



# IMPLEMENTING THE LEGAL FRAMEWORK FOR THE PROSECUTION OF ORPHANAGE TRAFFICKING

## A Cambodia Case Study

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**Disclaimer**

The opinions expressed in this publication are those of the authors. They do not purport to reflect the opinions or views of Griffith University, Better Care Network or Optimus Foundation.

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# Introduction

**Orphanage trafficking is a type of child trafficking that involves the recruitment and/ or transfer of children into residential care institutions, for a purpose of exploitation, profit or adoption.<sup>1</sup> It typically takes place in low- and middle-income countries where child protection services systems are highly privatized, under-regulated, and primarily funded by overseas sources. In such circumstances, residential care is used prolifically and inappropriately as a response to child vulnerability, including lack of access to education.**

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. Profiting from children's admission into orphanages may involve false representation of children as orphans or as abandoned in admission files, fraudulently issued identity documents, and/or in donor communications, which is referred to as paper orphaning.<sup>2</sup> It is employed as a means of legitimizing the child's admission into care, eliciting sympathy from donors and visitors, and soliciting donations. Reports of orphanage trafficking in Cambodia for the purpose of exploitation or profit started to emerge in 2013.<sup>3</sup> It has been acknowledged as an ongoing issue in reports released in subsequent years, including the Global Slavery Index and US State Department Trafficking in Persons Reports.<sup>4</sup>

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.<sup>5</sup> Based on the definitional constructs of TSE child trafficking offenses, orphanage trafficking comprises the elements of unlawful removal of a child from parental powers or guardianship for a purpose of exploitation, profit, or adoption. Unlawful removal is defined as:

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<sup>1</sup> K, van Doore, R, Nhep., 'Providing Protection or Enabling Exploitation? Orphanages and Modern Slavery in Post Disaster Contexts' (2021) 6(3) *Journal of Modern Slavery: A Multidisciplinary Exploration of Human Trafficking Solutions* 46-61.

<sup>2</sup> Katryn 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

<sup>3</sup> Cambodia shuts orphanage after reported abuse', USA Today (25 March 2013) <<https://www.usatoday.com/story/news/world/2013/03/25/cambodia-shuts-orphanage-after-reported-abuse/2017279/>>.

<sup>4</sup> Global Slavery Index 2016; United States Department of State, 2018 *Trafficking in Persons Report - United States of America*; United States Department of State, 2019 *Trafficking in Persons Report - United States of America*; United States Department of State, 2020 *Trafficking in Persons Report - United States of America*.

<sup>5</sup> 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.

without legal authority or any other legal justification to do so, take a minor or a person under general custody or curatorship or legal custody away from the legal custody of the parents, care taker or guardian.<sup>6</sup>

The legal powers, justifications, and persons with authority to remove a child from their parents or legal guardian and place them in a residential care facility are articulated in various child protection laws, and regulations.<sup>7</sup> Regulations also stipulate the provisions for the lawful operation of a residential care facility and admission of children.<sup>8</sup> This makes it possible to determine in any given case whether the child's removal and placement in the residential care facility was unlawful. Where a purpose of exploitation or profit or adoption is additionally evidenced, the conduct constitutes a crime of child trafficking under Cambodian law. Offenders involved in all stages of orphanage trafficking, including the recruitment, transport, transfer, receipt or harboring of a child, can be prosecuted under a range of offenses prescribed in the TSE Law.

The potential for orphanage trafficking to be prosecuted under existing law is aided significantly by the inclusion of profit making as a specific purpose in the TSE Law trafficking offences, thus capturing, and criminalizing the main impetus for the trafficking of children into orphanages. This makes Cambodia's legal framework particularly progressive and enabling of prosecutions. However, the effective implementation of these laws is contingent upon a range of factors that make up the social environment in which these laws must operate. This report examines the legal framework for orphanage trafficking in context; its application to cases where orphanage trafficking was indicated, and the various factors that enable or constrain the effective implementation of law and identification and prosecution of orphanage trafficking.

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<sup>6</sup> TSE Art. 8.

<sup>7</sup> *Civil Code*, Art 1048; *Civil Code*, Art 1050; *Law on Marriage and Family*, Art 119; *Prakas no. 2280 on the Implementation of the Policy on Alternative Care for Children*, Art 15; *Law on the Prevention of Domestic Violence and Protection of Victims*, Art 10; *Sub Decree 119 on the Management of Residential Care Institutions*; *Prakas no. 217 on the Enforcement of the Policy on Alternative Care for Children*; *Sub Decree 34 on the Transfer of Functions for the Management of State-Run Residential Care Centres to the Provincial and Municipal Level and the Transfer of Functions for the Inspection and Oversight of Non-Government Run Residential Care Centres to the District/City level and the Transfer of Functions for the Management of Vulnerable Children in the Community to the Municipal, City and Commune level*.

<sup>8</sup> Sub Decree 119.



# Scope and Methodology

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 study 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.

The study employed a case study analysis approach. Various data sources were collected, analyzed and triangulated. Sources included judicial decisions, extracted de-identified data from investigative records, inspection forms, and in-depth interviews with key stakeholders across law enforcement, criminal justice, and child protection. All stakeholders interviewed had direct experience of working on cases where child trafficking and/or exploitation in a residential care facility was detected and investigated. Different methods were used to analyze different data sources. Case law analysis was used to analyze data derived from judicial decisions and investigative files. Thematic analysis was used to analyze interview data. Document analysis was used to analyze guidelines and procedural tools relevant to victim identification and residential care inspections. Findings included in this report were evidenced by these multiple strands of data.

Case selection was based on the detection of a single individual involved in an alleged or substantiated incident of trafficking of children into a residential care facility and/or their exploitation. Identified incidents that did not result in lawsuits were included as cases, provided the material elements were sufficiently substantiated by evidence gathered by an investigative body (law enforcement or civil society organization). The decision to define a case more widely than a lawsuit was made to enable one of the prior hypotheses to be tested; that limited knowledge of orphanage trafficking, and its indicators, inhibits detection, interpretation, and progress through the criminal justice system.

Cases included in the case law analysis were analyzed against the legal framework for prosecuting orphanage trafficking as articulated in the phase one doctrinal research findings report.<sup>9</sup>

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<sup>9</sup> Nhep, R., van Doore, K. *The Legal Framework for Orphanage Trafficking in Cambodia: Enhancing identification, prosecution and prevention*, Griffith University, 2021.

## CASE IDENTIFICATION

This study employed several methods to identify cases for inclusion in the analysis. A case inclusion criterion was developed and used to request documentation and information from provincial courts of first instance and informants. This included:

1. A list of indicators and offenses under which charges may have been brought or convictions secured. These included relevant offenses under the TSE Law and Criminal Code. Offenses were drawn from the findings of stage one of this research on the analysis of the legal framework for the prosecution of orphanage trafficking.
2. A list of relevant cases reported in the mainstream media, including available details about the geographic location of the case, offender or alleged offender, nature of the offence, and charges and trial outcomes.
3. A list of names of orphanages that had been implicated in reports, or where suspicions of child trafficking and/or exploitation had been previously reported to child protection organizations, mandated child protection authorities or law enforcement. To compile this list the Chief Investigator also drew upon their knowledge and professional experience of reports or allegations made against specific orphanages.

Once judicial decisions, other primary court documentation or de-identified investigative data was obtained, documentation was vetted and cases where orphanage trafficking or exploitation was not indicated were excluded. The result was a final dataset of 72 cases where the level of information and evidence was sufficient to indicate that, at minimum, the offense of unlawful removal with purpose and/or exploitation had occurred against a child in a residential care facility. These cases occurred between the years 2000-2021. Criminal justice proceedings for several cases included in the study had not been concluded at the time of writing.

## KEY INFORMANT INTERVIEWS

In addition to compiling a dataset of cases, in-depth semi-structured interviews were conducted with 27 key informants. Key informants were selected from across 3 stakeholder groups:

1. **Criminal Justice System:** including judges, prosecutors, court clerks and victim defense lawyers.
2. **Child Protection Social Workers:** Social workers responsible for implementing case management for the reintegration of children out of residential care facilities, including in support of mandated child protection authorities.



- 3. Investigators:** Civil society organization (CSO) investigators involved in the investigation of serious crimes against children, in support of law enforcement.

Purposive sampling was used to identify and recruit key informants for interviews. The criterion for all stakeholder groups was previous professional involvement in responding to cases where orphanage trafficking and exploitation was indicated. Media reports, case law and primary court documents were reviewed to identify relevant provincial courts and experienced court officials, members of the judiciary and victim defense lawyers with direct experience of cases of exploitation of children in residential care facilities. Once identified, request letters were submitted to provincial courts as part of the recruitment and consent process. In a limited number of cases, victim defense lawyers approached for participation identified experienced colleagues, and invited their participation. In addition, requests for interviews were sent to all CSO investigative organisations who are authorized to investigate child trafficking and exploitation crimes, in support of law enforcement. CSOs involved in child and family tracing, and the reintegration of children out of residential care facilities were approached and requests made to interview senior social workers and case managers.

For the semi-structured interviews three interview guides were tailored for the different stakeholder groups. The first was designed to capture information from social workers involved in case management for the reintegration of children out of residential care. The second focused on capturing information from CSO investigators and victim defense lawyers, and the third focused on capturing information from court officials on the progression of cases through the criminal justice system. Questions were open ended and designed to enable the development of new theory regarding socio-cultural factors affecting the implementation of the legal framework for prosecuting orphanage trafficking. In addition, priors were identified from the Stage 1 report, and some questions designed to specifically test them.

An information sheet containing the consent form was also prepared and provided to all prospective participants. This was made available in English and Khmer. Interviews were conducted in Khmer for all Cambodian Nationals and English for expatriate personnel. All interviews were recorded and later transcribed. Khmer language interview transcripts were translated into English.

## ANALYSIS

After interviews were transcribed, qualitative data from the interview transcripts was analyzed using thematic analysis. Nvivo was used for data storage and management. An attributes matrix was developed and used to analyze case data.

## LIMITATIONS

There were several pertinent limitations to this study. Limited access to data, particularly judicial decisions, constrained the identification of relevant cases for inclusion in the analysis.

Judicial decisions for some known cases could not be located. For others, a complete dataset could not be extracted from investigative files, leading to the exclusion of some cases.

Cases involving sexual exploitation were the most reported, investigated and prosecuted of all orphanage trafficking crimes. This was due to a general reporting bias for crimes involving sexual offenses and was further influenced by the specific mandates of participating organizations and stakeholders. Case data on offenses where sexual exploitation was present are disproportionately represented in this study as a result.

While data on the number of victims of exploitation was gathered for each case, an accurate number of counts of trafficking, exploitation, or other criminal offenses, associated with these cases could not be determined. This was due to gaps in investigation, including of key elements of trafficking, and therefore gaps in data.

Despite making inquiries and submitting requests, researchers were unable to interview stakeholders from two key stakeholder groups: mandated child protection authorities and judicial police. Further research involving these stakeholder groups, to unpack the nuance of constraints and challenges reported by other stakeholders, is needed to bring balance to the study findings. In addition, personnel from one key provincial court of first instance were not interviewed due to the limited availability of relevant stakeholders from this specific court.

# Findings Part A: Analysis of investigated cases of orphanage trafficking

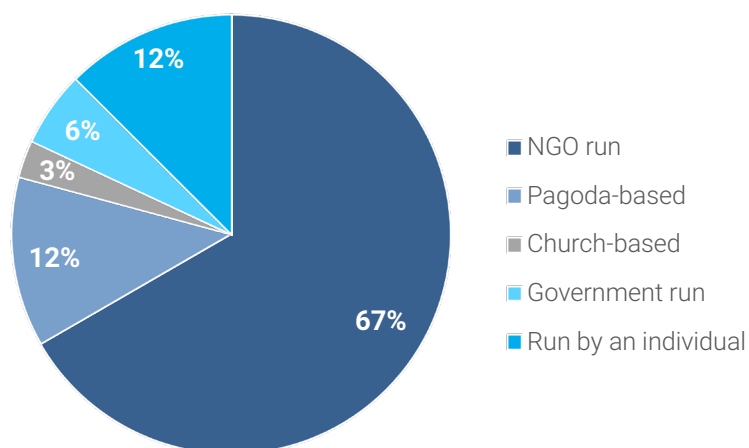
## NUMBER OF CASES

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 96% of RCFs and 2 or more offenders were identified and investigated in 2 RCFs.<sup>10</sup>

## PROFILE OF THE ORPHANAGES WHERE CASES WERE IDENTIFIED

Of all detected cases of orphanage trafficking and/or exploitation 48 (67%) occurred in NGO run residential care facilities. Nine cases (12%) occurred in Pagoda-based residential care services, 2 (3%) in church-based residential care facilities, 4 (6%) in government run residential care institutions and 9 (12%) in residential care facilities set up by individuals and not under any registered entity.

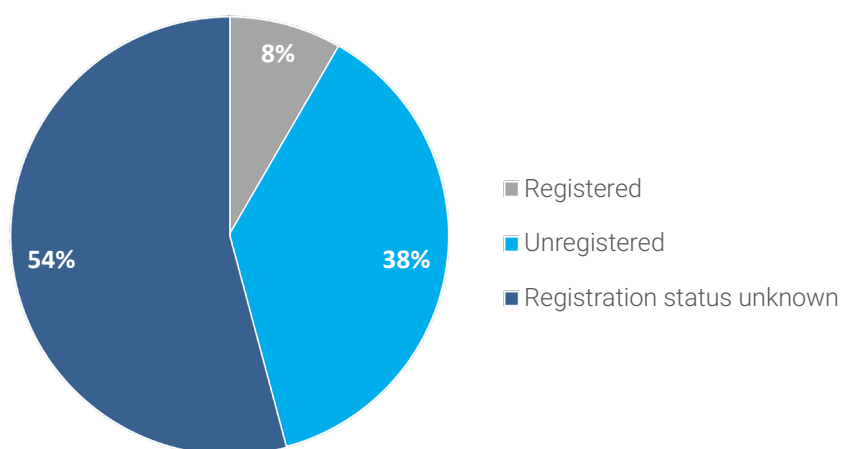
**TYPES OF RCFs WHERE ORPHANAGE TRAFFICKING AND/OR EXPLOITATION CASES WERE IDENTIFIED**



<sup>10</sup> Single offenders were typically identified in the documentation as there was a focus on detecting and investigating sexual exploitation at the exclusion of other purposes or forms of exploitation. In all cases there was a lack of investigation into all the elements of trafficking. This meant that other persons who may have been involved in the recruitment and transportation were not identified or subject to any level of investigation.

