

## **Submission: Addressing the vulnerabilities of children to sale and sexual exploitation in the framework of the Sustainable Development Goals**

We make this submission based on our expertise on the intersections between child institutionalisation, trafficking and exploitation.<sup>1</sup> This submission examines the context of child institutionalisation and exploitation with reference to SDGs 1, 4, 8 and 16. The submission particularly focuses on orphanage trafficking, a form of child trafficking and modern slavery which strongly intersects with the sale and sexual exploitation of children. The submission outlines the contextual challenges of these intersections and highlights the special protection needs of children residing outside of parental care who are living in institutions.

### **Collected data, including updated data on vulnerable groups of children and information pertinent to the reporting examples of vulnerable groups of children under the framework of SDGs.**

There are between 2.7<sup>2</sup> and 5.37<sup>3</sup> million children residing in institutional care settings globally.<sup>4</sup> Institutional care settings expose children to an increased risk of, and vulnerability to, sale and sexual exploitation, trafficking, exploitation and modern slavery. The 2019 United Nations Global Study on Children Deprived of Liberty reported that 'conditions in institutions are often characterised by violence, sexual abuse and neglect, amounting to inhuman and degrading treatment' and that child protection systems that favoured institutionalisation were sometimes characterised by 'profit motives or the commodification of the care of children'.<sup>5</sup> A 2020 Lancet Commission found that children residing in institutional care were 'at risk of severe physical or sexual abuse, violation of fundamental human rights, trafficking for sex or labour, exploitation through orphan tourism, and risk to health and wellbeing after being subjected to medical experimentation'.<sup>6</sup>

Orphanage trafficking is one form of trafficking and modern slavery that children in institutional care may be subjected to, and falls under SDGs 8 and 16. Orphanage trafficking is the recruitment or transfer of children into residential care institutions for the purpose of exploitation and profit.<sup>7</sup> Orphanage trafficking is an issue of supply and demand where the prevalence of volunteers and donors who wish to support orphaned children overseas creates a demand for children to be harboured in institutions or orphanages. To meet the demand, children are recruited or transferred from families into institutions for the purpose of exploitation or profit. Orphanage trafficking shares close links with the sale of children as in some instances children are bought and sold into institutional care for purposes of exploitation and profit. At

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<sup>2</sup> Nicole Petrowski, Claudia Cappa, and Peter Gross, "Estimating the number of children in formal alternative care: Challenges and results," *Child Abuse & Neglect* 70 (2017) 388.

<sup>3</sup> Chris Desmond et al., "Prevalence and number of children living in institutional care: global, regional, and country estimates," *The Lancet Child & Adolescent Health* 4(5) (2020) 370.

<sup>4</sup> The disparity in estimates is due to some governments not knowing how many orphanages are in their country, or the number of children living in them, despite having legislative and policy frameworks that require orphanages to register or seek authorisation to operate as a residential care centre for children: John Williamson and Aaron Greenberg, *Families, not orphanages* (Better Care Network, 2010) 3.

<sup>5</sup> Manfred Nowak, Report of the Independent Expert leading the United Nations Global Study on Children *Deprived of Liberty*, UN Doc A/74/136 (2019) 13/23.

<sup>6</sup> Marinus H. van Ijendoorn et al., "Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development," *The Lancet Psychiatry* 7(8) (2020) 706.

<sup>7</sup> Kathryn E van Doore, *Orphanage Trafficking in International Law* (2022, Cambridge University Press) 4.

law, these situations may be prosecuted as sale of children where ongoing exploitation is difficult to prove or sustain as a charge for prosecution.

