



**UNODC**

United Nations Office on Drugs and Crime

# Victim Identification Procedures in Cambodia

**A brief study of human trafficking victim  
identification in the Cambodia Context**



**REPORT**

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## ***LIST OF ABBREVIATIONS***

CNCW	Cambodian National Council for Women
CNP	Cambodian National Police
IJM	International Justice Mission
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOSVY	Ministry of Social Affairs, Veteran, and Youth Rehabilitation
MOWA	Ministry of Women's Affairs
NGO	Non-Governmental Organization
NRM	National Referral Mechanism
NTF	National Task Force
RA	Recruitment Agency
RGC	Royal Government of Cambodia
SISHA	South East Asia Investigations into Social and Humanitarian Activities
UNIAP	United Nations Inter Agency Project on Human Trafficking

## EXECUTIVE SUMMARY

This Report addresses the context of trafficking in human beings in Cambodia and the process by which trafficking victims are identified and assisted. Cambodia's current anti-trafficking field is crowded with various government, non-government, and international institutions each administering its own response to the problem of trafficking and the challenge of victim assistance. It assesses the successes and shortcomings of different approaches to identifying victims, providing support services, and ensuring access to justice. This Assessment evaluates the viability of a national referral mechanism, whereby the diversity of approaches could be streamlined into a single cooperative framework. Ultimately, a national referral mechanism would strengthen Cambodia's responsiveness to trafficking victims by providing standardized processes for victim identification, assistance, and referral therein replacing the inefficiency of competing approaches.

The Report begins with the Cambodian state framework, detailing the initiatives undertaken by the Cambodian government to combat trafficking. This state institutional overview investigates planned initiatives as well as the allocation of actual resources, as projects at the policy level are not always supported with tangible resources at the ground level. It then assesses how the Cambodian government's local and regional actors identify individuals. Furthermore, this Assessment analyzes Cambodia's current political, legislative, and judicial landscape to assess how victims' rights are protected and how their legal claims are pursued. The Report evaluates the relevant legislation pertaining to trafficking crimes and the international agreements or more formal treaties that govern cross-border trafficking in Southeast Asia. Relying on recent research and reports that provide background information on the current status of trafficking in Cambodia, the Assessment especially focuses on information about victims, including victim demographics and profiles, to determine precisely where and how trafficking occurs. Following the pathway of identified victims, this analysis also includes the situation for such victims after rescue from exploitative situations. The Report looks at how victims are processed and referred to social services, including what services are available and how such services are delivered to the victims.

In this context, this Assessment considers the viability of a national referral mechanism. Its value in this chaotic landscape is proportional to the enormity of the challenge that would be presented through its implementation. The Report catalogues the government's apparent receptiveness to such a project, based upon a series of interviews conducted with relevant ministries and figures knowledgeable in the field. The Assessment identifies other nascent coordinating projects underway, including centralized databases or victim identification procedures, which are in various stages of implementation. This document then analyzes possible avenues of cooperation, discusses the viability of a national referral mechanism and briefly outlines the hurdles to implementation. Finally, the Report considers the advantages such a project, if successfully undertaken, would provide for Cambodia.

# I. INTRODUCTION

Trafficking in Cambodia is understood to be a pervasive problem. Yet aside from this general observation, the problem of trafficking in the country attracts widely divergent analyses. Some facts are accepted: common routes, destination countries, and involved industries. The underlying causal factors driving the phenomenon are documentable. Cambodia's demographics reveal a young population, with over a third of the country younger than 14.<sup>1</sup> The economy struggles to absorb approximately 275,000 new workers annually.<sup>2</sup> Poverty and lack of opportunity create a vulnerable source population. The country's recent history of upheaval, civil war, and genocide destroyed the state structures that are elsewhere so frequently taken for granted. The Government of Cambodia is making significant efforts to comply with international minimum standards to eliminate human trafficking and the Government continued to prosecute sex trafficking cases and convict trafficking offenders. However, the Government is still establishing the rule of law through development and capacity building, and currently Cambodia has insufficient resources and infrastructure to enable it to completely overcome its own vulnerabilities.

Despite the fundamental consensus that trafficking is a widespread problem, the number of victims is utterly disputed. Estimates of the extent of the problem are put forth by an array of government bodies, from entities within the Royal Government of Cambodia (RGC) and foreign governments, international institutions, and other key stakeholders. The anti-trafficking field is saturated with participants, each proffering their own assessment of the problem and their own victim counts. The nation-wide population of sex trafficking victims, for example, has been extensively researched but nevertheless draws out wide-ranging estimates. An extremely high but seemingly unsubstantiated report of 80,000 to 100,000 "sex slaves" was mentioned in a 2001 report and then echoed elsewhere, taking on "a life of its own" and gaining credibility from its repetition in media and other reports.<sup>3</sup> That number is drastically greater from a total nationwide population of 20,000 sex workers estimated in a different 2002 report, out of which only 2,488 were believed to be trafficked.<sup>4</sup> The magnitude in the disparity between two estimates reveals the confusion within the field, then as well as now. The uncertainty continues unabated today; there is simply "no universally accepted estimate."<sup>5</sup> Furthermore, there is no single authoritative voice that can provide systemized structures, reliable statistics, or definitive counting procedures.

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<sup>1</sup> National Institute of Statistics, Ministry of Planning, *Labour and Social Trends in Cambodia 2010*, (Phnom Penh, Cambodia: International Labour Office, 2010).

<sup>2</sup> International Labour Organization Sub Regional Office for East Asia, "ILO Policy Brief on Youth Employment in Cambodia," (Phnom Penh, Cambodia: International Labour Office, 2007). The Report forecast that an average of 275,000 Cambodian youth would enter the workforce every year for the following 5 years.

<sup>3</sup> Thomas M. Steinfatt, *UNIAP Trafficking Estimates: Measuring the Extent of Sex Trafficking in Cambodia-2008*, (Bangkok: United Nations Interagency Project on Human Trafficking, 2011) 39-40, 52.

<sup>4</sup> Annuska Derkset. al., *Review of a Decade of Research on Trafficking in Persons, Cambodia*, (The Asia Foundation, 2006) 21.

<sup>5</sup> "Strategic Information Response Network (SIREN): Human Trafficking Data Sheet: Cambodia," (Bangkok, Thailand: United Nations Inter-Agency Project on Human Trafficking, 2008).

In an area where so much attention is devoted and so many resources deployed, the lack of a consensus as to the very parameters of the problem is illustrative of the lack of coordination among the victim response mechanisms in place. Anti-trafficking efforts are fragmented between uncoordinated participants. A failure of cooperation and an accompanying territoriality have impeded basic information-sharing, the standardization of procedures, and the efficient allocation of resources. Redundancies, inefficiencies, ambiguities, and obfuscations pervade the field and impede what is ostensibly the shared goal of key stakeholders.

The government has created a number of working committees and tasked many existing ministries with the project of combating trafficking. The Cambodian government entities substantially involved with anti-trafficking efforts include the Ministry of Interior, the Ministry of Labor and Vocational Training, the Ministry of Justice, the Ministry of Social Affairs, Veterans, and Youth Rehabilitation, and the Ministry of Women's Affairs and other ministries.<sup>6</sup> The Cambodian National Working Council for Women, with a representative from every ministry, the Queen, and the Prime Minister works in part to address the women's issues uniquely tied to the problem of trafficking. The Cambodia National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labour Exploitation, and Sexual Exploitation of Women and Children (NC-STSL) is a national task force designed to coordinate the government's efforts. However, these initiatives, even those aimed at fostering collaboration, proceed mostly autonomously from one another. So far a coordinated response at the national level is elusive and the various bodies involved bring varying resources to different activities.

The government's attention to trafficking indicates an effort to address and combat the problem. However with such an abundance of initiatives, the effectiveness of the entire government response is undermined rather than enforced by the multiplicity of involved actors. The national response in its current design is top-heavy in that many ministries have undertaken efforts that generate policies that are often not developed into concrete projects. The excess of policy initiatives can obscure deficiencies on the ground for local law enforcement in rural areas, where government resources may be scarce.

Additionally, Cambodia has passed legislation that provides a more developed legal framework for the protection of victims of trafficking and prosecution of criminal traffickers, most notably through the Law on the Suppression of Human Trafficking and Sexual Exploitation of 2008 and the Penal Code of 2009. Yet a gap remains between the legislative framework and the capacity of practitioners to enforce those laws.

The rule of law is still developing, and in some areas basic systemic inadequacies prevent victim identification and subsequent victim protection. Many police officers are untrained and under-equipped, resulting in a weak local apparatus to investigate

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<sup>6</sup> The Ministry of Tourism has an initiative underway to foster "child safe tourism," raising public awareness to prevent human trafficking in conjunction with child sex tourism. But because this initiative is sufficiently peripheral to the ongoing efforts to combat trafficking and would not necessarily be involved in a victim referral mechanism, the Ministry of Tourism is not a part of our Report.

trafficking crimes or identify victims, in an area requiring a proactive police approach.<sup>7</sup> Human trafficking involves vulnerable victims, who are unfamiliar with the law, with their rights, and with the protections that might be available. Even more importantly, the process of properly identifying a victim of trafficking requires adequate training because the determination is often clouded by the specifics of the situation, specifics that can include a victim's involvement in a stigmatized profession, community marginalization, illegal migration status, or initial agreement to a misrepresented employment opportunity, among innumerable other situational permutations.

