



APLE ²⁰_{YEAR}

Evidence of Best Practices

Related to the Right to Remedy and
Compensation for Child Victims of Sexual
Exploitation and Abuse

Brot
für die Welt

CHILDHOOD
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FOUNDED BY H.M. QUEEN SILVIA OF SWEDEN

 **Terre des
Hommes**

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Introduction

Despite the progress in prosecuting offenders of offline and online child sexual exploitation and abuse (“SEA”), restitution or compensation remains elusive for child victims in Cambodia. Families of the survivors generally become primarily responsible for the costs and expenses related to the child’s aftercare and recovery.

Survivors have various reasons for bringing their SEA cases forward, ranging from the desire for punishment and deterrence to apologies and compensation. Even though compensation could support victims’ recovery and rehabilitation, courts and prosecutors in Cambodia still fail to prioritize it, placing more importance on the imprisonment of the offender. Pursuing compensation can also be difficult, as the victims are responsible under Cambodian law for identifying the offenders’ assets and properties, and the investigation can delay already lengthy court proceedings.

Additionally, in cases where the offenders are from a foreign country (e.g., in the Global North), child victims may be able to pursue significant compensation claims under the domestic laws of that country. However, few of these cross-border child SEA cases are brought, as they are also complex and can be resource intensive. They require expertise and coordination between NGOs, Cambodian and foreign lawyers, investigators, law enforcement, psychologists, survivors, and their families.

This report will explore some of these challenges and others faced by victims in Cambodia with respect to enforcing their right to remedy in offline and online child SEA cases. It will then examine best practices for pursuing compensation on behalf of survivors based on case studies from Australia, the U.K., Thailand and the U.S. Finally, it will provide some recommendations that could inform advocacy and legal efforts in Cambodia.

Methodology for Report

The methodology for this report included: (1) a desk review of relevant literature, including research, existing training manuals, and NGO reports; (2) identification of gaps and challenges with respect to compensation for child victims of SEA in Cambodia; and (3) identification of best practices based on case studies in Australia, the U.K., the U.S., and France.

Evidence of Best Practices Based on Case Studies from Australia, U.S., and U.K.



A. Victims' Access to Remedy and Compensation

Issue:

The right to a remedy is enshrined in different international human rights instruments, such as the Universal Declaration of Human Rights or the International Covenant on Civil and Political Right which states that “any person whose rights or freedoms [...] are violated shall have an effective remedy.” It is also provided in Title 3 of the Code of Criminal Procedure of Cambodia.

Too often, however, Cambodian survivors of child SEA cannot access remedies or compensation via the criminal court proceedings in Cambodia, and victims rarely bring separate civil claims from the criminal proceedings, even if permitted under the Civil Code (torts law). Evidence relating to compensation for the harm suffered is not considered early enough in the proceedings or collected in a systematic manner by police, prosecutors, or investigating judges. Even where a trial judge orders compensation to be paid to a victim after a defendant's conviction, enforcement is weak. The burden is on the victims to identify the defendants' assets (a difficult, if not impossible, task), and the defendants will simply ignore the court's order or claim they are indigent (without providing any evidence). Foreign defendants, in particular, avoid paying compensation to survivors by immediately leaving Cambodia after serving their sentence or hiding their assets abroad.

Case Study: Loryman

A U.K. citizen, a former teacher, sexually abused at least five children in his home in Cambodia; he paid them for sexual acts when they were all minors. All of the children were from vulnerable family situations and lived in one of the poorest areas of Phnom Penh. One victim, about 13 years old at the time, was also raped (penetrated with the offender's finger) when the offender thought he was sleeping. This occurred in a room, and the child could not leave.

The U.K. citizen was convicted in the Court of First Instance in Phnom Penh under Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation and ordered to pay compensation for the mental and physical harm suffered by two of the children. However, he never paid this compensation despite the Cambodian court order. Instead, he fled Cambodia immediately upon the end of his prison term (prior to the Appeals Court hearing and judgment).

