone who voluntarily strikes another resulting in injury leading to permanent disability or temporary disability lasting more than six months, is guilty of battery and shall be liable to a punishment of one to five years in prison.

If the disability lasts less than six months, the offense shall be punished by a term of imprisonment of six months to two years.

2. If there is no disability, the punishment shall be a term of imprisonment of two months to one year.

3. If any weapon is used to strike the blows, the period of imprisonment shall be doubled.

Article 42: Indecent Assault

1. Any person who sexually assaults another person of either sex by touching, caressing or any other sexual act not involving penetration, is guilty of the misdemeanor of indecent assault and shall be liable to the term of imprisonment of one to three years.
2. If the indecent assault is accompanied by fraud, violence or threat, or if it is committed by any person with authority over the victim, or if the victim is under 16 years of age, the duration of these sentences shall be doubled.
3. Any person who procures, entices or leads away, for purposes of prostitution, or sexually exploits a minor, even with the consent of that minor, shall be liable to a term of imprisonment of two to six years.

ADDITIONAL LAWS

MARRIAGE AND FAMILY LAW

Article 2

The marriage between a too young couple and marriage by force against free willing of marriage shall be absolutely be prohibited.

Article 113

An adoptive contract must be in writing and certified by the committee of commune or sector in jurisdiction where an adopter or adoptee resides. Text of the adoptive contract shall be recorded in the registration book.

The people's court may rescind the above contract according to a complaint of an adoptee, person or other Organizations for the adoptee interests.

Article 115

Parent have obligation to love, bring up and take care of their child's education; that is, to develop the idea imbue with patriotism and love of education, love to work in spirit of international cooperation and respect for the State property, rights and property of others.

A child is bound to love, respect for, take care his or her parents, and support the parents in need.

Article 116

Parent shall not mistreat his or her child, child-in-law, adopted child or step of his or her former spouse.

LABOUR LAW

Article 15

Forced or compulsory labor is absolutely forbidden in conformity with the International Convention No 29 on the forced of compulsory labor, adopted on June 28, 1930 by the International Labor Organization and ratified by Kingdom of Cambodia on February 24, 1969.

The article applies to everyone, including domestics or household servants and all workers in agricultural enterprises or businesses.

Article 172

All employers and managers of establishments in which child laborers or apprentices less than eighteen years of age or women work, must watch over their good behavior and maintain their decency before the public. All form of sexual violation (harassment) is strictly forbidden.

Article 177

1. The allowable minimum age for wage employment is set at fifteen years.
2. The minimum allowable age for any kind of employment or work, which, by its nature, could be hazardous to the health, the safety, or the morality of an adolescent, is eighteen years. The types of employment or work covered by this paragraph are determined by a Prakas (ministerial order) of the Ministry in charge of Labor, in consultation with the Labor Advisor Committee.
3. Regardless of the provisions of paragraph 2 above, Ministry in Charge of Labor can, after having consulted with the Labor Advisor Committee, authorize the generation of occupation or employment for adolescents aged fifteen years and over on the condition that their health, safety, or morality is fully guaranteed and that can receive, in the corresponding area of activity, specific and adequate instruction or vocational training.
4. Regardless of the provisions of paragraph 1 above, children from twelve to fifteen years of age can be hired to do light work provided that:
 - a) The work is not hazardous to their health or mental and physical development
 - b) The work will not affect their regular school attendance, their participation in guidance programs or vocational training approved by a competent authority.
5. Prakas issued the Ministry in charge of Labor in consultation with the Labor Advisory Committee will determine the types of employment and establish the working conditions, particularly the maximum number of hours of work authorized as per paragraph 4 above.
6. After having consulted with the Labor Advisor Committee, the Ministry in charge of Labor can wholly or partially exclude certain categories of occupation or employment create considerable difficulties.

Article 369

Those guilty of violating the provisions of Articles: 12, 15, 17, 18, 39, 46, 104, 126, 260, 264, 281, 292, 331, 333, 334 and 335 are liable to a fine of sixty-one days of base daily wage or to imprisonment of six days to one month.

IMMIGRATION LAW

Article 29

Any alien who without authorization, entered the Kingdom of Cambodia by clandestinely or fraud or by any other forms whatsoever, contrary to the provisions of this law, shall be subjected to condemnation from three to six months imprisonment, before he/she is expelled.

Shall be subjected to the same term of condemnation, for those who assisted, or helped concealing, in order bringing those foreigners who got no authorization into the Kingdom of Cambodia.

Any competent official or agent of the royal government, who conspires or helps facilitating to commit the offense/crime above, shall be subjected to imprisonment from six (6) months to one (10) year.

Any competent official or agent of the government, who by negligence or by lack of attention or by non-observance of the regulation, shall be subjected to administrative penalties.

