

SUMMARY OF FINDINGS

IMPLEMENTING THE LEGAL FRAMEWORK FOR ORPHANAGE TRAFFICKING

A Cambodia Case Study

Rebecca Nhep and Dr Kate van Doore



UBS Optimus
Foundation



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Background to the study

Orphanage trafficking is a type of child trafficking that involves the recruitment and/ or transfer of children to residential care facilities (RCFs) or 'orphanages', for a purpose of exploitation, profit or adoption.¹ It typically takes place in low- and middle-income countries where child protection services systems are highly privatised, under-regulated, and primarily funded by overseas sources.

Reports on the trafficking of children into Cambodian orphanages for exploitation date back to the late 1990s. These earlier cases were mainly associated with fraudulent intercountry adoptions. More recently, orphanage trafficking has adapted and is primarily for the purposes of sexual exploitation, labor exploitation and/or profit.

The enactment of the Law on the Suppression of Human Trafficking and Sexual Exploitation (TSE Law) in 2008 established new offenses and provided a clear legal framework for the prosecution of orphanage trafficking crimes in Cambodia.² Most of the child trafficking offenses in the TSE Law are predicated on the elements of 'unlawful removal of a child' and 'purpose', which includes traditional

¹ Kathryn E Van Doore, 'Paper orphans: Exploring child trafficking for the purpose of orphanages' (2016) 24(2) *The International Journal of Children's Rights* 378-407.

² RGC, *Royal Kram NS/RKM/0208/005 on the Suppression of Human Trafficking and Sexual Exploitation*, (2008), Cambodia; R, Nhep., van Doore, K., *Legal Framework for Orphanage Trafficking Cambodia*, (2021), Griffith University.

forms of exploitation in addition to profit and adoption. The inclusion of profit as a purpose for unlawful removal was a particularly progressive development in law. It paved the way for all known forms of orphanage trafficking to be prosecutable offenses, including the unlawful removal of a child from family and placement in an orphanage for profit.

In addition to criminal law reforms, Cambodia has made significant progress in strengthening the child protection and alternative care systems over recent years. Efforts include significant regulatory reforms, scaling back the number of institutions, developing a framework for fostering and adoption, strengthening gatekeeping systems, digitizing the inspectorate system, developing local level child protection mechanisms and services, improving access to social protection services, and providing case management services for reintegration. These commendable efforts go a long way towards reducing the vulnerability of parents and children to orphanage trafficking and exploitation, and constraining aspects of the operating environment of exploitative orphanages.

Despite these positive developments to strengthen the law and child protection systems, cases of exploitation and suspected trafficking of children in orphanages have continued to be reported. Yet there are no known cases where child trafficking charges have been pursued against offenders. This report explores the treatment of investigated cases of child exploitation in RCFs where trafficking could be reasonably suspected under law. In addition, it identifies gaps in the implementation of the legal and regulatory framework for orphanage trafficking, and factors that constrained the consistent application of law.

About the study and summary report

This study was conducted as a part of a multi-stage, multi-country project designed to enhance the identification, prosecution, and prevention of orphanage trafficking crimes. It was the second of four stages to be conducted in Cambodia as one of three jurisdictions included in the study. This second stage of the project comprised socio-legal empirical research designed to examine the in-situ application of the legal framework for prosecuting orphanage trafficking in Cambodia. Specifically, the study sought to identify how cases, where orphanage trafficking and exploitation were indicated, were interpreted, and addressed under law, by relevant authorities. In addition, it sought to explore the influence of socio-cultural factors on child protection, law enforcement and court officials' interpretation and decision making, and identify challenges to the uniform application of the law to orphanage trafficking cases. This report contains a summary of findings from this stage two case data and case study analysis.

³ MOSVY, *The Results of the Implementation of the Action Plan for Improving Child Care*, (2019).

Key findings

Findings Part A: Analysis of investigated cases of orphanage trafficking

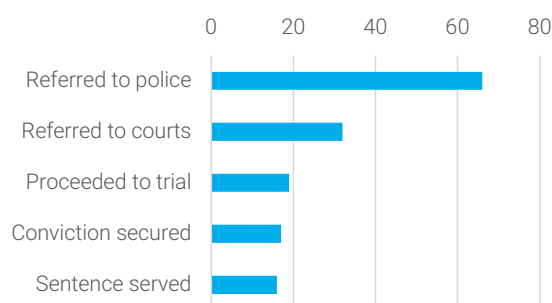
A total of 72 specific cases of orphanage trafficking and/or exploitation of children in residential care facilities were identified through the study. Orphanage trafficking and/or exploitation cases were detected in connection with 69 individual residential care facilities. Single suspects or offenders were identified in conjunction with 96% of involved RCFs and 2 or more offenders were identified and investigated in 2 RCFs. A minimum number of 440 victims were associated with identified cases.