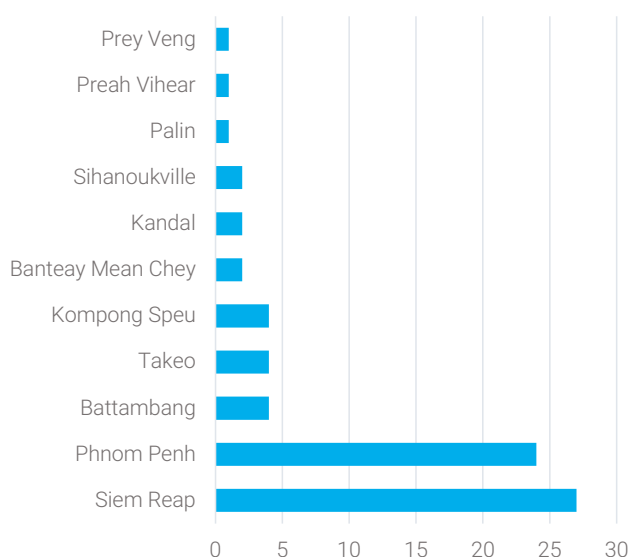
At least 38% of cases occurred in RCFs that were not authorized by the Ministry of Social Affairs, Veterans and Youth (MOSVY), and were therefore operating without registration or permission. Only 8% of cases occurred in RCFs known to be authorized. In 54% of cases, the authorization status of the RCF was not recorded as part of the investigation and was therefore unknown. The high number of cases in which the authorization status of the RCF was unknown points to a gap in the investigation of alleged instances of exploitation in residential care facilities. Authorization is a critical factor in determining whether removal was lawful or unlawful, and therefore whether trafficking took place, yet this is not systematically investigated in cases where exploitation is reported.

#### AUTHORIZATION STATUS OF RCFs WITH IDENTIFIED CASES



Cases of orphanage trafficking and/or exploitation were detected in residential care facilities located in 10 different provinces and the capital city. Geographical locations recording the highest number of cases were Siem Reap, with 37.5% prevalence, and Phnom Penh with 33.3% prevalence. This largely reflects the concentration of residential care facilities in these two locations. The 2017 mapping of residential care facilities report identified that 29% and 20% of all residential care institutions in Cambodia were in Phnom Penh and Siem Reap respectively.<sup>11</sup>

#### GEOGRAPHICAL DISTRIBUTION OF CASES



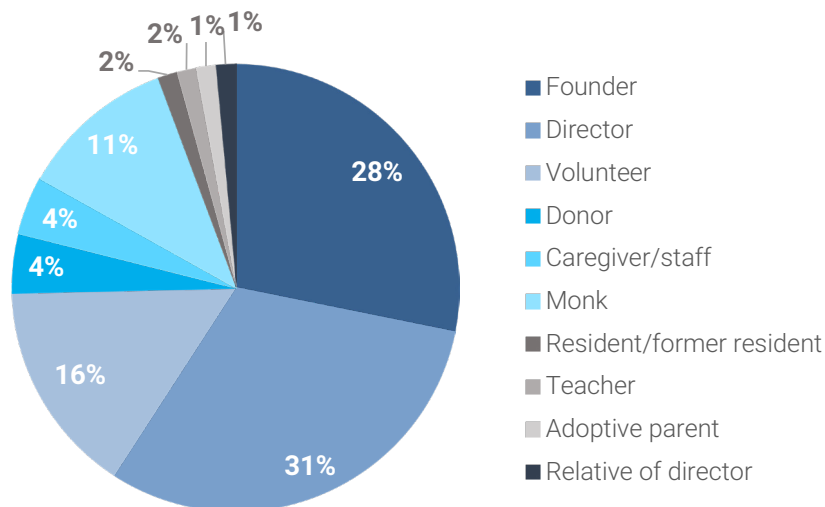
<sup>11</sup> MoSVY, *Mapping of Residential Care Facilities in the Capital and 24 Provinces of the Kingdom of Cambodia*, 2017.

## PROFILE OF THE OFFENDERS/SUSPECTS

The study found that offenders/suspects held a range of roles that gave them access to the orphanage and the children in care. Offenders/suspects were the directors of the orphanage in 31% of cases. Twenty-eight per cent were the founders. Overseas volunteers accounted for 16% of offenders/suspects. Monks residing in Pagodas that also housed pagoda-based residential care facilities were offenders/suspects in 11% of cases. Donors and staff/caregivers were offenders/suspects in 4% of cases respectively. Teachers, former residents, adoptive parents and a relative of the director were offenders/suspects, each in 2% of cases.

The data collected on the role of offenders/suspects in orphanages where trafficking and/or exploitation was reported, does not provide a comprehensive picture of the roles' offenders adopt to access children for trafficking and/or exploitation purposes. In most cases, only offenders/suspects involved in the exploitation within the orphanage were identified in the case data. The element of unlawful removal was never fully investigated, which meant offenders/suspects involved in the child's recruitment, transfer, receipt, or harboring were not identified. In addition, cases where profit was the primary purpose are underrepresented in this dataset, as profit is not a substantive offence, and requires substantiation of the element of unlawful removal for an offense to be confirmed. This data therefore better represents the profile of offenders involved in children's exploitation, and disproportionately, sexual exploitation.

ROLE OF THE OFFENDER IN THE RCF



Suspects/offenders involved in identified cases of orphanage trafficking and/or exploitation were Cambodian nationals in 51% of cases, and foreign nationals in 47% of cases. One offender held dual Cambodian and foreign citizenship. This finding is influenced by several factors, including the specialization of one of the investigative organisations in cases involving foreign sex offenders, and the lack of identification of offenders involved in the element of unlawful removal and admission into care for the purpose of exploitation, profit, or adoption. It is much more likely that offenders involved in the recruitment and removal

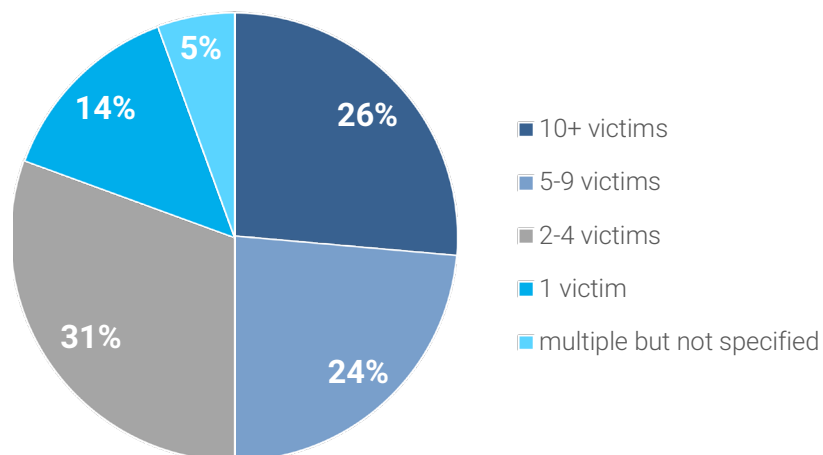
processes would be Cambodian nationals. This constitutes a gap in data that warrants further research and investigation.

## PROFILE OF THE VICTIMS OF ORPHANAGE TRAFFICKING AND EXPLOITATION

A minimum of 440 victims of orphanage trafficking and/or exploitation were identified in the 72 detected cases. This is highly likely to be an underestimate for several reasons. First, in many cases, only victims of sexual exploitation were identified, even when the purpose of profit was documented or could be reasonably suspected. Second, in some cases, it was known there were multiple victims, yet no specified number was given. A conservative estimate of 3 was assigned to each of these cases. In cases involving trafficking for the purpose of adoption, the exact number of victims is unknown. Only limited numbers based on known investigations or tracing efforts were included, yet data from foreign embassies and media reports suggests that the true number of children who were unlawfully removed for adoption purposes in conjunction with cases included in this study could well exceed 1000.<sup>12</sup>

The study showed that orphanage trafficking cases typically involve more than one victim. Multiple victims were identified in 86% of cases and one quarter of all cases (18 cases) involved 10 or more victims. The highest number of victims associated with 1 case was 18. There was no firm correlation noted between the role of the offender to the RCF and the number of victims, suggesting that all forms of access, through prescribed roles that give offenders some power/authority over children, constitute an equal risk for abuse and exploitation.

**AUTHORIZATION STATUS OF RCFS WITH IDENTIFIED CASES**



The ages of victims of orphanage trafficking and exploitation, at the time of the offence, varied widely across cases. The youngest victims were infants under one year old, and the

<sup>12</sup> LICADHO, *Cambodia's Stolen Children; Fraud and corruption in the inter-country adoption system*, 2018.

oldest victim was 17. Infants who were documented victims of orphanage trafficking in the dataset were all associated with cases of unlawful removal for the purpose of adoption. The youngest child subject to sexual exploitation in an orphanage was 3 years old.

Case data on victim age was disaggregated based on whether the victim was under 15 years old or 15 years old or above at the time of the offense. This was to align the analysis with the definitions of sexual offenses under the TSE Law and Criminal Code, which differentiate between sexual offenses against minors under the age of sexual majority (15 years old) and those against someone who has reached the age of sexual majority.<sup>13</sup> In 51% of cases, all the victims associated with a single case recorded in the dataset were under the age of 15. In 41.6% of cases, there were a mix of victims under and over the age of 15. In 4 (5.5%) cases, the victims were all over 15 years old, and in 1 case the age of the victim was unknown.

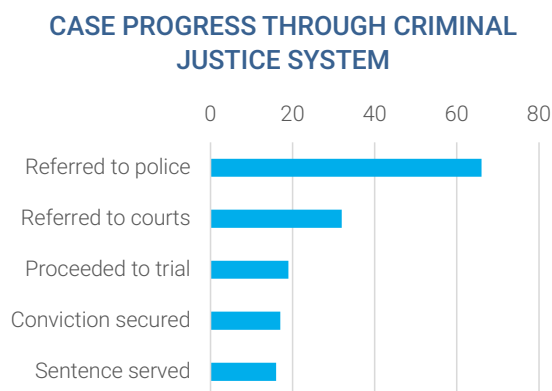
## PROGRESS OF CASES THROUGH THE CRIMINAL JUSTICE SYSTEM

The vast majority of identified cases (66 or 91.6%) were referred to the police. Less than half of these (32 cases) were referred by the police to the courts. 23 cases were dismissed by police. 6 remained under police investigation at the time of writing, with some investigations having stagnated for a period of years. 2 cases involving foreign offenders were referred to a foreign jurisdiction for investigation/prosecution, and in 3 cases, progress beyond police reporting was unknown.

Convictions were secured in 17 of the cases referred to provincial courts of first instance. In one case where a conviction was secured, the offender's sentence was suspended. The remaining 16 offenders served sentences of varying lengths. Two further convictions were secured in cases referred and prosecuted in foreign jurisdictions. In 9 of the cases referred to the courts, charges were either not brought or dropped pre-trial.

In two further cases the trial had not proceeded at the time of writing, with at least 1 of those cases still under court investigation.

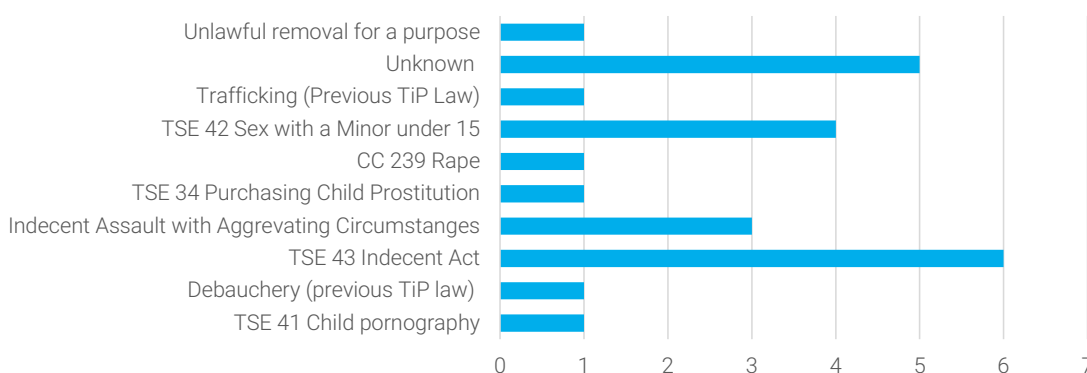
Charges brought in cases that proceeded to trial included those show in the graph below.



<sup>13</sup> Victims ages were under Cambodian law, sexual offenses are differentiated between those committed against minors under 15 years of age and those committed against person who have reached the age of sexual majority, which is set at 15 years of age. For under 15-year-olds, prosecutors are required to lay criminal charges under Chapter 6 of the TSE law. For over 15-year-olds, sexual offenses in the Criminal code can be brought.



## CHARGES BROUGHT AGAINST OFFENDERS



Charges were almost always only brought in cases that involved sexual exploitation. In these cases, prosecutions were mainly for the substantive offence of sexual exploitation and not for trafficking. There was one exception where charges of child trafficking were brought against three suspects involved in an orphanage trafficking for adoption purposes.<sup>14</sup> It is unknown what the outcomes were, or whether the case proceeded to prosecution. In another case, also associated with fraudulent adoption, two suspects who were staff at an orphanage implicated in illicit adoption, were arrested on suspicions of human trafficking. Media reports indicate the suspects were released without charge due to political interference.<sup>15</sup> In one additional case, charges of unlawful removal with purpose and fraud (associated with fraudulently running an NGO) were initially raised by police for an offender who established an orphanage and used it to procure children for foreign pedophiles who were posing as volunteers and paying for access to the children. The final charges were not publicly disclosed, however the limited information released by authorities regarding the potential sentencing length indicated that trafficking charges were not pursued.

Charges were not brought in other cases referred to courts where profit or adoption was the primary recorded purpose and sexual exploitation was not indicated.

