

Master of Law: Advanced Studies in International Children's Rights



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**Countering Child Abuse by Aid Workers:
How the Convention on the Rights of the Child Guides NGOs
Child Safeguarding Measures**

Thesis submitted by
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of the Advanced LL.M. in International
Children's Rights



Declaration Statement

The Hague, 12 July 2019

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Table of Contents

Acknowledgments	v
Executive Summary	vi
Keywords	vii
Overview of Main Findings	viii
List of Abbreviations	ix
1. Introduction	1
1.1. The Relevance of Child Safeguarding for NGOs	1
1.2. Research Question	2
1.3. Child Abuse and Child Safeguarding	3
1.3.1. Different Forms of Child Abuse	3
1.3.2. Child Abuse by Conducted by Aid Workers	4
1.3.3. Definition of Child Safeguarding	5
1.4. Methodology and Research Techniques	6
1.5. Scope and Limitations	6
2. International Legal framework CRC and NGOs	8
2.1. International Legal Framework	8
2.1.1. Convention on the Rights of the Child	8
2.1.1.1. The CRC Framework and Its Aim to Protect Children from Sexual Exploitation and Abuse	8
2.2. Whether and to What Extent is the International CRC Framework Binding for NGOs?	11
2.2.1. General	11
2.2.2. Legally Bound	12
2.2.3. Morally Bound	14
2.2.4. Concluding Remarks	17
2.3. Responsibilities Arising from a Moral Obligation	17
2.3.1. General	17
2.3.2. What Are Responsibilities to Further Ensure Children's Rights Compliance in Light of GC16 and Business Principles?	17
2.3.2.1. Business Principles	17
2.3.2.2. GC16	18
2.3.3. Concluding Remarks	19
3. What Can be Expected from Existing Child Safeguarding Policies?	20
3.1. Expectations from the CRC-Committee, NGOs and Scholars	20
3.1.1. The CRC-Committee	20
3.1.2. NGOs	20
3.1.3. Scholars	20
3.2. Case Study: Assessment of Child Safeguarding Policies	22
3.2.1. General	22
3.2.2. Criteria Assessment	22
3.2.3. Selection of the NGO	23
3.2.4. Assessment Terre des Hommes	24
3.2.4.1. General Overview of Terre des Hommes' Safeguarding Measures	24
3.2.4.2. Assessment of the Terre des Hommes' Child Safeguarding Policy	24

3.3. Notable Observations from Other Policies	27
3.4. Interpretation of the Assessment	28
4. What Can be Learned from Other Sectors?	30
4.1. General	30
4.2. Institutional Care	30
4.3. Safety and Health in Industry	33
4.3.1. Background	33
4.3.2. What is Vision Zero?	34
4.3.3. The Criticism and the Success Factors	34
4.3.4. Best Practice: ProRail Safety Culture Ladder	35
4.3.4.1. Safety Culture Ladder	35
4.3.4.2. Description of the Steps	36
4.4. What can NGOs Learn from Institutional Care and Industry?	37
4.4.1. What Can be Learned from Institutional Care Measures?	37
4.4.2. What Can be Learned from Safety and Health Measures in Industry?	38
5. Conclusion and Recommendations	40
5.1. Conclusion	40
5.2. Recommendations	41
Bibliography	43

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Executive Summary

NGOs play a crucial role in fighting the abuse of children, in particular by executing (child) development and protection programs and if needed, by mobilizing the public and take a stand against (serious) wrongdoing and abuses. It is essential that the public has trust in the work of NGOs and in the way they perform their work. Therefore, NGOs need to be credible and show impeccable behaviour. If not, this will negatively impact their credibility and as a result, undermine the influence they have and jeopardize their work.

This thesis addresses children's rights standards for NGOs. In particular, it will address the safeguarding of children's rights by employees of NGOs with the aim that NGOs must prevent that staff violates children's rights in their operations, programs and in private. In general, NGOs follow a zero-tolerance policy toward child abuse. The thesis will show that this is no guarantee that aid workers do not violate the rights of children. According to Keeping Children Safe (hereinafter KCS), "an abuser may even work for an organization that's meant to help children".

The question this thesis seeks to answer is, '*Child abuse committed by aid workers: to what extent do provisions and standards of the Convention on the Rights of the Child (hereinafter CRC) framework contribute to the development of employee child safeguarding measures for NGOs.*' To answer the research question, four sub-questions are addressed in this thesis. In addition, the thesis aims to make some recommendations to improve the protection of children in the performance of work by NGOs.

Chapter 1, explores the different forms of child abuse, which includes (*inter alia*) all forms of physical or mental violence, neglect and sexual abuse. Next, this chapter aims to provide a definition of child safeguarding and it will hold that 'child safeguarding' is "the responsibility that organizations have to make sure their staff, operations, and programs do no harm to children, that is that they do not expose children to the risk of harm and abuse".

Chapter 2, aims to answer the sub-question whether and to what extent the international CRC framework is binding for NGOs, followed by what the responsibilities of NGOs are. To answer these sub-questions, insights of a desk review will be used to analyse the perspectives of the UN and academics of both the legal and moral binding nature of the CRC and the responsibilities of the CRC for NGOs. In addition, literature is examined mainly focused on the obligations of non-state actors under international human rights law (hereinafter IHRL) and international relevant guidelines. The chapter will demonstrate that traditionally, IHRL, is only binding for States since States are the signatories of the treaties. In addition, this idea is reflected in the obligations that the treaties impose on the State. However, the debate that only states are bound to IHRL is shifting considerably. Internationally, non-state actors are more and more considered also to be bound by IHRL and also, the CRC-Committee started to address non-state actors/the private sector directly. In general, the chapter will conclude that although the idea that non-state actors do have obligations as well, this mainly seems to be a moral obligation.

Chapter 3, aims to answer the question of what can be expected from existing CSPs by exploring the responsibilities and obligations that arise from the CRC. The research is performed by examining CSPs from the perspectives of the CRC-Committee, scholars and NGOs. The chapter will continue with a qualitative research of NGO's CSPs with the focus on one particular policy. The thesis will demonstrate that it can be expected that putting CSPs and procedures in place raises awareness and provides direction to encourage desired employee behaviour. In this way, the awareness of and respect for children's rights increases. However, it will be shown that giving direction to the desired behaviour does not automatically lead to employees doing the right thing. The question arises then,

how to move beyond this 'policy and procedure' approach to one which focuses on increasing understanding and influencing actual lived practice.

For this purpose, chapter 4 will explore the institutional care and industry sector showing how they deal with this issue and try to identify best practices that could be used to improve the effect of CSPs on the behaviour of employees. First, the chapter will demonstrate that the ideas coming from institutional care mainly seems to be policy driven, and although the ideas may be valuable, to become effective, it is required they become deeply ingrained in the institution's operation. This cannot be achieved by outside agents like the CRC-Committee and the government by merely describing what is required. An approach to exploring further is the potential Erooga (2012) sees for the use of the situational prevention model in institutions and communities to prevent child abuse. Second, the chapter will show that in industry, successful practices do exist that help built a so-called 'lived practice', such as the ProRail safety ladder that will be explored in this thesis. One of the main requirements for this is that policies are deeply ingrained in the operation of the organization to develop a safety culture. Further research is necessary to see if and how a safety culture could work for NGOs and how it should/could be tailored to child abuse.

Following the findings, the thesis will conclude in chapter 5 with the observation that the CRC framework does give sufficient guidance to set up CSPs. However, NGOs do not entirely apply the recommendations. This leads to the conclusion that the CRC contributes to a great extent to the mindset and actions of NGOs to take measures to respect children's rights. The thesis finishes with a list of recommendations to NGOs, the CRC-Committee, academia and donors.

Keywords

Child Safeguarding – NGO – Child Abuse – Convention on the Rights of the Child – Employees

Overview of Main Findings

To answer the question to what extent the CRC contributes to the development of employee child safeguarding measures for NGOs, the thesis demonstrated the following. It finds that NGOs are not legally bound by the CRC, although internationally the debate is shifting considerably, to the idea that IHRL also binds non-state actors. NGOs do, however (at the minimum) have a moral obligation to comply with the CRC. In my view, out of this obligation follows the responsibility for NGOs to actively make sure that CRC standards are always applied in the performance of their work. This responsibility is far-reaching. In this, I agree with the CRC-Committee who expects that by following the recommendations, non-state service providers will carry out service provision “in accordance with international standards, especially those of the Convention”.

The current way NGOs set up CSPs is not enough because child abuse still occurs when NGOs execute their programs. Most of the measures seem to be reactive. In my opinion, in order to respect children's rights and to prevent child abuse, and to fully fulfil their moral obligations, NGOs cannot just act reactively and build policies based on international law and guidelines. To take full responsibility, they should pro-actively build a culture that can respond to the dynamics of its operations in the field. To move beyond this 'policy and procedure'-approach to one which focuses on increasing understanding and influencing actual 'lived practice', NGOs ideas may be derived from experiences in other fields.

First, in the field of institutional care, Erooga (2012) sees potential in using the situational prevention model, originating from criminology, in other settings such as institutions and communities as well to prevent child abuse. The model can be used to self-assess and find possible risks, which may be the incentive to adapt policies and potentially, behaviour. It may be interesting to research further in what way NGOs could use this model for their local activities in co-operation with the local community. Second, in the industry, it has been shown there are successful practices that help build a so-called 'lived practice', such as the ProRail safety ladder. One of the main requirements for this is that policies are deeply ingrained in the operation of the organization, and a safety culture is developed. Further research is necessary to see if and how a safety culture could work for NGOs and how it should/could be tailored to child abuse. Clearly, the creation of a safety culture requires dedication and consistency on an operational level by individual NGOs. This is required both to change the work culture and to become more aware of how opportunities for abuse can arise from the way physical locations are designed, and local communities perceive child abuse.

Notwithstanding the fact there is still some work to do to fully align with the CRC (and take on a proactive responsibility), NGOs are well on their way in the manner they implement the provisions of the CRC.

To answer the research question; first, the CRC gives clear direction, content and norms to NGOs about what is expected of them. The present set of provisions and recommendations in the CRC is sufficient (even though not entirely applied by NGOs to the extent the CRC recommends). In this respect, the CRC contributes to a great extent to the mindset (zero-tolerance) and actions of NGOs (setting up policies). Second, considering the objective of the CRC, the CRC-Committee could support the development of a new generation of CSPs by moving far ahead of the current 'state of thinking' and as such make way for NGOs to develop their work culture. Practically this means provisions and standards may be expanded, both by sharpening the way the provisions and comments are phrased and by the explicit topics that are addressed, *inter alia*, the CRC-Committee could explicitly recommend to NGOs to develop a lived practice culture, based on the so-called 'safety culture' and/or situational prevention model.

List of Abbreviations

CoC	Code of Conduct
CSP	Child Safeguarding Policy
CR&BP	Children's Rights and Business Principles
CRC	Convention on the Rights of the Child
CRC-Committee	Committee on the Rights of the Child
Committee	Committee on the Rights of the Child
GC	General Comment
HRC	Human Rights Council
ILO	International Labour Organization
IHRL	International Human Rights Law
KCS	Keeping Children Safe
NGO	Non-Governmental Organization
OPSC	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
Oxfam Novib	Oxfam
Plan	Plan International
RCA	The Royal Commission into Institutional Responses to Child Sexual Abuse
SCL	Safety Culture Ladder
StC	Save the Children
TdH	Terre des Hommes International Foundation
TdH-CSP	Terre des Hommes International Foundation Child Safeguarding Policy
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
WaCh	War Child
WHO	World Health Organization

1. Introduction

1.1. The Relevance of Child Safeguarding for NGOs

After the revelation of the sexual exploitation of women and allegedly children,¹ Oxfam Novib (hereinafter Oxfam) lost 7,000 donors in the United Kingdom (hereinafter: UK), Oxfam had to withdraw from bidding for new UK government funding, Archbishop Desmond Tutu retired from his role as global ambassador² and Haiti temporarily withdrew Oxfam's right to operate in the country, amongst others. Oxfam's actions had an impact on other charities as well. Oxfam acknowledged that the incidents had harmed the whole aid sector.³ Also, the UK Charity Committee stated in its report that the way Oxfam had handled and reported about the concerns of the events in Haiti, has damaged the public trust and confidence in Oxfam.⁴

The story of Oxfam is not unique for the global aid sector and has been a concern for an extended time. Several NGOs revealed reports and incidents over the years. In 2002, a report was released by the UN High Commissioner for Refugees (hereinafter UNHCR) and Save the Children (hereinafter StC). The report was based on research to investigate sexual violence and exploitation in Liberia, Sierra Leone and Guinea, including its extent, causes and consequences and to make recommendations for future action.⁵ In this report also cases are reported of humanitarian/aid workers who perpetrated sexual exploitation. The main reason behind this was poverty and abuse of power. In 2008, StC called the sexual exploitation and abuse of children by aid workers and peacekeepers an 'urgent problem'.⁶ Field research in Southern Sudan, Côte d'Ivoire and Haiti showed that over 50% of the participants identified as 'common', that children (sometimes as young as six) are trading sex with aid workers and peacekeepers in exchange for *inter alia*, food or money, and 65% confirmed verbal abuse of children as 'common'.⁷ StC confirmed that during 2006-2007, a total of 26 allegations of misconduct were made against StC and its partners. In 2016 Plan International (hereinafter Plan) announced they had six confirmed cases of sexual abuse and exploitation of children by staff or

¹ Oxfam, *Safeguarding in Action: our 10-Point Plan* (2018), (<https://www.oxfam.org/en/oxfams-commitment-stamping-out-sexual-harassment-and-abuse>), last visited (23-06-2019).

² Church Times, *Oxfam Scandal: Archbishop Desmond Tutu Steps Down as Ambassador*, (<https://www.churchtimes.co.uk/articles/2018/16-february/news/uk/oxfam-harassment-case-puts-pressure-on-ngos>), last visited (23-06-2019).

³ The Guardian, *Oxfam Loses 7,000 Donors Since Sexual Exploitation Scandal*, (<https://www.theguardian.com/world/2018/feb/20/oxfam-boss-mark-goldring-apologises-over-abuse-of-haiti-quake-victims>), last visited (23-06-2019).

⁴ Charity Commission for England and Wales, *Inquiry Report: Summary Findings and Conclusions Oxfam, Registered Charity Number 202918*, at 32 (2019), (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807943/Inquiry_Report_summary_findings_and_conclusions_Oxfam.pdf), last visited (23-06-2019).

⁵ E. Ferris, *Abuse of Power: Sexual Exploitation of Refugee Women and Girls*, 32 *Signs: Journal of Women in Culture and Society* 584–591 (2007).

⁶ . Csáky, *No One to Turn to. The Under-Reporting of Child Sexual Exploitation and Abuse by Aid Workers and Peacekeepers*, 3 (2008), (https://resourcecentre.savethechildren.net/node/2732/pdf/no_one_to_turn_to_1.pdf), last visited (10-06-2019).

⁷ See Csáky, *supra* note 6, at 6.

associates⁸ and in 2018, a consultant of UNICEF was convicted of sexually assaulting a boy for three years in 1965.⁹

NGOs play a crucial role in fighting the abuse of children, in particular by executing (child) development and protection programs and if needed, by mobilizing the public and take a stand against (serious) wrongdoing and abuses. It is essential that the public has trust in the work of NGOs and in the way they perform their work. Therefore, NGOs need to be credible and show impeccable behaviour. They need to 'walk their talk', both in the execution of their programs as to their internal organization. If not, this will negatively impact their credibility and as a result, undermine the influence they have and jeopardize their work. To quote the UN: "Leadership in today's world must be based on a bedrock of trust."¹⁰

1.2. Research Question

This thesis addresses children's rights standards for NGOs. In particular, it will address the safeguarding of children's rights by employees working for NGOs ('aid workers') with the aim that NGOs should prevent that children's rights are violated by staff in their operations and programs, in their supply chain and during activities of staff in private.

Problem statement

NGOs (especially those who work with children) in general follow a zero-tolerance policy¹¹ towards child (sexual) abuse. This is, however, no guarantee to eliminate children's rights violations by aid workers, either directly by abusing children or indirectly, by making use of services or goods which come from or are offered by businesses who violate rights of children. According to Keeping Children Safe (hereinafter KCS), "an abuser may even work for an organization that's meant to help children".¹²

Most NGOs do have a child safeguarding policy (hereinafter CSP) in place and instructions for employees how to behave and what to do or not to do. For example, Oxfam and StC did have a code of conduct (hereinafter CoC) in place to prevent child abuse. However, staff were still accused of child abuse. Apparently, the existence of a CSP is no guarantee for ethical conduct by staff members. This raises the question of what can be expected of CSPs? How can NGOs ensure that its employees respect and protect children's rights in all activities and programs they perform, with no exceptions?

