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## No Child Should Feel Left Behind: The Illegality of Orphanage Voluntourism under Article 19 of the United Nations Convention of the Rights of a Child

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# **NO CHILD SHOULD FEEL LEFT BEHIND: THE ILLEGALITY OF ORPHANAGE VOLUNTOURISM UNDER ARTICLE 19 OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD**

LILY BARON\*

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## I. INTRODUCTION

Orphanage “voluntourism” describes the practice of foreign tourists who visit orphanages in developing countries to add a philanthropic component to their trips.<sup>1</sup> Though usually well-intentioned, these tourists often do more harm than good by facilitating an ongoing cycle of abandonment in the children’s lives.<sup>2</sup> Orphanage voluntourism is neither an isolated nor regional practice, but one that is widespread across the developing world.<sup>3</sup> The practice is detrimental to both the health and wellbeing of the affected children,<sup>4</sup> who almost always live in states that have ratified the United Nations Convention on the Rights of the Child (UNCRC), a legally binding treaty which is supposed to protect children from such harms.<sup>5</sup>

Cambodia and Uganda are discussed in this Comment due to the ample documentation of orphanage voluntourism in their territories and to demonstrate that this issue is not only a regional problem, but a global one. They are just two of many state parties to the UNCRC that are in violation of Article 19 as a consequence of their failure to promulgate adequate orphanage voluntourism regulations and enforce existing regulations that might otherwise mitigate harms caused by orphanage voluntourists.

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1. See generally *Volunteering In Nepal? What You Should Know Before Volunteering in an Orphanage in Nepal*, UNICEF (Oct. 4, 2018), <https://www.unicef.org/nepal/stories/volunteering-nepal> [hereinafter *Volunteering In Nepal?*] (defining “orphanage voluntourism”).

2. See Georgette Mulheir, *Voluntourism Harms, Not Helps, The World’s Orphanage Children*, HUFFINGTON POST (Aug. 22, 2016, 1:31 PM), [https://www.huffpost.com/entry/-voluntourism-harms-not-h\\_b\\_11653292?guccounter=2](https://www.huffpost.com/entry/-voluntourism-harms-not-h_b_11653292?guccounter=2) (describing voluntourism’s cyclical process and its counterintuitive damage).

3. See Tina Rosenberg, *The Business of Voluntourism: Do Western Do-Gooders Actually Do Harm?*, GUARDIAN (Sept. 13, 2018, 1:00 PM), <https://www.theguardian.com/news/2018/sep/13/the-business-of-voluntourism-do-western-do-gooders-actually-do-harm> (discussing orphanage voluntourism programs in various countries).

4. See Mulheir, *supra* note 2 (exploring negative effects of voluntourism on affected children’s development).

5. See generally Convention on the Rights of the Child art. 19, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter UNCRC].

Part II of this Comment discusses the practice of orphanage voluntourism generally, followed by a brief overview of the UNCRC as a mechanism for establishing children's rights and a comprehensive introduction to Article 19. Part II then uses Cambodia and Uganda as case studies to illustrate why orphanage voluntourism is exploitative and harmful to children. Part III of this Comment explains that orphanage voluntourism is counter to Article 19 of the UNCRC because the practice promotes exploitation and various forms of violence protected against by Article 19. Part III then assesses Cambodia and Uganda's breaches of Article 19 due to their failure to regulate orphanage voluntourism. Finally, Part IV provides recommendations that place the onus on developed countries to ensure ubiquitous compliance with Article 19 across all state parties.

## II. BACKGROUND

### A. ORPHANAGE VOLUNTOURISM AS A FORM OF EXPLOITATION

#### *i. THE PHENOMENA OF VOLUNTOURISM*

In the 1950s, organizations such as the United States' Peace Corps, the United Kingdom's Voluntary Service Overseas, and Australia's Volunteers International (previously the Voluntary Graduate Scheme) catalyzed international volunteering.<sup>6</sup> These organizations laid the groundwork for a now growing trend in which foreigners volunteer to help the communities or environment they are visiting on vacation.<sup>7</sup> Voluntourism's popularity can be attributed to a combination of three factors: a greater awareness of current events, a growing concern about

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6. See NEXT GENERATION NEPAL, ORPHANAGE TRAFFICKING AND ORPHANAGE VOLUNTOURISM 3 (2014), <https://bettercarenetwork.org/sites/default/files/Orphanage%20Trafficking%20and%20Orphanage%20Voluntourism%20FAQs.pdf> (citing Kristin Lamoureux, *Chapter 3: Voluntourism in FIRST COMPREHENSIVE TRAVELERS PHILANTHROPY HANDBOOK 99* (Martha Honey ed., 2011)).

