



Committee on the Rights of the Child Day of General Discussion 2021
Rethink Orphanages Submission

1. About ReThink Orphanages

[ReThink Orphanages](#) is a network of 81 organisations comprised of child protection, academia, media, faith based and travel and tourism sectors, focused on addressing the harms associated with international volunteering and foreign funding in institutional care settings. This submission focuses on orphanage tourism and funding as a demand driver for the institutionalisation of children, providing recommendations for how the Committee on the Rights of the Child might address the issue.

2. Factors Contributing to the Institutionalisation of Children

Foreign funding and orphanage tourism, are known 'pull' factors that incentivise and create a demand for children to be separated from families, institutionalised, and denied opportunities for reintegration. Orphanage tourism has been documented in 37 countries¹ and an estimated 4 million people from the US alone volunteer in orphanages every year.² A 2021 study estimated that US Christians donate \$3.3 billion annually to residential care facilities.³ 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 even to be protected from exploitation⁴ may be undermined and even violated.⁵ Countries that send volunteers and funding to overseas institutions may be linked to the infringement of child rights.⁶

3. States Extraterritorial Obligations in Relation to Preventing Child Institutionalisation

As with all human rights obligations, extraterritorial human rights obligations can be examined using the tripartite classification of obligations; to respect, protect and fulfil. Most relevant to the issue of

¹ Better Care Network, *Orphanage Tourism Research* (Report, Better Care Network, 2018)

² Guiney, T 'Orphanage Tourism' in Cambodia: When Residential Care Centres Become Tourist Attractions', (2012) *Pacific News* 9.

³ Barna, Residential Care. US Christian Giving and Missions,

https://www.faithtoaction.org/wp-content/uploads/F2A_Residential-Care_Report_Final.pdf

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).

⁴ 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.

⁵ Reid, H, 'Orphanage Tourism and the Convention on the Rights of the Child', Cheer, Joseph et al, *Modern Day Slavery and Orphanage Tourism* (CABI, 2019).

⁶ van Doore, KE, 'Please stop Australians coming here': Orphanage Tourism, Child Rights and the Australian Response, *Court of Conscience* (2020) 14

preventing and phasing out institutional care are the extraterritorial obligations to ‘respect’ and to ‘protect’.

These extraterritorial obligations of State parties have been well articulated by the CESCR Committee in general comments.⁷ Consideration of these issues in CRC reporting and monitoring frameworks would draw governments’ attention to their obligations with respect to the actions of their citizens and legal entities that are involved in orphanage tourism and funding which contribute directly to the violation of children’s rights in those receiving countries and undermine the efforts of national authorities in to implement fully their obligations under the CRC. It would also ensure that the Committee is able to encourage and review governments’ efforts to curtail these practices through legislative, regulatory and policy means. This could ensure progress could be made in removing one of the most significant barriers to deinstitutionalisation, the propping up of the institutional care system by foreign actors.

3.1. Extraterritorial obligation to ‘respect’

The extraterritorial obligation to ‘respect’ is concerned with the actions or omissions of States and the effects of such actions or omissions on the enjoyment of human rights of individuals outside of the jurisdiction of the ‘acting’ State. With respect to the rights of children outside of parental care or at risk of separation and prevention of child institutionalisation, this obligation should be considered by States parties in the context of their Official Development Assistance (ODA) programs.

In General Comment 5, paragraph J, the Committee advises States parties that the CRC ‘should form the framework for international development assistance related directly or indirectly to children and that programmes of donor States should be rights-based’.⁸ This statement acknowledges the risk of negative impacts of ODA programs, where child rights are not a central consideration in the design process, and points to the obligation of States parties to ‘respect’ child rights.

3.1.1. How States parties could meet this obligation

To meet the obligation to ‘respect’, governments should take appropriate legislative and policy measures to prohibit the allocation of ODA to the development of new institutions or institutional models of care, consistent with CRPD General Comment No.5, and ensure this is adhered to by all entities and agencies of the state contributing to ODA.⁹ ODA projects and grants should be preceded by child rights impact assessments and consider both positive and negative child rights impacts. States parties should prohibit orphanage volunteering within the context of all state sanctioned or funded volunteering programs and government agency-led or facilitated overseas community engagement initiatives.