⁸ Plan, Stamp out Abuse and Exploitation, (<https://plan-international.org/news/2018-02-21-our-commitment-stamp-out-abuse-and-exploitation>), last visited (23-06-2019).

⁹ Center for Family & Human Rights, *UNICEF Consultant Sexually Assaulted Boy for Years*, (https://cfam.org/friday_fax/unicef-consultant-sexually-assaulted-boy-years/), last visited (23-06-2019).

¹⁰ UN General Assembly, Secretary-General Report, Special Measures for Protection from Sexual Exploitation and Abuse; A New Approach, A/71/818 (2017).

¹¹ See Independent Commission on Sexual Misconduct, Accountability & Culture Change, *Committing to Change, Protecting People. Toward a More Accountable Oxfam*, 21 (2019). According to the Commission, nearly 90% of Oxfam's partners, affirmed having a zero-tolerance policy against sexual harassment and exploitation and abuse, but only 65% reported having a safeguarding policy.

¹² See Keeping Children Safe (hereinafter KCS), (<https://www.keepingchildrensafe.org.uk>), last visited (08-07-2019).

The question this thesis seeks to answer is, 'Child abuse committed by aid workers: to what extent do provisions and standards of the Convention on the Rights of the Child (hereinafter CRC)¹³ framework contribute to the development of employee child safeguarding measures for NGOs.' In addition, the thesis aims to make some recommendations to improve the protection of children in the performance of work by NGOs.

To answer the research question, four sub-questions will be addressed in this thesis.

I Whether and to what extent is the international CRC framework binding for NGOs?

II What are the responsibilities of NGOs?

III What can be expected of the existing NGO safeguarding programs?

IV What can be learned from organizations in other sectors when setting up employee policies?

1.3. Child Abuse and Child Safeguarding

Child abuse figures give a reason for concern, and a substantial number of organizations are working globally on child abuse and see this as a priority, including the World Health Organization, UNICEF and several NGOs.¹⁴ Since the terminology that is used by organizations may differ, among other things, violence, harm or abuse is used, this chapter will define the wording for this thesis.

1.3.1. Different Forms of Child Abuse

Violence against children according to article 19 CRC means "all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse". Physical violence includes, but is not limited to, fatal and non-fatal physical violence such as corporal punishment and all forms of torture, cruel, inhuman or degrading treatment, and, also, physical bullying and hazing by adults.¹⁵ Further, it includes torture and inhuman or degrading treatment¹⁶ and harmful practices¹⁷ and the worst forms of child labour.¹⁸ Mental violence is physical maltreatment, mental abuse, verbal abuse and emotional abuse or neglect including, but not limited

¹³ UN General Assembly, Convention on the Rights of the Child, 1577 UNTS 3, UN Doc. GA/RES/44/25 (1989) (hereinafter CRC). In quotations, this thesis also uses 'Convention', if appropriate.

¹⁴ See also D. Finkelhor & P. Lannen, *Dilemmas for International Mobilization Around Child Abuse and Neglect*, 50 *Child Abuse & Neglect* 1-8 (2015), (<https://doi.org/10.1016/j.chiabu.2014.06.012>, last visited (26-06-2019)). This article articulates some issues and dilemmas raised by various efforts to mobilize international action around child abuse.

¹⁵ Committee on the Rights of the Child (hereinafter CRC-Committee), GC No. 13 on the right of the child to freedom from all forms of violence, CRC/C/GC/13 (2011) (hereinafter GC13), para. 22.

¹⁶ GC13, para. 26.

¹⁷ GC13, para. 29.

¹⁸ For this thesis, only the worst forms of child labour are regarded as violence against children. See ILO, Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182 (1999), for forms of child labour. See also L.M. Richter & A.R.L. Dawes, *Child Abuse in South Africa: Rights and Wrongs*, 17 *Child Abuse Review* 82 (2008), (<https://onlinelibrary-wiley-com.ezproxy.leidenuniv.nl:2443/doi/pdf/10.1002/car.1004>), last visited (21-06-2019). Not all child labour is considered child abuse; this is depending on law and context.

to, all forms of persistent harmful interactions with the child, scaring, terrorizing, threatening, corrupting, bullying and hazing.¹⁹

Neglect or negligent treatment means the failure to meet children's physical and psychological needs, protect them from danger, or obtain medical, birth registration or other services when those responsible for children's care have the means, knowledge and access to services to do so.²⁰

Child sexual exploitation is the exploitative use of children in prostitution or other unlawful sexual practices and in pornographic performances and materials.²¹ Child Sexual abuse means "engaging in sexual activities with a child who, according to the relevant provisions of national law, has not reached the legal age for sexual activities and engaging in sexual activities with a child where use is made of coercion, force or threats; or abuse is made of a recognized position of trust, authority or influence over the child, including within the family; or abuse is made of a particularly vulnerable situation of the child, notably because of a mental or physical disability or a situation of dependence."²² Child prostitution refers to the situation where a child is used for sexual activities where money or any other form of remuneration (sex traded for *inter alia* food) or consideration is given or promised as payment, regardless if this payment promise or consideration is made to the child or a third person.²³ Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

In this thesis, the words harm and abuse in the definition of child safeguarding will be referred to as 'child abuse' and will cover all forms of abuse and violation, as explained above.

1.3.2. Child Abuse Conducted by Aid Workers

According to evidence based on reports, child abuse in emergencies seems to be a serious problem globally. However, it is difficult to obtain detailed information about the numbers of child abuse cases conducted by aid workers, since either information is not collected or is not made public.²⁴ StC concluded that the scale of child abuse is significant, based on their fieldwork²⁵ and reported in 2006 that child exploitation in Liberia was widespread; children, some reportedly as young as eight years old,²⁶ were having sex with humanitarian workers, camp officials, peacekeepers and teachers, in exchange for goods and services. In camps, all children are at risk, due to separation from parents, lack of money and especially young girls since these girls are more vulnerable to sexual abuse.²⁷

¹⁹ GC13, para. 21.

²⁰ GC13, para. 20.

²¹ CRC, art. 34.

²² CRC-Committee, Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, A/RES/54/263 (2000) (hereinafter OPSC), art 2(b), Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) (hereinafter Lanzarote), art. 18 & CRC, art. 34.

²³ Lanzarote, art.19.

²⁴ See Csáky, *supra* note 6, at 10.

²⁵ See Csáky, *supra* note 6, at 10.

²⁶ StC UK, *From Camp to Community, Liberia Study on Exploitation of Children* (2006).

²⁷ *Id.*, at 11.

Compared to local people working in other fields, aid workers are usually paid relatively well, and they usually have access to food and goods to exchange for sex.²⁸

Besides employees who deliberately intend to abuse a child, abuse can also occur indirectly by taking on the services of a third-party service provider that does not carry out its service in accordance with the CRC. Sloth-Nielsen (2014),²⁹ stated that “The child safeguarding movement was born out of the realisation that relief workers, development agencies, humanitarian organizations and the like, many of whom do not have children as their primary focus or mandate, can and do become involved in abuse of children, or become aware of it occurring during the course of their endeavours.”

1.3.3. Definition of Child Safeguarding

The aid sector is not using a standard definition for safeguarding. The term originated from the UK, meaning: “protecting people’s health, well-being and human rights, and enabling them to live free from harm, abuse and neglect.”³⁰ For this thesis, the definition is followed used by KCS.³¹ ‘Child safeguarding’ means “the responsibility that organizations have to make sure their staff, operations, and programs do not harm children, that is that they do not expose children to the risk of harm and abuse”.^{32,33} Others use similar definitions and descriptions.³⁴

According to KCS, child safeguarding has four international standards, policy,³⁵ people, procedures and accountability. First, a policy describes the NGOs commitment to prevent child abuse and how the organization should respond to it when it does occur. Secondly, it needs to be clear who is responsible for what and what is expected from staff and associates. The organization needs to support staff and associates to understand the responsibilities and expectation and how to act in accordance with it. Thirdly, child-friendly safeguarding procedures need to be implemented and used by everyone in order to create a child-safe environment. Last, safeguarding measures need to be monitored and reviewed. Child safeguarding is based on the principles that all children have equal right to protection from harm, everybody has a responsibility to support and protection of children,

²⁸ *Id.*, at 12.

²⁹ J. Sloth-Nielsen, *Regional Frameworks for safeguarding children: The Role of the African Committee of Experts on the Rights and Welfare of the Child*, 3 *Social Sciences* 948-961 (2014), (<https://www.mdpi.com/2076-0760/3/4/948/htm>), last visited (21-06-2019).

³⁰ See the Care Quality Commission, *Safeguarding People*, (<https://www.cqc.org.uk/what-we-do/how-we-do-our-job/safeguarding-people>), last visited (25-06-2019).

³¹ See 12, *supra*.

³² See also Child Protection Working Group, *Minimum Standards for Child Protection in Humanitarian Action* (2012), (<https://spherestandards.org/resources/minimum-standards-for-child-protection-in-humanitarian-action-cpms/>), last visited (21-06-2019).

³³ See also K. Walker-Simpson, *The Practical Sense of Protection: A Discussion Paper on the Reporting of Child Abuse in Africa and Whether International Standards Actually Help Keep Children Safe*, 26 *Child Abuse Review* 252–262 (2017), (<https://onlinelibrary-wiley-com.ezproxy.leidenuniv.nl:2443/doi/pdf/10.1002/car.2477>), last visited 17-06-2019). Walker-Simpson uses the term child protection instead of child safeguarding since the last term is “still poorly understood in the Global South”.

³⁴ See UNICEF, *Child Safeguarding Toolkit for Business, A Step-by-Step Guide to Identifying and Preventing Risks to Children who Interact With Your Business* (2018), (https://www.unicef.org/csr/css/UNICEF_ChildSafeguardingToolkit_FINAL.pdf), last visited (21-06-2019) and see 32, *supra*.

³⁵ This thesis focusses on CSP of the larger NGOs. It may be interesting to further research to what extent other NGOs have set up and implemented CSPs.

organizations have a duty of care to children with whom they work, are in contact with, or who are affected by their work and operations, if organizations work with partners they have a responsibility to help partners meet the minimum requirements on protection, and all actions on child safeguarding are taken in the best interests of the child, which are paramount.³⁶

Child Safeguarding and Child Protection

The difference between the terms *safeguarding* and *child protection* is that safeguarding refers to the entirety of policies and practices that organizations employ to keep children safe and to promote their well-being.³⁷

1.4. Methodology and Research Techniques

In general, the thesis is based on the insights of performing desk reviews. However, some conversations took place for background information. Chapter 2, aims to answer sub-questions I and II. To answer sub-question I, insights of a desk review are used to analyse the perspectives of the UN and academics of both the legal and moral binding nature of the CRC for NGOs. In addition, literature is examined mainly focused on the obligations of non-state actors under IHRL and international relevant guidelines. Next, chapter 2 will continue with sub-question II by performing a desk review and analysing the views of the CRC-Committee and scholars. Chapter 3, aims to answer the question of what can be expected from CSPs, by exploring the responsibilities and obligations that arise from the CRC. The research will be performed by examining CSPs from the perspectives of the CRC-Committee, scholars and NGOs. The chapter will continue with a qualitative research on CSPs of four NGOs with the focus on one particular policy. In chapter 4, an analysis is made of the way employee standards are set up in the fields of institutional care and industry. It is examined how these fields guide employee behaviour and make sure that employee standards are actually implemented and come effectively to explore what can be learned from this by NGOs.

The thesis will end with the observation that the CRC framework provides sufficient guidance to set up CSPs; however, NGOs do not apply the CRC-Committee's recommendations to its full extent. This leads to the conclusion that the CRC contributes to a great extent to the mindset and actions of NGOs to take measures to prevent child abuse and set up child safeguarding measures.

1.5. Scope and Limitations

The thesis will focus on the *prevention* of child abuse and will not include the aftermath, such as remedies for abused children. The intention is to focus on employees of *every* NGO,³⁸ not only on NGOs working directly with children. When the words 'employees' or 'aid workers' is used in this

³⁶ Standards and principles are derived from KCS, see 12, *supra*.

³⁷ Littleport Community Primary School, Safeguarding and Child Protection, (<http://www.littleport.cambs.sch.uk/safeguarding-and-child-protection/>), last visited (27-06-2019). See also N. Parton, *Child Protection and Safeguarding in England: Changing and Competing Conceptions of Risk and Their Implications for Social Work*, 41 *British Journal of Social Work* 854-75 (2011), (<https://academic-oup-com.ezproxy.leidenuniv.nl:2443/bjsw>), last visited (25-06-2019) and see Walker-Simpson, *supra* note 33.

³⁸ The aim of this thesis is not to define 'NGO' and will follow this definition: "NGOs are formal independent societal organizations whose primary aim is to promote common goals at national or international level." They are societal actors because they originate from the private sphere, K. Martens, *Mission Impossible? Defining Nongovernmental Organizations*, 13 *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 271-285 (2002), (<https://link-springer-com.ezproxy.leidenuniv.nl:2443/content/pdf/10.1023/A%3A1020341526691.pdf>), last visited (02-07-2019).

thesis, the words include paid staff, temporarily staff and volunteers. The prevention of child abuse sees both on the situation when NGOs are executing their programs as in the internal organization and also when employees are working in private situations. In other words, the bookkeeper who is working at the NGO-headquarters also should respect the child safeguarding standards and should not keep child pornography on his computer.

The thesis focusses on the responsibility of the NGO in the capacity of non-state actor. The criminal case or prosecution of the employee will be disregarded since the scope of this thesis does not allow for an in-depth analysis of the diversity of national criminal, private and or administrative law.

2. International Legal Framework and NGOs

2.1. International Legal Framework

2.1.1. Convention on the Rights of the Child

The adoption of the CRC in 1989 has been a landmark in the fight against the sexual exploitation and abuse of children.³⁹ The aim of the CRC was to bring children's protection rights together that were to be found in many different instruments.⁴⁰ To bring it together would support more meaningful responses to violations. During the drafting process of the CRC, NGOs acted as participating observers at the Working Group under supervision of the UN Commission on Human Rights.⁴¹ During this process, human rights organizations became more aware of child rights violations in their organizations. Notable is the start of national Amnesty International Working Groups for Children in the 1980s.⁴²

2.1.1.1. *The CRC Framework and Its Aim to Protect Children from Sexual Exploitation and Abuse*

The rights of children who are involved in child abuse are seriously violated. To fight this, the CRC includes several provisions aimed to protect children. Articles 19, 32, 34, 35 and 39 CRC enshrine the protection rights for children with respect to sexual exploitation such as measures focused on the *prevention* of sexual exploitation or abuse. In 2000 the UN General Assembly adopted the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (hereinafter OPSC) which is a protocol to the CRC and requires parties to prohibit the sale of children, child prostitution and child pornography. In General Comment (hereinafter GC) No. 13, the CRC-Committee shares its interpretation of article 19 CRC.

Article 19 CRC

Article 19 CRC is the main provision⁴³ set up for the protection of children "from all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." According to article 19(2) these protective measures should include "effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore [...]." In 2011 the CRC-Committee issued a GC focused on the right of the child to freedom from all forms of violence. The Committee aimed to strengthen and expand measures to end violence

³⁹ M. Santos Pais, *The Protection of Children from Sexual Exploitation Option Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 18 *International Journal of Children's Rights* 551-566 (2010).

⁴⁰ N. Cantwell, *Are Children's Rights Still Human?* in A. Invernizzi & J. Williams (Eds.), *The Human Rights of Children. From Visions to Implementation* 37-59 (2011).

⁴¹ See Cantwell, *supra* note 40, at 40.

⁴² See Cantwell, *supra* note 40, at 40

⁴³ GC13, para. 7.

in order to put an end to violence against children effectively.⁴⁴ This GC was welcomed by society since child protection efforts worldwide have been disappointing.⁴⁵

Articles 34 and 35 CRC

Articles 34 and 35 CRC enshrine the right of the child to be protected “from all forms of sexual exploitation and sexual abuse.” Member States, in particular, shall ensure to prevent that children are engaged in unlawful sexual activity, that children are exploited in prostitution or pornographic performances or in any other sexual practices.

