



KINGDOM OF CAMBODIA

NATION RELIGION KING

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Cambodia National Council for Children

No: 107 CNCC

Phnom Penh, 20 December, 2007

DECISION

ON

**GUIDELINE FOR THE PROTECTION OF THE RIGHTS OF TRAFFICKED CHILDREN
OF THE KINGDOM OF CAMBODIA**

Chairperson of Cambodia National Council for Children

- Had seen the Constitution of the Kingdom of Cambodia
- Had seen Royal Kret No. NS/RKT/0704/124 dated 15 July 2004 on the Appointment of the Royal Government of the Kingdom of Cambodia
- Had seen Royal Krom No. 02/NS/94 dated 20 July 1994 which promulgated the law on the Establishment and Operation of the Council of Ministers
- Had seen Sub-Degree No.56 ANK dated 28 June 1999 on the Establishment of Cambodia National Council for Children
- Pursuant to Convention on the Rights of the Child which was signed on 22 September 1992 by the Supreme National Council and ratified on 15 October 1992
- Pursuant to Optional Protocol on the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography which was ratified by the National Assembly on 02 January, 2002
- Pursuant to Protocol to Prevent, Punish, Trafficking in Persons, especially Women and Children, supplementing to the UN Convention Against Transitional Organized Crime which was promulgated by Royal Krom No.NS/RKM/0106/004 dated 18 January, 2006
- Pursuant to Proposed Guideline for the Protection of the Rights of Trafficked Children in South East Asia

Decides

Article 1: To enforce the Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia as stated as follows:

Article 2: Definition

1. Child

A child is any person under eighteen (18) years of age

2. Child Trafficking

- a. Child trafficking is the recruitment, transportation, transfer, harbouring or receipt of a child by means of deception, persuasion, coercion, adoption or marriage for the purpose of exploitation such as child labor exploitation, child slavery, child prostitution, production and dissemination of child pornography, sale of organs, and participation in armed conflict etc.
- b. The consent of the child or the person exercising custody over the child to trafficking or any of its elements is irrelevant and does not exempt the offender from or lessen his/her liability for committing acts that constitute or promote child trafficking.
- c. The employment of 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 the child.

3. Trafficked Child

Trafficked child is a child who has been recruited, transported, transferred, harboured or received for the purpose of exploitation, within or outside a country.

4. Social Welfare Service Providers

A social welfare service provider shall include all those persons involved in providing direct services to trafficked children, whether from government or non government organizations.

Article 3: General Principle

1. Rights of the Child

- a. Trafficked children are entitled to the full respect and exercise of their survival, development, protection and participation rights as recognized under the Convention on the Rights of the Child.
- b. Trafficked children have special needs and are therefore entitled to special protection measures.

2. Best Interests of the Child

In all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies, the best interests of the child should be the primary consideration.

3. Rights to Non-Discrimination

- a. All trafficked children should be entitled to the same protection and rights in the country/place of origin, transit or destination regardless of their status, nationality, race, color, sex, language, faith, religion, political or other opinion, ethnic or social origin, property, disability, birth or other status.
- b. Whenever applicable, these guidelines should also apply to children who are conceived and subsequently born of trafficked persons.

4. Respect for the Views of the Child

- a. A trafficked child who is capable of forming his or her views should enjoy the right to express those views freely in all matters affecting him or her, including in relation to the legal process, interim care and protection and the identification and implementation of a durable solution.
- b. The views of the trafficked child should be given due weight in accordance with his or her age, maturity, evolving capacities and best interests.

5. Rights to Information

- a. Trafficked children should be provided access to information about all matters affecting them including entitlements, services available and the family reunification and/or repatriation process.
- b. Information should be provided in a language, which the trafficked child is able to understand. Suitable interpreters/translators should be provided whenever necessary.

6. Rights to Confidentiality

- a.** Information about a trafficked that could endanger the trafficked child or his/her family members should not be disclosed except as required by law.
- b.** All necessary measures should be taken to protect the privacy and identity of trafficked children. The name, address or other information that could lead to the identification of the trafficked child or his/her family members, should not be revealed to the public or media.
- c.** The permission of the trafficked child should be sought in an age appropriate manner before sensitive information is disclosed.

7. Respect for the Child's Ethnic, Cultural, Faith and Religious Identity

- a.** The trafficked child's ethic, cultural, religious and faith identity should at all times be respected.
- b.** Where applicable, assistance should be provided to the trafficked child in order to enable him/her to exercise or practice his/her ethnic, cultural, faith or religious practices.

