

VOLUNTOURISM FROM A CHILDREN'S RIGHTS PERSPECTIVE



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Executive Summary

This Master's thesis studies orphanage voluntourism, a growing trend wherein tourists decide to volunteer in an orphanage as part of their travels, from a children's rights perspective. The lack of a child-centred legal analysis on the repercussions of this phenomenon has motivated the author to explore the linkages between unnecessary institutionalization of children leading to children's rights violations and exploitative practices within the orphanage voluntourism industry.

Voluntourism is a growing trend mainly because of the accessibility of information on other places, ease of travel and the demand for voluntourists. Under the guise of changing the world, people are more likely to pack a bag and visit an unknown destination in the hopes of making a difference, one orphanage at a time. Little do they know that while these trips fulfil their altruistic visions for themselves, the communities that they seek to serve, children especially, may be harmed more than they are helped. Orphanage voluntourism, specifically, encourages separation of children from their families to fill the need for children to be cared for by these voluntourists. This leads to a variety of children's rights violations which the voluntourist may not be aware of. While their good intentions are appreciated, there is a need to widen the discourse on orphanage voluntourism and its long-term effects to the supposed beneficiaries.

This thesis aims to contribute to the discourse on voluntourism by providing an overview on orphanage voluntourism and how it affects children and their rights. It will discuss and use existing international legal frameworks on children's rights, including institutionalization, trafficking and exploitation of children to determine the obligations of orphanages and voluntourists' States. The foundation of this research is the consideration of *children as rights holders* - not mere recipients or objects of charity - and *States as main duty bearers* towards the orphanage voluntourism and its repercussions to children's rights.

Chapter Two will present an outlook of voluntourism as a trend and its relationship with children's rights. It will show the global presence and the ongoing debate and literature around voluntourism. It will also show a growing concern and interest of the international community to elucidate what are the real repercussions that voluntourism has on the communities it strives to help.

Chapter Three will identify the international legal framework on institutionalization, trafficking and exploitation. Article 6 CRC, on the children's rights to life, survival and development, will be the primary consideration towards settings a comprehensive structure for further analysis. Following the principle of interdependence and indivisibility of all human rights, other relevant instruments will be used to complement the interpretation of the CRC rights and provisions.

Chapter Four will explore the first element of the main research question and will analyse the impact of orphanage voluntourism in children's rights. First, it will explore the general effects of institutionalization showing that when orphanage voluntourism take place, inconsistent and short-term care puts in higher risk the children's right to development. Children's dignity and safety are also in danger as profit-making orphanages are willing to neglect children in order to attract more voluntourists and financial contributions. Second, the specific effects on children's rights will be explored when exploitative practices such as child trafficking and exploitation take place within – or incentivized by – orphanage voluntourism.

Chapter Five will explore the second element of the main research question, thus, it will elaborate upon the decisive role and obligations of orphanages and voluntourists' States according to international standards of protection. This chapter will elucidate the duty to provide, protect, cooperate and prevent children's rights violations within and outside national jurisdictions. This chapter will show that family support should be the first and foremost important step towards protecting vulnerable children and that states must invest in data collection and topic-specific research to tackle the rights violations within the orphanage voluntourism industry.

In light of the conclusion, this thesis will hold that orphanage voluntourism increases children's vulnerabilities, amplifies the harmful effects of institutionalization and further contributes to the continuity of egregious children's rights violations and modern slavery. Therefore, States need to take active and decisive steps towards tackling orphanage voluntourism as it attempts to the children's dignity and their rights.

Keywords:

Voluntourism | Orphanages | Institutionalization | Trafficking | Exploitation |
Convention on the Rights of the Child | UN Guidelines of Alternative Care |

List of Abbreviations

ABTA	Association of British Travel Agents
ATLAS	Association for Tourism and Leisure Education
BCN	Better Care Network
CSO	Civil Society Organizations
CRC	UN Convention on the Rights of the Child
CRC Committee	UN Committee on the Rights of the Child
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes NGO
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ILO	International Labour Organization
NGOs	Non-Governmental Organisations
NGN	Next Generation Nepal
OPSC	UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography
OVC	Orphanage Voluntourism Case
SDGs	Sustainable Development Goals
TRAM	Tourism Research And Marketing
UDHR	Universal Declaration of Human rights
UN	United Nations
UNICEF	UN Children's Fund
UNODOC	UN Office on Drugs and Crime
UNSDSN	UN Sustainable Development Solutions Network
UNWTO	UN World Tourism Organisation
VSO	Volunteer Service Overseas

Definition of Terms

Child-centred approach:	Method of legal analysis used to portray the main children's rights implications within the orphanage voluntourism industry.
Family-based care:	Extended family, kinship or foster care.
Forced Labour:	All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
Human Trafficking:	An act to recruit, transport, transfer or receipt a person; by means of coercion, deception or abuse of vulnerability; for the purpose of exploitation e.g. forced labour or practices similar to slavery.
Modern Slavery:	Practices that restrict freedom of movement, control of personal belongings and lack of informed consent and full understanding of the nature of the relationship between parties. It involves trafficking of children and forced child labour.
Non-family based care:	Orphanages, institutional and residential care.
Orphanage:	Non-family based care setting, part of the child protection system of a state.
Orphanages' states:	States that bear the legal duty to provide an appropriate child protection system, duty to protect children from exploitative practices and the duty to prevent children's rights violations within their jurisdiction.
Orphanage Voluntourism:	Industry that offers volunteering projects in orphanages or institutional care. It gives voluntourists the opportunity to have direct contact and interaction with children living in the orphanage.
Orphanage Voluntourism Case (OVC):	Fictitious introductory case that lays the main variables and elements that appear in orphanage voluntourism. The author uses this case to help the reader understand the relationship between orphanage voluntourism and children's rights analysis.
Paper orphans:	Term that appeared within the inter-country adoption sphere to refer to children with a false record appearing as having deceased parents, thus, adoptable.
Volunteer:	Individual willing to perform voluntary work and invest its time, energy and money in projects with the potential to be beneficial for the local communities and worthwhile for themselves.
Voluntourism:	Industry that includes short-term volunteering projects as part of a traveler's holidays plan.
Voluntourists:	Young people (18-26 years old) involved in voluntourism activities, namely they combine holiday travels with volunteering projects in a foreign country. They constitute the main <i>group target</i> to the orphanage voluntourism industry and the <i>demand</i> for volunteering programmes at orphanages. Mainly they are from developed countries such as USA, UK, Australia, Canada and European countries.
Voluntourists' states:	States that bear the legal duty to cooperate and prevent children's rights violations outside their jurisdiction.
Young people:	Segment of the population that are the primary target of voluntourism, independent travel and gap year industries.

1. Introduction

1.1. Voluntourism: A Global Phenomenon

The combination of volunteer service with travel is not a new phenomenon. Formal international volunteering can be traced back to the establishment of some international organizations such as Volunteer Service Overseas (VSO, 1958), US Peace corps (1961) and national Red Cross organizations. Entities directed “to fight poverty through volunteering”¹ or to offer support to medical service in times of war.² However, the ever-increasing overseas volunteering programmes and initiatives have contributed to a creation of a niche market that offers, mostly to young adults, the opportunity to *change the world* and *make a difference* while enjoying the traditional elements of travel and tourism.³ Nowadays, commercial volunteer agencies supply an alternative to those who want to engage in meaningful work but do not meet the skills and requirements to join an international development NGO.

Voluntourism is a term attributed to an industry that includes short-term volunteering projects as part of a traveller’s holiday plans. It is an industry regarded as one of the fastest growing alternative tourism markets in the world.⁴ Although there is no updated data on the current net worth of the voluntourism industry, most recent studies refer to a yearly total of 1.6 million voluntourists that spend up to 2 billion dollars globally.⁵ This estimate was published in 2008; since then, voluntourism has kept on growing and revenues are expected to continue to increase as young adults from developed countries are keen on exploring this alternative form of tourism. A marketing analysis done specifically on the global youth travel industry suggests that numbers on this industry will grow exponentially by 2020, as volunteering is seen to be the biggest growth sector of the youth travel landscape.⁶ Moreover, volunteering projects involving children are deemed as the most popular choice amongst travellers,⁷ which strengthen the

¹ “To fight poverty through volunteering” is the slogan of the British based organisation Volunteer Service Overseas (VSO). See VSO, *Home*, <https://www.vsointernational.org/index.php> (last visited 13 May 2017).

² British Red Cross founded Voluntary Aid Detachment (VAD) in 1909 to offer medical support in the event of war. See British Red Cross, *War-time volunteers and personnel records*, <http://www.redcross.org.uk/About-us/Who-we-are/Museum-and-archives/Resources-for-researchers/Volunteers-and-personnel-records> (last visited 13 May 2017).

³ VolunTourism.org, *Travel and Volunteer Opportunities*, <http://www.voluntourism.org/inside.html> (last visited 13 May 2017).

⁴ See E. Hartman *et al.*, *Fair Trade Learning: Ethical standards for community-engaged international volunteer tourism*, 14 *Tour. Hosp. Res.* 108–116 (2014). [Hereinafter Hartman *et al.*(2014)] See also K. Tomazos & R. Butler, *Volunteer tourists in the field: A question of balance?*, *Tourism management*, 33(1), at 177-187 (2012). See also M. Conran, *They Really Love Me! Intimacy in Volunteer Tourism*, *Annals of Tourism Research*, Vol. 38, No. 4, at 1454–1473 (2011). See also K. Holmes & K. Smith, *Managing volunteers in tourism: Attractions, destinations and events*. Oxford: Butterworth-Heinemann (2009).

⁵ All reviewed publications on volunteering and tourism, voluntourism, volunteering overseas, gap year and independent travel dated from 2008-2014 refer to the data given by the Association for Tourism and Leisure Education in 2008 when explaining the growth and importance of voluntourism as a global trend. See European Association for Tourism and Leisure Education (ATLAS) & Tourism Research and Marketing (TRAM), *Volunteer Tourism: A Global Analysis. Report*. ATLAS (2008). Available at: <http://www.atlas-webshop.org/Volunteer-tourism-A-global-analysis> (last visited 18 May 2017)

⁶ Marketing analysis done by StudentMarketing leading youth travel research and intelligence consultancy and affiliated member of the UNWTO. Data given by Samuel Vetrak, CEO of StudentMarketing, at his presentation in ITB Berlin 2012. Key findings: Global youth travel industry is currently worth USD 173 billion per annum. The youth travel market is expected to burgeon to 320 billion by 2020. See Staywyse, *Youth Travel – The Next Big Thing at ITB Berlin 2012*. Wyse Travel Confederation (2012). <https://www.staywyse.org/2012/03/09/youth-travel-the-next-big-thing-at-itb-berlin-2012/> (last visited 10 May 2017).

⁷ See K. Lamoureux, ‘Chapter 3: Voluntourism: An Overview.’ In: Honey, M. (ed.) *Travelers philanthropy*

urgency and necessity to study and foresee the repercussions of this phenomenon on children.

1.2. Voluntourism and Children's Rights

The relevance of voluntourism is grounded on its global presence, accessibility and continuous growth. The academic debate around the topic started by taking into account the point of view of the volunteer and the tourism industry which primarily focus on the advantages of this phenomenon. The questions were directed towards the voluntourists' motivations and the benefits of cultural exchange.⁸ However, the framework of this debate is slowly shifting as there is a growing concern about the harmful effects that this form of tourism can have on the communities and its particular targeted groups which has helped expand the debate to a more accurate illustration of reality.⁹ Human and children's rights advocates have also contributed with questions about the real effects and range of implications of voluntourism in the very communities it strives to help.¹⁰ The concrete effects of this phenomenon on children and their rights are yet to be unravelled.

The relation between voluntourism and children's rights is evident when referring specifically to orphanages. At first glance, this phenomenon does not necessarily imply children's rights violations; on the contrary, voluntourists are meant to contribute to better the lives of children in disadvantaged communities by giving their time and donations. However, while the intention is good, it is crucial to look closer at the dynamics between this very charitable act and international standards on child protection.

Orphanages are within the scope of states' child protection systems, which often operates in conjunction with other international and/or private entities. However, it can be argued as per international human rights law that states are the main duty bearers in the protection of children within their jurisdiction.¹¹ Orphanage voluntourism is in itself a complex phenomenon that has gathered the attention of many authors and small and major NGOs.¹² Many ethical questions have been raised about the creation of a

handbook. Washington DC: Center for Responsible Travel (2011). Available at:

<http://www.travelersphilanthropy.org/resources/publications.shtml> (last visited 9 June 2017).

⁸ E.g. S. Brown & X. Lehto, *Travelling with a Purpose: Understanding the Motives and Benefits of Volunteer Vacationers*. Department of Hospitality and Tourism Management, 8(6), 479–496 (2005). See also A. Coghlan, *Volunteer Tourism as an Emerging Trend or an Expansion of Ecotourism? A Look at Potential Clients' Perceptions of Volunteer Tourism Organizations*. International Journal of Non-profit and Voluntary Sector Marketing, 11, 225–237(2006).

⁹ E.g. N. McGehee, *Oppression, emancipation, and volunteer tourism*, 39 Annals of Tourism Research 84–107 (2012). See also L. Chen & J. Chen, *The motivations and expectations of international volunteer tourists: A case study of "Chinese Village Traditions*, 32 Tourism Management 435–442 (2011) [Hereinafter Chen & Chen (2011)]. See also H. L. Sin, *Volunteer tourism "Involve me and I will learn"?* Annals of Tourism Research, 36(3), 480–501 (2009) [Hereinafter Sin (2009)]. See also D. Guttentag, *The Possible Negative Effects of Volunteer Tourism*, Int. J. Tourism Res. 11, 537-551 (2009).

¹⁰ E.g. H. Goodwin, *Child Protection in the Travel & Tourism Industry*, 3 Progress in Responsible Tourism 45–55 (2015). [Hereinafter H. Goodwin, *Child Protection (2015)*]. See also K. Cheney, *The Cognitive Dissonance between Child Rescue and Child Protection*, (2015). Available at: <https://www.opendemocracy.net/beyondslavery/kristen-e-cheney/cognitive-dissonance-between-child-rescue-and-child-protection> (last visited 29 April, 2017). [Hereinafter K. Cheney, *Cognitive Dissonance (2015)*]. See also BCN, *Better Volunteering Better Care, Expert Paper - International Volunteering and Child Sexual Abuse*. Global Study Exploitation of Children in Travel and Tourism (2016). Available at: <http://globalstudyssect.org/wp-content/uploads/2016/05/Expert-Paper-Better-Volunteering-Better-Care.pdf>. (last visited 30 June 2017). [Hereinafter BCN, *Expert Paper (2016)*]

¹¹ See UN General Assembly, *Convention on the Rights of the Child*, UN Treaty Series, vol. 1577 (1989), article 2. [Hereinafter UN CRC (1989)]

¹² Authors such as J.K Roeling, who runs "Lumos Foundation" which campaigns to end the institutionalisation of children worldwide, has drawn attention to the perils of volunteering in orphanages; as well as Kristen Cheney (2015), Harold Goodwin (2015) and Kathryn E. van Doore (2016). NGOs such as Better Care Network (BCN), Next Generation Nepal (NGN), UNICEF, Save the Children International.

market around an unnecessary - even unwanted – charity, based upon the asymmetry of voluntourists willing to help and children in need of such help.¹³ As a result, reports and studies have shown that children are often used and abused in order to supply the high demand of voluntourists as touristic attractions or as objects to *be rescued*.¹⁴ Furthermore, the reviewed literature suggests that unnecessary institutionalization of children is linked to fundamental children's rights violations and exploitative practices within orphanage voluntourism. However, no legal study from a children's rights perspective has been found when writing this thesis and this has motivated the author to bring in a much needed child-centred legal analysis.

1.2.1. Scope

This thesis aims to study orphanage voluntourism from a children's rights perspective. There are two elements within the scope of this research 1) children as right bearers and 2) states as duty bearers. The author approaches this thesis as a tool and opportunity to raise awareness about a phenomenon that is likely to enhance the vulnerability of children living or at risk to be placed in orphanages. On the one hand, the analysis of the nature and effects of orphanage voluntourism on children can be used as a source of information for those who seek volunteering opportunities abroad. On the other hand, the specific analysis of this phenomenon in relation to children's rights violations, trafficking, exploitation and modern slavery aims to strengthen the discourse and urgency of the topic, with the goal of compelling States to act and place the regulation of orphanage voluntourism high on their agenda.

The author acknowledges that institutional care is sometimes the only option left for children and that volunteering programs have potential benefits for communities. However, this research aims to contribute to the critical debate about the effects of orphanage voluntourism on children and their rights. The author aims to broadly analyse whether orphanage voluntourism is fuelling the unnecessary removal of children from their homes.

This thesis will focus on the exploitative practices within orphanage voluntourism as a whole to determine existing and potential children's rights violations and to elucidate areas where states must act according to international standards. To set the context, the author will discuss the roles of other actors, such as private and international entities and NGOs, local communities and parents in relation to voluntourists and States; however, their specific roles are not the focus of this study. The assessment of the overall impacts of voluntourism on participatory development initiatives in host communities has been examined in depth in other studies thus falls out of the scope of this thesis.¹⁵ Also out of the scope of this study are the legal implications to those who benefit from the exploitation of the child, such as orphanages owners and intermediary agents. Likewise, the analysis of trafficking and exploitation of children from a criminal perspective is not within the scope of this thesis.

¹³ E.g. C. Toms, *Global Development Through International Volunteerism and Service-Learning: Who's Saving Whom?*, PHD Thesis at Azusa Pacific University (2015). See also e.g. B. Holmberg, *The Orphan and The Saviour- A Relationship of Love, Gratitude and Commodities: A Critical Discourse Analysis of the Construction of the Narrative About the Helper and the Orphanage Child*, Master Thesis at Stockholms Universitet (2014). See also e.g. Wanda Vrasti, *The Self as Enterprise: Volunteer Tourism in The Global South*, PHD Thesis at McMaster University (2010).

¹⁴ See Bread for the World – Protestant Development Service, Working Group Tourism and Development & ECPAT Germany, *From Volunteering to Voluntourism. Challenges for the Responsible Development of a Growing Travel Trend* (2015) [Hereinafter ECPAT, *Challenges* (2015)]. See also P. Jane Reas, "Boy, have we got a vacation for you": *Orphanage Tourism in Cambodia and the Commodification and Objectification of the Orphaned Child*, 16 *Thammasat Review*, 121–139 (2013).

¹⁵ See *supra* note 13.

1.3. Research Questions and Methodology

The main question to be answered is the extent to which orphanage voluntourism affects children's rights and the corresponding states' obligations towards this phenomenon in accordance with international legal standards.

In order to answer this question, it is necessary to have a broader understanding of the voluntourism phenomenon and the main actors and stakeholders. Chapter Two of this thesis will discuss the concept of voluntourism and its impact on children. In order to set a legal framework from a children's rights perspective, Chapter Three will focus on the international standards of child protection *vis-a-vis* orphanage voluntourism. Following the discussion of standards in Chapter Three, Chapter Four and Five will focus on answering the first and second element of the main research question – the impact of orphanage voluntourism on children's rights and the corresponding obligation of the State in relation to this phenomenon. Chapter Four specifically aims to answer the general and specific impact of orphanage voluntourism on children while Chapter Five will focus on the decisive role of orphanages and voluntourists' States.

1.3.1. Overarching Methodology

To answer these questions, the methodology followed consists of an exhaustive desk review of recent studies, academic researches and existing international legal frameworks. The UN Convention on the Rights of the Child (CRC) is the primary source of reference as it is the most comprehensive treaty dealing with children's rights. The CRC regards children as rights holders and States as duty bearers, which is the starting point of this thesis. The official documents of the Committee on the Rights of the Child (CRC Committee) will be consulted to complement the CRC. Moreover, other international human rights standards will be used to ensure a better implementation and interpretation of CRC rights and provisions, following the principle of interdependence and indivisibility of all human rights.¹⁶

Besides international legal standards, the literature review examined secondary data and materials on volunteering, tourism, institutionalization of children, child trafficking, slavery including research studies, reports by civil society organizations, documents produced by the UN, journal and academic articles, news reports, voluntourists narratives, programme evaluations and country analyses, among others.

Most of the reviewed literature concentrates on the analysis of voluntourism from the point of view of the voluntourists and the tourism industry. There are limited resources on literature exploring the effects of volunteering on children and communities on the ground. Anthropology, education, psychoanalysis and sociology are the main fields of study where orphanage voluntourism and its repercussions on children are examined. Therefore, to contribute to the research gap, the author's focus is to perform a child-centred legal analysis to portray the main children's rights implications within the orphanage voluntourism industry and its effects on children.

There is currently no case law at international courts touching upon the elements and issues this thesis aims to analyse. Therefore, in order to perform a more clear and comprehensive analysis, the author will use the following fictitious case scenario to better illustrate the implications to institutionalization of children in orphanages.¹⁷

¹⁶ On this regard, the CRC Committee consistently encourages the ratification of all relevant international conventions as the CRC must be interpreted in a holistic manner. See UNCRC General Comment No. 5, "*General measures of implementation for the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)*", UN. Doc CRC/GC/2003/5 (2003), paras. 17-18 and annex 1, non-exhaustive list of relevant human rights instruments. [*Hereinafter CRC GC No. 5*]

¹⁷ The fictitious OVC is inspired on a variety of real cases reported by NGOs reports. Inspiration based on many volunteering offers and advertisements with children in Ghana, India and Mexico, amongst others. *E.g.* Projects

1.3.2. Orphanage Voluntourism Case (OVC)

This fictitious Orphanage Voluntourism Case (OVC) showcases the complexity of the intersecting roles and interests of the stakeholders involved. It aims to depict the shared traits present in the vast majority of orphanage voluntourism cases reported by NGOs and civil society. This case primarily shows the vulnerability of children deprived of family environment and their subsequent submission and dependency to a system seemingly built to protect the child but in reality feeds the interests of players in the voluntourism industry. The OVC will guide the reader in understanding the variables and elements that will be referred to in this thesis when analysing the relation of orphanage voluntourism and children's rights.