## CROSS REPORTING AND REFERRAL BETWEEN SOCIAL SERVICES AND LAW ENFORCEMENT

The Guidelines and Forms and Procedures for the Identification of Victims of Human Trafficking for Appropriate Service Provision outline a cross referral mechanism between law enforcement and social service officials. This is designed to ensure that identified victims of trafficking and exploitation receive both legal and social support services. In addition, Sub Decree 119 on the Management of Residential Care Centres identifies the Department

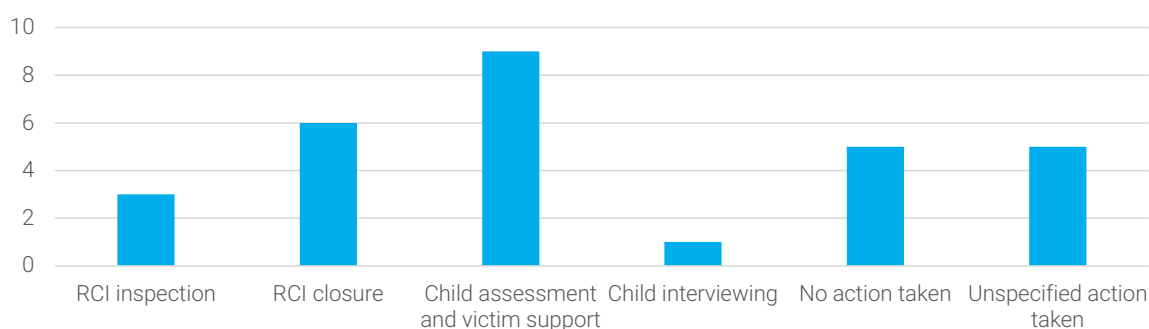
<sup>14</sup> <http://poundpuplegacy.org/node/28363>

<sup>15</sup> <https://www.phnompenhpost.com/national/tourism-officials-quit-ministry-run-adoption-business>

of Social Affairs, Veteran and Youth (DoSVY), under the oversight of the Ministry of Social Affairs, Veterans and Youth Rehabilitation (MoSVY) Child Welfare Department, as the responsible authorities for receiving reports of abuse or exploitation in RCFs and investigating allegations of abuse, neglect, or exploitation of a child in alternative care.<sup>16</sup> Investigations must be conducted within a 48hr period of reporting and can be jointly conducted with police and commune authorities. The regulations empower DoSVY officials to immediately remove alleged perpetrators and/or children in care where the allegation involves sexual abuse, serious physical violence, or life-threatening neglect.<sup>17</sup> MoSVY and judges, in conjunction with provincial governors, are empowered to enact emergency closures of RCFs involved in the exploitation or serious maltreatment of children in care.

Despite mandatory cross reporting requirements between law enforcement and social services/child protection authorities, there were gaps in data regarding the involvement of DoSVY and MoSVY in reported cases of exploitation in residential care facilities. In 40.3% of reported cases, a cross report or referral to child protection authorities, at either the national or subnational level, had been made and documented. In 44.4% there was no indication in documentation as to whether a report and referral had been made by law enforcement to DoSVY/MoSVY. In 15.3% no report or referral to DoSVY/MoSVY had been made.

#### NATURE OF MOSVY/DOSVY RESPONSE IN REPORTED CASES



<sup>16</sup> MoSVY, *Prakas no. 2280 on the Implementation of the Policy on Alternative Care for Children*, Art 23; MoSVY. *Sub Decree 119 on the Management of Residential Care Centres*.

<sup>17</sup> *Prakas 2280 MoSVY Art 23*.

# Findings Part B: Qualitative analysis (socio-cultural analysis)

## INVOLVEMENT OF MANDATED CHILD PROTECTION OFFICIALS IN REPORTED CASES

Respondents' experiences of reporting to mandated child protection authorities, and the responses of mandated authorities, varied. Several respondents noted positive collaboration between law enforcement and child protection authorities in RCF closures and in the provision of counselling and legal support services to identified victims.

*MoSVY do rapid responses, and there have been cases where they have taken action. They will go with law enforcement, because they don't have power to do everything, so they need to work in partnership. What has been reported is triggering criminal investigation in addition to closures.<sup>18</sup>*

*I really appreciate the fact that the Department of Social Affairs joins us when we meet with victims to offer legal support. They encourage the children to give their testimonies and to try to reduce their trauma.<sup>19</sup>*

Others noted the positive role child protection authorities played in supporting reintegration, including as part of efforts to remove children from the care of RCFs where abuse and exploitation has been documented and reported.

*'We work with DoSVY, and if DoSVY, through the process of conducting inspections, has identified an orphanage that is not meeting minimum standards, or where abuse or exploitation has been uncovered, and the orphanage has been flagged for closure, or the orphanage has run out of funds and is closing for that reason.'<sup>20</sup>*

In most cases, the involvement of child protection authorities in case management for reintegration and/or victim support was positive and in accordance with roles and responsibilities prescribed in law and regulation. However, this was less consistently the case with respect to response procedures for allegations or reports of criminal law violations in RCFs, including punitive regulatory measures against the institution and triggering criminal law proceedings against alleged perpetrators.

*The Khan level child protection authorities were very good. They would listen, support us to do our jobs, and intervene when the children were causing a lot of trouble and*

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<sup>18</sup> Key informant interview

<sup>19</sup> Key informant interview

<sup>20</sup> Key informant interview

*were behaving violently so we could continue to do our jobs. But they didn't act on that information in terms of reporting offences and pursuing any criminal charges.<sup>20</sup>*

The nature of responses by child protection authorities suggests a lack of consistent implementation of legal responses to reports of abuse or exploitation of children in residential care, and a hesitancy in some cases to use punitive regulation and criminal law proceedings against institutions and their legal officers, even when the risk threshold had been met.

*It is not their (MoSVY's) priority to seek prosecutions. It's not in their plan. I think they seek prosecution only in extremely high-risk cases because it's political and it's challenging.<sup>22</sup>*

These cases suggest an overreliance on lower-level regulatory measures such as minimum standards inspections and on case management for reintegration, despite these being disproportionate responses to the level of risk or nature of the allegations. In several cases, reports of exploitation or unlawful conduct in RCFs made to mandated authorities were treated as civil disputes with reporting parties being offered mediation.

*We reported the interference, the abuse, the exploitation, the risks to the children, and the child protection authorities did not implement an intervention in accordance with law and policy. They offered to 'mediate' between the parties.<sup>23</sup>*

Specific cases highlighted a range of scenarios and challenges preventing consistent enforcement of law and regulation to close exploitative and unlawful RCFs and report offenders to law enforcement. Lack of political will, clientelist networks that afford impunity to certain RCFs and jurisdictional issues, all of which were exacerbated by the inter-departmental coordination and cooperation required to enact closures or initiate criminal law proceedings, were amongst the most cited. In some cases, lack of understanding of criminal laws and minimization of the seriousness of criminal conduct in RCFs contributed towards decisions not to act on allegations or report to law enforcement.

*I did ask MoSVY officials once, "Are these people going to have to face up to the legal consequences of their actions, falsifying children's identity?" And the authority's response was "We're all Cambodians in this to help children".<sup>24</sup>*

The overreliance on lower-level regulation, and mediation in response to allegations and reports in RCFs in lieu of punitive regulation and reporting to law enforcement, sometimes appeared to be a pragmatic response by mandated child protection authorities. When faced with external higher up pressures restricting their ability to enforce law and policy with respect

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<sup>21</sup> Key informant interview

<sup>22</sup> Key informant interview

<sup>23</sup> Key informant interview

<sup>24</sup> Key informant interview

to certain institutions, child protection authorities relied on the powers they could confidently execute to remove children from unsafe environments and progress towards closure under repeated failure to meet minimum standards clauses.

*The easiest way to do it was for MoSVY to close it down under minimum standards, they do three inspections and you've got to prove it three times, and that was generally how it went. Even when we had children making complaints against foreigners who owned them, they still wouldn't prosecute them. Again, because that becomes political.*

However, this wasn't always the case. Specific examples indicate relationships or networks between child protection authorities and RCF directors were used to evade punitive regulation and criminal justice proceedings.

*So, in our experience reporting to the child protection authorities isn't very effective, and the information we provided in reports was leaked to those involved in the abuse and trafficking rather than used to protect the children. So, the authorities did not undertake their responsibilities according to law or policy. So, we had to find ways to protect the children ourselves.*

This data highlights the permeation of a society-wide system of clientelism<sup>25</sup> into the child protection system, and its particularistic impact on enforcement of child protection law and regulation. The result is that legal protections and redress mechanisms are not universally afforded to all children in residential care and known cases of exploitation and trafficking in institutions may evade reporting and investigation. Operators of RCFs involved in child trafficking and exploitation may forge clientelist relationships as a means of acquiring impunity.

The significance of this issue is exacerbated by the fact that the most likely avenue for the detection of cases of orphanage trafficking and exploitation are through the alternative care inspectorate system and reintegration case work. Both activities fall under the mandates of sub-national child protection authorities (DoSVY). CSOs implementing case management for reintegration identified DoSVY as the appropriate reporting pathway in cases where abuse, exploitation or trafficking was detected through case work. However, as they operate under the mandate of DoSVY, reporting directly to law enforcement was seen to be outside of the scope of CSOs authority. The only exceptions cited were reporting flagrant offences, including where children or youth were the perpetrators of abuse against other children in care.

*We support these authorities by providing the information, but we are not responsible for reporting to the relevant authorities or for making the decision as to when to report.*

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<sup>25</sup> S, James., "The Erosion of Patron-Client Bonds and Social Change in Rural Southeast Asia", *The Journal of Asian studies* 32, no. 1 (1972): 5-37. ;Philip Brown, "Traditional power-relations in Cambodia," (E-IR, 2013).; Kheang Un, "State, society and democratic consolidation: The case of Cambodia," *Pacific Affairs* 79, no. 2 (2006).

*Our role is to provide technical support.*<sup>26</sup>

*We also expect that DoSVY will take any action required, and if police need to be involved, it's up to DoSVY to involve them. We've fulfilled our obligations in informing them. That's DoSVY's role. If they don't take action, that's a serious issue as that's part of their mandate. We're just social work staff of an NGO. We have no authority there.*<sup>27</sup>

An additional challenge that inhibits detection and reporting through the case management for reintegration process is the perceived requirement for CSOs to provide sufficient evidence to substantiate a report. Social workers implementing case management are likely to uncover indicators, sufficient to form a reasonable suspicion that trafficking, or exploitation may have occurred, yet insufficient to constitute substantive proof. Further investigative steps are required beyond case management procedures to gather such evidence. However, social workers are not authorized to conduct investigations. Investigative powers rest with law enforcement, who were reportedly reluctant to investigate suspicions, particularly those that will require investigation into historical elements of a crime, such as unlawful removal. This perceived requirement to provide evidence to substantiate an offense at the point of reporting to law enforcement has a ripple effect down the reporting chain that discourages DoSVY and social workers reporting in cases where a reasonable suspicion exists.

*We know that children are being brought into the orphanage for profit. Children are being used in orphanages to go and sell things to make money for the orphanage. I've come across those cases, where children in care are being used to make a profit for the orphanage. If we're honest and blunt, those cases should be dealt with by the police and by DoSVY. But, in actual fact, those cases are very hard for us to report. Why? Because we need to investigate to have any proof that it's a crime, and we aren't authorized to investigate. That's overstepping boundaries. We see these cases all the time and fully recognize it's illegal, but no one does anything about it, because it's hard to report.*<sup>28</sup>

In addition, social workers considering making reports described how they must weigh up the potential ramifications of reporting suspicions, without sufficient evidence to substantiate an offence, against RCFs that may have forged high level connections to secure impunity. Numerous social workers pointed to the impact this could have on their ongoing access to children in those RCFs and ability to successfully reintegrate children back into their families.

*Other organizations also rely on their higher-level networks/contacts to perpetuate what they are doing, and when that is the case, DoSVY aren't going to intervene. Like the case in 2020 of orphanage x, that MoSVY was instructed from higher up government*

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<sup>26</sup> Key informant interview

<sup>27</sup> Key informant interview

<sup>28</sup> Key informant interview

*officials to stop investigating and back out. That's on the public record. There are lots of others, but they haven't been made public. So, if we were to intervene or interfere in those cases, then we have to face the potential consequences. For example, if we make a complaint without a strong foundation of evidence, then that could come back onto us with negative repercussions. So, we have to be cautious. What if in response we were no longer allowed to operate and we couldn't help any more children.<sup>29</sup>*

Faced with these constraints, case workers often chose the most pragmatic courses of action, prioritizing reintegration over reporting suspicions or indicators of trafficking and exploitation. This impacted levels of detection and reporting of such crimes.

## **BARRIERS TO PREVENTION**

### **Lack of enforcement of preventative child protection regulations**

An unlawfully operating residential care facility constitutes a high-risk environment for orphanage trafficking and the exploitation.<sup>30</sup> Lack of registration is a key indicator of unlawful removal. Unregistered institutions have no legal authority to accept or admit children into their care and mandated authorities are not permitted to refer children to unregistered facilities. This means all children removed for the purpose of admission into these unregistered facilities meet the definition of unlawfully removed.

Under child protection regulation, all facilities providing overnight alternative care for children are required to seek prior authorization and be registered with MoSVY. This is in addition and separate to the process of registration of the legal entity seeking to operate the RCF, which depending on whether the organization is a local or international NGO, may be with the Ministry of Interior or Ministry of Foreign Affairs. Agreements with other line ministries, such as the Ministry of Education or Cults and Religion, cannot be taken as a legal substitute for registration and authorization of an RCF with MoSVY. This is irrespective of whether the residential care service provider is a faith-based organization or whether education services are provided in conjunction with residential care.

Residential care facilities operating without MoSVY authorization are classified as clandestine centers under law.<sup>31</sup> Legal and physical persons involved in operating such facilities can be subject to penalties.<sup>32</sup> Despite registration mandates coming into force in 2011 with

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<sup>29</sup> Key informant interview

<sup>30</sup> An unlawfully operating RCF is one that is not registered and authorized with MoSVY

<sup>31</sup> Sub Decree 119 Art 16.

<sup>32</sup> Sub Decree 119 Art 16.



the introduction of the Policy on Alternative Care for Children, a significant percentage of residential care facilities continued to operate and proliferate without authorization.<sup>33</sup> Active engagement with unregistered RCFs and the socialization of the regulations by government resulted in many facilities seeking registration and some being closed. However, many others continue to operate in contravention of the law.

Laws requiring the authorization and registration of alternative care providers, including residential care, are preventative measures designed to protect the rights and best interests of children, bring alternative care services under the regulatory control of the competent authority, enforce minimum standards and safeguard against maltreatment, neglect, abuse, and exploitation of children in alternative care settings. In addition to the penalties for operating clandestine centers under Sub Decree 119, the Criminal Code contains offenses for taking away of minors<sup>34</sup> and incitement to abandon a child.<sup>35</sup> Despite the existence of offenses and punitive measures to prevent the operation of unlawful RCFs, which could curtail the operating environment of orphanage traffickers, there is no evidence of these particular measures being used.