APLE, which had been assisting the children, could not locate any of the offender's assets in Cambodia or the U.K. It contacted the Legal Impact Hub ("Hub") in Cambodia, which is specialized in cross-border cases, and the Hub formed a hybrid team of lawyers from Cambodia and England that could assist the child victim. The hybrid legal team evaluated the case, and then together with APLE, informed the child victim (with the most serious harm) and his family in Khmer about the child victim's right to compensation and the opportunity to bring a case in England since the defendant was a British citizen. The lawyers then conducted further investigations into the defendant's assets in England and located land and a house owned by the offender and his wife. Given that the land and house had significant value, the child victim and his mother decided to pursue a civil claim for compensation under English torts law.

APLE and the English lawyers coordinated with the Hub to successfully file the complaint on behalf of the child victim in the English civil courts, and a "litigation friend" was appointed. After about one year, through the preliminary court process, the legal representatives negotiated a settlement that was accepted by both the defendant and child victim (via the litigation friend). The mother of the child victim wanted to advance the settlement for the benefit of the whole family. However, under English law, the settlement (and compensation) cannot be paid to anyone but the victim. In this case, the child victim can only access the settlement when he turns 18 years old. To ensure that the funds are secured for the child victim, the English judge placed them in an account in the U.K. in the victim's name, not the mothers.

¹Article 2 ICCPR.

²Although other child-victims from the Cambodian criminal case could have filed a claims for compensation in the U.K. court, their harm (and the facts of their cases) was not as serious as the selected child-victim, and thus, it would not have been practical to pursue a case in the U.K. Additionally, under U.K. professional ethics rules, lawyers generally cannot represent more than one victim in a case; it is a conflict of interest.

Best Practices Identified:

- Inform survivors of child SEA of their rights, including their right to remedy and right to legal assistance, throughout the criminal justice process;
- Create child-friendly documents with appropriate language explaining the court procedures and the victims' rights, including right to remedy and compensation and right to legal assistance;
- Translate these documents into multiple languages, not only the official language of the country (e.g., Khmer, Vietnamese, Chinese, English, etc.);
- Widely disseminate these documents in police stations, courts, bar associations, NGOs, and frontline professionals who are equipped to inform the children and their families;
- Inform victims not only of their right to remedy but also the services that can help them get compensation or restitution, e.g., legal aid lawyers, NGOs, pro bono lawyers, etc.);
- Inform survivors and their families about opportunities to obtain compensation from foreign offenders in their home countries through civil or criminal cross-border cases, e.g., civil claims under torts law;
- If pursuing a civil case in a third country, identify a foreign lawyer and conduct an initial evaluation of the case, including investigation into the defendants' assets in his home country. It is important to manage the expectations of the victims and their families, as these cross-border civil cases are still challenging and require victims to participate in additional court proceedings. If the defendant does not have any assets, a civil claim may not be viable;
- Clearly inform the child's guardian or parents that any compensation won from civil claims (e.g., under torts law) is for the benefit of the child, not the parents or family; and
- Never promise to the client(s) that they are guaranteed compensation or will succeed in a case.



B. Access to Legal Assistance in Proceedings

Issue:

In Cambodia, it is not mandatory for children to be legally represented in child SEA cases. Some misconceptions exist, and some legal professionals believe that children do not need a lawyer as they usually have their parents, guardians, or caregivers representing them. In theory, children should have access to legal support from the Legal Aid Department of the Bar Association of the Kingdom of Cambodia ("BAKC") or specialized NGOs that provide free legal services. However, in practice, adequate and free legal assistance is generally provided by the NGOs. The BAKC has signed MoUs with the relevant ministries that provide legal aid

³Resolution adopted by the General Assembly on 16 December 2005, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", para. 20.

⁴Federal Crime Victims' Rights Act 18 U.S. Code § 3771.

⁵ECPAT, "Disrupting Harm Cambodia", 2002, p. 86.

