10-21-2016

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Supreme Court Ruling Weakens Peru’s Hand Against Human Traffickers

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Category/Department: Peru
Published: 2016-10-21

Many sectors of Peruvian society overwhelmingly rejected a ruling by the Permanent Penal Tribunal of the Supreme Court (Sala Penal Permanente de la Corte Suprema) saying that human trafficking isn’t criminal if, at the moment victims are captured, they are not told they will be exploited for work or sex. The ruling brought renewed focus on a crime affecting hundreds of people in Peru, including adolescent girls (NotiSur, Dec. 21, 2001).

Early last month, a ruling that absolved Elsa Cjuno Huillca of human trafficking charges was made public. Cjuno is the owner of a bar in the Mazuko mining region of Peru’s Madre de Dios department. The ruling, issued in January by the Penal Chamber presided by Judge Javier Villa Stein, upheld a lower court’s decision related to an incident dating back to 2008, when Cjuno Huillca allegedly forced a 14-year-old girl to work as a “lady companion” who would drink alcohol with clients 12 hours a day.

“The job of a lady companion, understood as a person who simply drinks with clients without having to do anything else, is not considered a task that would exhaust a worker’s strength,” Villa Stein ruled.

The prosecutor, who had requested annulment of Cjuno Huillca’s first acquittal in 2014, argued that “the defendant even suggested the victim ‘make passes,’ which is nothing other than engaging in sexual relations with bar clients.” The court did not accept the reasoning. It pointed out that “just as the victim stated, ‘making passes’ was not the main reason [the victim] went to work at the bar, although when the opportunity arose, the defendant suggested she do so... For the crime of trafficking for sexual exploitation to be established, this must be, from the beginning, the reason a minor is moved or captured.”

Miluska Romero Pacheco, a human trafficking prosecutor in Lima, warned that victims of human traffickers will be unprotected if other justices follow this line of reasoning. Romero told the daily La República that so far this year, 200 human trafficking cases have been brought to light. In the past two years, she added, 14 sentences have been issued and are now under appeal in Lima’s Superior Court.

“We hope that superior courts don’t follow this ruling and annul our sentences, because that will create a very serious situation for the victims,” Romero said.

Peru’s Ministry for Women and Vulnerable Populations (Ministerio de la Mujer y Poblaciones Vulnerables, MIMP) deplored the judge’s action, saying in a Sept. 13 press release, “The arguments made to excuse the defendant in this ruling establish a dangerous precedent for handling future cases of trafficking involving the sexual or labor exploitation of girls, children, and adolescents, by requiring as a condition to lodge a complaint against the trafficker that the purpose be made explicit to the victim.”
MIMP added: “Logically, no trafficker would let the victim know his or her intentions. Therefore, this unreasonable requirement minimizes the crime. It is a precedent of impunity for similar events in which the traffickers are not punished in any way, thus leaving the girls, boys, and adolescents of our country unprotected.”

As a result of the controversial ruling, the National Council of the Judiciary (Consejo Nacional de la Magistratura, CNM) announced on Sept. 19 that it would open a preliminary investigation of the Permanent Penal Tribunal, where Judge Villa Stein presides.

**Minors unprotected**

The Public Ministry (Ministerio Público), which has eight specialized offices for human trafficking crimes, said that between 2009 and 2014, the number of trafficking cases on a national level grew to 2,241. The largest number was registered in Lima, with 350 cases, followed by the departments of Loreto, with 243, and Madre de Dios, with 227.

In the first three months of this year, the Public Ministry registered 258 human trafficking across Peru, a 52% increase over the same period in 2015. In the whole of 2015, 889 people were victims of human trafficking. The prosecutor’s office said that more than 50% of the victims are minors.

A study on the trafficking of girls and adolescents titled “Madre de Dios. The Gold Road: Between Heaven and Hell,” noted: “There is proof that most of the victims are adolescent women between 13 and 17 years old, followed by women between the ages of 18 and 24. Men and women under 24 represented 47% of the victims in 2013, 57% in 2012, and 47.3% in 2011.” The study was carried out by the Swiss child-relief agency Terre des Hommes Suisse and published last year.

“Victims who are brought to Madre de Dios come from various departments of our country, with the greatest percentage concentrated in Cusco and Puno,” the report said, adding that “75% of the victims come from the mountains, 20% from the jungle, and just 5% from the coast.”

Traffickers have various ways of retaining their victims. They are known to persuade them that, in order to leave, they would have to pay the “investment” made in them when they were transported to the mining encampments, and for housing, food, and other costs. They also hold on to their personal identification documents. And they submit them to physical violence to gain control over them.

In the Madre de Dios region known as La Pampa, sexual and labor exploitation grows along with illegal mining. A report on the television news program Cuarto Poder (Fourth Estate) revealed that “prostitutes” abound near the area’s 15 mining encampments, where adolescents and young girls are forced to be “lady companions” or actual prostitutes.

An anonymous source whose identity Cuarto Poder withheld for reasons of security, told how young women who try to escape are beaten or killed to teach the others a lesson. Policemen interviewed said they pick up bodies on a daily basis.

According to La República, a source at the Public Ministry estimated the number of trafficking victims, mostly minors, in La Pampa at 800. The police indicated that 80% of the victims who are freed return, basically because they come from dysfunctional homes or violent environments. Many protect their captors and deny they have been mistreated.
**Inadequate resources**

Prosecutor Romero indicated that the state is not equipped to rescue victims of human trafficking. “We don’t have an adequate systems of assistance, protection, and rehabilitation of the victims. There aren’t enough shelters,” she told La República. Peru has only three specialized shelters to take care of these victims.

Additionally, the budget earmarked for the fight against human trafficking is insufficient. Between 2015 and 2016, the budget to combat trafficking dropped from more than 14 million soles (US $4.2 million) to 6.4 million soles (US$1.9 million). In 2017, it will be cut to half what it was in 2016, according a study by CHS Alternativo, a non-governmental organization that analyzed Peru’s fight against human trafficking over the past two years. If the proposed budget is approved, it will be a great step back, CHS Alternativo said.

In light of the recent ruling by the Supreme Court, should this budget reduction become a reality, human trafficking would be effectively legitimized in Peru.