8. Responsibility of Relevant Ministries/Institutions

- a.** Relevant Ministries/Institutions should take positive action to combat child trafficking and to protect and assist trafficked children.
- b.** Relevant Ministries/Institutions should take all appropriate legislative, judicial, administrative and other measures to protect and assist trafficked children.
- c.** Relevant Ministries/Institutions are responsible for taking pro-active measures to protect persons who provide care and assistance to trafficked children from reprisals from traffickers. These measures should extend to persons working in non-government organizations, civil society, faith-based and religious groups.

Article 4: Specific Guideline

1. Detection and Identification of Child

1.1 Presumption of Age

- a.** Aside from birth documents/family books of the trafficked person, his/her identification cards, school records, physical appearance, psychological maturity, statement, consensual medical or dental examinations and DNA

(Deoxyribonucleic Acid) can be considered in determining the age of the trafficked person.

Legally recognized documents attesting to the birth or age of the child from persons who have personal knowledge about these facts can likewise be considered. Documents recording cultural or religious practices which indicate age may also be considered.

- b.** Where the age of the trafficked person is uncertain and there are indicators to believe that the person is a child, the presumption should be that the person is a child.
- c.** Pending a reasonable time for the verification of the trafficked person's age, he/she should be treated as a child and should be accorded all special protection measures stipulated in these guidelines.

1.2 Pro-active identification measures

- a.** Establishing identification procedures of trafficked children including strengthening of birth registration procedures, the listing and recording of missing and exploited children and the creation of a checklist of warning signs that may indicate that a child is a victim of trafficking.
- b.** Training on rapid identification procedures should be provided to all persons having indirect and direct contact with trafficked children (i.e. seaport and airport personnel, immigration officers, border patrols, law enforcement officers, social welfare and health care providers, etc.). This may include training on the use of a checklist of warning signs that may indicate that a child is a victim of trafficking and on how to distinguish trafficked children from illegal migrants.
- c.** Relevant competent authority and non government organizations should conduct intensive efforts to provide information to families, communities and public about the issue of child trafficking and create procedures for reporting and referring suspected and actual child trafficking cases should be established.
- d.** Measures to coordinate information sharing between government agencies, including law enforcement authorities, and social welfare agencies and non-government organizations should be adopted to facilitate rapid identification of trafficked children.

2. Initial Contact

2.1 Initial Action

- a.** All the identification of a child as a trafficked child is the responsibility of prosecutor or investigating judge, but police or agencies who have firstly found the child are responsible for identifying whether s/he is trafficked child or not. However, police or agencies who have firstly found the child should immediately contact a social welfare service provider or family, parents/guardian of the trafficked child.

If the identification of police, prosecutor or investigating judge is different from the one firstly found, the police, prosecutor or investigating judge should sent the information to those officers in order to find further information. In the case of cross border trafficking, the prosecutor should inform the immigration officer of the country of destination through embassy/consulate of the country of destination or transit in order to provide temporary stay for the child survivor.

- b.** Investigation should not be affected the security of the child such as avoidance of the perpetrator to know about the investigation, child's confidentiality, moreover the following activities should be prohibited:
 - The use of recording equipment including camera, voice recorder, media which lead to the reveal of the identification of the trafficked child.
 - Publishing data, background of the trafficked child.
- c.** In principle investigator/officer (i.e polices, prosecutors, and judges) should recognize birth certificate, family book which are the sources of information for the background of the trafficked child as evident. In case there is no such document, police, prosecutor or investigator should recognize the certification letter from local authority that the trafficked child lastly live as correct.
- d.** The investigator/officer should assist the trafficked child in retrieving his/her personal belongings. Moreover, trafficked child should receive civil compensation from perpetrator through the court system.
- e.** The trafficked child or suspected trafficked child whatever had been seen or suspected should be removed from the place s/he is found and immediately brought to a safe location and environment, preferably with a social welfare service provider. The trafficked child should not be kept at police stations more than 48 hours and strongly prohibited send the child to the detention centers.

- f. At no time should the trafficked child be placed in the same room or in direct contact with the suspected trafficker/s.
- g. For the safety and security of the trafficked child and the social welfare service providers, police should foresee possible danger that may happen, the trafficked child's whereabouts -should be kept confidential.