*There is no implementation of some of the laws that protect children from being trafficked and exploited in orphanages- the laws that make it illegal to run an unregistered orphanage. The laws that make it illegal to take a child out of their family. But instead of acting on these laws, this conduct is accommodated and dismissed by authorities.<sup>36</sup>*

*According to the law, it is illegal to run an unregistered RCF and it's an offence to do so. It's wrong. MoSVY needs to be more responsive, and when conducting inspections check the registration status of the RCF. Do they have child protection policies in place, have all the required permissions they need to operate. If they don't the MoSVY has authority to close them down.<sup>37</sup>*

The lack of enforcement of RCF registration and utilization of punitive measures and offenses for unlawful conduct poses a significant barrier to the prevention of orphanage trafficking crimes, as it permits high-risk settings to operate with impunity and continue to unlawfully receive and harbor children. In most cases, the locations of unlawfully operating centers were known to local authorities, DoSVY and to MoSVY. The mapping exercise conducted in 2015 by MoSVY led to many being identified and incorporated into the RCF inspectorate system. This resulted in improved oversight of these centers and saw some of them targeted for

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<sup>33</sup> MoSVY Mapping Report 2017.

<sup>34</sup> Criminal Code Art 327.

<sup>35</sup> Criminal Code Art 330.

<sup>36</sup> Key Informant interview

<sup>37</sup> Key Informant interview

reintegration, transition, or closure. However, stakeholders noted that bringing clandestine centers under the oversight of commune level child protection authorities responsible for inspections was insufficient to ensure the safety of children harbored in unlawful RCFs. It places the burden of responsibility for safeguarding children in the highest risk settings for abuse, exploitation, and trafficking on the lowest level child protection authorities, who often lack sufficient training, capacity, and awareness of laws to prevent and detect exploitation.

*If the orphanage doesn't report to them (DoSVY) voluntarily, they won't chase up the orphanages either. They don't fully understand their responsibilities or the policies that govern their work. They therefore don't intervene in the way they are supposed to with these orphanages. This is a huge barrier.<sup>38</sup>*

*If they (Commune level DoSVY) are the ones who receive a complaint of exploitation or abuse in an orphanage. If they don't understand this issue; how to identify what is a crime, how to identify exploitation, when they receive information from DOSVY at the municipal level telling them there have been reports of abuse or exploitation in an orphanage in their area, and asking them to go and do the inspection, they won't be able to do it properly or know what to look for. This is extremely dangerous for the children.<sup>39</sup>*

In addition, and despite the requirement for all RCFs to be authorized by MoSVY, irrespective of their faith affiliation or other line ministry agreements, actors across the child protection landscape repeatedly raised concerns about the ability of faith-based residential care facilities to evade legal registration requirements and operate unlawful substandard facilities that place children at risk with impunity.

*There are lots operating under churches that are not registered legally, like x. These orphanages are very concerning. From the ones I've seen, they have very poor standards. I don't know if abuse and exploitation is happening there. There have been lots of reports of exploitation in Catholic orphanages with foreign funding. Some refuse to follow government policies and have their own procedures that violate the law and children's rights. This is indicative of what we need to examine in uncovering when trafficking and exploitation is happening in an orphanage.<sup>40</sup>*

Jurisdictional challenges were cited as a key barrier inhibiting inspections and the enforcement of registration and minimum standards in faith-based residential care services. Despite MoSVY having clear legal jurisdiction over all residential care facilities, respondents noted that in practice, MoSVY required permission from the Ministry of Cults and Religion to

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<sup>38</sup> Key Informant interview

<sup>39</sup> Key Informant interview

<sup>39</sup> Key informant interview.

<sup>40</sup> Key informant interview.

enter the premises of faith-based entities to undertake their child protection functions. This places critical and preventative child protection functions at risk of politicization, and results in bureaucratic hurdles and delays.

*These orphanages are high risk, because they're not under MoSVY oversight, so MoSVY refuses to take responsibility, and they're often under the Ministry of Cults and Religion, who aren't focused on child protection, but the registration of the church. These orphanages operate in and exploit this gap.<sup>41</sup>*

A prominent example given by respondents, and widely reported in media at the time, was of the largest provider of residential care in the country that housed over 2000 children across 106 centers. This faith-based organization skirted direct government orders to close 70 of their clandestine residential care centers, many of which were reported to be substandard, by relabeling and classifying them as 'community centers'.<sup>42</sup> These changes were semantic in nature and only served to further distance these children from legal protection and increase their risk of exposure to abuse, exploitation or commodification. Despite what appears to be an overt defiance of child protection law and policy, no legal or regulatory action was taken against them.

Such inconsistent enforcement of child protection law and regulation and leniency in response to non-compliance enables high risk settings for orphanage trafficking to continue to exist and puts children at risk. Stakeholders noted that most cases of orphanage trafficking, exploitation, child abuse and other child protection issues occurred in unregistered RCFs. They stressed the importance of constraining the operating environment of orphanage traffickers and child sex offenders through consistent and rigorous enforcement of preventative laws, including RCF registration requirements and penalties for non-compliance.

*In terms of trends, when there are issues in orphanages, they mostly occur in unregistered orphanages.<sup>43</sup>*

*If we could strengthen the enforcement of preventative laws, we would be able to prevent serious crimes from occurring in many cases, because that's exactly what those types of laws are designed to do- prevent and deter. It's like the minimum standards for residential care. Those were developed so that people who want to run an orphanage know what standard they need to meet in order to be permitted to do so. If they comply with those standards, they are not exposing children to risk. If they don't, then they are exposing children to risk. Some people don't understand that. They just want to do their own thing, and they think that any care they provide to children, even if it's substandard, is better than nothing, but it's not. It puts children at risk.<sup>44</sup>*

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<sup>41</sup> Key informant interview.

<sup>42</sup> <https://www.aljazeera.com/features/2014/9/29/can-cambodias-orphanage-system-be-reformed>.

<sup>43</sup> Key informant interview.

<sup>44</sup> Key informant interview.

## Lack of grooming offense

An additional barrier to the prevention of orphanage trafficking and exploitation and early intervention, is the lack of awareness of grooming as a precursor to sexual abuse, and the lack of a distinct grooming offense under Cambodian criminal law. In numerous reported cases of trafficking and exploitation of children in RCFs, offenders engaged in grooming behaviors to garner children's trust and to lower their inhibitions prior to perpetrating sexual exploitation.

*Normally, with children, there will be a period of grooming the child before committing the sexual abuse. This perpetrator admitted that he had been interested in her for some time and had groomed her in various ways before he first sexually assaulted her.*<sup>45</sup>

Residential care facilities are environments in which grooming behavior is easily disguised as 'caregiving' and legitimized by the offenders' formal role within the residential care facility. Residential care settings are by nature conducive to facilitating all six stages of a typical grooming process.<sup>46</sup>

- 1. Targeting the child:** Children are targeted via recruitment and admission into residential care facilities. Offenders target children from remote communities and from poorly educated families. These families are more easily deceived and less likely to know how to advocate or intervene on their children's behalf.

*The children who were brought to live in the orphanage were the children of poor families. The children were all selling things at a night market in a tourist area, and the director met all the children there, as he liked to frequent that place. He talked to the children about coming to live at the orphanage, and then he went to speak to their parents to request to bring them into the orphanage. He also provided some support to the parents.*<sup>47</sup>

- 2. Gaining their trust:** Offenders gain trust by leveraging positive community attitudes towards NGOs and orphanages, and perceptions that their operators are benevolent benefactors.

*There are cases where the community members have rallied together to come and protest the arrest (of an offender), including bringing batons to demonstrate. They'll ask "Why are you seeking revenge against this person? He is a good person, he helps the children in our area, he helps them with school, with materials, with a bicycle, with*

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<sup>45</sup> Key informant interview.

<sup>46</sup> M, Welner., *Child Sexual Abuse: 6 Stages of Grooming*, (2010) National Association of Adult Survivors of Child Abuse.

<sup>47</sup> Key informant interview.

*food for the families.” They see that as all positive and can’t conceive of there being something negative behind it.<sup>48</sup>*

- 3. Filling needs:** Residential care services are used and promoted as a means of fulfilling a range of unmet needs. They offer promises of better education, and opportunities for children that families are unable to independently provide.

*There are some cases in orphanages, where the perpetrator does help children, help them with education, buy them school supplies or a bicycle and provide rice to the family.*

*He (the offender) would give the child money. In short, he would give the child whatever they wanted and used various methods to groom and coerce the child to facilitate the exploitation. If she wanted a phone, he gave her a phone. If she wanted a moto, he gave her a moto. It didn’t transpire into big things. If she wanted clothes, he’d buy her clothes. If she wanted to go out somewhere, she was allowed. So, he was able to groom the girl because he had money.<sup>49</sup>*

- 4. Isolating the child:** Children are isolated from family and community by virtue of being recruited and admitted into residential care. Institutions are by nature closed environments isolated from the wider community.<sup>50</sup> Within the RCFS, offenders use various tactics to isolate specific children from the wider group, including engaging them in special chores or outings.

*At times when the other children were resting, he would exploit this particular child. He would use the child to do labor as a way of getting close to the child and isolating the child in order to sexually abuse the child.<sup>51</sup>*

- 5. Sexualizing the relationship:** Offenders often progressively violate boundaries under the guise of providing personal care to children, medical care or by fostering a quasi-parent relationship to facilitate touch. This eventually leads to sexual abuse.

*Normally, caregivers are like parents, and they love the children.*

*After a while, the director would summon the children individually and would bathe them or apply ointment on their bodies, because he said they had scabies on their skin. But from the testimonies it was apparent that this wasn’t normal touch with the intention of curing scabies. This was inappropriate touch with sexual intent.<sup>52</sup>*

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<sup>48</sup> Key informant interview.

<sup>49</sup> Key informant interview.

<sup>50</sup> Marinus H van IJzendoorn et al, ‘Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development’ (2020) 7(8) *The Lancet Psychiatry* 703-720.

<sup>51</sup> Key informant interview.

<sup>52</sup> Key informant interview.

**6. Maintaining control:** Offenders have control over children due to the closed nature of residential care environments and the position of the offender as a person with authority within the RCF. Directors who are perpetrators often foster patron-client relationships with families and with children to maintain coercive control of them. In addition, nepotism within RCF operations is common and acts as a means of controlling information and preventing disclosures.

*They set it up so it was all under the control of their network, from the director, to care givers, to the cooks, cleaners, administration, accountants- they were all relatives. So, it was very easy for them to run this trafficking operation and keep it silent, because it was all in house, and under their network and control.<sup>53</sup>*

*Children feel some sense of loyalty and obligation to the orphanage and director which prevents them from reporting.<sup>54</sup>*

*If abuse is perpetrated by someone with authority over them, children will be too scared to report... Children don't fully understand what's happened and so to expect that they can overcome these power imbalances to report is unrealistic in many cases.<sup>55</sup>*

The ability of offenders to disguise grooming as caregiving greatly reduces suspicion associated with grooming behaviors. These behaviors were often noticed by caregivers and other children, however, were rarely interpreted as indicative of an intention to perpetrate sexual abuse.

*Many other children also provided testimony to the grooming activities, but they didn't realize what the purpose of it was. Some of the caregivers has also noticed the grooming behaviors, but also didn't understand what it indicated and what had transpired.<sup>56</sup>*

Families also struggled to believe or accept that a person who has provided opportunities for their child, did so with ulterior motives. In addition, there is very little awareness of the tendency for perpetrators to groom family members or caregivers as part of gaining access to children. In many cases, perpetrators provided support to the families of children in RCFs to cultivate power and a sense of obligation that results in control over families. In numerous cases, this resulted in families defending perpetrators and advocating for them in the context of legal proceedings.

*The child's family may say, "This person did not hurt my child or did not intend to hurt my child. They are helping my child."<sup>57</sup>*

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<sup>53</sup> Key informant interview.

<sup>54</sup> Key informant interview.

<sup>55</sup> Key informant interview.

<sup>56</sup> Key informant interview.

<sup>57</sup> Key informant interview.

*At other times, the family withdrew their complaint, leading to a suspension of the investigation or court proceedings. This can be due to a number of reasons, such as uncertainty as to what happened and confusion between 'giving', 'loving' and 'committing immorality'.<sup>58</sup>*

The inability to distinguish between grooming and care limits detection by mandated authorities of exploitation indicators in the context of RCF inspections. In addition, as grooming indicators are misinterpreted as altruism and care, when exploitation comes to light, the severity of the behavior is often minimized, as are the consequences for perpetrators.

*There is also a mindset where inspectors and local authorities might know that some of the behavior is not good, but they'll think, well they also did all these other good things, and the wrong behavior seems minor and it's only one or two things, so let's just go with saying that it's all good. It becomes about the balance, rather than substantiated incidents of offence.<sup>59</sup>*

*The reason he was sentenced to five years, because the penalty allows for 5-10, was because before he was a good person. He provided a lot of support to children in the orphanage. In all honesty, he was a rich person. He had a lot of capacity to develop the orphanage. He had a lot of support from within the orphanage. There was also a petition from the caregivers, the orphanage director, and other NGOs that he financially supported, to ask the court to give him a lenient sentence.<sup>60</sup>*

The lack of a distinct grooming offense also means that actions or conduct known to constitute grooming are not considered indicators of a criminal offense, including of child trafficking for sexual exploitation purposes.

*Cambodia does not stipulate offenses related to the cultivation of intimate relations and child abuse for the purpose of future sexual exploitation. Thus, activities such as establishing special relationships with children, giving them gifts and money, and initiating physical harm to children are not indicators of a criminal offense.<sup>61</sup>*

This limits detection and the powers of law enforcement to respond or act on reports of grooming and launch investigations that may circumvent sexual exploitation and uncover cases of orphanage trafficking.

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<sup>58</sup> Key informant interview.

<sup>59</sup> Key informant interview.

<sup>60</sup> Key informant interview.

<sup>61</sup> Key informant interview.



## BARRIERS TO DETECTION

### Lack of investigation into the legality of children's removal and placement in RCFs

Under Cambodian law, most child trafficking offences commence with the element of unlawful removal of a child from parental powers or custody. Article 8(2) of the TSE Law provides a definition of unlawful removal of a minor for all relevant offenses contained within the Act. It states that:

*The act of unlawful removal in this law shall mean to:*

*without legal authority or any other legal justification to do so, take a minor or a person under general custody or curatorship or legal custody away from the legal custody of the parents, care taker or guardian.*

The criteria of 'legal authority', 'legal justification' and 'legal custody' are further expounded in the TSE Law Explanatory Notes.<sup>62</sup> Accordingly, unlawful removal occurs whenever a child is removed by a person who does not possess the legal authority or mandate, or who is operating outside of the scope of the law, and/or who removes a child from the legal custody of their parents where parental custody or guardianship has not been terminated, suspended, or transferred by law, or who removes a child from parental custody or guardianship under conditions not permitted by law, or in a prohibited manner.