Article 32 CRC

Children have the right “to be protected from economic exploitation and from performing any work that is likely to be hazardous” and work that harms them. This right is set forth by article 32 of the CRC. Also, reference should be made to ‘The Worst Forms of Child Labour Convention (1999)’ (hereinafter ILO Convention).⁴⁶ This Convention calls for “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”.⁴⁷ The definition of the worst forms of child labour includes “the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performance”. The ILO Convention is complementary and linked to the CRC⁴⁸ and its optional protocols.⁴⁹ The difference between the CRC and the ILO Convention is that the ILO Convention protects any child under 18,⁵⁰ whereas the CRC allows an earlier age of majority when this is recognized by national law.^{51, 52}

Article 39 CRC

Children who are a victim of “any form of neglect, exploitation, or abuse,” have the right to receive special help to recover their health, dignity and self-respect. This right is enshrined in article 39 CRC. Although this right is essential for children, it will not be further elaborated on due to the focus of this thesis on the prevention of child abuse.

Note on the CRC and the growing group of refugees and unaccompanied and separated children

It should be noted, that the CRC-Committee pays specific attention to the prevention of sexual abuse and other forms of exploitation in situations that children are unaccompanied and separated since

⁴⁴ GC13, para. 2.

⁴⁵ See also S. Bennett, S.N. Hart & A. Svevo-Cianci, *The Need for a General Comment for Article 19 of the UN Convention on the Rights of the Child: Toward Enlightenment and Progress for Child Protection*, 33 *Child Abuse & Neglect* 783-790 (2009), (<https://www-sciencedirect-com.ezproxy.leidenuniv.nl:2443/science/article/pii/S0145213409002002>), last visited (02-07-2019).

⁴⁶ See 18, *supra*, 185 have ratified the Convention, (https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO), last visited (10-06-2019).

⁴⁷ See 18, *supra*, art. 1.

⁴⁸ *Inter alia*, CRC, arts. 32, 34-35.

⁴⁹ The OPSC refers to the ILO Convention (see 18, *supra*) in its preamble.

⁵⁰ See 18 *supra*, art. 2.

⁵¹ CRC, art. 1.

⁵² See also, Y. Noguchi, *ILO Convention No. 182 on the Worst Forms of Child Labour and the Convention on the Rights of the Child*, 10 *The International Journal of Children's Rights* 355-369 (2002).

these children are “particularly vulnerable to exploitation and abuse.”⁵³ The numbers of children travelling alone are increasing.⁵⁴ Many of these children end up in refugee camps or other places where a significant number of aid workers and volunteers are working.

OPSC and its Draft Guidelines

The OPSC was adopted in 2002, and today 176 countries are part of the Protocol.⁵⁵ The OPSC explicitly lists the acts the national criminal law should cover,⁵⁶ to ensure that the sale of children, child prostitution and child pornography are covered. The OPSC defines child prostitution as ‘the use of a child in sexual activities for remuneration or any other form of consideration’,⁵⁷ which means that *inter alia*, sexual services in exchange for food or shelter also are covered by the OPSC.⁵⁸ Special attention is paid to prevention by providing specific preventive measures to be taken by the member states.⁵⁹

In 2019, the CRC-Committee published the draft Guidelines on the implementation of the OPSC.⁶⁰ The main objective of these Guidelines is to “to foster a deeper understanding of the substantive provisions of the OPSC in light of developments in the digital environment as well as of the increased knowledge and experience developed with regard to the sale and sexual exploitation of children since its adoption to enable a better implementation of the OPSC by States Parties.”⁶¹

The Committee emphasizes the importance of legislation to cover the acts listed in article 3 OPSC for both natural and legal persons, to fight impunity.⁶² Concerning the prevention measures, the Committee states that member states should pay attention to root causes of sexual exploitation, such as harmful social norms and the demand (of both offenders and economic profiteers), that exists.⁶³ Some specific measures listed by the Committee are the screening of all persons applying for work

⁵³ CRC-Committee, GC No. 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6 (2005), paras. 50-51.

⁵⁴ UNICEF, *Five-Fold Increase in Number of Refugee and Migrant Children Travelling Alone since 2010*, (https://www.unicef.org/media/media_95997.html), last visited (04-06-2019).

⁵⁵ United Nations Human Rights Office of the High Commissioner, Status of Ratification, (<http://indicators.ohchr.org>), last visited (04-06-2019).

⁵⁶ OPSC, *inter alia*, art. 3(1)(a)(i) the offering, delivering or accepting, by whatever means, a child for the purpose of (a) sexual exploitation of the child and see also art. 3(1)(b) offering, obtaining, procuring or providing a child for child prostitution [...].

⁵⁷ OPSC, art. 2.

⁵⁸ UNICEF, Innocenti Research Centre, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* 11 (2009).

⁵⁹ OPSC, art. 9 and see 58 *supra*, at 14.

⁶⁰ CRC-Committee, Draft Guidelines on the Implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2019) (hereinafter DG-OPSC), (https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CRC/INF/8870&Lang=en), last visited (04-07-2019).

⁶¹ DG-OPSC, at para. 11.

⁶² See also UN Special Representative of the Secretary-General on Violence against Children, Legislation, (<https://violenceagainstchildren.un.org/content/legislation>), last visited (08-07-2019) and see DG-OPSC, para. 16.

⁶³ DG-OPSC, para. 33.

where they are in direct contact with children, considering to establish registers of convicted sex offenders and measures to ensure that private sector actors play a proactive role in the prevention and combating of offences⁶⁴ and the enhancing of child protection policies and strategies.⁶⁵

To prevent the sale and sexual exploitation of children in the context of travel and tourism, the Committee pays attention to 'opportunistic' offenders, who are referred to as persons 'who may not have planned to carry out a sexual offence during their travels'.⁶⁶ Since this may be applicable to aid workers, the Committee could have paid more attention to offences committed by employees of non-state actors and the measures these actors should take. The Committee could, *inter alia*, have included employees of non-state actors or 'aid workers' explicitly in this paragraph, instead of only mentioning 'persons travelling for business and tourism'. With respect to the prevention of online sale, sexual exploitation and sexual abuse, the Committee refers to research showing that persons of trust are often involved in the sexual exploitation and sexual abuse of children. The Committee provides two examples of such persons, parents and teachers;⁶⁷ similarly to the previous example, the Committee could have included aid workers as an example. This may be of specifically important and helpful for countries where many NGOs are active.

2.2. Whether and to What Extent is the International CRC Framework Binding for NGOs?

2.2.1. General

To answer the question to what extent the CRC framework is binding for NGOs, this thesis will first have a look at what 'binding' means with respect to the CRC. For this purpose, the thesis will briefly go back into history. In 1979, it was proposed by the Polish delegation to the UN to set up a binding convention on child's rights.⁶⁸ In 1989, the CRC was adopted by the UN General Assembly and open for signature and ratification by all states. In 1990 the CRC entered into force and today, all countries except for the USA are member states. Ratification makes the CRC binding for these countries as a legal document with binding standards. This means that States have to respect and ensure the rights as enshrined in the CRC⁶⁹ and they have taken on the obligation under international law to implement it, which means they have to take action to ensure the realization of all rights in the CRC for all children in their jurisdiction,⁷⁰ including legislation to protect children against all forms of violence abuse and exploitation and other forms of abuse.

⁶⁴ DG-OPSC, para. 36.

⁶⁵ DG-OPSC, para. 24.

⁶⁶ DG-OPSC, para. 37 and see A. Hawke & A. Raphael, *Offenders on the move: Global Study on the Sexual Exploitation of Children in Travel and Tourism* 53 (2016)

⁶⁷ See DG-OPSC, para. 42.

⁶⁸ J.E. Oestreich, *UNICEF and the Implementation of the Convention on the Rights of the Child* 4 Global Governance 183-198 (1998), (<https://heinonline-org.ezproxy.leidenuniv.nl:2443/HOL/P?h=hein.journals/glogo4&i=195>), last visited (23-06-2019).

⁶⁹ D.A. Balton, *The Convention on the Rights of the Child: Prospects for International Enforcement*, 12 Human Rights Quarterly 120-129 (1990), (https://heinonline-org.ezproxy.leidenuniv.nl:2443/HOL/Page?lname=&public=false&collection=journals&handle=hein.journals/hurq12&men_hide=false&men_tab=toc&kind=&page=120&t=1561304956), last visited (23-06-2019).

⁷⁰ CRC-Committee, GC No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) (2003) (hereinafter GC5), para. 1.

To answer the question if the CRC framework binds NGOs, an analysis has been made of the CRC framework and academic literature focused on the obligations of non-state actors under IHRL. A distinction has been made between legally and morally binding obligations.

2.2.2. Legally Bound

As a minimum, NGOs are bound to observe national law⁷¹ which, depending on the jurisdiction, can be both in the country of the headquarters and in the country where the NGO is performing activities. For instance, forms of child abuse may be criminalized in national law,⁷² it may be mandatory to report child abuse to the relevant authorities^{73, 74} or other laws may apply to the NGOs. It is beyond the scope of this paper to further evaluate the specific laws that may be applicable.

For me it seems logical that the CRC protection rights⁷⁵ should apply in all situations and to all actors, however, the fact is that the CRC and other international treaties put in principle obligations on States and not on non-state actors or individuals. The reason that States are a party to the CRC and not non-state parties such as NGO is enshrined in article 46 CRC: "The present Convention shall be open for signature by all States."⁷⁶ Another reason is that human rights obligations are traditionally not addressed to non-state parties. Human rights originate from the need for individuals to be protected against abuse and harmful actions by States.⁷⁷ This is confirmed by the wording of the CRC; for instance, article 4 CRC refers to the member state's obligations to implement the CRC.

Ronen (2013) agrees with the idea that international law is not directly binding for non-state parties. For example, Ronen (2013) states: "International human rights law, imposes duties on States" and adds to this that international law first needs to be "significantly adapted" before it can impose obligations directly on non-state actors.⁷⁸

The CRC, as most international human rights treaties, put obligations on States Parties and the CRC Committee monitors if the States comply with these obligations. It is the State who is obliged by the

⁷¹ Which should include the CRC rights. European countries are required to criminalize sexual abuse, child prostitution and child pornography in national law. See Lanzarote, arts. 18-26. See also Council of Europe: Committee of Ministers, Regional legislation and action to combat sexual exploitation and abuse of children, Resolution 350 (2012), under 7 & 9.

⁷² Lanzarote, arts. 18-24. See also art. 26, which states that member states shall take "measures to ensure that legal persons can be held liable" for offences as enshrined in the Lanzarote.

⁷³ *Id.* art. 12.

⁷⁴ *E.g.*, Dutch professionals must report suspected child abuse, see Government of the Netherlands, Preventing and Identifying Signs of Child Abuse, (<https://www.government.nl/topics/child-abuse/strategy-against-child-abuse/preventing-and-identifying-signs-of-child-abuse>), last visited (27-06-2019). See also Lanzarote, art. 12, which requires States to encourage anyone to report knowledge or suspicion of child abuse. See also 14, *supra*.

⁷⁵ See §2.1.

⁷⁶ S.F. van den Driest, *Tracing the Human Rights Obligations of UN Peacekeeping Operations*, in J. Summers & A. Gough (Eds.), *Non-State Actors and International Obligations: Creation, Evolution and Enforcement* 255 (2018), (<https://brill-com.ezproxy.leidenuniv.nl:2443/abstract/title/34444>), last visited (26-06-2019).

⁷⁷ See K.M. Larsen, *The Human Rights Treaty Obligations of Peacekeepers* 87 (2012), (<https://doi-org.ezproxy.leidenuniv.nl:2443/10.1017/CBO9781139062022>), last visited (26-06-2019).

⁷⁸ Y. Ronen, *Human Rights Obligations of Territorial Non-State Actors*, 46 *Cornell International Law Journal* 21-50 (2013), (https://heinonline-org.ezproxy.leidenuniv.nl:2443/HOL/Page?iname=&public=false&collection=journals&handle=hein.journals/cintl46&men_hide=false&men_tab=toc&kind=&page=21), last visited (09-07-2019).

CRC to respect and ensure rights outlined in the CRC⁷⁹ and who “shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the” CRC.⁸⁰ Although the CRC⁸¹ according to Chaney (2017),⁸² require States Parties to cooperate “with civil society organizations including non-government organizations in the planning and monitoring of the implementation of the CRC and the Optional Protocols”,⁸³ no direct obligations for other than the States Party can be found in the CRC. This is in line with the fact that individuals in IHRL have only rights against the state.⁸⁴

In GC5 the Committee addresses ‘indirect obligations’ of non-state actors under the CRC, by stating: “The Committee emphasizes that States parties to the Convention have a legal obligation to respect and ensure the rights of children as stipulated in the Convention, which includes the obligation to ensure that non-state service providers operate in accordance with its provisions, thus creating indirect obligations on such actors.”⁸⁵ However, no support is given in this GC that the CRC directly binds non-state actors and the CRC-Committee explicitly confirms this in GC16 by stating that there is “no internationally legally binding instrument on the business sector’s responsibilities vis-à-vis human rights.”⁸⁶ In her keynote during a Conference organized by the World Organization against Torture,⁸⁷ Arbour (2005)⁸⁸ supports this growing acceptance that non-state actors are also responsible for respecting human rights; however, “means of holding non-states actors accountable for their actions in relation to human rights, are still wanting.”⁸⁹ In my opinion, she confirms as well that at the moment, non-state actors cannot be held accountable for violations of human rights. McCorquodale (2009)⁹⁰ has a different approach and suggests to take the example of the Rome Statute of the International Criminal Court⁹¹ where direct responsibility is created of non-state actors for human rights violations. He suggests to adopt an Optional Protocol to the existing treaties to create a similar responsibility for

⁷⁹ CRC, art. 2(1).

⁸⁰ CRC, art. 4.

⁸¹ See CRC, arts. 4, 42 & 44.

⁸² P. Chaney, *Comparative Analysis of State and Civil Society Discourse on the Implementation of the United Nations Convention on the Rights of the Child in North Africa*, 22 *The Journal of North African Studies* 6-34 (2017), (<https://doi-org.ezproxy.leidenuniv.nl:2443/10.1080/13629387.2016.1269229>), last visited (09-07-2019).

⁸³ *Id.*, at 8.

⁸⁴ R. McCorquodale, *Non-State Actors and International Human Rights Law*, in S. Joseph & A. McBeth (Eds.), *International Human Rights Law* 97-115 (2009), (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2065391), last visited (12-06-2019).

⁸⁵ GC5, para. 43.

⁸⁶ CRC-Committee, GC No. 16 on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16 (2013) (hereinafter GC16), para. 8.

⁸⁷ The World Organisation Against Torture, *Report on the International Conference, Poverty, Inequality and Violence: Is there a Human Rights Response. Keynote address Louise Arbour* (2005).

⁸⁸ Louise Arbour is the Special Representative of the UN Secretary-General for International Migration, (<https://www.un.org/press/en/2017/sga1712.doc.htm>), last visited (12-06-2019).

⁸⁹ See 87 *supra*, at 30.

⁹⁰ See McCorquodale, *supra* note 84.

⁹¹ Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 90 (entered into force 1 July 2002) (hereinafter Rome Statute), art. 75, victims can be heard and receive compensation for violations of human rights by a non-state actor.

non-state actors.⁹² This also confirms his opinion that at the moment, non-state actors are not directly bound by the IHRL.

The idea that IHRL legally binds non-state actors, including the CRC, seems not to be supported.

2.2.3. Morally bound

Based on the above, it could be argued that the CRC does not *legally* bind non-state actors. This does not mean that the CRC has no effect on NGOs at all. This paragraph will show that non-state actors can be bound by IHRL, including the CRC, based on 'moral' obligations that arise from these international treaties.

Ronen (2013),⁹³ *inter alia*, is of the opinion that conceptually human rights obligations are unlimited in whom they are addressed, they count for everybody. He believes that human rights obligations "are grounded in human dignity, which inheres in all individuals regardless of who is in a position to effect these obligations."⁹⁴ Human rights should apply to all organizations that may affect the enjoyment of human rights and as such, apply to non-state parties as well.⁹⁵

Ronen (2013), continues by stating that this interpretation is laid down in the Universal Declaration of Human Rights (hereinafter UDHR),⁹⁶ which is the foundation of IHRL and "which speaks of the *entitlement* of 'everyone' to the rights enumerated in it and does not indicate the addressees of the concomitant obligations."⁹⁷ Clapham (2017)⁹⁸ agrees with Ronen (2013) adding that the UDHR was not written for States and at the moment of drafting the UDHR, it was not clear yet what exactly were the obligations of States. Clapham (2017) additionally suggests to take a more sentimental approach and have a look at the victim's perspective instead of too much focus on legitimacy. For a victim, any inhuman treatment is felt as his human dignity is not respected, no matter who is responsible for it.⁹⁹ Also, the respect of human rights by, for example development agencies and international financial institutions can complement the responsibilities of States. This will not mean that it will replace the responsibility of States.¹⁰⁰ In the same vein, Emmerson (2015)¹⁰¹ adds that human rights always, at all times, apply; they belong to individuals and are the base for human dignity. Driest gives another

⁹² Although he is not hopeful this succeed since many States and non-state actors will resist such a protocol, one of them being the strong economic powers that non-state actors can have, especially financial institutions and international corporations.