The links between institutional care and trafficking have been in particular focus in recent years. In 2016, the *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography* to the Human Rights Council highlighted research indicating that orphanages were recruiting children and maintaining them in poor conditions to prompt foreign charity and donations:

Research has provided evidence of systems in which the owners of orphanages use intermediaries to get children who look poor to orphanages, in order to satisfy a fee-based volunteering demand, generating significant profits. Traffickers lure poverty-stricken families into giving away their children, under promises of good living conditions and education. Children are then often left in poor conditions, in order to prompt foreign charity, and forced to perform activities to please foreign volunteers.<sup>8</sup>

In the United States Trafficking in Persons Report 2018, a special section entitled 'Child Institutionalization and Human Trafficking' highlighted how children are both trafficked into and out of orphanages outlining that the 'physical and psychological effects of staying in residential institutions, combined with societal isolation and often subpar regulatory oversight by governments, place these children in situations of heightened vulnerability to human trafficking'.<sup>9</sup> Such heightened vulnerability results in the exploitation of children being more likely, with cases of orphanages doubling as brothels, and children being forced into commercial sexual exploitation and forced labour detailed in the report.<sup>10</sup> Profits from voluntourism 'incentivise nefarious orphanage owners to increase revenue by expanding child recruitment operations in order to open more facilities' thereby facilitating 'child trafficking rings'.<sup>11</sup>

### **Information how vulnerable children are at exacerbated threats to sale and sexual exploitation with links to the situation of deprivation of other SDGs.**

Orphanage trafficking relies upon an underlying enabling environment for its existence. This environment is the result of intersecting factors including poverty, marginalisation and vulnerability affecting families, a lack of appropriate community-based support for children and families, and privatised and under regulated institutionalised systems of alternative care in which children's care is easily commodified.<sup>12</sup>

Orphanage trafficking, and the sale and sexual exploitation of children in institutional settings, is enabled in an environment typified by:

- Push factors such as poverty (SDG 1), inadequate and inequitable access to education (SDG 4), and parental migration for labour (SDG 8).
- Systemic issues such as inequitable development, structural inequality, weak enforcement of child protection and care law and policy, insufficient regulation and oversight over privatized child protection and welfare services, and prevailing community attitudes towards residential care.

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<sup>8</sup> Maud de Boer-Buquicchio, Report of the Special Rapporteur of the Human Rights Council on the sale of children, child prostitution and child pornography, UN Doc A/HRC/34/55 (22 December 2016): 16/25.

<sup>9</sup> United States Department of State, *Trafficking in Persons Report 2017* (2017) 22.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> Manfred Nowak, Report of the Independent Expert leading the United Nations Global Study on Children *Deprived of Liberty*, UN Doc A/74/136 (2019) 13/23.

- External drivers such as foreign funding, orphanage volunteering and tourism that continue to incentivize the recruitment, the trafficking and exploitation of children in institutional care settings (SDG 16) and that undermine national child protection and care reform efforts.

In this environment, traffickers and orphanage operators are able to operate by disguising their intent to exploit and profit from children in institutional care under the guise of offering support to families. They typically recruit children from vulnerable families who are faced with few, if any other, options to access services such as education, or to meet children's basic food, healthcare and shelter needs. In many rural areas of low- and middle-income countries, children are often recruited/transferred to urban institutions under the guise of accessing better opportunities. Families may also initiate the transfer of a child to an orphanage in response to vulnerability, however, unwittingly transfer their children to an orphanage operator who has an intent to exploit and commodify children once in 'care'. Children who are victims of orphanage trafficking are often exposed to multiple forms of exploitation<sup>13</sup> including child labour, sexual exploitation, domestic servitude and slavery-like practices such as harbouring children in sub-standard and detrimental conditions to elicit sympathy and donations from tourists, volunteers and foreign donors.

Orphanage tourism has been documented in 37 countries<sup>14</sup> and an estimated 4 million people from the US alone volunteer in orphanages every year.<sup>15</sup> Orphanage tourism results in children being vulnerable to forms of labour and sexual exploitation with children residing in the most corrupt centres 'often perceived to be accessible for more than humanitarian activities'.<sup>16</sup> A 2021 study estimated that US Christians donate \$3.3 billion annually to residential care facilities.<sup>17</sup> The scale of foreign funding and orphanage tourism propping up the institutional model of care undermines the efforts of national authorities to reform their care systems and redirect resources towards family-based services. In some countries, institutions are established in tourist destinations to meet the demand for orphanage tourism. Where children are separated from their families to live in institutions to meet this demand, or to attract or sustain foreign funding, their right to a family life, to parental contact, and to be protected from exploitation<sup>18</sup> may be undermined and violated.<sup>19</sup>

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<sup>13</sup> ReThink Orphanages Australia & ACFID CR CoP, 2019, *Partnerships with Overseas Orphanages* (Report, ReThink Orphanages, 2019).