The Case

Like many orphanages in Nepal, *Imagine* is located in Kathmandu one of the most touristic areas of the country. Currently, 30 Nepali children are living in the orphanage with only 3 fixed staff. To complement its local staff, *Imagine* hosts short-term volunteering programmes that target young adults from developed countries to contribute their time and money to the children living in the orphanage. These volunteering programmes have been deemed successful and have gathered many voluntourists that take the opportunity to travel around Nepal while investing their time in the orphanages, giving general care or running English classes for children.

Imagine, like most orphanages, is considered part of the child protection system of Nepal. It provides assistance and care for children who lost their parents, victims of home abuse or live in extreme poverty. Many children are brought to the orphanage due to orphanhood. Take, for example, Sophia, a 5 year-old girl, who was brought to *Imagine* after both her parents died. She has lived in the orphanage for over two years now but no procedure has been initiated to place her in a long-term and family-based care. She will likely live in the orphanage until she reaches 18 years old.

For many years, *Imagine* has benefited from fee-paying volunteering programmes and donors' contributions. The ongoing and increasing demand for these type of programmes together with the growth of the voluntourism industry have incentivized *Imagine's* owner to expand its operations, host more volunteering programmes and voluntourists, and ultimately to increase its revenues. Expansion and constant demand for volunteering projects require the existence of children to be 'helped'; therefore, the owner has reached out to agents that can supply the orphanage with more children such as e.g. Thomas, a 7-year old boy who has been taken from his village and placed in the orphanage after agents induced his parents to believe that he will have a better future and education in Kathmandu. He has never seen or contacted his parents since then.

Both Sophia and Thomas live in unsanitary conditions and crowded rooms where children share beds or sleep on the floor. The orphanage's condition and neglect towards the children are intended to portray children as poor and in need of help. No steps have been made in finding new placements for these children as the orphanage has no intent to place the children in long-term family-based care settings for two reasons: first, the lack of pressure by the State and, second, the constant flow of income these children represent for the orphanage. Children in the orphanages are often sent to beg on the streets to attract more donors and voluntourists, one of the main sources of revenue of the orphanage. The situation of children in the area attracts an influx of voluntourists yet minimal monitoring and regulation is conducted on their activities. Attention needs to be drawn to the flexibility under which volunteering programmes are offered; requirements are lax that voluntourists rarely need to meet as long as they pay the correspondent fees, they are welcomed to join the orphanages from time periods as short as one week. This gives foreigners the opportunity to have direct contact and interaction with children without skills or any form of proper training.

Orphanage's State: Nepal

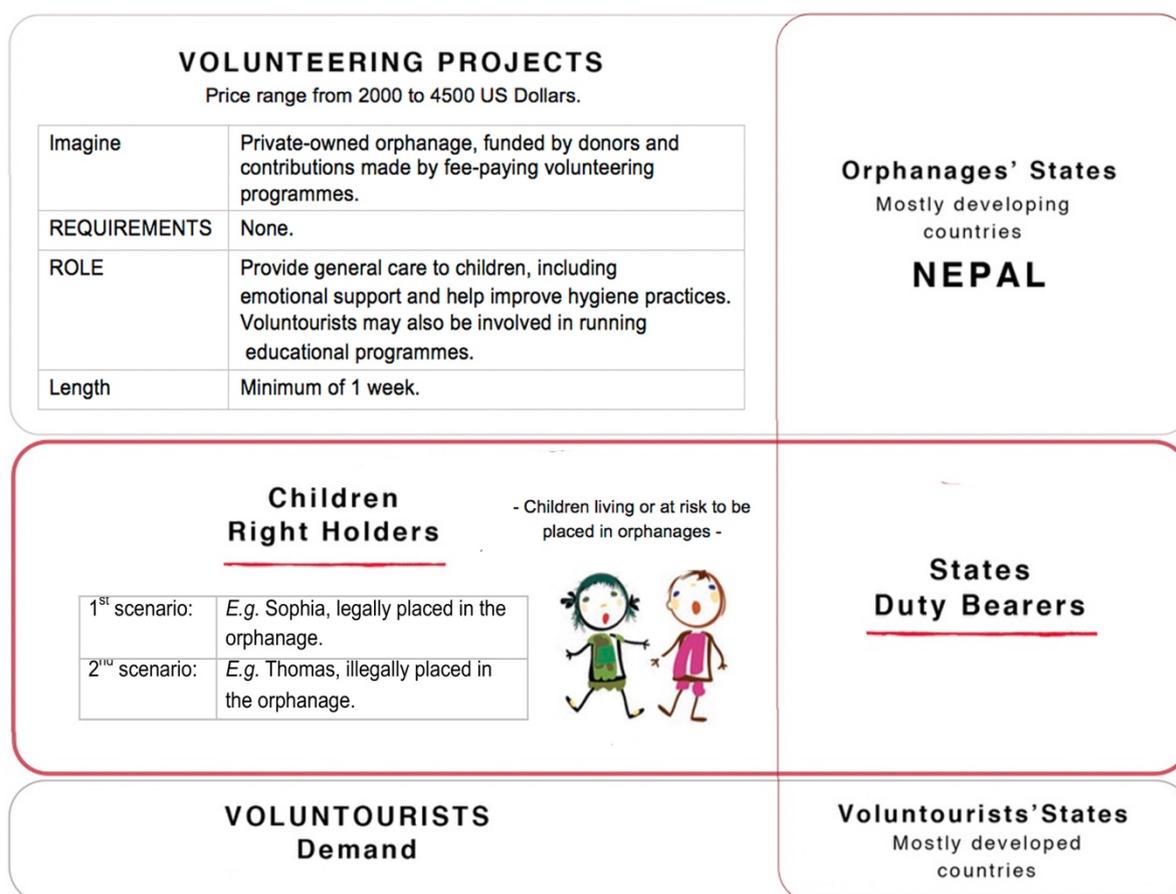
“Over 15,000 children are believed to be living in registered children’s homes and orphanages in Nepal”¹⁸, most of which are not in fact orphans. There is no available data on the total estimates within unregistered orphanages. Moreover, no real efforts have been made on the part of the State to support families and prevent institutionalization due to poverty. Thus, institutional care and placement of children in orphanages is often the first choice for many poor families. This practice encourages trafficking schemes where poor parents are enticed to give up their children under the guise of providing them a better future. While this phenomenon is widespread, there is not enough political will nor are there strong legislations to fight and prevent exploitative practices in orphanages.

Voluntourists' State:

Many of the voluntourists come countries such as USA, UK, Australia, Canada and other European countries. Voluntourists' States are not fully aware of the implications of orphanage voluntourism and often promote this practice, encouraging their citizens to volunteer abroad without regard to the impact on the children 'served' and their rights.

Two placements scenarios: Sophia and Thomas

The analysis of the general and specific effects of orphanage voluntourism can be better explained by looking at the two scenarios illustrated in the OVC: first, the case of Sophia who was institutionalized due to orphanhood, and second, the case of Thomas who was brought under fraudulent and exploitative means. Below is a summary of the general elements of the OVC:



¹⁸ M. Punaks, K. Feit & Next Generation Nepal (NGN), *The Paradox of Orphanage Volunteering Combating Child Trafficking Through Ethical Voluntourism* (2014), executive summary. [Hereinafter NGN, *The Paradox* (2014)]. See appendix 1: Image 1 shows a screenshot of a real advertisement for voluntourists. See, e.g. Image 2 to see the price range.

1.3.3. Outline

In order to clarify the impact of orphanage voluntourism on the rights of children living, or at risk of being placed, in orphanages and the states' legal obligations towards this phenomenon. This thesis is divided into six parts. After the Introduction, Chapter Two will provide additional background information about voluntourism and its relation with children's rights. It will better explain the scope of the study and the main stakeholders.

Chapter Three will then deal with the framework of analysis from a children's rights perspective. This chapter aims to set the legal standards that apply in relation to children as right holders and states as duty bearers. A descriptive explanation will be given on the relevant rights and provisions in the context of orphanage voluntourism.

Chapter Four will clarify the link between volunteering programmes in orphanages, unnecessary institutionalization of children and the repercussions on their rights. It will analyse the general and specific effects it has on children. This chapter will elucidate the first element of the main research question, namely the impact of orphanage voluntourism in children's rights. First, it reports the general harmful effects of institutionalization for the holistic development of children and then, the specific implications to children when exploitative practices within orphanage voluntourism industry.

Chapter Five will further elaborate on the second element of the main research question, namely the orphanages and voluntourists' states legal obligations towards children. It builds on the obligations identified in Chapter Three and Four to showcase the decisive role of states as duty bearers. This chapter explores two tangents: First, countries that allow untrained foreigners to work closely within their child protection system. Second, nationals of developed countries that are encouraged to volunteer abroad in spite of their training or qualifications. Chapter six concludes by highlighting the main findings and the recommendation on the way forward.

2. Voluntourism and Children

2.1. Introduction

Voluntourism is *formally* defined as a “form of tourism in which travellers participate in voluntary work, typically for a charity”.¹⁹ Indeed, the term is a blend of volunteering and tourism. Volunteers are individuals willing to invest their time, energy and money in projects with the intention of benefitting local communities and a worthwhile endeavour for themselves. Tourism refers to a wide industry that involves actors at national and international levels. However, when referring to voluntourism as a form of tourism that includes charity work, it is necessary to add into consideration those who are targeted by the industry – the so-called beneficiaries of the charity work.

This chapter will present an overview of voluntourism and its relationship with children as a first step in the analysis of the impact of orphanage voluntourism on children’s rights. It offers an outlook of voluntourism, including orphanage voluntourism, as a trend and critical literature related thereto to better understand the complexities within this phenomenon (2.2). Then, the relationship between orphanage voluntourism and children will be better explained (2.3) together with a brief reference on the voluntourists and States as the main stakeholders - as they constitute the demand and the main duty bearers towards children (2.4).

2.2. Voluntourism as a Trend

Connectivity amongst countries is a tangent reality. Nowadays, there is a wide variety of tools and technologies that allow people to access information from contexts different than their own. By discovering other realities, feelings of connection, humanity and empathy light up coupled with the desire to do more. The internet, as the most powerful and accessible tool to access information, has contributed to a more dynamic social interaction between strangers as it provides different ways of sharing personal stories and experiences.²⁰ Blogs, YouTube channels and a great number of websites show new and alternative ideas, paths and opportunities. Through these media, a person is able to showcase personal experiences in their country, often enticing other people to visit and experience the same thing. At the same time, the internet is also used as a way to share advocacies and causes with the intention of either raising awareness or gathering support, or both. Thus, it can be said that the sharing of realities and experiences through online marketing greatly influence the decisions of an individual – from causes to support to holiday destinations.

Voluntourism has emerged as an alternative form of tourism and it has greatly benefited from online marketing in the last decade. Modern communication, affordable flights and ever-increasing peer and media encouragement to step outside the comfort zone and seek new adventures have contributed to the growth of voluntourism, making it a global trend. People are curious to get a grasp of unknown and exotic realities and eager to act and make this world a better place thus are more prompt to believe and fall into appealing advertisements calling people to action. Access to primarily positive and non-critical advertisements on different platforms, from Facebook advertisements to articles about contributing to poverty alleviation abroad as a life changing experience is rampant.²¹

The global influence and easy access to voluntourism programmes can be depicted by enumerating

¹⁹ Oxford online dictionary, <https://en.oxforddictionaries.com/definition/voluntourism> (last visited 10 May 2017).

²⁰ E.g. T. Huang *et al.*, *The Impact of the Internet on Global Industry New Evidence of Internet Measurement*, Research in International Business and Finance, 93–112 (2016). See also UN General Assembly, *Globalization and its impact on the full enjoyment of all human rights: report of the Secretary-General*, UN Doc. A/63/259 (2008). Available at: <http://www.refworld.org/docid/48e35dc12.html> (last visited 9 June 2017).

²¹ E.g. The CNN’s Hero of 2015, Maggie Doyne. Available at: <http://edition.cnn.com/2015/11/17/world/cnn-hero-of-the-year-2015/index.html> (last visited 9 June 2017)

what can be found on voluntourism in three major websites.²² First, when “voluntourism” is typed in the Google search engine, over half a million results appear in a fraction of a second.²³ “We offer voluntourism trips to suit any interest, experience level, or age. We have hundreds of different types of programs in more than 30 developing countries” is the promise given in the very first link by Projects Abroad.²⁴ On their website, type “orphanages” and immediately ten individual projects appear from destinations all over the world. Volunteering opportunities at orphanages in Ghana, Ethiopia, Sri Lanka, Mongolia, Mexico and India are advertised on the front page of their website. With another click, one hundred fifteen (115) other global projects surface.²⁵

Second, when searching for “Voluntourism” on YouTube, a wide variety of channels appear. YouTube is a free video-sharing website where users can simply upload their videos for the general public to view. Travellers’ stories,²⁶ news channels,²⁷ a couple of TEDx Talks²⁸ and one round table discussion²⁹ held in Oxford University reflect rather critical points of view on the topic. The majority of videos found on YouTube with regard to voluntourism seek to showcase voluntourism from different viewpoints.

Third, Pinterest has a wide variety of “pins” related to voluntourism.³⁰ Pinterest is a website where people share photos, called pins, linked to a website. Majority of these pins show pictures of adventurous and happy voluntourists in exotic places with children and/or wildlife in different setups and designs. However, not all pictures are meant to encourage people to find the right voluntourism trip; in particular, one picture shows a white woman holding two little black girls with voluntourism written on the top and “busted” across the picture, in big and red capital letters.³¹ This picture links to an article titled “The Big Voluntourism Lie” that aims to expose the dirt of paid experiences under the umbrella term of volunteering, an attempt to show a different angle on the phenomenon.

The above reference on the prevalence of information in the internet on voluntourism aims to showcase the power of information and the growing interest of society to know more about the voluntourism industry – an industry that at first appears to be harmless. Several studies have been conducted to decode the elements and the potential impacts of voluntourism due to the ever-increasing attention that has gathered.

²² Google, YouTube and Pinterest have been used to showcase voluntourism as a trend. The choice of the websites has been done based on their global influence and popularity. All three websites target different set of information. Google is a major search engine that links the online user to websites related to the topic that is being search. YouTube works as a network of video channels where professional and amateur people share video content. Pinterest is defined as a catalogue of ideas, where people can share and save media content when surfing around the web.

²³ Google search box: “Voluntourism”. About 562.000 results in 0,55 seconds (last visited 10 May 2017).

²⁴ The first link about voluntourism is from Projects Abroad, an organization that began in 1992 by some students in their gap year. Projects Abroad regards itself as the world’s leading international volunteer organization. Available at: <http://www.projects-abroad.org/voluntourism/> (last visited 10 May 2017).

²⁵ The website showcases 12 individual pages. The first 11 pages has 10 projects per page, the last page has 5 extra. Total of 115 project that involve specific voluntourism projects at orphanages or orphanage related activities. Available at: <http://www.projects-abroad.org/search-results/?q=orphanages> (last visited 10 May 2017).

²⁶ Travellers channels such as “The Voluntourism”, “The Budgeteers”.

²⁷ News Channels such as: “Al Jazeera English”, “ABC News” and “The Agenda with Steven Paikinn”.

²⁸ TED is a private organization that organises conferences all over the world with regards of actual topics and current issues.

²⁹ Oxford Union Channel round table discussion about “Voluntourism: A Boost or Burden for Communities”. <https://youtu.be/TSO21WRyRlk> (last visited 10 May 2017).

³⁰ Pins and pinboards are the way of catalogue images within Pinterest website. People can “pin” content wherever they are in the web.

³¹ Pin: picture of a white woman with two black children, link to article “The Big Voluntourism Lie”. <http://pin.it/5uuYSaC> (last visited 10 May 2017).

2.2.1. Critical Literature Overview

The attention from academics and researchers on voluntourism have grown simultaneously with the increase of programmes on all-inclusive volunteering and commercial packages to worldwide destinations. The focus of analysis around the topic has been centred on the elements of voluntourism and its positive impacts to the communities they seek to benefit. Some see the idea of voluntourism as a learning tool and a way to achieve global citizenship as it expands people's understanding and respect.³² Others consider voluntourism as being a safe and more conscious way of traveling and a form of international community service.³³ However, the positive impacts achieved with volunteering programmes abroad are overestimated and under-analysed. For instance, a Canadian study shows concerns about the assumption and impact of global citizenship in relation to international volunteering. According to the Canadian youth volunteers, the impact of their volunteering experience is based on personal growth and skills development rather than poverty alleviation, sustainability or development goals, as the latter cannot be measured as a result of their "short-term placements, lack of qualifications and limited cultural understanding".³⁴ The benefit of voluntourism may very well be for the voluntourist and not the community it initially sought to help.

Moreover, the comparison between voluntourism and neo-colonialism is found in all literature that critiques this phenomenon. Some claim that voluntourism serves to perpetuate unequal power structures and the belief that those born and raised in developed societies have the inherent capacity to help less fortunate people.³⁵ Many studies use the terms "west" or "global north" versus "global south" to exemplify the helping discourse at risk to reproduce postcolonial dichotomy. Hutnyk argues that voluntourism is "the soft side of an otherwise brutal system of exploitation" in that it maintains the "third World" as the disempowered recipient of discretionary aid and benevolence".³⁶ In practice, there is no guarantee that volunteering services actually meet the real need of the communities they serve, as the agenda is only set by the volunteer and the NGO with perhaps little to no consultation with the community they seek to serve.

There have been attempts from international organizations to contribute to the voluntourism industry with research and self-regulating initiatives to be applied in the touristic sphere. For instance, the "Volunteer Tourism Research Group", a special interest group of the Association for Tourism and Leisure Education (ATLAS), aims to contribute to the critical discussion within the touristic sector. Its research showcases that voluntourism concentrates international tourism from rich western countries such as the UK, USA and Australia, to developing countries all around the world; which strengthens the profit-making side of it. This group has recognized that this growing sector involves profit-making companies, bringing the ethical and moral dilemmas of the industry into the picture.³⁷

³² S. Wearing, *Volunteer tourism: experiences that make a difference* (2001) [Hereinafter S. Wearing (2001)]. See also K. Lyons et al., *Gap year volunteer tourism*, 39 Ann. Tour. Res. 361–378 (2012). [Hereinafter Lyons et al. (2012)] See also J. Butcher & P. Smith 'Making a difference': *Volunteer tourism and development*. Tourism Recreation Research, 35(1), 27–36 (2010).

³³ H. Goodwin, *Tourism, Good Intentions, and the Road to Hell: Ecotourism and Volunteering*, 22 Brown J. World Aff. 37 (2015). [Hereinafter H. Goodwin, *Road to Hell* (2015)]. See also ECPAT, *Challenges* (2015), *supra* note 14.

³⁴ R. Tiessen & B. Heron, *Volunteering in the developing world: the perceived impacts of Canadian youth*, 22 Dev. Pract. 44–56 (2012), at 53-54.

³⁵ W. Easterly, *Can the West Save Africa?*, *Journal of Economic Literature*, 47(2), 373-447 (2009).

³⁶ J. Hutnyk, *The Rumour of Calcutta: Tourism, charity and the poverty of representation*. London [etc.]: Zed Books (1996), at ix.

³⁷ The Volunteer Tourism Research Group raises questions such as: "to what extent is it beneficial to host communities? Do volunteers possess the skills to 'make a difference'? Or is any advice/help better than not at all? To what extent is volunteer tourism subject to 'green wash' marketing by industry in order to capture a larger percentage of the travel market?" See ATLAS Special Interest Group: <http://www.atlas->

The UN World Tourism Organisation (UNWTO) promotes tourism as a vehicle to help deliver poverty alleviation.³⁸ However, no official standpoint or report has been prepared on voluntourism. In the last report of the World Tourism Network on Child protection, the closest thing to voluntourism was a special section on responsible business strategies and child protection in tourism. Along these lines, the Association of British Travel Agents (ABTA) presented the “Volunteer Tourism Guidelines” aiming to assist tour operators in identifying practices tantamount to exploitation of children when developing volunteering programmes.³⁹ However, ABTA’s practical guidelines are not public and costs £350 for non-ABTA members.⁴⁰

The approach of the ATLAS’ volunteer tourism research group, UNWTO and ABTA on voluntourism shows the clear dichotomy of this phenomenon – strong focus on the volunteers and the tourism industry but limited regard to the effect on communities and ‘beneficiaries.’ The current growth of the voluntourism industry has produced a wide range of services and companies offering volunteer projects but monitoring and regulation has not caught up with its growth. Apart from the lack of monitoring and regulation, there is very limited information on the real impact of voluntourism in communities, especially children.

The tourism industry blends a variety of layers – intersecting roles and purposes of stakeholders – and includes both public and private interests. Moreover, NGOs, charities, university-based programs, religious organizations, government agencies and private companies organize and sponsor voluntourism initiatives in all corners of the world. NGOs and local charities play a major role in this phenomenon as they often provide a wide range of activities and projects that enable the interaction of voluntourists and host communities. Some studies have researched and echoed the uneven power relations between local communities and tourism stakeholders due to the fact that stakeholders often have overlapping interests that go beyond social responsibility.⁴¹ This brief overview about the relevance, presence and ongoing interest on voluntourism shows a growing interest in knowing more about the hidden and yet to be revealed sides of this trend. However, it is necessary to further promote critical and evidence-based research around a topic that is likely to have repercussions on children’s rights.

