Concerning Summary Repatriations of Sex-Trafficking Victims Out of Cambodia Part I (Legal and Administrative System)

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(Part I of II)

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I. INTRODUCTION

In 2010 and the years following, I had the privilege of assisting a human rights and justice group with one of the stickiest issues in Cambodia involving sex-trafficking. Specifically, this concerned the rights and proper handling of rescued foreign victims of sex-trafficking, including their needs and opportunities for aftercare. The project involved research and coordination among several students and colleagues to assist the human rights group with this endeavor.

This article is the first in a two-part series, reflecting what we learned in that effort. I hope both articles (Spring and Fall) will contribute some valuable analysis on the issues surrounding victim aftercare. The analysis is intended to not only be useful in the Cambodian context, but also in a broader context, as the issues observed here are likely experienced globally in several international efforts to stop sexual slavery. I suspect the issues explored herein are all too common around the world.

In Cambodia, victims of sex-trafficking are commonplace, and thankfully, many are rescued. However, over the last several years, and almost as a routine, many rescued foreign victims were being summarily repatriated to their countries of origin. In its broadest sense, repatriation means “the personal right of a refugee or a prisoner of war [or in some cases, another non-national] to return to his/her country of nationality under specific conditions laid down in various international instruments.” In Cambodia, however, victims of sex-trafficking have in many cases been repatriated without giving any serious consideration to victims’ long-term aftercare needs, and without first deciding if repatriation was actually in the victims’ best interests. Victims were basically being improperly deported after rescue. I use the term “summary repatriation” (or its derivatives) in this set of articles to express this situation.

In many cases, the idea of repatriation is at odds with the expressed desires of victims who wish to remain in Cambodia and receive an education and job skills through the help of various NGOs. In our experience, some victims were already in that process when they were summarily repatriated. Victims may have no “home” to go back to, and wished to remain in Cambodia to start a new life. Several victims had already started that new life, but were required to leave the country via these summary, compelled repatriations; some ran away to avoid this.

The assistance we provided involved girls or women trafficked mainly from Vietnam and perhaps a few other countries, such as Thailand. Accordingly, this set of articles addresses

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1 See MINISTRY OF SOCIAL AFFAIRS VETERANS AND YOUTH REHABILITATION POLICY AND MINIMUM STANDARDS FOR THE PROTECTION OF THE RIGHTS OF VICTIMS OF HUMAN TRAFFICKING 1 (2009) [hereinafter MOSAVY HANDBOOK] (defining victims as anyone abused or exploited in human trafficking, and stating that victims are not illegal aliens).


3 Some victims are sold into sexual slavery by members of their own family or acquaintances, and going back “home” is not such a good idea; still others may have been kidnapped, and wish to return. See Nefarious: Merchant of Souls (Exodus Cry 2011).

4 See IOM, INTERNATIONAL MIGRATION LAW: GLOSSARY ON MIGRATION 18 (2004). Deportation is defined as “the act of a State in the exercise of its sovereignty in removing an alien from its territory to a certain place after refusal of admission or termination of permission to remain.” Id. Deportation is the removal of illegal aliens, while repatriation refers to a benign return to one’s homeland. Victims should not be repatriated in a summary fashion, more resembling a deportation.

5 Information from the contracting human rights group (notes on file with the author).
victims coming mainly from those countries.\(^6\) As indicated, however, the issue of improper, summary repatriations of rescued sex-trafficking victims is likely global in nature.

In Cambodia, most of these summary repatriations had been done through police acting on orders of the Ministry of the Interior (“MOI”), often only after a very short period following a victim’s rescue. Interestingly, this was likely contrary to the rehabilitative steps suggested by Cambodia’s Ministry of Social Affairs, Veterans and Youth Rehabilitation (“MOSAVY”).\(^7\) In effect two of the most important Cambodian government ministries on the issue of repatriation seemed to be working almost completely out of sync with each other in their approaches to rescued victims, and without a systematic approach.\(^8\) In some important respects, this initial article will examine the interplay between these separate Cambodian ministries, which necessarily also includes a short summary of the relevant regulatory and legal framework existing in Cambodia.

The general thrust of our research assistance revealed at least three key lessons, and these are somewhat related. First, administratively, MOSAVY is the central source of policy in this area and should be taking the lead on victim aftercare. It should be prescribing the appropriate policies and courses of action for victims. MOI and others should be following MOSAVY’s lead, and cooperate in executing its policies. It seemed this was not happening, and the ensuing administrative confusion contributed to summary repatriations.

Second, MOSAVY’s standards and policies indicate a “best interests” standard shall be applied in assessing and handling the needs of rescued foreign victims.\(^9\) This standard requires assessing each victim’s situation on a separate, case-by-case basis, including a determination of whether repatriation and reintegration into a victim’s original family or community is advisable. Summary repatriations ignore that standard because they ignore a review of each individual’s situation. In addition, Cambodia seems to have habitually viewed repatriation as the action that should always serve the best interests of foreign victims. Such an assumption only eases the shift to summary repatriations, and has led to improper treatment of foreign victims (in comparison to domestic victims, who at least in theory are given an actual assessment). If the best interests standard is applied correctly, it should be seen in many instances, that allowing victims to remain in Cambodia is actually in their best interests.

\(^6\) Vietnamese victims in Cambodia, and their repatriation, is very well known and documented. In comparison, it seems little statistical information is known about victims trafficked from Thailand into Cambodia, although this is purported to be the case. The human rights group we assisted also believed this to be the case, although victim identification is difficult. Cambodia also recently released its National Plan of Action on the Suppression of Human Trafficking, Smuggling, Labour, and Sexual Exploitation (S.T.S.L.S.) 2011-2013 (2011) [hereinafter National Plan of Action], indicating the existence of victims from Vietnam and Thailand in Cambodia. Id. at 47 (Activity Group 4.3.1) (it appears the authorship of the National Plan of Action is a consortium, including MOSAVY, and led by the National Committee on the Suppression of Human Trafficking, Smuggling, Labour, and Sexual Exploitation [NC/S.T.S.L.S.]). The far more prevalent and documented situation involving Thailand, however, is the frequent trafficking of Cambodians into Thailand, and not the inverse.

\(^7\) See generally MOSAVY HANDBOOK, supra note 1. MOSAVY has been abbreviated in the past in a several ways to fit its change of name: initially, it was “MoSalvy,” (when it included a labor component) and somewhat later, just “MoSavy” (or MOSVY), and other varieties may exist. I will simply use “MOSAVY” (in all caps) for sake of convenience in this set of articles.

\(^8\) It is not clear why MOI’s actions seemed so at odds with MOSAVY’s standards. I address this in section II, below. Interestingly, the International Organization for Migration (IOM), United Nations Inter-Agency Project on Human Trafficking (UNIAP), and other NGOs were also working with the MOI on proper procedures for victim identification and repatriation at this time. See National Plan of Action, supra note 6, at 7.

\(^9\) See MOSAVY HANDBOOK, supra note 1.
Third, the written policies, standards and guidelines in MOSAVY’s official Handbook fail to articulate any specific steps addressing the unique situation of handling foreign victims (other than steps supporting their repatriation). It is this author’s conviction that the lack of written specific steps for an alternative scenario (i.e., one instead of repatriation) contributed significantly to the increase in summary repatriations. If repatriation is all the State can conjure, this is likely all there will be.

After our research, the human rights group we assisted used our information and incorporated it into several meetings with MOSAVY in efforts to bring its attention to some of these concerns. This effort also included instruction and training for MOSAVY personnel on important international legal protocols it was already bound to follow. I am happy to say the result of this process has been an improvement in MOSAVY’s handling of rescued victims. At least as of this writing, greater cooperation is happening with MOI (and the IOM) in handling rescued victims. The human rights group we assisted reports it is unaware of any significant numbers of current summary repatriations. MOSAVY has also increased its pro-activity in coordinating with others and in trying to meet its own best interests standard.

This set of articles elaborates on the three key points indicated above in different stages. Specifically, I start in this initial article with some background coverage on Cambodia’s administrative and legal systems. I consider separately Cambodia’s administrative and legal hierarchies, which should somehow converge into an intended apparatus for handling rescued victims. I conclude that MOSAVY ought to have primary jurisdiction on this issue, and its regulatory scheme should govern the overall approach to handling rescued victims. However, MOSAVY still needs to increase cooperation with other entities involved.

In the second article, I analyze several specific international and domestic standards helpful in protecting victims from summary repatriation. In addition, I discuss the general steps in victim assessment and handling that should have been followed after rescue, according to MOSAVY’s own administrative set-up and instructions.

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10 Information on file with the author. It goes without saying Cambodia may just be camouflaging summary repatriations better, but in fact, reports indicate a real improvement. A lingering concern, always, is the possibility of Cambodia reverting back to the former situation. In a severe economic squeeze, that can easily happen.