<sup>14</sup> Better Care Network, *Orphanage Tourism Research* (Report, Better Care Network, 2018).

<sup>15</sup> Tess Guiney, 'Orphanage Tourism' in Cambodia: When Residential Care Centres Become Tourist Attractions', (2012) *Pacific News* 9.

<sup>16</sup> Tess Guiney and Mary Mostafanezhad, "The political economy of orphanage tourism in Cambodia," *Tourist Studies* 15(2) (2015) 141.

<sup>17</sup> Barna Group, Residential Care: US Christian Giving and Missions (Report, Barna Group, 2021)

In APEC countries, 79% of all volunteering with children takes place in residential care settings. S Milne, E Thorburn, I Hermann, R Hopkins, & F Moscoso, *Voluntourism Best Practices: Promoting Inclusive Community-Based Sustainable Tourism Initiatives*, (Report, Asia-Pacific Economic Cooperation, 2018).

<sup>18</sup> Orphanage tourism has been linked to child sexual exploitation in travel and tourism, with situational and preferential offenders gaining access to vulnerable children through volunteer placements in residential care settings.

<sup>19</sup> Hannah Reid, 'Orphanage Tourism and the Convention on the Rights of the Child', in Joseph Cheer et al, *Modern Day Slavery and Orphanage Tourism* (CABI, 2019).

## **Protection needs and contextual challenges amid the efforts to combat sale and sexual exploitation of children.**

The institutionalisation of children through the establishment of orphanages is often implemented as a child protection response in post-disaster and conflict humanitarian contexts.<sup>20</sup> Despite extensive evidence that institutionalisation can be harmful to the development of children,<sup>21</sup> institutions and orphanages have proliferated over the past three decades as a response to humanitarian crises and the 'increased interest of private financial donors in funding the creation and operation of institutions'.<sup>22</sup>

There are special protection challenges that arise in humanitarian responses where the influx of aid funds and new responders, particularly from outside of the formal humanitarian response framework, can result in children being institutionalized and the establishment of new institutions. In such situations, where child institutionalization is posited as a protection response, it can be easily maintained for many years with the crisis as an ongoing rationale. Where institutionalization is touted as a child protection response and orphanages as sites of protection, it can interfere with reintegration efforts. By virtue of their ongoing institutionalization, children in this situation may be continually subjected to an increased risk of sale, sexual exploitation and trafficking.

## **Practical measures taken to address the vulnerabilities in institutional, family and online settings to ensure no child is left behind with respect to protection against sale and sexual exploitation.**

In 2019, the Report of the Secretary General on the Status of the Convention on the Rights of the Child to the UNGA detailed awareness-raising campaigns that 'sought to highlight the potential harm to children stemming from a wave of short-term, unqualified staff, volunteers and interns in orphanages around the world' as an 'emerging area of progress'.<sup>23</sup> In the 2019 UNGA Resolution on the Rights of the Child, United Nations Member States acknowledged the link between orphanage tourism, trafficking and exploitation, and committed to taking appropriate measures to prevent and address the harms associated with orphanage tourism and volunteering.<sup>24</sup>

To address both in-country and external causal factors that drive and enable orphanage trafficking, governments of host and sending countries must work in tandem, under the framework of international cooperation, to implement practical measures to combat the sale and exploitation of children in institutional care settings, including orphanage trafficking.

### Host country governments

Host country governments should ensure the protection of children in alternative care, including by:

1. Strengthen the alternative care regulatory system: Improved gatekeeping mechanisms, enforcement of legal registration requirements and monitoring, and timely and appropriate responses to violations.