The current system of victim response places a significant reliance on NGOs that provide resources to victims and act as first responders in many instances. These organizations generally operate relatively freely. They form a fragmented landscape, but they are not institutionally situated to provide a coherent and comprehensive framework. They fill in the victim response landscape in an ad-hoc and self-determined method, according to their private capacities, missions, and aptitudes. Given their centrality in victim response mechanisms currently, their involvement in a national referral mechanism would be important even though they are arguably not ideally suited to perform a national oversight function. Given the fact that the government has relied on NGO's to supply the bulk of victim services and it would be important to demonstrate to NGOs the importance of a centrally managed and coordinated victim response in future in order to gain their full cooperation.

A multitude of organizations are involved in furnishing aftercare services or shelter services. Any trafficking victim encountered by an NGO must be registered with MOSVY, who must sign off on their referral to an aftercare facility. But MOSVY's involvement is not invasive and organizations identify victims according to their own operative definitions. The care of identified trafficking victims is an area almost entirely dominated by NGOs. The Cambodian government under MOSVY does operate a temporary shelter in Poipet that can accommodate victims briefly until they are referred to longer-term placements in NGO-operated facilities.<sup>8</sup> MOSVY also has a short-term facility with very limited capacity in Phnom Penh.<sup>9</sup> Additionally, the mechanism of registering victims with MOSVY provides a rudimentary structure for centralization.

Still other organizations provide legal services, attempting to provide victims with access to legal representation. While NGOs provide some victims with access to legal services, the low number of successful prosecution indicates that these organizations cannot surmount the legal system's endemic inadequacies. At every stage of the legal process, from police investigations, prosecutions, to judicial administration, a myriad of problems from insufficient resources to a lack of training interfere with the legal vindication of victims' rights.

The NGO landscape is dense and ever-changing, so that available services are not always well-known to associated referring entities. NGOs struggle to match victims to existing

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<sup>7</sup>U.N. General Assembly, Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights in Cambodia," A/HRC/15/46 (New York: United Nations, September 16, 2010) ¶¶ 51, 52, 64.

<sup>8</sup>U.S. Department of State, "Trafficking in Persons Report 2008," (Washington, DC, 2008) 84.

<sup>9</sup> Interview with James Pond, Executive Director and Founder, Transitions Global, Phnom Penh, Cambodia, July 14, 2011.



facilities or services without fully knowing what exists, and trafficking victims might miss critical support opportunities because of this information quagmire. NGOs do provide crucial yet fragmented victim support services across an equally fractured government institutional and operational landscape. NGOs as well as government stakeholders would thus both be essential cooperative partners in the success of any NRM. While the need for systematized responses is evident, the impediments that currently frustrate attempts at cooperation would present a similar challenge to the proposed NRM. However, a full understanding of the situation of human trafficking in Cambodia and an appropriately tailored nation-wide strategy of action are impossible while the victim response mechanisms that are currently in existence remain disjointed.

## II. THE CONCEPTUAL AND OPERATIONAL STRUCTURE IN CAMBODIA

### STATE ANTI-TRAFFICKING PROGRAM

The Royal Government of Cambodia (RGC) is presently employing a number of strategies to reduce human trafficking and other forms of exploitation within and outside Cambodia. According to the existing strategic plans of various government ministries, efforts are currently in place or are planned to begin in the coming months.<sup>10</sup> Activities undertaken include tactics in the areas of prevention, protection, and prosecution. State programs are clearly adapting new policies to address Cambodia's markedly high numbers of human trafficking cases, but the question remains whether these policies are being implemented effectively at ground level.

This section will discuss the complex nature in which the RGC and some of the ministries within, namely the Ministries of Labor and Vocational Training (MOLVT); Social Affairs, Veteran and Youth Rehabilitation (MOSVY); Women's Affairs (MOWA); Interior (MOI); Justice (MOJ), as well as the National Committee, comprised of officials from the aforementioned ministries, are handling the government's response to human trafficking. Multiple task forces, committees, sub-committees, and working groups have been formed with the intention of crafting a comprehensive response but with the unintended consequence of confusing the various boundaries of responsibilities. The involvement of so many entities has caused overlapping areas and simultaneous gaps in services that desperately need to be filled.

#### MINISTRY OF LABOR AND VOCATIONAL TRAINING

At present, MOLVT is attempting to take steps towards the prevention of human trafficking. According to national policy, it is required that all recruitment agencies (RA) register with MOLVT and prevent the recruitment of any person under the age of 18.

The Cambodian National Council for Children (CNCC) is the specific department that is directly responsible for issues involving human trafficking of children. The CNCC itself has created four sub-committees to include: the Sub-Committee on Child Labor and Other Forms of Exploitation, the Sub-Committee for Countering Trafficking and Sexual Exploitation of Children, and the Sub-Committee for Legislating Child Related Laws, and the sub-committee on early childhood development. The creation of the sub-committees was to ensure the effectiveness of the Council, but their precise activities and the delineation of responsibilities between them is unclear to the author of this report.

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<sup>10</sup> Interview with H.E. PorPhek, Major General, Cambodia National Police, Phnom Penh, Cambodia, July 4, 2011; Interview with H.E. Dr. IngKanthaPhavi, Minister, MOWA, Phnom Penh, Cambodia, July 5, 2011; Interview with H.E. ChhayVanna, Under Secretary of State, MOSVY, Phnom Penh, Cambodia, July 5, 2011.

## MINISTRY OF SOCIAL AFFAIRS, VETERANS, AND YOUTH REHABILITATION

MOSVY aims to enhance social services for all Cambodian citizens by advocating for economic welfare and by ensuring the equitable distribution of developmental benefits among all throughout the country. In reference to this mission, MOSVY has prioritized its effort to strengthen and expand social welfare services for the vulnerable poor, which includes continued efforts to combat human trafficking, promote rehabilitation and reintegration of victims into communities and provide follow-up support.<sup>11</sup>

According to *MOSVY's Strategic Goals and Workplan 2008-2013*, the ministry intends to respond to the issue of human trafficking at both the policy and implementation levels. MOSVY created a sub decree on victims' rights, completed in 2010, establishing a reception center for victims of human trafficking and other vulnerable people in Poipet, repatriating victims of human trafficking and vulnerable people from neighboring countries, enforcing an education campaign to prevent human trafficking, training social workers to be regional focal persons (training provided by United Nations Inter Agency Project on Human Trafficking (UNIAP)), and collaborating with development partners to provide education, healthcare and vocational training services to female victims of human trafficking (150 victims per year).<sup>12</sup>

Following what is deemed as a success with the Poipet reception center, MOSVY has planned to implement two additional centers of the same kind in Svay Rieng and Banteay Mancheay to receive trafficking victims or vulnerable individuals. The purpose of both centers is to act as a transition house, a temporary shelter for victims while they await further services at long-term residential shelters.

In addition to the objectives stated in the strategic plan, specific task forces have been created in response to the high numbers of trafficking cases in recent years, which include 1) the National Task Force on the Implementation of the Memorandum of Understanding of the Cambodia and Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting the Victims of Human Trafficking and 2) the National Coordination Team of Undertaking the Repatriation of Trafficked Children and Women through the Cambodian-Thai Border.<sup>13</sup>

In December 2009, under the scope of the 2005 Agreement on "*Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking*", the "*Cooperation Agreement on the Standard Operating Procedures (SOPs) for the Identification and Repatriation of Trafficked Victims*" was signed between the Royal Government of Cambodia and the Government of the Socialist Republic of Vietnam. MoSVY is the signatory of the agreement. In Cambodia, responsible entities were identified as the MoSVY, The MoI and the MoFAIC. In Vietnam, responsible entities were identified as the Ministry of Public Security (MPS), the Ministry of Labour, Invalids and Social Affairs (MoLISA), the Department of Labour, Invalids and Social Affairs (DoLISA),

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<sup>11</sup>"Strategic Goals and Workplan of the Ministry of Social Affairs, Veterans, and Youth Rehabilitation, 2008-2013," MOSVY, Royal Government of Cambodia. Last modified 4 August 2009.

<[http://www.MoSVY.gov.kh/English/STRATEGIC\\_2008\\_2013.htm](http://www.MoSVY.gov.kh/English/STRATEGIC_2008_2013.htm)> Accessed 4 July 2011.

<sup>12</sup> Ibid.

<sup>13</sup>*United Nations: A Framework for Addressing Human Trafficking in Cambodia*, (Phnom Penh, Cambodia: Office of the United Nations Resident Coordinator, 2009).

Department of Social Evil Prevention (DSEP), both under MoLISA, the Women's Union (WU), the Vietnamese Embassy in Phnom Penh, IOM Missions in Cambodia and Vietnam and NGOs. As a result of the Cooperation Agreement, the process of victim identification and repatriation was standardized to clarify the roles and responsibilities of all parties involved in each country.

Currently, all cases of trafficking should be filtered through MOSVY. Those who have contact with the victim (i.e. police officers, NGOs, immigration officers) make an initial determination as whether or not the person is a victim of human trafficking, and then relay a positive determination to MOSVY. Once a victim is identified, MOSVY assesses the case to determine whether the victim will be reintegrated directly back into his/her community or placed into a long term aftercare shelter, usually sanctioning an existing referral or placement made by an NGO.