2.2 Child-sensitive Interview

- a. Interview a child for gathering all the information, evidences should be guided to all relevant agencies to have a common standard for interviewing such as: place, friendly environment, simple questions, good words and have to avoid using any equipment which may frightened children, especially avoid from having direct contact with perpetrator.
- b. The trafficked child's right to privacy should be respected. The express consent of the trafficked child and his/her parent/guardian or social welfare service provider shall be acquired prior to the conduct of the interview.
- c. The trafficked child should be allowed some time to rest and stabilize before s/he is interviewed.
- d. At all stage of interviewing trafficked children, the investigator/officer and interpreter/translator, should be of the same gender as the trafficked child, dressed in civilian clothes, trained in administering child friendly/sensitive interview methods and knowledgeable about the issue of child trafficking.
- e. Prior to the interview with the trafficked child, the investigator/officer should inquire whether prior interviews have already been conducted by any person or agency, and if so, s/he should acquire the results from such prior interview.
- f. The interview should be conducted in a language known to the trafficked child. Where this is not possible, a qualified translator/interpreter should be provided.
- g. The trafficked child should be interviewed in the presence of a representative of the social welfare service provider, parent/guardian or trusted adult of his/her choice.
- h. The interviewing of trafficked child should be in a child friendly/sensitive environment the confidentiality of proceedings and the protection of the trafficked child's right to privacy should at all times be respected.

- i. The consent of the trafficked child and his/her parent/guardian, social welfare service provider or trusted adult of his/her choice must be secured before using any recording equipment including video cameras or tape recorders.

2.3 Legal Protection for Child

- a. Trafficked children are victims of human rights violations. They should not be treated as offenders or subjected to or threatened with criminal sanctions for any offense related to their situation as trafficked children.
- b. Access to basic social welfare and support services should not be dependent on the trafficked child's willingness to cooperate with law enforcement authorities. Even if victim children are not willing to file complaint or cooperate with local authority with this process.
- c. In case of someone is charge of child trafficking including parents or guardian, the judge has a rights to deprive their parent/guardian hood according to the legal procedure.
- d. If trafficked children have no relatives or orphan, child support agency should find free legal assistance (lawyer) in order to protect children at all legal procedures from the beginning to the end.

3. System of Referral, Coordination Collaboration and Cooperation

3.1 Regional Mechanism

Competent authority of the government should strengthen coordination, cooperation and regional referral system in relation to child trafficking.

3.2 National Mechanism

- a. Strengthen the existing national mechanism for referrals coordinating and cooperation with relevant NGOs/IOs working on human trafficking issues.
- b. Develop a national database that will centralize all information about the efforts to combat child trafficking and data and statistics in relation to incidents of child trafficking occurring within the country or affecting nationals of the country. The development of such a database should take into due consideration the rights to privacy and confidentiality of trafficked children.

- c. Continue training and strengthening all relevant agencies officers about the referral system in order to ensure prompt, effective and appropriate responses to cases of child trafficking.
- d. Arrange for study visit in and out the country to learn and exchange experiences with one another to ensure effective referrals, coordination and cooperation.

4. Interim Care and Protection

4.1 Safe Places for Children

- a. Provide safe, secure and child-friendly shelters to trafficked children in response to the real needs.
- b. Shelters, centers for trafficking children should be run by a sufficient number of well-trained and competent staff. The gender of the staff should be appropriate for the needs of the trafficked children.
- c. Set up monitoring mechanisms to evaluate shelters and services.

4.2 Support Services

- a. Relevant ministries, institutions should allocate the necessary annual budget to ensure trafficked children's security from threat and reprisals from traffickers, food and accommodation, access to health-care and psychosocial support.
- b. The primary objective of interim care is the recovery counseling, psychosocial services, legal aid, education, vocational skills training and other support services which are appropriate for the need of the trafficked child and his/her family.

4.3 Legalization of Stay

- a. Relevant ministries, institutions should establish laws, policies and procedures to ensure that trafficked children, who are not Cambodian nationality are not treated as illegal migrants.
- b. For trafficked children without legal documentation, relevant competent ministries, institutions should assist them to immediately legalize their stay such as granting of a temporary visa.
- c. Relevant ministries, institutions should ensure that trafficked children are exempt from all government fees and charges normally imposed in the process of legalizing their stay.

5. Social Case Management of Trafficked Children

5.1 Individual Case Assessment

- a.** Each trafficked child is entitled to have his/her case individually assessed by competent social affairs officer with based on his/her best interests. A social case management intervention plan should then be developed for the child.
- b.** The social case management intervention plan should consider the preservation and integrity of the trafficked child's ethnic, cultural, faith and religious identity.
- c.** Relevant ministries, institutions should cooperate with relevant NGOs/IOs should take steps to locate the trafficked child's family in order to reunite him/her with his/her family.
- d.** The implementation of the social case management intervention plan should be done with people who have skills in social affairs.