11 See National Plan of Action, supra note 6, at 4. These initiatives include the creation of the Department of Human Trafficking and Victim Reintegration within MOSAVY in 2011. The United Nations Office of Drugs and Crime (UNODC) has also begun a large project in collaboration with MOSAVY and MOI for the purpose of developing Standard Operating Procedures (SOP) for identification of trafficking victims. (Information supplied by the human rights group in April 2012).

12 In any subsequent articles tracking this issue, I would consider including progress reports on how well the expected steps in victim handling are being followed, any administrative changes and new laws, and possibly more permanent solutions, since many victims may wish to stay permanently in Cambodia, but face obvious and legitimate immigration issues. See, e.g., Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT), (RE)INTEGRATION-PERSPECTIVES OF VICTIM SERVICE AGENCIES ON SUCCESSES & CHALLENGES IN TRAFFICKING VICTIM (RE)INTEGRATION IN THE GREATER MEKONG SUB-REGION, available at http://www.no-trafficking.org/ Apr%202012%20COMMIT%20reintegration%20booklet.pdf (highlighting seven areas of needed improvements) [hereinafter COMMIT INITIATIVE].
II. INTRODUCTION TO THE ADMINISTRATIVE SYSTEM IMPACTING THE HANDLING OF RESCUED VICTIMS

In this section, I will consider generally Cambodia’s system of government and administration as it affects victims. In short, there are a lot of vagaries in the administrative system, and this situation has likely led to a significant deprivation of justice for several foreign rescued victims. In addition to MOI and MOSAVY, a host of other government and non-government institutions may be involved. This can be a rather confusing situation, and it highlights the need for better systematic coordination among the various institutions involved. The National Plan of Action was a striking effort in that improvement.

It is imperative that Cambodia continue to move toward greater systematic cooperation among the various government (and non-government) entities involved in handling rescued victims in order to achieve a more efficient and just system. I hope to offer some suggestions on this in accordance with the seemingly intended administrative structure under Cambodian law. Initially, however, it might be helpful to consider a general overview of Cambodia’s system of government.

A. Basics of Cambodia’s Government Structure

Cambodia is a Constitutional Monarchy, and has been since 1993. This structure followed the devastation of the communist-led Khmer Rouge (Pol Pot Regime), in 1975, and intervention efforts by the U.N. thereafter (1991-1993, “U.N. Transitional Authority in Cambodia,” or “UNTAC”). Cambodia’s king is Norodom Sihamoni, but he is not especially active in day to day affairs of the country; however, he does sign Laws (Royal Kram), and Decrees (Royal Kret) appointing, transferring or ending the mission of high civil and military officials, ambassadors, envoys, and judges. He also signs international treaties.

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13 As many as 1061 repatriations of trafficking victims were noted from 2005-2007, and 179 known sexual exploitation cases in trafficking were recorded between 2005 and 2006. UNITED NATIONS INTER-AGENCY PROJECT ON HUMAN TRAFFICKING (UNIAP), SIREN HUMAN TRAFFICKING DATA SHEET: CAMBODIA, (v.1.0 March 2008), available at http://www.notrafficking.org/content/SIREN/SIREN_pdf/china%20siren%20data%20sheet%20sept %202008.pdf. In terms of repatriations, and as a sample, Cambodia officially recorded 47 victims repatriated to Vietnam between March 1999 and May 2005. See MOSAVY & IOM, REPATRIATION FROM CAMBODIA TO VIETNAM OF VIETNAMESE VICTIMS OF TRAFFICKING FROM 15 MAY 1999 – 30 MARCH 2005, at 22, available at www.humantrafficking.org/.../final_report_31_may_2005.doc [hereinafter VIETNAM REPORT] (note: this report is combined with another report, MOSAVY & IOM, THE RETURN AND REINTEGRATION OF VICTIMS OF TRAFFICKING FROM CAMBODIA TO THAILAND 01 JULY 2004 – 30 MARCH 2005 [hereinafter THAILAND REPORT], in a single document). It is doubtful, however, whether this number reflects the actual number of persons trafficked, and it does not likely include those returning by other means.

14 Indications since 2010 show strides and improvements in this area. Some of this is due to ongoing assistance from International Organizations (IOs), including the IOM, and several NGOs. About 200 organizations and 5000 people are estimated to be working on trafficking issues in Cambodia. See Guy Delauney, Trafficking Countdown in Cambodia, BBC NEWS, Apr. 6, 2007, available at http://news.bbc.co.uk/2/hi/asia-pacific/6532181.stm (comments of Maria Sander Lindstrom of the Asia Foundation).

15 DFDL MEKONG LEGAL & TAX ADVISORS, CAMBODIA LEGAL & INVESTMENT GUIDE 6 (2010).

16 Id.

17 This is the son of the highly celebrated King Norodom Sihanouk, who died in Oct. 2012.

18 CAMBODIA CONST., arts. 21, 28 (new).

19 Id. art. 26 (new).
The State has three branches of government: an executive branch, a bicameral legislative branch (consisting of a 123-member National Assembly and a 60-member Senate), and an aspiring independent judiciary.

The executive branch (the “Royal Government”) is led by a Prime Minister (Hun Sen), assisted by Deputy-Prime Ministers, Senior Ministers, Ministers, Secretaries of State (Vice-Ministers), and Under-Secretaries of State. It consists of both civil administration and armed forces. The executive branch is responsible for the overall execution of national policies and programs. Its agenda is directed and controlled by the highest administrative unit, The Office of the Council of Ministers, led by a Deputy Prime Minister. The Royal Government is accountable to the National Assembly for its policies and conduct. The Royal Government may initiate legislation, and can also pass certain quasi-legislative decrees.

There are approximately twenty-seven ministries or similar entities in the Royal Government. These entities include ministries over tourism, economics and finance, labour and vocational training, and the environment, to name a few. Most of the governmental authority affecting summary repatriation stems from activity within the executive branch, and of the twenty-seven ministries, the ones most directly involved with trafficking and repatriation issues are MOSAVY and MOI. Yet several others have been or continue to be involved at some level with this issue, including the Ministry of Women’s Affairs (MOWA), the Ministry of Justice (MOJ), and others. However, their efforts are usually not well coordinated, as discussed below.

The legislative branch consists of a National Assembly and the Senate. After a law proposed by the Prime Minister or the Senate is adopted in the National Assembly, it is reviewed and adopted by the Senate; after a second approval in the National Assembly, it enters into law upon signature of the King. The legislative branch has the right to pass laws relating to “the

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20 See U.N. Dep’t of Econ. & Soc. Affairs, Kingdom of Cambodia Public Administration Country Profile, § 2.2 (Feb. 2004), available at http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023231.pdf (indicating that all are members of the Government, except under-secretaries of state (also called "reserved politicians")).

21 Id.

22 CAMBODIA CONST. art 121 (formerly art. 102).

23 See generally CAMBODIA CONST., chs. VII (arts. 90 (new) – 93 (new)), X. The executive branch may propose a law, but it cannot enact law. The executive branch, however, may pass: (a) Sub-decrees (prepared by the Council of Ministers and signed by the Prime Minister); (b) Proclamations (Prakas – prepared by each ministry and signed by its Minister); (c) Circulars (Sarachor – issued by Prime Minister and/or a Minister to explain or clarify certain legal regulatory measures or to provide instruction); (d) Decisions (Sechkdei Samrech—an individual decision of the Prime Minister and/or of a Minister); (e) Provincial Notices or other Decisions (Deika – issued by a provincial governor within the geographical limits of his province). See discussion, infra, section III.A.


25 Id.

26 See National Plan of Action, supra note 6. As noted, the tension between their approaches was a major focus of our project assistance, and of this article.

27 STRATEGIC INFORMATION RESPONSE NETWORK (SIREN), UNIAP REPORT: MEKONG REGION COUNTRY DATASHEETS, HUMAN TRAFFICKING 2010, available at http://www.notrafficking.org/reports_docs/siren/uniap_2010.ht_datasheets.pdf (listing several other ministries that may be involved in some way on issues of trafficking including education and tourism).

28 CAMBODIA CONST. arts. 28 (new), 91 (new), 93 (new).
national budget, [ ] State Planning . . . amnesty . . . treaties or international conventions . . . . .\textsuperscript{29}

The legislative branch is thus involved in both the law and treaty making processes. In the case of a treaty, the executive branch usually drafts a law for a treaty’s ratification, which is then approved by the National Assembly, the Senate, and the King prior to entering into force (some instruments are considered self-executing, such as the Universal Declaration of Human Rights, as adopted in the Constitution).\textsuperscript{30}

The judicial branch is established as an independent branch of government, theoretically not to be interfered with by the executive or the legislative branches.\textsuperscript{31} The judicial branch has the power to adjudicate broad legal matters including administrative cases. It consists of lower courts, appellate courts, a Supreme Court, a Military Court, and the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”), a hybrid court dealing with atrocities from high ranking persons in the Khmer Rouge.\textsuperscript{32} Cambodia’s Judiciary has four components: (1) the Constitutional Council, (2) the Supreme Council of Magistracy (supporting in administrative issues), (3) the courts, and (4) the prosecutors.\textsuperscript{33} Courts in Cambodia are courts of general jurisdiction which means they should have jurisdiction over trafficking cases.\textsuperscript{34}

\textbf{B. The Administrative System Charged with Handling Victims}

Here, I look at some of the confusion in Cambodia’s administrative system, including on this repatriation issue. Then, I offer some interpretive principles aimed at establishing an administrative hierarchy to counter that confusion.