⁹³ See Ronen, *supra* note 78, at 21.

⁹⁴ See also Driest, *supra* note 76, at 187 and K. Kenny, *UN Accountability for its Human Rights Impact: Implementation Through Participation*, in N.D. White & D. Klaasen (Eds.), *The UN, Human Rights and Post-Conflict Situations* 440-441 (2005).

⁹⁵ See Kenny, *supra* note 94, at 438 & 447-448.

⁹⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III), UN Doc. A/801 (1948).

⁹⁷ See Ronen, *supra* note 78, at 21.

⁹⁸ A. Clapham, *Non-State Actors*, in D. Moeckli, S. Shah & S. Sivakumaran (Eds.), *International Human Rights Law*, 3rd ed. (2017).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ B. Emmerson, Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, A/HRC/29/51 (2015), para. 30.

perspective (2018)¹⁰² who argues that if states delegate responsibilities, such as UN missions, then the UN should have the same human rights obligations as the State. Although Driest (2018) refers to UN Peacekeeping missions, this may be an argument which also could be applied to NGOs when they provide services which may be a direct obligation via human rights treaties, such as for instance to protect children from abuse.¹⁰³

On several occasions, it seems the CRC-Committee is directly putting an obligation on non-state actors. *Inter alia*, in the GC on health, the Committee directly addresses non-state service providers, by stating that they "must incorporate and apply to the design, implementation and evaluation of their programmes and services all relevant provisions of the Convention, as well as the criteria of [...] acceptability and quality [...]. Also, all businesses "have an obligation of due diligence with respect to human rights, which include all rights enshrined in the CRC" to ensure businesses identify, prevent and mitigate their negative impact on children's rights to health. They also need to make public what their impact is on children's rights.¹⁰⁴ The Committee also calls directly on relevant stakeholders such as non-governmental partners and the private sector to be engaged in the realization of the child's right to health.¹⁰⁵ Also, the CRC-Committee seems to take the view that non-state actors have a moral obligation under the CRC. During the day of General Discussion on the private sector and its role in implementing children's rights, the CRC-Committee directly addresses non-state actors and also, specifically lists the actions to be taken by non-state actors to make sure children's rights are respected. According to Clapham (2006), this is a rather unusual step for the CRC-Committee to take, being a Human Rights Treaty Body.¹⁰⁶ Since the recommendations to non-state service providers are engaging in this context, the full text is included.¹⁰⁷

16. The Committee calls on all non-state service providers to respect the principles and provisions of the Convention on the Rights of the Child. It further recommends that all non-state service providers take into account the provisions of the Convention when conceptualizing, implementing and evaluating their programmes, including when sub-contracting other non-state service providers, in particular the four general principles set out in the provisions concerning non-discrimination (article 2), the best interests of the child (article 3), the right to life, survival and development (article 6), and the right of the child to express his or her views freely and have those views be given due weight in accordance with the age and maturity of the child (article 12).

17. To that end, the Committee encourages non-state service providers to ensure that service provision is carried out in accordance with international standards, especially those of the Convention. It further encourages non-state service providers to develop self-regulation mechanisms which would include a system of checks and balances. To that end, the Committee recommends that, when developing self-regulation mechanisms, the following criteria be included in the process:

¹⁰² See Driest, *supra* note 76.

¹⁰³ See Driest, *supra* note 76, at 187.

¹⁰⁴ CRC-Committee, GC No. 15 on the right of the child to the highest attainable standard of health (art. 24), CRC/C/GC/15 (2013) (hereinafter GC15), paras. 79-80. See also para. 77: "The Committee calls on all non-state actors, including partners, working in health to act in compliance with the CRC-provisions. Partners include international organizations [...] global partnerships, the private sector (private foundations and funds), donors, [...] providing services or financial support to children's health, particularly in humanitarian emergencies or politically unstable situations."

¹⁰⁵ GC15, paras. 6 & 42, the private sector includes businesses and not-for-profit organizations.

¹⁰⁶ A. Clapham, *Human Rights Obligations of Non-State Actors* (2006), at 323.

¹⁰⁷ CRC-Committee, Report on its thirty-first session, September-October 2002, Day of General Discussion on "The private sector as a service provider and its role in implementing child rights", para. 653.

- (i) The adoption of a code of ethics, or similar document, which should reflect the principles of the Convention and which should be developed jointly by the various stakeholders and in which the four general principles of the Convention should figure prominently;
- (ii) The establishment of a system for monitoring the implementation of such a code, if possible by independent experts, as well as the development of a system of transparent reporting;
- (iii) The development of indicators/benchmarks as a prerequisite for measuring progress and establishing accountability;
- (iv) The inclusion of a system enabling the various partners to challenge each other regarding their respective performance in implementing the code;
- (v) The development of an effective complaints mechanism with a view to rendering self-regulation more accountable, including to beneficiaries, particularly in the light of the general principle that provides for the right of the child to express his or her views freely and have those views be given due weight in accordance with the age and maturity of the child (art. 12).

18. Furthermore, the Committee *encourages non-state service providers*, particularly for profit service providers, as well as the media, to engage in a continuing process of dialogue and consultation with the communities they serve and to create alliances and partnerships with the various stakeholders and beneficiaries in order to enhance transparency and involve community groups in decision-making processes and, where appropriate, in service provision itself.¹⁰⁸ Service providers should collaborate with communities, particularly in remote areas, or with communities composed of minority groups, in order to ensure that services are provided in compliance with the Convention, and in particular in a manner that is culturally appropriate and in which availability, accessibility and quality are guaranteed for all.¹⁰⁹

Specific attention should be paid to the wording of the Committee in the recommendations. For example, “the Committee ‘calls on’ all non-state service providers [...] Child”¹¹⁰ and “the Committee encourages non-state services providers [...] Convention.”¹¹¹ By using these words, the Committee seems to make a moral appeal to non-state actors to hold themselves (morally) bound by the CRC. Clapham (2006)¹¹² concludes that these recommendations intend to make sure that non-state actors take on a moral obligation to protect rights in the Convention, and this could also “be adapted for use in other contexts”.

An additional argument that the CRC morally binds NGOs is that many NGOs are involved in the design and development of the CRC framework, the GCs and the monitoring of the CRC. They position themselves as front-runners of children rights protection. In addition, they communicate their involvement in the CRC and children's rights advocacy¹¹³ to society in order to build their credibility, fundraise and strengthen their licence to operate. In order to sustain their credibility, they should hold themselves (morally) bound by the provisions of the CRC.

¹⁰⁸ See also C. Sanford, *The Responsible Business* (2011). Sanford uses similar reasoning where she believes “corporations have a responsibility to the larger system they are part of to contribute to the well-being and development of the whole system they belong to”.

¹⁰⁹ See 107, *supra*, recs. 16, 17 & 18.

¹¹⁰ See 107, *supra*, rec. 16.

¹¹¹ See 107, *supra*, rec. 17.

¹¹² See Clapham, *supra* note 106, at 324.

¹¹³ See, e.g. (<https://www.savethechildren.org/us/about-us/why-save-the-children/eglantyne-jebb>, <https://www.unicef.org/child-rights-convention>) and (<https://www.thekidsrightschangemakers.org/en/news/kidsrights-index-2018-insufficient-budget-for-childrens-rights>), last visited (23-06-2019).

2.2.4. Concluding Remarks

Traditionally, the idea is that IHRL is only binding for States since States are the signatories of the treaties. In addition, this idea is reflected in the obligations that the treaties impose on the State. However, the debate that only states are bound to IHRL is shifting considerably. Internationally, non-state actors are more and more considered also to be bound by IHRL. The CRC-Committee started to directly address non-state actors/the private sector. This development is encouraging; however, one should keep in mind that the CRC-Committee has no legal tools to enforce the obligations which they may put on non-state actors. In general, it can be concluded that although the idea that non-state actors do have obligations as well, this mainly seems to be a moral obligation.

2.3. Responsibilities Arising from a Moral Obligation

2.3.1. General

In the previous paragraph, this thesis concluded NGOs are not legally bound by the CRC. However, NGOs seem to have a moral obligation to comply with the CRC. Based on this, the question arises, what are then the responsibilities of NGOs?

Special Rapporteur Emmerson (2015) states that NGOs are responsible for applying children's rights at all times¹¹⁴ and thus protect children from sexual exploitation and abuse. This means that employees should always respect/protect these rights in all activities and programs they perform, with no exceptions ever. The CRC-Committee also confirms this view: non-state actors should always consider the provisions of the CRC when "conceptualizing, implementing and evaluating their programs".¹¹⁵ The Committee provides examples of some specific actions the non-state parties should take to make sure that activities are performed in line with the CRC, such as setting up a self-regulating mechanism.¹¹⁶

2.3.2. What Are Responsibilities to Further Ensure Children's Rights Compliance in Light of GC16 on Business Principles?

The impact and role of businesses in society are increasing, and the awareness of a link between businesses and human rights is growing.¹¹⁷ This has resulted in the creation of guidelines and a GC aiming to support respect for children's rights by businesses. These documents will be explored to see if responsibilities addressed to businesses could be useful to NGOs as an addition to the general responsibilities. After all, there seems no reason to assume any difference between business and NGOs in this respect.

2.3.2.1. Business Principles

The Guiding Principles on Business and Human Rights (hereinafter Guiding Principles),¹¹⁸ addressed to *inter alia*, States and businesses and the Children's Rights and Business Principles, (hereinafter CR&BP),¹¹⁹ addressed to businesses are an answer to the impact businesses can have on human

¹¹⁴ See also Emmerson, *supra* note 101, at para. 30.

¹¹⁵ See 107, *supra*, recs. 16, 17 & 18.

¹¹⁶ See §2.2.3. for a full list.

¹¹⁷ See UN Global Compact, UNICEF & Save the Children, Children's Rights and Business Principles (2012) (hereinafter CR&BP).

¹¹⁸ United Nations Human Rights Office of the High Commissioner, Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework, HR/PUB/11/04 (2011).

¹¹⁹ See 117 *supra*.

and children's rights. The Guiding Principles recognize the State's duty to *protect* against human rights abuses and the corporate responsibility to *respect* human rights.^{120, 121} Respect not only means that human rights violations in the business' operations should be avoided, but it also means that adverse human rights impacts should be addressed when they occur.¹²²

According to the CR&BP, businesses are responsible for setting up CoCs, including child protection and a detailed overview of what is expected from employees who come in contact with children within or outside their daily job.¹²³ The business should issue a statement that sets out the business' responsibility to respect rights,¹²⁴ to be approved by the most senior level. Important is that such a document is embedded in relevant policies and procedures and it is communicated internally and externally.¹²⁵ Businesses should make sure that business facilities are not used to abuse, exploit or harm children¹²⁶ and that the business holds a zero-tolerance policy for child abuse during business activities but also away from the business facilities. Also, action will be taken when abuse arises and personnel will be held accountable;¹²⁷ it may be expected that, as a consequence, offenders of unlawful activities, such as child sexual abuse, will be reported to the relevant authorities.

To fulfil the moral obligation of NGOs to protect children from child abuse, my suggestion is that the responsibilities as mentioned earlier are equally applicable for NGOs as for businesses. NGOs should respect children's rights at all times. To support this and raise awareness, a statement which sets out the NGOs responsibility to respect children's rights, signed at the most senior level, could be a supporting way to raise awareness and the commitment of the most senior level. Moreover, this statement should be embedded in relevant policies and procedures, that is publicly available and is communicated internally and externally.¹²⁸ The responsibility that facilities are not used for child abuse may specifically be important for NGOs, since facilities in this respect may be schools, hospitals or community-centres where adults directly work with children. Also, the zero-tolerance for child abuse at all times is a responsibility which should apply to NGOs.

2.3.2.2. GC16

In 2013, the CRC-Committee issued a GC on State obligations¹²⁹ regarding the impact of the business sector, including not-for-profit organizations that play a role in the provisions that are critical

¹²⁰ See also A. Clapham, *Human Rights Obligations for Non-State Actors: Where are we Now?* in F. Lafontaine & F. Larocque (Eds.), *Doing Peace the Rights Way: Essays in International Law and Relations in Honour of Louise Arbour*, 11-236, 3rd ed. (2017).

¹²¹ J.G. Ruggie, *Just Business: Multinational Corporations and Human Rights*, at xx-xxi (2013), ([https://books.google.nl/books?hl=en&lr=&id=nJqoTmuD6uoC&oi=fnd&pg=PR11&dq=J.+G.+Ruggie,+Just+Business:+Multinational+Corporations+and+Human+Rights+\(2013\)&ots=AHes5zj_8Q&sig=rmnfYrfZ0TJnyJ190wl2aEfOLr4#v=onepage&q&f=false](https://books.google.nl/books?hl=en&lr=&id=nJqoTmuD6uoC&oi=fnd&pg=PR11&dq=J.+G.+Ruggie,+Just+Business:+Multinational+Corporations+and+Human+Rights+(2013)&ots=AHes5zj_8Q&sig=rmnfYrfZ0TJnyJ190wl2aEfOLr4#v=onepage&q&f=false)), last visited (04-07-2019).

¹²² See 118, *supra*, at 13-16,

¹²³ See also CR&BP, at 7.

¹²⁴ CR&BP, at 9.

¹²⁵ *Id.*

¹²⁶ CR&BP, at 22.

¹²⁷ CR&BP, at 52.

¹²⁸ CR&BP, at 9.

¹²⁹ Obligations deriving from the CRC and its optional protocols.

to the enjoyment of children's rights.¹³⁰ The GC aims to clarify these obligations and provide measures that should be taken by the State to meet them¹³¹ and to make sure that businesses fulfil their responsibilities. To avoid overlap, only responsibilities that are in addition to the business principles will be mentioned here. The Committee pays attention to the culture in business by stating that States should encourage a business culture that understands and fully respects children's rights.¹³²

The GC gives guidance to States as to how they should create an enabling and supportive environment for businesses to respect children's rights. The business' responsibility to respect children's rights is also applicable to their business relationships and their global operations.¹³³ A business engaged with international development must act in accordance with the CRC framework in their decision-making and operations, which should go beyond the elimination of child labour. A measure businesses should be obliged to take, is to have a due diligence and monitoring system specifically focussed on the rights enshrined in the CRC to make sure they prevent and reduce the impact they make on children's rights¹³⁴ and they should share results of the due diligence with the public to improve transparency.¹³⁵

2.3.3. Concluding Remarks

It can be concluded that the principles and GC concerning businesses do provide guidance as to the kind of responsibilities NGOs have. Based on the above, one could also say that NGOs have a responsibility for their global activities in, for instance, their field offices. In addition, to set up a monitoring and due diligence system focussed explicitly on children's rights may be fitting for NGOs as well. In particular, this is because of their moral obligation to comply with the CRC framework and be accountable to the public and to maintain and improve credibility.

¹³⁰ GC16, para. 3.

¹³¹ GC16, para. 2.

¹³² GC16, paras. 29 & 73.

¹³³ GC16, paras. 5b & 51.

¹³⁴ GC16, para. 62.

¹³⁵ GC16, paras. 64-65.

3. What Can be Expected from Existing Child Safeguarding Policies?

3.1. Expectations from the CRC-Committee, NGOs and Scholars

This chapter will describe what can be expected of CSPs. It will begin with a brief overview of the perspectives of the CRC-Committee, NGOs and scholars. Next, a few CSPs will be examined to assess what can be expected of these kinds of policies in the context of the CRC-Committee's view that non-state actors have a responsibility to make sure children's rights are respected in the (operation of) their organization.¹³⁶

3.1.1. The CRC-Committee

The Committee expects that by following their recommendations, non-state service providers will carry out service provision "in accordance with international standards, especially those of the Convention" and that the quality of the activities is guaranteed.¹³⁷ This means that the Committee expects that the sector itself will voluntarily set up rules by self-regulation. This is not a formal way of setting up rules via the government; however, it does have an effect as it gives children's rights more status and creates awareness within these organizations. The question is, what is needed to make organizations actually act in accordance with the international standards in their daily operations?