2.3. Orphanage Voluntourism

Voluntourism can involve a wide variety of areas, themes and community focus. As previously stated, the term includes two basic elements: tourism and volunteer service. The volunteering aspect of voluntourism can focus on environmental, cultural, or humanitarian issues and can be translated to action in a variety of ways such as construction work, nature conservation, education, medical care and general children care. Specific activities and tasks vary according to the area, issue or means chosen.

Orphanage voluntourism is one of the more popular types of voluntourism where voluntourists seek to

euro.org/sig_volunteer.aspx#symposium

³⁸ The UNWTO has an open-ended network on Child Protection which aims to prevent all forms of child and youth exploitation in the tourism sector, including sexual exploitation, child labour and child trafficking. See UNWTO, *post on tourism and poverty alleviation*, <http://step.unwto.org/content/tourism-and-poverty-alleviation-1> (last visited 10 May 2017).

³⁹ See World Tourism Network on Child Protection, *Report of the 31th Meeting*, (2016), <http://cf.cdn.unwto.org/sites/all/files/docpdf/reportofthe31stmeetingoftheworldtourismnetworkonchildprotection22.pdf> (last visited 10 May 2017).

⁴⁰ See ABTA Volunteer Tourism Guidelines - ABTA, <https://abta.com/abta-shop/abta-volunteer-tourism-guidelines> (last visited 10 May 2017).

⁴¹ E.g. Miedema concludes that the benefits of township tourism are unevenly distributed based on global market forces that are not fair shared with local businesses. See P. Miedema, *The Dilemma of Fair Shares in Township Tourism – A Case Study from Port Elizabeth*, 3 Progress in Responsible Tourism, 4-15 (2015).

help orphans. The UN International Children's Emergency Fund (UNICEF) defines an 'orphan' as a child who has lost one or both parents. UNICEF has expressed its concern about the creation of orphanages that host children that are not orphans, in order to supply touristic demands.⁴² The growth of the voluntourism industry and the high demand for projects at orphanages have resulted in the exponential creation of new orphanages. Volunteering in orphanages is one of the more popular voluntourism projects; thus, a high number of orphanages are mostly foreign-founded and fuelled by donors.⁴³ It is common to immediately assume that children living in orphanages are orphans, but this is not always the case. Few, if any, ask questions regarding the child's family context or the possibility of other forms of care and support systems for vulnerable children and families.

After an extensive literature review, the link between orphanage voluntourism, institutionalization and trafficking and exploitation of children becomes clearer. The analysed literature and reports show that the main reason for orphanages to accept voluntourists is to gain financial aid and incentives. Scholars and some NGOs sustain that visiting and donating to residential care facilities build an incentive to create more orphans. Thus, financial opportunities appear to be the driving force for many profit-making agencies and orphanages that use children's images, stories and struggles to better sensitize and engage visitors and donors.

Scholars against institutionalization of children and those who have battled inter-country adoption have described orphans as "commodified objects for intervention"; they argue that orphans are "being manufactured to meet the demands of child rescuers".⁴⁴ Goodwin sustains that there is a wide variety of challenges in relation to child protection ranging from neglect and abuse to trafficking and exploitation. He states that unscrupulous orphanage owners have taken advantage of the noble motivation of tourists and, in one way or another, have encouraged child trafficking and abuse. Goodwin states that orphanage voluntourism "results in children being trafficked, removed from their families to become unnatural orphans".⁴⁵ Cheney, argues that those who are willing to pay to visit and help in orphanages need to consider a shift in approach and help build communities with families that are able to care for their own children.⁴⁶ Commodification of orphans appear to be a pattern in developing countries which contributes to unnecessary institutionalization of children due to a high demand of orphanages to be visited.⁴⁷ Along these lines, a recent article shows an Australian Senator, Linda Reynolds, campaigning against orphanage tourism due to the exploitative and harmful effects it has on children.⁴⁸

⁴² UNICEF, *Orphans*, https://www.unicef.org/media/media_45279.html (last visited 12 May 2017).

⁴³ Uganda called the NGO capital of the world with more than 50,000 children in residential care. Training changing lives of children in Uganda, *United for Children* (2014), <http://unitingforchildren.org/2014/06/changing-lives-in-uganda/> (last visited 12 May 2017).

⁴⁴ K. Cheney, *Cognitive Dissonance* (2015), *supra* note 10, at 2. See also K. Cheney & K. Smith, *Addicted to Orphans: How the Global Orphan Industrial complex Jeopardizes Local Child Protection Systems*, Springer Singapore 1–19 (2014). [Hereinafter K. Cheney, *Addicted to Orphans* (2015)]

⁴⁵ H. Goodwin, *Road to Hell* (2015), *supra* note 33, at 46.

⁴⁶ K. Cheney, *Cognitive Dissonance* (2015), *supra* note 10.

⁴⁷ E.g. Aljazeera's News, *Cambodia's Orphan Business*, *People and Power* (2012).

Available at: <http://www.aljazeera.com/programmes/peopleandpower/2012/05/201252243030438171.html> (last visited 12 May 2017).

⁴⁸ ABC News, *Child exploitation fears drive push to outlaw 'orphanage tourism'*. Available at: <http://mobile.abc.net.au/news/2017-07-02/exploited-cambodian-children-orphanage-tourism-trade/8668506?pfmredir=sm> (last visited 2 June 2017).

2.4. Who are the Primary Stakeholders?

2.4.1. Demand: Who are the Voluntourists?

The voluntourism industry demand volunteering projects abroad that can be incorporated within the voluntourists travels. Although this industry may include the general public of all ages and walks of life, this thesis will refer to young adults from 18 to 26 years old when talking about voluntourists. This is because young adults are the primary target of the voluntourism industry due to their willingness to explore and seek new ways of traveling. They also constitute the main targeted group by the independent travel or gap year tourism industries.⁴⁹

Some authors regard “voluntourists” as “people who invest their time, budgets, and manpower at a destination far from home to gain cultural, environmental, and spiritual experiences”.⁵⁰ In the case of orphanage voluntourism, they are expected to pay a fee in order to have access to the orphanage and interact with children. Orphanages appear to be the preferred way of volunteer service; moreover, they are used as touristic attractions by some tour operators.⁵¹

According to Goodwin, volunteers who want to make a difference create a demand for orphanages and ‘orphaned’ children.⁵² Statements have been repeatedly made by children’s rights organizations in the rising movement against unskilled volunteers and tourist visits at orphanages.⁵³ The interest from various touristic fronts together with the vast amount of information and pull from information channels directed towards young people encourage them to volunteer, thereby becoming the primary source of voluntourists who play a huge part in the growth of these industries. However, voluntourists are becoming more aware of the repercussion of their traveling choices and some find themselves uneasy when being part of volunteering programmes abroad due to the reality they have come to experience.

Travel often symbolizes social status; however, the travellers’ motivation is what ultimately defines the style of the trip and its subsequent meaning and impact. “At the core of voluntourism is the desire to help others” is the first example given to contextualize this term in Oxford Dictionary.⁵⁴ Altruism, travel and adventure, personal growth, cultural exchange and learning have been echoed in many studies as the common motivators to volunteer overseas.⁵⁵ Some altruistic motivations might not always be accurate as voluntourists are “typically more interested in fulfilling objectives relating to the self”.⁵⁶ The Internet allows voluntourists to document their travels and the projects they work on giving their audience

⁴⁹ See Hartman *et al.* (2014), *supra* note 4. See also Lyons *et al.* (2012), *supra* note 32.

⁵⁰ Chen & Chen (2011), *supra* note 9, at 436. See also S. Wearing (2001), *supra* note 32.

⁵¹ *E.g.* Tripadvisor, Things to do: Volunteer at an Orphanage. Available at: https://www.tripadvisor.com/AttractionProductDetail-g294207-d11468974-14_Day_Volunteer_Orphanage_Masai_Mara_And_Lake_Nakuru_Safari_from_Nairobi-Nairobi.html?t=293889 (last visited 30 June 2017). See also Tripadvisor, Things to do: Traditional Khmer Dance at ACODO Orphanage. Available at: https://www.tripadvisor.com/Attraction_Review-g297390-d1647060-Reviews-Traditional_Khmer_Dance_at_ACODO_Orphanage-Siem_Reap_Siem_Reap_Province.html (last visited 10 May 2017).

⁵² H. Goodwin, *Road to Hell* (2015), *supra* note 33.

⁵³ See Orphanages not the Solution at: <http://orphanages.no/>. See also Child Safe Movement at: <http://thinkchildsafe.org/>. See also NGN, Ethical Volunteering at: http://www.nextgenerationnepal.org/Ethical_Volunteering (last visited 16 May 2017). See also Better Care Network, Lumos and other initiatives.

⁵⁴ Oxford online dictionary. <https://en.oxforddictionaries.com/definition/voluntourism>

⁵⁵ See S. Wearing (2001), *supra* note 32. See also P. Mustonen, *Volunteer Tourism—Altruism or Mere Tourism?*, 18 *Anatolia* 97–115 (2007). See also S. Brown, and X. Lehto, *Travelling with a purpose: understanding the motives and benefits of volunteer vacations*. *Current Issues in Tourism*, 8(6), 479–496. (2005)

⁵⁶ Sin (2009), *supra* note 9, at 497.

and the general public a view of what they have been doing as volunteers.⁵⁷ Although there are many self-indulgent and shallow demonstrations of philanthropy, such as selfies on social media while “changing the world” aimed to gain social admiration and validation; young adults are slowly becoming more aware of the bigger picture due to the increasing critical approach around the topic.

Searching the Internet for stories about voluntourism experiences show that travelers usually regard their volunteering experience at orphanages as an achievement. However, more young adults have started to undertake a more critical view of the topic. For instance, “The Budgeteers” dedicated a video to explain why voluntourism can cause more harm than good after a fellow traveller voiced her concerns around the topic. In “What is Voluntourism?”, the channel starts by stressing the necessity of being aware of the issues in the community and the travelers duty to promote responsible travel, awareness raising being the starting point.⁵⁸

In 2012, three voluntourists raised their concerns about the time they spent in orphanages, its usefulness and the nature of the industry in an informal news interview. “[I]t is kind of a joke... it doesn’t really do as much” says one of the voluntourists in an attempt to explain the usefulness of their work and short contribution. Another voluntourist adds the challenge of creating a bond with the children and then having to leave them behind. The third volunteer raises an interesting point on the creation of educational dependency and the State’s role on this regard.⁵⁹ Voluntourists, in general, have become more critical as they observe first hand some inconsistencies between what they expected to do and the reality they face in the host destination, especially when working with children.

2.4.2. States: What is Their Role?

The obligations of States constitute an important aspect to be addressed because they have international legal obligations towards children. A detailed analysis will be conducted in Chapter Five about the States’ international obligations. States have a major role in enabling the structure where voluntourism manifests itself. It is the State who permits and supposedly regulates NGOs and other private entities to operate within their jurisdiction, oftentimes providing services falling within the State’s legal obligation to provide.

According to Cheney, charities’ child rescue narratives portray children in a position of needing saving by northern benefactors, which complements the paternalistic north-south relationship.⁶⁰ The global north and south dichotomy, is used by many scholars to connect *developed* versus *developing* countries.⁶¹ Indeed, international developmental aid is often blamed for creating dependency and sustaining stereotypes of the powerless poor and the benevolent saviours. The OVC illustrates developing and developed countries as the orphanage’s states and voluntourists’ states, respectively. Ultimately, this research seeks to clarify the States’ duties and obligations in relation to orphanage voluntourism and children according to international standards and will be further discussed in the succeeding chapters.

⁵⁷ Voluntourists usually share their stories on their YouTube channels, blogs or Facebook pages. Public blogs and channels as well as Facebook pages from the author’s circle has been used in order to show a grass-root level representation of this phenomenon. Only public online information will be disclosed on this thesis.

⁵⁸ Orphanage voluntourism experience in Cambodia followed by fundraising and donation to “worthy causes” along the way was the initial experience and approach to the topic, and later they show the broader pictures of what is voluntourism? See The Budgeteers YouTube Channel. https://youtu.be/sKKWu_quYOE (last visited May 10 2017).

⁵⁹ Al Jazeera English, YouTube Channel. <https://youtu.be/vv5Oq3XaN9s> (last visited May 10 2017).

⁶⁰ See K. Cheney, *Cognitive Dissonance* (2015), *supra* note 10.

⁶¹ The author has reviewed studies that focus on the failure of developmental aid and the narcissistic motivations of international volunteers. However, the analysis of those topics are not within the scope of this thesis, as it does not target developmental aid in general and it does not aim to critique the desires and motivations of voluntourists.

2.5. Concluding Remarks

The popularity of voluntourism is continuously growing and with it, the commercial interest and scholarly literature. Leisure and hospitality studies stress on the mutual beneficial aspects of voluntourism. Social sciences and humanities studies are rather critical and sceptical about the real impact of this phenomenon and how it perpetuates traditional relations of power.

At the international level, voluntourism has become an ever-increasing source of revenue and opportunities; however, international organizations that focus on tourism and its relation with voluntourism (UNWTO, ABTA, ATLAS) do not tackle this phenomenon directly. Hence, there is no comprehensive literature or agreed upon standards in relation to the voluntourism industry and its elements, and more importantly its real impact in communities.

Furthermore, there is not enough literature that supports the effectiveness of voluntourism in alleviating poverty and 'changing the world'. Cultural respect and human compassion are undoubtedly key factors to improve societies. However, the voluntourism industry often distort the realities in the host communities, at times contributing to its decline rather than in its improvement. It likewise encourages idealistic, young people to go out into the world without proper training, often making their contributions to the host community fleeting and unsustainable. Furthermore, research and voluntourists' experiences show that proclaiming voluntourism as a way *to make a difference and change the world* results in misleading expectations and gives rise to questionable philanthropic goals. On the surface, voluntourism is seen to offer people the opportunity to have authentic interactions with local communities while giving back to its people. By experiencing a completely new reality and socio-economic background, voluntourists enrich and broaden their world's view and learn to operate in multicultural settings. However, although most voluntourists recall their interaction with host communities as the best part of their experiences, their initial excitement to change the world and novel beliefs are replaced by powerlessness and, in many cases, guilt once they face the reality that their stay may not have a sustainable impact.

This chapter has shown the international relevance and presence of the voluntourism phenomenon. Moreover, the involvement of children in the industry was also described when referring to orphanages, voluntourism and the roles of the main stakeholders, the demand and states – main duty bearers.

3. International Standards of Protection

3.1. Introduction

This chapter will carefully describe the international standards of protection that apply to children living or at risk to be placed in institutional care, specifically when voluntourism activities take place in the orphanages. Institutionalization appears to be the traditional and accepted way of alternative care and is further strengthened by the constant cash flow that orphanage operators get from fee-paying volunteering projects.

The CRC - regarded as the “touchstone for children’s rights throughout the world”⁶² - will be the primary source of reference together with other relevant instruments that might apply. Several CRC provisions can be used to analyse orphanage voluntourism. However, Article 6 CRC will be the centre and primary consideration to lay the foundation for the discussion in Chapter Four. The discussion will revolve around the general and specific effects of orphanage voluntourism including the situation of children before and after the placement to the orphanage in relation to the protection of children.

This chapter aims merely to describe and establish the legal grounds for the analysis that will be performed in Chapters Four and Five. The structure of analysis of the later chapters will be based on the division made in this chapter: children as right holders and states as duty bearers, respectively.

3.2. Children as Rights Holders

Article 1 CRC defines a child as “every person below the age of eighteen years old, unless majority is attained earlier”; and Article 2 CRC entitles all children with the rights enshrined in the convention without any ground of discrimination. Furthermore, the CRC provides that children deprived of family environment are entitled to special measures of protection and assistance by the State, which applies to children living in orphanages.⁶³ Considering that the CRC is the fundamental document for children’s rights, its provisions, including the ones cited above, must be interpreted in a comprehensive and holistic manner and due to the principle of interdependency and indivisibility of all human rights, all rights enshrined for children are linked to the child’s development.⁶⁴

In order to answer the extent to which orphanage voluntourism affects children and their rights, recall the situation of Sophia and Thomas in the OVC and use their cases to better define and differentiate two sets of legal implications and, accordingly, set the framework of analysis. The two scenarios in the OVC refer to the circumstances that cause children to be placed in orphanages:

1st scenario: Legal placement of a child in an orphanage with special reference to the child’s rights when placed in institutional care (3.2.2)

Sophia is a 5 year-old girl who was placed in the orphanage after both her parents died. She has been living in the orphanage for over two years now and no procedure has been initiated to place her in another type of care, *i.e.* long-term, family-based care. She will likely live in the orphanage until she reaches 18 years old.⁶⁵

2nd scenario: Illegal placement of a child in an orphanage. Consider the right of a child to be protected from all forms of abuse and exploitative practices (3.2.3)

⁶² J. Fortin, *Children’s Rights and the Developing Law*, Second Edition, London: LexisNexis (2003), at 49.

⁶³ UN CRC (1989), *supra* note 11, article 20.

⁶⁴ J. Doek *et al.*, *The Rights of the Child in International Law: Rights of the Child in a Nutshell and in Context: All about Children’s Rights*. Bern, Stämpfli Publishers (2012), at 106. [*Hereinafter* J. Doek *et al.* (2012)]

⁶⁵ Refer to introductory OVC at chapter 1.3.2.

Thomas is a 7 year-old boy who was taken from his village and placed in the orphanage after agents induced his parents to believe that he will have a better future and education in Kathmandu. He has never seen or contacted his parents again.⁶⁶

3.2.1. Article 6 CRC: Right to Life, Survival and Development.

The CRC establishes the children's right to harmonious development in Article 6, a provision that is both a substantive right and a core principle underpinned in the whole Convention. This provision contains elements which constitute both civil and political rights – the right to life, as well as economic, social and cultural rights - the right to survival and development.⁶⁷ Therefore, its scope of protection is delimited also by the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR) and other relevant instruments.

The right to life, survival and development has been characterized as a “participatory process which ultimately shall lead to the full realization of all human rights and fundamental freedoms”.⁶⁸ On the one hand, the inherent right to life and the notion of dignity are at the centre of entitlement and protection of children's rights.⁶⁹ On the other hand, the concept of development is “associated to the developmental capacities of the child” and involves issues concerning health, education and family environment.⁷⁰ Moreover, the right to survival and development is governed by the progressive realisation principle which requires affirmative steps by the governments aiming for the full enjoyment of economic, social and cultural rights.⁷¹ As per the documentation on the *travaux préparatoires* of the CRC, States had to consider different sets of wording for Article 6, for instance “states must undertake to create within their available resources *psychosocial conditions* which will guarantee the full and healthy development of the child”.⁷²

After lengthy debates, the word “survival” was finally adopted and understood within the special contextual meaning used by the World Health Organization (WHO) and UNICEF;⁷³ which means that the children's survival and development right aims to ensure the full development of his or her personality, both from material and spiritual points of views.⁷⁴

It is worth mentioning that the interpretation of Article 6 CRC and Article 27 CRC which recognizes the right of every child “to a standard of living adequate for the child's physical, mental, spiritual, moral and social development” need to be harmonized. Placement of children in orphanages can be related with Article 27 CRC in the sense that families might be unable to provide the necessary means to care for their children leading to give their children up to institutional care. Likewise, once a child is in institutional care, there is still a need to ensure that the standard of living within that facility is adequate for the child's development. Indeed, the right to shelter and adequate housing is crucial to the enjoyment of children's rights but so is their right to physical, mental, spiritual, moral and social development.

⁶⁶ *Id.*

⁶⁷ CRC GC No. 5, *supra* note 16, para. 6.

⁶⁸ Alen *et al.*, *A Commentary on the United Nations Convention on the Rights of the Child. Article 6: The Right to Life, Survival and Development*. Leiden [Etc.], Nijhoff (2005), at 47. [*Hereinafter Alen et al., Article 6 (2005)*]

⁶⁹ J. Doek *et al.* (2012), *supra* note 64, at 101.

⁷⁰ *Id.*, at 104.

⁷¹ Specific reference to the principle of progressive realization. See UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, UN Doc. E/1991/23 (1990), paras. 1, 2, 9 & 10.

⁷² J. Doek *et al.* (2012), *supra* note 64, “emphasis added”.

⁷³ Survival refers to “growth monitoring, oral rehydration and disease control, breastfeeding, immunization, child spacing, food and female literacy”. See J. Doek *et al.*, *The United Nations Convention on the Rights of the Child: A Guide to the “Travaux Préparatoires”*, Dordrecht [Etc.], Nijhoff (1992). [*Hereinafter J. Doek et al. (1992)*]

⁷⁴ *Id.*, at 120.

Many CRC provisions establish the States' legal obligation to assist parents through social and financial assistance, child care facilities and services, and other support programs to prevent and respond to child neglect.⁷⁵ Vandenhole, when analysing children's rights and poverty, relates Article 6 and Article 27 CRC and argues that States have the obligation to assist parents when they are unable to provide the necessary living conditions for the child's development.⁷⁶

3.2.2. International Legal Framework on Institutionalization

The case of Sophia refers to the *legal* placement of children in orphanages. The legality of these placements refers to the non-use of coercion, fraud or any irregular removal of children from the care of their parents. In Sophia's case, she was a child with no living parent, thus proper steps to find her a suitable home must be taken.⁷⁷ The term *orphanage* commonly refers to an institution for care and education of orphans.⁷⁸ However, the use of institutional care has been heavily extended to non-orphans, most children being placed in orphanages because of violence at home, family disintegration and social and economic conditions, including poverty.⁷⁹ Institutional care is common throughout the entire world. In developed countries, the placement of children in institutions is often due to abuse and neglect; while in developing countries, it is due to social and economic reasons.⁸⁰ Although the damaging effects of institutional care have been widely recognized, placing children in orphanages is often the usual response to protect children "from harm and rescuing them from poor and inadequate parenting".⁸¹ Nine out of ten children in residential care are estimated to have one living parent.⁸²

For the purpose of clarity, the terms 'institutional care', 'residential care' and 'orphanages' will be used interchangeably when referring to *non-family based care settings as part of a child protection system of a state* (emphasis added) and refers to children within this setting whether orphans or not.⁸³

3.2.2.1. Article 6 in conjunction with Article 20 CRC

Article 20 CRC refers to the alternative care for children deprived of, or removed in their best interest from, their family environment. It refers to 'institutions for the care of children' as an example of non-family based care setting. There is no General Comment on Article 20 CRC or any other specific

⁷⁵ UN CRC (1989), *supra* note 11, articles 18, 19 & 27.