1. Cambodia’s Lack of a Clear Administrative System

As mentioned, the ministries that seem most involved in the question of handling trafficking victims, at this point, are MOSAVY and MOI.\textsuperscript{35} Yet it seems their history in this area has been marked by confusion, overlapping efforts, or simply inconsistent approaches. In addition, several other agencies, groups, and committees, including government and non-government, domestic and international institutions are all involved in aftercare issues. In situations involving government institutions, some may be operating strictly under a particular ministry, like MOSAVY, or can be operating across government institutions, or at a mix of

\textsuperscript{29} \textit{CAMBODIA CONST.} art. 90 (new).
\textsuperscript{30} \textit{Id.} arts. 26 (new), 31, 90 (new); \textit{see also Kong Phallack, Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform, in INTRODUCTION TO CAMBODIAN LAW} 1, 11 (Hor Peng et al., eds., 2012) [hereinafter INTRODUCTION TO CAMBODIAN LAW].
\textsuperscript{31} \textit{CAMBODIA CONST.} art. 128 (formerly article 109).
\textsuperscript{32} \textit{See Kong Phallack, Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform, in INTRODUCTION TO CAMBODIAN LAW, supra} note 30, at 11-12, 448.
\textsuperscript{33} \textit{See Kong Phallack, Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform, in INTRODUCTION TO CAMBODIAN LAW, supra} note 30, at 11-12; \textit{see also CAMBODIA CONST.} art. 131 (formerly art. 112), 132 (formerly art. 113), 136 (formerly art. 117) (indicating these non-court components).
\textsuperscript{34} \textit{See Kong Phallack, Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform, in INTRODUCTION TO CAMBODIAN LAW, supra} note 30, at 11.
\textsuperscript{35} \textit{See National Plan of Action, supra} note 6 (other ministries include MOWA (victim stigma/discrimination issues and social worker training), Ministry of Justice (MOJ; victim identification, guardianship issues), Ministry of Labour and Vocational Training (MOVLT; vocational training assistance), Ministry of Foreign Affairs and International Cooperation (MOFAIC; repatriation and victim identification issues), Ministry of Education Youth and Sports (MOEYS; education and social work)); \textit{see id.} at 45-52 (Strategy 4, Tables).
entirely different hierarchical levels in the government. Inefficiency in this administration in the past has yielded a strange composition of standards and approaches to assist victims, resulting in inconsistencies and injustices. Historically, efforts at establishing greater coordination and communication have not had much success. While improvements have been evident since 2010, especially in conjunction with the 2011-2013 National Plan of Action, still greater improvements and their actual implementation are necessary. Summary repatriation is simply easier and cheaper in terms of its administration and economics, but is not justice.

One of the primary reasons for Cambodia’s administrative confusion is simply its historical and political context. Starting a new country and trying to recover from the devastation of the Pol Pot genocide is an enormously daunting task. It is one not made easier by the continued presence of former Khmer Rouge officials in government. This is compounded further by the enormity of youth and inexperience trying to lead the country (about 50% of Cambodians are under twenty years of age).

Another cause of confusion, I hesitate to say, may be the large volume of advice coming from so many well-intentioned NGOs and IOs, all at once, and perhaps including competing suggestions. I believe the work of the best of these groups is absolutely essential to Cambodia’s development, yet the need for coordination and consensus cannot be overstated.

I suggest an approach and starting point would be to look at the intended administrative set-up for handling victims of sexual exploitation, and work from there. I believe it is essential to start with a correct interpretation of the roles of MOI and MOSAVY, as the chief players, in the area of dealing with rescued victims. This should provide a clearer sense of an intended administrative hierarchy and assist in resolving confusion in handling victims.

As indicated above, MOI’s coercive power (it runs the police) seems to habitually trump any administrative due process steps MOSAVY had once suggested in satisfaction of its “best interests” standard. Several things may account for this, including economics. For instance, perhaps MOSAVY had simply succumbed to MOI’s greater political stature or force, in the midst of its own struggles with other priorities and budgetary concerns. MOSAVY could have been too embroiled with other concerns to pay much attention to what was happening, leaving MOI free to do what it wanted. Or, perhaps there was lack of communication between the two

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36 The National Task Force (NTF) is one example. Much of its work has been subsumed now into the new “National Committee to Lead the Suppression of Human Trafficking, Smuggling, Labour Exploitation and Sexual Exploitation of Women and Children” (NC/S.T.S.L.S.). See National Plan of Action, supra note 6, at 4; see also MOSAVY DECISION NO. 13 SSR ON THE ESTABLISHMENT OF THE NATIONAL TASK FORCE TO IMPLEMENT AGREEMENTS ON THE ELIMINATION OF TRAFFICKING IN PERSONS, (Mar. 12, 2006); cf. MOSAVY DECISION NO. 35 SSR (Jul. 20, 2007) (no signed version available in English). This 2006 draft document attempts to coordinate participation among a cross-section of eighteen different ministries, various government councils, and under-secretaries of state. Id. art. 2.

37 The NTF (now NC/S.T.S.L.S.) was such an initial effort at communication.


40 That is, assuming that set-up is decipherable, and is basically a good one.

41 The human rights group we assisted laid blame largely on the limited reach of MOSAVY’s internal proclamations (Prakas) in having any kind of influence over other ministries (like MOI). However, if true, that still does not explain MOI’s apparent lack of deference to, and cooperation with MOSAVY in an area in which MOSAVY appears to have responsibility.
organizations. It is possible that MOSAVY had been complicit in summary repatriations, or just did as it was told.\textsuperscript{42} Certainly, MOSAVY’s lapse in drafting any specific steps for handling foreign rescued victims, in the face of an international and domestic presumption in favor of repatriation, would be a considerable factor. It could have been some combination of all these.

In any case, Cambodian colleagues and researchers I worked with suggested a chief contribution to this administrative confusion in roles is Cambodia’s lack of a clear administrative code.\textsuperscript{43} Such a code for instance, might specify the roles, jurisdiction, and authority among competing government institutions or ministries, and would govern citizens’ access and rights in the administrative process.\textsuperscript{44} Some might suggest this lack of an administrative code may simply be the result of a fairly new government going through its growing pains, and trying to sort itself out. That, of course, is a kinder, softer view.

Others, more cynically, see this situation as something intentional. They suggest this lack of a formal code enables the government to structure things too flexibly, or as politically expedient, according to the interests of the highest echelons in the administration. Cambodia, for instance, follows something akin to French principles in administration, often resembling a kind of customary administrative system, except, as some claim, without any truly viable system.\textsuperscript{45} Assuming some truth in this charge, that situation would of course significantly contribute to the haze surrounding a clear system for dealing with rescued victims. In other words, simple politics may govern in some administrative areas, depending on the issues at stake.

Some individuals I have worked with in Cambodia explain further, indicating the present “system” is designed specifically to allow the Prime Minister to fashion priorities on the most flexible, discretionary basis within his office, epitomizing a highly political and top-down approach.\textsuperscript{46} As an example, the Prime Minister may issue something called a “Recommendation” (Anuk Sas); some view this in practice as having greater weight than a Law (Kram), although in principle that should not be the case.\textsuperscript{47}