⁶ECPAT, "Disrupting Harm Cambodia", 2002, p. 86.

⁷ECPAT, "Disrupting Harm Cambodia", 2002, p. 86.

to indigent people. Despite these MOUs, few child SEA cases have come to BAKC. The lawyers in BAKC who have knowledge and expertise working with minors is limited. Additional training and experience working with children is needed, especially on child-friendly practices and procedures. Providing legal assistance to child victims of SEA is a specialized area that requires expertise.

Case Study: Loryman

In the Loryman case described above, in addition to the English lawyers who filed the complaint on behalf of the victim in English civil courts, a “litigation friend” (also sometimes referred to as a “court guardian”) was appointed (free of charge) for the purpose of the legal case. The appointment of the litigation friend was required because the victim was a minor and because the mother could not understand English and had no knowledge of the common law system. The litigation friend was tasked with making decisions on behalf of the child victim after consultation with the Cambodian lawyer, mother, and child. She assisted in organizing a psychological assessment of the child to demonstrate the harm suffered as a result of the SEA, and she aided in the settlement negotiations to protect the funds for the child.

Best Practices Identified:

- All children should be entitled to free legal assistance in cases of child SEA, including to seek compensation for the harm suffered;
- The lawyers representing the children must be qualified and have experience in previous child SEA cases. Specifically, the lawyers must understand and have experience in applying a child-friendly approach, and they must have knowledge of the child rights stipulated in the UNCRC, the optional protocol, and the latest developments in the child rights legal field;
- Where the family or legal guardian may not be able to act effectively for the child, e.g., in a foreign legal proceeding, consider appointing a “litigation friend” to work with the victim’s legal team.⁹





C. Calculating Compensation

Issue:

In Cambodia, there are no guidelines to assist judges in calculating the amount of compensation to award to a victim. Furthermore, compensation orders in criminal cases in Cambodia are confidential, only accessible to the parties and lawyers in the case. Little to no data exists about amounts awarded as compensation to child victims of SEA.

Accordingly, it is difficult for courts to assess the harm and non-pecuniary losses of the victims at the time of the case or in the future. In addition, the compensation awarded often does not reflect the full extent of the victim's harm, as it focuses more on physical harm than psychological harm (or pain and suffering). There is a lack of qualified psychologists who can work with children and assess psychological harm resulting from SEA.

Case Study of Moyle

An Australian man, who previously worked and lived in Cambodia, was arrested and charged with child SEA in Australia. The Australian Federal Police ("AFP") found child pornographic photos and videos on his computer and sought to identify the victims, minor girls from Cambodia and/or Vietnam. With support from APLE, the AFP located a young woman who had lived in a former brothel area in Phnom Penh when she was 12 years old. The defendant had forced and paid her to perform sexual acts, raped her, filmed and photographed the incidents, had kept the photographs and videos on his computer and had uploaded and circulated the child SEA material on the dark web.

The defendant was convicted in Australia in 2019, and the identified victim sought to obtain reparations, in particular for the uploading of the child SEA material to the internet as this material could continue to be online for years to come. APLE contacted the Legal Impact Hub in Cambodia to form a hybrid team of lawyers. The Hub established a team of Cambodian lawyers from Amrin Law and Consultants Group and Australian lawyers from a pro bono law firm. This legal team assisted the victim in seeking restitution through the Australian criminal case. It was the first time that a child victim, who was not Australian, sought compensation in a criminal case in Australia against an Australian defendant.

