



ABOUT ORPHANAGE TRAFFICKING: Description and Indicators

WHAT IS ORPHANAGE TRAFFICKING?

Orphanage trafficking is a form of child trafficking defined as the recruitment or transfer of children into orphanages, or any residential care facility (RCF), for a purpose of exploitation or profit. It involves both 'acts' and 'purposes of exploitation' that meet the definition of child trafficking under the Protocol to Prevent, Suppress and Punish Trafficking in Persons ('UN Trafficking Protocol').

Orphanage trafficking is associated with various purposes of exploitation, including:

- Sexual exploitation
- Labor exploitation
- Servitude or slavery like practices
- Profit
- Illicit adoption

HOW TO DETERMINE IF A CHILD HAS BEEN TRAFFICKED INTO AN ORPHANAGE?

Child trafficking crimes are determined based on evidence of two elements: acts and purposes. Both must be present and linked for the conduct to be classed as child trafficking.

In orphanage trafficking, the primary acts are the recruitment and/or transfer of the child from their family/legal guardians into a residential care facility. To establish that these 'acts' have indeed occurred, the process and legality of a child's removal from family and admission into the residential care facility must be examined.

In most cases, children who are victims of orphanage trafficking will have been recruited and admitted into orphanages outside of formal gatekeeping mechanisms prescribed in alternative care laws and policies. Gatekeeping mechanisms typically stipulate 3 legal bases:

1. MANDATE: the persons and entities who possess legal authority and mandate to remove a child from family/guardianship, refer the child to residential care services and receive/admit a child into residential care.	2. JUSTIFICATIONS: the circumstances or conditions in which a person with legal mandate can remove a child from family/guardianship and admit/refer the child to residential care services.	3. PROCESS: the manner prescribed in law and policy that must be followed for the removal of a child and referral and admission into a residential care service.
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Where a child is removed and admitted into residential care in contravention of any or all these legal bases, the removal and admission may be deemed 'unlawful' or 'irregular'. In some countries, unlawful removal and irregular admission are stand-alone offenses that carry penalties ranging from imprisonment, fines, and entity deregistration. Active recruitment by orphanage personnel or child finders, transfer of children by non-mandated authorities (including families) into residential care services, and any transfer of a child into an unauthorized RCF (unregistered and unlawfully operating RCFs) are all examples of irregular or unlawful removal that may constitute 'acts' of orphanage trafficking.

To confirm whether a purpose exists, there are two requirements that must be met:

1

There must be evidence of **conduct** that constitutes exploitation or profiting, or there must be evidence of an **intent** to exploit or profit (where it has not yet occurred).

2

The intent to exploit or profit from the child's institutionalisation must be the underlying reason for the child's recruitment and/or transfer into the RCF (unlawful removal and/or irregular admission). This means the **act and purpose must be linked**. If a child is recruited into an RCF and is subsequently abused or exploited, but the exploitation was not the purpose for which the child was recruited (opportunistic or unrelated), it may not constitute orphanage trafficking. It still however constitutes a criminal offense for which other charges may be brought.¹

If the 'act' of recruitment or transfer into a residential care facility (unlawful or irregular removal and admission) was for a 'purpose' of exploitation or profit, then both required elements are present, and the conduct may constitute orphanage trafficking.



ORPHANAGE TRAFFICKING UNDER DOMESTIC LAW

In addition to being defined under international law, for the purpose of detection, prosecution, victim identification, orphanage trafficking needs to be situated under domestic law in each country or jurisdiction. This requires an examination of the following laws:

1

Human trafficking laws, to examine the construction of child trafficking offences, the definitions of exploitation, and the extent to which profit is captured under existing offenses or definitions of exploitation.

2

Child protection laws and regulations, to establish the legal bases for gatekeeping, including mandate, justifications, and processes for the removal of a child from family/guardianship, and referral and admission into residential care, and to determine what conduct is unlawful and/or irregular.

Through such an analysis, it is possible to theoretically determine what conduct constitutes an offense under domestic law and how orphanage trafficking could be evidenced and potentially prosecuted.

¹ See the decision-making tree below for further clarity.

HOW IS ORPHANAGE TRAFFICKING DETECTED? Indicators

Orphanage trafficking can be detected by the presence of indicators. Indicators can be categorized around the different elements of orphanage trafficking. The first category of indicators deals with the 'acts', including the primary acts of recruitment and/or transfer (unlawful removal and irregular admission), as well as transportation, receipt or sale or exchange of a child. The second category of indicators relate to the 'purposes', including sexual exploitation, labor exploitation, servitude and slavery like practices, profit, and adoption. The third category of indicators relates to the 'means', including deception, coercion, and threats.