Case data at a glance:

- Of suspected orphanage trafficking cases 67% occurred in NGO run RCFs, 15% in faith based RCFs, 12% in RCFs run by individuals and 6% in state run RCFs.
- Of suspects/offenders were 31% RCF directors, 28% were founders, 16% foreign volunteers, 11% religious leaders and 10% were staff, relatives, or donors.
- Of cases 38% occurred in unregistered RCFs, 8% in registered RCFs and 54% of cases occurred in RCFs where the registration status was unknown.

Charges were almost always only brought in cases of orphanage trafficking that involved sexual exploitation. In these cases, offenders were primarily charged with sexual offenses. There were no cases where offenders were charged with unlawful removal or transfer or receipt of a child unlawfully removed, for a purpose of exploitation, profit or adoption (child trafficking charges). Cases where the primary purpose was adoption or profit, and where sexual exploitation was not indicated, were rarely investigated. There were no records of such cases proceeding to trial. Orphanage trafficking cases involving profit and adoption were found to be the most underreported and least likely to progress through the criminal justice system.

CASE PROGRESS THROUGH CRIMINAL JUSTICE SYSTEM



Findings Part B: Socio-cultural barriers to the detection and prosecution of orphanage trafficking crimes

Key findings at a glance:

The main barriers to the consistent implementation of the legal framework for the detection, prosecution and prevention of orphanage trafficking crimes identified through the study included:

- Lack of enforcement of preventative child protection laws and regulations, including penalties for the unlawful operation of RCFs, and offenses for unlawful removal of a child and incitement to abandon. This was a barrier to prevention and contributed towards the normalization of elements of child trafficking offenses in orphanages.
- Lack of a distinct grooming offense within criminal law. This impeded the ability of stakeholders, including mandated authorities, to detect crimes and distinguish between conduct constituting 'care' and intent to sexually exploit a child. It reduced the likelihood of intervention prior to sexual abuse occurring. It also reduced protections for borderline minors over the age of sexual majority who were trafficked for the purpose of sexual exploitation.
- Lack of routine investigation into the legality of removal and admission into RCFs, especially in the context of investigations into the exploitation of children in residential care. This meant that the full scope of criminal conduct was rarely uncovered, and the element of unlawful removal was rarely evidenced in investigative briefs. This had an impact on charges, victim identification and perpetrator identification, especially those involved in the elements of removal, transfer, and receipt of a child.
- Reactive investigative practices and reluctance amongst police to investigate historical elements of a crime. As above, this limited detection of the element of unlawful removal and resulted in a narrow focus on investigating and prosecuting exploitation as a substantive offense, rather than child trafficking crimes.
- Limited and/or inconsistent awareness of orphanage trafficking and its indicators, especially amongst law enforcement and sub national child protection authorities. This impeded detection, reporting and limited investigative scopes.
- Difficulty gathering enough evidence to warrant investigation. This was due to jurisdictional barriers that limited access to RCFs and a lack of provision in law for undercover investigations.

- Inconsistencies in the implementation of the RCF inspectorate and monitoring system. Inspections were reportedly not always conducted rigorously, in-depth, or regularly. This enabled RCFs to superficially cover up non-compliance with minimum standards, hide irregularities in their practices, and evade remedial action for unlawful conduct. This limited detection and reporting, and enabled exploitative RCFs to continue to operate without intervention.
- Normalization of conduct that intersects with orphanage trafficking crimes, including involving children in fundraising activities in orphanages, irregular admission into RCFs, and operation of clandestine RCFs. This de-sensitised actors to indicators of orphanage trafficking, particularly the elements of unlawful removal and profit and limited the likelihood of detection, reporting and referral.
- Barriers to victim reporting and participation in the criminal justice process. These included stigma, cultural notions of gratitude and obligation towards offenders who had acted as benefactors of the children, lengthy trial proceedings, concerns of re-traumatization, lack of faith in the criminal justice system amongst lower socio-economic families, and victim tampering and interference by offenders.
- Jurisdictional and access issues stemming from RCFs being registered under various ministries. An in-practice requirement to secure permission from registering line ministries prior to entering RCFs impacted inspections of some RCFs, particularly faith-based RCFs, and resulted in delays in evidence gathering and interventions in response to reported concerns.
- Patron-client relationships forged between orphanage operators and other stakeholders within and external to the orphanages. These relationships discouraged reporting and disclosure, led to the minimization of abuse, and resulted in interference in investigations or remedial action.