7. See *id.* at 3 (following the growth of the voluntourism industry). See generally Yetta Rose Stein, *Volunteering to Colonize: A Cost-Benefit Analysis of the Impacts of Voluntourism* (2017) (B.A. thesis, Portland State University) (on file with the Portland State University Library) (explaining the growth of the voluntourism industry since the inception of the Peace Corps).

the environment and global poverty, and young people's desire to gain valuable experiences for their resumes.<sup>8</sup> Construction, teaching, research, and environmental cleanups and conservation are all activities in which voluntourists participate; projects involving children, including engaging with orphanages, are some of the most popular.<sup>9</sup> The United Nations Children's Fund (UNICEF) defines orphanage voluntourism as activities that support orphanages which are carried out by individuals who are primarily tourists on vacation.<sup>10</sup> Tourists often wish to include a social element in their vacation, like volunteering in orphanages, which the tourists may also support financially or materially.<sup>11</sup>

The number of orphanages in the developing world has increased.<sup>12</sup> Though this rise is contextual and cannot be ubiquitously attributed to the same causes,<sup>13</sup> many places where orphanages are popular also have an ample supply of paying voluntourists whose demands inadvertently contribute to the popularity of orphanages.<sup>14</sup> In some cases, orphanages are established solely to satisfy the Western desire to volunteer.<sup>15</sup>

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8. *See id.*

9. *See id.* at 3 (citing Kristin Lamoureux, *Chapter 3: Voluntourism in FIRST COMPREHENSIVE TRAVELERS PHILANTHROPY HANDBOOK* 99–101 (Martha Honey ed., 2011)).

10. *See Volunteering in Nepal?*, *supra* note 1 (defining voluntourism).

11. *See id.*

12. *See* David Eimer, *Voluntourism Tips: Is it Ethical to Visit Orphanages?*, LONELY PLANET (Apr. 25, 2013), <https://www.lonelyplanet.com/articles/voluntourism-tips-is-it-ethical-to-visit-orphanages> (reporting that UNICEF documented a 65% increase in the number of orphanages in Cambodia between 2005 and 2013); KATE VAN DOORE ET AL., VOLUNTOURISM AND CHILD TRAFFICKING INTO ORPHANAGES 3 (2016), <https://www.ecpat.org/wp-content/uploads/2016/10/Voluntourism-and-child-trafficking-into-orphanages.pdf> (providing that in Uganda the number of orphanages skyrocketed from 30 in 1992 to an estimated 800 in 2013); *cf.* Anna Darling, *The Ugandan Orphanage Business*, LUMOS (Jan. 15, 2019), <https://www.wearelumos.org/news-and-media/2019/01/15/ugandan-orphanage-business/> (“[A]n estimated 5.4 million children around the world live in orphanages . . .”).

13. *See* NEXT GENERATION NEPAL, *supra* note 6, at 4.

14. *See id.* (discussing factors contributing to the rise in orphanages in developing countries).

15. *See* VAN DOORE ET AL., *supra* note 12, at 1; *cf.* NEXT GENERATION NEPAL, *supra* note 6, at 6–7 (adding that up to 90% of orphanages in Nepal are located in

ii. *WHEN ORPHANS ARE NOT ACTUALLY ORPHANS*

Unknown to most well-intentioned voluntourists, many children living in orphanages are often not really “orphans” at all.<sup>16</sup> Rather, they are “social orphans,” a term which refers to children who have living parents but who do not live under the care of those parents.<sup>17</sup> This phenomenon is quite common—in Nepal, an estimated 85% of children living in orphanages have at least one living parent;<sup>18</sup> in Ghana, the figure is estimated at 90%.<sup>19</sup> In some instances, these children are “paper orphans,” meaning they are presented as orphans on paper through the use of false documentation provided to them by recruiters.<sup>20</sup> These recruiters convince the children’s parents that they are taking the children to cities for educational purposes<sup>21</sup> and that the children will be able to return for visits.<sup>22</sup> Instead, the recruiters sell the children to orphanages that profit from their commodification through voluntourism, donations, international funding, or inter-

destinations where Western tourists are known to frequent).