To be awarded compensation under Australian law, the victim had to demonstrate the harm she suffered at the time of the SEA and in the present day. This was a challenge for the legal team since the abuse happened more than ten years ago. As a result, the legal team hired a certified

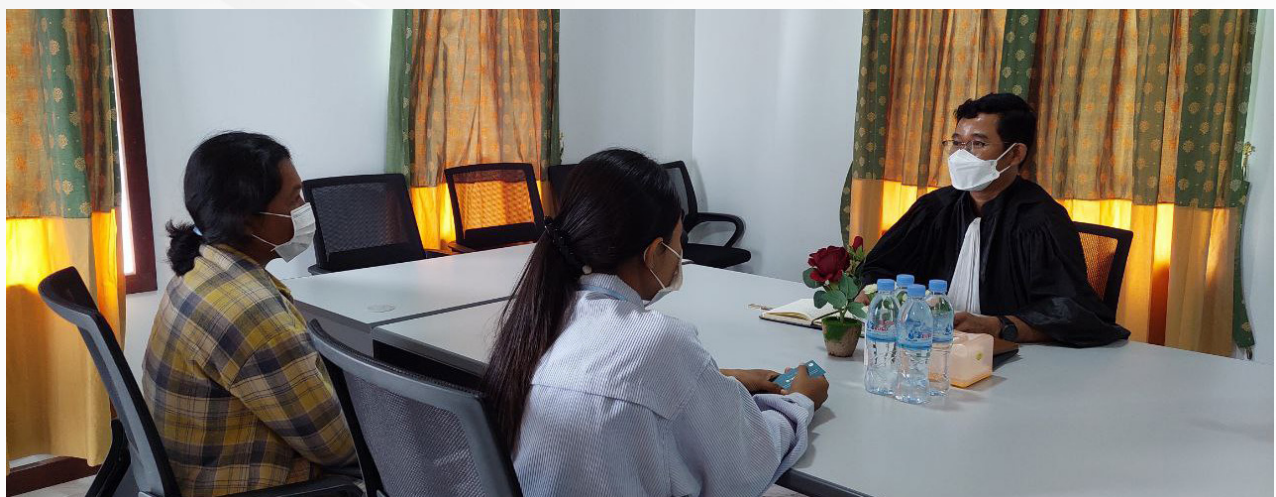
Australian psychologist and psychiatrist to interview the victim and assess her psychological harm. The psychological assessments were admitted as evidence in court to support the victim's compensation claim.

In addition, the legal team worked with the victim to prepare a "victim impact statement," a personal statement by the victim explaining to the Australian court how the SEA had affected and hurt her. Because the victim refused to travel to Australia, her Australian lawyer, on behalf of the victim, agreed to read the victim impact statement in front of the court during the offender's sentencing hearing.

Both the victim impact statement and the psychological assessments proved to be critical when it came time to negotiate an in-court settlement with the defendant. They enabled the victim's legal team to achieve one of the highest known settlement amounts for a child victim of SEA in Cambodia.

Best Practices Identified:

- Publish court decisions, including compensation orders, redacting the child's or victim's name so that these decisions become jurisprudence / precedent that can inform future cases;
- Establish a standard or method for calculating the amount of damages / compensation for child SEA, including compensation for mental and emotional harm suffered now and in the future;
- In calculating compensation, the courts should consider both the physical and psychological harm of the victim at the time of the proceedings and looking into the future. Furthermore, the amount of compensation should not only include expenses of the victim and the family related to the court proceedings, but also funds required to repair and restore the victim in the future;
- Compensation orders should be based on evidence, including psychological assessments and victim impact statements;
- Ensure victims have adequate legal representation during their civil claims for compensation.





D. Time Limits for Bringing a Claim

Issue:

Reporting cases of child SEA can be a difficult process for victims, especially when they are minors. Because of their age, some victims are not aware of the unlawfulness of the acts or need more time to talk about their stories. In Cambodia, for a criminal case, the statute of limitations varies: 15 years for a felony offense, five years for a misdemeanour, and one year for a petty offense. The statute of limitations for a civil claim is five years. If civil and criminal actions are brought concurrently, the civil claim cannot be brought before a criminal court after the statute of limitations of the criminal case has expired.¹³

Case Study of Moyle:

In the Case Study of Moyle, the victim was allowed to bring restitution claims in the criminal proceedings even though almost 20 years had passed since the incidents of SEA. In Australia, there is no statute of limitations for criminal proceedings relating to any child SEA crime or for seeking compensation, including from a State-managed program.¹⁵