\textsuperscript{42} Although this author has not yet seen real evidence to support this view of complicity.
\textsuperscript{43} Administrative codes are often a part of countries’ civil law. Germany, for instance, has an administrative law called Verwaltungsrecht. Verwaltungsrecht governs the relationships between authorities, including rules, regulations, orders, and decisions relating to administrative agencies. Additionally, it specifies individual rights toward authorities. See Verwaltungsverfahrensgesetz (Administrative Procedure Act), May 25, 1976, eBAnz. at 102, last amended by Viertes Gesetz zur Änderung verwaltungsverfahrenrechtlicher Vorschriften – 4 [VwVfAndG], Dec. 11, 2008, eBAnz. at 2418, §§ 1-103 (Ger.) [hereinafter VwVfG]. Indonesia also has an administrative code, but the consistency of its application is frequently questioned. See Law No. 5/2004 and Law No. 5/2009 (Indon.) (concerning the state administrative judicial system).
\textsuperscript{44} See generally VwVfG, supra note 43.
\textsuperscript{45} However, administrative provisions are typically included in laws on general matters, as explained below. I am told several Cambodian legal scholars studied French administrative principles, incorporating these into Cambodia. Interviews with Cambodian colleagues (notes on file with author; \textit{see also} Theng Chan-Sangvar, Administrative Law And Decentralization, in INTRODUCTION TO CAMBODIAN LAW, supra note 30 at 245, 257-58 (reflecting on the French influence in Cambodian administration, and underscoring the lack of an administrative code and a single court system to adjudicate both administrative and private lawsuits).
\textsuperscript{46} Interviews with Cambodian colleagues (notes on file with author; several available blogs offer similar sentiments).
\textsuperscript{47} Others regard the Prime Minister’s Recommendation as something less than “Law,” but above a standard “Regulation”; \textit{see} descriptions \textit{infra} section III.A. It may even consist of the contents of a speech. Evidently, few seem to know really where his Recommendation stands (its rank probably depends in large part on how important the Prime Minister himself sees his Recommendation in a particular context), but this exactly highlights the problem of intentional vagueness expressed by some of my colleagues.
None of this should be taken to mean that Cambodia is completely lacking in an administrative process. To the contrary, during the nascent period of the new government, Cambodia promulgated a *Kram* precisely for that purpose.\(^{48}\) In addition, some inter-ministerial agreements or proclamations have emerged in certain areas, purportedly specifying ministerial roles.\(^{49}\) In actuality, these have tended to be general accords, identifying an issue needing important attention (rather than a clear roadmap on roles), and their efficacy is questionable beyond any stated aspirations.\(^{50}\) The National Plan of Action hopefully provides a recent counterpunch to this historical weakness. In the final analysis, some efforts at administrative coordination do exist, but are seen by some colleagues as only something on paper.

The overall “system” in the country appears to be a mix of overlapping or competing practices and procedures among ministries; i.e., administrative process lacks clarity and consistency. This characterization of administrative confusion suitably describes the situation surrounding summary repatriations up through much of 2010 and somewhat still.

2. **Suggested Principles of Interpretation for an Administrative System to Handle Rescued Victims**

Cambodian laws, however, do offer some clues, along with some principles and customs, to glean basic administrative structures for handling social problems like trafficking.

A starting point in attempting to decipher an intentional administrative ranking between ministries and their actions may be found in a ministry’s founding *Kram*. A *Kram* in this context refers to the law establishing a specific ministry. Such *Kram* sometimes contain general administrative principles, including indications of a ministry’s power, function and authority. Surprisingly, this may not be as specific as one might expect, as evidenced by the *Kram* establishing MOSAVY.\(^{51}\)

In other instances, a specific item of legislation on a particular matter (still a *Kram*), may give additional information on the roles and authority of a government entity. An example of this would be the Immigration Law’s indications for the Ministry of the Interior.\(^{52}\)

Alongside *Kram*, various regulatory decrees of the government, such as a Royal Decree or a Sub-decree, may outline other specific administrative capacities of a ministry or government.

\(^{48}\) See ROYAL KRAM NO. 02/NS/94 ON THE ORGANIZATION AND FUNCTIONING OF THE COUNCIL OF MINISTERS (Jul. 20, 1994) [hereinafter JULY 20, 1994 KRAM] (giving a fairly broad range of latitude to the Prime Minister); see also Theng Chan-Sangvar, *Administrative Law And Decentralization*, in INTRODUCTION TO CAMBODIAN LAW, supra note 30, at 248-55 (discussing administrative structures); ROYAL KRAM NO. 02/NS/94 PROMULGATING THE LAW ON ORGANIZATION AND FUNCTIONING OF THE COUNCIL OF MINISTERS (Jul. 20, 2004) (updating the July 20, 1994 version).

\(^{49}\) See generally AGREEMENT ON GUIDELINES FOR PRACTICES AND COOPERATION BETWEEN THE RELEVANT GOVERNMENT INSTITUTIONS AND VICTIM SUPPORT AGENCIES IN CASES OF HUMAN TRAFFICKING, art. 61 (Feb. 6, 2007) [hereinafter ICA] (detailing NGO registration with MOI, Ministry of Foreign Affairs). Interestingly, this is an “inter-ministerial agreement,” rather than the more typical “inter-ministerial proclamation” (and the latter is said to perhaps have greater legal effect).

\(^{50}\) See id.

\(^{51}\) ROYAL KRAM NO. NS/RKM/0105/001 PROMULGATING THE LAW ON THE ESTABLISHMENT OF THE MINISTRY OF SOCIAL AFFAIRS, VETERANS AND YOUTH REHABILITATION, art. 2 (Jan. 17, 2005) (indicating very generally, MOSAVY’s leading and management over social affairs).

\(^{52}\) See, e.g., ROYAL KRAM NO. 05/NS/94 ON IMMIGRATION, arts. 5-6 (Sept. 22, 1994) (specifying MOI’s role to administer aliens, and procedures for checking resident cards, etc.).
entity in a given situation; or, they may allude to relationships among entities. MOSAVY’s own Sub-decree, for instance, does both. In addition, Conventions, International Agreements, or MOUs may specify roles of a ministry in a particular context. This again is the case involving MOSAVY, with International Agreements between Cambodia, and its neighbors Thailand and Vietnam.

The functional-jurisdictional information gleaned from such legal sources in Cambodia may shed some light on an intended hierarchy of authority and responsibility among government institutions for handling rescued victims. In this next section I will examine some of the key institutional players involved in the aftercare process, applying the above sources of information, to give a sense of what their respective authority and roles should be.

**C. Application of Interpreted Hierarchical Principles to MOI, MOSAVY, and Other Government Institutions**

On paper, MOSAVY and MOI are expected to work in a cooperative approach, with MOSAVY shaping the policy and process involved in handling the victims, and also performing several key functions. On the other hand, MOI should be play an auxiliary role in actual repatriations, if repatriation is appropriate. In the past, however, MOI seemed to execute summary repatriations fairly routinely, without interference from MOSAVY. The Vietnam Standard Operating Procedures (SOP) impliedly prescribe repatriation (and MOI’s role in it). The lack of any specific contrary steps issued by MOSAVY, on behalf of foreigners, has likely contributed to the lack of a cooperative approach. A look at intended roles of each ministry is gathered below.

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53 The King alone may issue a Royal Decree (*Kret*); while only the Prime Minister can issue a Sub-decree (other ministries have the authority to issue regulations such as Proclamations, Circulars, Notifications, etc.). See infra section III.A. Regulation is used here as a broad, catch-all term, as there are all sorts of varieties and ranks of these. See infra section III.A. In most cases, a regulation would be considered lesser in rank than *Kram* (see infra section III.A).

54 See SUB-DECREE NO. 54 ON THE ORGANIZATION AND FUNCTIONING OF MINISTRY OF SOCIAL AFFAIRS, VETERANS AND YOUTH REHABILITATION, art. 3(A) (Apr. 8, 2001) [hereinafter SUB-DECREE ON ORGANIZATION OF MOSAVY]. This Sub-decree indicates MOSAVY’s roles and duties in governing “all social services of the state,” and also generally alludes to its cooperation with other institutions. See id.

55 Essentially, there are three very important International Agreements/MOUs between Cambodia and neighboring Thailand and Vietnam relating to this issue: the Memorandum of Understanding Between the Gov’t of the Kingdom of Cambodia and the Gov’t of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking, Cambodia-Thailand, May 31, 2003 [hereinafter Thai MOU], Agreement Between the Royal Gov’t of Cambodia and the Gov’t of the Socialist Republic of Vietnam on Bilateral Cooperation for Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking, Cambodia-Vietnam, Oct. 10, 2005 [hereinafter Vietnam Agreement], and a Cooperation Agreement Between the Royal Gov’t of the Kingdom of Cambodia and the Gov’t of the Socialist Republic of Vietnam on Standard Operating Procedures (SOPs) for the Identification and Repatriation of Trafficked Victims, Cambodia-Vietnam, Dec. 3, 2009 [hereinafter Vietnam SOP].

56 Institutions such as the NTF (now subsumed within the NC/S.T.S.L.S.) and CNCC (virtually inactive) were not at the level of “ministries” but were rather akin to committees or task forces created by relevant ministries, and I include some of their past contributions in the discussion infra section II.C.2.a-c. If new institutions emerge, I will attempt to cover them in any subsequent writings.
1. Primary Ministries Involved, MOSAVY and MOI

I cover these comparatively. I also suggest how things ought to work in the area of victim handling, under MOSAVY’s lead.

a. Authority and Role of MOI in Repatriation

In terms of its legal authority, MOI is responsible for implementing the Immigration Law in Cambodia, and running the police and border patrol. MOI’s role is “to guide and control all levels of provincial administrative authorities, supervise the national police, protect social order and security, and provide safety to the people of Cambodia.” In combating trafficking, MOI theoretically plays an important role in leading all other government institutions in making villages less vulnerable to trafficking, under a Safe Village/Commune Policy. MOI established the Department of Anti-Human Trafficking and Juvenile Protection, in 2002 (there had been a similar Office in 1996). The actual accomplishments of this Department are not very clear at this time.