3.1.2. NGOs

NGOs expect that CSPs will keep children safe and prevent them from any form of harm and violence,¹³⁸ and will prevent child abuse. Also, the policies reflect the standards of protection from violence as enshrined in the international children's rights framework. A clear and consistent policy framework can prevent and fight against any form of abuse against children; moreover, the policy and procedures regulate the way an organization works. According to Terre des Hommes International Foundation (hereinafter TdH), policies make sure "[children] are safeguarded and have their wellbeing promoted, and that our actions while implementing programs [...] do not cause any harm to children." In this respect, safeguarding implies more than just upholding children's rights. The duty of an organization includes both preventative and responsive action.¹³⁹ According to Plan, the policy aims to ensure that staff are well supported to be able to safeguard children from violence, to ensure that violence against a child is prevented and that children know and are aware of how staff should behave.¹⁴⁰

3.1.3. Scholars

Price *et al.* (2013),¹⁴¹ concluded that the focus of child service organizations is to have policies and procedures in place. However, according to him, most existing procedures are not effectively

¹³⁶ See 107, *supra*.

¹³⁷ See, 107, *supra*, recs. 17 & 18.

¹³⁸ Terre des Hommes International Federation, *Child Safeguarding Policy*, 3rd version (2015) (hereinafter TdH-CSP), (<https://www.terredeshommes.org/wp-content/uploads/2017/08/TdH-Child-Safeguarding-Policy.pdf>), last visited (08-07-2019).

¹³⁹ TdH-CSP, at 6.

¹⁴⁰ Plan International, *Global Policy Safeguarding Children and Young People*, 2nd version (2019) (hereinafter Plan-CSP), (<https://plan-international.org/publications/global-policy-safeguarding-children-and-young-people>), last visited at (06-07-2019).

¹⁴¹ S.A. Price, R.K. Hanson & L. Tagliani, *Screening procedures in the United Kingdom for Positions of Trust With Children*, 19 *Journal of Sexual Aggression* 17-31 (2013), (<https://doi.org/10.1080/13552600.2012.744856>), last visited (17-06-2019).

preventing child abuse.¹⁴² For instance, the screening of applicants when hiring a person needs to be more than a criminal record check.¹⁴³ Indicators of risk factors also need to be included.¹⁴⁴ I agree with Price *et al.* (2013), since offenders of child abuse may have abused a child before, however, may not have been convicted for it. Especially for NGOs this is an essential observation, not just for hiring staff, but also for hiring volunteers, since they form a substantial part of the NGO-staff. Notable is in this respect is the growing market of 'voluntourism'^{145, 146} where international volunteers carry out work in *inter alia* children's homes or orphanages and pay a contribution to the NGO. Since NGOs appreciate the good intentions, volunteers are often not checked or monitored properly, which could increase the opportunity for volunteers to abuse children.¹⁴⁷ Erooga (2012)¹⁴⁸ is of the opinion that organizations think they have set up adequate procedures; however, this does not mean the procedures work in practice. "Everyone at senior management level may think that they have got it sorted and breathe a sigh of relief, rather than seeing it as a real live thing. Getting it to the next level is the challenge."¹⁴⁹ Walker-Simpson (2017) believes that "there is a need to move beyond a tick-box approach to compliance in favour of one which focuses on increasing understanding and influencing actual lived practice".^{150, 151} If an NGO sets up and implements global standards, it may have the result that it complies with donor requirements; however, the standards may ignore cultural specifics in the different countries.¹⁵² International norms and national legislation may not be in line with each other.¹⁵³ Krueger *et al.* (2015)¹⁵⁴ are also concerned about this approach where the standards are

¹⁴² See Csáky, *supra* note 6, at 9 and see also 4, *supra*, at 5, both Oxfam and StC confirmed they had CoCs in place at the time the abuse took place.

¹⁴³ See Price, *supra* note 141.

¹⁴⁴ See Price, *supra* note 141, at 28. He believes that to effectively screen applicants, procedures need to consider other indicators of personal and social functioning, such as emotional congruence with children and problems with self-regulation.

¹⁴⁵ See S. Wearing & N. Gard McGehee, *Volunteer tourism: A review*, 38 *Tourism Management* 120–130 (2013) and see Hawke *supra* note 67.

¹⁴⁶ Y. Torres, *Voluntourism From a Children's Rights Perspective*, Leiden University Faculty of Law (2017).

¹⁴⁷ See L. Moerenhout, *Kindersekstoerisme* (2013) and N. M'jid Maalla, Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography A/HRC/22/54 (2012).

¹⁴⁸ M. Erooga, *Creating Safer Organisations. Practical Steps to Prevent the Abuse of Children by Those Working With Them* (2012).

¹⁴⁹ See I. Allsop, *A Wake-up Call for Charities? How to respond to the Safeguarding Challenge*, Erooga's view (2018), (<https://www.civilsociety.co.uk/finance/a-wake-up-call-for-charities-how-to-respond-to-the-safeguarding-challenge.html>), last visited (17-06-2019). Allsop shares views of experts Erooga, Walker-Simpson and others.

¹⁵⁰ *Id.*, Walker-Simpson's view.

¹⁵¹ See also, Walker-Simpson, *supra* note 33, at 257. The moment procedures to report abuse have been set up, organizations assume that children or families know whom to contact or where to report child abuse.

¹⁵² See Walker-Simpson, *supra* note 33.

¹⁵³ F. Kisanga, J. Mbwambo & N. Hogan, *Perceptions of Child Sexual Abuse. A Qualitative Interview Study with Representatives of the Socio-Legal System in Urban Tanzania*, 19 *Journal of Child Sexual Abuse* 290-309 (2010), (<https://www.tandfonline-com.ezproxy.leidenuniv.nl:2443/doi/pdf/10.1080/10538711003789031?needAccess=true>), last visited (27-06-2019). See also Walker-Simpson, *supra* note 33.

¹⁵⁴ A. Krueger, G. Thompstone & V. Crispin, *Learning from Child Protection Systems Mapping and Analysis in West Africa: Research and Policy Implications*, 5 *Global Policy* 47-55 (2014), (<https://onlinelibrary-wiley-com.ezproxy.leidenuniv.nl:2443/doi/full/10.1111/1758-5899.12047>), last visited (18-06-2019).

virtually identical in all countries, although definitions of child abuse may not be the same on a local level since poverty or structural inequality are locally seen as a higher risk for the child.^{155, 156} It is then likely that local NGOs will accept standards, however, that they will not implement them.¹⁵⁷ And although this may sometimes be the best,¹⁵⁸ it also has the effect that, according to Walker-Simpson (2017) the “policies and procedures become a mere paper exercise undertaken to appease donor requirements [...]”.¹⁵⁹ The sexual abuse of children will not be fought against this way.

3.2. Case Study: Assessment of Child Safeguarding Policies

3.2.1. General

Most NGOs take measures in the form of CSPs to assure that children’s rights are safeguarded both in the execution of their programmes as well as in their internal organization.

In order to determine what can be expected of these CSPs (and to what extent they take into account the CRC-Committee’s recommendations or guidelines¹⁶⁰) this chapter will research four NGOs and assess to what extent their CSPs can be expected to make sure children’s rights will be respected both in the execution of NGO programs as well as in the internal organization.

The assessment will be based on several criteria inspired by the CRC-Committee’s views on how the private sector could play a role in implementing and respecting children’s rights. These views are derived from the report of the Day of General Discussion on the private sector as a service provider and its role in implementing child rights.¹⁶¹ The assessment of the CSPs will not lead to a judgement on the policies itself. It is meant to provide insight in the way a CSP is set up and the items it addresses in relation to the recommendations of the Committee. Based on the assessment, in combination with the perspectives of scholars, the thesis will comment upon the expected effect of the policy.

3.2.2. Criteria Assessment

The following criteria are used for the assessment.

i. General impression

To what extent does the NGO demonstrate on its website commitment to child safeguarding?¹⁶²

ii. Program execution

Are the child abuse protection provisions of the CRC reflected in design, implementation and evaluation of the NGO’s programmes?

iii. Third party service providers

¹⁵⁵ See Kisanga, *supra* note 153.

¹⁵⁶ See also 107, *supra*, rec. 18, about local community involvement.

¹⁵⁷ See Walker-Simpson, *supra* note 33, at 259-260.

¹⁵⁸ Walker-Simpson gives the example that sometimes, reporting abuse to the authorities is not the best thing to do for the child, since the response may be inadequate.

¹⁵⁹ See Walker-Simpson, *supra* note 33, at 260.

¹⁶⁰ See 107, *supra*.

¹⁶¹ *Id.*

¹⁶² Within the scope of this thesis, the assessment of the general impression is only based on NGOs’ website communication.

Are the provisions of the CRC and the recommendations of the CRC-Committee applied when contracting (including sub-contracting) with third party service providers to ensure that service provision is carried out in accordance with the CRC?¹⁶³

iv. Internal operation and employee behaviour

Is a self-regulation mechanism in place which includes a system of checks and balances, consisting of:

- a CoC, that reflects the CRC principles and developed jointly by the various stakeholders;
- a monitoring system, executed by an independent expert;
- a transparent reporting system;
- indicators for measuring progress and establishing accountability;
- an (effective) complaints mechanism aimed at self-regulation and accountability.

v. Tailoring to and involvement of local communities

Can the organisation demonstrate they engage in a continuing process of dialogue and consultation with the communities they serve and do they create alliances and partnerships with the various stakeholders and beneficiaries in order to enhance transparency and involve community groups in decision-making processes and, where appropriate, in service provision itself.¹⁶⁴

3.2.3. Selection of the NGO

For the assessment, four NGOs have been researched: TdH, Plan, War Child¹⁶⁵ (hereinafter WaCh) and StC. In order to not fall into repetition, the CSP of TdH will be assessed in full; the policies of the other three NGOs will be assessed marginally and only notable measures from these three NGOs will be addressed.

TdH is a network of ten national organizations. They work for the rights of children and promote equitable development without racial, religious, political, cultural or gender-based discrimination.¹⁶⁶ TdH works directly with children in almost 67 countries,¹⁶⁷ which makes them an interesting organization to look at, as their organization stretches across borders, which makes implementing guidelines an extra challenge. KCS¹⁶⁸ awarded TdH with the Level 1 Status which means that they have an effective safeguarding framework in place, that is however not yet implemented.¹⁶⁹ To decide to what extent this safeguarding framework is in line with the recommendations the Committee has given for non-state actors, this framework will be measured against the recommendations.

¹⁶³ See 107, *supra*, recs.16, 17 & 18.

¹⁶⁴ See Sanford, *supra* note 108 and see Walker-Simpson, *supra* note 33, at 255: "Existing cultural differences, social norms and traditional practices, builds the perspectives of what can be harmful to children and consequently this influences the way persons look at child protection." NGOs usually hire local staff who may have a different look at how to protect children and thus may be reluctant to apply the international standards NGOs have introduced." See also UNICEF, *supra* note 58, at 42.

¹⁶⁵ War Child, (<http://www.warchild.org>), last visited (11-07-2019).

¹⁶⁶ TdH, (<http://www.terredeshommes.org>), last visited (08-07-2019).

¹⁶⁷ TdH, *Annual Report 2017* (2018), (<http://annualreport.terredeshommes.org/making-children-heard/1-1/>), last visited (08-07-2019).

¹⁶⁸ See §1.3.3. and see 12, *supra*.

¹⁶⁹ *Id.*, level 1 Certification ensures that the organization has an effective child safeguarding framework in place. Level 2 Certification ensures that an organization is implementing its CSP and procedures.

3.2.4. Assessment Terre des Hommes

3.2.4.1. General Overview of the Terre des Hommes' Child Safeguarding Measures

The CSP is a detailed document which is divided into preventive and responsive actions. The preventive actions are focused on putting the policy in practice and include human resources, media and communication and program design and implementation. The responsive actions are focused on reporting of implementation concerns and child protection incidents. Also, appendices are added including the CoC (which has to be signed by all employees), a guide for occasional volunteers and visitors, a parental consent form, safer recruitment checklist and the child safeguarding focal point.

In general, TdH believes that the systematic use of the CSP is the best way to ensure that all children receive the necessary protection to which they are entitled. The TdH website shows the priority TdH gives to child safeguarding, which can be deduced from the prominent place the topic has on the home page and from the fact that information about safeguarding can be easily derived both under general standards and as a separate topic.¹⁷⁰

TdH states that by implementing child safeguarding measures in every project conducted around the world, every TdH staff member is aware of the risk of child abuse and knows how to report any allegations. Staff are required to sign a CoC to confirm their responsibilities to guarantee the children they work with come to no harm. All allegations are recorded and annually submitted to the General Assembly, and the implementation of the safeguarding measures is frequently monitored and reviewed. One of the aims of the CSP is to provide guidance to employees and any other person in TdH and partners about child protection; how it works, what to do to prevent risk and what to do in case of suspected cases of abuse. TdH also calls upon anyone ("Child safeguarding is also your responsibility!") and specifically on journalists to be a protector, since they believe "Media have the power to listen and report, to give these children a voice and convey their message".¹⁷¹

3.2.4.2. Assessment of the Terre des Hommes' Child Safeguarding Policy

i. General impression

The general impression of TdH's commitment to child safeguarding can be derived from the website. On the homepage, child safeguarding measures are highlighted as one of the main topics and you can directly click through to the child safeguarding page. It is easy to find more information on this topic; general standards about accountability to, delivering quality work and monitoring its impact, can be found under 'about/standards'.¹⁷² Under 'about/safeguarding measures', the information provided shows the commitment of TdH to keep children safe and protecting them from all forms of harm and abuse. TdH sees upholding children's rights as the foundation of their work, which also can be deduced from a video about safeguarding children's rights, informing the public that children have played a pivotal role in the content of the standards.¹⁷³ In addition, the topic is included in the annual reports, where TdH also shares information about the number of complaints brought by children alleging these safeguarding commitments were not met.¹⁷⁴

¹⁷⁰ TdH Standards, (<https://www.terredeshommes.org/standards/>), last visited (07-07-2019).

¹⁷¹ See also TdH's *Guide for Journalists*, (https://www.terredeshommes.org/wp-content/uploads/2014/09/DU_guide_journalists_long_2014.pdf), last visited (15-06-2019).

¹⁷² See 170, *supra*.

¹⁷³ In line with CRC, art. 12.

¹⁷⁴ See 167, *supra*. In 2017, TdH reported 14 complaints.

ii. Program execution

In the policy, under preventive actions, TdH has a separate chapter about program design and implementation.¹⁷⁵ According to TdH, child safeguarding should be something running through all work and activities; it should not be a separate activity. A risk assessment checklist is available to help country teams regularly evaluate safeguarding requirements in programs. If a specific activity is conducted, outside regular program design, a specific template is available in order to assess to identify potential dangers and to make a plan to minimize these risks. If the conclusion is that there are too many risks that cannot be reduced to an acceptable level, then the activity should not proceed. Additional guidance must be given to staff, volunteers, partners, children and communities in order to ensure that the spirit of the CSP is met for specific activities or programs. Staff who work with children must be supervised regularly. Throughout and at the end of activities (which could be daily), staff need to conduct a review of the safeguarding measures. 'General Guidelines for Safeguarding in Projects and Activities' are available for employees.¹⁷⁶ Several actions in order to promote child safeguarding must be set up and implemented, and program activities must be evaluated. The use of some words, such as 'should',¹⁷⁷ and 'if necessary' may be interpreted by staff as 'not required', which leaves it up to the individual staff member to decide whether or not specific guidelines are applied. Safeguarding measures are included in the policy, although it may be helpful to emphasize that application is an obligation and not give room to own interpretation. If they are actually applied in practice, cannot be determined.

iii. Third party service providers

The CSP requires that "Consideration should be made with respect to the potential partner's suitability and track record for working with children (including if they have their own CSP and procedures)". The CSP also requires to train and support partners on the CSP. Also, a reference to child safeguarding measures should be included in partnership agreements and contracts; however, if TdH is the lead-partner, then reference in the contract must be made to TdH's CSP. In general, most measures are not required, and it seems, they do not directly affect or end the partnership. The policy does not include any measures relating to third-party suppliers.

*iv. Internal operation and employee behaviour**Code of Conduct*

A CoC needs to be signed by every staff member. By signing, staff agree to work in accordance with principles and responsibilities for safeguarding children, which are part of the CoC. The principles include that staff must act in all times in the child's best interests and protect the child from risk of child abuse. TdH will not tolerate any form of abuse and states that it is everyone's responsibility to implement the CSP.

Monitoring system and transparent reporting system

Every country has to conduct a self-assessment annually, based on a prescribed template.¹⁷⁸ Project implementation is monitored regularly, and activities must be reviewed if possible, daily. According to the policy, this is an internal process, not executed by an external expert.