3.2. Extraterritorial obligation to ‘protect’

The obligation to ‘protect’ is concerned with States’ regulation of the extraterritorial conduct of domiciled non-state actors, including entities and individuals. Whilst States are not required under

⁷ Vandenhole, Wouter, ‘Economic, social and cultural rights in the CRC: Is there a legal obligation to cooperate internationally for development?’, *The International Journal of Children’s Rights* (2009) 17(1) 23-63.

⁸ UN Committee on the Rights of the Child (CRC), *General comment No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, CRC/GC/2003/5.

⁹ UN Committee on the Rights of Persons with Disabilities (CRPD) *General Comment No. 5 (2017): Living independently and being included in the community*, CRPD/C/GC/5, art 96, October 2017.

international law to regulate the full extent of extraterritorial conduct of non-state actors, States do have a duty to take steps to prevent their citizens and domiciled entities from violating human rights.¹⁰

This obligation is of utmost relevance to curtailing the demand side drivers or foreign funding and orphanage tourism, however, has yet to be called upon for this purpose. The extraterritorial obligation to ‘protect’ has primarily resulted in governments regulating the conduct of transnational corporations. However, to protect children in institutional care, the obligation to ‘protect’ needs to encompass regulation of the conduct of a wider range of entities, including not-for profit entities and individuals, given the significant role foreign private funding and orphanage volunteering plays in perpetuating these harms.¹¹

By invoking donor States extraterritorial obligations to ‘protect’ child rights, responsibility for regulating the extraterritorial conduct of non-state actors to prevent child rights infringements can be shared by donor countries under the framework of international cooperation. This is consistent with the Committee’s affirmation in General Comment 5 of the shared responsibility for implementation and the obligation of ratifying States ‘not only to implement it within their jurisdiction, but to also contribute, through international cooperation, to global implementation’.¹²

3.2.1. How States parties could meet this obligation

To meet the obligation to ‘protect’ the rights enshrined in the Convention States parties should ensure sufficient not-for-profit (NFP) sector regulation that at minimum incorporates:

- **A registration process** that requires:
 - o all not-for profit organisation (NPO) types, including churches, to register,
 - o NPOs to identify whether they conduct overseas operations, including the funding or support of third-party implementing organisations,¹³
 - o NPOs to identify their charitable purpose and beneficiary groups, in particular categories of vulnerable persons, including children outside of parental care.
- **An NFP sector responsibility to respect human rights:** Standards should be prescribed for NPOs overseas operations and should, at minimum, require NPOs to ensure their overseas operations:
 - o are compliant with the laws and policies in their host country,
 - o are appropriately registered and licensed,
 - o meet relevant minimum/national standards, including those pertaining to child protection and alternative care,
 - o employ a rights-based approach and do not directly or indirectly cause human rights infringements,
 - o protect vulnerable persons, including children, from harm, abuse, and exploitation in connection with the overseas operations.

¹⁰ Skogl, Sigrun, ‘Extraterritorial obligations and the obligation to protect’ *Netherlands Yearbook of International Law* 2016, 217-244.

¹¹ Research from multiple countries attests to the magnitude of foreign funding that flows into institutional care, including to unregistered institutions. 100% of private institutions in Cambodia and 80% in Kenya were foreign funded. In Cambodia over half of these were unregistered: K Cheney and K Smith Rotabi, ‘Addicted to Orphans: How the Global Orphan Industrial Complex Jeopardizes Local Child Protection Systems’ in K Hörschelmann, C Harker and T Skelton (eds), *Conflict, Violence and Peace* (Springer, 2015) 12; UNICEF, *With the best intentions: A study of attitudes towards residential care in Cambodia*, (Report, UNICEF & Ministry of Social Affairs, Veterans and Youth Rehabilitation, Cambodia, 2011); E.J. Walakira, I Ddumba-Nyanzi and B Bukonya, *Child Care Institutions in Selected Districts in Uganda and the Situation of Children in Care: A Baseline Survey Report for the Strong Beginnings Project*, (Report, Terre Des Hommes, 2015) viii.

¹² CRC Committee General Comment 5, above n 8.

¹³ The term ‘overseas operations’ in this submission has been used in accordance with the definition found in the ACNC External Conduct Standards regulations imposed by the Australian government, <https://www.acnc.gov.au/node/4755486>

- **A reporting requirement:** NPOs should report on their overseas operations on a regular basis and include information about their risk mitigation measures for overseas operations. NPOs should be required to verify that they meet the prescribed standards.