MOI’s actual scope of authority and its intended role in the repatriation process is also not very clear. However, the National Plan of Action and the Vietnam SOP suggest some roles of the MOI on this specific issue. MOI is supposed to assist in the development of new victim identification criteria (including a handbook for that purpose), the improvement of repatriation mechanisms and guidelines with MOSAVY and MOFAIC, and the improvement of shelters with MOSAVY. In addition, MOI must assist in case management and prosecution of perpetrators, improving victim interviewing processes, protecting victims, strengthening victim rescue operations, maintaining a victim hotline; MOI is also charged with coordinating with overseas law enforcement, improving laws, and developing victim data collection systems.

In actual repatriations, MOI is expected to cooperate with MOSAVY, and should involve itself with actual repatriation only after MOSAVY and the receiving government have concluded that repatriation is appropriate. Specifically in repatriations to Vietnam, MOI receives various exchange and handover documents, such as a *laissez passer*, arrival notifications, and escort lists; it also assists in obtaining free exit visas, accompanies the victims to the border, and hands them over to the appropriate authorities, signing the handover documents.

In general MOI is expected to work in cooperation with MOSAVY, and should allow MOSAVY to make determinations as to the appropriateness of repatriation, while it assists more with the mechanical details of the process, although it certainly also has a role in victim

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58 National Plan of Action, supra note 6, at 3.
59 National Plan of Action, supra note 6, at 6-7. MOI also apparently had an important role in drafting the National Plan of Action in collaboration with MOSAVY and others. In addition, the Minister of the Interior (head of MOI) is also the Chairman of the NC/S.T.S.L.S. Id.
60 As of this writing, MOI is working with other IOs and MOSAVY on new victim identification SOP.
61 National Plan of Action, supra note 6, at 45, 46, 49.
62 National Plan of Action, supra note 6, at 37, 39-44 (relating both directly and indirectly to repatriation); see generally Vietnam SOP, supra note 55, arts. 1, 3, 4 (noting tasks in which both signatories must engage, while not specifically naming the MOI).
63 See, e.g., Vietnam SOP, supra note 55; see also Thai MOU, supra note 56.
64 See Vietnam SOP, supra note 55, art. 4 (identifying *laissez passer* as a special identity card for a victim entering Vietnam). These steps will be laid out in greater detail in the second article (Fall).
identification. Historically, such cooperation has not been very apparent. Instead, in the past, authorities such as the police have routinely rounded up rescued victims and given them a choice of going either to the consulate for deportation, or going through a shelter’s repatriation process, all without apparent consideration of the interests of the individuals. Little, if any, justification seems to exist for this approach under any laws or regulations in Cambodia. It seems as if MOI’s approach was once victims were identified and rescued, they were to be automatically sent across the border.

b. Authority and Role of MOSAVY in Repatriation

The Kram establishing MOSAVY is not very helpful in defining MOSAVY’s jurisdictional authority. However, article 3(A)(1) of the Sub-decree on Organization and Functioning of MOSAVY states, "MOSAVY has functions and obligations to organize policies and lead all social services of the State in order to help all kinds of vulnerable persons and the poor, such as elders without supports [sic], handicaps, homeless people, orphans, homeless children . . ." In general, MOSAVY is the institution charged with overseeing all social affairs of the State, including preventing prostitution, human trafficking, child molestation, assisting trafficked children, and enforcing children’s rights.

The International Agreements Cambodia has entered into with Vietnam and Thailand also indicate MOSAVY is the “focal authority” for information and handling victims as to their post-rescue care.

In the broadest terms here, the National Plan of Action indicates several activities of MOSAVY relating directly or indirectly to repatriation. These activities include, but are not limited to, identifying victims, disseminating and implementing a Handbook, publishing and disseminating SOPs for repatriation with Vietnam and Thailand, improving shelter standards and victim care models, family tracing, updating its statistical (ATRO) databases, monitoring victim

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65 See SUB-DECREE ON ORGANIZATION OF MOSAVY, supra note 54, art. 24 (stating, “[in] any work that is related to the responsibility of other institutions (Ministries), the Minister of MOSAVY and the heads of those institutions shall cooperate with one another to divide responsibilities and enforce that work through co-proclamation of the Minister of MOSAVY and the heads of those institutions” (Unofficial student translation)). So far no such “co-proclamations” with MOI are known to exist. However, they would now have to be referred to as “Inter-Ministry Proclamations.”
66 Information of incidents on file with the human rights group.
67 Searching Cambodia’s laws and regulations so far has failed to reveal a single law, regulation, guideline or decree in support of MOI’s approach.
68 Documents including The National Plan of Action and MOSAVY’s HANDBOOK (articulating its Policy and Minimum Standards) outline numerous steps for MOSAVY to handle in the areas of victim aftercare and repatriation. However, these activities are too numerous to cover in detail here, and are best addressed in the second article. In general, this section is aimed at addressing the scope of MOSAVY’s authority on this issue.
69 See ROYAL KRAM NS/RKM/0105/001, supra note 51.
70 SUB-DECREE ON ORGANIZATION OF MOSAVY, supra note 54.
71 SUB-DECREE ON ORGANIZATION OF MOSAVY, supra note 54, at 2.
72 Thai MOU, supra note 55, art. 17 (indicating “focal point”); Vietnam SOP, supra note 55 (indicating “focal authority”) is the Department of Social Welfare (Anti-Trafficking and Reintegration Office [“ATRO”]) of MOSAVY, or in a given case the Provincial/Municipal departments of MOSAVY, both of which are within MOSAVY’s domain); see Vietnam Agreement, supra note 55, art. 14 (naming MOWA as the “implementing institution,” which seems to have been replaced by MOSAVY).
reintegration, and improving victim access to counseling, health care, legal services, education, and vocational training.\textsuperscript{73}

A critical task of MOSAVY in the National Plan of Action is to cooperate with other countries “to reduce the number of deported victims.”\textsuperscript{74} This is precisely the thesis of this article, and the failure to follow this task has been the crux of the problem with MOI, despite being tasked in the same National Plan of Action Strategy to do so.\textsuperscript{75} Additionally, MOSAVY is responsible for working with other ministries, such as MOI, as it seeks to lead in the area of victim aftercare.

Accordingly, it seems MOSAVY is the primary institution charged with coordinating the aftercare of rescued victims, including initial determinations of the suitability of repatriation, and it is authorized to obtain cooperative assistance from MOI and other ministries.\textsuperscript{76} If so, the administrative intent would seem to be that MOSAVY’s Proclamations (Prakas) should govern, absent any contrary, competing proclamations from MOI or any other ministry, and absent any contrary higher law (Decree, Kram, etc.).\textsuperscript{77} Specifically, article 29 of the Kram on the Organization and Functioning of the Council of Ministers addresses this issue.\textsuperscript{78} In theory, article 29 restricts MOI or any other ministry from issuing Prakas and Circulars (guidelines) in contravention of MOSAVY, in any area within MOSAVY’s designated authority.\textsuperscript{79}

Searching MOI’s website and several other sources reveals no laws, including Prakas, regulations, or Circulars contrary to MOSAVY’s. Accordingly, it seems MOSAVY is best situated in a role-jurisdictional sense to set the policy in this area, including determinations as to whether repatriation should be pursued. Still, ambiguity remains.

c. Resolution of the Administrative Conflict

The apparent ambiguity, and even conflict, in approaches between MOSAVY and MOI is a complicated inter-ministerial situation, which is not easily solved.\textsuperscript{80} Upon information and based on review of some of the documents, an inter-ministerial dispute such as this is typically only resolved by intervention of the Prime Minister.\textsuperscript{81}

However, in some cases, the role of IOs (such as IOM, UNODC, UNIAP), and various influential NGOs (i.e., the human rights group), can have a significant impact by bringing clarity, communication, training, and accountability to institutions of government. In some sense, that

\textsuperscript{73} See generally National Plan of Action, \textit{supra} note 6, at 23, 32, 37, 40-41, 45-52.

\textsuperscript{74} National Plan of Action, \textit{supra} note 6, at 23-24, Activity 1.4.14.

\textsuperscript{75} National Plan of Action, \textit{supra} note 6, at 23-24, Activity 1.4.14.

\textsuperscript{76} Although this could have been made clearer in the National Plan of Action (which almost seems to assume this cooperation will just happen), the pattern of MOSAVY’s leadership in repatriation issues is still sufficiently clear.\textsuperscript{77} Sometimes also called “Brokas,” another source of law, at the ministry level. See definitions and hierarchy of laws in section III.A., \textit{infra}.

\textsuperscript{78} JULY 20, 1994 KRAM, \textit{supra} note 48, art. 29.

