

Orphanage Trafficking and the Modern Slavery Act in Australia

Written by Kathryn (Kate) E. van Doore and Rebecca Nhep

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Recent estimates suggest that there are over 40 million victims of modern slavery in the world today. Modern Slavery is an umbrella term encompassing the offences of human trafficking, slavery, debt bondage, forced labour and other slavery-like practices. Due to the scale and the heinous nature of these crimes, a number of countries are strengthening measures to combat modern slavery, including through the introduction of Modern Slavery legislation. Following the lead of the United Kingdom, a parliamentary Inquiry into whether Australia should establish a Modern Slavery Act was held in 2017. One of the foci of the Inquiry was the issue of how Australia contributes to modern slavery through 'orphanage trafficking'. Australia is a key donor and volunteer sending country with respect to overseas orphanages, or residential care institutions. The Parliamentary Inquiry heard extensive evidence from non-government organisations and academics pertaining to Australia's potential involvement in orphanage trafficking through the charity, tourism, education and faith-based sectors. Australia is the first government to consider legislating for orphanage trafficking as a form of modern slavery.

Orphanage trafficking is where children are actively recruited into orphanages for the purpose of exploitation and profit. It has strong links to voluntourism (where people visit or volunteer in orphanages) and foreign aid funding emanating from donor countries such as Australia. Of the 8 million children living in orphanages globally, it is estimated that 80% have one or both parents alive that they could be raised by if supported appropriately (Csáky, 2009). Evidence suggests that where there is a demand for volunteering in orphanages, children are recruited from their families to fill those orphanages and pose as 'paper orphans' (van Doore, 2016).

What Is Orphanage Trafficking?

Orphanage trafficking is the active recruitment of children from vulnerable families into residential care institutions for the purpose of exploitation. Orphanage trafficking typically involves the false construction of a child's identity as an orphan, known as 'paper orphaning' (van Doore, 2016). This is achieved through falsifying documents including parental death or abandonment certificates or through fabricated 'orphanhood' narratives, which are espoused to foreign donors in order to legitimise a child's admission into institutional care. Once a child is constructed as an orphan and placed into care, the orphan narrative and associated notion of vulnerability is used to elicit the sympathy of tourists, volunteers and overseas donors to solicit funds. Orphanages are often established in popular tourist destinations for this reason (Reas, 2015). Once in the orphanage, children are often kept in poor conditions, malnourished and without proper healthcare or schooling in order to encourage donations and further funding from volunteers (Better Care Network, 2014). Other concerning activities are where children are made to perform traditional dances, sent out to beg for funds in bars at night, or to hand out flyers advertising their orphanage and told to beg for donations (UNICEF, 2011).

Like many forms of trafficking, a primary motivation driving orphanage trafficking is profit. In countries where orphanage trafficking takes place, orphanages have become a lucrative business due to the high levels of tourist, volunteer and foreign donor interest in assisting orphaned children. This has been widely termed the 'orphanage industry' (Cheney and Rotabi, 2015). Within the orphanage industry, orphanage tourism acts as the interface between the commodification of the child as a tourist attraction and object of voluntourism, and the commodification

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of the good intentions of tourists/volunteers (Guiney, 2017). The result is profit in the form of a fee for volunteer placement or one off or recurring donations. There have also been cases of charities in donor countries being established specifically to unwittingly support institutions engaging in orphanage trafficking (Nave and Forget Me Not, 2017).

The ongoing profitability of the orphanage industry is entirely dependent on harbouring a sufficient number of children in institutional care to meet the demands of orphanage tourism and foreign funding. With the decline in numbers of children who legitimately require residential care, orphanage trafficking acts as one of the means by which the deficit between supply of children and demand for orphanage tourism is met.

Orphanage Tourism as Exploitation

Orphanage tourism is the 'donation of money and goods, attending performances, or volunteering on a short-term basis at orphanages as part of one's holiday' (Guiney and Mostafanezhad, 2014). Orphanage tourism activities often comprise 'informal English practice, and can also include formal lessons, medical or other professional services, playing sports or games, participating in art or music activities or watching dance performances' (Carpenter, 2014). Orphanage tourism includes a wide range of activities, from short visits to orphanages to engage with the children; to structured activities held between tourists and orphans; to long term volunteer positions where tourists may stay onsite at the orphanage for a period of months. Research notes the frequency in which orphanage tourists are given free access to vulnerable children without any background checks or the orphanage having any connection or knowledge of the person apart from the potential of a donation (van Doore et al., 2016). There is often no enforcement of appropriate screening of volunteers and this can create havens for child sex offenders (Johnson, 2014).