As of now, the various first-line responders have their own distinct methods for concluding whether or not individuals are victims of human trafficking. According to ministry representatives, an identification procedure is currently being constructed within MOSVY. Representatives acknowledged the need for a single uniform procedure and welcomed external support for the initiative underway.<sup>14</sup>

## **MINISTRY OF WOMEN'S AFFAIRS**

MOWA was established to advocate for the empowerment of women and for the advancement of gender equality.<sup>15</sup> In 2001, the Cambodian National Council for Women (CNCW) was created to be chaired by the Minister of MOWA. The Council advises the RGC on the promotion of women's statuses and roles as well as on the reduction and elimination of all forms of discrimination against women.<sup>16</sup>

The CNCW is comprised of 27 members: the Queen, Prime Minister, and one representative from each of the government ministries. The CNCW's work relates to different aspects of the problem of human trafficking. The CNCW assists the Royal Government to coordinate, follow up, and provide recommendations to support and promote the implementation of national policies, laws, orders, and measures related to the social welfare of Cambodian women. The CNCW also assists the RGC in the implementation of international treaties concerning the rights of women and the implementation of national laws relating to the suppression of human trafficking and sexual exploitation.<sup>17</sup>

The CNCW addressed its own structural weaknesses within its strategic plan. The assessment acknowledged that the structure, roles and responsibilities of CNCW were not fully understood at the sub national level. Additionally, the submission of reports from Inter-Ministerial Working Group on Gender was frequently tardy. The Plan also

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<sup>14</sup>Interview with H.E. ChhayVanna, Under-Secretary of State, MOSVY, Phnom Penh, Cambodia, July 5, 2011.

<sup>15</sup>"Ministry Background," Ministry of Women's Affairs, Royal Government of Cambodia, Last Modified 16 July 2011 <<http://www.mwa.gov.kh>> Accessed 1 July 2011.

<sup>16</sup>Cambodia National Council for Women, *A Five-Year Strategic Plan, 2010 - 2014* (Phnom Penh, Cambodia, 2010).

<sup>17</sup>Ibid.

noted the lack of a budget to monitor and evaluate the implementation of related national and international laws, regulations and other measures. Without the proper resources, the capacity of CNCW officials to disseminate, monitor, and implement related national and international laws is limited.<sup>18</sup>

According to the five year strategic plan put into place in 2008, MOWA, in conjunction with the CNCW, is focusing on women and girls' economic empowerment, education, attitudes and behavior change, legal protection, health and nutrition, awareness of HIV/AIDS, and advancement in public decision-making and politics. Additionally, in cooperation with six additional ministries, the National Task Force, local authorities, and a multitude of NGOs, MOWA currently has four targeted goals to combat trafficking:

- Improved legal protection against all forms of violence against women and children, including domestic violence, human trafficking, sexual and labor exploitation.
- Improved access and trust in judicial system for victims enhanced including domestic violence, rape, human trafficking, sexual and labor exploitation. Activities to include, with cooperation from MOI, MOJ, MOH, and local authorities.
- Improved access to psychosocial and health-related services for victims of gender-based violence, human trafficking, rape, sexual harassment and exploitation.
- Bilateral, regional and international cooperation mechanisms strengthened to protect and combat trafficking and to assist victims – including the current MOUs with Vietnam and Thailand and MOU pending with Malaysia.<sup>19</sup>

## **MINISTRY OF INTERIOR**

MOI oversees the Cambodian National Police (CNP) force, which is presently participating in anti-trafficking efforts at the ground level by identifying human trafficking victims and by assisting in the prosecution of offenders.

MOI has put together a five year strategic plan with the specific objectives of providing safety and security to the citizens of Cambodia and creating a peaceful environment for socio-economic development in rural areas leading to eventual poverty reduction.<sup>20</sup>

The national government has recognized the need to enhance the capacity of the CNP and provide officers with fundamental investigative skills, so as to strengthen the criminal justice system. The need for a standardized mechanism to identify victims of trafficking has been expressed by a representative of the International Relations Department within the Ministry of Interior. He stressed how such a mechanism would bridge the gaps among the human trafficking working groups within the different ministries.<sup>21</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ministry of Interior, "Cambodia's Strategic Planning Analysis," Translated by H.E., Major General, Cambodia National Police, MOI.

<sup>21</sup> Interview with H.E. Por Phek, Major General, Cambodia National Police, Phnom, Penh, Cambodia, July 4, 2011.

The Department of Immigration also falls under MOI and is actively involved in counter-trafficking efforts. The Department works in collaboration with ASEAN and the European Union on developing more effective immigration policies and implementation procedure. The Department is trying to ensure safer travel of people by combating crimes such as human smuggling and human trafficking. The Department oversees key locations such as the Poipet Border Center.<sup>22</sup>

## **MINISTRY OF JUSTICE**

MOJ presides over judges, prosecutors, and clerks throughout the nation. MOJ has a presence in the National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation in Women and Children and currently oversees the Criminal Justice Technical Working Group on Human Trafficking. According to UNIAP, MOJ has tried to participate in anti-trafficking efforts by developing a team of specialist judges and prosecutors that have a strong understanding of the issues and sensitivities involved in cases of human trafficking.<sup>23</sup> The MOJ has also been developing new data collection methods to more accurately capture court information on the prosecution and conviction of traffickers in the hopes of strengthening prosecution procedures.<sup>24</sup> However, currently the prosecution process is still hindered by inadequate training for judges and prosecutions.

## **NATIONAL COMMITTEE TO LEAD THE SUPPRESSION OF HUMAN TRAFFICKING, SMUGGLING, LABOR EXPLOITATION AND SEXUAL EXPLOITATION IN WOMEN AND CHILDREN**

In 2007, the National Taskforce and High Level Working Group to lead the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation of Women and Children were created to implement the Plan of Action on human trafficking in the country. The two groups were merged in late 2009 to become just one national mechanism – the National Committee to lead the Suppression of Human Trafficking, Smuggling, Labor Exploitation and Sexual Exploitation of Women and Children (NC/S.T.S.L.S.), chaired by H.E. SAR Kheng, Deputy Prime Minister, Minister for Ministry of Interior. The National Committee is comprised of multiple facets, including government representatives at both national and sub-national levels and local and international non-government organizations, in order to unite and improve the work combating human trafficking and other forms of exploitation effectively. The work is implemented by the Secretariat of the National Committee.<sup>25</sup> Some of the main goals identified by the Task Force were the coordination of various anti-trafficking groups and the reduction of duplicating efforts.

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<sup>22</sup> Department of Immigration, Ministry of Interior, Cambodian National Police, “Cambodia Immigration Department.” Last Modified 16 July 2011 <<http://www.immigration.gov.kh/>> Accessed 16 July 2011.

<sup>23</sup> “Strategic Information Response Network (SIREN): Human Trafficking Data Sheet: Cambodia,” (Bangkok, Thailand: United Nations Inter-Agency Project on Human Trafficking, 2008).

<sup>24</sup> “Ministry of Justice Assembles Cambodia’s Court Leaders for Trafficking Conference,” East-West Management Institute: Program on Rights and Justice, November 2009 <<http://www.ewmi-praj.org/news.asp?nID=9>> Accessed July 14, 2011.

<sup>25</sup> Ibid.

## STATE PROGRAM AT THE LOCAL LEVEL

While there seem to be active policy responses to the problem of trafficking in Cambodia at the national level, work to convert policies into concrete and financially-supported activities at the ground level needs greater support. Anti-trafficking efforts remain essentially reactive. The identification of trafficking victims and the pursuit of traffickers is frustrated by a lack of training, a lack of equipment, and a budget that cannot stretch to cover most active operations. The limits of Government initiatives become apparent from the dearth of actual resources available to frontline law enforcement as the first-responders for trafficking victims. On the local level, one sees a vast disconnect between policies endorsed and projects pursued. Expressions of concern for the trafficking problem at the ministerial level do not yet translate into discernible changes in the budget at the level where such policies must be realized.

Law enforcement agencies not only lack the financial resources to conduct investigations but also the proper equipment and training needed to pursue their professional obligations. NGOs often work in collaboration with the police and are able to provide funding for investigations and operations. NGOs, cooperating with the police on specific operations, often pay for gasoline, meals away from home, and investigative material such as cameras and equipment for evidence collection.<sup>26</sup> But dependence on NGO financing for such core necessities greatly constrains the reach of law enforcement and explains in part why victim identification remains so anemic.

With rudimentary equipment and technical training, it is hard for police officers to penetrate networks of traffickers or reach the upper echelons of criminal networks. Police officers rely on witness testimony, as they only have the resources and training to pursue basic, superficial investigations. Forensic awareness is generally poor in Cambodia, with knowledge of fingerprinting, one of the most basic concepts in field, being at its very early stages. Technical interventions, apart from telephone interception, are almost nonexistent. Undercover operations are also prohibited under Cambodian law in trafficking investigations,<sup>27</sup> limiting what could potentially be a viable and inexpensive technique that would maximize the police force's available human resources. With limited investigatory skills at their disposal, police concentrate on those offenders who operate at the lowest levels and are most likely to be physically present at the time of a raid or rescue. Trafficking networks remain virtually undisturbed even after operations.

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<sup>26</sup>Interview with Eric Meldrum, Operation Director, SISHA, Phnom Penh, Cambodia, July 13, 2011.

<sup>27</sup> Undercover operations are permitted, by contrast, in drug investigations through a special provision of the legislation pertaining to narcotics. Interview with Eric Meldrum, Operation Director, SISHA, Phnom Penh, Cambodia, July 13, 2011

## MAIN LAWS IN THE CONTEXT OF TRAFFICKING

A large component of a national referral mechanism includes victims' access to justice, which requires that trafficking crimes be properly addressed in the laws, the police force in turn able to enforce those criminal laws, and the judicial system ultimately able to prosecute those violations.