The study identified gaps in the implementation of the legal and regulatory framework, and several factors that constrained the consistent application of law. These included barriers that were situated at various levels within the criminal justice system, child protection system and internal operations of residential care facilities. Additional barriers stemmed from limited awareness of orphanage trafficking, community attitudes towards residential care, cultural notions and norms regarding gratitude, and patron-client obligations.

Barriers related to knowledge and awareness, included varying levels of awareness of orphanage trafficking and its indicators, and technical knowledge of the TSE child trafficking offenses amongst relevant stakeholders. The highest levels of knowledge were reported

amongst judiciary, court officials and specialized investigative organisations. The lowest levels of knowledge were reported amongst local authorities, sub national child protection authorities and police, who tend to be more at the forefront of detection, victim identification and case referral. The Guidelines on Forms and Procedures for the Identification of Victims of Human Trafficking for Appropriate Service Provision are an important mechanism for developing capacity for detection and victim identification, particularly amongst front-line actors. However, the guidelines do not include most indicators of orphanage trafficking. As such there was no clear framework to guide detection amongst front-line actors, who often lacked the more specialized training in legal interpretation afforded to those higher up in the criminal justice system. This impeded detection of orphanage trafficking crimes and the likelihood of cases being acted upon and progressing through to full investigation.

Detection and interpretation were further complicated by the fact that these crimes occurred in orphanages, which remained widely and positively viewed by most segments of society as vital child protection services. This reduced scrutiny on RCFs and their operators, and enabled constituent elements or indicators of orphanage trafficking, including grooming and the commodification of children, to be obfuscated. It made it challenging for authorities to differentiate between 'care' and exploitation in the process of evidencing crimes. In addition, narrow investigative scopes, and a lack of proactive police investigation, particularly in the preliminary stage of investigation, also limited detection and prosecution of orphanage trafficking crimes. Investigations tended to be limited to establishing the material facts of the offense reported or charges proposed. Reports were generally only made when the purpose constituted a substantive and well understood offense, such as sexual exploitation. Therefore, without proactive investigations to uncover the full scope of criminal conduct, including whether children subject to exploitation had also been unlawfully removed, evidentiary briefs were unlikely to validate child trafficking charges. The confluence of these factors was found to have a diminishing effect on the likelihood of orphanage trafficking crimes being detected and prosecuted, and on the identification of all the victims and offenders. The most significant impact of these barriers was on the detection and prosecution of cases involving purposes other than sexual exploitation, including profit and adoption. In almost all cases that progressed to prosecution, offenders were charged with sexual offenses—not trafficking, despite numerous offenses occurring in clandestine RCFs where removal is *prima facie* unlawful.

Numerous barriers situated within the child protection and alternative care system were also identified. These included the inconsistent enforcement of preventative child protection regulations, such as penalties for legal persons operating clandestine RCFs⁴, and discrepancies in the rigor and regularity of RCF inspections. Gaps were also noted in the enforcement of gatekeeping (legal procedures regulating the admission of children in

⁴ Defined under law as unauthorized residential care facilities.

residential care) and consequences for irregular admission of children into RCFs. These barriers were sometimes externally imposed on mandated child protection authorities who were unable to implement laws and regulations with specific RCFs due to jurisdictional barriers or the presence of patrons. Inconsistent implementation of the alternative care regulatory and monitoring framework was found to reduce safeguards for children in residential care. It decreased the likelihood of abuse, exploitation and trafficking being detected in orphanages and referred for investigation and intervention.