The Palermo Protocol (UN Trafficking Protocol) and most domestic laws recognize that, for the trafficking of children, there is no requirement to prove 'means'. However, as deception, coercion, and threats against children and their families are often present in orphanage trafficking cases this category of indicators is included in this document to aid in the detection of orphanage trafficking crimes and identification of victims. In some cases, these 'means' may be easier to detect and interpret (indicators may be more visible, more readily disclosed, or easier to establish without putting children at further risk) than some of the 'purposes' involved in orphanage trafficking. Therefore, detecting means may trigger an intervention and wider investigation that will uncover evidence of the acts and purposes required for orphanage trafficking crimes to be established and prosecuted under domestic child trafficking offenses.

Orphanage trafficking can be detected by a range of persons, including professionals and members of the community. The following groups of people are most likely to come across indicators of orphanage trafficking and have opportunities to identify victims:

- **Mandated child protection authorities:** may detect orphanage trafficking indicators when conducting routine RCF inspections, performing other monitoring functions, responding to reports or concerns in RCFs, or supporting RCFs to close or transition to other non-residential services.
- **Social workers:** may detect orphanage trafficking when providing case management or counselling services to children in RCFs or children/youth who have left RCFs.
- **Social service providers:** may detect orphanage trafficking when providing services to children in RCFs or children or youth who have left care, including in the context of aftercare services.
- **Local authorities:** may detect orphanage trafficking based on the presence of unlawfully operating RCFs or suspicious conduct in RCFs operating within their jurisdiction.

- **Law enforcement:** may detect orphanage trafficking in response to reports or complaints filed with police or the courts about abuse that occurred in RCFs.

Children or youth may also disclose abuse or conduct that constitutes exploitation in residential care settings to their families, teachers, or other trusted persons. This typically only happens once they have left care. It is less common for children to disclose whilst they remain in care and under the control of the perpetrator/s.

INDICATORS OF ORPHANAGE TRAFFICKING

1. Indicators of Acts

1.1. *Unlawful removal, recruitment, and transfer of a child into a residential care facility*

- Operation of an unauthorized RCF
- Irregular or unauthorized admission of children into RCFs
- Active recruitment of children from families
- Admission of children who are relatives of the staff/director in the RCF
- Advertising the residential care services in the community
- Incomplete or absent child files
- Incomplete child intake/admission forms
- Widespread irregularities in children's files and identity documents
- Fraudulent or falsified identity documents
- Falsified reasons for admission
- Paper orphaning
- Movement of children from one RCF to another
- Patron-client relationships occurring in the RCF (between directors, families and high-level patrons)
- Limited or no contact facilitated between children and families

2. Indicators of Purposes

2.1. *Sexual exploitation*

- Withdrawn, isolated, fearful, anxious, or aggressive behaviors amongst children
- Sexually harmful behaviors
- Grooming
- Volunteers or visitors taking children offsite unaccompanied
- Physical signs of abuse, STIs, pregnancy, self-harm, drug, and alcohol use
- Disclosures of sexual abuse made by children/youth

2.2. Labor exploitation

- Children working on farms, land, properties or in construction roles
- Children providing labor in businesses owned by the director or the director's family
- Children working in the homes of directors and/or staff (domestic and childcare duties)
- Children performing for volunteers/visitors

2.3. Servitude and slavery like practices

- Indicators of labor exploitation (as above)
- Never or rarely leaving the RCF or never without the accompaniment of the director or their family members (deprivation of liberty)
- School aged children not attending school

2.4. Profit

- Orphanage tourism, voluntourism and volunteering
- Inappropriate disclosure of children's personal details (poor confidentiality standards)
- Scripted and coached interactions between children and volunteers/visitors
- Sharing falsified, improbable or embellished narratives about children's backgrounds
- Involving children in begging, recruiting volunteers or visitors or other fundraising activities
- Poor standards of care (below minimum standard)
- Director/staff interference or lack of cooperation with reintegration
- Inflated admission numbers
- Significant discrepancy between the living standards of the director and the children in care
- Nepotism
- Financial misappropriation or fraud
- Sale of land/relocation of the RCF
- Lack of child safeguarding policies and mechanisms
- Giving children foreign or Christian names
- Overt emphasis on fundraising

2.5. Adoption

- High numbers of infants and young children in care (under 5)
- High numbers of claims of abandonment or orphanhood of infants and small children without special needs (health or disability)

- Fraud in declarations of adoptability for intercountry adoptions
- Orphanage tourism/visits
- Irregular adoption fees or donations

3. Indicators of Means

3.1. *Deception, Coercion and Threats: Against families*

- Contracts or agreements with parents and families
- Lack of cooperation from parents during reintegration assessments
- Limited family contact
- Deception about the conditions of care
- Deception through false or unmet promises
- Abuse of vulnerable family situations
- Cultivation of dependency between directors and families
- Families in patron-client relationships with RCF directors