\textsuperscript{79} JULY 20, 1994 KRAM, \textit{supra} note 48, art. 29.

\textsuperscript{80} Interview with a former head professor at the Royal University of Law and Economics, currently at the National University of Management. Identity cannot be disclosed without permission.

\textsuperscript{81} See JULY 20, 1994 KRAM, \textit{supra} note 48, arts. 9, 10, 13, 17, 30, 32 (discussing the Prime Minister’s role in controlling the Council of Ministers. Article 10, for instance, states, “the Prime Minister is the one who calls for meeting[s] and presides [over] those meetings. The plenary meetings of the Council of Ministers decides to resolve all general affairs of the government.”) An administrative resolution such as this may require issuance of a Sub-decree.
appears to be happening more and more in this situation involving the handling of rescued victims. Lately, MOI seems more interested in following MOSAVY’s designated administrative process, and some key IOs and NGOs were instrumental in shaping that change.

In the final analysis, each ministry of the government has a specific operational sphere. Yet much of what is carried out in practice in Cambodia is based on unwritten practice and custom, regardless of what legal rules and policies may say. MOSAVY has issued a Handbook, stating its Policies and Minimum Standards that should govern the handling and repatriation process of victims. The Handbook affords foreign victims the same protections available to Cambodian victims, but at the same time lacks specific steps in managing foreign victims. MOI certainly was not about to volunteer a series of steps for implementing such protections, and this likely contributed to the lack of care in handling rescued foreign victims.

In one sense, if MOSAVY was concerned with the actions of MOI, it would have sought relief from the Prime Minister. However, there is no evidence that MOSAVY has sought the help of the Prime Minister. If there was a serious conflict between MOSAVY and MOI, it could have been settled in this manner. Nevertheless, accountability wrought by the human rights group, along with other NGOs and IOs (such as the IOM and UNODC), seems to have alleviated some of the administrative shortfalls, thereby improving the situation for rescued foreign victims.

2. Secondary Institutions

Secondary institutions in this context are those that have historically been directly involved with working on aftercare or repatriation.

a. Authority and Role of MOWA and the COMMIT Task Force in Repatriation

While MOWA had been involved initially in signing an MOU with Thailand on human trafficking, its role now seems much less significant. MOWA was the lead ministry in establishing and overseeing the National Task Force (NTF) in the implementation of agreements such as the Cambodia-Vietnamese Agreement and SOP, the Cambodia-Thailand MOU, and regional MOUs. In addition, MOWA’s Secretary of State apparently led the NTF (the Permanent Secretariat of NTF was to be located at MOWA), and chairs the Cambodian COMMIT Task Force. The COMMIT Task Force is apparently still active, is led by MOWA,

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82 Thai MOU, supra note 55, art. 14 (naming the Ministry of Foreign Affairs and International Cooperation, Ministry of Justice, and Ministry of Tourism, as other institutions involved and required to cooperate).
83 See, e.g., Thai MOU, supra note 55.
84 See National Plan of Action, supra note 6, at 4, 7; see also MOSAVY DECISION NO. 13 SSR ON THE ESTABLISHMENT OF THE NATIONAL TASK FORCE, art. 7 (Mar. 12, 2006) (the NC/S.T.S.L.S. has subsumed most of the functioning of the NTF as of 2011, but the NTF, and thus MOWA, was involved in overseeing an earlier (“second”) National Plan of Action after 2007).
and required to work with the Secretariat of NC/S.T.S.L.S to implement the various MOUs discussed above.\(^{85}\)

Currently, there is little MOWA does directly in the specific area of repatriation. Its activities are directed primarily to raising awareness, conducting studies, and assisting in community development and village activities to help prevent the stream of trafficking (so called “upstream” activities).\(^{86}\) It also has some responsibilities to assist with victim identification, improving counseling, and fighting victim stigma.\(^{87}\)

b. Contributions of National Task Force (Now NC/S.T.S.L.S.)

As indicated, the NTF was established to implement the Cambodia-Thailand-Vietnamese MOUs and Agreements, as well as the regional Greater Mekong Sub-Region MOUs.\(^{88}\) The NTF also had the ambitious goal of coordinating the participation of eighteen different ministries or offices involved in handling victims. Its accomplishments are not altogether clear in that regard. It seems the NTF was more a multi-ministry coordinator and plan implementer, rather than a law and policy setter, in contrast to the ministries involved in it, which make binding laws and regulations. Significantly, a NTF flow chart indicates MOSAVY is the only named ministry involved in coordinating repatriation and reintegration.\(^{89}\) NTF was involved in formulating the previous National Plan of Action, and the NTF (under the auspices of MOWA) merged with the High Level Working Group to Lead the Suppression of Human Trafficking, Smuggling, Labour Exploitation, and Sexual Exploitation of Women and Children (HLWG) (under the auspices of MOI) in late 2009 to form the current NC/S.T.S.L.S.\(^{90}\)

The NC/S.T.S.L.S. is led by a Deputy Prime Minister (Mr. Sar Kheng) who is also Minister of Interior; it has a Secretariat, which is led by the Secretary of State of MOI, and includes six Working Groups, one of which is a Reintegration and Repatriation Working Group.\(^{91}\) The Working Groups operate at the national and sub-national levels. The NC devised the new 2011-2013 National Plan of Action.\(^{92}\)

The current activities of the NC in regard to trafficking are very extensive, and can be found in the National Plan of Action, Implementation Table.\(^{93}\) In terms of repatriation specifically, the NC’s roles are relatively insignificant, including assisting in victim identification and dissemination of MOSAVY’s Policy and Minimum Standards.\(^{94}\)

\(^{85}\) National Plan of Action, supra note 6, at 4, 7, 57 (indicating also the COMMIT Task Force started in 2005, and involves 11 ministries).

\(^{86}\) National Plan of Action, supra note 6, at 31-36, 45-46, 50.

\(^{87}\) National Plan of Action, supra note 6, at 31-36, 45-46, 50.

\(^{88}\) See Thai MOU, supra note 55; Vietnam Agreement, supra note 55; Vietnam SOP, supra note 55; COMMIT INITIATIVE, supra note 12.

\(^{89}\) Notes supplied by the human rights group, on file with author.

\(^{90}\) National Plan of Action, supra note 6, at 4 (the HWLG was established in 2007 to lead a large-scale effort to halt trafficking in certain locations).

\(^{91}\) National Plan of Action, supra note 6, at 4, 7.

\(^{92}\) National Plan of Action, supra note 6, at 4, 7.

\(^{93}\) National Plan of Action, supra note 6, at 6, 17-57 (listing various roles of the Secretariat, who is involved in virtually every Activity Group of the five Strategies of the National Plan of Action, such as: 1) strengthening policy implementation and cooperation; 2) preventing trafficking and sexual exploitation; 3) enhancing criminal justice; 4) protecting victims (including by repatriation and reintegration); 5) “improving monitoring and evaluation.”)

\(^{94}\) National Plan of Action, supra note 6, at 46, 51.
c. Contributions of CNCC

The Cambodian National Council for Children (CNCC) was formed under the auspices of MOSAVY, with MOSAVY’s head Minister serving as its Chair. It exists, but information from the human rights group we assisted indicated that they are inactive. Nevertheless, the current National Plan of Action includes some active roles of the CNCC such as sponsoring children and youth forums, raising awareness of children’s rights, and doing research on their behalf. The CNCC had also assisted in MOSAVY’s joint effort with UNICEF in promulgating the Minimum Standards on Alternative Care for Children, an important document in general support of quality aftercare—presumptively even for foreign (trafficked) children.

In December 2007, the CNCC issued its Decision on the Guideline for the Protection of the Rights of Trafficked Children. The Prime Minister supported this document, adding a statement and signature to it. This Decision (Guideline) was intended, it seems, to have some force. Its value is that it contains some specific, useful language for advocacy, which is analyzed in the second article (Fall).

D. Summary on Administrative Issues

To the extent an intentional plan on handling rescued victims can be ascertained from the above information, it shows MOSAVY is the intended administrative head in determining policy and procedure for rescued victims. Other institutions or government entities may have the lead in different aspects of the anti-trafficking plan (i.e., the NC/S.T.S.L.S), yet here we are speaking very specifically about the post-rescue handling of foreign victims. MOI and other ministries should assist MOSAVY on this. Essentially, MOSAVY’s Proclamations (Prakas) and policies should govern and be given the greatest weight in this matter. In the second article (Fall), I consider the content of those Prakas and polices, and other legal standards (including specific international ones), which support victims and suggest against summary repatriations. First, however, an introduction to Cambodia’s legal system is necessary, since available legal norms differ in their authority or weight, according to Cambodia’s hierarchical system of laws.