The legal authority and justifications for the removal of a child from parental powers or custody, for admission into a residential care facility, are detailed in various laws and child protection regulations.<sup>63</sup> These legal powers and justifications form part of the alternative care gatekeeping system which governs entry into and exit from the alternative care system. In addition, gatekeeping regulations articulate the legal justifications and powers for placement of a child who has been removed for child protection reasons in a residential care facility, and the legal powers of a residential care facility to receive a child into care.

The clear articulation of the alternative care gatekeeping mechanisms in Cambodian law and regulation provides a means of assessing and determining whether the removal and admission of a child into an RCF constituted unlawful removal for the purpose of the TSE Law. Yet the legality of the child's removal and placement in the RCF was not considered in the investigation of any of the cases of exploitation of a child in an RCF analyzed in this study. This was despite 38% of the cases exploitation occurring in RCFs where prima facie evidence of unlawful removal and admission existed.

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<sup>62</sup> Law on Suppression of Human Trafficking 2008 Explanatory Note.

<sup>63</sup> See Legal Framework for Orphanage Trafficking in Cambodia for more detail.

Informants identified a range of reasons why the legality of removal was not systematically investigated. Reasons included a general tendency towards narrow and reactive investigative practices and a reluctance amongst law enforcement to investigate historic elements of crimes.

*I don't think (police) investigative procedures are very thorough. Based on my observation, they were not very proactive in their investigation. As criminal investigators, they must take a proactive role in investigating cases, as stated in the Criminal Code, yet in practice, they were not very active.*<sup>64</sup>

*We've seen cases where the children came into the orphanage 10-15 years ago, and the investigators said that's too long ago to trace their families and investigate the removal. Truth is, they could investigate it and they likely could trace the families, but they don't want to spend the time. We asked them about laying trafficking charges as in that case, that's what we suspected happened, but the police and law enforcement said that's too complicated, and they didn't want to bother with it. They just wanted to pursue a very narrow focus- the sexual exploitation.*<sup>65</sup>

In addition, some informants drew attention to the added complexity of investigating trafficking crimes as more than one element must be investigated and evidenced. This can lead to a pragmatic tendency to prosecute only the substantive element of exploitation, even when trafficking is indicated.

*Cases related to human trafficking as well as child trafficking, whether inside or outside the orphanage, are very complicated, according to my experiences with such cases. It requires stakeholders who are involved in support of the courts and the legal process to be very proactive. It also demands much more intensive and comprehensive investigation when compared to other types of cases.*<sup>66</sup>

*If they have a clear-cut sexual offence, they will go with that offence, because evidentially, which one can be proved. I think it would be a fair comment that if they find evidence for a substantive offence, and they can prove it and it's a category one offence, they would tend to use it.... The system is sometimes against protracted investigations.*<sup>67</sup>

Informants identified a range of factors that prohibit proactive investigation, including resource constraints, lack of political will, lack of incentives for investigators, limited technical capacity and lack of detailed rules on investigation and evidence gathering procedures. These barriers

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<sup>64</sup> Key informant interview.

<sup>65</sup> Key informant interview.

<sup>66</sup> Key informant interview.

<sup>67</sup> Key informant interview.

result in a criminal justice system that is overly reliant on victim and witness statements and confessions.

*The main issue is the capacity of the police. Perhaps they are unsure of how to commence a proactive investigation in response to indicators rather than a report of a substantive crime. They may not know what to do first, how to start, how to proceed. Secondly, there is the issue of resource. If they don't have sufficient resource, it will constrain their ability to investigate.<sup>68</sup>*

*The rules on evidence gathering are very basic. There are no guidelines. It's all about politics, power, and a very simplified system where you rely on someone saying something has happened and another person admitting it. It's not unusual to get victims and offenders in the same room together and get them to argue it out. Again, this is because of the lack of evidence and the lack of understanding as to how to gather evidence.<sup>69</sup>*

In cases of orphanage trafficking these issues are further compounded by a general lack of understanding of orphanage trafficking. Victims and their families are generally unaware of what constitutes unlawful removal, particularly as it pertains to admission into an orphanage, or that unlawful removal is an element of child trafficking. As such complaints filed by victims or their families that informed the scope of investigations only pertained to the exploitative purpose.

*The police only take a very narrow view during investigations and pursue a limited scope based on what's been brought to their attention. So, if the information given is that there was sexual abuse, then they'll only investigate the sexual abuse. They don't stop and think about, hang on, how did the child end up in this orphanage? Why were they brought here? How were they brought here? Were they transferred? Were they trafficked? They don't attempt to gather evidence to understand the whole picture. These things all indicate trafficking, but they don't investigate them. They need to examine all of these things to understand the whole situation to determine the full nature of the offence, but they don't.<sup>70</sup>*

The lack of routine proactive investigation to ascertain the full scope of criminal conduct in response to complaints or indicators of exploitation in RCFs was among the most significant obstacles to the detection and prosecution of orphanage trafficking identified in the study.

*In truth, if the police investigate fully, they'll find lots of cases of orphanage trafficking, but in many cases, they don't prioritize this and there is no political will to investigate these cases.<sup>71</sup>*

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<sup>68</sup> Key informant interview.

<sup>69</sup> Key informant interview.

<sup>70</sup> Key informant interview.

<sup>71</sup> Key informant interview.

It is associated with numerous serious implications. First, it results in a failure to identify victims of orphanage trafficking and render them appropriate protection and support. Children trafficked into orphanages for the purpose of profit are at most risk of not being identified and removed from exploitative RCFs, as unlike labor or sexual exploitation, profit (commodification) is not a substantive offence.

*They might intervene and save the child who was sexually abused, but what about the other children? If they don't seek to understand the whole context and picture, they can very easily miss if other children are victims of other crimes or at risk. And if the relevant authorities don't intervene, detect these issues, and respond, then the other children remain in a risk environment, whereas in fact they should be removed. They only support the child who was sexually abused. The police don't investigate holistically and thoroughly. A child who was abused in an orphanage, may also have been unlawfully removed. There might be cases of fraudulent adoption taking place. There could be trafficking. Children may be bought from families who are receiving payments to hand over their children to orphanages. These are all offences, because when the children are brought into RCFs under these circumstances and the directors then use them to raise funds, well it's a trafficking offence. This is a big gap and weakness in current investigative practice.<sup>72</sup>*

Second, narrow, and reactive investigations lead to a failure to identify traffickers involved in elements other than exploitation, such as unlawful removal, transfer, harboring or receipt. This results in impunity and a lack of deterrence for these offenses.

*There are always multiple offenders involved in trafficking cases. There might be someone who identified the child, recruited the child, transported the child, and they all need to be charged with trafficking as they were equally complicit. When the investigation remains only partial, and they only identify and prosecute those involved in the exploitation, other perpetrators keep evading the law, and there is nothing to deter them from continuing. They've nothing to fear. So it has the reverse effect- it incentivizes trafficking.<sup>73</sup>*

### Limited awareness of orphanage trafficking and its indicators

Orphanage trafficking is a relatively new issue, and awareness of the nature of the crime, its indicators and how it is constituted under Cambodian law remains inconsistent and limited. The lack of knowledge means that orphanage trafficking crimes are often overlooked or

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<sup>72</sup> Key informant interview.

<sup>73</sup> Key informant interview.

mischaracterized, indicators missed or misinterpreted, and reports by victims, families or advocates dismissed. Stakeholders noted a disparity in knowledge of orphanage trafficking between police and court and judicial officers, particularly with respect to the TSE Law and the offense and element of unlawful removal with purpose. Numerous examples were given of cases where police were unable to interpret actions or conduct as an element of a trafficking crime and/or where reports made by families or NGOs were dismissed under the assertion that the conduct reported did not constitute a crime. The latter was more common in cases where the purpose was for adoption or profit. In contrast, prosecutors, judges, and court clerks have more specialized knowledge of trafficking offenses and as a result are more readily able to interpret conduct constituting orphanage trafficking under the TSE offenses.

*The prosecutors and judges have a good understanding of the law and the evidentiary threshold for pressing particular charges, including trafficking charges. But as for the police, their understanding is still limited. Sometimes when we file a complaint to request police involvement in commencing a case and investigating, the police say no, because they don't believe that a crime has been committed. However, when we referred the case to the prosecutor and discussed it with them, they also agree with us and can see that what has taken place constitutes a crime.<sup>74</sup>*

*Another thing is the offence of unlawful removal for a purpose. It's included as an article in the Law on the Suppression of Human Trafficking and Sexual Exploitation, however this offence is almost never used or implemented. The police always say that it has nothing to do with the offence of sexual abuse or exploitation, which is generally what they are investigating. They forget to consider that the act of removing a child from his or her parents or guardians, for a specific purpose, without legal authority or justification, either by the means of fraud, deception, or persuasion, is an offence in either article 8 or 9 of the TSE Law. The police still have very limited knowledge and understanding of this crime. In contrast, judicial personnel such as prosecutors and judges, are much more knowledgeable and well-versed in the trafficking offenses. They'd be more likely to interpret unlawful removal.<sup>75</sup>*

Stakeholders, including judicial personnel, acknowledged the important role local level authorities play in detecting and reporting cases of orphanage trafficking, yet identified several interrelated attitudinal and knowledge barriers that impeded detection. First, positive attitudes towards residential care and the association between orphanages and altruism makes it easier for offenders to disguise the element of unlawful removal of a child as charity. This notion of 'charity' enables offenders to secure the participation of key stakeholders, including

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<sup>74</sup> Key informant interview.

<sup>75</sup> Key informant interview.

families and local authorities in the removal process. Offenders intentionally targeted families who were poor, originated from remote communities, and who lacked means and opportunity to meet their children's basic needs. This lent a sense of legitimacy to the removal, even when it was unlawfully executed. Stakeholders noted that families almost always consented to the placement of their children in the orphanage and may have participated in the transfer. Village level authorities also reportedly signed documents presented to them by recruiters acknowledging their removal from the community. Local authorities and families consented based on their belief in the unequivocal good of orphanages and lack of knowledge of legal process and justifications for removal and placement in an orphanage.

*Remember the parents always consent in some way, they're given money, so the children are not snatched. They're given \$50 to \$100 and there is this document and it's usually signed by the village chief, and that was enough, as far as the law was concerned, to cover them, because the parents have consented, and they haven't made a complaint. If you went back to the parents and said this is your son or daughter and this is what has happened, do you want to make a complaint, they wouldn't make a complaint. They don't understand what's happened, and they don't want to get into trouble.<sup>76</sup>*

*Law enforcement officers still overarchingly think of the placement of a child in an orphanage as a good opportunity and therefore don't examine the admission of a child for any criminal conduct. Parents of these children also don't recognize it as trafficking. The children who are victims also, they don't realize they've been trafficked, and they may have been very willing to go to the orphanage. In short, law enforcement officers in Cambodia still have a positive mindset towards orphanages and see them as opportunities for poor children to get an education. That biases how they examine cases crimes that occur in orphanages.<sup>77</sup>*

Stakeholders noted that local authorities in the jurisdictions where these orphanages were located were best placed to detect orphanage trafficking. However, they were often unable to interpret visible or reported indicators and perceive risk. This was also due to prevailing positive attitudes towards orphanages that translated into uncritical trust, coupled with a lack of specialized knowledge of the TSE offenses and gatekeeping regulations. Without this knowledge, it is difficult for local authorities to interpret when admission may indicate the element of unlawful removal in a child trafficking crime, even if the orphanage is unauthorized. The findings of this study suggest this is one of the primary reasons why orphanages, where children are trafficked and exploited, can operate in plain sight.

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<sup>76</sup> Key informant interview.

<sup>77</sup> Key informant interview.

*The local authorities are really important. They are the ones that are most likely to have visibility, and if they don't understand the risk indicators and the indicators for identifying victims, they might not suspect that anything is happening.<sup>78</sup>*

*Cases of child trafficking in orphanages are rare and occur in a place (orphanage), which is mostly a place for child protection and care, not a place where children are abused, thus making it difficult for the authorities. In finding the presence of a crime. Local authorities do not always fully understand child trafficking in orphanages, and they may not expect to encounter trafficking in orphanages, as most orphanages are not set up for this purpose. They exist to help children. So, they may think it is not necessary to look for indicators of trafficking in orphanages.<sup>79</sup>*

*The level of awareness amongst sub national authorities as it pertains to child trafficking in RCFs is still limited, because they have not been properly trained, they have limited experience, and they have huge workloads with respect to supporting vulnerable persons... In addition, the child protection and care reforms and systems strengthening are still in their infancy and only slowly being rolled out.<sup>80</sup>*

Stakeholders identified a range of indicators that may suggest orphanage trafficking and child exploitation in an RCF. These included:

- Operation of an unregistered RCF
- Failure to meet minimum standards of care
- Poor child protection standards
- Violence against children
- Labor exploitation
- Sexual exploitation
- Grooming
- Misappropriation of funds
- Orphanage tourism
- Permitting volunteers to take children out of the orphanage unaccompanied
- Overt focus on fundraising or soliciting donations
- Falsifying stories for fundraising purposes
- Irregular admission

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<sup>78</sup> Key informant interview.

<sup>79</sup> Key informant interview.

<sup>80</sup> Key informant interview.



- Falsified or fraudulently issued child identify documents
- Missing documentation in child files
- Changing children's identities
- Significant discrepancies in living conditions between the orphanage and the director
- Begging
- Active recruitment, including the involvement of brokers
- Payments made in connection with recruitment and admission
- Prohibiting contact between families and children
- Deception of families
- Director interference in reintegration
- Demeanor of children that may indicate coercive control, threats, or abuse
- Irregular adoptions

Many of these indicators are distinct from the indicators of other types of child trafficking, such as cross borders sex or labor trafficking. Current indicators listed in the Guidelines on Forms and Procedures for the Identification of Victims of Human Trafficking for Appropriate Service are geared towards these more well-known and traditional forms of trafficking.<sup>81</sup> They do not include many of the known indicators that may lead to a suspicion or report of orphanage trafficking. Stakeholders noted the nature of orphanage trafficking indicators makes these crimes more difficult to detect and identify.