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<sup>20</sup> See Annexure 1: Kathryn E van Doore & Rebecca Nhep, "Providing Protection or Enabling Exploitation: Orphanages and Modern Slavery in Post-Disaster Contexts", (2021) 6(3) *Journal of Modern Slavery* 46-61.

<sup>21</sup> Lorraine Sherr, Kathryn J. Roberts, and Natasha Gandhi, "Child violence experiences in institutionalised/orphanage care," *Psychology, Health & Medicine: Know Violence in Childhood Global Learning Initiative* 22(1) (2017) 33.

<sup>22</sup> Marinus H. van Ijzendoorn et al., "Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development," *The Lancet Psychiatry* 7(8) (2020) 706.

<sup>23</sup> *Status on the Convention on the Rights of the Child, Report of the Secretary General*, 74th sess, Provisional Agenda Item 68(a), UN Doc A/74/231 (26 July 2019) 9/17.

<sup>24</sup> *Rights of the Child*, GA Res 74/133, UN GAOR, 74<sup>th</sup> sess, 50<sup>th</sup> plen mtg, Agenda Item 66(a), UN Doc A/Res/74/133 (20 January 2020), art 35 (t) A/74/395 <https://undocs.org/A/74/395>.

2. Improve cooperation between child protection and law enforcement/anti-trafficking sectors: increased sensitization of orphanage trafficking indicators and strengthening of mandatory reporting.<sup>25</sup>
3. Institute moratoriums on new institutions, including in emergency response contexts.<sup>26</sup>
4. Develop and enforce national policies to eliminate unskilled volunteering in residential care facilities.
5. Ensuring trafficking offences allow for the criminalization and prosecution of orphanage trafficking.
6. Recognising profit as a purpose of exploitation in anti-trafficking legislation. For example, article 10 'Unlawful Removal with Purpose' of Cambodia's Law on Suppression of Human Trafficking and Sexual Exploitation 2008.
7. Enhancing awareness of orphanage trafficking and its indicators amongst child protection and law enforcement personnel to enhance detection and prosecution.
8. Establishing redress mechanisms for abuse and exploitation in alternative care, including for sale of children into institutional care, orphanage trafficking and exploitation.

### Sending country governments

The harms associated with orphanage tourism and volunteering are increasingly being recognised by governments. Countries such as the UK, Netherlands, Australia and the US have issued travel advice alerting prospective volunteers to the harms and risks associated with orphanage tourism and links to child exploitation and trafficking.<sup>27</sup> In the US, this was linked to the Department of State's examination of child institutionalization and human trafficking in the 2018 Trafficking in Persons report.<sup>28</sup>

As a sending country, Australia, has taken several steps to regulate charities' engagement with orphanage tourism and volunteering, including restricting access to government funding and introducing regulatory measures for charities with overseas activities. Residential care for children, overseas volunteering and child sponsorship are categorised as high-risk activities under the regulations and charities are required to meet minimum safeguarding requirements and relevant minimum standards, as set out in Australian law and the laws of the host country.<sup>29</sup> Effectively this makes Australian charities' support for unregistered overseas institutions, including through sending volunteers or facilitating orphanage tourism, an ineligible

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<sup>25</sup> See Annexure 2: Kathryn E van Doore & Rebecca Nhep, *The Legal Framework of Orphanage Trafficking in Cambodia, Nepal and Uganda: Summary Report* (Report, Law Futures Centre & Better Care Network, 2022).

<sup>26</sup> Example: the Government of Nepal issued a moratorium preventing the registration and establishment of new residential care institutions for children in the wake of the 2015 earthquake.