Best Practices Identified:

- In most countries, statutes of limitations are tolled until the child victims of SEA turn 18 years old. This means that the limitations period only begins to run once the victim is no longer a minor.
- Recently, countries have also begun to eliminate statutes of limitation altogether in child SEA cases, recognizing that it can take many years for the harm, especially psychological, to manifest. For example, Brunei, Laos, Malaysia, Myanmar, and Singapore have abolished the statute of limitations for the prosecution of sexual exploitation of children offences.¹⁶

¹¹The Code of Criminal Procedure, Article 10.

¹²The Code of Civil Procedure, Article 482.

¹³The Code of Criminal Procedure, Article 26.

¹⁴"South Australian Geoffrey Moyle admits to sexually abusing children in Cambodia", Cambodia Expats Online, 22 January 2020, <https://cambodiaexpatsonline.com/newsworthy/south-australian-geoffrey-moyle-admits-sexually-abusing-children-cambodia-t35739.html>.

¹⁵Government of Australia, NSW (1986), "Criminal Procedure Act" §179; *ibid.* § 270.

¹⁶"Summary of recommendations: Legal Interventions in Southeast Asia", ECPAT, 2022.



E. Enforcement of Compensation Orders

Issue:

Enforcement of compensation orders remains weak in Cambodia. Under Cambodian law, the burden is on the victims to identify the offenders' assets and present them to the court. Although the police and NGOs (supporting victims) have received training in the past five years (e.g., by other NGOs, the FBI, and the AFP), they continue to lack sufficient resources to conduct financial investigations and freeze, seize, and confiscate the offenders' assets connected to the crimes. It is especially difficult for victims and the police to identify the assets of offenders who stay in Cambodia for a short time as tourists or short-term residents. These individuals have few assets or valuables in Cambodia that can be presented to the court for compensation.

Furthermore, enforcing compensation orders from criminal cases in Cambodia involves the filing of another civil case, which can significantly extend the time of the court proceedings and requires additional resources. For example, sometimes, the cost of the investigation into the defendant's assets (by the authorities or victims) may be higher than the compensation awarded to the victims by the court in the first place. Thus, victims choose not to pursue the enforcement of the order, as it is not practical.

Finally, defendants, especially foreign defendants, too often ignore the court's compensation orders, claim they are indigent when they are not, or engage in corruption. For example, they often avoid paying compensation by fleeing or being deported from the country after serving their sentences, by hiding their assets abroad, or by paying off the police or judges.¹⁷

Case Study of Rife

A Kentucky resident pleaded guilty in a U.S. federal court for engaging and attempting to engage in illicit sexual conduct with two minor females while he travelled and resided in Cambodia. In his plea agreement, the defendant admitted that he travelled to and resided in Cambodia where he touched two child victims under their clothing and inside or on their genital areas on more than one occasion. He further admitted that both child victims were under the age of 12 when the illicit conduct occurred.

The court sentenced him to 21 years of imprisonment and ordered him to pay restitution to the two victims. The defendant claimed that he did not have any money or other assets to pay the victims, but the U.S. prosecutors investigated his finances and identified a bank account belonging to the defendant. To enforce the restitution order, the bank account was seized and the funds were used to pay the victims the amount ordered by the court.

Case Study: Thailand Anti-Trafficking-in-Persons Fund

A State-managed compensation fund is an additional opportunity for victims to obtain compensation. As it is a State-managed mechanism, the State is the payer instead of the offenders. Such a mechanism allows victims to bypass the obstacles related to lengthy or complex court proceedings and receive compensation even when offenders are insolvent or indigent.¹⁸ It is also a way to avoid re-traumatizing children, as the procedure is more informal and less intimidating.