Governments have already demonstrated a willingness to regulate the segment of their Not-For-Profit sectors involved in raising and disbursing funds for overseas charitable purposes. The 200 member countries/jurisdictions of the Financial Action Task Force, or its nine regional bodies, have committed to bringing NFP sector regulation into conformity with FATF Recommendation 8 on NPOs. This recommendation was updated in 2020 catalysing a need for most member countries to introduce further NFP sector regulation. States parties to the Convention could be encouraged to incorporate into NFP sector regulatory reforms (related to FATF Recommendation 8), measures to also meet their extraterritorial obligations to ‘protect’ child rights under the Convention.

To meet the obligation to ‘protect’, and with reference to Article 10.1 and 10.3 of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to prevent child sex tourism and child sexual exploitation in residential care settings, States parties could be encouraged to utilise the ECPAT [Legal Checklist](#). This could improve their national legal and policy frameworks to address sexual exploitation of children in the context of travel and tourism, along with its online elements, to meet the obligation to ‘protect’. Governments should furthermore establish child protection standards or codes of conduct that regulate the extraterritorial conduct of their domiciled for-profit tourism and voluntourism entities. These should include prohibitions on facilitating orphanage tourism and volunteering.

4. Progress and Promising Practices

4.1. Current international recognition

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.¹⁴ In 2019, the Report of the Secretary General on the Status of the Convention on the Rights of the Child to the UNGA noted the prevention of orphanage voluntourism as an emerging issue. The report 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’.¹⁵ United Nations Member States acknowledged the link between orphanage tourism and trafficking and exploitation in the context of the 2019 UNGA Resolution on the Rights of the Child and committed to taking appropriate measures to prevent and address the harms associated with orphanage tourism and volunteering.¹⁶

4.2. Promising practices at national levels

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

¹⁴ Maud de Boer-Buquicchio, *Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, GA Res 71/37, UN GA, 71st sess, provisional agenda item 65(a), UN Doc A/71/261 (1 August 2016) 15-16/25.

¹⁵ *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.

¹⁶ *Rights of the Child*, GA Res 74/133, UN GAOR, 74th sess, 50th 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>.

child exploitation and trafficking.¹⁷ 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.¹⁸

Australia has taken steps to regulate charities' engagement with residential care facilities, including restricting access to government funding and introducing regulatory measures for charities with overseas operations.¹⁹ 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.²⁰ Effectively this makes Australian charities' support for unregistered overseas institutions, including through sending volunteers or facilitating orphanage tourism, an ineligible activity for Australian charities, including churches.²¹ The UK and Australia acknowledged orphanage trafficking as a reportable type of modern slavery under their respective Modern Slavery Acts.²² 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.²³

Destination country governments are progressively recognising orphanages as venues for the sexual exploitation of children in travel and tourism (SECTT).²⁴ 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.²⁵ 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.²⁶

4.3. Civil Society- Private Sector Collaboration (self-regulation)

Civil society have been at the forefront of efforts to curtail orphanage tourism through coalition building, government engagement and multisector partnerships. In 2013, Better Care Better Volunteering (later ReThink Orphanages) was launched. Members of ReThink Orphanages have engaged with the Australian, United Kingdom and Dutch governments on policy and regulatory reforms across travel, charitable sector and overseas development assistance.²⁷

¹⁷ <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>

¹⁸ 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/>

¹⁹ van Doore, K, and R Nhep, 'Orphanage Trafficking, Modern Slavery and the Australian Response', *Griffith Journal of Law & Human Dignity* (2019) 7(2) 122.

²⁰ 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>

²¹ ReThink Orphanages Australia, *Working with Children in Residential Care: Implications of the ACNC External Conduct Standards for Australian Charities*, (Report, ReThink Orphanages Australia, 2019).

²² *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.

²³ Commonwealth Government of Australia, *Modern Slavery Act 2018: Guidance for reporting entities*, (Report, Commonwealth Government of Australia, 2019) 80.

²⁴ ECPAT, *Offenders on the Move: Global Study on Sexual Exploitation of Children in Travel and Tourism*, (Report, ECPAT, 2016).

²⁵ <https://thinkchildsafe.org/public-authorities/>

²⁶ Milne, Thorburn, Hermann, Hopkins & Moscoso, above n 3.