Child protection experts state that the constant rotation of volunteer caregivers contributes to attachment disorders in children without primary caregivers (Richter and Norman, 2010). Those participating in orphanage tourism rarely have appropriate credentials to work with vulnerable children and whether the focus on play by rotating volunteers is of any worth to the long-term development of the children has not been established (Kathie, 2014). The presence of volunteers and visitors does not ameliorate the conditions that children in orphanages reside in but rather causes both cognitive and material detriment to the children. Where this occurs, children become the commodity in the orphanage tourism product (Reas, 2015).

The United Nations Guidelines for the Alternative Care of Children provide that institutional or residential care, where children reside in orphanages, residential care facilities, shelters and children's homes or villages, should be a last resort and only a temporary measure while community based care can be arranged. However, there has been an increased reliance on this form of care in many developing countries over the past two decades.

Links between orphanage tourism, the increased use of child institutionalisation and orphanage trafficking have been reported in Liberia (Chaitkin et al., 2017), Uganda (Among, 2015), Ghana (Frimpong-Manso, 2016), Nepal (Punaks and Feit, 2014), Guatemala (Familiar, 2010), Haiti (Mulheir and Cavanagh, 2016), Cambodia (UNICEF, 2011), Indonesia (Martin and Sudrajat, 2007), Botswana (Phelan, 2015) and South Africa (Richter and Norman, 2010) as well as many other countries (Better Care Network, 2014).

Orphanage Trafficking and Institutionalisation of children: Delineating the Issues

Orphanage trafficking is a form of modern slavery that has clear links to the orphanage industry and the broader issue of the inappropriate use of institutional care. However, it must be made clear that modern slavery is not synonymous with institutionalisation. Orphanage trafficking is a serious crime involving exploitation and, as with all forms of trafficking, must be addressed through criminal law mechanisms.

The prolific and inappropriate use of institutional care is a serious child welfare and protection issue involving the violation of a number of children's rights as outlined in the UN Convention on the Rights of the Child. Redress is achieved through reforming care systems and the deinstitutionalisation of broader child welfare services systems,

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including divestment strategies targeting foreign donor and volunteer sending countries and entities.

In practice, due to the interwoven nature of this issue, criminal law mechanisms designed to combat orphanage trafficking cannot be unlinked from child welfare and protection reform processes, including divestment strategies. Divestment is key to breaking the business model of orphanage trafficking as well as the strengthening of care and child protection systems that uphold children's rights and reduce their vulnerability to other forms of trafficking, exploitation or harm, including the harm caused by unnecessary institutionalisation.

Current Recognition of Orphanage Trafficking

Orphanage trafficking is an emerging issue within the trafficking sector and was formally recognised in the Nepal narrative of the 2017 Trafficking in Persons Report. The Nepal Country narrative specifically linked orphanage tourism and the trafficking of children into institutions – 'Under false promises of education and work opportunities, Nepali parents give their children to brokers who instead take them to frequently unregistered children's homes in urban locations, where they are forced to pretend to be orphans to garner donations from tourists and volunteers; some of the children are also forced to beg on the street' (United States of America Department of State, 2017).

The Global Slavery Index 2016 listed the practice of orphanage tourism in the Cambodian Country Report and referenced specific forms of exploitation that take place in residential care including forcing children to perform dances for tourists, perform farm work or distribute flyers in order to raise funds (Walkfree Foundation, 2016).

The Government of Sweden outlined the issue of orphanage trafficking and its direct links to orphanage tourism and volunteering in its 2016-2018 Action Plan to protect children from human trafficking, exploitation and sexual abuse. It stated that "The general public must also be informed of the existence of exploitation and human trafficking in children in connection with orphanage tourism and voluntary work in other countries, and how this can contribute to the increasing vulnerability of children" (Ministry of Health and Social Affairs, 2016). The Action Plan includes specific measures to prevent abuse and crimes against children in the context of orphanage tourism.

Finally, paper orphaning and orphanage trafficking was recently included as an 'emerging form of exploitation' in Modern Slavery Research: A Picture from the UK by the Office of the Independent Anti-Slavery Commissioner and the University of Nottingham's Rights Lab (Bales et al., 2017).

How Are Countries Involved?