In general, TdH is transparent about child safeguarding. In their annual report, they specifically mention the efforts they have made relating to child safeguarding and also the number of complaints brought by children. Their report states as well that TdH has not reached its final goals yet, since not

¹⁷⁵ TdH-CsP, at 17.

¹⁷⁶ Not publicly accessible.

¹⁷⁷ TdH-CSP, at 17. A risk assessment form for activities and guidelines for safeguarding 'should' be used.

¹⁷⁸ TdH-CSP, at 23.

all country organizations are at the same level of implementation. Based on the results of the annual self-assessment, a plan of action will be developed to address gaps in policy implementation. It is not clear to what extent this is communicated through the organization.

Indicators for measuring progress and establishing accountability

TdH has set up a template for self-assessment to support the country organizations to track their progress in safeguarding, to record good practices and also to identify areas for action.

Effective complaints mechanism

TdH has set up a complaints mechanism which can be used by staff, children and others to complain about actual or suspected child abuse by staff, visitors, partners or other stakeholders or complaints the fact the CSP is not being implemented.

Country organizations must develop a flowchart how concerns and reports should be managed and as a minimum the reports have to be sent to the local child safeguarding lead and to the TdH headquarters and decision about the way how to handle the complaint, must be taken by more than one person. TdH introduced a Whistle Blowing Policy,^{179, 180} which means that employees can safely raise complaints¹⁸¹ on a person as engaging in an unlawful or immoral activity.¹⁸² Although the first step of the complaint may be verbal, the complaints always need to be made in writing.

v. Tailoring to and involvement of local communities.

TdH recognizes that situations of abuse can flourish when amongst others, community members do not feel able to raise their concerns and thus, communities should be made aware of the CSP¹⁸³ and need to know how to report a child abuse concern. Awareness raising should be done in an appropriate and accessible way, such as translation of the CSP in the local language, use of posters and booklets (including pictures) and the use of child-friendly versions.¹⁸⁴ When TdH reviews the CSP, feedback from local children and communities will be included.¹⁸⁵ What strikes me though, is that no reference is made to the local community or children by the Director-General's foreword, when he states that TdH is committed to 'widely promote our CSP, not only internally but also with partner organizations'.¹⁸⁶

¹⁷⁹ See also G. Lee & N. Fargher, *Companies' Use of Whistle-Blowing to Detect Fraud: An Examination of Corporate Whistle-Blowing Policies*, 114 *Journal of Business Ethics* 283-95 (2013), (<https://rd-springer-com.ezproxy.leidenuniv.nl:2443/article/10.1007/s10551-012-1348-9>), last visited (02-07-2019).

¹⁸⁰ See also E. Ceva & M. Bosschiola, *Is Whistleblowing a Duty?* at 47 (2018). They conclude that whistleblowing should be seen as an institutional duty, embedded within the organizational practices, (<http://web.b.ebscohost.com.ezproxy.leidenuniv.nl:2048/ehost/detail/detail?vid=0&sid=4623f7a1-479f-459e-904a-8174d5ee4992%40pdc-v-sessmgr03&bdata=JnNpdGU9ZWZWhvc3QtbGl2ZQ%3d%3d#db=nlebk&AN=2014611>), last visited (04-07-2019).

¹⁸¹ This means a guarantee of confidentiality and protection of those raising concerns.

¹⁸² See also S. Pillay & N. Dorasamy, *Systemic Factors Moderating Effective Whistle Blowing: An Exploratory Study Into a Public Service Organisation*, 5 *African Journal of Business Management* 9429-9439 (2011), (<https://academicjournals.org/journal/AJBM/article-full-text-pdf/594B88D20481>), last visited (02-07-2019). Although this study focuses on public service organizations, it is interesting to see that a "whistleblower decision to either blow the whistle or not, is also dependant on the country's institutional context and task context."

¹⁸³ TdH-CSP, at 17.

¹⁸⁴ TdH-CSP, at 12.

¹⁸⁵ TdH-CSP, at 23.

¹⁸⁶ TdH-CSP, at 5.

3.3. Notable Observations from Other Policies

Internal perspective

NGOs tend to think from their perspective when convincing employees about the importance of child safeguarding, out of concern for scandals or the reputation of the organization.^{187, 188}

Wording of policies

The wording used in policies seems to be political and not very direct or explicit. StC's statement of the purpose of the policy is to ensure that StC is safe for children by promoting awareness and mitigating the risk of or actual harm that may come to children by employees, representatives, programming or operations.¹⁸⁹ In my view, 'mitigating' does not show any urgency for the topic. Another example is the goal of 'minimizing risks to children', used by *inter alia* StC¹⁹⁰ and Plan.¹⁹¹ This wording implies an effort but lacks a tangible objective. The last example is the use of 'Zero Tolerance Policy',^{192, 193} which implies a strict policy. However, in my opinion, this is a reactive way of fighting child abuse since it refers to the way the organization deals with the offender.

¹⁸⁷ See the Q&A section at StC's website about reporting of concerns,

(<https://secure.ethicspoint.com/domain/media/en/gui/42925/faq.pdf>), last visited (15-06-2019).

"*Question*: I am aware of some individuals involved with unethical conduct, but it doesn't affect me. Why should I bother reporting it? *Answer*: StC is committed to ethical behaviour. All unethical conduct, at any level, ultimately hurts the company, all employees, and our beneficiaries. You only have to consider what happened in recent corporate scandals to see the disastrous effects that a seemingly harmless lapse in ethics can have on an otherwise healthy company. So, if you know of any incidents of misconduct or ethical violations, consider it your duty to yourself and your coworkers to report it. It is better to know about an issue and fix it than to wait and see whether a problem develops.

Question: Does management really want me to report? *Answer*: We certainly do. In fact, we need you to report. You know what is going on in our company - both good and bad. You may have initial knowledge of an activity that may be cause for concern. Your reporting can minimize the potential negative impact on the company and our people. Also, offering positive input may help identify issues that can improve corporate culture and performance."

¹⁸⁸ See Price, *supra* note 141, at 24, who concluded that policies in organizations who work with children are set up to protect the volunteers and employees from accusations against them and are policy-focused, whereby the expectation is that the rules and regulations will be followed.

¹⁸⁹ Save the Children, Policy on Child Safeguarding, 5th version (2019) (hereinafter StC-CSP), (<https://www.savethechildren.org/content/dam/usa/reports/advocacy/scus-child-safeguarding-policy-2019.pdf>), last visited (05-07-2019).

¹⁹⁰ StC-CSP.

¹⁹¹ See Plan, Keeping Children and Young People Safe, (<https://plan-international.org/approach/keeping-children-safe-plan-international>), last visited (15-06-2019).

¹⁹² See, e.g. StC-CSP, at iv.

¹⁹³ Also interesting in this respect is the Charter of the US Catholic Church. See United States Conference of Catholic Bishops, Charter for the Protection of Children and Young People, Essential Norms for Diocesan/Eparchial Policies Dealing with Allegations of Sexual Abuse of Minors by Priests or Deacons, 3rd revision (2018), (<http://www.usccb.org/issues-and-action/child-and-youth-protection/upload/Charter-for-the-Protection-of-Children-and-Young-People-2018-final.pdf>), last visited (16-06-2019). Art. 5, para. 3 states: "Diocesan/eparchial policy is [...] that for even a single act of sexual abuse of a minor [...] which is admitted or established [...] the offending priest [...] is to be permanently removed from ministry [...]." This provision is referred to as the zero-tolerance provision. See also, the United States Conference of Catholic Bishops, Report

Employee training and recruitment

Employee awareness training with respect to CSPs at StC and WarC takes place in the first three months. After that, it takes place every one¹⁹⁴ or two years.¹⁹⁵ It can be questioned whether this frequency affects actual awareness building. Plan refers to ongoing training courses for all employees, volunteers and other associates,¹⁹⁶ however, it is not clear what 'ongoing' implies. With respect to recruitment, it is observed that only some policies pay attention to this. For example, law enforcement is contacted to check for criminal records at TdH and StC.¹⁹⁷

Internal evaluation

Monitoring seems mostly to be regarded as an internal process.¹⁹⁸ Although some CSPs require to have child safeguarding on the agenda every month at management level,¹⁹⁹ in general monitoring and evaluation seems to be an internal process. The exception is the WarC-CSP, which requires a formal evaluation of the policies and practices by an external evaluator every three years.²⁰⁰

Budget

Notably, the CSPs do not mention to reserve budget for the implementation of child safeguarding measures (with the exception of WaCh).²⁰¹ This would be corollary as connecting a budget to written policy strengthens the NGOs intention. With the absence of a budget, a written policy can easily remain without consequences.

3.4. Interpretation of the Assessment

As mentioned before, the Committee expects that by following the recommendations, non-state service providers will carry out service provision "in accordance with international standards, especially those of the Convention" and that the quality of the activities will be guaranteed.²⁰² Can this be expected from the kind of CSPs that were assessed?

It seems TdH has spent much effort in setting up safeguarding policies in order to self-regulate and apply the provisions of the CRC in its organization and for its employees. This is shown in particular in the way programs are designed, the CoC, the self-assessment and the complaint mechanism. One can see child safeguarding has a high priority for TdH.

on the Implementation of the Charter for the Protection of Children and Young People, 2018 Annual Report, Findings and Recommendations (2019).

¹⁹⁴ War Child Safeguarding Policy (2018) (hereinafter WaCh-CSP), at 20, (https://www.warchild.org.uk/sites/default/files/link-files/Joint_Child_Safeguarding_Policy.PDF), last visited (05-07-2019).

¹⁹⁵ StC-CSP, at 17.

¹⁹⁶ Plan-CSP, at 9.

¹⁹⁷ TdH & StC

¹⁹⁸ WaCh-CSP, at 14 and TdH-CSP, at 23.

¹⁹⁹ WaCh-CSP, at 21.

²⁰⁰ WaCh-CSP, at 22.

²⁰¹ WaCh-CSP, at 13-14 & 21-22.

²⁰² See 107, *supra*, recs. 17 & 18.

At the same time, the assessment shows that TdH has mainly focused its safeguarding measures on policies and procedures. As Erooga (2018) mentions, setting up adequate procedures does not mean the procedures work in practice.²⁰³ It is unclear to what extent TdH employees have an awareness of and apply the standards in their day to day work. Also, it is unclear if the standards give any guarantee for the quality of employee actions. The latter would be the desired effect of a CSP. In this respect, it will be interesting to see if a change occurs if TdH receives the 2nd level certificate of KCS that focusses on the implementation of policies.

Based on this, it can be expected that putting CSPs and procedures in place raises awareness and guides desired employee behaviour. In this way, the awareness of and respect for children's rights increases. However, guiding the desired behaviour does not automatically lead to employees doing the right thing.

The question arises how to move beyond this 'policy and procedure' approach to one which focuses on increasing understanding and influencing actual lived practice as Walker-Simpson (2017, 2018) puts it.^{204, 205} For this purpose, the next chapter will explore how other fields of business deal with this issue and try to identify best practices that could be used to improve the effect of CSPs on the behaviour of employees.

²⁰³ See Allsop, *supra* note 149, Erooga's view.

²⁰⁴ See Allsop, *supra* note 149, Walker-Simpson's view.

²⁰⁵ See also, Walker-Simpson, *supra* note 33, at 257 and see 151, *supra*.

4. What Can be Learned from Other Sectors?

4.1. General

This chapter will research two sectors in order to find out if and how they have managed to move beyond the policy and procedure approach. For this purpose, measures in institutional care will be researched, followed by measures taken by industry to improve safety and health in the workplace. Next, it will be examined if these practices can be applied to the practice of NGOs (in particular to optimize child safeguarding measures).

4.2. Institutional Care

Worldwide, a number of child abuse cases in institutions have come in the open.²⁰⁶ In the UK, the Savile²⁰⁷ and the nurse abuse case,²⁰⁸ worldwide, the child abuse cases in the Catholic Church²⁰⁹ and also, the Australian government confirmed child abuse cases.²¹⁰ In response to these abuse cases, scholars, governments and other organizations have made recommendations which may be helpful for NGOs as well. Three sets of recommendations will be assessed to analyse if they move beyond the policy and procedure approach that we have seen in chapter three, the new UK safeguarding guidance for education,²¹¹ the report of the Royal Commission Australia (RCA)²¹² and recommendations of scholars.

UK Keeping Children Safe in Education (KCSiE)

Recently, new statutory guidance around safeguarding came into force in the form of two revised guidelines: KCSiE²¹³ and Working Together to Safeguard Children.²¹⁴ In the guidance, staff are

²⁰⁶ B. Gallagher, *The Extent and Nature of Known Cases of Institutional Child Sexual Abuse*, 30 *British Journal of Social Work* 800 (2000), (<https://academic-oup-com.ezproxy.leidenuniv.nl:2443/bjsw/article/30/6/795/1620340>), last visited (25-06-2019). This research across England and Wales showed that 52% of extra-familial child sexual abuse cases occurred in community-based organizations and institutions.

²⁰⁷ See, e.g. BBC, *Jimmy Savile Scandal*, (<https://www.bbc.com/news/uk-20026910>), last visited (04-07-2019).

²⁰⁸ See, e.g. The Guardian, *Nursery Worker Vanessa George Pleads Guilty to Sexually Abusing Children* (2009), (<https://www.theguardian.com/society/2009/oct/01/vanessa-george-sex-abuse>), last visited (04-07-2019).

²⁰⁹ See, e.g. Child Rights International Network, *Child Sexual Abuse and the Holy See. The Need for Justice, Accountability and Reform*, (https://archive.crin.org/sites/default/files/CRIN_Holy%20See%20Report_WEB_0.pdf), last visited (04-07-2019) and see The Boston Globe, *Church Allowed Abuse by Priest for Years* (2002), (<https://www.bostonglobe.com/news/special-reports/2002/01/06/church-allowed-abuse-priest-for-years/cSHfGkTlrAT25qKGvBuDNM/story.html>), last visited (04-07-2019).

²¹⁰ The Royal Commission into Institutional Responses to Child Sexual Abuse (hereinafter RCA), (<https://www.childabuseroyalcommission.gov.au>), last visited (19-06-2019).

²¹¹ Department of Education, *Keeping Children Safe in Education Statutory Guidance for Schools and Colleges* (hereinafter KCSiE) (2018), (<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>), last visited (08-07-2019).

²¹² RCA, *Final Report - Recommendations* (2017), (<https://www.childabuseroyalcommission.gov.au/recommendations0>), last visited (19-06-2019).

²¹³ See 211, *supra*.

²¹⁴ HM Government, *Working Together to Safeguard Children. A Guide to Inter-Agency Working to Safeguard and Promote the Welfare of Children* (2018),

responsible for making schools a safe environment for children and preventing child abuse.²¹⁵ Schools should have an employee CoC,²¹⁶ which, amongst others, should include staff/pupil relationships. Staff need to be trained²¹⁷ and be aware of the fact that 'it could happen here'²¹⁸ and the school need to appoint a designated safeguarding lead. Specific recruitment and selection procedures need to be set up²¹⁹ where staff are adequately interviewed by a person who has followed a 'safer-recruitment training'.²²⁰ Notable is the way the government is elaborating about what exactly abuse, sexual violence and sexual harassment are. Interesting is the note which is made in relation to the supervision of activities with children; The government believes that for too long, policy and legislation has been drafted in response to incidents and public pressure. Instead, they would like to see a change; To start with creating trust in the persons working with children and the "good sense and judgement of their managers".²²¹ In other words, to move from a reactive to a proactive approach in the design of policies.

The guidance also pays attention to tailoring safeguarding policy and procedures to the setting and needs of a school, which means that learnings from prior safeguarding issues experienced, crime levels in the area and even parental engagement levels should be considered.²²² CSPs should, as a minimum, be updated annually and be available publicly either via the school's website or by other means.²²³ Other preventive measures include the governance by proprietors and clarity around management, the appointment and role of a designated safeguarding lead and the inclusion of safeguarding lessons (including online safety) in the school curriculum.²²⁴ Further, the reporting section in the guidance is re-worded so that it urges staff to early identification of concerns and share all concerns about their colleagues.

Royal Commission Australia

The significant number of abuse cases was the reason for the Australian government to appoint a special commission to investigate these cases and come up with responses.²²⁵ The main idea is to make institutions safe through prevention, establishing mechanisms to oversee developments and implementation of a national strategy to prevent child sexual abuse²²⁶ which should include community awareness raising, prevention education through (pre)school and other community

(https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779401/Working_Together_to_Safeguard-Children.pdf), last visited (04-07-2019).

²¹⁵ KCSiE, para. 7.