<sup>27</sup> <https://www.nederlandwereldwijd.nl/reizen/vrijwilligerswerk-weeshuistoerisme-buitenland?>  
<https://www.dfat.gov.au/people-to-people/volunteers/Pages/smart-volunteering>  
<https://www.gov.uk/guidance/safer-adventure-travel-and-volunteering-overseas#volunteering>  
<https://travel.state.gov/content/travel/en/international-travel/before-you-go/travelers-with-special-considerations/volunteering-abroad.html>

<sup>28</sup> U.S Department of State, *Child Institutionalisation and Human Trafficking Fact Sheet*, (Report, US Department of State, 2018) <https://www.state.gov/child-institutionalization-and-human-trafficking/>

<sup>29</sup> ACNC, External Conduct Standards, Standard 4, <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/acnc-external-conduct-standards/external-conduct-2>

activity for Australian charities, including churches.<sup>30</sup> The UK and Australia acknowledged orphanage trafficking as a reportable type of modern slavery under their respective Modern Slavery Acts.<sup>31</sup> Australia explicitly identified engagement with children through orphanage tourism and other forms of voluntourism as a specific sector or industry risk indicator for modern slavery in the Acts guidance material for reporting entities.<sup>32</sup>

Destination country governments are progressively recognising orphanages as venues for the sexual exploitation of children in travel and tourism (SECTT).<sup>33</sup> Whilst voluntourism remains largely unregulated, in countries such as Cambodia and Thailand, governments have formed partnerships with key child protection organisations and taken steps to reduce the prevalence of orphanage tourism to combat SECTT.<sup>34</sup> In the Asia Pacific region, the APEC Tourism Working Group released *Voluntourism Best Practices in the Asia Pacific Region in 2018* which explicitly discourages orphanage voluntourism in member economies' tourism sectors.<sup>35</sup> The ECPAT Legal Checklist: Key Interventions to Protect Children from Sexual Exploitation in Travel and Tourism<sup>36</sup> provides an excellent framework for addressing the potential harms of exploitation in institutional care.

Sending country governments should consider the implications of their extraterritorial human rights obligations, including:

1. Establishing **extra-territorial jurisdiction**, for all offences involving sale of children, child trafficking and exploitation. Ensure trafficking and slavery laws are fit for purpose to criminalize orphanage trafficking, including for the purpose of profit.
2. Issuing travel advice to discourage citizen participation in orphanage tourism and volunteering.
3. Instituting policies to prevent Overseas Development Aid from funding institutions and state sanctioned volunteering in residential care facilities.
4. Regulating the extraterritorial activities of domiciled not for profit and voluntourism sector entities that intersect with residential care facilities.<sup>37</sup>

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<sup>30</sup> ReThink Orphanages Australia, *Working with Children in Residential Care: Implications of the ACNC External Conduct Standards for Australian Charities*, (Report, ReThink Orphanages Australia, 2019).

<sup>31</sup> Modern Slavery Act 2018 (Cth), Australia; Secretary of State for the Home Department, *Independent Review of the Modern Slavery Act 2015* (Report, UK Home Department, 2019) 63; Commonwealth Government of Australia, *Modern Slavery Act 2018: Guidance for reporting entities* (Report, Commonwealth of Australia, 2019), 80.

<sup>32</sup> Commonwealth Government of Australia, *Modern Slavery Act 2018: Guidance for reporting entities*, (2019) 80.

<sup>33</sup> ECPAT, *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism*, (Report, ECPAT, 2016).

<sup>34</sup> <https://thinkchildsafe.org/public-authorities/>

<sup>35</sup> S Milne, E Thorburn, I Hermann, R Hopkins, & F Moscoso, *Voluntourism Best Practices: Promoting Inclusive Community-Based Sustainable Tourism Initiatives*, (Report, Asia-Pacific Economic Cooperation, 2018).

<sup>36</sup> ECPAT, *Legal Checklist*, <https://ecpat.org/resource/legal-checklist-key-legal-interventions-to-protect-children-from-sexual-exploitation-in-travel-and-tourism/>

<sup>37</sup> See Annexure 3: ReThink Orphanages, Submission to Committee on the Rights of the Child Day of General Discussion 2021

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**Annexure 1:** Kathryn E van Doore & Rebecca Nhep, “Providing Protection or Enabling Exploitation: Orphanages and Modern Slavery in Post-Disaster Contexts”, (2021) 6(3) *Journal of Modern Slavery* 46-61.

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