16. See *Volunteering In Nepal?*, *supra* note 1.

17. See Sara Dillon, *The Missing Link: A Social Orphan Protocol to the United Nations Convention on the Rights of the Child*, 1 HUM. RTS. & GLOBALIZATION L. REV. 39, 39 (2008) (explaining that social orphanhood is a result of social, cultural and economic factors).

18. See *Volunteering In Nepal?*, *supra* note 1.

19. See *Protecting Children from Orphan-Dealers*, NEW HUMANITARIAN (May 27, 2009), <https://www.thenewhumanitarian.org/report/84582/west-africa-protecting-children-orphan-dealers> (citing a 2009 Social Welfare Department study showing the rate of children with living parents in orphanages in Ghana); see also Rosenberg, *supra* note 3 (mentioning that in 2005, Save the Children found 92% of children living in orphanages in Sri Lanka had a living parent, and in 2006 UNICEF found that in Liberia 98% of children living in orphanages were not actually orphans).

20. See VAN DOORE ET AL., *supra* note 12, at 2 (defining “paper orphans” and explaining how they are recruited).

21. See BETTER VOLUNTEERING BETTER CARE, COUNTRY FOCUS: GHANA 6 (Andrea Messmeer et al. eds., 2014), <https://bettercarenetwork.org/sites/default/files/Collected%20viewpoints%20on%20international%20volunteering%20in%20residential%20care%20centres%20-%20Country%20Focus%20-%20Ghana.pdf> (explaining that in some cases orphanages are marketed as a type of boarding school); see also Rosenberg, *supra* note 3 (noting that though hundreds of institutions were opened in Aceh, Indonesia, after the 2004 tsunami, one organization discovered that more than 97% of children living in them were brought by their parents so they could receive an education).

22. See VAN DOORE ET AL., *supra* note 12, at 2.

country adoption.<sup>23</sup>

*iii. INADVERTENT FORMS OF EXPLOITATION*

Voluntourists can instill long-lasting trauma in the children they think they are helping through their presence alone.<sup>24</sup> As noted by Sara Dillon, “living in group settings with inconsistent caregivers leaves residual trauma that is difficult to ameliorate.”<sup>25</sup> Orphanage voluntourism deprives children of the stability and permanency needed for them to reach their full potential through this inconsistent exposure.<sup>26</sup> Additionally, exposing children to a constant stream of volunteers can disrupt their attachment process, potentially leaving them more vulnerable to others who seek to exploit and abuse them, even in later years.<sup>27</sup> So long as there are short-term volunteers, even otherwise “good quality” institutional care facilities can have negative residual effects.<sup>28</sup>

In addition to exploitation at the hands of volunteers, children face exploitation stemming from the orphanages’ attempts to attract volunteer assistance.<sup>29</sup> Some orphanages send children to busy tourist areas to ask for donations and visits, and others host nightly cultural performances to attract tourists and their donations.<sup>30</sup> Children may

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23. See *id.* at 2–3.

24. See Mulheir, *supra* note 2 (discussing studies on the effect of voluntourism on childhood development and attachment).

25. Sara Dillon, *Time for a Truth-Based Policy: Humanitarian Access to Children Living Without Family Care*, 27 FLA. J. INT’L L. 23, 45 (2015); see Mulheir, *supra* note 2; see generally KEVIN BROWNE, THE RISK OF HARM TO YOUNG CHILDREN IN INSTITUTIONAL CARE 9–17 (2009), [http://learn.viva.org/wp-content/uploads/2017/08/The\\_Risk\\_of\\_Harm.pdf](http://learn.viva.org/wp-content/uploads/2017/08/The_Risk_of_Harm.pdf) (discussing the psychological and long-term effects of institutional care).

26. See Dillon, *supra* note 25, at 31, 45 (describing the effects of inconsistent care givers on childhood development).

27. See Mulheir, *supra* note 2 (explaining the destructiveness of the cycle voluntourism perpetuates).

28. See BROWNE, *supra* note 25, at 13.

29. See Julia Landau et al., *How Foreign Donations, Poverty and Corruption Are Fueling Uganda’s Orphanage Industry*, VICE (Aug. 3, 2019, 12:15 PM), <https://www.vice.com/en/article/a35wka/how-foreign-donations-poverty-and-corruption-are-fueling-ugandas-unregulated-orphanage-industry> (detailing the conditions the “orphans” live in).