⁷⁶ W. Vandenhole, et al. *Why Care?: Children's Rights and Child Poverty*. Antwerp [Etc.], Intersentia (2010), at 27. [Hereinafter W. Vandenhole et al. (2010)]

⁷⁷ These thesis focuses in all children that live in orphanages, orphans and those who are placed in orphanages as a measure of protection.

⁷⁸ Oxford dictionary online, <https://en.oxforddictionaries.com/definition/orphanage> (last visited 30 June 2017).

⁷⁹ UNICEF, Implementation handbook for the Convention on the Rights of the Child: Fully Revised Third Edition, (2007), at 283. https://www.unicef.org/publications/index_43110.html (last visited 30 May 2017). [Hereinafter UNICEF Handbook (2007)]

"Poverty seems to be the main underlying factor for placing a child in institutional care, with single parents and parents with large unplanned families equally challenged by poverty and unable to cope" See K. Browne (2009), *infra* note 80, at 7.

⁸⁰ See K. Browne, *The risk of harm to young children in institutional care* (2009), at 3-5. Available at: http://www.kinnected.org.au/assets/resources/23.The_Risk_of_Harm.pdf (last visited 25 May, 2017). [Hereinafter K. Browne (2009)]

⁸¹ *Id.*, at 3.

⁸² *Id.*, at 21.

⁸³ Some authors consider that the term "orphanages" is an incorrect way of referring to institutional care for children. However, this thesis will not explore in detail the particularities and uses of these terms. See e.g. K. Browne (2009), *supra* note 80, at 2. See also e.g. Terre des Hommes and UNICEF, *Adopting, the rights of child: a study on intercountry adoption and its influence on child protection in Nepal*, (2008), at 5. Available at: <https://resourcecentre.savethechildren.net/node/1661/pdf/1661.pdf>. (last visited 19 May 2017).

guidance of interpretation by the CRC Committee. However, the UN Guidelines for the Alternative Care of Children (UN Guidelines), formally endorsed by the UN General Assembly in 2009, supplement the implementation of Article 20 CRC.⁸⁴ The UN Guidelines set out the appropriate use and conditions of alternative formal care for all persons under the age of eighteen years, thus it applies to children living in orphanages.⁸⁵

Article 6 and 20 CRC when read together with the UN Guidelines suggest that the placement of children in institutions should be a measure of last resort, after considering other family-based care options either within the extended family or kinship or foster care.⁸⁶ 'Suitable institutions' must be the last option for children and always for the shortest period of time; efforts should be directed to enable children to remain or return to their families.⁸⁷ If family reintegration is not possible or not in the best interest of the child; efforts should be directed to find a secure and stable solution in an alternative family-based setting.⁸⁸ The CRC Committee agrees with the idea that a family environment, in detriment of institutionalization of children, provides better opportunities for the harmonious development of the child.⁸⁹ Therefore, children are entitled to grow and develop in a family-like environment even when they are deprived from their own family. In addition, it can be inferred that children living in institutions have the right to be taken care of by trained professional, according to the UN Guidelines and UN CRC General Comment No 5 on measures of implementation.⁹⁰

Article 25 CRC also plays an important role in alternative care as it establishes the right of children to periodic review of all circumstances relevant to their placement in institutional care.⁹¹ All placements should be reviewed regularly and its States responsibility to regularly oversee the conditions of those placements.⁹² Article 20 read together with Article 25 are subject to the obligation of giving primary consideration to the child's best interest.⁹³

3.2.2.2. Article 6 in conjunction with Article 3 CRC

Article 3 CRC is a three-fold provision that must be interpreted and applied in a case-by-case basis.⁹⁴ This provision specifies that the best interest of the child must be a primary consideration in all decisions that concern children, especially when decisions of 'public or private social welfare institutions' take place. In this sense, children are "on behalf of whom and because of whom decisions must be taken and taken in a particular direction".⁹⁵

Article 3.1 CRC now reads 'a primary consideration' but during the draft process of the CRC there were

⁸⁴ UN General Assembly, *Guidelines for the Alternative Care of Children*, UN Doc. A/RES/64/142 (2010). [Hereinafter *UN Guidelines (2010)*]

⁸⁵ *Id.*, para. 27.

⁸⁶ *Id.*, para. 123.

⁸⁷ *Id.*

⁸⁸ *Id.* See also UNICEF Handbook (2007), *supra* note 79, at 282.

⁸⁹ CRC Committee, *Report on the fortieth session: Day of General discussion on Children Without Parental Care*, CRC/C/153, (2005), paras. 665. [Hereinafter *CRC Committee (2015)*]

⁹⁰ See UN Guidelines (2010), *supra* note 84, para 105, 107, 113-116. See also CRC GC No. 5, *supra* note 16, para. 53.

⁹¹ In the context of Orphanage voluntourism other CRC rights can be included such as: article 16 (right to privacy) and article 19 (protection from violence). See UN CRC (1989), *supra* note 11.

⁹² J. Doek *et al.* (2012), *supra* note 64, at 176.

⁹³ M. Freeman, *A Commentary on the United Nations Convention on the Rights of the Child, Article 3: The Best Interests of the Child*. Leiden, BRILL (2007), at 51. [Hereinafter *M. Freeman, Article 3 (2007)*]

⁹⁴ UNCRC General Comment No. 14, *On The Right of The Child to Have his or her Best Interests Taken as a Primary Consideration (art. 3, para. 1)*, UN Doc. CRC/C/GC/14 (2013), para 6. [Hereinafter *CRC GC No. 14*]

⁹⁵ M. Santos, *A Human Rights Conceptual Framework for UNICEF*, UNICEF International Child Development Center, Innocenti Essay No. 9 (1999), at 11.

discussions about replacing its wording with 'the' instead of 'a' and 'paramount' instead of 'primary'.⁹⁶ Moreover, suggestions were made on the inclusion of 'the' primary consideration when relating to the children's welfare but it was not included in the wording of Article 3.1 CRC as it refers to *all* actions concerning children. Thus, in order to avoid the subjectivity of the term and ensure an adequate interpretation of the article in other circumstances the final wording is "a primary consideration". Article 3.2 CRC further stresses on the consideration of the child's well-being when ensuring the protection and care of the child. In the context of orphanages, children have the right to have their best interest assessed and taken as a primary consideration when other interests are being considered⁹⁷

The best interest principle is a determining factor in two situations that are directly relevant to institutionalization of children: 1) according to Articles 9 and 20.1 CRC, the removal of children from their parents must be done in the best interest of the child, and 2) according to Article 21 CRC, long-term solutions must be considered and explored for children taken into alternative care, such as adoption.

The CRC Committee has expressed its concern about the systematic use of institutionalization and has emphasized the 'principle of individualization' when resourcing to placing children in non-family based care setting, such as orphanages.⁹⁸ Individual and tailored solutions for placement of children in institutions, taking the child's best interest as a primary consideration appears to be the CRC Committee standpoint when referring to long-term child development and institutions.⁹⁹ The UN Guidelines also stress the restricting recourse of residential care and on the consideration of the best interest principle when dealing with placement of children.¹⁰⁰

Likewise, following the UN Guidelines and Article 3.3 CRC, children have the right to be placed in a well-monitored institutional care, with competent and suitable care givers. The wording used regarding 'suitability of their staff' relates to "appropriate training and qualification of officials and personnel of child care institutions".¹⁰¹

3.2.3. International Legal Framework on Child Trafficking and Exploitation

The second scenario, that is, the case of Thomas, shows the illegal placement of children in orphanages. By contrast, the illegality of these placements refers to the use of coercion or irregular removal of children from the care of their parents. Following the principle of interdependency of all human rights, this section will deal with the protection of the dignity and life of children.

The CRC Preamble refers to inherent human dignity and the protection and harmonious development of the child and it further declares its inherent right to life and development. In analysing the case of Thomas, Article 6 CRC will be complemented by other CRC rights and provisions, as well as the UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC), ICCPR, and other relevant instruments to better determine the exploitative nature of orphanage voluntourism.

Article 6 CRC read together with Article 6 and 8 of the ICCPR protects the right to life and the right to be protected from slavery, slave trade, servitude and forced labour. Furthermore, children have the right to be free from slavery according to the 1926 Slavery Convention,¹⁰² the Universal Declaration of Human

⁹⁶ J. Doek *et al.* (1992), *supra* note 76, at 137.

⁹⁷ The wording "a primary consideration" suggests that the best interests of children are a consideration of first importance among other considerations. See CRC GC No. 14, *supra* note 94, at 6. See also M. Freeman, Article 3 (2007), *supra* note 93, at 61-63.

⁹⁸ CRC Committee (2015), *supra* note 89, paras. 665 and 667.

⁹⁹ *Id.*

¹⁰⁰ UN Guidelines (2010), *supra* note 84, para. 21.

¹⁰¹ J. Doek *et al.* (1992), *supra* note 76, at 140.

¹⁰² Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956).

Rights (UDHR, Article 4) and the ICCPR (Article 8.1).

3.2.3.1. Conceptual framework of trafficking, forced labour and modern slavery

Chapter Four will consider the potential issues regarding trafficking of children for the purpose of orphanage voluntourism together with the analysis of economic exploitation and slavery-like practices in orphanages. To achieve that, it is first necessary to elucidate on the definition of trafficking, forced labour and modern slavery.

Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (also known as the Palermo Protocol) set the internationally accepted legal definition of human trafficking, to wit:

[...] shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability [...] to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of [...] forced labour or slavery or practices similar to slavery.¹⁰³

The protection against forced labour and slavery are addressed in distinct international treaties.¹⁰⁴ However, the primary legal definitions of those forms of exploitation are as follows: Article 2 of the International Labour Organization (ILO) Forced Labour Convention, 1930 (ILO Convention No. 29)¹⁰⁵ defines forced labour as “[...] all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Moreover, the ILO establishes that forced Labour encompasses:

[t]raditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking.¹⁰⁶

Moreover, Article 1.1 of the Slavery Convention defines slavery as “the status or condition of a person over whom *any or all of the powers attaching to the right of ownership* are exercised”, and Article 1.2 defines slave trade as “all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him”.¹⁰⁷ In addition, Article 1.d of the Supplementary Convention on the Abolition of Slavery shows the relationship between children, slavery and exploitation and further extends this definition, to wit:

[a]ny institution or practice whereby a child or young person under the age of 18 years, is

¹⁰³ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, Palermo (2000) (Palermo Protocol).

¹⁰⁴ Such as Slavery Convention, ILO Conventions, ICCPR, amongst others.

¹⁰⁵ ILO, Forced Labour Convention (No. 29) (1930).

¹⁰⁶ ILO, *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization*, Report of the Committee of Experts on the Application of Conventions and Recommendations (2012), para. 272.

¹⁰⁷ The Rome Statute of the International Criminal Court in its article 7 (2) (c), defines “enslavement” as “the exercise of any or all of the powers attaching to the right of ownership over a person [...] and includes the exercise of such power in the course of trafficking in persons, in particular women and children”. See UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)* (1998).

“The question of what constitutes “powers attached to the right of ownership” is not settled although reference is generally made to acts such as purchasing, selling, lending or bartering a person or persons. There is some evidence of an evolution of the definition of slavery in international law but its core content remains intact.” See UNODC, *The concept of ‘exploitation’ in the trafficking in persons Protocol*, issue paper (2015), at 33. [Hereinafter UNODC (2015)]

delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.¹⁰⁸

Although there are distinct differences in the definitions of highlighted above, in reality, victims of forced labour and/or slavery often intersect two or more legal categories because they simultaneously experience both.¹⁰⁹ Further, there is an overlap between the use of the terms trafficking, forced labour and slavery. The above legal definition of trafficking suggests that the terms *slavery and forced labour* refer to the purpose of a trafficking act while *trafficking of human beings* is considered a *form of modern slavery* and considered to be one of the most egregious human rights violations of our time by the international community.¹¹⁰ This likewise applies to children, with no less than the Interpol explicitly mentioning children when referring to trafficking of women and children for sexual exploitation and commercial sexual exploitation of children in tourism, as types of modern slavery.¹¹¹ Implicit reference to children can be inferred when the Interpol links “trafficking for forced labour” to victims in general.¹¹² Likewise, the term modern slavery has been used to refer to child labour and child marriage.¹¹³ The ILO sheds light on the working and living conditions contrary to human dignity that encompasses forced labour.¹¹⁴

As seen in the legal definitions, the exploitative nature is a conceptual requirement in all of these practices. The UNODC asserts that “to exploit a person is to use a weakness in order to gain substantial control over the person's life or labour”.¹¹⁵ However, the term exploitation is commonly used as an umbrella term to unify harmful practices as there is no general definition of exploitation in international law, rather definition of practices identified as “exploitative”.¹¹⁶ With regards to children, the exploitative requirement also remains in the OPSC’s definition of *sale of children*.¹¹⁷ Even though sale and trafficking are both violations of children’s rights with the intent to exploit in both cases, not all forms of sale of children for the purpose of forced labour amount to trafficking.¹¹⁸ A report on sale of children for the purpose of forced labour has established that the key characteristic of trafficking is the transfer of the child for the purpose of exploitation, which may or may not involve sale.¹¹⁹

In order to avoid legal loopholes and protection gaps, in relation to the above definitions, the author refers to trafficking and exploitation of children within the context of Articles 35 and 32 CRC together

¹⁰⁸ Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), article 1.d.

¹⁰⁹ Global Report on Trafficking in Persons (2017), at 14-18. [*Hereinafter Report on Trafficking (2017)*] See also General Assembly, Seventy-first session, *Sale of children, child prostitution and child pornography Note by the Secretary-General, A/71/261* (2016), para. 23. [*Hereinafter UN General Assembly (2016)*]

¹¹⁰ *Id.* See also Commission on Human Rights, *Rights of the Child: Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos* (2001), para. 11.

¹¹¹ Trafficking of Human Beings, *Interpol Fact Sheet*, <https://www.interpol.int/Crime-areas/Trafficking-in-human-beings/Trafficking-in-human-beings> (last visited 1 June 2017).

¹¹² *Id.*

¹¹³ For the purposes of producing the 2017 Global Estimate of Modern Slavery, “modern slavery” is regarded as consisting of two components: forced labour and forced marriage. See ILO, *Baselines to Achieve SDG Target 8.7, Frequently Asked Questions*. Available at: http://www.ilo.org/global/topics/forced-labour/news/WCMS_547304/lang--en/index.htm (last visited 6 June 2017). See also *Report on Trafficking (2017)*, *supra* note 109, at 16.

¹¹⁴ ILO, *What Is Forced Labour, Modern Slavery and Human Trafficking*. <http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm> (last visited 6 June 2017).

¹¹⁵ UNODC (2015), *supra* note 107, at 23.

¹¹⁶ *Id.*

¹¹⁷ UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2001), article 3. [*Hereinafter CRC OPSC (2001)*]. See also UNODC (2015), *supra* note 107, at 34.

¹¹⁸ UN General Assembly (2016), *supra* note 109, para. 23.

¹¹⁹ *Id.* See also CRC OPSC (2001), article 3.1(a)(i).

with ILO Conventions.¹²⁰ ILO Convention No. 182 requires ratifying states to take immediate, effective and time bound measures, including enacting penal sanctions, to implement the most abhorrent and unacceptable forms of child labour. Its Article 3 defines the worst forms of child labour as:

“(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour.
(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”

Modern slavery is not a formal legal term under international law either, yet it also serves as an umbrella term that incorporates other terms and criminalized activities.¹²¹ Subsequently, to achieve conceptual clarity, after reviewing qualitative literature this thesis understands the term *modern slavery* as practices that *restrict* freedom of movement, *control* of personal belongings and *lack of informed consent and full understanding* of the nature of the relationship between parties.¹²² The degree of the restrictions and control, as well as the personal circumstances of the enslaved person are crucial in the identification of slavery-like practices.¹²³

From the above conceptual framework, it can be concluded that modern slavery involves child trafficking and forced child labour and that trafficking is the modern slave trade. Furthermore, the author will analyse in Chapter Four if the orphanage voluntourism industry involves trafficking schemes and subjects children to exploitative practices such as child labour.

3.2.3.2. Article 6 in conjunction with Article 35 CRC

Children’s rights law aims to prohibit and abolish trafficking and child exploitation. On the one hand, Article 35 CRC refers explicitly to the prevention of abduction, sale and trafficking of children for any purpose and in any form. This article provides extra protection for children, as it refers to the main forms of abduction, sale and traffic of children related to sexual exploitation and abuse as seen in Article 34 CRC and economic exploitation in Article 32 CRC but it is wider in scope as it extends to 'all' action of abduction, sale or traffic 'for any purpose or in any form'.¹²⁴ Article 35 CRC protects children from both international and internal abduction and trafficking.

3.2.3.3. Article 6 in conjunction with Article 32 CRC

On the other hand, economic exploitation and forced begging constitute violation of Article 32 CRC. Specifically, this article refers to the right of children to be protected from economic exploitation and from performing any work that is likely to be harmful to the child's physical, mental or social development. Article 32 CRC offers protection towards works or processes that could damage the mind or learning capacities of children.¹²⁵ Moreover, States must consider “relevant provisions of other international instruments”. The most relevant instruments are the ILO Conventions and Recommendations, including in particular the ILO Convention No.182 which directly impacts on the effective implementation of articles

¹²⁰ ILO Convention No. 182 and ILO Convention No. 29.

¹²¹ N. Siller, ‘*Modern Slavery: Does International Law Distinguish between Slavery, Enslavement and Trafficking?*’, *Journal of International Criminal Justice* 14, 405-427 (2016).

¹²² Control and ownership are the common elements of slavery amongst all international standards concerning abolition of slavery. See also OHCHR, *Abolishing Slavery and its Contemporary Forms* (2002), para. 21. [Hereinafter OHCHR (2002)]

¹²³ *Id.*

¹²⁴ Article 34 CRC refers to sale and trafficking related to all forms of sexual exploitation or abuse. See UN CRC (1989), *supra* note 11. See also UNICEF Handbook (2007), *supra* note 79, at 531-542.

¹²⁵ Alen et al., *A Commentary on the United Nations Convention on the Rights of the Child. Article 32: Protection from Economic Exploitation*. Leiden [Etc.], Nijhoff (2012), at 25.

35 and 32 CRC. This Convention bans slavery-like practices such as forced labour or other work which harms the health, safety or morals of children. Thus, the eradication of child labour in economic sectors such as domestic servitude and slavery-like practices is based upon Article 32 CRC and ILO Convention No 182.¹²⁶

3.3. States as Duty Bearers

The State Parties to the CRC carry the responsibility and legal obligation to respect, protect and fulfil the rights of the child so that a child may fully realize all the rights enshrined in the CRC.¹²⁷ The CRC is legally binding to 196 States worldwide that have signed and ratified it, becoming the most ratified Convention in the world.¹²⁸

The CRC Preamble states that parties to the Convention have the obligation to establish special safeguards and care for children, including appropriate legal protection. By acquiescing to the Convention, States recognize the importance of international cooperation for improving the living conditions of children in every country. It can be inferred that States include children subjected to welfare and those living in orphanages when referring to children who need special protection for living in exceptionally difficult conditions.¹²⁹

In spite of the multi layered nature of voluntourism as a global phenomenon, this thesis argues that States are the stakeholders with the most authority and the means to intervene on the regulation and prevention of the harmful effects of orphanage voluntourism.

States are obliged to ensure the full realization of the rights enshrined in the Convention. Specifically, Article 4 CRC establishes the obligation of States to ensure that economic, social and cultural rights are realized to the maximum extent of their available resources. When read together with Article 3.3 CRC, States must set standards for, *inter alia*, the safety, health, suitability and number of staff of child care services and facilities.¹³⁰ The overlap in the responsibility of States and parents must be resolved based on the best interest of the child as “always a paramount importance”.¹³¹ States must interfere only if there are reasons to believe there are circumstances that will obstruct the realization of rights or will result to children’s rights violations.

3.3.1. Orphanages’ States

The obligations and duties of all State Parties to the CRC is sustained in Article 2 CRC, which requires States to ensure the full development of the rights enshrined in the Convention within the national jurisdiction. Therefore, the State where the orphanages are based must comply with all its obligations following the rights of children in the CRC. Specifically, in relation to orphanage voluntourism, States

¹²⁶ Moreover, the Special Rapporteur on contemporary forms of slavery relies on the 1926 Slavery Convention, 156 Supplementary Convention Slavery and ILO Convention No. 29 and the Abolition of Forced Labour Convention (1957) (No. 105) amongst others. See Human Rights Council, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Gulnara Shahinian*, UN Doc. A/HRC/9/20 (2008), paras. 29- 31. [*Special Rapporteur Slavery (2008)*]

¹²⁷ UN CRC (1989), *supra* note 11, preamble, article 1 and 2.

¹²⁸ 140 Signatories; 196 Parties to the CRC. UN, *UN Treaty Collection*, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (last visited 15 May 2017).

¹²⁹ The Declaration on Social and Legal Principles relating to the Protection and Welfare of Children is explicitly mentioned in the CRC Preamble. See UN CRC (1989), *supra* note 11.

¹³⁰ J. Doek *et al.* (2012), *supra* note 64, at 162.