Barriers to detection, reporting and prosecution also stemmed from the internal operations of RCFs. In many cases they were linked to power dynamics between directors, staff, children, and their families or external patrons. Power dynamics coupled with the closed environment of orphanages often made it unsafe for children to disclose abuse when it was occurring and whilst they remained under the control and authority of the perpetrators. The study found that coercion and threats were common tactics used by perpetrators to silence children and families and prevent reporting. As a result, disclosures by children or young people often occurred only after they had left the RCF. Out of court settlements were also cited as a barrier. These were sometimes the result of victim and witness tampering during the investigative stage and in other cases, precluded and circumvented complaints being filed with police. These same power dynamics were also reported to impact children and family's perception of crimes, and result in minimization and underreporting of criminal conduct. This was due to cultural notions of gratitude and loyalty that stem from orphanage directors/caregivers taking on patron or benefactor roles in the children's lives, providing them with shelter, food and education. This made children more likely to justify the exploitation as the means by which their debt of gratitude was exacted by the orphanage director (where the director was the perpetrator). Children also reportedly felt obliged to stay silent out of a sense of loyalty to the director/benefactor. In addition, the study found orphanages that had external patrons were often exempt from laws and regulations or shielded from legal consequences of unlawful or criminal conduct. This impeded consistent implementation of the legal framework and constrained the ability of mandated authorities to intervene in the operations of certain orphanages.

Recommendations

Sensitization and training

The findings of the study showed that there is inconsistent, and in some sectors, limited awareness of orphanage trafficking and the indicators of the crime. This resulted in indicators being missed or misinterpreted, whole crimes or elements of trafficking crimes going unreported, and victims remaining unidentified and in situations of exploitation and risk. The findings pointed to a need to improve general awareness of orphanage trafficking and its indicators broadly across child protection, law enforcement, anti-trafficking, and criminal justice systems. Awareness raising and sensitization activities should be conducted with all stakeholder groups who have child protection and criminal justice mandates to improve knowledge, and subsequently rates of detection, reporting, investigation, prosecution, and remedy for victims. This should include at a minimum awareness raising initiatives targeting:

- Mandated child protection authorities, including those operating at the national and subnational levels to improve detection and reporting in the context of residential care facility inspections, child protection reports and responses, and in the implementation of alternative care gatekeeping functions.
- Social workers and case managers, including DoSVY social workers and civil society social workers, to improve detection, reporting and victim identification in the context of case management for reintegration, and technical support for the closure or transition of RCFs.
- Law enforcement, including judicial police and specialized juvenile anti trafficking police, to improve their capacity to interpret reports, complaints, disclosures or gather appropriate evidence during investigations. Improved knowledge amongst law enforcement will support wider investigative scopes to enable elements of trafficking, other than those reported, to be uncovered.
- Court and judicial officers, including court clerks, prosecutors, investigating and trial judges, to increase general awareness of orphanage trafficking crimes, and specialized knowledge of the application of TSE offenses to orphanage trafficking and its elements.
- Civil society organisations, including those focused on human trafficking, child sexual abuse, legal aid, and human rights. These organisations often provide support to either law enforcement or victims throughout various stages of the criminal justice proceedings.

Strengthening enforcement of existing mechanisms

The study highlighted the critical importance of strengthening the enforcement of preventative laws, policies, and alternative care monitoring mechanisms to curtail orphanage trafficking and improve early detection and intervention. Existing laws prescribing penalties for the operation of an unauthorized (clandestine) RCF, unlawful removal of children, and inciting abandonment, need to be routinely enforced. This is critical to disrupting the operating environment of unregulated orphanages in which child trafficking and exploitation most often occurs, and to deterring offenders. More rigorous enforcement of these preventative laws will additionally address the normalization of the unlawful operation of RCFs and unlawful removal, which the findings of this study show undermine the detection of crimes.

The study also identified the importance of strengthening the implementation of the residential care inspectorate and monitoring system. Inspectors with jurisdiction to enter and scrutinize the operations of RCFs have the most opportunity to uncover indicators of orphanage trafficking and report them. However, this requires consistently rigorous, in-depth inspections and a strong commitment to integrity and transparency. Responses to irregularities uncovered in the inspection process should be addressed in a routine manner based on pre-determined remedial actions. Consideration needs to be given to the monitoring of inspections and supervision of inspectors to preclude clientelism and rent seeking behaviors from undermining the integrity of inspections or enforcement of follow up actions.

Legislative, regulatory and protocol reforms

The study findings identified several ways the legislative, regulatory, policy and procedural frameworks across the anti-human trafficking and child protection sectors, could be strengthened to combat and enhance the prosecution of orphanage trafficking.