5.2 Identification of a Durable Solution

- a.** Relevant ministries, institutions in collaboration with NGOs/IOs have the responsibility to identify the most appropriate long term solution for the trafficked child.
- b.** In the process of identification of a durable solution for trafficked child, the nationality and citizenship of the trafficked child, family background, environment and other circumstances, risk of reprisal from traffickers and security capability should be taken into consideration.
- c.** During the process of identifying a durable solution and the implementation of this solution, a qualified guardian to represent and assist the trafficked child should be appointed in a period of necessary in order to protect the interests of the child.
- d.** The views of the trafficked child shall be taken into consideration when considering whether s/he should be returned to the country/place of origin to reunited with his/her family and/or to stay in a shelter, with due consideration given to his/her age, maturity and evolving capacities.

5.3 Implementation of a Durable Solution

- a.** Care for a child in the family and community should be promoted. Care for a child in a temporary center should be considered as the last option.

- b. In cases where a trafficked child is to be repatriated to community, appropriate arrangement should be done. Family/guardian, relative of the trafficked child and social welfare service providers working for children should be responsible for health care, psychological support, social services, education and other assistances as a mean for living supporting to trafficked child and his/her family in order to protect them from reprisal of traffickers.
- c. In cases where the trafficked child is not Cambodian national, competent authority should take all efforts to provide travel document and coordination with origin country to ensure safe repatriation of trafficked child.
- d. In cases of repatriation trafficked child into his/her origin country, if relevant ministries, institutions could not afford to pay for all the expenses, the support from trafficked child in the origin country, NGOs/IOs should be sought such as: United Nations, IOM.

5.4 Monitoring of Implementation of Durable Solution

Mechanism and systems for monitoring of implementation of durable solution trafficked children should be established to avoid them being trafficked again.

6. Access to Justice

6.1 Victim/Witness Security and Protection

- a. Trafficked child should not be forced to be a witness when he/she is in condition of unable to provide any answers.
- b. Competent authority should make prior assessment on the child to determine whether he/she is ready to be a witness.
- c. A trafficked child who agrees to testify as witness should be provided with special protection measures to ensure his/her safety and, if necessary, the safety of his/her family or of other persons significant him/her.
- d. Prosecution and judicial authorities should respect the rights of the child during gathering information. These procedures should include: video-taped interviews, TV and other actual means in order to avoid the child's physical presence in the court room and/or confrontation with the trafficker/s during trial which may frighten him/her. All the answers of the child should be kept confidential.

- e. **Judicial police**, prosecutor, **investigating judge**, **trial judge** and victim support **agency** should inform parents/guardian of trafficked child on the information and the assistance.
- f. In cases where there is an assessment by the psychological doctor that the trafficked child is affected on their mentality and memories, competent authority should allow the presence of psychological counselor or child support during the process of gathering information and evidence from trafficked child.
- g. The court covers on all cases of the child, the appealing in special condition if there is a request from the victim for a confidential trial.
- h. At all stages of the investigation, prosecution and hearing of any criminal or civil action, the right to privacy of the trafficked child should be protected. The confidentiality of the action should be ensured by the law enforcement, and service providers.
- i. The media should respect trafficked children's rights to privacy and confidentiality in all proceedings.

6.2 Criminal Proceedings

- a. A trafficked child must be fully informed, in a language understood by him/her, of the risks and security issues that are associated with criminal proceedings prior to deciding whether or not to cooperate in such proceedings.
- b. At all stages of criminal proceedings trafficked children should be provided with free and competent legal representation.

- c. Wherever possible, the taking of a statement by any law enforcement authority, lawyer, prosecutor or any other authorized officer should not prevent or delay a trafficked child's return or reunification with his/her family.
- d. Wherever possible, and whenever it is in the best interests of a trafficked child, his/her testimony should be given and/or his/her statement should be taken at the earliest possible time.
- e. Prosecution and judicial authorities should consider the confiscation, freezing and forfeiture of the assets of the trafficker/s so that the proceeds of the sale of such property may be used for the payment of compensation or outstanding liabilities to the trafficked child.

6.3 Civil Proceedings

- a. Only parents/guardian of trafficked child has a right to claim compensation for the damage caused as a result of him/her being trafficked.
- b. Filing criminal action and accelerating of criminal action is the responsibilities of prosecution department attached to provincial/municipal even if the trafficked child doesn't complaint as long as there is a case and reported by anonymous persons or any competent authority.
- c. Trafficked child, parents/guardians or child representative can file complaint with the charges from the judge in order to claim for damages and compensation. The court should find a lawyer for the child.