The Cambodian legislative framework is, in one respect, well-developed. Trafficking and various associated crimes are criminalized by legislation. The expansive legislative framework is however in its infancy. The legislation has been recently implemented, is not widely understood, and is not uniformly enforced. Therefore, the expanse of the legislative framework should not be equated with adequacy in implementation.

The Law on the Suppression of Human Trafficking and Sexual Exploitation,<sup>28</sup> enacted in 2008, represents a comprehensive response to human trafficking crimes. Its 52 articles criminalize trafficking, exploitation, illegal transport, or the facilitation of such activities. However, the various provisions are not self-executing, since a trafficking offense might be construed under one of several articles depending upon which elements are presented in any particular case or upon what evidence is admissible. A trial monitoring report generated by the Cambodian Center Human Rights (CCHR) found that judges frequently failed to explain the law in trials involving human trafficking. Given the complexity of the different elements of the crime, this omission could demonstrate an unfamiliarity or discomfort with the relevant law. The report also revealed the dangers of improper application of the law. In one case study, the prosecutor failed to get a conviction on a trafficking charge, which requires that the trafficker have an exploitative purpose, when a human smuggling charge, which does not have a requisite purpose element, would have fit the case and would likely have allowed a conviction.<sup>29</sup>

The Law on the Suppression of Human Trafficking and Sexual Exploitation also specified in Article 51 that the then-forthcoming Penal Code would supplant several specific provisions when it came into effect. The new Penal Code, passed in 2009, came into force in late 2010. The 692-article code is a substantial overhaul of the existing criminal law. Having only recently taken effect, how courts will interpret its various provisions will unfold over time.

The LSHTSE and the Penal Code can interact in several different ways. The Penal Code preempts any contradictory criminal charge, including those from the LSTHSE. The Penal Code explicitly states that its provisions take precedence over contradicting previous legislation. If the provisions are identical, then the criminal charge from the Penal Code and whatever penalties there prescribed, as the more recent enactment supersedes the LSHTSE as the older enactment.<sup>30</sup> However, if the provisions are slightly

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<sup>28</sup> Law on Suppression of Human Trafficking and Sexual Exploitation, 2008 (UNICEF Unofficial Translation, March 3, 2008).

<sup>29</sup> *Cambodian Center for Human Rights*, "Human Trafficking Trials in Cambodia," (Phnom Penh, Cambodia, 2010) 40-43.

<sup>30</sup> Jenna Holiday, *Cambodia's Penal Code (2009): Affect on the Legal Framework Concerning Trafficking in Persons*, (Phnom Penh, Cambodia: The Asia Foundation, 2010).



different and can be read to define different crimes, then those two articles are complementary and can co-exist. In the latter scenario, the crime charged will determine the resulting penalty. Therefore, the possible variance between charges could result in inconsistency among sentences, undermining the deterrent effect even of successful prosecutions.

There are several core differences between the LHTSE and the Penal Code. Most importantly, the Penal Code allows for greater latitude in the administration of punishments by the judicial branch.<sup>31</sup> The Penal Code's Article 97 allows for a crime that carries the punishment of a prison term and a fine to be sentenced with either the prison term and fine jointly, the prison term only, or the fine only. Therefore, the Penal Code introduces the possibility of a judicially-introduced leniency, not necessarily apparent on the face of the legislation, which could interfere with the appropriate severity of the punishment regime. This leniency is especially pronounced within the Cambodian criminal system, which does not allow for concurrent sentencing based upon multiple counts of the same crime.<sup>32</sup> When a criminal is found guilty of concurrent counts of the same crime, the Penal Code's Article 137 only allows for the imposition of a single sentence up to the maximum permitted by law.

A complete victim response mechanism requires that the prosecution of traffickers should not involve prosecution of victims. As far as victim protection, the LSHTSE contains no provisions insulating victims from liability for conduct committed while they were being trafficked. The Penal Code, as a general criminal code, does not endeavor to provide protection to victims. The criminal charges surrounding "soliciting" reveal the potential danger that the law, if misapplied, can pose to trafficking victims. The Penal Code's provisions criminalize "soliciting" generally and leave the term undefined.<sup>33</sup> The ambiguity of the "soliciting" crime in the Penal Code raises concerns about how it will or should be applied. In 2008, from his position as Chair of the Leading Task Force, Deputy Prime Minister Sar Kheng issued a statement that police should take action against alleged "soliciting" crimes when prompted by specific conditions: (1) if there is a complaint from nearby residents that the "soliciting" is affecting their affairs; (2) if there is a complaint from a victim that they have been forced into the activity; (3) if the "soliciting" involves minors; and/or (4) if the activity leads to public disorder and lack of security.<sup>34</sup> However, despite these espoused informal guidelines for application, the scope of criminality means that law enforcement could be drawn towards prosecutions of trafficking victims through the existing law.

The number of annual trafficking convictions has been traced by the US A State Department's Trafficking in Persons Report, as reported by government officials. For the TIP 2008 report, the reporting period was almost entirely prior to the LHTSE, which

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<sup>31</sup>Ibid.

<sup>32</sup> Interview with Mimi Yang, Legal Director, International Justice Mission, Phnom Penh, Cambodia, July 3, 2011.

<sup>33</sup>"Soliciting" is criminalized in the LSHTSE in Article 24, as the crime of "willfully soliciting another in public for the purpose of prostituting himself/herself" where prostitution is defined in Article 23 as sexual conduct in exchange for something of value. The Penal Code criminalizes "soliciting" even more broadly, without the stipulation that something of value be exchanged, providing for what is a broader crime or a complementary crime to the soliciting crime in the LHTSE.

<sup>34</sup>Jenna Holiday, *Cambodia's Penal Code (2009): Affect on the Legal Framework Concerning Trafficking in Persons*, (Phnom Penh, Cambodia: The Asia Foundation, 2010).

came into effect in February of 2008. That 2008 Report found that the Phnom Penh Municipal Court had documented 52 trafficking convictions for the relevant period. Subsequently, the 2009 Report described a decline in convictions with the passage of the trafficking law, describing 71 initiated prosecutions but only 12 convictions during the course of the reporting period. The following year, the 2010 Report chronicled 36 trafficking convictions. And the most recent 2011 Report found 72 initiated prosecutions and 20 convictions.<sup>35</sup>

The low conviction rate might be associated with a lack of understanding of the law. MOJ initiated several limited training programs regarding the LHTSE law and its interpretation.<sup>36</sup> Whether these guidelines have filtered through the judicial system or have been thoroughly disseminated is uncertain given the statistics on convictions. There are also initiatives to improve the general judicial response to trafficking crimes, from a recognition that increased competence is required. Cambodia has adopted and customized the ASEAN Awareness Program on Trafficking in Persons for Judges and Prosecutors so as to train participants in analyzing evidence, collaborating effectively with police, performing persuasively in trial, and properly supporting and protecting victims and witnesses during the trial process.<sup>37</sup>

A thorough judicial response to the specific crime of trafficking remains an aspiration. The UN Special Rapporteur on human rights, after his tour through Cambodia where he was tasked to observe the situation of human rights on the ground, offered his perceptions of the deficiencies of the judicial system. He described a judiciary afflicted by the kind of growing pains that are understandable in a still-developing country enmeshed in the process of writing effective laws. But he also described more insidious failings resulting from corrupting political intrusions, from ongoing rent-seeking behavior, and from the resulting decline in community expectations and professional standards.<sup>38</sup>

## **LAW ENFORCEMENT**

The first line of victim response precedes the judicial system. Victims are often first encountered by law enforcement officials (from police officers, to border guards, to immigration and custom officials), who must also be engaged in the process of protecting victims and properly directing their investigative efforts. Law enforcement officers need to be trained in the human trafficking law, so that they can recognize a possible trafficking case, and direct the victim towards appropriate services or service providers. Police officers must have therefore, an understanding of trafficking, the skills to identify those cases, and the training to handle encountered victims. Any victim

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<sup>35</sup> U.S. State Department, *Trafficking in Persons ("TIP") Report, 2008* (Washington, DC, 2008); U.S. State Department, *TIP Report 2009* (Washington, DC, 2009); U.S. State Department, *TIP Report 2010* (Washington, DC, 2010); U.S. State Department, *TIP Report 2011* (Washington, DC, 2011).

<sup>36</sup> "Ministry of Justice Assembles Cambodia's Court Leaders for Trafficking Conference," East-West Management Institute: Program on Rights and Justice, November 2009 <<http://www.ewmi-praj.org/news.asp?nID=9>> Accessed July 14, 2011.

<sup>37</sup> Gerard Smith, *Strategic Information Response Network (SIREN), The Criminal Justice Response to Human Trafficking*, (Bangkok, Thailand: United Nations Inter-Agency Project on Trafficking, 2010).

<sup>38</sup> Surya P. Subedi, "The UN human rights mandate in Cambodia: the challenge of a country in transition and the experience of the special rapporteur for the country," *The International Journal of Human Rights*, 15:2(2011): 249 — 264.

identification mechanism depends upon the abilities of frontline officers who will have initial interaction with potential victims.

Cambodia established the Department of Anti-Human Trafficking and Juvenile Protection (DAHTJP) of the police force in 2002. The Department has expanded so that it now has a presence in each of Cambodia's twenty-four provinces. The 2008 Cambodian Civil Procedure Code empowered DAHTJP to investigate independently from the judicial police officers, freeing the Department from the constraint of having to operate in conjunction with non-specialist officers. In addition, the Department has increased its percentage of female officers to 14% (a significant 9% increase from its numbers three years ago).<sup>39</sup>

Police continues to rely on an essentially reactive investigatory model.<sup>40</sup> Trafficking victims are often in precarious situations: economically vulnerable, socially marginalized, and in uncertain legal conditions. Trafficking victims have been deprived of their basic human rights through restraints forcibly or manipulatively imposed upon their freedoms. Trafficking victims are therefore a unique type of victim particularly ill-suited to advocate for their own rights in the legal arena or assert the criminality of their victimizers. Therefore, effective victim redress requires an especially proactive approach from the legal system.