²¹⁶ KCSiE, para. 55

²¹⁷ KCSiE, para 81.

²¹⁸ KCSiE, para. 20, at 8.

²¹⁹ KCSiE, paras. 111-183.

²²⁰ Regulation 9 of the School Staffing (England) Regulations 2009, (<http://www.legislation.gov.uk/ukxi/2009/2680/contents/made>), last visited (08-07-2019).

²²¹ KCSiE, Annex F (3), at 100.

²²² S. Preston, *Are you Ready for New Safeguarding Legislation?* (2018), (<https://www.tes.com/news/are-you-ready-new-safeguarding-legislation>), last visited (20-06-2019).

²²³ KCSiE, para. 55.

²²⁴ KCSiE, paras. 85-87.

²²⁵ See 210, *supra*.

²²⁶ See 212, *supra*.

settings to increase children's and parents' knowledge, information and help-seeking services for persons who are at risk or may be at risk. To make institutions safe, most importantly, all institutions should uphold the best interest of the child²²⁷ and to achieve this, the RCA has set up a list of standards, including, *inter alia*:²²⁸

- Child safety is embedded in institutional leadership, governance and culture;
- Children participate in decisions affecting them and are taken seriously, which means that staff and volunteers facilitate child-friendly ways for children to communicate and raise their concerns;
- Families and communities are informed and involved and staff are suitable and supported;
- Staff are equipped with the knowledge, skills and awareness to keep children safe through continual education and training;
- Implementation of the Child Safe Standards is continuously reviewed and improved;
- Policies and procedures document is available, how the institution is 'child safe'.

Recommendations scholars

Most child safeguarding legislation in the institutional sector has been reactive; however, according to Erooga (2012)²²⁹ and Higgins *et al.* (2016),²³⁰ legislation is only a small part of accomplishing a true safeguarding culture, since setting up standards and regarding them as just that is not enough. *Inter alia*, checking criminal records when hiring a new person is often the only step organizations take, instead of also doing in-depth interviews, checking references²³¹ and performing on-going suitability assessment.²³² Higgins *et al.* (2016) hold it is also important to implement sexual-abuse specific prevention programs,²³³ and above all, it is important to make sure that the institution has a "positive culture that is child-friendly, transparent and respectful."²³⁴ According to Erooga (2012), a mindset is needed "which goes beyond legislation and regulation".²³⁵ Interesting is the potential Erooga (2012) sees to use the situational prevention model in organizations and institutions²³⁶ for the prevention of child sexual abuse. This model is based on three theories, originating from criminology.²³⁷ First, the Rational Choice Theory suggests that all offenders are active decision makers and choose to perpetrate crimes, aiming to get desired benefits while avoiding consequences.²³⁸ Second, the

²²⁷ CRC, art. 3.

²²⁸ See 212, *supra*, rec. 6.5, at 6.

²²⁹ See Erooga, *supra* note 148, at 60.

²³⁰ See also D.J. Higgins, K. Kaufman & M. Erooga, *How can Child Welfare and Youth-Serving Organisations Keep Children Safe?* 44 *Developing Practice: The Child, Youth and Family Work Journal* 48-64 (2016) (<https://search.informit-com-au.ezproxy.leidenuniv.nl:2443/documentSummary;dn=299113531833481;res=IELHSS>), last visited (19-06-2019).

²³¹ See Erooga, *supra* note 148, at 60.

²³² See Higgins, *supra* note 230.

²³³ See Higgins, *supra* note 230.

²³⁴ See Higgins, *supra* note 230, at 61.

²³⁵ See Erooga, *supra* note 148, at 58.

²³⁶ See Erooga, *supra* note 148, at 140-169.

²³⁷ See Erooga, *supra* note 148, at 141.

²³⁸ D.B. Cornish & R.V. Clarke, *Crime as a Rational Choice*, in *Criminological Theories: Bridging the Past to the Future* 77-96 (2002), (<https://books.google.nl/books?hl=en&lr=&id=mURWG41N77oC&oi=fnd&pg=PA291&dq=what+is+rational+choic>

Routine Activity Theory focusses more on the kind of crime and the environment, rather than on offender characteristics.²³⁹ The Defensible Space Theory²⁴⁰ suggests that "the physical arrangement and design of living environments can determine their degree of vulnerability to criminal behaviour."²⁴¹ These theories are the base of the situational prevention model,²⁴² which is adapted for use in strategies in the prevention of child sexual abuse,²⁴³ and could be implemented for self-assessment and to identify possible risk factors that need an adaption in programs and policies. Erooga (2012) believes in the potential for their use in other settings as well, such as (local) communities.²⁴⁴ It goes beyond the scope of this thesis to further elaborate on this; however, the approach is a promising way to go forward and explore further.

4.3. Safety and Health in Industry

4.3.1. Background

More and more companies in the industry are committed to excellent safety by adopting 'zero accidents' objectives.²⁴⁵ This chapter will describe what is meant by this and how NGOs can use this approach to enrich existing safeguarding programs to avoid child abuse conducted by employees. In 2017 the first international campaign to promote safety, health and well-being was launched by the International Social Security Association,^{246, 247} with Vision Zero (VZ) as the starting point.²⁴⁸ Many companies today have zero objectives, like zero defects or aiming to be climate neutral. Companies gradually learn that besides generating commercial benefits, this way of doing business also has an

e+theory+cornish&ots=J1W6k0RuVA&sig=eYdnclfG3b5svvC1VXFf_MJ3e5M#v=onepage&q=what%20is%20rational%20choice%20theory%20cornish&f=false), last visited (25-06-2019).

²³⁹ L.E. Cohen & M. Felson, *Social Change and Crime Rate Trends: A Routine Activity Approach*, 44 *American Sociological Review* 588-608 (1979), (https://www-jstor-org.ezproxy.leidenuniv.nl:2443/stable/2094589?sid=primo&origin=crossref&seq=1#metadata_info_tab_contents), last visited (26-06-2019).

²⁴⁰ O. Newman, *Defensible Space: Crime Prevention through Urban Design*, 36 *Ekistics* 325-332 (1973), (www.jstor.org/stable/43619866), last visited (26-06-2019).

²⁴¹ See Erooga, *supra* note 148, at 144 and see Higgins, *supra* note 230. In the same vein, Higgins recommends limiting the opportunities for abuse to take place.

²⁴² R.V. Clarke, *Situational Crime Prevention*, 19 *Crime and Justice: A Review of Research* 91-150 (1995), (<https://heinonline-org.ezproxy.leidenuniv.nl:2443/HOL/P?h=hein.journals/cjrr19&i=99>), last visited (01-07-2019). See also R.V. Clarke, *Situational Crime Prevention: Successful Case Studies*, 2nd ed. (1997), (https://popcenter.asu.edu/sites/default/files/library/reading/PDFs/scp2_intro.pdf0), last visited (01-07-2019).

²⁴³ See Erooga, *supra* note 148, at 146.

²⁴⁴ See Erooga, *supra* note 148, at 151.

²⁴⁵ E.g. Shell, (<https://eventsimages.bobitstudios.com/upload/pdfs/fsc/2015/speaker-presentations/how-to-create-a-successful-corporate-safety-culture-shells-journey-to-goal-zero-mike-watson.pdf>) and NOIA, (<http://www.noia.org/wp-content/uploads/2013/03/47288.pdf>), last visited (19-06-2019).

²⁴⁶ See ISSA, (<https://www.issa.int/en/-/vision-zero-issa-launches-global-campaign-for-zero-accidents-diseases-and-harm-at-work>), last visited (06-07-2019).

²⁴⁷ See also G. Zwetsloot, *Op Weg Naar de Nul. Commitment Strategie Voor Excellente Veiligheid*, 1 *NVVK Nieuws* 10-13 (2018), (http://gerardzwetsloot.nl/wp-content/uploads/2015/09/Zwetsloot_2018_NVVK-Nieuws_-_Op-weg-naar-de-nul.pdf), last visited (20-06-2019).

²⁴⁸ Vision Zero, (<http://visionzero.global/>), last visited (18-06-2019). See also M.Å. Belin, P. Tillgren & E. Vedung, *Vision Zero - A Road Safety Policy Innovation*, 19 *International Journal of Injury Control and Safety Promotion* 171-179 (2012), (<https://doi.org/10.1080/17457300.2011.635213>), last visited (17-06-2019).

ethical (value-driven) and social side. Another stimulating factor for VZ-objectives is government policy and regulations. As an example: in 1997 Sweden was the first country to introduce a road safety law.²⁴⁹ One of the goals of this law was the pursuit of zero fatal or severe accidents.²⁵⁰ In this law, driver behaviour was seen as a direct effect of 'the traffic system'. The government was seen as the organizer and manager of the infrastructure and was therefore given primary responsibility for road safety. This law resulted in a substantial reduction in accidents. In 2016, the Dutch government published its Vision on Healthy and Safe Working.²⁵¹ One of the essential principles of this vision is that no one should become ill or die as a result of his/ her work.

4.3.2. What is Vision Zero?

VZ assumes that all (serious) accidents, injuries and work-related illnesses are preventable. Adopting VZ means that an organization has the ambition and commitment to achieve this by starting a *process towards the ideal*: to create and safeguard safe and healthy world so that all (serious) accidents and work-related illnesses (including psychosocial) are prevented.

4.3.3. The Criticism and the Success Factors

Some critics believe this approach (striving for zero accidents) is unrealistic and naïve.^{252, 253} They reason that there are always risks and people are not infallible. According to them the zero accidents approach leads to excessive attention to minor security risks and a culture of cynicism, underreporting, fear of openness, a climate in which there is no learning and stigmatization of those involved in accidents.²⁵⁴ However, much criticism is based on experiences of companies that claim to aim for zero accidents, but do not act accordingly. Also, the criticism assumes that zero accident companies do more of the same: stricter control through (bureaucratic) procedures, stricter control of behaviour and, if necessary, fraud with numbers.²⁵⁵

²⁴⁹ See Government Offices Sweden & WHO, *Vision Zero-No Fatalities or Serious Injuries Through Road Accidents* (2019), (<https://www.roadsafetysweden.com/about-the-conference/vision-zero---no-fatalities-or-serious-injuries-through-road-accidents/>), last visited (18-06-2019). See also Government Offices of Sweden, *Renewed Commitment to Vision Zero. Intensified Efforts for Transport Safety in Sweden* (2016), (https://www.government.se/4a800b/contentassets/b38a99b2571e4116b81d6a5eb2aea71e/trafiksakerhet_160927_webny.pdf), last visited (18-06-2019).

²⁵⁰ The Economist, The Economist Explains, *Why Sweden Has so Few Road Deaths* (2014), (<https://www.economist.com/the-economist-explains/2014/02/26/why-sweden-has-so-few-road-deaths>), last visited (17-06-2019).

²⁵¹ Ministerie van Sociale Zaken en Werkgelegenheid: *Visie en strategie gezond en veilig werken* (2016), (<https://www.arboportaal.nl/documenten/publicatie/2016/07/11/visie-en-strategie-gezond-en-veilig-werken>), last visited (17-06-2019).

²⁵² A.C. Kristianssen, R. Anderson & M.A. Belin, *Swedish Vision Zero Policies for Safety. A Comparative Policy Content Analysis*, 103 *Safety Science* 260-269 (2018), (<https://doi.org/10.1016/j.ssci.2017.11.005>), last visited (18-06-2019).

²⁵³ G.I.J.M. Zwetsloot, P. Kines & J.L. Wybo, *Zero Accident Vision Based Strategies in Organisations: Innovative Perspective*, 91 *Safety Science* 260-268 (2017), (<https://doi.org/10.1016/j.ssci.2016.08.016>), last visited (18-06-2019).

²⁵⁴ S.W.A. Dekker, *Employees: A problem to Control or Solution to Harness?* 2014 *Professional Safety Journal* 32, (<http://www.safetydifferently.com/wp-content/uploads/2014/08/SD-employees.pdf>), last visited (02-07-2019).

²⁵⁵ See Zwetsloot, *supra* note 247, at 10-13.

The reality is different. Empirical research²⁵⁶ shows that the Zero Accident Vision, make companies start from a different mindset and approach. They strive for learning by developing a safety culture. Companies explore innovative ways to promote safety²⁵⁷ and their main focus is on empowerment instead of control and sanctions. Managers ask questions to stimulate reflection and dialogue, *inter alia*, they could ask to employees if they are not afraid to inform management if the situation is potentially unsafe? Is safety often discussed in the team and does management listen to employees if they bring up these issues? If the answer is positive, this means that these companies give high priority to safety and encourage involvement and learning.²⁵⁸

To work with VZ requires real commitment, not just from the management, but from the whole organization. Based on the conviction that the company should be and could be accident-free, this ambition must be noticeable in daily practice both by employees and external stakeholders. To achieve that is a continuous and lengthy process and requires personal commitment. It requires to develop a learning and innovative culture, openness, involving people and collaboration with other companies. The following example of Paper Factory De Hoop in the Netherlands,²⁵⁹ demonstrate the way it could work. De Hoop is aiming for zero accidents under the motto: 'No tons of paper is worth working unsafely.' About ten years ago a severe accident occurred. After investigation the labour inspection could not find a clear cause in the production process and released the production. The CEO, however, said: "we will not restart production before I know what could have caused this accident." It took two more days to find the root cause and the recurrence could be excluded. Ten years later this story is still important for the credibility of the company's commitment: it really wants to work safely. People in the workplace know that top management takes safety seriously.²⁶⁰

4.3.4. Best practice: ProRail Safety Culture Ladder²⁶¹

4.3.4.1. Safety Culture Ladder

ProRail²⁶² has developed the safety culture ladder (hereinafter SCL) and expanded it into the rail market. The SCL has made a significant contribution to the safety consciousness within the entire rail industry. Its success is explained because this system is based primarily on attitude, behaviour and culture. Furthermore, it includes the entire chain of stakeholder, rather than only individual organizations. This can be achieved for example through tendering and procurement processes. The central thought behind the SCL is that the responsibility of work-related accidents lies with all parties involved, both employer and employees. Even if there are systems, structures, rules and regulations in place to avoid accidents, that alone is not enough to prevent unsafe situations.

²⁵⁶ G.I.J.M. Zwetsloot, P. Kines & R. Ruotsala, *The Importance of Commitment, Communication, Culture and Learning for the Implementation of the Zero Accident Vision in 27 Companies in Europe*, 96 *Safety Science* 22-32 (2017).

²⁵⁷ S. Young, *From Zero to Hero. A Case Study of Industrial Injury Reduction: New Zealand Aluminium Smelters Limited*, 64 *Safety Science* 99-108 (2014).

²⁵⁸ See Zwetsloot, *supra* note 247.

²⁵⁹ Part of DS Smith, (<https://www.dsmith.com>), last visited (20-06-2019).

²⁶⁰ See Zwetsloot, *supra* note 247. Translation by H. Kramps.

²⁶¹ NEN, Safety Culture Ladder Certification Scheme Version 4.0 (2016), (<http://www.veiligheidsladder.org/en/the-safety-culture-ladder/safety-culture-ladder-steps/>), last visited (20-06-2019).

²⁶² ProRail is responsible for the maintenance and extensions of the railway infrastructure in the Netherlands, (<https://www.prorail.nl/>), last visited (20-06-2019).

4.3.4.2. Description of the Steps

The SCL consist of five steps that companies go through when developing safety awareness:²⁶³

Step 1.

The company's attitude is: 'we have no mishaps, we deliver good quality, so why should we waste time on preventive activities' and 'what you don't know won't harm you'. The company makes little to no investment in improving safety behaviour. This is not the desired attitude and will therefore not be rewarded.

Step 2.

The company tends to make changes after things have gone wrong. The response is based on deeply ingrained patterns. Employees are inclined to feel themselves the victim of a situation, rather than personally responsible. 'But that is not my fault?' To change behaviour is often ad hoc and short lasting. This behaviour is moderately valued.

Step 3.

The company has determined which safety rules are important. It adopts a vulnerable approach, assumes responsibility, but is often driven by self-interest. 'What's in it for me?' Involvement in safety and compliance with rules and laws is mainly the task of (senior) management. Attention is given to health and safety, which is valued.

Step 4.

Safety has a high priority, is deeply ingrained in the company's operations. Continuous investments are made in raising safety awareness and employees are encouraged to confront one another with their unsafe behaviour. Improvements are structurally implemented and evaluated. The approach is characterized by proactivity and initiative. Safety awareness is regarded as an own responsibility: 'how can I contribute?'. This form of behaviour is highly valued.

Step 5.