Countries are impacted by orphanage trafficking in two different ways. Some countries are 'sending countries' – they send funding and volunteers to assist overseas residential care institutions. Sending countries are impacted by orphanage trafficking because the funding and volunteers they send create a demand for children to be trafficked into residential care institutions. This commodification of good intentions results in the exploitation of both donors and volunteers, as well as the child victims of orphanage trafficking.

Other countries are 'receiving countries' – these countries house the residential care institutions that receive funding and volunteers. Receiving countries are impacted by orphanage trafficking because children are trafficked from their families into residential care institutions to meet the demand that the funding and volunteers from the sending countries create.

Even where receiving countries attempt to reform their child protection systems to be less reliant on residential care, the funding and volunteers from sending countries can perpetuate the overuse of residential care operated by non-government organisations.

What Is Australia Doing about Orphanage Trafficking?

Australia is the first government in the world to consider orphanage trafficking as a form of modern slavery. The final report of the Modern Slavery Inquiry, 'Hidden in Plain Sight', made significant recommendations with respect to

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orphanage trafficking. The eleven recommendations advocated for awareness raising of the issue of orphanage trafficking, funding stream reforms, support for divestment and transition of organisation's involvement in residential care institutions, a mechanism to register organisations operating residential care institutions in accordance with the Convention on the Rights of the Child and United Nations Guidelines for the Alternative Care of Children, and the introduction of offences under the Modern Slavery Act. As an initial step, the Department of Foreign Affairs and Trade have launched a Smart Volunteering Campaign featuring the prevention of orphanage tourism.

On 28 June 2018, the Modern Slavery Bill was introduced into the Australian Parliament. The Bill has adopted a wide definition of modern slavery incorporating all practices criminalised under Division 270 and 271 of the Criminal Code 1995 (Cth), including human trafficking, slavery, slavery like practices, forced labour and forced marriage, trafficking offences falling under 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, and conduct falling under the worst forms of child labour, as defined in Article 3 of the 26 ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. Orphanage trafficking and the exploitation of children in orphanages was specifically mentioned in item 50 of the Explanatory Memorandum accompanying the Modern Slavery Bill. The definition of modern slavery provided in the Bill is broad enough to include orphanage trafficking. This means that should the Bill pass, companies which meet the reporting threshold will be required to report in their Modern Slavery Statements on how they have assessed and mitigated the risk of orphanage trafficking and child exploitation in orphanages in their supply chains. This will impact on large travel companies who still offer orphanage tourism products.

Like other forms of trafficking, orphanage trafficking requires a cooperative response between both sending and receiving countries. Australia's decision to include orphanage trafficking as a form of modern slavery will set a global precedent, not only for other countries looking to legislate against modern slavery, but also for countries with a high prevalence of children in institutional care. Australia's decision will have ramifications across the aid, tourism and charity sectors and will represent a watershed moment in how we conceptualise child protection in developing nations and recognise its intersections with trafficking and exploitation.

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About the author:

Kathryn (Kate) E. van Doore is an international children's rights lawyer and an academic at Griffith Law School, Australia. Kate currently researches the intersections of child rights, institutionalisation and human trafficking. Kate's work includes publishing the first legal argument under international law for the active recruitment of children from their biological families into orphanages to be regarded as a form of child trafficking. She is a co-founder of Forget Me Not Australia and Born to Belong Foundation, both international non-governmental organizations focused on child protection and family reunification for children residing outside of parental care; a Steering Group member of the Better Volunteering, Better Care Global Working Group; and a Steering Committee member of ReThink Orphanages Australia. Kate was the recipient of the 2017 Australian Anti-Slavery Freedom Award recognising her research contribution to the issue of orphanage trafficking.

Rebecca Nhep is the Joint CEO of ACCI Relief and Co-Chair of the ReThink Orphanages Australia. Rebecca has 17 years experience working in alternative care and care reform, and is responsible for ACCI Relief's care reform program, Kinected, which operates in 11 countries. Rebecca is on the executive of the Better Volunteering, Better Care, a global initiative addressing the issue of orphanage tourism. In 2016 Rebecca co-founded ReThink Orphanages, an Australia cross sector network which has taken a lead role in working with Government and members of Parliament to address orphanage trafficking and orphanage tourism through the proposed Modern Slavery Act and other recommended regulatory measures. Prior to her current role with ACCI Relief, Rebecca spent 11 years in Cambodia where she was also involved in establishing Children in Families, a Cambodian NGO providing family-based alternative care, family preservation reintegration and community-based disability support services. Rebecca holds post graduate degrees in International Development, and Anthropology.