Recognition of the importance of the grassroots response in the identification of trafficking victims has led to expanded training efforts. A number of international institutions and NGOs have conducted training of law enforcement agencies throughout Cambodia. NGOs have undertaken to provide training services to police throughout the country and report an increasing receptiveness to these training initiatives.<sup>41</sup> The government has also expressed its interest in expanded capacity-building training programs.<sup>42</sup>

Cambodia has adopted the Palermo Convention and its classification of trafficking, so the law already provides a standardized and operative definition.<sup>43</sup> However, a problem emerges from applying a definition to specific cases and training actual front-line responders in identifying cases that fulfill the definition. Ambiguities emerge immediately when one considers the blurred categories that can interfere with a precise understanding of the situation of a worker/victim: migration status, fake documents, illegal or semi-legal status, employment contracts, exploitative conditions, coercive contractual formation, limited freedom of movement, victim fear of prosecution, an accompanying inability to assert rights, changing employment conditions, or increasing economic vulnerability. In many cases, trafficking involves exploitation and coercion within apparently legal employment arrangements. The definition of a trafficking victim does not allow easy application. The graphic below demonstrates how the gradations of

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<sup>39</sup>Gerard Smith, *Strategic Information Response Network (SIREN), The Criminal Justice Response to Human Trafficking*, (Bangkok, Thailand: United Nations Inter-Agency Project on Trafficking, 2010).

<sup>40</sup> Interview with H.E. PorPhek, Major General, CNP, Phnom Penh, Cambodia, July 5, 2011.

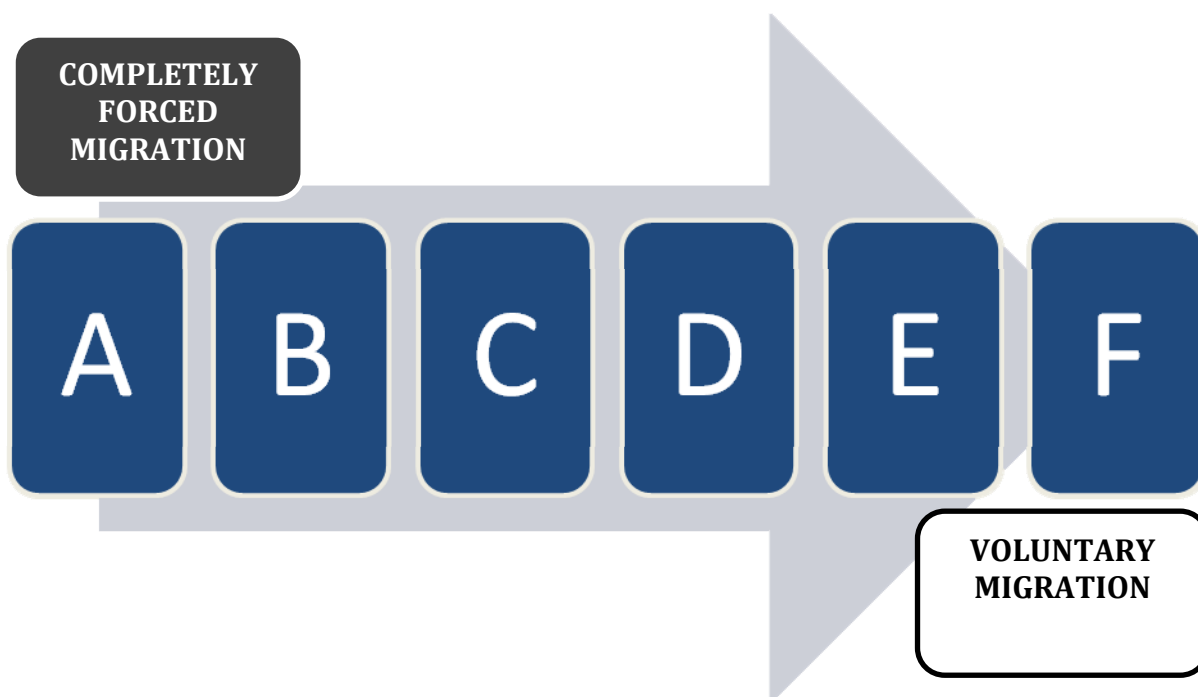
<sup>41</sup> Interview with Eric Meldrum, SISHA Operations Director, Phnom Penh, Cambodia, July 13, 2011.

<sup>42</sup> Interview with H.E. ChhayVanna, Under-Secretary of State, MOSVY, Phnom Penh, Cambodia, July 5, 2011.

<sup>43</sup> Article 1 clarifies that the objective of the LSHTSE is to comply with Palermo Protocol. Palermo defines TIPs crimes by the presence of three elements: act, means, and purpose.

exploitation and volition within a labor situation can complicate a trafficking classification.

Figure 2 Continuum between trafficking and labor migration<sup>44</sup>



**A = Victims are forced and/or kidnapped**

**B = Victims are given false information, and are trafficked into types of business other than promised**

**C = Victims are aware of the kind of work, but not the work conditions**

**D = Victims are aware of the kind of work and work conditions, but are not aware of and/or unable to foresee the difficult situations they may encounter**

**E = Workers (who may have been trafficking victims before) are aware of the kind of work and work conditions, but are not given an alternative worksite (cannot choose where they want to work)**

**F = Workers (who may have been trafficking victims before) are aware of the kind of work and the work conditions and are able to select their worksite**

In any community, the popular understanding of the law depends upon its enforcement. If the police and judiciary are unable to understand or enforce the recent legislative enactments, then their application will be imprecise and uneven, even in the best of circumstances. The weakness of a legal system can encourage criminal impunity, undermine the law's deterrent effect, and provide disincentives to victims from coming forward.

Law enforcement officers would have to be primary participants in any successful centralized national referral mechanism. The mechanism would seek in part to overcome the deficiencies of law enforcement officials now by providing a centralizing

<sup>44</sup> Graphic is re-created based on a similar representation in K. Archavanitkul, *Trafficking in Children for Labour Exploitation Including Child Prostitution in the Mekong Sub-region: Research report* (Bangkok: Institute for Population and Social Research, Mahidol University, 1998) as quoted in Annuska Derks et. al., *Review of a Decade of Research on Trafficking in Persons*, (Asia Foundation, 2006).

agency wherein final determinations about individual trafficking cases can be made. However, this additional safeguard will not remove the need for a clear understanding of trafficking amongst frontline officers. A complete national referral mechanism therefore must address these institutional and operational challenges for law enforcement agencies and for the judiciary if victims are to receive redress through the law.

## **LAW ENFORCEMENT IN THE INTERNATIONAL CONTEXT**

As trafficking frequently is a transnational crime, a sufficient operative framework also requires international cooperative agreements. Ensuring an adequate victim response depends upon having mechanisms in place to encounter and assist victims who have been transported abroad. Among its international anti-trafficking agreements, Cambodia is a member of COMMIT (Coordinated Mekong Ministerial Initiative against Trafficking), which aims to foster an effective cross-border system to combat trafficking. In its first meeting in 2004, the ministers of Cambodia, China, Lao, Myanmar, Thailand and Vietnam signed the COMMIT Memorandum of Understanding, representing a formal commitment towards international cooperation. Cambodia has additional bilateral MOU's regarding trafficking in place with Thailand and Vietnam.<sup>45</sup>

Cambodia has also had Standardized Operating Procedures (SOP) in place with Vietnam since 2009, which attempt to streamline procedures for identifying and handling cross-border victims. Cambodia is also in the process of formulating such a policy with Thailand, though political turnover has prevented the development of definitive procedures or then the formalization of such an arrangement.<sup>46</sup>

Victim identification abroad proceeds on an ad-hoc basis. The government's reactive investigatory model is very far from permitting active cross-border investigations. Therefore, victims can usually only be identified abroad if they come forward or if NGOs learn of and pursue information about a particular victim. But generally, victims are only identified after they have escaped from their traffickers. A danger for international victims is that their immigration status or lack of documentation will hinder identification and subject them instead to prosecution or deportation. Foreign governments often do not interview illegal migrant workers to identify which, if any, have been trafficked. When trafficking victims are identified, the Cambodian embassy in the particular country and the Ministry of Foreign Affairs facilitates the repatriation process, often with assistance from NGOs.<sup>47</sup> The NGOs and repatriated victim might have contact with police and the MOSVY once returned to the country and either returned to the family or to NGO-operated aftercare services.

Labor migration is connected to human trafficking and is susceptible to exploitation. The issue is particularly important in terms of trafficking in Cambodia because of the country's enormous challenge in furnishing adequate employment opportunities for its rapidly growing labor-force. Labor migration is an important alternative for new

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<sup>45</sup>Association of Southeast Asian Nations, *ASEAN Responses to Trafficking in Persons (2006)*, (Indonesia: Asean Secretariat, 2006.)

<sup>46</sup> Interview with Minister H.E. Dr. IngKanthaPhavi, Ministry of Women's Affairs, Phnom Penh, Cambodia, July 5, 2011.