²⁷ ACFID, *Position Paper: Residential Care and Orphanages in International Development* (Report, ACFID, 2016) ; Gov.UK, 'Guidance: Gap years, volunteering overseas and adventure travelling', <<https://www.gov.uk/guidance/safer-adventure->

Collaboration between members resulted in the incorporation of orphanage tourism in the SECTT agenda, including in [The Code](#) and [Global Study on Sexual Exploitation of Children in Travel and Tourism](#). The 2018 International Summit on Child Protection in Travel and Tourism issued a declaration recognising orphanage tourism as a travel product that placed children at risk of sexual exploitation.²⁸ In 2019, a civil society coalition of 256 organisations formulated a comprehensive set of Key Recommendations for the UNGA Resolution on the Rights of the Child which contributed to the inclusion of orphanage tourism and orphanage trafficking in the Rights of the Child Resolution adopted by the UN General Assembly.²⁹

Civil society organisations have also been active in the development of campaigns to shift the narrative around the merits of orphanage tourism. Campaigns include [‘Helping not Helping’](#), [‘Children are not Tourist Attractions’](#), and [‘The Love You Give’](#).

5. Recommendations

In countries which exhibit a high dependence on residential care, the focus is generally on in-country reforms and government obligations. However, this submission asserts that equal attention should be paid to the role of contributing/donor countries that perpetuate institutional models of care through sending volunteers, visitors and funding.

To support States parties to meet their extraterritorial obligation to ‘respect’ children’s rights and prevent violations through institutionalisation, abuse and exploitation in institutional care settings, the Committee could:

- Require States parties to include measures taken to ensure ODA does not infringe upon the rights of children, including appropriate legislative, policy and due diligence measures employed to ensure ODA does not support programs involving residential care or orphanage volunteering, in their Periodic Reports. This could be incorporated in States parties’ common core document reports pursuant to paragraph 43 (i) of the Reporting Guidelines on Development Cooperation and Assistance.
- Encourage States parties to take stronger action where measures are found to be insufficient to meet the obligation to ‘respect’ and provide guidance through Concluding Observations.

To support States parties meet their extraterritorial obligation to ‘protect’ children’s rights and prevent violations through institutionalisation, abuse and exploitation in institutional care settings, the Committee could:

- Require States parties to report on measures taken to regulate their NFP sector and prevent child rights infringements resulting from NFO’s overseas operations. Ensure States parties prohibit NPOs from involvement with institutions that are unregistered and non-compliant with national minimum standards for alternative care.

travel-and-volunteering-overseas#volunteering>; UK Aid Direct, ‘What will not be funded’, <<https://www.ukaidirect.org/apply/what-will-not-be-funded/>>; Taylor, Ruth, Blandine Champagneur and Frank Seidel, ‘Mapping the European Contribution to the Institutionalization of Children Overseas’ (Report, ReThink Orphanages European Hub, 2020).

²⁸ ‘Declaration and Call for Action for the Protection of Children in Travel and Tourism - International Summit Bogota’, *Global Study on sexual exploitation of children in travel and tourism*, <<https://www.protectingchildrenintourism.org/resource/declaration-and-call-for-action-for-the-protection-of-children-in-travel-and-tourism-international-summit-bogota-2018/>>

²⁹ *Rights of the Child*, GA Res 74/133, UN GAOR, 74th sess, 50th plen mtg, Agenda Item 66(a), UN Doc A/Res/74/133 (20 January 2020).

- Request States parties to report on efforts to raise awareness of the harms of orphanage tourism and volunteering and discourage the practice pursuant to paragraph 43 (e) of the Common Core document Reporting Guidelines on the Promotion of Human Rights Awareness through the mass media.
- Require States parties, whose travel, tourism and voluntourism sectors have been linked to the facilitation of orphanage tourism, to report on measures taken to curtail the practice, pursuant to Section I, paragraph 20 of the treaty specific Reporting Guidelines.
- Require States parties to the OP-SC to report on their legislative and policy framework with respect to the prevention of child sexual exploitation in the context of travel and tourism, including in residential care settings and in connection with orphanage tourism, pursuant to section V111 (c) of the treaty specific Reporting Guidelines.
- Encourage States parties to take stronger action, where any of the forementioned measures are insufficient, and provide guidance through Concluding Observations.

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³⁰ This submission was written by Rebecca Nhep and Dr Kate van Doore on behalf of the ReThink Orphanages Steering Committee and Network. For more information please contact coordinator@rethinkorphanages.org