*Orphanage trafficking is very complex. It's not as straight forward as cross border trafficking. It involves lots of power dynamics, lots of purposes, and it's very complex to detect and investigate.*

Several reasons were given. First, many of the indicators do not clearly or emphatically indicate trafficking or exploitation, particularly in isolation. Detection requires observers to evaluate the extent and extremity of these indicators to form a reasonable suspicion of criminal conduct. In addition, RCFs are closed environments, which limits the visibility of indicators. Indicators that are externally visible may be the hardest to differentiate between standard activities within an RCF. Several stakeholders gave the example of fundraising, which is a normative for all NGOs and integral to their operations. At extreme or overt levels, and where children are being used or commodified for fundraising, it may indicate the purpose of profit. However, this can be difficult to differentiate. It may require the presence of other indicators,

<sup>81</sup> Nhep, van Doore, 2021 Legal Framework for Orphanage Trafficking in Cambodia.

such as evidence of financial misappropriation, or intentional neglect of children in care, to substantiate.

*It can be difficult to distinguish between fundraising activities for childcare and illegal activities that deliberately exclude children from their families and take them to orphanages for the purpose of exploiting children for profit. Donations and visitors. This includes cases where the orphanage requires children to perform for guests in exchange for a fee or donation. It may be difficult to distinguish between childcare for personal gain (for directors of orphanages) and poor financial management resulting in a lack of financial accountability and record keeping. It's really hard to tell when it's a case of profit or financial exploitation and when it's just a case of unintentional lack of management standards. Exploitation of children in orphanages.<sup>82</sup>*

*Is it easy to prove profiting? If you can see money coming into an orphanage from foreigners, from sponsorship, visitors, is that enough? Would that meet the burden of evidence? It hasn't been tested has it. And people defend it don't they because it's happening in an orphanage.<sup>83</sup>*

*The difficulty in identifying victims in orphanage trafficking cases. It is not always easy to detect what is going on. In one case, an offender was using the children to raise funds from overseas. It was hard to determine whether this was legitimate fund raising or whether it was profiting from the children and therefore exploitation. This is a difficult determination for the investigator to make in cases inside orphanages.<sup>84</sup>*

Some stakeholders noted that many of the reports they received regarding RCFs were from tourists. Tourists had the advantage of being directly subject to the overt solicitations for donations and were given inside access to the RCF in the capacity of volunteers. This made it easier for them to see inside the four walls of the orphanage, observe multiple indicators and formulate a concern. However, they were almost never aware that the indicators they had observed may suggest orphanage trafficking.

*It was almost always tourists. People who'd come and see something they didn't like and report it. They didn't know what they were reporting. They were almost always nervous to report. They didn't want to say something in case, they didn't want to get the kids in any kind of trouble. They were reporting the basic stuff, kids are showing harmful behaviours, coming up and hugging us and kissing us. They thought it was a bit inappropriate. They'd say that the kids looked really poor and the people running*

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<sup>82</sup> Key informant interview.

<sup>83</sup> Key informant interview.

<sup>84</sup> Key informant interview.

*the orphanages were at them to get money all the time, it was all a bit money, money, money, but they didn't see that the money was going to the kids, that the kids were being looked after.<sup>85</sup>*

## Difficulty gathering enough evidence to warrant investigation

Some stakeholders noted that the lack of a legal framework for undercover investigation and evidence gathering was an additional factor that further complicated the detection and reporting of orphanage trafficking crimes. As noted, orphanages are closed environments where criminal conduct is more readily hidden. In the absence of a complaint filed by children or their families, police require sufficient preliminary evidence to substantiate a reported suspicion, and to make a request to the courts to launch an investigation. However, this evidence is difficult to lawfully obtain. Stakeholders asserted that neither police nor investigators could enter an orphanage to gather evidence without announcing their intentions to do so. Doing so however, alerts alleged offenders to the suspicion and gives them opportunity to destroy evidence. It also places children at heightened risk, as directors may use threats or coercion to ensure children who possess information about criminal conduct, or have been subject to exploitation, remain silent. This creates the problematic situation where reports of indicators of orphanage trafficking cannot be acted upon effectively through law enforcement channels.

*It is difficult to investigate to determine whether trafficking did or didn't occur, because, firstly, the orphanage are very closed spaces. It's very difficult to get permission to enter these places to investigate. So, when we have clues or receive a report of the abuse or the suspicion of abuse in an orphanage, we need to have a search warrant to enter and conduct a search. The police can't just suspect and enter the orphanage at will. And sometimes it can be a little too late by the time we get access, and many children may have already been victimized.<sup>86</sup>*

*Orphanage trafficking cases typically have lots of victims, and one challenge is we often lack the evidence. The judicial police may be requested to gather a certain scope of evidence, but the police may not be able to do so because in many cases the perpetrator has destroyed the evidence.*

*For police, we can only inspect an RCF once there is a suspicion of a crime and permission to investigate. We don't have authority to inspect on any other basis. That authority rests with DoSVY.<sup>87</sup>*

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<sup>85</sup> Key informant interview.

<sup>86</sup> Key informant interview.

<sup>87</sup> Key informant interview.

As a result, stakeholders noted that in many cases, exploitative RCFs were addressed under child protection regulations and closed after several inspections evidenced *minimum* standards violations. This was in some cases a pragmatic solution to the challenges of gathering evidence and lack of political will to pursue complex investigations, as only DoSVY had the right to enter and inspect RCFs without a warrant. However, stakeholders noted that DoSVY inspectors did not always have the knowledge of the TSE Law to interpret more subtle indicators of orphanage trafficking gathered during inspections.

*Issues with detection include the close nature of orphanages. We need local child protection authorities to have more awareness as they are the front line of detection. Local authorities have limited understanding of the law, especially criminal offences. There is a need to raise awareness.<sup>88</sup>*

*It almost always came down to DoSVY closing the RCF for minimum standards, and this is what we kind of realized. In one case, there was obviously enough to prove that kids were being exploited and abused there. The anti-human trafficking police and DoSVY went and closed it down, but they said there was not enough proof. Again, it was politics in the background.<sup>89</sup>*

*I don't think DoSVY inspectors are trained to detect criminal law violations. The inspectors are trained, and they've been trained on many things, so the DoSVY focal points have been trained on various aspects to look out for. To what extent we've gone through the legal aspects? It's more a child protection angle I would say. But they do know for example what things shouldn't be happening, like for example shows for the tourists. Whether they define those as criminal or a child protection issues? Even if they don't understand, I think they are aware of what shouldn't be happening.<sup>90</sup>*

*Commune level DoSVY officers don't know what the indicators of criminal offences are. They don't know what is and isn't an offence. They don't know and won't detect it. This is really important to note, because they're the ones who have the mandate and the authority. And if they don't understand, they'll intervene inappropriately and not in accordance with the policies.<sup>91</sup>*

Examples were given where DoSVY detected criminal conduct. In some cases, this led to reporting to the police. In other cases, stakeholders noted that DoSVY determined that the offense was not of a serious enough nature to warrant reporting to law enforcement and investigation.

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<sup>88</sup> Key informant interview.

<sup>89</sup> Key informant interview.

<sup>90</sup> Key informant interview.

<sup>91</sup> Key informant interview.

*They (DoSVY) will go with law enforcement, because they don't have power to do everything, so they need to work in partnership. So yes, DoSVY inspections are triggering criminal investigation in addition to closures.<sup>92</sup>*

*What I can say is that we've seen interdepartmental reporting, so it happens. My fear would be that it only happens around very serious and obvious cases. Other cases, they (DoSVY) might well decide that it's not such a big issue or not a very serious offence, even if there is evidence of an offence, and they might not report it and chose to address it through the monitoring system instead of law enforcement. It's quite likely that's the case, but with bigger cases, there has been really good cooperation between DoSVY and the police.<sup>93</sup>*

*In our experience, we've seen that there has been some reporting of information from DoSVY to the police, but it is not yet consistent.<sup>94</sup>*

While closing exploitative RCFs is a critical part of a response to orphanage trafficking, it cannot be taken as a substitute for criminal law mechanisms. The lack of criminal law redress means that children are not formally identified as victims of human trafficking nor offered the protection and legal remedy they are entitled to under law. The failure to seek prosecutions also impacts deterrence. In one example given by a stakeholder, an orphanage director and a recruiter who were subject to allegations of trafficking and exploitation were reported to MoSVY. The director was removed from his position, while all the children underwent reintegration, however no legal action was taken against either suspect. As a result, the director continued to threaten the children, interfere with their reintegration, and made attempts to source new donors and open a new orphanage. The recruiter also made multiple attempts to regain access to the children for re-trafficking purposes.<sup>95</sup> In this case, the lack of legal remedy had serious consequences for the children's safety and rehabilitation.

## Superficial inspections and inadequate monitoring or RCFs

Stakeholders across all groups affirmed the importance of the residential care inspection system in detecting and reporting cases of orphanage trafficking and exploitation in RCFs. DoSVY inspectors have the authority to enter RCFs, access files, interview children and the mandate to check and report on irregularities. As a result, they are the most likely to uncover indicators of orphanage trafficking and exploitation. In addition, inspectors may be requested by superior authorities to conduct spot check inspections of RCFs in response to reported

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<sup>92</sup> Key informant interview.

<sup>93</sup> Key informant interview.

<sup>94</sup> Key informant interview.

<sup>95</sup> Key informant interview.

concerns. Inspectors therefore have the jurisdiction and opportunity to gather sufficient evidence to trigger a referral to law enforcement for investigation.

*DoSVY and the local authorities are critical. They are in the community. They are critical to finding families, to preventing separation. If DoSVY knows that a certain orphanage is not great, if information is being withheld, if they are using the children as a commodity to profit and benefit personally. It is DoSVY who can act against this. They have the mandate and authority from the Ministry.<sup>96</sup>*

*So mostly the identification of orphanages where children are victims of trafficking and exploitation is done by DoSVY.<sup>97</sup>*

In addition to the barriers associated with the absence of knowledge about orphanage trafficking generally and the TSE legislative provisions specifically, stakeholders identified other factors that impede detection through the inspection system. These included the degree of rigor and effectiveness of inspections, ability of orphanage directors to evade detection during inspections, and the influence of power dynamics on inspections. Some stakeholders stated that inspections are often superficial and are insufficient to uncover more complex issues such as orphanage trafficking indicators. Stakeholders gave examples of inspections being approached as a box ticking exercise, scores being influenced by payments made by staff or directors, or by the directors' association with well-respected or powerful community figures.

*As for the inspection of RCFs, it is only superficial. It doesn't dig into these deeper issues. This is one of the major issues with the alternative care system.<sup>98</sup>*

*They need to much more thoroughly screen the orphanages; assess whether they are legally operating, to the right standards, according to the legal and policy requirements, or are they using children for profit. They need to be more proactive in discovering this.<sup>99</sup>*

*In other cases, someone starts an orphanage in a town or location where they are well connected, so this can influence the inspection, if the inspector can see that the director has good relationships with the high up authorities in that area, they might assume the RCF is running above board and so they don't do the inspection thoroughly. This can result in risk to children.<sup>100</sup>*

When inspections lack rigor, stakeholders also noted that it is possible for directors to superficially 'clean up' the orphanage ahead of the inspection to evade detection. This was

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<sup>96</sup> Key informant interview.

<sup>97</sup> Key informant interview.

<sup>98</sup> Key informant interview.

<sup>99</sup> Key informant interview.

<sup>100</sup> Key informant interview.

unintentionally facilitated in some cases by inspectors informing orphanage directors ahead of time of a pending spot check in response to a reported concern from a superior level of government.

*One of the problems relates to the inspection and the rigor of the inspections, this is important. Secondly, the evasive behavior of orphanages. For RCFs where the directors are intentionally exploiting children, they will typically have ways of hiding their conduct, so that they can continue with their operations, unregistered and create side agreements with those who they need to, to enable that to continue. This is what we've seen happening.<sup>101</sup>*

*Sometimes, because they lack understanding, DoSVY leak the complaint to the orphanage before they've done the inspection, and if the director becomes aware, the children could be at risk of increased abuse at a time when there is no intervention in place yet at all.<sup>102</sup>*

In addition, the inspection forms are designed to check compliance with minimum standards. They do not specifically guide inspectors to look for potential indicators of trafficking, exploitation or other criminal conduct or draw correlations between information collected (such as the lawfulness of the RCF and children's admissions) and potential criminal law implications. The exception to this is a question asked directly of children as to whether they feel safe. However, given the power dynamics, and various issues impeding child disclosures while still in care, this is unlikely to be a reliable means of detecting abuse or exploitation.

## Normalization of elements of the crime

Detecting orphanage trafficking is further complicated by numerous elements of the crime being normalized and not considered deviant by society at large, despite being unlawful. Regulation of civil society is relatively recent and still in a fledgling stage of implementation. Communities and many local authorities alike, still regard orphanages as good environments that provide otherwise inaccessible opportunities to disadvantaged children. Stakeholders noted that local communities, particularly in rural and disadvantaged areas, have a high regard for NGOs and charitably run services and are quick to afford trust and respect to persons representing NGOs. The combination of these factors means there is little scrutiny or concern for the legal status of the orphanage or lawfulness of the child's removal. Communities and local officials and authorities are more concerned about the tangible provision of support than the legality of the service provider. This translates into a general acceptance of unregistered RCFs and unlawful removal and admission of children, despite both practices being offenses

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<sup>101</sup> Key informant interview.

<sup>102</sup> Key informant interview.

under law. As such these behaviors are unlikely to cause concern, be identified as indicators of orphanage trafficking or reported as such for further investigation.

*The admission of a child into an orphanage is typically thought of as an act of helping children- even when it's done unlawfully.<sup>103</sup>*

*In Cambodia people have experienced decades of insecurity and war, and there is a lot of trauma associated with that. When they receive help from someone, they feel really happy. They see the assistance so positively, to the point that they might be blind to instances where someone is posing as charitable in order to cover up for something they are doing that is wrong.<sup>104</sup>*

Many stakeholders also noted that children who are victims of orphanage trafficking often have their identities changed or falsified in the process. Numerous examples were given of fake, altered, or fraudulently issued identity documents in which the children's birth names were changed, or birth parents' names removed and replaced, often with the name of the recruiter or director.

*We often see that the child's identity is falsified or changed, that their identity doesn't match their birth identity and their identity has been created by the orphanage. Often the name of the parent on the birth certificate is the name of the broker or orphanage director.<sup>105</sup>*

*In some of the cases, we saw issues with the children's birth certificate or identity card, because they had two different names. When the child was born, they were issued with a birth certificate in his family, but when he brought the child to the center, they erased the child's identity by giving them the name of the RCF as their surname, and giving them a different first name, which caused the child to lose his identity.<sup>106</sup>*

In some cases, amateurish alterations were made to original documents by recruiters or orphanage directors.