<sup>47</sup> Interview with Eric Meldrum, Operations Director, SISHA, Phnom Penh, Cambodia, July 13, 2011.

workers, albeit an alternative that carries the risk of exploitation. Workers are especially vulnerable when transported across borders, uncertain of their surroundings, often subject to precarious payment structures, and occasionally at risk because of tenuous immigration status so that a victim's report might draw prosecution rather than protection from relevant authorities.<sup>48</sup>

Labor trafficking necessitates international cooperation. As the incidence of labor trafficking seems to be on the rise,<sup>49</sup> the development of effective cross-border cooperative arrangements will be an essential component of any effective victim referral mechanism.

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<sup>48</sup>AnnuskaDerks, "Migrant Labour and the Politics of Immobilisation: Cambodian Fishermen in Thailand," *Asian Journal of Social Science*, 38 (2010): 915-932.

<sup>49</sup> Interview with Eric Meldrum, Operations Director, SISHA, Phnom Penh, Cambodia, July 13, 2011.

## III. CURRENT SITUATION OF HUMAN TRAFFICKING IN CAMBODIA

### TYPES OF TRAFFICKING

#### CROSS-BORDER TRAFFICKING

Cambodia's economy struggles to generate enough work opportunities for its young population. As a result, 73.48% of Cambodia's population migrates for work<sup>50</sup> either within the country's borders or abroad. Such large and chaotic movements of vulnerable people provide excellent opportunities for human trafficking to thrive especially when relevant authorities often disregard screening at borders.<sup>51</sup>

Although difficult to quantify, sufficient data exists to identify trends in human trafficking. Cambodia is a source, transit and destination country for trafficking and Thailand is the main destination for Cambodian trafficking victims. Cambodian men, women and children are estimated to be trafficked every year to and within Thailand for the purpose of labor exploitation.<sup>52</sup> The UNIAP Poipet Sentinel Surveillance Study was able to identify that of 400 individuals interviewed (each having been deported from Thailand for illegal working), 23% might have been victims of trafficking, with 8% reporting clear trafficking type experiences. None of these victims had been identified by relevant authorities as trafficking victims. This study revealed that Cambodian men were more likely than women to be trafficked because trafficking risk increases with each broker involved and men tend to use brokers more than women. In recent years, numerous cases of Cambodian men trafficked in the Thai fishing industry have come to attention.<sup>53</sup>

Malaysia is also believed to be a common destination for Cambodian victims of human trafficking especially for labor trafficking. Thousands of women and girls are sent to Malaysia every year to work as domestic workers and a large proportion of them are believed to have been illegally recruited and trafficked.<sup>54</sup> Although less well known, there are reports of Cambodian male victims of labor trafficking in Malaysia. Men are often forced to work in factories and not allowed to leave the premises.<sup>55</sup> Trafficked victims usually have their passports confiscated and experience extremely abusive working conditions.<sup>56</sup>

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<sup>50</sup> National Institute of Statistics, *General Population Census of Cambodia 2008*, Phnom Penh: Cambodia, 2008.

<sup>51</sup> Andre Olivie, *Identifying Cambodian Victims of Human Trafficking Among Deportees from Thailand* (Bangkok, Thailand: United Nations Inter-Agency Project on Trafficking, 2008).

<sup>52</sup> Ibid.

<sup>53</sup> "Cambodia: Men Being Exploited, Trafficked Too." *IRIN Asia*, 19 Sept. 2009. Accessed July 1st 2011. <<http://www.irinnews.org/report.aspx?reportid=86155>>

<sup>54</sup> "Strategic Information Response Network (SIREN): Human Trafficking Data Sheet: Cambodia," (Bangkok, Thailand: United Nations Inter-Agency Project on Human Trafficking, 2008).

<sup>55</sup> "Cambodia: Men Being Exploited, Trafficked Too." *IRIN Asia*, 19 Sept. 2009. Accessed July 1st 2011. <<http://www.irinnews.org/report.aspx?reportid=86155>>.

<sup>56</sup> U.S. Department of State, *Trafficking in Persons Report 2011* (Washington, DC, 2011).

A significant number of Cambodian women enter marriage with Korean and Taiwanese men; many are believed to be experiencing abuse and exploitation in those arrangements. There are reports of Cambodian women who were forced into prostitution after marrying. Recent reports also talk of trafficking through adoption, where traffickers pose as child welfare agents and sell Cambodian babies overseas in adoption.<sup>57</sup> However more research is needed to better understand the nature and scope of these forms of trafficking.

Vietnam is the main source of foreign trafficking victims in Cambodia according to repatriation statistics.<sup>58</sup> Vietnamese women and girls are trafficked into Cambodia to be sexually exploited. Victims in Cambodia are typically exploited in the entertainment/commercial sex industry, factories (e.g. brick), begging rings, agricultural labor, and domestic labor. As for transit, Vietnamese and Chinese citizens are the most common nationalities among trafficking victims.<sup>59</sup> Organized Vietnamese criminal gangs move Vietnamese women and girls through Cambodia onward to destinations in Thailand and Malaysia for forced and child prostitution.<sup>60</sup>

## DOMESTIC TRAFFICKING

Trafficking within the borders of Cambodia is also common, especially with regards to sexual exploitation. Cambodia became known as a haven for sex tourism in the early 1990s following the departure of soldiers who had “created an instantaneous market for the bodies of impoverished young women”<sup>61</sup>. Women and children are trafficked from rural areas to urban locations such as Phnom Penh, Poipet, Siem Reap, Koh Kong, Sihanoukville and the infamous Svay Pak<sup>62</sup>. Some children are sold into prostitution by their parents; others are sold by village members or people they trust<sup>63</sup>.

In 2008, 1,058 Cambodian women and children in the commercial sex industry were identified as trafficked by one study. This number however is below the estimates of other studies, most likely because Steinfatt’s methodology excluded all sex workers who were “free” to leave with a client.<sup>64</sup> Although international attention focuses more on girls, young Cambodian boys are also vulnerable to sexual trafficking and abuse.<sup>65</sup>

Labor trafficking is also very common within Cambodia’s borders. In the wake of the Khmer Rouge brutal regime, violence and trauma has torn apart the Cambodian family structure which leaves many children unprotected. Poverty is a powerful contributing factor. An estimated 28,000 children work as domestic workers in Phnom Penh alone.

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<sup>57</sup>Asia Regional Trafficking in Persons Project (ARTIP), *Cambodia Country Profile, 2011*.

<sup>58</sup> Cambodian Ministry of Social Affairs, Veterans and Youth Rehabilitation, as cited in “Strategic Information Response Network (SIREN): Human Trafficking Data Sheet: Cambodia,” (Bangkok, Thailand: United Nations Inter-Agency Project on Human Trafficking, 2008).

<sup>59</sup>“Strategic Information Response Network (SIREN): Human Trafficking Data Sheet: Cambodia,” (Bangkok, Thailand: United Nations Inter-Agency Project on Human Trafficking, 2008).

<sup>60</sup>U.S. Department of State. *Trafficking in Persons Report 2011*.

<sup>61</sup>Abigail Schwartz, “Sex Trafficking in Cambodia,” *Columbia Journal of Asian Law* 17.2. (2004).

<sup>62</sup>U.S. Department of State. *Trafficking in Persons Report 2011*.

<sup>63</sup>*REDLIGHT: Documentary*, Dir. Ezroni, Adi & Guy Jacobson, Priority Films, 2009.

<sup>64</sup>Thomas M. Steinfatt, *UNIAP Trafficking Estimates: Measuring the Extent of Sex Trafficking in Cambodia 2008* (Bangkok, Thailand: UNIAP, 2011).

<sup>65</sup>Alastair Hilton, *I Thought It Could Never Happen to Boys: Sexual Abuse and Exploitation of Boys in Cambodia, An Exploratory Study*. Phnom Penh, Cambodia: World Vision, 2008.



Cambodian children are particularly vulnerable to being forced into various forms of exploitative labor such as begging, refuse scavenging, quarry work, domestic work and work in brick, rubber, salt and shrimp industries.<sup>66</sup> Children who spend a significant amount of their time roaming the streets are at high risk of being sexual exploited and abused by local men and tourists<sup>67</sup>.

Over all, more information is needed on the nature and extent of trafficking in Cambodia. Currently there are only estimates that vary greatly from each other. Consistent and standardized approaches to victim identification, together with a systematic approach to data collection and analysis will help to address this shortcoming.

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<sup>66</sup>U.S. Department of State. *Trafficking in Persons Report 2011*.

<sup>67</sup>Caroline Grillot. *Street Pedophilia in Cambodia: A Report*, (Phnom Penh, Cambodia, Action Pour les Enfants Cambodia, 2005).

## VICTIM IDENTIFICATION

The RGC has highlighted the need for a more accurate system of identifying human trafficking victims. It understands that in order for victims to receive the needed services and care, a more standardized process of victim identification must be implemented nationwide. International groups, such as UNIAP, have also expressed ideas of implementing a similar mechanism to track victims.

While it is important for implementation to begin at the national policy level, the mechanism must translate into effective actions on the ground with accountability measures put into place by one governing body. As of now, victim identification in Cambodia is a mixture of various initiatives. MOSVY, MOWA, MOI and NGOs are currently trying to implement their own procedures but the data collected varies greatly in terms of definitions used and results obtained. It has been expressed by the RGC that ensuring a multi-sector approach to this issue is key, however communication and coordination amongst the multitude of task forces involved can still be improved upon.