7. Care and Protection for Social Welfare Service Providers

7.1 Compensation

Social welfare service providers who suffer harm or injury as a result of providing assistance to trafficked children, especially those resulting from or likely to be the result of reprisal from traffickers have rights to claim for damages and compensation from traffickers.

7.2 Legal Assistance

In a case where a suit is filed by a trafficker against a social welfare service provider for an act done in good faith as part of his/her function to provide assistance to a trafficked child the court should provide legal protection and/or free legal assistance.

7.3 Support System

Support system for social welfare service providers and provide venues for the sharing of learning and experiences should be established.

8. Capacity Building

8.1 Communities

Workshops, meetings, activities and trainings for raising community awareness should be conducted to children, families and communities so that they can actively participate in order for them to be able to actively participate in addressing the problem of child trafficking.

8.2 Persons working with Trafficked Children

- a.** Relevant ministries, institutions, NGOs and IOs should provide training programs to persons working with trafficked children. Such programs should be based on the identified needs of the people who will be participating in the programs. A system for monitoring and evaluating the effectiveness of such programs should also be established.
- b.** All persons working with trafficked children should have access to education and training programs which deepen their understanding and knowledge of the issues related to child trafficking. Such training could include topics on human rights, children's rights, culture, code of conduct, gender and development, reproductive health, child labor, migration issues and national and international legal frameworks.
- c.** All persons working with trafficked children should have access to education and training which gives them practical skills to assist them in their work with trafficked children. Such training could include topics on psychological and legal counseling, social case management, documentation, data collection, child friendly interview methods, investigative techniques, conflict resolution and stress management.
- d.** Relevant ministries, institutions, NGOs/IOs should trained all persons working with trafficked children in the use of this decision.
- e.** Relevant ministries, institutions, NGOs/IOs should allocate the necessary funds to conduct capacity building activities to address all of the training needs mentioned in these decision.

Article 5: Provisions contradicting this decision shall be deemed null and void.

Article 6: Ministries, institutions who are members of Cambodia National Council for Children, all relevant child NGOs, IOs have a duty to effectively implement this decision from the date of signing.

**Cambodia National Council for Children
Chairman**

Copied to:

- Ministry of Royal Palace
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Cabinet of the Prime Minister
- Cabinet of H.E Deputy Prime Minister Tea Banh
- As in Article 6
- File – Chronicle

ITH SAMHENG



**Samdach Akka Moha Sena Padei Techo HUN SEN
Prime Minister of the Kingdom of Cambodia**

**MESSAGE of
Samdach Akka Moha Sena Padei Techo HUN SEN
Prime Minister of the Kingdom of Cambodia**

- Venerable Monks!
- Dear Compatriots!

Kingdom of Cambodia has ratified UN Convention on the Rights of the Child on October 15, 1992 and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, as well as Palermo Protocol to Prevent, Punish, Trafficking in Persons, especially Women and Children, supplementing to the UN Convention against Transitional Organized Crime.

The Royal Government of Cambodia has considered children as **Bamboo Shoot Youth** and the future of the nation. In this spirit, Royal Government of Cambodia has tried to dignities children without abuse, physical and mental violence through many means which may affect dignity and development of children. Children should live with happiness with their families and society and are entitled to get services in order to be out of worst forms of child labor which make children unable to study and affect their health. Moreover, child issue is the prioritized issue in social affairs development program. Child issues have always been thought of and included in national policies, plans and strategies. Meanwhile, laws and some standards have been made in order to fight against human trafficking, commercial prostitution and woman and child pornography.

Meanwhile, in order to prevent children from trafficking there is a need for special protection, rehabilitation and reintegration into community. I would like to praise Cambodian National Council for Children and relevant organizations that developed Decision on the Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia which stated about the Definition of Child Trafficking, General Principle and Specific Principle for relevant ministries, institutions and organization for the best interest of the child.

On behalf of the Royal Government of Cambodia and as the Honorable Chairman of Cambodian National Council for Children, I would like to express my full support to the Decision on the Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia.

I would like to appeal to parents, guardians to pay attention and monitor all the activities of the children and advise them regularly in order to prevent them from falling into any debauchery acts which may be easily used by the perpetrators as their target for commercial sexual, labor exploitation and serve for their criminal acts.

I would like to appeal to all relevant ministries, development partners, national & international organizations, civil society as well as all compatriots to give more support and continue cooperating with Cambodian National Council for Children in disseminating and implementing this decision into real actions for the cause of Cambodian children.

Phnom Penh, 14 December, 2007

HUN SEN