III. INTRODUCTION TO THE LEGAL SYSTEM AND OTHER NORMS IN CAMBODIA APPLICABLE TO RESCUED VICTIMS

In this section, I will give a short survey of the various kinds of laws and regulations and international legal standards that may be involved. I take this approach because Cambodia does not have a single nationally binding law directly on point to address victim aftercare and

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95 National Plan of Action, supra note 6, at 7. However, as of 2006, Prime Minister Hun Sen was the “Honourable Chairman” of the CNCC. See Message of Prime Minister Hun Sen, in POLICY ON ALTERNATIVE CARE FOR CHILDREN (Apr. 11, 2006).
96 National Plan of Action, supra note 6, at 21, 28, 35. The CNCC also had a hand in earlier drafting of the National Plan of Action. See id. at 6.
97 It had apparently also improved “community-based child protection networks” around that time. See Message of Prime Minister Hun Sen, in POLICY ON ALTERNATIVE CARE FOR CHILDREN (Apr. 11, 2006).
98 CAMBODIA NATIONAL COUNCIL FOR CHILDREN, DECISION NO. 107 CNCC ON GUIDELINE FOR THE PROTECTION OF THE RIGHTS OF TRAFFICKED CHILDREN OF THE KINGDOM OF CAMBODIA (Dec. 20, 2007) [hereinafter GUIDELINE].
99 Message of Prime Minister Hun Sen, in GUIDELINE, supra note 98.
rehabilitation issues. In our research, we saw a host of several different international standards, laws, and regulations, often emanating from, or influencing, a variety of sources in the government. In light of that, I will attempt to bring some understanding to that mix of standards, hoping to shed some light on their relative weight. Like the issue of determining who is in charge of the administrative process, this issue requires a fair amount of interpretation in determining the weight of various legal standards. In the second article (Fall), I will delve into the standards to show how they apply, and how they should protect rescued victims, indicating specifically how summary repatriations are improper.

In general, the following subsection (A) offers what I believe to be a realistic hierarchy of Cambodian law and legal principles. Some of this will require an introduction to Cambodian legal vocabulary, including some helpful explanations of that terminology and Cambodian legal concepts, which are provided in subsection (B).

A. *A Hierarchy of Laws and Legal Principles in Cambodia*

An intended sense of hierarchy of legal standards is generally determinable in Cambodian law, due to the introductory language, or chapeau of almost any Law, Decision, or Regulation. These introductory sections of a law, for instance, usually indicate a list of supporting legal norms, presented in a hierarchical order, upon which the current law or regulation is based. Such prefatory phrases like the following are common: “having seen the Constitution of the Kingdom of Cambodia . . . [and] having seen [Preah Reach] Kret dated September 24, 1993 on the appointment of the first and the second Prime Minister . . . [and] having seen Kram NS-RKM-0196-04 dated January 24, 1996, on the creation of the Ministry of Justice . . . [we] promulgate the law on [etc.] . . . .” Thus, the governing law supporting a particular Law, Proclamation, Decision, or other norm in a particular area is generally determinable, and this supporting law is typically listed in a hierarchical pattern. Seeing that pattern, and according to actual practice, the following is suggested as a general hierarchy of laws and legal norms in Cambodia:

1. a. Cambodian Constitution
   b. Treaties and International Instruments
   c. Law/Act (Preah Reach Kram; or just Chbab when in a “draft” stage in the National Assembly; Preah Reach means ”Royal”)
   d. Royal Decree (Preah Reach Kret, a Regulation; i.e., appointing or removing officials, signed by the King)
   e. Sub-decree (Anuk Kret also a Regulation, signed by the Prime Minister)
   f. Proclamation (Prakas)
   g. Circular ( Sarachor); including also possibly a ministry’s Directive (instruction).
   h. Decision (Sekdei Samrach various kinds, and rank depends on issuer: if issued by the Prime Minister, it would be higher than a “Proclamation;” if issued by a Minister it ranks here)
   i. Lesser Decisions (Deika or Deka issued at various sub-national levels)
   j. Others: Announcements, etc. (Decisions of professional associations and others).


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100 However, it does have a law against trafficking. Royal Kram No. NS/RKM/0208/005 Promulgating The Law on Suppression of Human Trafficking and Sexual Exploitation (Feb. 15, 2008).

101 Taken as an example directly from the Kram on Suppression of the Kidnapping, Trafficking and Exploitation of Human Persons (Feb. 29, 1996) (older version of a current law).

102 A classic “textbook” hierarchy of legal norms is available, but may be less realistic in light of some of the informal legal mechanisms employed. A version of the classic hierarchy is:
a. The Constitution
b. Treaties and similar International Instruments, Conventions

c. Law (Preah Reach Kram; a legislative Act issued by the National Assembly, as indicated briefly above)

d. Prime Minister’s Recommendation (Anuk Sas; various kinds)

e. International Agreements/MOU (as with Thailand and Vietnam)

After this, there are various instruments, similar in effect to “Regulations” (although there is no clear satisfactory term for all of them, collectively):

f. Royal Decree (Preah Reach Kret; an appointing decree issued by the King)

g. Sub-decree (Anuk Kret; adopted by Council of Ministers and signed by the Prime Minister)

h. Decision (Sekdei Samrech; individual decision of the Prime Minister, and/or others at various, different levels)

i. Proclamation (Prakas; issued by various ministries, like MOSAVY)

j. Inter-Ministerial Proclamation (previously, Sahak brokas, issued by ministers of several ministries jointly)

k. Circular (Sarachor; to be issued by the Prime Minister and/or by a Minister to explain or clarify certain legal regulatory measures or to provide instructions; may also include a ministry’s Directive)

l. Municipal, Provincial, Commune, or District Decision (Deika, or Deka; issued by a city, province, commune or district governor within their geographical limit; similar to administrative decisions)

m. Decisions of professional associations (Bar Association, Institute of CPAs, etc.)

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103 International Agreements and MOUs, which are prevalent in this area concerning sex-trafficking victims, would have a lesser rank in the hierarchy than treaties.

104 The Prime Minister’s Recommendation is vague and it may consist of something said in a speech. It has been used sometimes to surpass or modify a “Law,” although that should not be the case according to any true legal design. See explanation, supra notes 46-48 and accompanying text. Its rank in the hierarchy is thus contingent upon various, specific situations.

105 Again, the precise ranking of these International Agreements and MOUs is not entirely clear, and can be much lower than some of the following “regulations,” as I explain below. I place them here for convenience and because of their unique nature, not because they are higher than Kret, for instance.

106 Kret (Royal Decree) is used chiefly to appoint, transfer, or remove certain officials and judges.

107 Decisions are various and can be issued at other levels, thus affecting their hierarchy. For instance, a Decision of the Constitutional Council should rank highly, just below the Constitution; a Decision of a Department Head (within a Ministry), should rank just below Prakas. Lesser Decisions may also be issued, as indicated above (i.e., even entities like the CNCC may issue Decisions).

108 Inter-Ministerial Proclamations should be at the same level of a Prakas.

109 A Directive is a kind of internal instruction in a government entity. It defies any precise location in the hierarchy because it may be issued at several levels, ranging as high up as the Prime Minister to ministries and others. In that sense it is similar to a Decision, as a catch-all, but can share similarities with a Circular, as an “instruction,” for instance, within a ministry. See, e.g., MOSAVY DIRECTIVE NO. 009 S.V.Y. ON REINTEGRATION AND FOLLOW-UP OF VICTIMS RESIDING IN THE SHELTERS OF THE GOVERNMENT AND NON-GOVERNMENT ORGANIZATIONS (Sept. 28, 2007); see also email correspondence with Cambodian colleague and student, April 28, 2013 (on file with the author; explaining).
B. Elaborating on Some of the Above Terms

This next section is intended to elaborate on some of the legal terms and the nuances they create in this hierarchy above. Although some terms are common, they may have a different legal application in Cambodia in comparison to other contexts.

1. Treaties/Conventions

Sometimes, a treaty or convention shares constitutional import, although usually a treaty or convention is considered to be only on equal footing with a “Law.” For example, article 31 of Cambodia’s Constitution states, "[t]he Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights.” According to common constitutional interpretation, a state’s constitution is generally considered to have higher authority than a treaty, but the Cambodian Constitution actually incorporates some human rights instruments into the Constitution as part of the supreme law of the land. In a particular civil or human rights context, the specific provisions in an international human rights convention may thus govern against broader or different provisions in the Constitution itself, and this seems to be an acceptable interpretive practice in Cambodia. This has clear implications for the rights of rescued foreign trafficking victims under any applicable international law: such international standards may be decisive in determining victims’ rights.

In technical terms, a treaty requires some formal, internal ratification process to become law in Cambodia, including the vote of the National Assembly and Senate, and final approval by the King. However, there are no indications any of these steps have been followed in this matter as to the International MOU’s/Agreements Cambodia has entered into with Vietnam and Thailand.