Articles 12 and 13 of the Law on the Suppression Human Trafficking and Sexual Exploitation<sup>68</sup> (2007) provide a workable definition for human trafficking; however the extent to which this definition is understood and applied by various stakeholders is unclear. Most NGOs use these definitions but their collection of data is colored by the particularities of their mission and is limited in scope. Therefore this definition may not always be perfectly respected.<sup>69</sup> All Ministries interviewed have expressed varying degrees of concern regarding their first-respondents' ability to differentiate victims of trafficking from other groups of people such as illegal immigrants and rape victims.

### IDENTIFICATION THROUGH MOI

By virtue of its role, the MOI is the Ministry whose professionals are the most involved in victim identification. Both the Department of Immigration and the Department of Anti-Human Trafficking and Juvenile Protection have the mandate to identify victims.

MOI has expressed mixed reviews of its current system for human trafficking victim identification. One source stated that current identification occurred almost by accident and that there were no proactive operations to identify trafficking victims who currently do have contact with law enforcement. This means that victims either have to advocate for themselves during the investigation or have an NGO assist them in doing so. Concerns over manpower in key locations were also raised. Another source

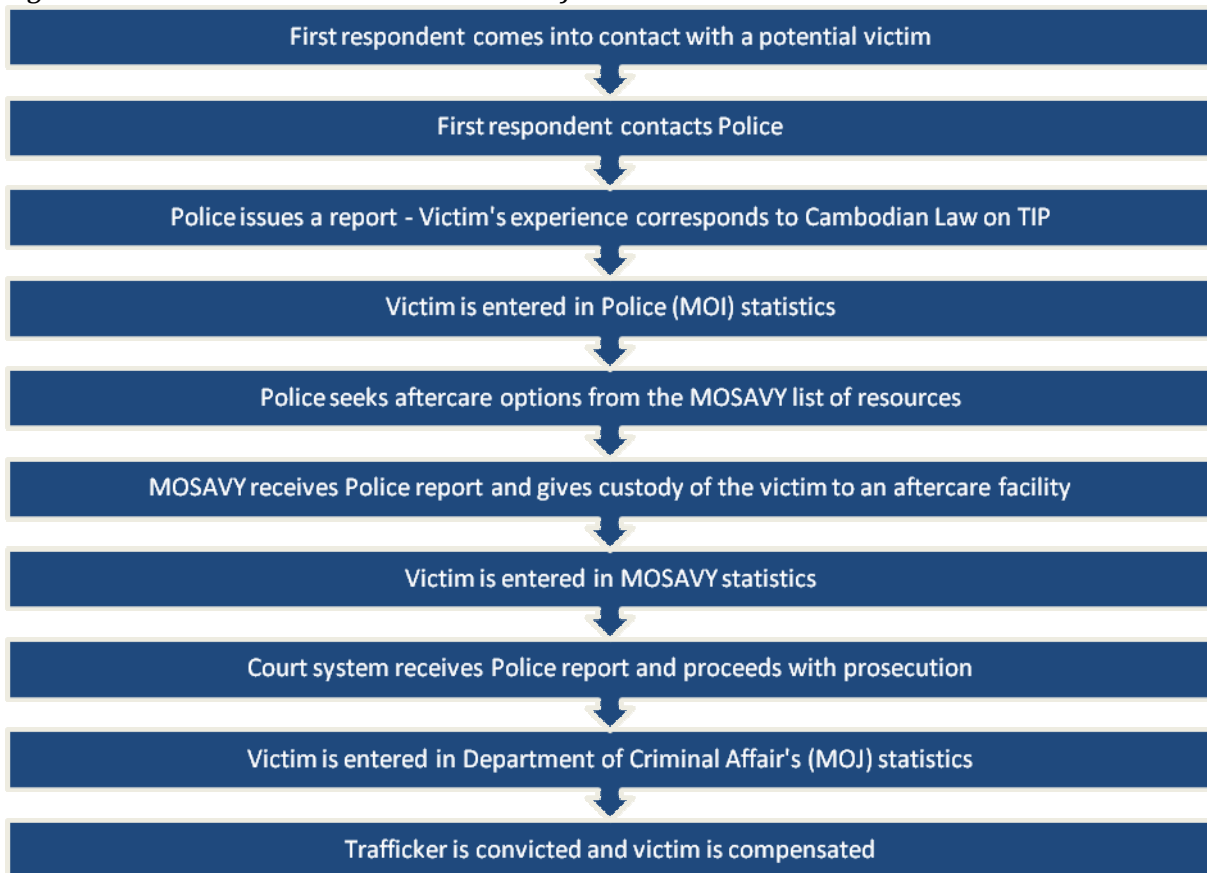
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<sup>68</sup> Article 13 on the Law on Suppression of Human Trafficking and Sexual Exploitation defines 'the act of selling, buying or exchanging a person' as 'to unlawfully deliver the control over a person to another, or to unlawfully receive the control over a person from another, in exchange for anything of value including any services and persons.' Article 12 defines 'any form of exploitation' as meaning the act of unlawful recruitment which means to induce, hire or employ a person to engage in any form of exploitation with the use of deception, abuse of power, confinement, force, threat or any coercive means.'

<sup>69</sup> Derks, Annuskaet. al., *Review of a Decade of Research on Trafficking in Persons, Cambodia* (The Asia Foundation, 2006).

described the most pressing problem as connected to victim referral to resources rather than identification at the frontlines.

*Figure 3 Current Theoretical Victim Identification Process*



The Department of Immigration, which falls under MOI, is in charge of identifying victims of trafficking at the border and has been criticized for not taking a more aggressive stance on trafficking. Lack of manpower and financial resources to pursue investigations was raised as the most likely cause of these shortcomings. Also, some of the NGOs interviewed complained that police refuse to identify the victims they come into contact with, pointing to corruption and ignorance of the law as issues which affect the effectiveness of the police response in some areas.

Figure 4 Current Existing Databases for Human Trafficking Victims



## MOSVY DATABASE

MOSVY currently registers victims of human trafficking that have been referred by police officers and NGOs and either directs them to social service providers or assists in their reintegration. The actual determination of victimhood however occurs at other levels, mostly through police; MOSVY in fact acts as a data collecting unit, not a data analyzing unit. MOSVY uses reports from the Police and NGOs to compile its data. All NGOs surveyed for this report had internal policies that included registering victims with MOSVY. MOWA is collaborating with MOSVY on this database. Lack of capacity renders interpretation and analysis of data extremely challenging<sup>70</sup>.

## MOI DATABASE

The Department of Anti-Human Trafficking and Juvenile Protection (DAHTJP) under MOI is currently developing a database for its cases which is referred to as the Law Enforcement against Sexual Exploitation and Trafficking in Children (LEASETC) database. As of now, data on trafficking-related cases is faxed to Phnom Penh or manually collected in some provinces. The information in the database includes data about suspects and victims, charges filed, details of arrest, investigative and forensic evidence and court details. MOI is evaluating the possibility of an electronic system.<sup>71</sup>

<sup>70</sup>“Strategic Information Response Network (SIREN):Counter-Trafficking Databases in Cambodia,” (Bangkok, Thailand: UNIAP, 2007).

<sup>71</sup> Ibid.

## **MOJ DATABASE**

The Department of Criminal Affairs under MOJ is also currently working on its own database.<sup>72</sup> As of 2007, this system was paper-based, filed manually by MOJ staff. This database only tracks those cases that proceed through the judicial system. Given the low numbers of prosecutions, the database captures a very small segment of trafficking incidents.

## **MOLVT DATABASE**

MOLVT currently gathers data on the number of Cambodians who are sent abroad by RAs. However, there are some doubts as to the actual reliability of this database since information is hard to obtain from the Ministry. This database does not identify victims of trafficking even though rates of exploitation and abuse experienced by Cambodian workers abroad are high.<sup>73</sup>

## **ECPAT DATABASE**

ECPAT- Cambodia (End Child Prostitution, Abuse and Trafficking in Cambodia) has been implementing the “NGO Joint Statistic Report: Database Report on Trafficking and Rape in Cambodia” project since 2005. ECPAT Cambodia is a coalition of NGOs with 29 member organizations. Since 2005, ECPAT has been working in conjunction with NGOCRC, a national coalition of 51 national and international NGOs, and COSECAM, a 25-member coalition. In 2010, Cambodia ACTs (Cambodia Against Child Trafficking Network), with a coalition of 12 NGOs, also joined in the project.

The most recent 2010 report is still in draft stage and combines data collected from 39 NGOs. However, only seven of the participating NGOs presented cases of trafficking, with 39 reported sexual trafficking victims.<sup>74</sup> ECPAT also described the challenges of the data collection process, with cases presented by participating NGOs sometimes missing critical facts in the submitted form or failing the trafficking definition used in the database.

Among an admittedly small trafficking database, out of the 39 trafficking cases, 29 victims’ cases were reported to the police, and only 10% of cases proceeded to a criminal charge against the trafficker. Even within the narrowness of this sample, the potential for skewed results in the MOJ’s database and even the MOI’s database becomes apparent. NGOs often are first-line responders to trafficking victims that never have contact with the government. Additionally, the ECPAT database project illustrates the limitations on an NGO-led initiative to build a comprehensive database. An NGO coalition must ultimately rely on participants’ voluntary buy-in and cannot mandate full participation or complete information sharing. Even a project with wide NGO backing, emerging from an obvious need for better data sharing, cannot capture a very broad picture of trafficking.

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<sup>72</sup>Association of Southeast Asian Nation (ASEAN) *ASEAN Response to Trafficking in Persons* (2006), (Indonesi, Asean Secretariat, 2006).

<sup>73</sup> Chen Chen Lee, *Labour Migration in Cambodia*, (Phnom Penh, Cambodia: Action Aid, 2008).