All kinds of means of transport and materials used for committing such above offences/crimes, shall be confiscated and kept as state's property by the court.

CRIMINAL PROCEDURE

Article 14

Article 96

In each province or municipality there exist one court of which the territorial jurisdiction covers all territory of the province or municipality. As a "criminal tribunal", the provincial or municipal court has competence of all kinds of criminal cases.

To be valid by constitute, the criminal court as well as civil court, requires the presence of a judge, an assistant prosecutor and the assistance of a court clerk.

The judge may be the president, the vice-president or the magistrate of the court.

Article 156

The appeal court is located in Phnom-Penh.

This competence of the appeal court covers the entire territory of the state of Cambodia.

Article 206

The Supreme Court is located in Phnom-Penh.

The competence of the Supreme Court extends over the whole territory and all jurisdictions in the State of Cambodia

PROCLAMATION ON ADMINISTRATION OF PRISONS

Article 4

- A. Male and female prisoners must be accommodated separately.
- B. The following prisoners shall be accommodated separately, where the prison buildings permit:

Prison under the age of 18 years from older prisoners;

Detainees from convicts;

Prisoners who have escaped from prison or have acted contrary to the security and good order of the prison;

Felonious prisoners from prisoners with minor offences or misdemeanors;

Prisoners diagnosed with a physical or mental illness of injury which impact on their own health and welfare or other prisoners.

Memorandum of Understanding between the Royal Government of The Kingdom of Thailand and The Royal Government of The Kingdom of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking

This memorandum has ratified, hopefully, to support and protect the victims of trafficking and to strengthen the bonds of friendship between the two countries and to increase the bilateral cooperation on the suppression of trafficking in children and women.

Article 7

Trafficked children and women shall be considered victims, not violators or offenders of the immigration law. Therefore,

- a) Trafficked children and women shall not be prosecuted for illegal entry to the country;
- b) trafficked children and women shall not be detained in an immigration detention center during the times awaiting the official repatriation process, but shall be put under the care of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (Cambodia) or the Department of Social Development and Welfare (Thailand), and shelter and protection shall be provided to the victims according to the policy of each state;
- c) The relevant authorities shall ensure the security of trafficked children and women; and
- d) Victims shall be treated humanely throughout the process of protection and repatriation, and the judicial proceedings.

INTERNATIONAL TREATIES, CONVENTIONS, AND PROGRAMS

Numerous treaties, United Nations (UN) conventions and programs, and other international initiatives address the human trafficking through sexual exploitation. All attest to the importance placed on the eradication of sexual exploitation by the international community. Unfortunately, the international instruments have varying degrees of enforceability and often rely entirely on the voluntary cooperation of nations.

CONVENTION OF THE RIGHTS OF THE CHILD

Article 48

The State shall protect the rights of children as stipulated in the Convention on Children, in particular, the right to life, education, protection during wartime, and from economic or sexual exploitation.

The State shall protect children from acts that are injurious to their educational opportunities, health and welfare.

Main point:

As the child is a human being, he/she is entitled to all human rights

As the child is more vulnerable, he/she is entitled to special protection

As the child has special needs, he/she is entitled to special rights

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

ANNEX II

LIST OF INTERVIEWEES

RELEVANT MINISTRIES, COURT AND POLICE DEPARTMENT

- Ministry of Justice
- Ministry of Interior
- Ministry of Women's and Veteran Affairs
- Provincial Court in Banteay Meanchey province
- Provincial Court in Kandal province
- Police Department of Anti-Trafficking in Banteay Meanchey Provinces

RELEVANT INTERNATIONAL ORGANIZATIONS (OI)

- International Organisation for Migration (IOM), Phnom-Penh and Banteay Meanchey
- International Labour Organization (ILO), Phnom-Penh
- United Nation of the High Commissioner for Human Rights (UNCHR), Phnom-Penh
- United Nations International Children's Fund (UNICEF), Phnom-Penh
- Cambodian Criminal Justice Assistance Project (CCJAP), Phnom-Penh
- Coalition to Address Sexual Exploitation of Children in Cambodia (COSECAM), Phnom-Penh
- Baan Kred Trakarn Shelter, Thailand

NON-GOVERNMENT ORGANIZATIONS (NGOS)

- Cambodian Women's Crisis Center (CWCC), Phnom-Penh and Banteay Meanchey
- The Cambodian Human Rights And Development Association (ADHOC), Phnom-Penh
- Cambodian League for the Promotion and Defense of Human Rights (LICADO), Phnom-Penh
- Cambodian Defender Project (CDP), Phnom-Penh
- Legal Aid of Cambodia (LAC), Phnom-Penh

OTHERS - the identity of the trafficking victims, relatives of victims, and perpetrators that the team interviewed is, of course, not disclosed.