¹³¹ *Id.*, at 163.

have the 'duty to provide' an adequate child protection system and the 'duty to protect' children from any form of trafficking and exploitation which will be further analysed in Chapter Five.

The UN Guidelines require States to respect two basic principles of alternative care for children, namely: necessity and suitability principle.¹³² In this regard, the UN guidelines set strict standards to be met by States in the development of functioning child protection systems. It also recognizes the constructive role of formal care when performed in an appropriate manner and in consideration of the best interest of the child.¹³³

3.3.2. Voluntourists' States

The obligation and duties to be complied by voluntourists' states are based on the CRC Preamble and Article 4, which establish international cooperation to better implement the CRC and improve the living conditions of children in every country.

Voluntourists' states have the obligation to cooperate in the prevention of egregious violations of human and children's rights. Trafficking, child forced labour and slavery are crimes prosecuted worldwide and set to be abolished in cooperation with the global community. Furthermore, the right to be free from slavery is a peremptory norm of international law which means that no derogation is allowed, e.g. Article 4.2 ICCPR, and creates *erga omnes* obligations on all states. Therefore, voluntourists' states have the 'duty to cooperate' in the abolishment of violations of children's rights and the 'duty to prevent' them to happen.

3.4. Concluding Remarks

This chapter has described the international standards of protection in relation to children and orphanage voluntourism.¹³⁴ Children are entitled to a set of rights aimed at ensuring and protecting their full and holistic development. Article 6 CRC is one of the core principles of the convention and it must be guaranteed taking into account the CRC as a whole together with other relevant legal instruments.

In the first OVC scenario, many children like Sophia are placed in institutional care such as orphanages as a consequence of death of both parents, abandonment and other legally accepted reasons. The relationship between Article 6 with Article 20 and 3 CRC becomes clearer when institutionalization is described as a measure of last resort within the alternative care system of a state, and its use must be considered taking into account the best interest of the child. As a general principle, States should not interfere with the family but may do so when done in the best interest of a child.

Taking into consideration the second scenario, children like Thomas who are taken from his family environment with promises of a better future and education need protection from abusive and exploitative practices. The linkage of unnecessary institutionalization of children like Thomas and trafficking practices that involve exploitative activities must be analysed in connection with the right to life, survival and development of children and the provisions that protect children from trafficking and economic exploitation.

The CRC, as the primary source for the rights of children, is a binding instrument to all the States who

¹³² UN Guidelines (2010), *supra* note 84, paras. 21, 67, 124, 132, 154 and 155. See also N. Cantwell *et al.*, *Moving Forward: Implementing the United Nations Guidelines for the Alternative Care of Children*, (2013), at 22-25. Available at: <http://strathprints.strath.ac.uk/id/eprint/43093> (last visited 21 May 2017).

¹³³ UN Guidelines (2010), *supra* note 84, paras. 21.

¹³⁴ See annex 2. Graphic 1 shows the international standards described in this chapter and it will establish the elements within the OVC before proceeding to the analysis of children's rights violations.

have signed and ratified it. Despite States' reservations and the lack of ratification of the US,¹³⁵ the CRC stands as the most comprehensive instrument to advance and promote children's rights worldwide. States have the duty to ensure that the rights of children are respected, protected and fulfilled. The CRC, together with other instruments, sets the legal obligations of States towards the fulfilment of the children's rights previously exposed. The distinction between orphanage and voluntourists' States is drawn to better identify and classify the responsibilities of these States.

Articles 6 and 3 CRC not only operate as a substantive and directly applicable right for children but also underline a fundamental, interpretative legal principle and rule of procedure in any decision that involves them.¹³⁶ States shall explain how the best interest of children has been respected and considered. It is also required that policies and individual decision assess the criteria and due weight given to children's best interest while weighed against other considerations.¹³⁷

Under Article 20 CRC, States have the duty to provide an appropriate set of alternative care measures, and they need to perform an individualized assessment of the child's best interest before removing the child from parental care.

Under Article 35 CRC, States shall take all appropriate national, bilateral and multilateral measures to prevent abduction, sale and trafficking of children. The OPSC reinforces the protection of Article 35 CRC as it provides for states to take measures to criminalize and prosecute all forms of sale of children. States shall in particular provide appropriate penalties or other sanctions to ensure the effective enforcement of Article 32 CRC, which ensures children protection against economic exploitation.

¹³⁵ The USA has signed the CRC but has not yet ratified it.

¹³⁶ CRC GC No. 14, *supra* note 94, para. 6.

¹³⁷ *Id.*

4. Children's Rights Violations

4.1. Introduction

Institutionalization has long been culturally accepted as a form of rescuing children with little regard to its effects on children. With time and further studies, however, its potential harmful effects are now recognized by a wide community of researchers and advocates, on the psychological, sociology and human rights arena.¹³⁸

This chapter aims to answer the first element of the research question, namely the extent to which orphanage voluntourism affects the rights of children. Following the conceptual framework and legal standards discussed in Chapter Three, the author will supplement these standards using reports and studies about institutionalization, trafficking and exploitation to better assess the children rights violations within the orphanage voluntourism industry.¹³⁹ First, the general harmful effects of institutionalization for the holistic development and best interest of children will be explained. Second, the specific children's rights implication will be displayed in light of international standards when there are exploitative practices surrounding the industry.

4.2. Institutional Care: General Harmful Effects

4.2.1. On the Child's Development

The CRC recognizes the value of the relationships of children with their parents and caregivers as an important aspect of the child's development.¹⁴⁰ Therefore, the placement of children in institutional care needs to be done in accordance with the right to optimal development of the child and the best interest principle. Security, continuous care and affection must be provided to children, especially those under the age of five, as children need to have the chance to "develop long-term attachments based on mutual trust and respect".¹⁴¹

In general, institutionalization raises many issues with respect to children's development.¹⁴² Studies

¹³⁸ See R. McCall & C. Groark, *Research on Institutionalized Children: Implications for International Child Welfare Practitioners and Policymakers*, American Psychological Association (2015). [Hereinafter R. McCall (2015)] See also European Commission Daphne Programme & Directorate-General Justice and Home Affairs, *De-Institutionalising and Transforming Children's Services A Guide To Good Practice* (2007). Available at: https://www.crin.org/en/docs/Deinstitutionalisation_Manual_-_Daphne_Prog_et_al.pdf (last visited 2 July 2017). See also C. Csáky, *Keeping Children Out of Harmful Institutions: Why We Should Be Investing in Family-Based Care*, Save the Children UK, 5 (2009). Available at:

http://www.savethechildren.org.uk/sites/default/files/docs/Keeping_Children_Out_of_Harmful_Institutions_Final_20.11.09_1.pdf (last visited 2 June 2017). [Hereinafter C. Csáky (2009)]

¹³⁹ E.g. Next Generation Nepal (NGN). NGN was officially founded as an international non-governmental organization (INGO) in the United States in 2006. Its mission is to prevent the trafficking of children into abusive children's homes and rebuilds family connections torn apart by traffickers. See NGN, *Mission & Vision*, http://www.nextgenerationnepal.org/How_We_Work (last visited 30 June 2017).

¹⁴⁰ See Article 5 CRC: states must respect the responsibilities, rights and duties not only of parents but also "where applicable [...] legal guardian or other persons legally responsible for the child". See also J. Todres, et al. *Human Rights in Children's Literature: Imagination and the Narrative of Law*. New York, Oxford University Press (2016), at 101. [Hereinafter J. Todres (2016)]

¹⁴¹ UNCRC General Comment No. 7, *Implementing child rights in early childhood*, UN Doc. CRC/ C/GC/7/Rev.1 (2005).

¹⁴² Browne suggests this is the main reason why there has been a decline in the use of institutional care in the English-speaking world. See K. Browne (2009), *supra* note 80, at 11-15. See also R. McCall (2015), *supra* note 138, at 12.

show that non family-based care settings, such as orphanages, induce children to psychological harm and deficits in their general development in comparison to children that have been placed in family-based care settings. There are four areas of concern when dealing with psychological harm associated with institutionalization: 1) effects on the formation of emotional attachments, 2) effects on social behaviour and interaction with others, 3) effects on intellect and language, and 4) effects on the development of the brain.¹⁴³ Orphanage voluntourism deprives children of qualitative and consistent care givers, making the children more prone to negative effects on their social, behavioural, emotional and cognitive development.¹⁴⁴ As seen in the introductory OVC, voluntourists are used to complement the general educational and care services provide for children, However, there are no requirements – on qualifications or length of stay - for those who aim to directly interact with children living in the orphanage.

Institutionalization, in general, does not provide a child-centred and personalized care for children. Lack of stimulation and attention is proved to create developmental deficits such as lower IQ and stunted growth.¹⁴⁵ The OVC shows the shortage of local and fixed primary caregivers within the orphanage as is usually the case in most orphanages. In the scenario, there were three fixed staff to manage a home with thirty children. Thus, it is unsurprising that they are unable to provide personalized care for each child, leaving the general care of children to the hands of untrained, unskilled and temporary voluntourists.¹⁴⁶ The author argues that orphanage voluntourism promotes unhealthy attachment of children with adults.¹⁴⁷ The major effects of the interaction of voluntourists and children – due to the vulnerability of children deprived of family environment and the lack of safeguards – are emotional trauma and attachment disorders.¹⁴⁸ These symptoms of psychological dysfunction have been related to the lack of reliable attachment of children who are constantly being separated from voluntourists that come and go, which further enhances their risk of emotional trauma.¹⁴⁹ The constant change of caregivers increases the frequency of children's experiences of loss and contributes to an unstable and stressful environment, especially with infants and toddlers.¹⁵⁰

Moreover, the dignity and integrity of children are in danger due to health risks within orphanages. Save the Children has pointed out cases of neglect caused by poor living conditions and substandard quality in institutional care such as “life-threateningly poor nutrition, hygiene and healthcare, lack of access to education, and a chronic lack of physical and emotional attention”.¹⁵¹ The author argues that orphanage voluntourism intensifies the health risks that children are exposed to in institutional care. On this matter, NGN has raised concerns of children living in “dangerously unhealthy and unsanitary conditions, some of them even starving or becoming seriously ill”.¹⁵² There have been many reported practices where orphanage owners deprive children of basic needs in order to “attract more and larger financial donations”.¹⁵³ Children are then intentionally neglected to create more opportunities for profit-making orphanages. Children become the object of neglect in order to fit the image of a poor child in need of

¹⁴³ See K. Browne (2009), *supra* note 80, at 11-15

¹⁴⁴ R. Johnson *et al.*, *Young children in institutional care at risk of harm*. Trauma Violence and Abuse, 7.1 (2006), at 1–26.

¹⁴⁵ R. McCall (2015), *supra* note 138, at 12. See also K. Browne (2009), *supra* note 80, at 11-15.

¹⁴⁶ E.g. C. Csáky (2009), *supra* note 138, at 12.

¹⁴⁷ NGN, *The Paradox* (2014), *supra* note 18, at 9.

¹⁴⁸ H. Goodwin, *Road to Hell* (2015), *supra* note 33, at 47-48

¹⁴⁹ ECPAT, *Challenges* (2015), *supra* note 14, at 11.

¹⁵⁰ R. McCall (2015), *supra* note 138, at 12.

¹⁵¹ C. Csáky (2009), *supra* note 138, at 12.

¹⁵² NGN, *The Paradox* (2014), *supra* note 18, at 15. See also NGN, *Next Generation Nepal assists in rescue of 18 children from squalor and neglect* (2013). Available at: http://www.nextgenerationnepal.org/Press_Releases (last visited 20 May 2017)

¹⁵³ Orphanages need poor looking children to meet donors' criteria. See NGN, *The Paradox* (2014), *supra* note 18, at 15.

help and donations. Neglect puts the health and lives of children at risk; leading to severe physical, mental and psychological damage which violates the right of children to survival and development and also their right to have an adequate standard of living as they are purposely left uncared without proper shelter, food and sanitation.¹⁵⁴

In addition, children living in orphanages do not have access to quality education as education in the orphanages are often provided by untrained voluntourists - many of them never having taught before - which damages the full development of children and their future opportunities and life options.¹⁵⁵

INSTITUTIONALIZATION

Psychological harm and deficits in general development in comparison to children that have been placed in family-based care settings. E.g. Lower IQ and stunted growth due to lack of stimulation and attention.

ORPHANAGE VOLUNTOURISM

OVC: Voluntourists are used to complement the general educational and care services.

No requirements or qualifications.

Short-term projects. No safeguards for children

PSYCHOLOGICAL & EMOTIONAL DEVELOPMENT

No child-centred and personalized care:

Impact on the perception and creation of bonds and attachments.

Constant separation from short-term voluntourists produces:

- No consistency of care-givers.
- Risks of emotional trauma and bonding abnormalities.
- Attachment disorders: emotional attachment and feelings of rejection.
- Psychological dysfunction due to lack of reliable attachments.

PHYSICAL DEVELOPMENT & HEALTH RISKS

Health risks due to neglect & poor quality standard:

"Life-threateningly poor nutrition, hygiene and health-care, lack of access to education, and a chronic lack of physical and emotional attention".

- Children used as profitable commodities for profit-making orphanages.
- Neglect in order to "attract more and larger financial donations".
- Purposely left uncared without proper shelter, food and sanitation.

4.2.2. On the Child's Best Interest

The CRC together with the UN Guidelines establish that institutionalization must be a measure of last resort and for the shortest period of time, and only when family-based care settings are considered inadequate and not the best interest of the child.¹⁵⁶ However, extreme poverty and a wrongful, most of the time misled, assumption that orphanages are in the best interest of children, leads desperate parents to give their children up to orphanages.¹⁵⁷ Moreover, the lack of adequate child-protection systems in

¹⁵⁴ *Id.* See also UN General Assembly, *Report of the independent expert for the United Nations study on violence against children*, UN Doc. A/61/299 (2006), paras. 57-58. [Hereinafter UN General Assembly (2006)] See also UNICEF Handbook (2007), *supra* note 79, at 285.

¹⁵⁵ ECPAT, *Challenges* (2015), *supra* note 14, at 11.

¹⁵⁶ See UN CRC (1989), *supra* note 11, article 20. See also UN Guidelines (2010), *supra* note 84, para. 14.

¹⁵⁷ E.g. Nepal. See NGN, *The Paradox* (2014), *supra* note 18, See also UN News Service, *Nepal: in earthquakes'*

impoverished countries promote turning to orphanages, whether public or private owned, as a common alternative care setting. According to international standards, once a child is placed in an institution, family reintegration or a long-term solution such as placement in family-like environments need to be explored.¹⁵⁸

The OVC illustrates the lack of procedures or the desire to initiate such procedures to place children in a different type of care, thus, children are likely to remain in institutional care as long as they are useful and needed for the financial gain of the orphanage or until they reach the age of majority. For this reason, the author argues that orphanage voluntourism increases the likelihood of permanent institutionalization of children within the orphanage voluntourism industry which violates the right of children to grow in a family-like environment thereby violating the principle of taking into consideration the best interest of the child.

Furthermore, institutionalization enables victimization of children, a fact recognized by the CRC Committee when dealing with violence against children.¹⁵⁹ Millions of children are victims of violence, all around the world either from one-time incidents or systematic violence.¹⁶⁰ However, when in orphanages, children are more likely to be subjected to violence, abuse and neglect.¹⁶¹ Children living in institutional care have higher risk of physical, verbal and sexual violence and abuse in comparison with children growing up in family-based care.¹⁶² Indeed, institutionalization puts children at high risk of violence under the hands of the staff for the purpose of disciplining children. UN General Secretary has reported the types of violence perpetrated against children, to wit:

Violence by institutional staff, for the purpose of “disciplining” children, includes beatings with hands, sticks and hoses, and hitting children’s heads against the wall, restraining children in cloth sacks, tethering them to furniture, locking them in freezing rooms for days at a time and leaving them to lie in their own excrement.¹⁶³

Save the Children has also reported that institutionalization leads to higher rates of “homelessness, aggression, difficulties finding employment, criminal activity, and depression leading to high rates of suicide”.¹⁶⁴ The CRC committee has shown concerns about the over representation of former institutional care children in the homeless population and all the risks of violence and abuse that it entails.¹⁶⁵ Moreover, reports on institutionalization have shown that loss of identity and family attachment, together with the new challenges and placement conditions of children impede psychological and emotional development and further intensify the vulnerability of children towards abuse and exploitation.¹⁶⁶ The author argues that those risks get amplified within the orphanage

wake, *UNICEF speeds up res prevent child trafficking* (2015), available at: <http://www.refworld.org/docid/558a9d094.html> (last visited 20 May 2017).

¹⁵⁸ UN Guidelines (2010), *supra* note 84, para. 21-22.

¹⁵⁹ See CRC Committee, Report on the twenty-fifth session: Day of General Discussion on “State Violence Against Children”, UN Doc. CRC/C/100 (2000), at 123, para. 668 (b)(c)(d). [*Hereinafter CRC Committee “State Violence Against Children” (2000)*] See also UN Handbook (2007), *supra* note 79, at 280.

¹⁶⁰ UN General Assembly (2006), *supra* note 154, paras. 53. See also J. Doek, *The CRC 20 years: An overview of some of the major achievements and remaining challenges*, Child Abuse & Neglect 33, 771–782 (2009), at 775.

¹⁶¹ *Id.* See also H. Goodwin, *Child Protection* (2015), *supra* note 10, at 54.

¹⁶² Several reported cases where orphanage’s managers abusing children in their care and also documented cases of orphanages voluntourists persecuted for sexually abusing children in Nepal. See NGN, *The Paradox* (2014), *supra* note 18, at 10.

Terre des homes and UNICEF. 2008. *Adopting the rights of the child*.

¹⁶³ UN General Assembly (2006), *supra* note 154, para. 56.

¹⁶⁴ Save the Children, Policy brief, *Institutional Care: The Last Resort* (2014). Available at: <http://www.thinkchildsafe.org/thinkbefore donating/wp-content/uploads/Institutional-Care-The-Last-Resort-Save-The-Children.pdf> (last visited 2 July 2017), at 3. [*Hereinafter Save the Children (2014)*]

¹⁶⁵ *Hungary CRC/C/HUN/ CO/2, paras. 31 and 33.*

¹⁶⁶ Orphanages have countless of reported child abuse, including in developed countries. See, e.g. *The Guardian*,

voluntourism industry due to easy access of children the creates opportunity to paedophilia and other abuses.¹⁶⁷ Studies have shown that orphanage voluntourism increases the risk of emotional and psychological abuse and physical exploitation from part of the orphanage owners and – in the some cases - the voluntourists themselves. Goodwin argues that for this reason volunteering in orphanages should be “completely discouraged”.¹⁶⁸

The best interest is not a determinate concept.¹⁶⁹ However, it is worth mentioning one of the many concepts as provided by Eekelaar:

[b]asic interest, for example to physical, emotional and intellectual care developmental interests, to enter adulthood as far a possible without disadvantage; autonomy interests, especially the freedom to choose a lifestyle of their own.¹⁷⁰

Following the above analysis and description, the author argues that institutionalization is rarely – and only in extreme circumstances - in the best interest of the child. Orphanage voluntourism perpetuates the long lasting harmful effects of institutionalization on children and overlooks the best interest principle. Allowing untrained voluntourists to directly interact with children and be in charge of providing care and education go against the children’s best interest principle and further amplifies the risks that children are subjected to within institutional care.

INSTITUTIONALIZATION

- Should be a measure of last resort and for the minimum period of time.
- Thorough assessment of the child’s best interests.
- Poverty should never be a justification for the removal of children from parental care.

ORPHANAGE VOLUNTOURISM

- Poverty reasons.
- Assumption that foreign-funded orphanages are in the best interest of children.

RIGHT TO FAMILY-LIKE ENVIRONMENT

- Children aged under three should be placed in family-based settings. Institutionalization not in the best interest of children.
- Family reintegration or long-term solutions are the desirable outcome.

- Lack of procedures to place children in a different type of care.
- Likelihood of permanent institutionalization.

DANGER OF VICTIMIZATION OF CHILDREN

- When in orphanages, children are more likely to be subjected to violence, abuse and neglect.
- Risk of violence by staff for the purpose of disciplining children.
- Leads to higher rates of homelessness.

- Easy access to children: opportunity to paedophilia and other abuses.
- Increases the vulnerability of children.
- Higher risk of emotional and psychological abuse and physical exploitation.

4.3. Exploitative Practices Within the Orphanage Voluntourism Industry: Specific Effects

More than 2,200 Australians reported abuse in orphanages or children’s homes, Press release (2017). Available at: <https://www.theguardian.com/australia-news/2017/mar/07/more-than-2200-child-abuse-survivors> (last visited 9 June 2017). See also BCN, Expert Paper (2016), *supra* note 10.

¹⁶⁷ H. Goodwin, Child Protection (2015), *supra* note 10, at 45.

¹⁶⁸ *Id.*, at 54.

¹⁶⁹ M. Freeman, Article 3 (2007), *supra* note 93, at 27.

¹⁷⁰ *Id.* See also J. Eekelaar, *The Importance of Thinking that Children Have Rights*, 6 International Journal of Law and the Family 230-231 (1992).

This section seeks to explore the exploitative practices within the orphanage voluntourism industry and its linkage with modern slavery. In relation to the conceptual framework showed in Chapter Three, a set of elements need to be characterized in order to elucidate the exploitative nature of the practices surrounding orphanage voluntourism and its specific implications on children's rights. First, it is necessary to identify whether the illegal placement of children in orphanages, with the purpose to supply and serve voluntourism projects can be considered trafficking and be protected by Article 35. Second, whether the treatment of children within the orphanage voluntourism industry is within the definition of forced labour or slavery-like practices and within the scope of Article 32 CRC.