2. International Agreements/MOUs

International agreements generally have a greater binding effect than MOUs, but are considered less binding than treaties. Article 1(a) of the Vienna Convention on the Law of Treaties, helps explain the distinctions by stating, “a ‘treaty’ means an international agreement concluded between States in written form and governed by international law, whether embodied

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110 Obviously a treaty is not unique to Cambodia, but I treat here the understanding of treaty law domestically.
111 CAMBODIA CONST. art. 31.
112 Id.
113 Interview with Cambodian colleague (notes on file with the author); see also Kong Phallack, Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform, in INTRODUCTION TO CAMBODIAN LAW, supra note 30, at 10-11 (citations omitted).
114 CAMBODIA CONST. art. 8 (stating “[t]he King shall be the guarantor . . . of international treaties”); CAMBODIA CONST. art. 26 (stating “[t]he King shall sign and ratify international treaties and conventions after a vote of approval by the National Assembly and the Senate”); CAMBODIA CONST. art. 90 (stating “[t]he National Assembly shall adopt or repeal treaties and International Convention [sic]”); see also JULY 20, 1994 KRAM, supra note 48, art. 12 (stating “[t]he Prime Minister leads in negotiation and signature on trade agreement[sic], cooperation, economy, culture, science, technology, and national defense. The Prime Minister may authorize a member of the government to be the negotiator and the signatory.”)
115 PARRY AND GRANT, ENCYCLOPAEDIC DICTIONARY OF INT’L LAW 16 (Oceana, 2d ed. 2004).
in a single instrument or in two or more related instruments and whatever its particular
designation.” An international agreement is intended to have an obligatory character, although
less than that of a treaty.  

Typically, MOUs may be considered to have moral or political force, but not legal force; they may also have an estoppel effect on a signing government. An MOU may in some cases be “subject to” the law of treaties, without giving rise to the same legal obligations, and this is usually where the intention of the governments involved was to enter into an “international agreement” in the sense of an instrument with greater force. An MOU not intended as a binding “international agreement” does not require registration under article 102 of the U.N. Charter, and may remain confidential among the parties. 

In the specific context of Cambodia’s relations with its neighbors, international MOUs can be very significant. This was certainly the case in a land/border dispute between Cambodia and Thailand, in which both States staked their claims on an MOU governing between them. The International Agreement and MOUs between Cambodia and Vietnam, and Cambodia and Thailand on the issue of repatriation should be viewed in light of these examples and principles.

3. Law (Kram)

Law has a limited meaning in Cambodia. It means an “Act.” A Preah Reach Kram is used to bring a “bill” (Chhab, or proposed law) into force, as an actual Law. The document is signed by the King for that purpose, in accordance with the legislative process discussed above. A Kram is also used to establish institutions such as ministries.

4. Decision (Sekdei Samrach)

A Decision is primarily used in the settlement of a legal or administrative conflict, but is not like a court decision. As mentioned above, there are several varieties of Decisions, including those issued by the Prime Minister, the Council of Ministers, or the Head of a Department (within a ministry), and by even lesser government institutions, and professional entities. The hierarchical rank of a Decision is thus completely relative on the scale, depending primarily on who issued it.

Decisions are somewhat difficult to pin down, and thus pose some administrative, hierarchical problems. There has often been some confusion in their use, and even abuse. The confusion may stem from situations in which the Decisions issued by the Prime Minister or Council of Ministers conflict with other laws. As noted, the Prime Minister may also make

117 Id.
118 Id. at 314.
119 Id. (citing Reports of the International Law Commission to the General Assembly, II ILC Yearbook, 188, U.N. Doc. A/CN.4SER.A1966/Add.1 para. 2 (construing ILC draft articles on the Law of Treaties)).
120 Id.
121 See Memorandum of Understanding between the Gov’t. of the Kingdom of Cambodia and the Gov’t. of the Kingdom of Thailand on the Survey and Demarcation of Land Boundary, Cambodia-Thailand (2000).
122 A Preah Reach Kram may also be considered a kind of “Royal Decree,” but this is also true of a Preah Reach Kret, which is an administrative appointment by the King. To avoid confusion, and as acceptable and customary in Cambodia, it is best to refer to the Kram as a “Law” and the Kret as a “Decree,” and so this set of articles adopts that nomenclature.
123 See supra note 107; see also GUIDELINE, supra note 98 (a Decision by a lesser entity).
“Recommendations,” (see above), and also has specific authority to issue Sub-decrees (Anukret), so the need to issue Decisions (Sekdei Samrach) is somewhat questionable.

Since the Decision's maker at the highest levels (either the Prime Minister or the head Minister of the Council of Ministers) is considered very powerful, seldom does anyone challenge the constitutionality or the legality of a high-level Decision. Decisions at the next levels down, issued by the Department Heads within a ministry and so forth, are certainly less ironclad. 124

5. Proclamations (Prakas)

These are usually issued by the heads of ministries. Significantly, each Prakas (and Circular) binds the indicated ministry in its sphere of authority within the country as a whole. It should also be binding as against other government institutions and ministries to the extent the Prakas (or Circular) is truly issued within the realm of the ministry’s subject matter authority. This assertion is not without controversy. However, this author’s view seems to have support in the Kram dated July 20, 1994 On the Organization and Functioning of the Council of Ministers, specifically article 29, stating:

The head of ministry has power to issue Prakas and Circulars. Circulars are texts for enlightening the works/affairs and for giving instructions. Prakas or Circulars, can neither stipulate on any issues that are not concerned within the framework and competence of the ministry, nor contradict with other norms and standards of the royal government, such as Anukret or Circulars. (emphasis added) 125

This matter is very important because it deals directly with the respect one ministry pays to another, and this highlights precisely the administrative tension expressed above, between MOI and MOSAVY, in their approaches to handling rescued victims. 126 In essence, if MOSAVY is authorized to issue governing Prakas on issues of aftercare and repatriation (as seems to be the case), MOI should not act contrary to MOSAVY’s Prakas. Prakas may also be issued collectively, or jointly by a group of ministries on a specific matter. Prakas can only be contradicted by a superior “Law.” 127

6. Circulars (Instructions)

Circulars can be issued by the Prime Minister, the Council of Ministers, and also by individual ministries to give guidance and instruction on specific matters within the issuer’s jurisdiction. They are not at quite the same level as Prakas. Circulars face the same issues of scope and reach through a ministry as Prakas, mentioned above.

124 A “Directive” (or Instruction) is a lesser known instrument and is similar to a Decision in that it can be issued by several levels in the government, including the Prime Minister. It is also similar to a Circular if issued in a ministry. See supra note 109 (giving an example).
125 See STUART COGHILL, RESOURCE GUIDE TO THE CRIMINAL LAW OF CAMBODIA, §§ 1.32-.34, 1.57, International Human Rights Law Group (2000) (indicating a Prakas only governs within the jurisdiction of the issuing ministry, and organizes the activities within that jurisdiction).
126 See discussion, supra section II.
127 See supra note 108 and accompanying text.
C. Value of This Information in Assisting Rescued Victims

A variety of the assorted legal instruments indicated above may be involved at various levels in the government with the question of repatriation of victims. Implementation of these instruments of course would come through the various institutional actors mentioned above in section II.C. The weight of that legal authority is thus a hybrid, or intersection, of at least two considerations: one is the actual rank of a law or other legal norm in the country, and the other is the rank of the government institution responsible for keeping or enforcing it. From this, it is possible to fashion a list of governing law and processes, something almost systematic, that should protect the human rights and serve the best interests of rescued victims.

In the second article, I will attempt to identify many of the specific laws and legal norms that apply to rescued foreign victims of sex-trafficking. In addition, I will seek to map-out the steps that should be followed in an appropriate, intentional, administrative-legal system in handling the care of these victims.

IV. CONCLUSION

Sex-trafficking has long been a plight in Cambodia. Many victims, including foreigners, are fortunately rescued. Summary repatriations of the rescued victims, however, do not serve the interests of justice and are not in the victims’ best interests. The escalation of incidents of summary repatriations of foreign victims out of Cambodia in the last several years may be largely attributed to administrative confusion (even tension) between two of Cambodia’s state actors in the area (MOSAVY and MOI), as well as the lack of a clear systematic application of various governing legal norms. This first article was intended to help sort out some of that administrative confusion and introduce the reader to various legal norms which have developed in Cambodia, in hopes of discovering a suitable legal and administrative system for helping victims. Specifics of that system are covered in the second article.

Suffice it to say for now that the above shows the focal point of activity in handling rescued foreign victims rests with MOSAVY. MOI and other institutions should play a supporting role. Greater cooperation between the institutions involved, and a clearer understanding of their respective roles, are essential to promote justice and to avoid the tempting default of summary repatriations. A comprehensive Kram covering many of the specifics of victim rescue and aftercare would have been helpful, but it does not exist. Instead, a suitable and just system of victim aftercare, which avoids summary repatriations, can still be parsed together and fashioned from elements of Cambodia’s already-existing legal standards and administrative structures. The specific content of that, again, is addressed in the second article.