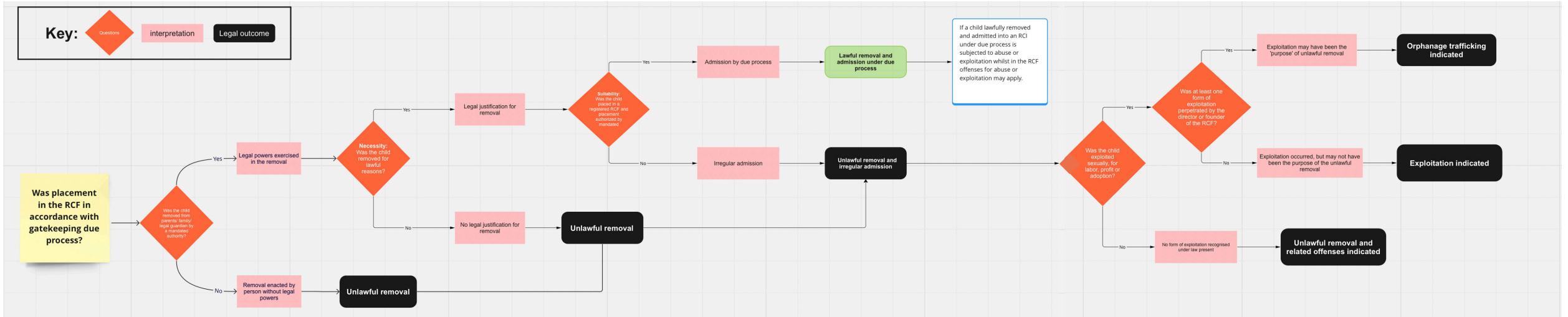
3.2. *Deception, Coercion and Threats: Against children*

- Inability to speak to children alone (social workers/inspectors)
- Rapid exit of some children (older children/youth) without due process
- Violence, physical or emotional/verbal abuse
- Noticeable changes in children's demeanor during assessments/interview
- Submissive, fearful, distressed, or anxious behavior
- Forced to lie to donors, volunteers, visitors and authorities
- Evidence of trauma bonds

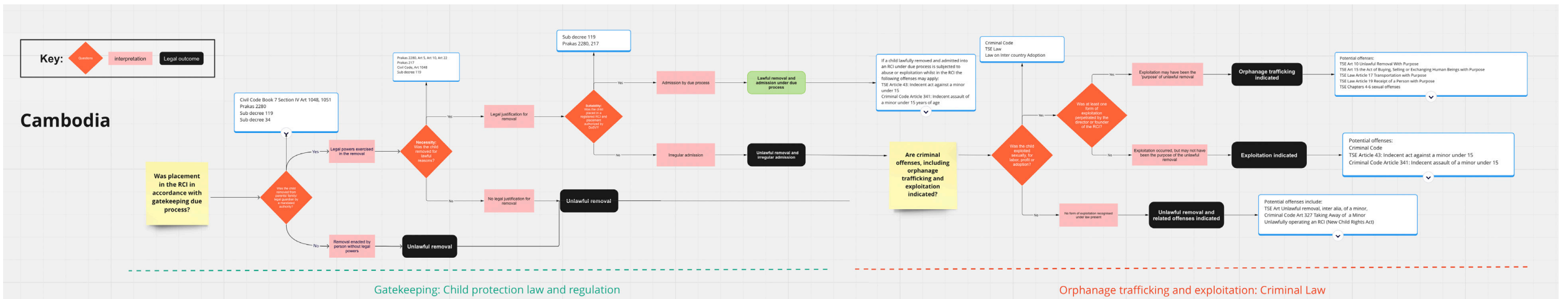
ORPHANAGE TRAFFICKING DECISION MAKING TREE

Like all human trafficking crimes, orphanage trafficking can be difficult to detect for a range of complex reasons. However, one challenge unique to orphanage trafficking is that it is disguised as a child protection intervention. This makes many of the indicators more covert and difficult to detect and interpret. In addition, to detect orphanage trafficking, stakeholders must possess knowledge of both criminal and child protection laws to be able to differentiate between legitimate child protection interventions and conduct that may constitute orphanage trafficking.

The diagram below is a decision-making tree that can support stakeholders to interpret information available to them to form a preliminary determination of whether orphanage trafficking or child exploitation offences may be reasonably suspected.



For improved specificity, this decision-making tree can be adapted and situated within the legal frameworks of specific countries or jurisdictions. Below is an example of the decision-making tree situated in the Cambodian legal context.



Gatekeeping: Child protection law and regulation

Orphanage trafficking and exploitation: Criminal Law