*I mean sometimes you can tell the document is fraudulent, because it's very amateur as someone has rubbed something out and put something else in.<sup>107</sup>*

In another case, new birth certificates were fraudulently issued by local authorities responsible for the registration of births.

*There were lots of children's names that had been changed in their records. We could tell this had happened because in some cases we had the birth record from the*

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<sup>103</sup> Key informant interview.

<sup>104</sup> Key informant interview.

<sup>105</sup> Key informant interview.

<sup>106</sup> Key informant interview.

<sup>107</sup> Key informant interview.



*hospital, and the name on the birth record (yellow paper from hospital) was different to the name on the birth certification and other records.<sup>108</sup>*

The issuing of fraudulent birth certificates to illegally change a person's identity, including name and age, is an offense under Article 629 of the Criminal Code.<sup>106</sup> On the surface this would suggest requests for new or altered identity documents, or their issuance, is an indicator of trafficking that should trigger suspicion and reporting. However, as one stakeholder noted, the alternation of identity documents is not uncommon and has been somewhat normalized in Cambodia.

*You can get a new birth document very easily. I think most people have 2 or 3 different documents. You use it for different things, and that's not uncommon.*

In most cases, requests to issue, re-issue and/or alter details in identity documents are made for non-nefarious reasons related to employment, enrolment in education or for family matters. Record keeping systems are not yet fully digitized, which makes it easier to change details if a request to re-issue a lost certificate is made. Birth registration rates have increased significantly, however universal registration has yet to be achieved. One stakeholder noted administrative barriers to registering a child's birth still exist and may leave a child without identity documents and more vulnerable to trafficking.

*Sometimes the child is still born if the family is not registered in that area, the family is unable to register the child's birth and location. The authorities will not facilitate it.<sup>109</sup>*

The confluence of these factors makes it easier for traffickers to request fraudulent identity documents and change the child's identity, or that of their parents, in the process, and for commune authorities to oblige, without arousing suspicion. This normalization of this conduct impacts upon detection and reporting of cases of orphanage trafficking. In addition, some stakeholders noted that reporting and investigating orphanage trafficking is made more challenging when authorities may be involved, intentionally or otherwise, through issuing fraudulent birth certificates. Various reports, including US State Department Trafficking in Persons reports have noted a general reluctance to seek prosecutions for human trafficking in cases where government officials may be involved.<sup>110</sup>

The normalization of children's involvement in fundraising activities for the orphanage and the commodification of their stories is another factor that impedes the detection of cases of orphanage trafficking where the purpose is profit. Orphanage tourism, including performances by children, and the public dissemination of confidential and sensitive details about children's

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<sup>108</sup> Key informant interview.

<sup>109</sup> Key informant interview.

<sup>110</sup> United States Department of State, *2018 Trafficking in Persons Report - United States of America*; United States Department of State, *2019 Trafficking in Persons Report - United States of America*; United States Department of State, *2020 Trafficking in Persons Report - United States of America*.

backgrounds to donors, or their fabrication, for fundraising purposes were all identified by stakeholders as highly visible indications of orphanage trafficking. Yet their normalization, despite the documented impacts on children's wellbeing and right to privacy, mean these indicators rarely raise suspicions or trigger detection and reporting of orphanage trafficking, where it may be implicated.

*I remember hearing about the orphanage shows, people defending them saying, well the kids like it and we get money, we can buy more rice. That's the argument they'd make.<sup>111</sup>*

Stakeholders indicated that donors may be amongst the first to come across indicators of orphanage trafficking as recipients of children's profiles or fundraising requests. Several stakeholders gave examples where the inappropriate levels of detail about children's backgrounds, or implausible stories, shared with donors led them to suspect trafficking for profit purposes. However, the commodification of trauma has been normalized in international aid fundraising strategies to the point where donors are desensitized to the risk.

*They are brought into the orphanage and presented to donors as orphans to attract funding from donors. The donors are told the children were found in rubbish dumps, or the children were being sold and the director intervened and gave the mother some money so he/she could bring the child to the orphanage. So, these are the stories the donors are told so they'll give money for the children's care. This is pretty suspicious.<sup>112</sup>*

One stakeholder also noted that the normalization of children's involvement in fundraising for their own care, and commodification of their stories, may similarly impact the detection of a crime or decision to charge. It makes it challenging for the element of profit to be perceived as exploitative, despite its clear articulation as such under law.

*I've never seen an orphanage director charged with this offence (unlawful removal for a purpose of profit). I think it's probably because the courts don't perceive the removal of a child and placement of a child in an orphanage for profit or exploitation in the same way. They may not understand the profit purpose and see that as exploitative, so they don't think the exploitation element has been met and therefore they don't think it meets the requirements of the unlawful removal with purpose offence. I think this is part of the issue. They might see the activity of using children in orphanages to raise money as pretty minor and not really classed as exploitation. But if you look at the offence, and as a child protection advocate, we can say that's wrong. Removing a child in order to take photos of them, pose them as orphans in order to raise funds and make a profit is wrong and it constitutes exploitation, but the court may not perceive it that way.<sup>113</sup>*

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<sup>111</sup> Key informant interview.

<sup>112</sup> Key informant interview.

<sup>113</sup> Key informant interview.

## BARRIERS TO REPORTING AND VICTIM PARTICIPATION IN COURT PROCEEDINGS

Stakeholders acknowledge the underreported nature of orphanage trafficking crimes and identified several barriers to reporting, even when criminal conduct has been suspected or detected. Reporting is often triggered by children disclosing sexual abuse; however, stakeholders noted the challenges children face in reporting exploitation or abuse. In addition to general issues of shame and stigma, often associated with sexual abuse, children exploited in RCFs are often under the power and control of the person who perpetrated or enabled their exploitation. Stakeholders spoke of instances where children had been coerced and threatened by orphanage directors to prevent disclosure, and where families had been threatened to circumvent reporting.

*The whole dynamic of abuse of power is really significant. If abuse is perpetrated by someone with authority over them, children will be too scared to report. In one case, there were threats of killing children if they reported or disclosed the abuse. So, the children were placed under enormous pressure and they couldn't speak out. These types of threats are silencing for adults let alone child victims of abuse. Children don't fully understand what's happened and so to expect that they can overcome these power imbalances to report is unrealistic in many cases.<sup>114</sup>*

*If you went back to the parents and said this is your son or daughter and this is what has happened, do you want to make a complaint, they wouldn't make a complaint... There is no doubt the orphanage director, if they thought someone was putting in a complaint, then someone from their family would go and visit them, and either give them money or threaten them. That happens all the time.<sup>115</sup>*

In other cases, these power dynamics prevented children from being able to confirm suspicions of abuse. Police interviews were often conducted on site, and in the presence of the director who was often the perpetrator or complicit. Several stakeholders noted that because of these power dynamics, it is not uncommon for children to only disclose abuse or exploitation once they have been reintegrated back into their family and are no longer under the direct control or authority of the perpetrator. .

*The kids were often interviewed by the police at the orphanage, and where the director could hear, and very rarely would the kids say anything. They'd been threatened as well, and told they'd be turned out on the street if they ever said anything or told. The kids were abusing each other a lot in these places. There was a lot of that going on, and so it was very difficult for them to speak out.<sup>116</sup>*

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<sup>114</sup> Key informant interview.

<sup>115</sup> Key informant interview.

<sup>116</sup> Key informant interview.

*It's also a very closed environment and a place that that's easier to keep information contained and if they keep the children inside the orphanage and don't let them leave, then it will be even harder for disclosures or reports to be made. It is very difficult for a police officer to go into an orphanage and interview children, because the children are under someone else's control and authority. It's also tenuous because if information that the orphanage is under investigation is shared that could put the children at further risk of being threatened or coerced or harmed before an arrest is made. Then the children might be instructed what to say when they are interviewed and what not to say. We've come across many cases like this where the children have been instructed what to say. We've come across cases where the families have been instructed what to say as well. We can tell when this is happening and when a child is lying to us because they've been instructed. You can tell by the words the children are choosing to use, they're often more sophisticated than language typical for a child of their age. But to actually evidence this is very challenging.<sup>117</sup>*

Several stakeholders highlighted the role of cultural notions of gratitude and obligation in preventing disclosures by children and discouraging reports by their families. Children are recruited into care with promises of food, shelter, access to education and other opportunities. These things are often provided to children, even at a rudimentary level, in orphanages that perpetrate trafficking or exploitation. On this basis, orphanage directors, and caregivers take on benefactor roles in the children's lives, which can be quasi-parent, patron-client in nature, and are associated with an obligation to reciprocate with loyalty and gratitude. Stakeholders described how in some cases children interpret their exploitation as a form of reciprocation. In addition, loyalty towards their benefactor demands their silence. One stakeholder noted how complex these feelings are for children to process and how it leaves them conflicted and confused about whether they have a legitimate claim to report exploitation.

*Cambodia is still such a patron client society isn't it, and that's what you do, you have a big person protecting you, and it's not seen as exploitation.<sup>118</sup>*

*It's rare for a child to report, because its conflicting. They've received some level of care, support, accommodation, food, and this means they'll evaluate whether they should report. They'll weigh it up and often decide that what happened to them isn't that bad, isn't that serious and it's overshadowed by the support they've received. So, they feel some sense of loyalty and obligation to the orphanage and director which prevents them from reporting. Sometimes when the children are being exploited for labor they think, well it's just a case of them asking me to do work that I can do, so that's not so bad. They don't realize it constitutes labor exploitation. Sometimes they might use*

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<sup>117</sup> Key informant interview.

<sup>118</sup> Key informant interview.

*the children to give massages to visitors, and the children will think, that's not so bad. They won't understand that it's a violation. So, it's rare for children to report, because it's difficult for them to separate out loyalties and other issues to realize they've been violated.*<sup>119</sup>

*They don't report because of the loyalties and sense of obligation they feel towards the orphanage and its operators. We can't blame children for this or not reporting, because they're still minors. It's much harder for them at that age to process these issues clearly and differentiate between what's right and wrong and where boundaries are.*<sup>120</sup>

For some children and families, a lack of confidence in the criminal justice system can deter reporting and lead families to pursue compensation in lieu of criminal justice. Stakeholders noted that criminal law proceedings can be very daunting for children and their families. Factors contributing towards the lack of confidence amongst children and their families included lengthy court proceedings, exposure of children to multiple interviews, insensitive child interviewing and evidence gathering techniques that can leave children feeling traumatized and incriminated, and partiality.

*Sometimes these children don't trust the courts in Cambodia. It's an assumption, but they might not trust in the justice system here. They've heard that it's a drawn-out process, that it's difficult and that you'll never beat someone with power or money. Some feel like this is the case and therefore they chose to let it go and move on.*<sup>121</sup>

*Trial proceedings take a long time, and this frightens the victims. They are summoned to come to the court multiple times throughout the proceedings and this exacerbates their trauma. By the time it gets to the trial, they may have tried to suppress some of their memories of the event to cope, and this impacts their ability to answer questions when examined during the trial. One of my cases continued to the Supreme Court, so it took almost four years to reach the final verdict. During the trial, the victim said that she was actively trying to forget about what happened to her, so by the time she got to the trial, she couldn't recall all the minute details of the event as she was originally able to do. The judge then accused her of lying saying, you originally said this, and now you're saying that, which is inconsistent.*<sup>122</sup>

Numerous stakeholders spoke of the widespread practice of victim interference and out of court settlements in criminal law cases and the undermining affect it has on prosecution and deterrence of human trafficking crimes. Examples were given of cases where victim

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<sup>119</sup> Key informant interview.

<sup>120</sup> Key informant interview.

<sup>121</sup> Key informant interview.

<sup>122</sup> Key informant interview.

tampering and intimidation during court proceedings led victims to withdraw complaints, revoke testimony, and in some cases, the termination of court proceedings, although this was reported to be in decline. One stakeholder noted that criminal charges for victim or witness tampering were often not added to charge sheets, even when concrete evidence of intimidation and coercion existed.

*In this case, I defended many children who were the victims of the abuse. It was a very sensitive case, and the accused was a person who has both resources and influence, hence, even at the last moment he still could persuade the children to withdraw their statements. When we commenced the inquiry into this case, the children provided statements and clearly said they were abused. Then afterwards, we don't know how or what methods he used, but he managed to persuade children to withdraw their statements.<sup>123</sup>*

*There are many cases where the perpetrators are out on bail, and in those cases, it almost always results in interference and threats to the victims or witnesses. There are other cases where bail is not granted but the perpetrator uses their networks to threaten or coerce victims, witnesses or the families, to try to encourage the victims to go for an out of court settlement and withdraw the complaint. They'll tell the victim and family that the perpetrator didn't intend to abuse the children. It was situational, and he was stressed and that's why it happened. There are lots of cases where the defense lawyers will play that role and try to meet with the victims, negotiate, and get them to withdraw the complaint or minimize the charges. This happens all the time.<sup>124</sup>*

In some cases, victim tampering was enabled by lengthy investigations or delays to the commencement of trials, during which period the alleged offender was at large in the community. This gave them access to children and families and heightened the level of intimidation experienced by the children. In one case of multiple victims, two-thirds of the victims withdrew their complaint in response to serious and sustained intimidation from the perpetrator. In other cases, stakeholders described how out of court settlements can be used to convince families into switching sides and defending perpetrators in ongoing court proceedings and cases with multiple victims.

*If the victim and family love the perpetrator from the beginning, like I've explained. If they believe they owe a debt of gratitude towards the perpetrator, then they won't put themselves in opposition to the perpetrator, and they won't allow their children to be portrayed as victims of an offence perpetrated by that person. They will instead defend the perpetrator and often give testimony on his behalf. But, in some cases, the*

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<sup>123</sup> Key informant interview.

<sup>124</sup> Key informant interview.

*families might file a lawsuit and pursue legal action against the perpetrator, but once they receive an out of court settlement from the perpetrator, they will switch sides and start to defend the perpetrator instead. That sometimes happens.*<sup>125</sup>

*Firstly, the victims and their families sometimes withdraw the lawsuit after they receive compensation from the perpetrator outside the court proceeding. They withdraw the lawsuit, and they change their story to defend the perpetrator once they've received compensation.*<sup>126</sup>

## OTHER BARRIERS TO INVESTIGATION AND PROSECUTION

Stakeholders identified the degree of technical knowledge of trafficking offenses amongst investigative police, including the anti-human trafficking police, as a further barrier affecting the implementation of the legal framework for prosecuting orphanage trafficking. Numerous stakeholders noted a tendency to pursue charges under more well-known TSE offenses, specifically sexual offenses, and the underuse of trafficking offenses.