4.3.1. Trafficking Schemes and Orphanage Voluntourism

The analysed literature shows that the main reason for orphanages in accepting volunteers is to gain financial aid and incentives. Save the Children and other NGOs sustain that visiting and donating to residential care facilitates builds an incentive to create more orphans. Orphanage voluntourism "provides a cash incentive to establish orphanages, orphanages need orphans; demand creates supply".¹⁷¹ Therefore, the growing trend of voluntourism has provoked the increase of orphanages' so-called *demand* for orphans.¹⁷²

It has been proven and recognized internationally that child traffickers take advantage of the vulnerability of poor families to recruit and further exploit children.¹⁷³ NGN has reported that child traffickers in Nepal are "entrepreneurs of a sort" which promise desperate parents that their children will be placed in foreign-funded orphanages. This is seen by many as a golden opportunity for the education and well-being of their children.¹⁷⁴ However, reported cases show that these children are used and abused through illegal inter-country adoption and sexual and economic exploitation, the most discussed and relevant forms of exploitation of children. Reports have also shown trafficking practices within the orphanage voluntourism industry, which involves supplying children to orphanages to enhance financial revenues from voluntourists and donors.¹⁷⁵ E.g. NGN has reported that in Nepal the vast majority of orphanages are located in touristic areas, 90% of them concentrated in only 5 out of the 75 provinces, making the relation of child trafficking and unnecessary institutionalization easier to be linked with economic gain from touristic areas.¹⁷⁶

As stated earlier, the legal definition of trafficking includes: an *act* to recruit, transport, transfer or receipt a person; by *means* of coercion, deception or abuse of vulnerability; for the *purpose* of *exploitation* e.g. forced labour or practices similar to slavery. As seen in the introductory OVC, orphanages owners turn to intermediaries or traffickers to find and recruit children.¹⁷⁷ Recruiters often use deception to "lure families into releasing a child".¹⁷⁸ Goodwin denounces the illegal removal of children from their family

¹⁷¹ Progress in Responsible Tourism, *Editorial*, 3 Prog. Responsible Tour. (2015), at 2.

¹⁷² ECPAT, Challenges (2015), *supra* note 14, at 11.

¹⁷³ *Id.*

¹⁷⁴ NGN, The Paradox (2014), *supra* note 147, at 6. See also D. Smolin, *Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnaping, and Stealing Children*, 52 Wayne L. Rev. 115-200 (2006), at 120- 121. [Hereinafter D. Smolin, *Child Laundering* (2006)].

¹⁷⁵ NGN, The Paradox (2014), *supra* note 18. See also ECPAT, Challenges (2015), *supra* note 14, at 11.

¹⁷⁶ NGN has reported that children are separated from their families and institutionalized with the only purpose of helping orphanage owners to make profit. NGN considers this as an act of human trafficking in accordance with USA trafficking victims protection act. See NGN, NGN, The Paradox (2014), *supra* note 18, Executive summary.

¹⁷⁷ Those who act as facilitators between children and those who exploit them, hence the intermediaries whose involvement is motivated by gain. See UN General Assembly (2016), *supra* note 109, para. 59.

¹⁷⁸ Some criteria and analysis used for sale of children for forced labour will be used and applied to intersect illicit practices within orphanages voluntourism. However, the argument presented on by the author of this thesis is not the comparison between orphanage voluntourism with sale of children but trafficking, as monetary exchange is not a characteristic of illegal placement of children in orphanages, reports suggest that families do not sale children as

environment to populate orphanages.¹⁷⁹ Once children are being illegally placed in orphanages they are used to solicit donation and entertain tourists e.g. with traditional dances.¹⁸⁰ Therefore, demand of voluntourism opportunities fuels the search of more children to be trafficked.¹⁸¹ From the analysed literature, only one official UN report refers to orphanage voluntourism as a system that leads “to the sale of children for the purpose of labour exploitation”.¹⁸² NGN and ECPAT’s reports have been cited as evidence to argue an industry that encourage child trafficking due to a fee-based volunteering demand.¹⁸³

4.3.1.1. Paper Orphans

The wide movement against inter-country adoption that resulted in many countries banning the practice due to corruption and trafficking of children in countries of origin is worth mentioning.¹⁸⁴ Paper orphans is a term that has appeared within the inter-country adoption sphere referring to children with false documents showing that both parents are deceased, thus, adoptable. NGN explains how traffickers in Nepal earn through trafficking and creation of paper orphans.¹⁸⁵ These children were illegally placed in orphanages with the purpose to be adopted overseas. The exposure of these activities got the attention of governments of developed countries resulting to the suspension of intercountry adoptions from Nepal in 2010 due to corruption, fraud and child trafficking.¹⁸⁶

NGN believes that due to restrictions on inter-country adoption, traffickers have *moved business* into orphanages funded by foreign donors and paying voluntourists, changing the industry and purpose of the illegal removal but maintaining child trafficking practices. Extreme poverty and bad living conditions of families in remote areas are used by traffickers to displace children from their family environment with promises of a better life and education in big cities.¹⁸⁷ However, those promises fade, in the best-case scenario by having educational teaching run by untrained voluntourists, or the worst-case scenario exploitation and abuse of children. Cheney, refers to an orphan crisis linked to a family and child protection crisis.¹⁸⁸ She argues, alongside of Smolin, that the orphan rescue discourse drives the creation of new orphanages along with the unnecessary institutionalization of children, child trafficking

a general practice. However, the sale can be made within the intermediary and the orphanage owners, overlapping sale and trafficking towards the placement of children in orphanages. See UN General Assembly (2016), *supra* note 109, para. 40, 41, 51-63.

¹⁷⁹ See H. Goodwin, *Child Protection* (2015), *supra* note 10, at 45. See also H. Goodwin, *Road to Hell* (2015), *supra* note 33, at 47.

¹⁸⁰ See also ABC News, *Child exploitation fears drive push to outlaw 'orphanage tourism'*. Available at: <http://mobile.abc.net.au/news/2017-07-02/exploited-cambodian-children-orphanage-tourism-trade/8668506?pfmredir=sm> (last visited 2 June 2017). See, e.g. Tripadvisor, *Things to do: Traditional Khmer Dance at ACODO Orphanage*. Available at: https://www.tripadvisor.com/Attraction_Review-g297390-d1647060-Reviews-Traditional_Khmer_Dance_at_ACODO_Orphanage-Siem_Reap_Siem_Reap_Province.html (last visited 30 May 2017).

¹⁸¹ H. Goodwin, *Road to Hell* (2015), *supra* note 33, at 47.

¹⁸² UN General Assembly (2016), *supra* note 109, para. 62.

¹⁸³ *Id.*

¹⁸⁴ E.g. D. Smolin, *Child Laundering as Exploitation: Applying Anti-Trafficking Norms to Intercountry Adoption Under the Coming Hague Regime*, 32 *Vt. L. Rev.* 1 (2007-2008). [*Hereinafter D. Smolin, Child Laundering as Exploitation (2008)*].

¹⁸⁵ NGN, *The Paradox* (2014), *supra* note 18.

¹⁸⁶ *Id.*, at 5.

¹⁸⁷ NGN, *The Paradox* (2014), *supra* note 18, at 4-6. See also ECPAT, *Challenges* (2015), *supra* note 14, at 11. See also UNICEF and trafficking due to natural disasters and poverty. See also H. Goodwin, *Road to Hell* (2015), *supra* note 33, at 47.

¹⁸⁸ K. Cheney, *Addicted to Orphans* (2015), *supra* note 44, at 6.

and manufacture of orphans for profit.¹⁸⁹ Smolin has studied abduction and trafficking of children in relation to intercountry adoption.¹⁹⁰ However, the main claim against the equivalence of intercountry adoption and trafficking is that adoption in itself is not a form of exploitation; therefore, insufficient to meet the legal definition of trafficking because the exploitative purpose is lacking. Van Doore, has recently studied the characterization of fraudulent removal of children from their families as child trafficking under international law where she used the comparison made between paper orphans and child trafficking to strengthen her arguments and conclusions.¹⁹¹

4.3.2. The Exploitative Nature of Orphanage Voluntourism

As illustrated in the OVC, the ongoing demand of orphanage voluntourism incentivize orphanage owners to expand in order to be able to host more volunteering programmes and voluntourists. Expansion requires more children and the likelihood of exploitative practices post-arrival of new children to the orphanages is high and imminent. The following analysis with regard to the treatment of children when placed in orphanages can affect both scenarios, Sophia and Thomas, regardless if the prior placements have been legal or illegal.

It has been reported that children living in orphanages are often used and abused for economic gain of the orphanages owners or managers.¹⁹² As illustrated in the OVC, children in orphanages like *Imagine* are often forced to beg for donations and attention of voluntourists. Thus, when children become beggars through the guardianship of the orphanage and are used for economic profit, the definition of forced labour and slavery-like practices apply. ILO defines begging as “a range of activities whereby an individual asks a stranger for money on the basis of being poor or needing charitable donations [...]”.¹⁹³ UNICEF has reported that in many developing countries children are sold into slavery:

[c]hildren are also used to beg, sometimes having been deliberately deformed. There is also evidence that exploiting children for the purposes of begging is undertaken as a mass commercial enterprise.¹⁹⁴

Children living in orphanages lose their freedom and the possibility to leave as a result of their vulnerability and the use of coercion. Moreover, children develop dependency to the orphanage, given the children’s limited agency and greater vulnerability.¹⁹⁵ The author concludes that these practices are within the scope of Article 32 CRC, therefore, the treatment that children are subjected to post arrival in orphanages like *Imagine* constitutes violation of the right to be protected from economic exploitation.

Therefore, the exploitative practices prior and post arrival of children to the orphanages, namely the recruitment of children to supply orphanages and the control and retention of children to use them as touristic attractions and forced labours – builds enough grounds for their categorization as child trafficking and slavery-like practices. In addition, the author argues that the treatment that children are subjected to within - or incentivized by - the orphanage voluntourism industry is within the scope of both Articles 32 and 35 CRC due to the nature of those practices. Moreover, the author further concludes

¹⁸⁹ *Id.*, at 9. See also D. Smolin, *Child Laundering* (2006), *supra* note 174, at 116.

¹⁹⁰ *Id.* See also D. Smolin, *Child Laundering as Exploitation* (2008), *supra* note 184.

¹⁹¹ K. van Doore, *Paper Orphans: Exploring Child Trafficking for the Purpose of Orphanages*, 24 *The International Journal of Children’s Rights* 378–407 (2016). [*Hereinafter K. van Doore (2016)*]

¹⁹² Special rapporteurs have paid special attention to causes and consequences of forced labour in general. However, the most contemporary forms of forced labour are extracted by private agents and more research on that area needs to be done. See Rapporteur Slavery (2008), *supra* note 126, paras. 15-16. See also NGN, *The Paradox* (2014), *supra* note 18. See also ECPAT, *Challenges* (2015), *supra* note 14. See also H. Goodwin, *Child Protection* (2015), *supra* note 10, at 45.

¹⁹³ UN General Assembly (2016), *supra* note 109, para. 40. See also ILO, *Working paper: A rapid assessment of bonded labour in domestic work and begging in Pakistan* (2004).

¹⁹⁴ UNICEF Handbook (2007), *supra* note 79, at 535.

¹⁹⁵ UN General Assembly (2016), *supra* note 109, para. 24.

that child trafficking schemes pre arrival of children in orphanages, the subsequent use of children as touristic attractions, children subjected to forced begging and the use and control of children to keep the orphanage cash flow do amount to the international stance and definition of modern slavery. After the analysis of legal literature together with the worst forms of forced labour and slavery-like practices that can potentially take place in orphanages, it can be concluded that orphanage voluntourism helps perpetuate child trafficking schemes and exploitative practices within the orphanages due to the monetary incentive that this industry entails.

Finally, it is worth mentioning a recent study that supports and strengthens the author's line of reasoning. Van Doore, has recently analysed the initial displacement of children into orphanages, where consent has been obtained on the basis of fraud and deception for the purpose to long-term institutionalization and whether this process can be classed as trafficking. Van Doore, argues that the children's orphanhood is commodified and used to keep them in an ongoing state of institutionalization. She argues that this type of institutionalization and the "act of 'selling time' with orphans through orphanage tourism programs, and the use of orphans' photographs and stories to elicit donations and sponsorship" are forms of exploitation.¹⁹⁶ Van Doore has also argued that the orphanage tourism effect on children "should be regarded as a form of exploitation and thus modern slavery".¹⁹⁷ Along these lines, Linda Reynolds, Australian Senator, agreed that orphanage tourism should be a category of modern slavery.¹⁹⁸

4.4. Concluding Remarks

The author concludes that orphanage voluntourism is not in the best interest of children as it increases children's vulnerabilities, amplifies the dangers and risks to their overall development and contributes to perpetuate egregious children's rights violations. The first element of the research question, namely the extent of the impact of orphanage voluntourism in children's rights, has been answered from two angles:

1. *General effects of orphanage voluntourism*

Deficits in the overall development of children are shown to be linked with long-term, poor institutional care. Studies reveal that the psychological, emotional and physical development of children are at risk when they are placed in institutional care for long periods of time, due to the lack of child-centred and personalized care. The author argues that the comings and goings of voluntourists in orphanages amplifies the developmental harmful effects of institutionalization. When orphanage voluntourism takes place, children are prompt to suffer psychological dysfunction and attachment disorders; and in many cases they also suffer neglect in order to attract more and larger financial contributions.

Institutionalization should be a measure of last resort and only for the shortest period of time. Keeping children in orphanages without the proper assessment of their best interests and without adequate safeguards constitute a violation of the children's right to a family environment and hinders their right to life, survival and development. Orphanage voluntourism often enhances the likelihood of permanent institutionalization of children and the dangers of violence and abuse within the orphanages. Thus, the author concludes that orphanage voluntourism intensifies the general known harmful effects of institutionalization on children.

¹⁹⁶ K. van Doore (2016), *supra* note 191. See also K. van Doore, *How does volunteering in an orphanage encourage modern slavery?* (2017). Available at: https://app.secure.griffith.edu.au/news/2017/03/03/how-does-volunteering-in-an-orphanage-encourage-modern-slavery/#_ftn2 (last visited 2 July 2017).

¹⁹⁷ *Id.*

¹⁹⁸ See also ABC News, *Child exploitation fears drive push to outlaw 'orphanage tourism'*. Available at: <http://mobile.abc.net.au/news/2017-07-02/exploited-cambodian-children-orphanage-tourism-trade/8668506?pfmredir=sm> (last visited 2 June 2017).

2. Specific effects of orphanage voluntourism

It has been shown that orphanages can be used as a space of exploitation, whether temporarily or permanently; and that the inappropriate and short term bonding experience promoted by orphanage voluntourism industry exposes children to greater exploitative risks.¹⁹⁹ Others risks, aside from paedophilia and sexual exploitation, are psychological damage, neglect, trafficking and forced child labour.²⁰⁰ Moreover, after an extensive literature review, it appears that exploitative practices that amount to modern slavery can be present and be experienced by children living in orphanages.

The author argues that within the orphanage voluntourism industry, children are being used for the economic interest of the profit-making orphanages. Fee-paying voluntourism incentivize the fraudulent removal and the use of children as commodities to supply volunteering projects. The vulnerability of children living in orphanages, given their lack of a protective environment, intensifies the dangers of abused and exploitation. It has been reported that exploitative practices within the orphanage voluntourism industry involve child trafficking schemes and forced labour. Trafficking is one of the most serious and urgent problems of our time and gathers the attention of the whole international community.²⁰¹ Forced labour activities exposes children to unlawful practices such as forced begging.²⁰² The exploitative nature of keeping children in orphanages as *objects* to be helped and touristic attraction showcases how orphanage voluntourism works in detriment to the children's right to life, survival and development.

Orphanage voluntourism industry, in many cases, contribute in perpetuating trafficking practices aimed at recruiting and transporting children to be placed in orphanages. Treatment that children are subjected to post arrival in the orphanage are within the legal definition of forced labour and slavery-like practices. Both child trafficking and economic exploitation fall within the scope of protection of Articles 32 and 35 CRC. Thus, the author concludes - *as specific effect* - that orphanage voluntourism helps perpetuate child trafficking schemes and exploitative practices due to the monetary incentive that this industry entails; therefore, it helps perpetuate modern slavery.

¹⁹⁹ H. Goodwin, *Child Protection* (2015), *supra* note 10, at 45, 46 and 49.

²⁰⁰ *Id.*, at 49. See also H. Goodwin, *Road to Hell* (2015), *supra* note 33, at 47.

²⁰¹ Report on Trafficking (2017), *supra* note 109. See also Commission on Human Rights, *Rights of the Child: Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calceñas-Santos* (2001), para. 11.

²⁰² When children are separated from their family environment, forced labour and bad living conditions can be particularly harmful. See UN General Assembly (2016), *supra* note 109, paras. 24 and 69.

OVC: Exploitative Practices



Pre - arrival

Children like Thomas become a tradeable commodity.

Sophia & Thomas
Both likely to suffer from specific exploitative practices when living in the orphanage.

Post - arrival



TRAFFICKING

Act:	Movement of children from parental care which involves their recruitment and transportation to supply orphanages.
Means:	Control through fraud, deception and abuse of vulnerability of families in remote poor areas.
Purpose:	Exploitation and use of children to gain financial revenues from fee-pay volunteering opportunities in orphanages. Subject children to forced labour, begging. Work which is likely to harm the health, safety or morals of children.

FORCED LABOUR

"[...] all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

BEGGING

"a range of activities whereby an individual asks a stranger for money on the basis of being poor or needing charitable donations [...]".

MODERN SLAVERY

- Forced begging and keeping children for economic profit of orphanages owners amount to slavery- like practices.
Children remain institutionalised in orphanages for profit purposes.
- The degree of the restrictions and control:
Children living in the orphanage have full dependency on it to survive.
Children cannot exercise their own agency.
- Personal circumstances of the slaved person:
Children living in orphanages are deprived of any sort of protective environment and are especially vulnerable to abuse and exploitation.
- Therefore:
Orphanage operators: slaveholders.
Children living in orphanages: slaves.

5. The Decisive Role of States: Duties and Obligations

5.1. Introduction

“[T]he orphan and the waif must be sheltered and succored” was the mandate of the 1924 Declaration of the Rights of the Child which continues to define the State’s obligations towards children deprived of family environment and alternative care arrangements.²⁰³ The CRC compels States to ensure the full enjoyment of children’s rights within national jurisdictions and declares, the international obligation to cooperate in advancing children’s rights globally.²⁰⁴ The States’ obligations and the implementation of the CRC must not be seen as a charitable process towards children, rather, a measure to allow children to fulfil their rights.²⁰⁵ According to Article 20 CRC, children deprived of family environment are entitled to special measures of protection and assistance from the State. It is the duty of all societies to meet the needs of children who cannot be cared by their parents.²⁰⁶

The scope of this study is limited to the effects that orphanage voluntourism in children’s rights and the states’ legal obligations to ensure the realization and implementation of the CRC rights and provisions, in a broad and holistic manner. This Chapter builds on the structure discussed in Chapter 3.2, namely orphanages and voluntourists’ States as duty bearers.

5.2. Orphanages’ States

5.2.1. Duty to Provide an Adequate Child Protection System

The recognition by the CRC of children deprived of family environment involves “special protection and assistance” which must be provided by the state when setting alternative care options.²⁰⁷ A thorough assessment on the children’s best interest and the necessity of institutional care placement must be done in light of the states’ obligation set out in the CRC and other relevant instruments.²⁰⁸ States must take all protective measures to ensure the child’s well-being, following the principle of subsidiarity and necessity.²⁰⁹ The specific obligations of orphanages’ states with regard to alternative care for children are discussed in the succeeding sections.

5.2.1.1. Right to Family-like Alternative Care Arrangements

The CRC Preamble emphasizes the importance of family as the natural environment for the growth and wellbeing of children. Family is at the centre of the children’s development and well-being and it roots, amongst others, the children’s identity.²¹⁰ The CRC establishes that children have the right to family relations unless it is proven not to be in their best interest.²¹¹ However, reports show that children

²⁰³ Geneva Declaration of the Rights of the Child (1924). See also J. Todres (2016), *supra* note 140, at 144.

²⁰⁴ CRC most ratified instrument in international law, ratified by 196 countries except by United States. See more S. Kilbourne, *The Wayward Americans- why the USA has not ratified the UN Convention on the Rights of the Child*, *Child and Family Law Quarterly*, 243-246 (1998).

²⁰⁵ UNCRC General Comment No. 5, *supra* note 16, para. 11.

²⁰⁶ UNICEF Handbook (2007), *supra* note 79, at 279.

²⁰⁷ J. Todres (2016), *supra* note 140, at 101.

²⁰⁸ M. Freeman, Article 3 (2007), *supra* note 93, at 69.

²⁰⁹ J. Doek *et al.* (2012), *supra* note 64, at 105. See also UN Guidelines (2010), *supra* note 84, para. 67.

²¹⁰ Article 8 and 9 CRC protect the child’s right to family relations and it strengthens that “a child shall not be separated from his or her parents against their will”. See also J. Todres (2016), *supra* note 140, at 99.

²¹¹ Vandenhoe sustains that in cases of neglect, the state has an obligation to intervene and offer protection and care to children even though the primary responsibility to provide an adequate standard of living lays on parents.

isolated from their family environment are prone to deteriorated development due to emotional and intellectual atrophies.²¹² On this matter, the CRC Committee further recommends states to give priority to family-based care settings as they are more suitable for the developmental needs of children.²¹³ Community and family-based care settings can offer children affection, attention, personal identity and the social connection lacking in institutions.