Safety is fully integrated into the operational processes. It is a fixed item on the agenda during reflection and evaluation within the own organization and with sector parties. Safety is ingrained in the thinking and behaviour of all employees; it is part and parcel of their work. This is very highly valued.

The illustration of the five steps:

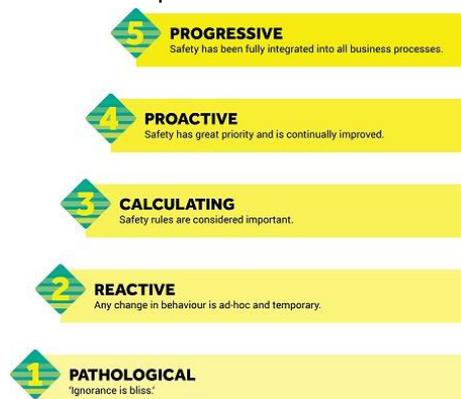


Figure 1, Safety Culture Ladder (source: NEN).²⁶⁴

²⁶³ Description of the steps derived from NEN. See 261, *supra*.

²⁶⁴ Figure derived from NEN. See 261, *supra*.

In addition to ProRail there are other companies in particular in the oil, chemical, construction and off-shore industry that apply familiar approaches to safety and health.²⁶⁵ In the context of the question raised in this chapter, how current child safeguarding measures of NGOs can be developed beyond the policy and procedure approach, the following figure may be illustrative:



Figure 2, Bristow (source: Bristow).²⁶⁶

It shows that building a safety culture is a final (and ongoing) step. By building on previous measures taken, like standards and a safety management system, it will gradually bring down the number of accidents as the culture grows, provided that it is applied consistently.²⁶⁷

4.4. What Can NGOs Learn from Institutional Care and Industry?

To end this chapter, some observations about the practices described will be highlighted and compared to the way NGO safeguarding policies as seen in chapter three are set up.

4.4.1. What Can be Learned from Institutional Care Measures?

Institutional care seems mainly policy driven in a similar way as described for NGOs in chapter three. The raised ideas and recommendations may be valuable, to become effective however, it is required they are deeply ingrained in the institution's operation. As we have seen, this cannot be achieved by outside agents like the CRC-Committee and the government by merely describing what is required.

The embedding in institutional leadership, governance and culture recommended by the RCA and the tailoring of the CSP to the needs of a particular school as mentioned in the KCSiE, is a notable example of a step into the right direction. However, it can still be called a 'policy and procedure

²⁶⁵ See, e.g. Shell, (<https://www.shell.com/sustainability/safety/our-approach.html>), BAM, (<https://bamsafety.com/?l=en>), Sabic, (<https://www.sabic.com/en/news/4110-safety-a-core-value-at-sabic-says-ceo-as-company-marks-injury-free-milestone-in-construction>) and Bristow, (<http://bristowgroup.com/about-bristow/safety/>), last visited (19-06-2019).

²⁶⁶ Figure derived from Bristow, *Target Zero: A Safety Vision*, <http://www.noia.org/wp-content/uploads/2013/03/47288.pdf>, last visited (10-07-2019).

²⁶⁷ *Id.* and Bristow, (<http://bristowgroup.com/search/?q=zero>), last visited (19-06-2019).

approach', as it makes no statements about how to guarantee that it becomes an 'actual lived practice', as Walker-Simpson (2018) calls it.²⁶⁸

Notable is the potential Erooga (2012) sees for the use of the situational prevention model in institutions and communities to prevent child abuse. I agree to this and it seems worthwhile to explore this approach further. Finally, the overall recommendation made by Higgins *et al.* (2016) that it is important to create a "positive culture that is child-friendly, transparent and respectful" in institutions, makes sense to me.²⁶⁹ This recommendation suggests developing a culture that can respond proactively to the dangers of child abuse. This is a step into the direction of developing an actual lived practice.²⁷⁰

4.4.2. What Can be Learned from Safety and Health Measures in Industry?

The way industry deals with safety is different from what this research has observed from NGOs. ProRail (and Bristow in a similar way) focuses actively on creating a safety culture by applying the five steps²⁷¹ and connects this to goal setting in order to reduce the number of accidents.²⁷²

When looking at the NGO CSPs, a different approach is visible. NGOs have decided that child safeguarding measures are a priority²⁷³ and they see it as a topic of critical importance which is their responsibility.²⁷⁴ To deal with safeguarding they have set up policies and procedures to fight child abuse. Certain NGOs adopted the procedures of KCS and these standards have been leading when setting up measures. As we have seen TdH (amongst others), has been awarded the level 1 certification of KCS, which means that policies have been set up, but are not yet implemented.

If we look at the SCL and the specifics of the different steps, the NGOs examined in chapter 3 seem to be at step 3,²⁷⁵ that says: "The company has determined which safety rules are important. It adopts a vulnerable approach, assumes responsibility, but is often driven by self-interest. 'What's in it for me?' Involvement in safety and compliance with rules and laws is mainly the task of (senior) management. Attention is given to health and safety, which is valued".

Some of the wording of step 3 in particular draws the attention: "[...] is often driven by self-interest. What's in it for me?" As we have seen NGOs communicate that they are taking responsibility, although (sometimes) they may be thinking from their perspective²⁷⁶ or driven by self-interest.²⁷⁷ *Inter alia*, Oxfam already knew in 2011 that staff were involved in sexual exploitation of women and

²⁶⁸ See Allsop, *supra* note 149, Walker-Simpson's view, see also Walker-Simpson, *supra* note 33 and see also 151, *supra*.

²⁶⁹ See also Higgins, *supra* note 230.

²⁷⁰ See Walker-Simpson, *supra* note 33.

²⁷¹ See ProRail and Bristow, in §4.3.4.

²⁷² NEN, Safety Culture Ladder, (<http://www.veiligheidsladder.org/en/the-safety-culture-ladder/>), last visited (20-06-2019).

²⁷³ See 191, *supra*.

²⁷⁴ TdH Child Safeguarding Measures, (<https://www.terredeshommes.org/child-safeguarding-measures/>), last visited (19-06-2019).

²⁷⁵ Although more in-depth research is required to decide on this.

²⁷⁶ See §3.3.

²⁷⁷ See 187, *supra*.

allegedly also girls were abused. However, at that time Oxfam did not investigate further to find out if the insinuations of child abuse indeed took place.²⁷⁸ Only after media coverage in 2017, Oxfam started to communicate in that they will review safeguarding policies and they published a ten-point action plan including the commitment to re-examine past cases.^{279, 280} This suggests a reactive attitude.

For an NGO to grow to the next level of the SCL (step 4,) the main requirement seems to be that policies are deeply ingrained in the operation. Zwetsloot (2018)²⁸¹ describes what the differences are between a more traditional approach and safety culture (connected to a vision zero approach) in the following table.

	Traditional approach safety	Vision Zero approach
Commitment strategy	Safety is a priority	Safety is a value/norm
	Safety (zero accidents) is an (unrealistic) goal	Safety is a process
Safety in the operation	Safety improvement is a separated program	Safety is an integral aspect of the operation
	Safety is internally and for the law important	Safety is relevant as well for external stakeholders
Prevention culture	Prevention of accidents	Creating safety at work
	Focus on (management) systems	Focus on culture and learning
Compliance	Compliance: external motivation	Participation: intrinsic motivation
	An incident means failure	Incidents are chances to learn
	Safe behaviour is desirable	The improvement of safety is the norm
Leadership	Transactional leadership, attention is focused on the management of proper task performance	Transformational leadership that is focused on involving and motivating employees and with attention to task demands and resources

Table 1 – Innovative aspects of VZ-approach (source: Zwetsloot).²⁸²

Further research is necessary to see if and how a safety culture and a VZ-approach could work for NGOs and how it should/could be tailored to prevent child abuse conducted by aid workers.

²⁷⁸ See 4, *supra*, at 6 & 7.

²⁷⁹ See 1, *supra*. Action-point 3 states: “Re-examine past cases and encourage other witnesses or survivors to come forward”.

²⁸⁰ See 4, *supra*, at 32. Conclusion Commission: “Whilst it is clear that after the events in Haiti in 2011, the trustees voiced their commitment to prioritise safeguarding, decisions on safeguarding made between 2012 and 2017 meant resourcing and capabilities did not adequately match the risks faced by the charity. The charity’s actions were not sufficient to implement the strategic level improvements they themselves identified and committed to as necessary. [...] As late as 2017, promises that the resources for safeguarding would be increased were not delivered. [...] A culture of tolerating poor behaviour existed in Oxfam in Haiti at the time. There were early warning signs of this from 2010; ultimately some individuals took advantage both of the charity’s presence in Haiti and the culture of poor accountability that existed.”

²⁸¹ See Zwetsloot, *supra* note 247.

²⁸² *Id.*, at 12.

5. Conclusion and Recommendations

5.1 Conclusion

The question addressed in this thesis is: to what extent does the CRC contribute to the development of employee child safeguarding measures for NGOs. In this thesis the following has been demonstrated.

NGOs are not legally bound by the CRC, although internationally the debate is shifting considerably, to the idea that IHRL also binds non-state actors. They do however (at the minimum) have a moral obligation to comply with the CRC. In my view, out of this obligation follows the responsibility for NGOs to actively make sure that CRC standards are always applied in the performance of their work.²⁸³ This responsibility is far-reaching. In this I agree with the CRC-Committee that expects that by following the recommendations, non-state service providers will carry out service provision "in accordance with international standards, especially those of the Convention".

It has been showed, that most NGOs put their responsibility into practice by following a zero-tolerance policy to behaviour which involves any harm to children.²⁸⁴ Also, they have CSPs in place and instructions for employees how to behave and what to do or not to do. The measures they take are based on the CRC provisions to avoid abuse. In this respect they act in line with and are guided by the CRC provisions. However, it can also be observed that the way NGOs set up CSPs and procedures is not enough because child abuse still occurs when NGOs execute their programs. Most of the measures seem to be a reactive way of setting up frameworks. In my opinion, in order to respect children's rights and to prevent child abuse, and to fully fulfil their moral obligations, NGOs cannot just act reactively and build policies based on international law and guidelines. To take full responsibility, they should develop a pro-active attitude. This is an approach in which NGOs pro-actively build a culture that responds to the dynamics of its operations in the field. The question is, how to move beyond this 'policy and procedure' approach to one which focuses on increasing understanding and influencing actual 'lived practice' as Walker-Simpson (2017, 2018) puts it?²⁸⁵

To answer this question, this thesis examined other fields that dealt with a similar challenge and explored what can be learned from their experience. First, in the field of institutional care, it has been acknowledged by Erooga (2012)²⁸⁶ and Higgins *et al.* (2016)²⁸⁷ that just taking legal measures is not enough, more needs to be done to get the actual 'lived practice' ingrained in the activities of the institution. Higgins *et al.* (2016)²⁸⁸ underlined the importance of a positive culture in an institution. Interesting is the potential Erooga (2012)²⁸⁹ sees in using the situational prevention model, originating from criminology, in other settings such as institutions and communities as well to prevent child abuse. The model can be used to self-assess and finding possible risks, which may be the incentive

²⁸³ See 107, *supra*, rec. 16.

²⁸⁴ See §3.3. and *see, e.g.* StC-CSP, at iv.

²⁸⁵ See Allsop, *supra* note 149, Walker-Simpson's view. *See also* Walker-Simpson, *supra* note 33, at 257 and *see also* 151, *supra*.

²⁸⁶ See Erooga, *supra* note 148.

²⁸⁷ See Higgins, *supra* note 230.

²⁸⁸ *Id.*

²⁸⁹ See Erooga, *supra* note 148.

to adapt policies and potentially, behaviour. It may be promising to research further in what way NGOs could use this model for their local activities in co-operation with the local community.

Second, in the industry it has been shown there are successful practices that help build a so-called 'lived practice', such as the ProRail SCL that has been described in this thesis.²⁹⁰ One of the main requirements for this is that policies are deeply ingrained in the operation of the organization and a safety culture is developed. Further research is necessary to see if and how the safety culture approach could work for NGOs and how this should or could be tailored to child abuse. Clearly, the creation of a safety culture requires dedication and consistency on an operational level by individual NGOs. This is required both to change the work culture and to become more aware of how opportunities for abuse can arise from the way physical locations are designed and local communities perceive child abuse. Notwithstanding the fact there is still some work to do to fully align with the CRC (and take on a proactive responsibility), NGOs are on their way in the manner they implement the provisions of the CRC.

Back to the research question, to what extent does the CRC contribute to the development of employee child safeguarding measures for NGOs? First of all, the CRC gives clear direction, content and norms to NGOs about what is expected of them. The present set of provisions and recommendations in the CRC is sufficient (even though not completely applied by NGOs to the extent the CRC recommends). In this respect the CRC contributes to a great extent to the mindset (zero-tolerance) and actions of NGOs (setting up policies). Second, considering the objective of the CRC, the CRC-Committee could support the development of a new generation of CSPs by moving far ahead of the current 'state of thinking' and as such make way for NGOs to develop their work culture. Practically this means provisions and standards may be expanded, both by sharpening the way the provisions and comments are phrased and by the explicit topics that are addressed, *inter alia*, the CRC-Committee could explicitly recommend to NGOs to develop a lived practice culture, based on the so-called 'safety culture' and/or situational prevention model.

5.2. Recommendations

Recommendations to NGOs

- i. NGOs could initiate engagement with industry, for example ProRail, to share knowledge and build an expert group on safety culture and the VZ approach, in order to explore how the safety culture could be tailored to NGO child safeguarding practice.
- ii. NGOs should hire external professionals to perform local audits to break through rooted practices.
- iii. Since NGOs usually hire local staff, who may be reluctant to apply the international CSPs due to a different look at how to protect children,²⁹¹ NGOs should, when they (plan to) execute programs, empower and mobilize local communities including women, man and children to understand existing cultural differences, social norms and traditional practices. It may be necessary to adapt a CSP or put effort in explaining a CSP to local communities, to let it work. Also, awareness raising for children is essential; children should be empowered and learn how to stay safe and learn to speak out.²⁹²

²⁹⁰ See 261, *supra*.

²⁹¹ See also Walker-Simpson, *supra* note 33, at 255 and UNICEF, *supra* note 58, at 42.

²⁹² Based on the National Society for the Prevention of Cruelty to Children, Speak out, Stay safe workshops for primary schools in the UK, (<https://learning.nspcc.org.uk/services/speak-out-stay-safe/>), last visited (24-06-2019). These workshops could be tailored for use in different settings.

iv. The situational prevention model offers the potential for use in institutions and communities to prevent child abuse. NGOs could enter into discussion with academics to explore if the model could be used to improve child safeguarding locally in *inter alia*, aid facilities or refugee camps.

v. NGOs should make sure that if child abuse occurs, the person is not just fired, but also reported to the authorities and registered as a child abuser. An addition could be to have a combined register for NGOs, UN peacekeeping missions and UNICEF.²⁹³

Recommendations to the CRC-Committee

vi. The Committee could organize a second Day of General Discussion on the private sector as service provider and its role in implementing children's rights to enrich the 2002 recommendations. In particular to emphasize the importance of developing a safety culture and contribute to a shift in the current way of thinking. The Committee should be explicit and could, to guide NGOs, name examples from industry, like the ProRail safety ladder and thus, moving far ahead of the current 'state of thinking'.

vii. The Committee could explore the creation of direct responsibility under the CRC framework of non-state actors for human rights violations by setting up a new Optional Protocol.²⁹⁴

Recommendation to academia

viii. Follow up research is required about the development of a safety culture and a VZ-approach for NGOs and how this should/could be tailored to prevent child abuse. As this is a subject that covers multiple academic fields, a joint research project is required (for instance, law, psychology and business administration).

Recommendation to donors

ix. Donors could incorporate the CoC in the funding contracts between themselves and the NGO. As a consequence, the NGO is violating the terms of the contract when the code is violated.²⁹⁵ These indirect measures work as incentives for required behaviour.

²⁹³ See also 10, *supra*, at Annex III, under 9, at 33. An electronic screening tool for dismissed UN-staff as a result of a substantiated allegation of sexual exploitation and abuse, will be set up.

²⁹⁴ See McCorquodale, *supra* note 84.

²⁹⁵ See International Code of Conduct for Private Security Service Providers, 50 ILM 92 (2011) (hereinafter ICoC). See also Business & Human Rights Resource Centre, *ICoC. A Process Aimed at Companies*, (<https://www.business-humanrights.org/en/conflict-peace/special-initiatives/initiatives-on-private-military-security-companies/international-code-of-conduct-for-private-security-service-providers-icoc-a-process-aimed-at>), last visited (24-06-2019). See also, Clapham *supra* note 120, at 16.

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