*The anti-human trafficking police are using the TSE Law more than they're using the Criminal Code, but they're using specific offences, and focusing on the sexual offences. They're not using trafficking offenses.*<sup>127</sup>

For orphanage trafficking, this meant that cases involving sexual exploitation were often investigated and prosecuted under lesser offenses. In addition, reactive policing and investigative practices meant that investigations only sought to establish the material facts of the charges proposed. Therefore, the bias towards using sexual offenses resulted in investigations that failed to uncover or evidence other elements, such as unlawful removal, transfer, harboring or receipt, or other forms of exploitation that may also have simultaneously occurred in the RCF.<sup>128</sup> This has evident ramifications for the identification of victims and the identification and prosecution of offenders involved in orphanage trafficking crimes.

*Investigating judges have the authority and responsibility for investigating, for actively gathering additional evidence beyond what is presented to them in the evidentiary brief. But in most cases, they rely on the case file given to them from below, from the police. This means a lot of information is lost and not included, because the police don't investigate thoroughly to start with. We know that there are many more child victims than what is coming to the attention of the courts.*<sup>129</sup>

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<sup>125</sup> Key informant interview.

<sup>126</sup> Key informant interview.

<sup>127</sup> Key informant interview.

<sup>128</sup> This was more prevalent in the provinces when compared to Phnom Penh municipal police who stakeholders noted had more experience investigating child trafficking cases.

<sup>129</sup> Key informant interview.



*The police did not think this constituted an act of trafficking and therefore they did not file a report or launch an investigation. Because of police inaction, an NGO filed a complaint to the court and the prosecutor filed charges against the perpetrator.*<sup>130</sup>

One stakeholder gave an example of a report made to the police by a parent of a child who had been irregularly admitted into an orphanage and subsequently adopted, without the parent's consent. While adoption is a recognized purpose for unlawful removal under Cambodia's child trafficking laws, police unfamiliar with the TSE trafficking offenses failed to detect that the reported behavior may have indicated child trafficking. As a result, police did not accept a complaint from the family nor launch a preliminary investigation.

*In the one case where a family made a report to the police, I think that the family were explicitly told that no crime had been committed and to go home.*<sup>131</sup>

Delays resulting from jurisdictional issues were also cited as a barrier to the investigation and prosecution of orphanage trafficking cases. While all residential care services fall under the oversight of MoSVY, as the ministry with oversight for child welfare and child protection, other line ministries also have jurisdiction over the entities that run residential care services. Local NGOs fall under the oversight of the Ministry of Interior, international NGOs the Ministry of Foreign Affairs, and faith-based organisations or places of worship, the Ministry of Cults and Religion. When a complaint is received regarding the abuse or exploitation of a child in an RCF police may require permission from the relevant line ministry to enter the premises and gather evidence. Stakeholders noted this process risked delaying investigation and alerting alleged offenders to reports. It was noted to be particularly challenging when the allegations related to a Pagoda run RCF, due to the revered position of Buddhism as a State religion, and reluctance to incriminate Buddhist institutions or Monks. Examples were given of how these jurisdictional challenges resulted in evidence being destroyed or alleged offenders fleeing prior to arrest.

*It is very challenging to investigate suspected cases of orphanage trafficking in the Buddhist run residential care facilities. Because of the reverence and privilege of Buddhism as an institution, to investigate a suspected case of orphanage trafficking in a pagoda-based care facility, we first need permission from the prosecutor and then we need to request permission from the Ministry of Cults and Religions. In the time it takes for this to happen, the perpetrator often finds out about the pending investigation and escapes since the requesting procedure takes too long. So, this procedure is a barrier as it takes too long.*<sup>132</sup>

*Churches are also difficult to get permission to investigate because they are under Cults and Religion. However, for the trafficking case in the church that I was involved*

<sup>130</sup> Key informant interview.

<sup>131</sup> Key informant interview.

<sup>132</sup> Key informant interview.



*in, because it was not registered with the Ministry of Cult and Religions, it was much easier to request permission from the prosecutor to investigate. But for cases in Pagodas, it's so difficult. For trafficking cases that happen in NGO run orphanages, it's also challenging to investigate since we need to request permission from MoSVY and the Ministry of Interior and we end up waiting a long time to receive these permissions. In summary, the procedure of approving the request is a challenge in investigating suspected cases.*<sup>133</sup>

*In some cases, there have been reports of cases of child abuse in orphanages in the past, but when this report is made, the perpetrators go missing and cannot be found. This has hampered efforts to investigate cases reported to prosecutors. The risk that the perpetrator may go missing before the investigation begins is high in the case of foreign perpetrators who have the means to leave Cambodia quickly to escape prosecution. They often left the country when the reports came out, so there was little we could do.*<sup>134</sup>

Weak rule of law and a pervasive system of clientelism were systemic issues identified by numerous stakeholders as issues that have a general constraining effect on the criminal justice system in Cambodia and a specific impact on the investigation and prosecution of orphanage trafficking cases. Clientelism was one of the key factors identified by stakeholders as a root cause of reactive policing and investigation. It was associated with a system of incentives and disincentives that are more concerned with the maintenance of social and political networks than the enforcement of law and policy. Some stakeholders asserted that fears an investigation might uncover a link between a crime, and a well-connected individual, discouraged police from taking initiative in preliminary investigations. Instead, police preferred to wait for a request to investigate from superiors, as this offered them personal protection against any resulting backlash.

*Everyone is within this [clientelist] system and it's tightly run. It's like invisible threads and you don't want to snap the threads. You have to look after the threads. You need the threads to climb. If someone cuts the thread you're done, and no one wants that to happen. That's the biggest problem with orphanage trafficking and all forms of trafficking.*<sup>135</sup>

In addition to the general investigative inertia that stems from clientelism, stakeholders also noted that patron-client relationships can have direct impacts in orphanage trafficking cases. Stakeholders gave several concrete examples of cases where the decision not to press charges, pursue prosecution or to terminate an investigation was made due to the connection between the orphanage and a powerfully connected patron, and the patron's intervention. This

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<sup>133</sup> Key informant interview.

<sup>134</sup> Key informant interview.

<sup>135</sup> Key informant interview.

connection was in some cases forged through the patron's role as a donor to the orphanage, and in others was a personal connection between the director and patron.

*To rise through the ranks here, to become an excellency, you've got to do charitable works, and lots of them just chuck a bit of money at something, including at orphanages. All of a sudden, they're a patron and you've got a powerful person as a patron, and you can't touch that orphanage anymore. You've got to be seen to be philanthropic to rise in the ranks. They don't check how their money is being spent, but all of a sudden, you've got an orphanage that you can't touch anymore.<sup>136</sup>*

*Another issue is related to the intervention from high-ranking government officials that make law enforcement in our country difficult. Sometimes they intervened as a result of bribery and it made the law enforcement officers reluctant to properly perform their duties. Instead, they either participated in the wrongdoing or just wanted to evade the responsibility.<sup>137</sup>*

*Another barrier involves the RCF managers. When they get into trouble, they often try to find a powerful person or higher-level authority to intervene and protect them from any consequences. We have encountered this issue up to the highest levels of society, where big political figures intervene and protect the RCFs involved in crimes, and we cannot do anything. This is a real challenge for children who are victims of crimes in RCFs.<sup>138</sup>*

The overarching impact of clientelism on the prosecution of orphanage trafficking cases was the inconsistent implementation of criminal law procedures for investigation, apprehension, and prosecution of offenders. In every case where clientelism was an intervening factor, criminal justice proceedings were stalled at the investigative stage.

*We have worked with the police, and it's been a failure in some cases and a success in others. Some RCFs are connected to powerful networks, and this can result in failure.<sup>139</sup>*

*Some organizations also rely on their higher-level networks/contacts to perpetuate what they are doing, and when that is the case, authorities aren't going to intervene. Like the case in 2020 of [name redacted] orphanage, when authorities were instructed from superior government officials to stop investigating and back out. That's on the public record.<sup>140</sup>*

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<sup>136</sup> Key informant interview.

<sup>137</sup> Key informant interview.

<sup>138</sup> Key informant interview.

<sup>139</sup> Key informant interview.

<sup>140</sup> Key informant interview.

# Recommendations

In addition to general recommendations to strengthen the rule of law, stakeholders and the findings of this study identified several ways that the deterrence, detection, and prosecution of orphanage trafficking could be enhanced in Cambodia. Recommendations fall under the general categories of sensitization and training, strengthening existing mechanisms and legislative, regulatory and protocol reforms.

## 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 case 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, including under the National Action Plan for Improving Child Care.
- 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.

To ensure training is relevant, implementable, and sustainable, stakeholders noted the need to factor in context analysis into the design of training. Where possible, training modules should be integrated into existing or planned national training pathways and frameworks.

## 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 residential care facility, 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 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.

First, it is imperative for Cambodia to progress with plans to enact grooming offenses. The grooming of children under the age of sexual consent should be criminalized as a specific offense. 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 position 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 prosecution of orphanage trafficking crimes. Enacting grooming offenses will make some of the indicators of orphanage trafficking a substantive crime, improving the likelihood of action from law enforcement and mandated reporters in response to the detection of these indicators. The legal basis will be strengthened 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 the 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.

Second, it is recommended that the Guidelines on Forms and Procedures for the Identification of Victims of Human Trafficking for Appropriate Service Provision<sup>139</sup> 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 of children into residential care need 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.

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 protocols 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.

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<sup>139</sup> Guidelines on Forms and Procedures for the Identification of Victims of Human Trafficking for Appropriate Service Provision 2015.

- (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 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 being detected and a suspicion of orphanage trafficking being formulated. This coupled with a default assessment of the status of all children in the RCF and increased awareness and training, may improve the likelihood of child trafficking charges being brought against offenders. It may also lead to the identification of perpetrators involved in all stages of the trafficking act, and of other victims.

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/voluntourism (e.g., volunteer sending or receiving organisations, including the RCFs, destination management companies and local tourism/voluntourism service providers).

Prohibitions on orphanage tourism will enhance efforts to combat and prosecute orphanage trafficking in several ways. Rendering the facilitation of orphanage tourism/voluntourism unlawful will reduce the incentive for children to be trafficked into RCFs for profit, producing a preventative effect on orphanage trafficking. It will simplify the process of differentiating between acceptable forms of fundraising and commodification of children in RCFs. 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 that offenders who recruit or transfer children into RCFs for the purpose of profit will be prosecuted, including those involved in the recruitment of children from their families.

# Conclusion

Cambodia possesses a progressive and enabling legal framework for the prosecution of orphanage trafficking crimes. The inclusion of profit and adoption as a purpose for unlawful removal in the 2008 TSE Law constituted a significant and commendable development in human trafficking law. These developments paved the way for all known expression of orphanage trafficking to be prosecuted as criminal offenses. In addition, Cambodia's legal framework contains a range of offenses that can constrain the operating environment of orphanage traffickers and prevent and deter these crimes. These include offenses in the Criminal Code related to unlawful removal, incitement to abandon, and penalties under child protection regulations for operating unlawful 'clandestine' RCFs.

In addition, Cambodia has made significant progress in strengthening the child protection and alternative care systems. 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 of families at risk of separation to social protection, and providing case management services for reintegration.<sup>140</sup> These commendable efforts go a long way towards reducing the vulnerability of parents and children to orphanage trafficking and constraining aspects of the operating environment of exploitative orphanages.

These positive developments to strengthen law and child protection systems notwithstanding, 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 within the criminal justice system, child protection system, internal to the operation of residential care facilities, and those that stemmed from levels of awareness, community attitudes and cultural notions and norms.

Barriers related to knowledge and awareness, included varying levels of awareness of orphanage trafficking and its indicators, and technical knowledge of the TSE offenses amongst relevant stakeholders. The highest levels of knowledge were reported amongst judiciary, court officials and specialized investigative organisations and the lowest levels of knowledge were reported amongst local authorities, sub national child protection authorities and police. Detection and interpretation were further complicated by the fact that these crimes occurred in orphanages, which remained widely and positively viewed as vital child protection services. This reduced scrutiny, and enabled constituent elements or indicators, including grooming

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<sup>140</sup> Guidelines on Forms and Procedures for the Identification of Victims of Human Trafficking for Appropriate Service Provision 2015.



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 investigation, particularly in the preliminary stage, also limited detection and prosecution of orphanage trafficking. 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 provided to prosecutors 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 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 RCFs, and discrepancies in the rigor and regularity of RCF inspections. Gaps were also noted in the enforcement of gatekeeping and consequences for irregular admission. 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. These inconsistencies in the alternative care regulatory and monitoring framework were found to reduce safeguards for children in residential care and the likelihood of abuse, exploitation and trafficking being detected and referred for investigation.

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 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 roles in the children’s lives.



This made children more likely to justify the exploitation as the means by which their debt of gratitude was exacted. Child also reportedly felt obliged to stay silent out of a sense of loyalty to the perpetrator. 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.

To address barriers and enhance the detection, prosecution and prevention of orphanage trafficking, significant efforts are required to increase the level of awareness of orphanage trafficking amongst the child protection and criminal justice systems. The identification and integration of orphanage trafficking indicators into the alternative care inspectorate system, human trafficking victim identification and referral mechanisms are an important step to improving detection and encouraging referrals across the child protection and criminal justice systems. The enactment of grooming offenses can aid in detection and provide a clearer means of evidencing 'intent' to sexual exploit. It is likely that this will improve intervention and the initiation of criminal proceedings before sexual exploitation has occurred, thus minimizing the severe trauma impacts on children. Regulation of voluntourism and prohibitions on orphanage voluntourism will eliminate a key driver of orphanage trafficking and reduce instances of sexual exploitation. In addition, the development of investigative protocols will support more comprehensive investigations and ensure evidence critical to establishing all the elements of a trafficking crime are gathered. This can contribute to overcoming what was perhaps the greatest barrier to the detection and prosecution of orphanage trafficking identified in the study: the detection of the element of unlawful removal. Routine investigation into the legality of removal will result in improved offense classification and increase the likelihood of child trafficking charges being brought in these cases. It is expected that this will also result in the prosecution of perpetrators involved in stages of trafficking other than exploitation, such as removal, transfer, and receipt.

These recommendations represent a comprehensive suite of suggest actions to be undertaken across the criminal justice and child protection landscape to enhance the detection, prosecution and prevent of crimes of orphanage trafficking. Without such measures, it is likely that orphanage trafficking crimes will remain obscured, underreported, misclassified, and infrequently prosecuted. This ultimately puts already vulnerable children at risk of predation and exploitation, all under the guise of charity and 'care'.