In 2008, Thailand established its Anti-Trafficking-in-Persons Fund (“Fund”) to “be used as capital for the prevention and suppression of trafficking in persons.” The Fund is aimed at assisting trafficked persons and preventing additional trafficking. It was set up to “provide an initial remedy for victims before they start official claims for compensation against the perpetrators.”¹⁹ The Fund consists of contributions coming from the government, donations, or money received from the sale of offenders’ properties. In 2018, the Fund awarded 394,352.16 USD in financial remedy to victims.²³

Best Practices Identified:

- Work with foreign lawyers to enforce compensation orders in the offenders’ home countries where their assets or properties are located;
- Establish clear procedures for placing liens on offenders’ property or garnishing their wages, pensions, or other sources of income in order to pay compensation to victims;
- Establish clear procedures for compensation to be paid by the State when the offenders either refuse or cannot satisfy the reparation order (e.g., where they have proven that they are indigent). To date, Cambodia does not have a State mechanism that could help victims to access compensation;
- Many States have established a State fund or other mechanism to support compensation for child SEA victims or human trafficking victims. For example, Thailand established a fund to compensate victims when the offender is unable to directly pay the restitution or compensation ordered by the court. The aim of this fund is to reduce out-of-court settlements, which result in smaller amounts for victims and hinder the prosecution;

¹⁷“Barriers to compensation for child victims of sexual exploitation”, ECPAT, May 2017, p. 44.

¹⁸“Barriers to compensation for child victims of sexual exploitation”, ECPAT, May 2017, p. 16.

¹⁹Thailand Anti-Trafficking Persons Act, 2008, Sections 42-51, available at <https://library.siam-legal.com/thai-law/anti-trafficking-persons-act-anti-trafficking-in-persons-fund-sections-42-51/>.

²⁰Thailand Anti-Trafficking Persons Act, 2008, Sections 42-51, available at <https://library.siam-legal.com/thai-law/anti-trafficking-persons-act-anti-trafficking-in-persons-fund-sections-42-51/>.

²¹Royal Thai Government’s Country Report on Anti-Human Trafficking Efforts, 2019, p. 45, available at <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2020/02/RTG-Country-Report-2019-Full-Report.pdf>.

- If established in Cambodia, the State fund should be wide in scope to include cases of child SEA and not be contingent upon the criminal proceedings (e.g., there should be no requirement that the offender is convicted);
- The State fund should not have a maximum amount of compensation to be awarded;
- Child victims should be able to access the State fund regardless of their cooperation with the authorities and/or the fate of the offender. Some countries, such as Australia do not require a hearing to access compensation; it is sufficient that an act of violence occurred against the victim, eliminating the risk of re-traumatization.²⁴



²²Thailand Anti-Trafficking Persons Act, 2008, Sections 42-51, available at <https://library.siam-legal.com/thai-law/anti-trafficking-persons-act-anti-trafficking-in-persons-fund-sections-42-51/>.