According to international standards of protection, long-term family-like alternative care solutions must be a priority within the child protection system. The effects of institutionalization need to be regarded in light with the best interest principle, and always after consideration of other alternative options such as cared by extended family, foster or adoptive family and only if necessary, an appropriate institution should be considered.²¹⁴ The CRC suggests that states must refrain from institutional placement whenever possible.²¹⁵ Moreover, the UN Guidelines stipulate that in accordance “with the predominant view of experts”, children under three years of age who require alternative care should be placed in family-based settings, excluding all types of residential care. For children under three years old, institutional placement is deemed as the worst solution for children without parental care.²¹⁶

Therefore, States must development and implement a comprehensive policy to protect children and their family environment. States must ensure material support and benefits towards families. Whenever the right to be cared by one’s parents is not reasonably feasible or in the best interest of the child, States must respect the right to family-life alternative care arrangements.²¹⁷ Save the Children recognizes that supporting and strengthening families is one of the key measure to build national protection systems for children.²¹⁸ Family support and child protection are inherently linked and mutually reinforcing.²¹⁹ Child welfare depends on good family welfare, thus, family support must be a high priority for every State.²²⁰ Child-sensitive social protection measures must be a key strategic measure to be developed. The UN Guidelines stipulate that poverty should never be a justification for the removal of children from parental care.²²¹ Thus, States have the duty to support the families, with the necessary tools and resources on hand, in order to prevent separation of children from their parents due to poverty reasons.²²²

Communities also have an important role in the development of children and in strengthening family and child care. As pointed out by Guttentag,²²³ the negative impacts associated with voluntourism can likely

Vandenhole also points out the nature of the primary obligation of parents helps prevent excessive states intervention. See W. Vandenhole et al. (2010), *supra* note 78. See also UN CRC (1989), *supra* note 11, article 3.2, 9 & 19.

²¹² UN General Assembly (2016), *supra* note 109, para. 70.

²¹³ CRC Committee “State Violence Against Children” (2000), *supra* note 159, paras. 688.22 and 688.24.

²¹⁴ UN General Assembly, *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally*, UN Doc. A/RES/41/85 (1987), article 4. Available at: <http://www.refworld.org/docid/5290a1cf4.html> (last visited 30 May 2017).

²¹⁵ J. Doek et al. (2012), *supra* note 64, at 177.

²¹⁶ *Id.*

²¹⁷ The CRC protects family life in a holistic manner, throughout all provisions of the Convention, especial consideration in articles 8, 9, 16 and 18 CRC. See UN CRC (1989), *supra* note 11. See also J. Todres (2016), *supra* note 140, at 101.

²¹⁸ Save the Children, *Strengthening families. Save the Children programs in support of child care and parenting policies* (2012), at 14-15.

²¹⁹ *Id.*

²²⁰ Article 1, 2 and 3 of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children. This Declaration is referred by the CRC preamble. See UN CRC (1989), *supra* note 11.

²²¹ UN Guidelines (2010), *supra* note 84, para. 15.

²²² CRC Committee (2015), *supra* note 89, para. 658. See also Save the Children (2014), *supra* note 164, at 3.

²²³ D. Guttentag, *The Possible Negative Effects of Volunteer Tourism*, Int. J. Tourism Res. 11, 537-551 (2009), at 548.

be mitigated when projects are properly planned and managed, for instance, by matching volunteer's skills with the needs of the community. It is relevant to include the community in the creation and development of alternative care options. Even when other alternative care options, such as community and family-based care are not yet established, institutional care must not be a long-term solution. The financial difficulties of countries must never constitute a reason to a failed child protection system considering that studies have shown that the costs of community and family-based care alternatives are even lower than those of institutional care.²²⁴

As seen in the introductory OVC, the State and the orphanage do not put enough effort to establish alternatives to institutionalization, thus, the 30 children living in the orphanage are likely to remain in institutional care in detriment of long-term family-based care settings due to the profit-making nature of the orphanage. As seen in Chapter 4.2, the general harmful effects of institutionalization are intensified by the inclusion of volunteering projects within orphanages as well as the retention and commodification of children when the orphanage employs exploitative practices. It can be inferred that orphanage voluntourism normalizes and perpetuates institutionalization of children, instead of pushing States to establish and develop family-based care settings.

The author argues that States must tackle institutionalization of children, in general, and the orphanage voluntourism phenomenon, in particular, in order to prevent permanent institutionalization of children in detriment of long-term family-based alternative care.

5.2.1.2. *Right to be Cared for by Well-trained Staff*

Following the UN Guidelines and Article 3.3 CRC, children have the right to be placed in a well-monitored institutional care, with competent and suitable caregivers. The phrase "suitability of their staff" relates to "appropriate training and qualification of officials and personnel of child care institutions".²²⁵ States have the obligation to provide child care institutions with well-trained staff to meet children's needs and prevent abuse, neglect and violence.

The legal obligation in Article 3.3 CRC also applies to voluntourists in contact with children. As seen in the OVC, orphanages host untrained and short-term voluntourists to directly interact with children and contribute to their education and general welfare. Orphanage voluntourism rarely involve any kind of training and capacity-building of voluntourists resulting in sub-standard educational programs and inadequate care for children. Short-time volunteering projects do not allow voluntourists to match the need of children and contribute meaningfully to communities. Moreover, studies have cautioned about the lack of preparation and adequate implementation of volunteering projects at orphanages that fail to preserve the child's wellbeing.²²⁶ The author argues that the low requirements in terms of qualifications and time investment of voluntourists violates Article 3.3 CRC and the UN Guidelines.

5.2.1.3. *Minimum Standards, Regular Review and Monitoring*

Article 3.3 CRC also mentions the establishment of standards "particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision." Article 25 CRC entitles children to periodic review of all circumstances relevant to their placement in institutional care. These translate into the States' obligation to ensure periodic review of institutional placement, appropriate

²²⁴ E.g. "[a]n analysis of care provision in Romania, Ukraine, Moldova and Russia concluded that the cost-per-user for institutional care is six times more expensive than providing social services to vulnerable families." See C. Csáky (2009), *supra* note 138, at 12.

²²⁵ J. Doek *et al.* (1992), *supra* note 73, at 140.

²²⁶ ECPAT, *Challenges* (2015), *supra* note 14, at 10-11.

monitoring and inspection.²²⁷ The CRC Committee has shown deep concern on the harmful developmental impacts of children living in institutions and the high risk of violence within the alternative care system due to the lack of systematic monitoring of institutions.²²⁸ Thus, both public - and private-owned institutions must undergo systematic supervision and oversight to better control the standards of adequate protection and care for children.

The OVC shows lack of human and financial resources and lack of permanent supervision of voluntourists. Education, care and prevention of abuse cannot be assured. Furthermore, the lack of monitoring and background checks of voluntourists creates avenues for abuse and neglect of children.²²⁹ As seen in the OVC, volunteering projects exist mainly to increase the monetary contribution made by volunteers and constitute an incentive for institutions to keep children in a desperate and needy look.²³⁰ On this regard, a report on Ukraine's orphanages show the life-threatening dangers of inadequate institutional care and lack of adequate standards and monitoring mechanism. The report argues that international donors perpetuate the establishment and creation of abusive institutions.²³¹ Although the best interest of children trumps any other consideration when personal financial gain is involved, no adequate and periodic monitoring is performed in those orphanages.²³² For all the above, the author argues that State parties must establish a minimum set of standards to ensure the appropriate care and protection of children deprived of family environment. Budget and resources allocations need to be geared towards the protection and care of children deprived of a family environment.²³³ Those are required steps to enable the creation and development of adequate child protection systems.

5.2.2. Deinstitutionalization

There is no strict ban on the construction of new orphanages or institutions for care children. However, States are required to invest and support other forms of alternative care, aside from institutionalization. The UN guidelines suggest that States must take full account of complete deinstitutionalization objectives and strategies.²³⁴ Thus, States must create an adequate deinstitutionalization plans and in order to proceed to execute these plans, other alternative forms of care must be developed and promoted. The author argues that reforms in the current child care system of many countries must take place, including legal and policy changes, in order to stop the harmful effects of institutionalization and other children' rights violation. To begin with, the State should provide support services to families to gradually lessen the need for institutionalization and avoid the long lasting effects that it has on children's rights and well-being.

5.2.3. Duty to Protect from Trafficking and Exploitation

²²⁷ Special relevance article 25 CRC child who has been placed for care, protection or treatment "to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement". Institutions of care must also follow articles 2, 3, 12, 13, 14, 15, 16, 19, 32-37 CRC. See UN CRC (1989), *supra* note 11.

²²⁸ UN Handbook (2007), *supra* note 79, at 280. See also CRC Committee, Burundi, CRC/C/15/Add.133, para. 50.

²²⁹ Disability Rights International, *Report: No Way Home the Exploitation and Abuse of Children in Ukraine's Orphanages* (2015), at 39-43. Available at: <https://www.driadvocacy.org/wp-content/uploads/No-Way-Home-final2.pdf> (last visited 2 June 2017)

²³⁰ *Id.*, at 34-35.

²³¹ *Id.*, at 39-43.

²³² It has been shown that some institutions are run like businesses the best interests of the child come second to the interests of the institution. See Save the Children (2014), *supra* note 164.

²³³ UN CRC, Georgia, CRC/C/15/Add.124, para. 35

²³⁴ UN Guidelines (2010), *supra* note 84, para. 23.

The States' obligation to protect children from trafficking and economic exploitation is established in a long list of international human rights binding treaties. The OPSC is an instrument that provides detailed international norms for the adoption of measures that will assist in the implementation of Article 35 CRC. The safety net provided by Article 35 CRC helps ensure that children are protected from being abducted or procured for any purpose, including protection from economic exploitation.

Article 3.1 OPCS obliges States to:

“[e]nsure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis: (a) in the context of sale of children as defined in article 2: (i) offering, delivering or accepting, by whatever means, a child for the purpose of: [...] c. engagement of the child in forced labour”.²³⁵

Work that is detrimental in nature is unacceptable for children. ILO No. 182 focused on the worst forms of child labour and No. 138 on minimum age standards as a priority target, provide the basic framework for national and international action for the elimination of child labour. In addition, Article 1 and 3(a) of the ILO Convention No. 182 establishes that States must take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency including all forms of slavery or practices similar to slavery. However, the determination of each country is extremely important as a first step to clarify what is to be eliminated and to take concrete actions accordingly.²³⁶

Article 32.1 CRC provides that States must:

“[r]ecognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”.

Paragraph 2, further declares the obligation to take legislative, administrative, social and educational measures to ensure this protection. This provision together with Article 3.1 CRC compel States that in all actions concerning children, “the best interests of the child shall be a primary consideration”. Therefore, States must address all circumstances that expose children to abuse and exploitation by appropriate legislative, administrative, judicial and other positive measures.²³⁷ States have the obligation to proceed with due diligence,²³⁸ to actively prevent and respond to human rights violations such as slavery-like practices.²³⁹ Therefore, States must tackle the exploitative practices surrounding orphanage voluntourism. They need to develop an effective system to prevent orphanages to generate wealth as a result of voluntourism projects. Laws and policies should prevent activities that allow children to be commodified. Paying for volunteering at orphanages seems to involve a commercial and economic element that put children as commodities. Therefore, States must ensure that donations and fund are spend on children and do not promote financial gain as an incentive to child trafficking and must prevent the exposure of children to any exploitative practices.

²³⁵ CRC OPSC (2001), *supra* note 117, article 3.

²³⁶ Alen, et al. *The UN Children's Rights Convention: Theory Meets Practice: Proceedings of the International Interdisciplinary Conference on Children's Rights, 18-19 May 2006, Ghent, Belgium*. Antwerpen [Etc.], Intersentia (2007), at 273. [*Hereinafter Alen et al., Theory Meets Practice (2007)*]

²³⁷ The specific obligation of states to protect children from violence are under article 19, 32, 33, 34, 35 and 36 CRC. See also Alen et al., Article 6 (2005), *supra* note 68, at 35.

²³⁸ On due diligence: OHCHR, Commentary. *Recommended Principles and Guidelines on Human Rights Trafficking* (2010), at 77-78.

²³⁹ All individuals have the right to not be held in slavery and servitude under international human rights law. Article 4 UDHR, article 8.2 ICCPR.

5.2.4. Concluding Remarks

States have the obligation to develop an adequate child protection system following the international standards of child protection. Family-based alternative care settings must be developed and institutional care must always be a measure of last resort. Moreover, in order to avoid the risks of institutionalization states must set minimum standards for orphanages. States have the obligation to provide well trained staff and to establish adequate review mechanism and monitoring systems. Family support must be the priority within national protection systems and states must development family-based alternative care settings in order to active and proceed with effective deinstitutionalisation strategies.

States must build a strong legal system that prohibits illegal and exploitative practices. An effective monitoring system needs to be geared towards the prevention of child commodification, trafficking and exploitation.

5.3. Volontourists' States

5.3.1. Duty to Cooperate in the International Protection of Children's Rights

The CRC promotes international cooperation and assistance to achieve the effective realization of CRC rights and provisions, the needs of developing countries need to be taken into account. There is an obligation to contribute to the healthy development of children in other countries by means of international cooperation and assistance following the spirit of the CRC.²⁴⁰

Although voluntourists do not necessarily exploit or abuse the children themselves, many studies argue that they do contribute to the continuity of exploitative practices working similarly as other exploitative schemes that supply children to orphanages according to demand.²⁴¹ The demand for children who allegedly need help is considered a push factor in the exploitation of children.²⁴² Therefore, it is the duty of the voluntourists' states of nationality to cooperate in combating children's rights violations, even though the violations do not occur within their jurisdiction and are not always perpetuated by their citizens. The obligation and duties to be complied by voluntourists' states are based on the CRC Preamble and its Article 4, which establish international cooperation to better implement the CRC and improve the living conditions of children in every country.

States have the obligation to cooperate in the prevention of egregious violations of human and children's rights and the duty to prevent trafficking and help protect the dignity of trafficked children. Therefore, voluntourists' states have the *duty to cooperate* in the abolishment of children's rights violations and the *duty to prevent* them to happen. These duties involve tackling the demand – voluntourists – which leads to institutionalization and exploitation. As seen in the OVC, when an orphanage become popular amongst voluntourists, owners seek to expand and bring more poor children from villages to meet the demand for orphanage voluntourism and increase revenues.²⁴³ NGN has reported cases where orphanage managers have asked traffickers for more children; making foreign support an accomplice in the traffic and exploitation of children.²⁴⁴ Forced begging is a form of forced labour and amounts to a slavery-like practice.²⁴⁵ The prohibition against slavery-related practices is customary international law and has *jus cogens* status.²⁴⁶ The treatment endured by children at orphanages amounts to modern slavery, therefore, states should establish the urgency of this topic and set a stricter agenda to stop

²⁴⁰ Alen et al., Article 6 (2005), *supra* note 68, at 49.

²⁴¹ E. George & S. Smith, *Good Company: How Corporate Social Responsibility Can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery*, 46 N.Y.U. J. Int'l L. & Pol. 55 (2013-2014), at 69-71.

²⁴² UN General Assembly (2016), *supra* note 109, para. 57-62.

²⁴³ NGN, *The Paradox* (2014), *supra* note 18, at 15.

²⁴⁴ *Id.*

²⁴⁵ UN General Assembly (2016), *supra* note 109, para. 40.

²⁴⁶ OHCHR (2002), *supra* note 122, at 3.

orphanage voluntourism as an industry that helps perpetuate child trafficking and exploitation.

5.4. Measures Towards Orphanage Voluntourism's Harmful Effects

5.4.1. General States' Obligations

Most children living in orphanages are not orphans, however, due to poverty reasons families and states - with weak child protection systems - use institutionalization as a main choice. Thus, it is crucial to promote global initiatives to strengthen family support to end unnecessary institutionalization of children.²⁴⁷ On the one hand, orphanages' States must ensure the protection of children living in orphanages as they are entitled to fully enjoy all rights set forth in the CRC. On the other hand, voluntourists' States have the legal and moral obligation to cooperate, regulate and educate the voluntourists on these issues and how voluntourism contributes to perpetuate children's rights violation outside their jurisdiction.

States must systematically consider how children's rights and interests are or will be affected by orphanage voluntourism and they must further ensure by all means necessary to prevent children's rights violations. The government, parliament and judiciary must follow the CRC principles in the creation and effective implementation of the national child protection systems. National strategies must follow "a unifying, comprehensive and rights-based strategy rooted on the convention".²⁴⁸ Children that are in marginalized and disadvantaged groups, such as the case of children living in orphanages, must be the priority and they should be included in the development planning and national budgeting strategies.²⁴⁹ Moreover, States must enable political spaces to engage in public debate and analyse the orphanage voluntourism phenomenon from a children's rights perspective.

5.4.1.1. International Cooperation to Fight Poverty

International cooperation must be directed towards poverty elimination;²⁵⁰ and to the promotion of universal respect of children's rights.²⁵¹ Poverty creates specific and added vulnerability amongst children and although these children are in need of special attention and care, there is a thin line in practice to provoke a disproportionate placement of children into care.²⁵² Often parents decide to place children in orphanages due to extreme poverty and hopes and promises of a better future. It has been reported that poverty seems to be the main underlying factor for placing a child in institutional care.²⁵³ Orphanages seem to be their best alternative and the only choice of family support. In addition, poverty enhances children's vulnerability to child trafficking and exploitation.²⁵⁴ It is crucial that states ensure and develop policies and strategies to change this reality. The CRC Committee encourages States to receive international aid and assistance to allocate a substantive part of that aid to the implementation

²⁴⁷ Catholic Relief Services, *80-90 percent of children in orphanages are not orphans*, Press Release (2017) Available at: <http://www.crs.org/media-center/news-release/80-90-percent-children-orphanages-are-not-orphans>. See also Programme, *Changing the Way we Care*. <http://www.crs.org/our-work-overseas/program-areas/youth/changing-the-way-we-care>

²⁴⁸ CRC GC No. 5, *supra* note 16, para. 28.

²⁴⁹ *Id.*, paras. 30-31.

²⁵⁰ *Id.*, para. 60-62.

²⁵¹ UN CRC, General comment No. 19, *on public budgeting for the realization of children's rights (art. 4)*, CRC/C/GC/19 (2016), para. 35. [*Hereinafter* CRC GC No. 9]

²⁵² W. Vandenhoe *et al.* (2010), *supra* note 76, at 29. See also J. Doek *et al.* (2012), *supra* note 64, at 105.

²⁵³ See K. Browne (2009), *supra* note 80, at 7. See also W. Vandenhoe *et al.* (2010), *supra* note 76, at 28.

²⁵⁴ E. George & S. Smith, *Good Company: How Corporate Social Responsibility can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery*, 46 N.Y.U. J. Int'l L. & Pol. 55 (2013-2014), at 62.

and protection of children's rights.²⁵⁵

The eradication of poverty is a contemporary overarching goal that relates to the right to development in all societies. The CRC Committee encourages State efforts to reduce poverty in the most heavily indebted countries through the Poverty Reduction Strategy Paper (PRSP).²⁵⁶ Also, the new SDGs must be taken into account in the creation and development of country-led strategies. The UN Member States have committed to the SDGs goal 1, to eradicate extreme poverty. A human rights approach to poverty will help strengthen the state protect for children's rights and it will enable the shift from charity to rights.²⁵⁷

The author argues that in order to prevent new institutional placements due to poverty reasons, it is crucial to establish strong community-based services and family support, through better social services and benefits. States must promote that participation and empowerment of families and children towards changing power relations, combat social exclusion and eradicate poverty.

5.4.2. Specific Actions Towards Orphanage Voluntourism

Most children's rights violations require a response from the State because of their severe and long-lasting impact on children's development.²⁵⁸ When some States' functions, e.g. child protection, are delegated or outsourced to a private business or non-profit organization, States must continue to ensure that the rights of children are respected, protected and fulfilled by the business or organization.²⁵⁹ The CRC Committee declares that "inadequate oversight, inspection and monitoring of these bodies can result in serious violations of children's rights such as violence, exploitation and neglect".²⁶⁰ Even when services are provided by other entities, the CRC committee stresses that "States are not exempted from their obligations under the Convention".²⁶¹ Therefore, States have the legal obligation to closely monitor public and private entities, obligation that also applies to orphanage voluntourism industry and stakeholders.

The author argues that States must develop a comprehensive review of the national legal framework that apply to public - and private - owned orphanages. States must also create national frameworks with specific safeguards for children deprived of their family environment. A children's rights approach to orphanage voluntourism and its potential impact on children's rights need to be taken and considered when planning and implementing national child protection strategies.

States must also develop an adequate child-rights impact assessment within the orphanage voluntourism industry, and the results need to be considered in legislation and policy development. The impact assessment must be based on an interdisciplinary approach including input from civil society organizations, experts and children themselves together with all relevant states actors guided by country-specific studies. States must follow a child-centred approach within laws, policies and budget decisions and they must increase the visibility of both children and their rights.²⁶² Legislative actions need to be accompany with processes and plans of action.

States must also implement a comprehensive strategy to inform and educate all communities - children, parents, voluntourists, donors and institutions - about the potential risks of institutionalization and

²⁵⁵ UNCRC General Comment No. 5, *supra* note 16, para. 61.

²⁵⁶ *Id.*

²⁵⁷ W. Vandenhoe et al. (2010), *supra* note 76, at 29.

²⁵⁸ UN CRC, General Comment No. 16, *on State obligations regarding the impact of the business sector on children's rights*, UN Doc. CRC/C/GC/16 (2013).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

orphanage voluntourism. It is necessary to develop concrete national action plan and achieve real political commitment. In order to abolish exploitative practices surrounding orphanage voluntourism, efforts should be geared towards strengthening national responses and policies choices.²⁶³ Economic exploitation of children *is an undeniable issue of all countries*, therefore national legislative and policy frameworks need to be strengthened.²⁶⁴ Abolishment of child trafficking and child labour needs to be strengthened and mainstreamed into key development and human rights frameworks, such as the SDGs and poverty reduction strategies (PRSs).

