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 Cambodian Center for Human Rights

A SERIES ON FAIR TRIAL RIGHTS AND RULE OF LAW

Human Trafficking Trials in Cambodia in 2011

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INTRODUCTION

Cambodian men, women, and children are trafficked for sexual and labor exploitation throughout South East Asia. In 2008, the Law on the Suppression of Human Trafficking and Sexual Exploitation (the “LHTSE”) was introduced in an effort to increase the rate of successful prosecutions for human trafficking offenders in Cambodia. Human trafficking has proven difficult to prosecute. In Cambodia, in the majority of cases the work of the trafficking victim has not itself been illegal, the victims are nonetheless often reluctant to become involved in the prosecution of the perpetrators for fear of ramifications. It should be noted that under Cambodian law, victim testimony is not required in order to prosecute human trafficking offenders.

In July 2010 the Cambodian Center for Human Rights (CCHR) published a report providing data on human trafficking trials in Cambodia to assist relevant Cambodian institutions and agencies, including the judiciary and law enforcement agencies in their handling of LHTSE cases. The report entitled ‘Human Trafficking Trials in Cambodia’ is available on the CCHR website. This edition of the Trial Monitoring series examines criminal trials involving human trafficking and sexual exploitation as charged under the LHTSE or the Penal Code 2009 in Cambodia as monitored at the Phnom Penh Capital Court of First Instance in 2011.

FINDINGS

In total CCHR monitored seven trials involving offenses of human trafficking and/or sexual exploitation in 2011. The seven LHTSE cases monitored involved a total of 13 victims, all of whom were female, and 5 of which were juveniles. Of the trials monitored, there was only one in which the victim was present at the hearing.

Given all the cases monitored involved female victims, gender sensitivity was an important consideration in these trials. Examples of gender sensitivity approaches can include the provision of female interpreters and other court personnel, particularly where there has been a sexual element to the offense. Of the seven LHTSE trials monitored, no measures were taken to respect gender sensitivity. None of the female victims present at the hearing, nor the female accused, were represented by a female lawyer. Additionally, none of the court officials present in the LHTSE trials were female.

Four of the trials involved juvenile victims. However, in only one trial was the victim present at court. No measures were taken to ensure the confidentiality and safety of the juvenile involved in the court proceedings. It is the responsibility of the court to ensure that the safety and privacy of juveniles involved in the judicial process are protected.

Despite the absence of most of the victims and their legal representation at the hearing in six of the trials monitored, conviction was achieved in six of the seven cases. The punishment ranged from one to 10 years imprisonment and in one case the imposition of compensation paid to the victims.

CASE STUDIES

The proceeding case studies from human trafficking and sexual exploitation trials monitored in 2011 present a snapshot of human trafficking cases, highlighting particular victim considerations and fair trial rights that may present the greatest challenges in this difficult area:



Case One

The accused was a male Cambodian between the ages of 26-35 years old. The victim was a female Cambodian student between the ages of 15-17 years old. The accused stated at the hearing that he knew the victim for many months and they started to have a loving relationship. He used to take the victim to have sex at a guesthouse on many occasions. The accused agreed to give the victim \$2000 in order to give to her mother but did not give her the money, so she filed a complaint. The accused was arrested by the police upon returning home.

The Judge informed the victim of her rights, as the victim chose to testify in court. There was nothing to suggest that the victim was ordered by the court to testify against her will, nor did it appear that the victim had contact (directly or indirectly) with the accused between arrest and trial. There was no information on whether the lawyer of the victim requested the victim's identity be kept confidential. During the hearing, the Judge approached sensitive topics in a suitable manner, though did not take extra precautions when speaking to the victim, as she was a juvenile. Despite the victim being a female, none of the court officials were female, nor was the victim represented by a female lawyer. No screen or further protective measures were used during the hearing to protect the juvenile from testifying in public. The accused was found guilty of the charge against him and sentenced to 10 years imprisonment.

Case Two

The accused was a male Cambodian pimp between the ages of 26-35 years old charged with procuring under Article 284 of the Penal Code. The five female Cambodian victims were all between the ages of 18-25 years old and were not present during the hearing. The court clerk informed the court that the accused had raised the victims for sexual intercourse with men. At night, the accused commanded the victims to stand at a garden in Phnom Penh to wait for men to purchase sex from them. The accused was found guilty of the charge against him and sentenced to six years imprisonment.

Case Three

The accused was a male foreigner who stated that he knew the two female Cambodian victims since 2005. Together, the accused and the two victims went to the

water park two or three times. The accused used to take the victims to a house, located near Phsar-Kandal Market, and have sex with them. For the victims who had sex with the accused, he gave them \$100 and if the accused touched the body of the victim, he would give \$50. Issues found at the trial included that the victims were not present at the hearing, nor were witnesses present to provide the trial with credibility and fairness. The accused was found guilty of the charge against him and sentenced to seven years imprisonment and ordered to pay compensation in the amount of 1,000,000Riel to each victim.

Conclusion & Recommendations

Although it has not fully complied with the minimum standards for the elimination of trafficking, the Royal Government of Cambodia, in cooperation with prominent NGOs and intergovernmental organizations, has demonstrated its willingness to tackle the problem of human trafficking and must be commended for its efforts. The small number of cases monitored by CCHR has shown high conviction rate in the seven cases monitored. However, this is not necessarily representative of the situation in Cambodia, where more needs to be done to increase the rate of successful prosecutions for human trafficking and sexual exploitation offenders in order to aid Cambodia in its efforts to combat human trafficking in general. In so doing much more needs to be done to ensure the judiciary is cognizant of all gender issues related to trafficking, that the judiciary recognizes the interdependence of victim protection and successful prosecution, and minimum standards of care for victims of human trafficking are provided to ensure for greater protection of all victims, in particular for juveniles.

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CCHR is a non-aligned, independent, non-governmental organization that works to promote and protect democracy and respect for human rights throughout the Kingdom of Cambodia.