<sup>74</sup> ECPAT-Cambodia, *NGO Joint Statistics: Database Report on Trafficking and Rape in Cambodia 2010, (Draft Report)*, (Phnom Penh, Cambodia: 2010).

## **UNIAP VICTIM IDENTIFICATION INITIATIVE**

UNIAP is working on a victim identification system in Cambodia. The creation of a national database in partnership with key governmental stakeholders was especially challenging and ultimately unsuccessful. For this reason, UNIAP has joined ECPAT's database project. UNIAP is still committed to working with government actors and hopes to build on current governmental initiatives to create a national database<sup>75</sup>.

As a part of its general victim identification initiative, UNIAP has created three documents: the Victim Identification Card, a Victim Identification Checklist and a Victim Screening Form. The Identification Card and Victim Identification Checklist involved consultations with government ministries, specifically the MOI and MOJ. UNIAP's Victim Identification Card has been pre-tested with success but UNIAP reports little actual use on the ground. However, UNIAP does report that its Victim Identification Checklist has been successful and is being used. The UNIAP Screening Form is a separate document, which has not yet been nationally promulgated. UNIAP did describe how the Screening Form was being used by some of its NGO partners as well as in UNIAP's own projects.

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<sup>75</sup>Email from Tith Lim, National Project Coordinator, Cambodia, United Nations Development Program, July 9, 2011.

## VICTIM REFERRAL AND AFTERCARE

All shelters and aftercare services in Cambodia, apart from one government-managed shelter in Poipet, are currently being offered by a dense network of NGOs. These NGOs must register with MOSVY, which is mandated to oversee them. At the time of this report, 35 residential shelters had been identified throughout Cambodia; however, over 200 NGOs currently offer aftercare services to victims of human trafficking. Most of these NGOs are referred victims by other NGOs and the Police. There are currently no shelters for adult male victims and so-called “ladyboys” (transgendered males) of human trafficking, and few NGOs provide any type of aftercare services to these underserved population. The belief that trafficking is solely a women and children’s issue still permeates the governmental and non-profit sectors in Cambodia.<sup>76</sup>

According to one shelter organization, misunderstandings of trafficking and what constitutes a victim is very common in Cambodia, even in the counter-trafficking field. There is a lot of confusion over issues of consent especially when it comes to sex trafficking. Victims who may have verbalized a positive answer to their “clients” because of explicit threats of abuse from their trafficker should they express any other answer are often seen as consensual, and therefore not as trafficking victims. Even children who were sexually trafficked might be seen as consensual if they participated in anything remotely sexual, despite the legal age of consent for sexual activity. The notion of psychological abuse being as potent as physical abuse to coerce victims is a difficult concept to understand for many actors in the anti-trafficking field.<sup>77</sup>

Cultural elements of shame that target victims are especially powerful in Cambodia, with many victims taking full responsibility for decisions that were never of their own choosing. A careful analysis of each potential case of human trafficking is needed to go beyond mere appearances of compliance and actually look at the context in which these “decisions” were supposedly made. This shelter organization expressed a great need for a victim sensitive approach when it comes to identification.<sup>78</sup> Another NGO expressed great concerns over lack of understanding from aftercare and law enforcement officials about labor trafficking, with many believing that if a person initially consented to working in an establishment under false promises, then this person is not a “true victim”. This lack of understanding affects not only the victim’s chances at accessing justice mechanisms but also greatly undermines the victim’s ability to recover by reinforcing self-blaming attitudes and being denied aftercare services.<sup>79</sup>

According to the shelter organization, more extensive and comprehensive training is needed for actors in the anti-human trafficking field to be able to understand all the

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<sup>76</sup> Anne Gallagher & Elaine Pearson, “The High Cost of Freedom: A Legal Policy Analysis of Shelter Detention for Victims of Human Trafficking,” *Human Rights Quarterly* 32:1 (2010).

<sup>77</sup> Interview with James Pond, Founding Director and Interview with Summer Twyman, Clinical Supervisor, Transitions Global, Phnom Penh, Cambodia, July 14, 2011.

<sup>78</sup> Ibid.

<sup>79</sup> Interview with Eric Meldrum, Operation Director, SISHA, Phnom Penh, Cambodia, July 13, 2011

complexities of victim identification, especially those who first come into contact with victims and those who evaluate victims' needs.<sup>80</sup>

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<sup>80</sup> Interview with James Pond, Founding Director of Transitions Global, Phnom Penh, Cambodia, July 14, 2011.



## IV. CONCLUSION

### ASSESSMENT OF GOVERNMENT RESPONSES

*Figure 4 Challenges to Victim Identification*



The resounding message gleaned from research was that a national standard for the identification of victims was incredibly important for the success of ongoing anti-trafficking efforts. However, that central conclusion was filtered through confusing, mixed messages from various stakeholders as to similar projects that are said to already be in progress. But ultimately, the very confusion that permeates information about centralizing initiatives only re-enforces our assessment that such a project remains needed and absent.

Various databases exist but none provides a comprehensive list of victims. Each database only represents a partial picture. The MOJ's database only captures those cases that are pursued through the legal system; the MOI keeps records based upon its police investigations; various NGOs within ECPAT are cooperating with UNIAP to develop a database based upon their victim interactions; and MOSVY keeps a database of victim registrations though the determinations are made elsewhere and not scrutinized. Given the assortment of different parties who have contact with trafficking victims, their various procedures for making the determinations, the limited view that any one entity can achieve, and the ulterior motives that may color their data-collection procedures, no current database represents a complete, unbiased picture.

As far as standardized victim response procedures, the MOWA described the formulation of a very similar project with the MOI and with MOSVY. According to

MOWA's account, standardized procedures were currently being adopted and assistance would be helpful at the implementation level.<sup>81</sup> In contrast, according to the MOI, though an ostensible partner in the project described by the MOWA, a national referral mechanism was deemed to be very much needed and lacking within Cambodia's current landscape.<sup>82</sup> Various officials in MOSVY described their processes of victim identification and said they would welcome support in the Ministry's own project of centralization.<sup>83</sup> Given these disjointed accounts of projects underway, we were unable to ascertain concrete evidence of what precisely was being implemented at the policy, regional, and local levels cooperatively or independently by any single ministry. But we feel confident saying that there were, at least, verbal expressions of support for the idea of centralization, even if there was ambiguity over precisely what that should or did look like.

While the NRM would generally be advantageous, its practicability can not be taken for granted while the Cambodian country context continues to pose such daunting challenges. Any victim referral mechanism will depend upon government cooperation.

Despite the foreseeable challenges at the policy level, this report has also highlighted the willingness of various stakeholders in the counter-trafficking field to streamline procedures, especially with regards to victim identification. The fragmentation of the landscape simultaneously shows great energy and dedication on the part of various stakeholders, qualities which are essential to addressing any social problem and can be harnessed for further good. Future efforts should therefore capitalize on this willingness to build momentum towards effective and precise country-wide strategies for the elimination of human trafficking.

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<sup>81</sup> Interview with Minister H.E. Dr. IngKanthaPhavi, Ministry of Women's Affairs, Phnom Penh, Cambodia, July 5, 2011.

<sup>82</sup> Interview with H.E. PorPhek, Major General, CNP, Phnom Penh, Cambodia, July 5, 2011.

<sup>83</sup> Interview with H.E.ChhayVanna, Under-Secretary of State, MOSVY, Phnom Penh, Cambodia, July 5, 2011.

## RECOMMENDATIONS

**Policy:** As of now, the investments of state resources are primarily directed towards policy initiatives. The government deploys resources towards the ministries and officials who are generating ideas and platforms but seldom move those forward with resources on the ground.

- Invest in resources at the local level
- Allocate funding to law enforcement equipment and training
- Support policy initiatives with tangible resources
- Increase self-reliance and decrease dependence on NGO-provided services
- Increase communication between various ministries
- Improve transparency as to ongoing ministry projects and their accompanying budgets
- Implement a stable roster of initiatives so that victim services can be relied upon and publicized
- Standardize approach to victim identification through the creation of a National Referral Mechanism

**Law Enforcement:** Victim identification is ineffective at the ground level because of deep deficiencies in training, understanding of human trafficking, and resources. Police officers cannot pursue investigations and subsequent operations with insufficient funding. Police also struggle to identify trafficking victims because they lack the training to apply an abstract definition to the nuances of an individual victim's actual situation.

- Increase funding for police departments at the local level, primarily for equipment and operation costs
- Improve evidence collection procedures
- Train police in trafficking laws and in the application of the trafficking definition
- Support the development of a technological infrastructure so that police accountability can be increased
- Support the creation of a Competent Authority within a National Referral Mechanism, through which small numbers of well trained individuals retain final responsibility for victim identification

**Aftercare:** The aftercare services that are available are not always known to the organizations that are referring victims. In addition, there are gaps in the services available, especially for adult male and female victims.

- Establish facilities for male victim of all ages
- Establish procedures for the care of victims
- Improve accuracy and dispersal of information available through MOSVY
- Regulate quality of shelters and ensure adequacy of treatment and facility
- Ensure that aftercare services are brought under the umbrella of a single national policy framework for trafficking victim identification and support

Data Collection: The various actors collecting data have spawned wide-ranging estimates, which may distract from the proper deployment of resources because of their evident inaccuracy.

- Establish a central mechanism to identify victims
- Centralize a single database within a National Referral Mechanism that can credibly and authoritatively provide a record of trafficking victims in Cambodia
- Ensure that the trafficking definitions in use accurately identify victims and are not over- or under-inclusive

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