1

First, it is imperative for Cambodia to progress with plans to enact grooming offenses. The grooming of children under the age of sexual majority should be criminalized as a specific offence. So too should the grooming of their trusted persons (family members or guardians) and the grooming of children under the age of 18 by persons in positions of power, authority, or trust. Directors and staff of RCFs should be included in the definition of 'persons of power, authority, or trust'. The enactment and socialization of grooming offenses is likely to impact positively on the detection and prosecution of orphanage trafficking crimes. Enacting grooming offenses will make some of the indicators of orphanage trafficking substantive crimes, improving the likelihood of law enforcement and mandated reporters acting on the detection of these indicators. It will strengthen the legal basis for law enforcement and mandated child protection authorities to intervene

in a situation where abuse has not yet been reported and increase the chances of interventions being staged before sexual exploitation occurs. This will increase the likelihood that perpetrators of orphanage trafficking will be prosecuted based on the intent to sexually exploit a child who has been unlawfully removed. The clear articulation of grooming conduct is likely to improve the ability of law enforcement and judiciary to differentiate between indicators of exploitation or intent to exploit and 'caregiving', which was identified as a barrier to interpretation and prosecution in this study.

2

Second, it is recommended that the Guidelines on Forms and Procedures for the Identification of Victims of Human Trafficking for Appropriate Service Provision⁵ be reviewed and updated to include indicators of emerging forms of human trafficking, including orphanage trafficking. The development of accompanying policy or thematic briefs will assist to elucidate some of the key indicators of orphanage trafficking, and their primary means of detection and interpretation under law. Such guidance should particularly focus on the elucidation of unlawful removal as it occurs in conjunction with the removal and placement of a child in an RCF. Clear information on the prescribed legal powers and justifications for removal and placement into residential care, needs to be made accessible and disseminated to stakeholders across criminal justice, child protection and the anti-human trafficking sectors. A review and update such as this will address several of the barriers to the detection and prosecution of orphanage trafficking crimes, including knowledge of the indicators and their interpretation under law.

3

Third, the development of investigative protocols is recommended to guide the collation of evidence in all cases where reports are made, or complaints filed, involving the abuse, exploitation, or adoption of a child in connection with an RCF. The protocol should:

- (a) Direct investigators to routinely establish the legality of the removal of the child from parental powers or guardianship and placement in an RCF and provide specific guidance to aid interpretation of information gathered.
- (b) Require investigating police and judges to routinely request inspection and registration information on the RCF subject to allegations from MoSVY/DoSVY in all criminal cases connected to orphanages. This

⁵ Guidelines on Forms and Procedures for the Identification of Victims of Human Trafficking for Appropriate Service Provision 2015.

will help investigators understand whether the RCF is operating lawful, meeting prescribed minimum standards and whether incidents or patterns of violations have been recorded.

- (c) Instruct investigators to consider all children residing in the RCF subject to allegations as potential victims for investigative and victim identification purposes.

Investigative protocols that mandate investigators to explore the legal status of the RCF and legality of removal and placement, will improve the likelihood of the element of unlawful removal.

4

Finally, regulating voluntourism and the use of volunteers is a key strategy to combat orphanage trafficking and the sexual exploitation of children in travel and tourism more broadly. Voluntourism regulations should be introduced to regulate the use of volunteers in all settings with direct contact with children. A specific prohibition on orphanage tourism, voluntourism and the use of unskilled volunteers in RCFs should be included in voluntourism regulations, and in child protection regulations. Penalties should be prescribed for infringements and focus on penalizing legal persons who facilitate and/or profit from orphanage tourism and voluntourism (e.g., volunteer sending or receiving organisations, including the RCFs, destination management companies and local tourism/voluntourism service providers).

Prohibitions on orphanage voluntourism will enhance efforts to combat and prosecute orphanage trafficking in several ways. Rendering the facilitation of orphanage voluntourism unlawful will reduce the incentive for children to be trafficked into RCFs for profit, producing a preventative effect on orphanage trafficking. Clear indicators of orphanage trafficking, specifically those that indicate the purpose of profit, will make it easier for stakeholders to act. A streamlined process of evidencing 'profit' enables the element of purpose to be established and evidenced, and for charges of unlawful removal for profit to be brought in these cases. Combined, these factors may improve the likelihood offenders who traffic children into RCFs for the purpose of profit will be prosecuted, including those involved in the recruitment of children from their families.

To read the full findings of the study, please see [Implementing the Legal Framework for Orphanage Trafficking](#).