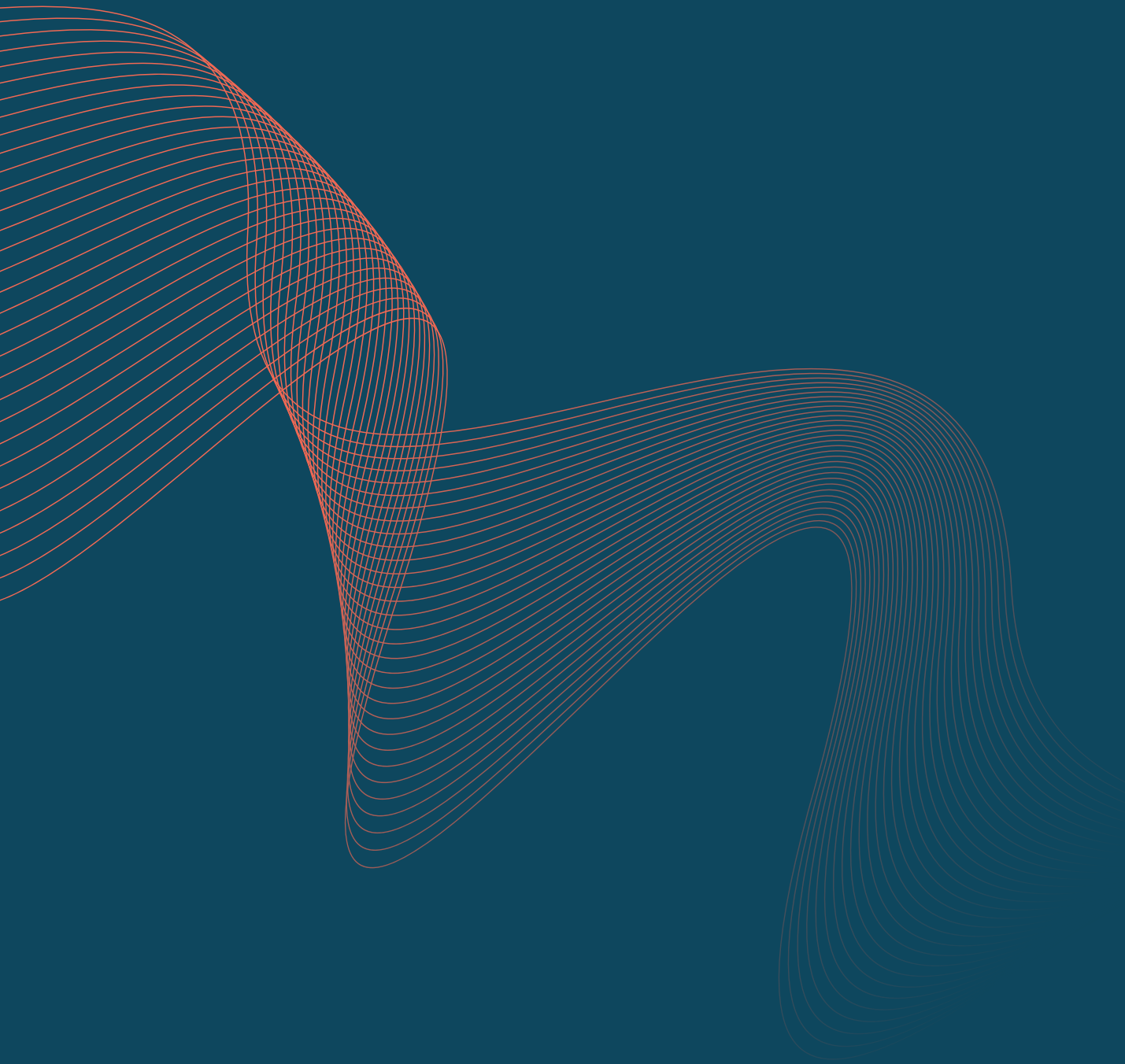
²³Royal Thai Government's Country Report on Anti-Human Trafficking Efforts, 2019, p. 45, available at <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2020/02/RTG-Country-Report-2019-Full-Report.pdf>.

²⁴"Barriers to compensation for child victims of sexual exploitation", ECPAT, May 2017, p. 31.

Recommendation

- Cambodia should consider the following recommendations:
- Enact a special law, or clear guidelines, setting out the specific mechanisms pursuant to which victims could claim remedies and compensation in child SEA cases (online and offline);
- Create clear guidelines for calculating compensation for child victims of SEA (online and offline);
- Allow experts to testify about the harm suffered by child victims of SEA (online and offline) and use this testimony to inform the calculation of damages;
- Require offenders to declare under oath their assets and properties (both the amounts and locations) at the beginning of a case so that the court can freeze them and they are available in the event of a compensation order;
- Establish a State compensation fund for child SEA (online and offline) and other human trafficking victims. The State could replenish the fund with proceeds from the sale of properties and assets confiscated from defendants in criminal cases;
- Where possible (e.g., the offender is a civil servant), garnish (i.e., deduct amounts from) the wages of offenders in order to compensate the child SEA victims.





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