Miller states that legal intervention needs to take the children's development into account by ensuring that policies and practices help create the ideal environment for children.²⁶⁵ Although her book deals with developmental policy - the use of law and its direct impact on the well-being of children - within the judiciary system, some of her conclusions can be extrapolated to explain how the law can impact the environment of children in other settings, such as alternative care. For instance, it is necessary to:

- Educate on the impact of laws on children and families. Promote interdisciplinary communication and educational efforts on the creation of adequate materials to educate public and private entities, voluntourists and donors, communities, parents and children themselves.²⁶⁶
- Promote opportunities for legal scholars, mental health care professionals and researchers to share their knowledge with each other and with policy makers.²⁶⁷
- Improve educational efforts to train voluntourists before they embark in any voluntourism project.

5.4.2.1. Investment on Data Collection and Research

The author argues that sufficient and reliable data on children are essential to the implementation of the CRC and the effective realization of children's rights.²⁶⁸ There is almost no data on the quality of care in family alternative environments in low-resource countries.²⁶⁹ Poor quality or lack of data "frustrates an accurate and transparent understanding and analysis of the state of children's rights at domestic level".²⁷⁰ Moreover, there is no data that directly assess the impact and effects of orphanage voluntourism on children; on this note, Goodwin states that the scale of the issues within voluntourism is currently under-estimated.²⁷¹ States have the specific obligation to properly manage their financial resources towards issues that directly or indirectly affect children within their jurisdiction.²⁷² Therefore, it is in the author's opinion that States must allocate investment and funding to conduct data collection, research and further disseminate findings for evidence based advocacy to fight the general and specific effects that orphanage voluntourism have on children's rights.

Investment in accurate data and topic-specific research will help to better assess the reality beneath the surface of the orphanage voluntourism industry. An academic evidence-based approach will serve as a strategy to support and inform policies and action plans. These will also contribute to the accomplishment of major international community goals such as: 1) the abolishing modern slavery and 2) getting closer to achieving the Sustainable Development Goals (SDGs), as follows:

²⁶³ Alen *et al.*, *Theory Meets Practice* (2007), *supra* note 236, at 286.

²⁶⁴ *Id.*, at 267-287.

²⁶⁵ M.K., Miller *et al.* *Psychology, Law, and the Wellbeing of Children*. New York, Oxford University Press (2014), at 15-16.

²⁶⁶ *Id.*, at 255-265.

²⁶⁷ *Id.*

²⁶⁸ UNCRC General Comment No. 5, *supra* note 16, para. 48.

²⁶⁹ R. McCall (2015), *supra* note 140.

²⁷⁰ Alen *et al.*, *Theory Meets Practice* (2007), *supra* note 236, at 69.

²⁷¹ H. Goodwin, *Child Protection* (2015), *supra* note 10, at 55.

²⁷² CRC GC No. 9, *supra* note 251, para. 10.

1. Abolishment of Modern Slavery: Child trafficking and child labour

All necessary measures need to be taken to bring about progressively and as soon as possible the complete abolition of practices similar to slavery; whether or not they are covered by Article 1 of the Slavery Convention. The act of inducing another person to place himself or a person dependent upon him into the servile status resulting from any of the institutions or practices mentioned in Article 1 (Article 6.2 Slavery Convention) need to be criminalized.

Measures:

- States must raise public awareness about the implications of orphanage voluntourism and children's rights.
- States must review of legislation and policies to strengthen the action plan to abolish trafficking schemes.

2. Accomplish the SDGs.

It is relevant to mention the SDGs; specifically goal 8.7, that compels states to:

Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.²⁷³

The indicator to be used to see the compliance of this goal is the "ratification and implementation of fundamental ILO labour standards and compliance in law and practice."²⁷⁴

5.5. Concluding Remarks

The author concludes that children's rights need to be protected and ensured by the international community. The second element of the research question, namely the extent of States' obligations towards the orphanage voluntourism, has been answered. Under the CRC and other relevant international standards, States are the main duty bearers towards the orphanage voluntourism and its repercussions to children's rights. The implementation of the CRC must be done in a comprehensive and holistic manner.²⁷⁵ On the one hand, orphanages' States have the duty to provide and develop an adequate child protection system and the duty to protect children from any form of trafficking and exploitation. On the other hand, voluntourists' States have the duty to cooperate in the implementation of the CRC and the duty to prevent children's rights violations.

States must recognize the urgency and relevance of the issues related to voluntourism and the violation of the human rights of children. States need to invest time, money and all efforts to strengthen their child protection systems and towards the development of an adequate children's rights assessment of orphanage voluntourism in order to foresee and prevent the rights violations seen in Chapter Four, safety and development of children must be paramount. When allowing voluntourists to interact closely with vulnerable children, these are prone to suffer unintended but preventable harmful consequences for their well-being and development. States must provide support to families unable to take care for their children and must develop policies and mechanism that promote the healthy and positive environment to ensure the harmonious development of the child.²⁷⁶ In order to respect the needs of children and ensure the full enjoyment of their rights under the CRC and other international standards, efforts should be made towards deinstitutionalization, meanwhile the use of alternatives to institutionalization - community and family-based care settings - shall be ensured and promoted.

²⁷³ UNSDSN, Indicators and a Monitoring Framework, *Launching a Data Revolutions for the Sustainable Development Goals*. Available at: <http://indicators.report/targets/8-7/> (last visited 6 June 2017).

²⁷⁴ *Id.*

²⁷⁵ Alen *et al.*, *Theory Meets Practice* (2007), *supra* note 236, at 42 & 74. See also CRC GC No. 5, *supra* note 16, para. 11.

²⁷⁶ J. Doek *et al.* (2012), *supra* note 64, at 105.

6. Conclusion

The voluntourism trend has focused on its financial implications, the services that it entails and the touristic stakeholders that make possible this form of alternative travel; rather than the real repercussions on the very communities voluntourism claims to help. The problem about this industry lies in the very little critical approach gathered from social and human rights advocates, highlighting the fact that this industry is underestimated and not seen as a threat to children's welfare. Hence, raising critical questions about the effects and the impact of voluntourism is crucial in the advancement of children's rights. The relation between voluntourism and children becomes obvious when focusing in orphanage voluntourism where children are the targeted beneficiaries or the *object* to be rescued.

Although voluntourism can have both positive and negative impact for local communities, this thesis focused on the harmful effects that orphanage voluntourism on children which have been proven to outweigh the allegedly and inconsistent positive impacts that this practice might entail for other stakeholders. Even though, this form of travel and volunteering service appears to be innocuous at first, society as a whole and the voluntourists themselves have started to question whether their contribution is effective, meaningful and well-directed. This constitutes a step forward into changing this potentially harmful phenomenon. As big private entities continue to communicate and portray orphanages voluntourism as an ideal way to improve the welfare of children, more drastic steps should be taken.

This thesis pursued to contribute to the critical debate around voluntourism, aiming to shed light on its specific implications on children's rights. The first three chapters served to lay the grounds for analysis and the basic elements to better understand the relevance of the topic and its relationship with children's rights. The introductory OVC illustrated an overview of potential issues within the orphanage voluntourism industry and has presented the shared traits and elements for further analysis. Chapter Two gave an overview of the current and ongoing voluntourism trend and its close relationship with children when volunteering projects in orphanages take place.

The consideration of children as rights holders and states as duty bearers is the foundation of this research, used by Chapter Three to set the international legal framework and further enable a child-centred legal analysis around orphanage voluntourism. The analysis is performed in Chapter Four and Five, which have tackled the two elements of the main research question, namely the extent to which orphanage voluntourism affects children's rights and what are the states' legal obligations towards this phenomenon. Chapter Four shows the general and specific effects of orphanage voluntourism, which has shown to increase children's vulnerabilities and contribute to perpetuate children's rights violations. Chapter Five has clarified the states duties and obligations towards children deprived of family environment and the potential steps to follow to better protect children living or at risk to be placed in orphanages.

On Institutionalization

While there are harmful effects arising from institutionalization of children, in some individualized cases, institutional care is in the best interest of the child. The problem begins when orphanages are overused and abused, disregarding case-by-case assessments and considerations of children. Orphanages voluntourism intensifies the problem when orphanages are transformed and childcare is considered a business, where children are the commodities. Mismanaged orphanages and irregular settings lead to negative impacts for children's rights and communities as a whole as it perpetuates the risks and vulnerability of these children.

According to Article 20 CRC, children deprived from their family environment have a special vulnerable status and they are entitled to special measures of protection and safeguards. The author argues that,

generally, institutional care is not in the best interest of children. Institutional care should only take place when the best interest of the child has been thoroughly assessed and when other alternative family-based care settings have been considered. The reason being that children living in institutional care have higher risk of psychological and emotional underdevelopment, trauma, abuse and neglect compared with children growing up in family-based care settings. Thus, institutionalization must not be used as a long-term solution for children due to its harmful effects for their upbringing and development. As seen in the OVC, children are likely to endure unnecessary and indefinite institutionalization as the relocation of children into family-based care settings does not constitute a priority for orphanages involved in the voluntourism industry. The author concludes that orphanage voluntourism perpetuates and intensifies the harmful effects of institutionalization due to the added vulnerability of children when interacting with sporadic fee paying voluntourists which violates, primarily, Articles 6 and 3 together with Article 20 CRC and the UN guidelines on Alternative Care of children.

On Trafficking and Exploitation

The increasing and ongoing demand for fee-paying volunteering projects at orphanages has become a profit-making opportunity for many orphanage owners and managers and has provoked the use of children as commodities. Many reported cases show that trafficking schemes take advantage of the vulnerability of poor families in order to recruit their children and supply them to orphanages, with the purpose to keep the financial revenues of ongoing voluntourists. As analysed in Chapter Four, the treatment that children are subjected to - pre and post arrival to orphanages - constitutes violations of their rights to be protected from any form of trafficking and economic exploitation.

The author argues that the existence of child trafficking schemes pre arrival of children to the orphanages and the subsequent retention of children with the purpose to economic exploitation - the use of children as touristic attractions and beggars - amount to the international definition of modern slavery. Thus, orphanage voluntourism helps perpetuate exploitative practices against children in breach of international standards of protection and rights enshrined in the CRC, ICCPR, OPSC, ILO conventions and others.

On Orphanage Voluntourism

The author argues that orphanage voluntourism is hazardous for the health and development of children, it further increases the children's vulnerability and enables children's rights violations. Moreover, it enhances the risk of abuse and neglect of children as there are not enough measures to prevent and protect children living or at risk to be placed in orphanages.

This thesis concludes that there is a linkage between unnecessary institutionalization leading to children's rights violations and the growth of the orphanage voluntourism industry. The author argues this industry overexposes children jeopardizing their dignity and safety. It amplifies the already harmful effects that children are exposed to when living in institutional care, having long lasting effects on the life of children. The author concludes that orphanage voluntourism should be discouraged and regulated by all appropriate means aiming to its complete abolishment no safeguards nor adequate assessments on the needs and interests of children take place.

6.1. A Possible Way Forward

Although there has been attempts to expand the research on the topic, little has been done from a children's rights perspective. As can be observed, international organizations and States do not tackle this phenomenon directly, the effects and dangers of orphanage voluntourism has only been found on NGOs reports.

States need to take appropriate measures to ensure the protection of children deprived of family environment. They must repair, reform and strengthen their child protection systems and further tackle the profit-making orphanages that involve exploitative practices against children. States must ensure access to family support for families living in poverty. Family welfare goes together with child welfare, therefore states need to strengthen their focus of attention and protection towards families.

One of the reasons why people start and fund orphanages is because they are not aware of the effects of such activities to the children in these orphanages that they seek to help. Thus, it is important to raise the awareness of the general public about the nature of orphanage voluntourism and how it can do more harm than good not to mention the harmful long-term effect they have on children. There is a need to simultaneously strengthen family-based care and social support. Voluntourists aid should be shifted and geared towards family and community based support systems.

Visibility of the issue will potentially gather social and political attention. By promoting a critical approach towards orphanages and the role of voluntourists, this issue can arise as urgent and relevant for all countries. Good intentions are not enough. It is crucial to raise awareness about the harmful practices and consequences that derive from orphanage voluntourism. Best practices need to be encouraged and disseminated. Sustainable voluntourism that do not focus on commercial gain but in the empowerment of local communities need to be promoted.

States must comply, in collaboration with civil society and other non-state actors, to their obligations as enshrined in the CRC. States must fulfil their duty to provide for an adequate child protection system considering their duties: duty to protect children from all forms of trafficking and exploitative practices; duty to cooperate in the prevention of children's rights violations within and outside national jurisdictions.

Setting minimum standards to be specifically applied to orphanage voluntourism and consistent monitoring need to be a priority for states as duty bearers. Although there have been attempts to self-regulate the tourism industry by international organizations and NGOs, it is crucial for States to step in and adopt binding documents to protect children within voluntourism practices. Application of policies and standards and effective enforcement need to take place to gradually abolish all types of exploitative practices of children. Orphanage voluntourism seems to be a hub that entangled other exploitative schemes, thus, by regulating this industry, States will be able to touch on other pressing issues as well.

States must take a strong stance on the topic, taking into account the harmful effects and repercussions that orphanage voluntourism has on children. The safety and protection of children living in orphanages must be the primary concern of any project directed to orphanages. However, it is hard to believe that a better industry recruitment and supervisory mechanisms of voluntourists will solve the root causes of child exploitation; for that, States need to invest their time, money and energies to strengthen their child protection systems. States must conduct a children's rights assessment to orphanage voluntourism and its potential impact on children's rights and legislation and policy development should follow the general and specific obligations of states towards the protection of children within states' jurisdiction and in all societies. Interdisciplinary approach to the issue and a child-centred strategy within laws, policies and budget decisions should aim to increase the visibility of both children and their rights. Specifically, it is crucial to invest in data collection and research to tackle the general and specific effects that orphanage voluntourism have on children.

Many voluntourists, if not all, actually care and have good intentions about contributing to the welfare of children. However, as most of the reviewed literature have pointed out good intentions are not enough. Voluntourists need to have accessible and updated information about the reality inside irregular orphanages and how they increase the vulnerability of children. They need to be aware about the risks of institutionalization and the extent of harm that orphanage voluntourism can cause children and their rights. They also need to find alternatives ways to help. States and voluntourists themselves need to switch their focus towards helping the development and empowerment of communities and families. Family support being the first and foremost important step towards protecting vulnerable children.

Annex 1

Image 1: Real offer to volunteer in an orphanage in Ghana.

General Care Projects	
	Ghana Care Management Plan 
PLACEMENT LOCATIONS:	Accra, Akuapem Hills, Cape Coast
TYPES OF CARE PROJECTS:	Care centers, orphanages, special needs schools
AGE OF CHILDREN:	0 - 14
NUMBER OF PEOPLE CARED FOR:	Varied
ROLE:	Volunteers work on achieving the goals set out in the Care Management Plan, including running educational games and group activities, providing emotional support, and helping improve hygiene practices.
REQUIREMENTS:	None
ACCOMMODATION:	Host families
LENGTH OF PLACEMENT:	From 1 week
START DATES:	Flexible

Ghana is a fantastic place to spend time volunteering abroad with children in orphanages and day care centers. Ghana in West Africa is a country of rich natural resources and ancient traditions. However, an ever-growing disparity between rich and poor has resulted in a large percentage of the population still living in poverty. Poor health and sanitation have contributed to the low life expectancy and high infant mortality rates. Problems such as violent methods of discipline, child labor, and poor education means that childhood in Ghana can be a real struggle, which is why our volunteer Care projects are so important.



Volunteer care work in Ghana is an ideal way to get involved and help improve the welfare of the children. You can contribute toward this important development work during a gap year or career break, or as a worthwhile way to spend a vacation. Volunteers with qualifications and experience are welcome but you do not need to have either to volunteer. Energy, passion, and commitment to the work at hand are all that you need.

We have various different volunteer options for you in Ghana, working in both orphanages and day care centers. Most of the placements are based in the Akuapem Hills, but there are also Care placements available in Cape Coast and Accra. Volunteers can work with HIV and AIDS patients on our challenging [HIV/AIDS Project](#) as well.

Volunteering in an Orphanage in Ghana

Source: Project Abroad, [Volunteering in an Orphanage in Ghana](http://www.projects-abroad.org/volunteer-projects/care/general-care-projects/volunteer-ghana/): <http://www.projects-abroad.org/volunteer-projects/care/general-care-projects/volunteer-ghana/>

Image 2: Project Abroad's official prices to volunteer abroad in Care facilities and orphanages.

Care	MINIMUM STAY							Adjust Duration	Extra Week	In-Country Extensions per week
	1 Week	2 Weeks	3 Weeks	4 Weeks	5 Weeks	6 Weeks	7 Weeks			
General Care Projects										
Argentina	\$2,195	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Belize	n/a	\$2,990	\$3,335	\$3,680	\$4,025	\$4,370	\$4,715	\$5,060	\$345	\$420
Bolivia	n/a	\$2,315	\$2,610	\$2,905	\$3,200	\$3,495	\$3,790	\$4,085	\$295	\$345
Cambodia	n/a	\$2,215	\$2,460	\$2,705	\$2,950	\$3,195	\$3,440	\$3,685	\$245	\$295
China	n/a	n/a	\$2,985	\$3,280	\$3,575	\$3,870	\$4,165	\$4,460	\$295	\$345
Costa Rica	n/a	\$2,690	\$2,985	\$3,280	\$3,575	\$3,870	\$4,165	\$4,460	\$295	\$345
Ecuador	n/a	\$2,215	\$2,460	\$2,705	\$2,950	\$3,195	\$3,440	\$3,685	\$245	\$295
Ethiopia	n/a	\$2,315	\$2,610	\$2,905	\$3,200	\$3,495	\$3,790	\$4,085	\$295	\$345
Fiji	n/a	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Ghana PRICE RANGE	\$2,195	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Jamaica	\$2,645	\$2,990	\$3,335	\$3,680	\$4,025	\$4,370	\$4,715	\$5,060	\$345	\$420
Kenya*	n/a	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Madagascar	n/a	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Mexico	n/a	\$2,690	\$2,985	\$3,280	\$3,575	\$3,870	\$4,165	\$4,460	\$295	\$345
Monqolia	n/a	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Morocco	n/a	\$2,690	\$2,985	\$3,280	\$3,575	\$3,870	\$4,165	\$4,460	\$295	\$345
Myanmar	n/a	\$2,215	\$2,460	\$2,705	\$2,950	\$3,195	\$3,440	\$3,685	\$245	\$295
Nepal	\$1,720	\$1,915	\$2,110	\$2,305	\$2,500	\$2,695	\$2,890	\$3,085	\$195	\$245
Peru	n/a	\$2,315	\$2,610	\$2,905	\$3,200	\$3,495	\$3,790	\$4,085	\$295	\$345
Philippines	\$2,195	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Romania	n/a	\$2,990	\$3,335	\$3,680	\$4,025	\$4,370	\$4,715	\$5,060	\$345	\$420
Samoa	\$2,195	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Senegal	\$1,970	\$2,215	\$2,460	\$2,705	\$2,950	\$3,195	\$3,440	\$3,685	\$245	\$295
South Africa	n/a	\$2,990	\$3,335	\$3,680	\$4,025	\$4,370	\$4,715	\$5,060	\$345	\$420
Sri Lanka	n/a	\$2,215	\$2,460	\$2,705	\$2,950	\$3,195	\$3,440	\$3,685	\$245	\$295
Tanzania**	n/a	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Thailand	n/a	\$2,490	\$2,785	\$3,080	\$3,375	\$3,670	\$3,965	\$4,260	\$295	\$345
Togo	n/a	\$2,315	\$2,610	\$2,905	\$3,200	\$3,495	\$3,790	\$4,085	\$295	\$345
Vietnam	n/a	\$2,690	\$2,985	\$3,280	\$3,575	\$3,870	\$4,165	\$4,460	\$295	\$345

Source: Project Abroad, prices of volunteering abroad in Care Facilities: <http://www.projects-abroad.org/prices/#volunteer-and-intern-abroad-by-project-care>

Annex 2: Chapter 3, Graphic 1.

Chapter 3: INTERNATIONAL STANDARDS OF PROTECTION

3.1. Children: Rights Holders

On institutionalization:

O V C

<p>Article 6 CRC: Full and holistic development.</p> <p>Article 3 CRC: Individual and tailored solutions. Child's best interest as a primary consideration.</p> <p><i>Article 3.3 CRC: To be placed in a well-monitored institutional care, with competent and suitable care givers.</i></p> <p>Article 20 CRC: Access to appropriate alternative care system provided by the state (relation with article 25 CRC). <i>Complemented by the UN Guidelines.</i></p>	<p>Conditions of the placement:</p> <ul style="list-style-type: none"> • Three fixed staff + Untrained and inconsistent flow of voluntourists (Article 3.3 CRC) • Crowded rooms. Precarious and unsanitary placement conditions to better fit the stereotype of poor children in need of help (Article 3 CRC). • No intention to place the children in long-term family-based care settings (Article 20 CRC).
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On trafficking and exploitation:

O V C

<p>Article 35 CRC: Protection from any form of trafficking.</p> <p>Article 32 CRC: Protection from economic exploitation.</p>	<p>Pre-arrival to the orphanage:</p> <ul style="list-style-type: none"> • Trafficking schemes to recruit and provide the orphanage with more children. (Article 35 CR) <p>Post-arrival to the orphanage:</p> <ul style="list-style-type: none"> • Children are forced to beg on the streets to attract more donors and voluntourists, amongst other slavery-like practices (Article 32 CRC)
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3.2. States: Duty Bearers

Orphanages' states	Voluntourists' states
<p>Article 2 CRC: must ensure the fulfilment of all CRC right and provisions within the state's jurisdiction.</p>	<p>Preamble and Article 4 CRC: Duty to international cooperation to better implement the CRC and prevent children's rights violations worldwide.</p>

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