30. See Tess Guiney, *‘Orphanage Tourism’ in Cambodia: When Residential Care Centres Become Tourist Attractions*, 21 PAC. GEOGRAPHIES 9, 13 (2012)

even be kept malnourished to attract greater sympathy and donations.<sup>31</sup> Orphanage voluntourism is a business—and a booming one.<sup>32</sup> However, it is unclear exactly how much of the donations go towards actually supporting the children living in these orphanages.<sup>33</sup>

#### *iv. EGREGIOUS FORMS OF EXPLOITATION*

Children may also be subjected to explicitly egregious forms of exploitation and abuse at the hands of voluntourists.<sup>34</sup> Background checks are seldom conducted on volunteers, thereby increasing children's risk of exploitation and abuse.<sup>35</sup> Exacerbating this risk, pedophiles also target orphanages by posing as volunteers.<sup>36</sup> Some

(noting an informant stated “performances were similar to monkeys having to perform for their food, or dolphins performing in shows”).

31. VAN DOORE ET AL., *supra* note 12, at 1; see Laurie Ahern, *Donors Need to Support Vulnerable Families Not Rebuild Nepalese Orphanages*, HUFFINGTON POST (May 22, 2016, 6:48 PM), [https://www.huffpost.com/entry/donors-need-to-support-vulnerable-families\\_b\\_7422618](https://www.huffpost.com/entry/donors-need-to-support-vulnerable-families_b_7422618) (“Children can be intentionally underfed, shabbily dressed and living in squalid conditions in an effort to elicit even more donations.”).

32. See Eimer, *supra* note 12 (finding that, in south Thailand, orphanages charge up to \$400 a week for volunteers to spend time with children); *Protecting Children from Orphan-Dealers*, *supra* note 19 (explaining that, in Ghana, a small orphanage may have a budget of up to \$70,000 USD a year).

33. See Sarah Cruddas, *Rwanda Outgrows Its Genocide Orphanages*, BBC NEWS (Mar. 12, 2014), <https://www.bbc.com/news/world-africa-31830220> (showing that, in Rwanda, for every \$100 donated to organizations running orphanages, an estimated \$40 goes towards caring for the children); Vanessa Steinmetz & Maria Feck, *The Scam of Fake Orphanages in Cambodia*, DER SPIEGEL (Apr. 16, 2019, 11:16 AM), <https://www.spiegel.de/international/global-societies/cambodia-how-fake-orphanages-take-advantage-of-children-and-tourists-a-1262975.html> (estimating that 20 percent of revenues goes directly to the children while 80 percent covers operational costs for one Cambodian orphanage); VAN DOORE ET AL., *supra* note 12, at 2 (noting that orphanage directors have been caught siphoning donations for personal profits).

34. See Ahern, *supra* note 31 (“Once delivered to bogus orphanages, children are at risk of sexual and physical abuse, not only from staff, but from a steady stream of volunteers and donors who receive unfettered access to them.”).

35. See *Volunteering In Nepal?*, *supra* note 1.

36. VAN DOORE ET AL., *supra* note 12, at 1; see, e.g., Laurie Ahern, *Ukraine Orphanages Feeder for Child Trafficking*, HUFFINGTON POST (June 2, 2015, 3:18 PM), [https://www.huffpost.com/entry/ukraine-orphanages-feeder\\_b\\_7344882](https://www.huffpost.com/entry/ukraine-orphanages-feeder_b_7344882) (exposing that, in Ukraine, producers of child pornography go to orphanages to seek out their prey).

orphanages give visitors the freedom to take children away on day trips,<sup>37</sup> and others even allow children to be in volunteers' rooms unsupervised.<sup>38</sup>

These systemic oversights have led to numerous reports of children being harmed around the world. In 2015, an orphanage volunteer from Canada was convicted by a Nepalese court of sexually abusing a disabled 15-year-old boy.<sup>39</sup> Five years prior, a French charity worker was convicted of raping ten children in a Kathmandu orphanage.<sup>40</sup> Similarly, a nineteen-year-old missionary from the US was charged with traveling to Kenya to engage in sex acts with disadvantaged children after he volunteered at a Nairobi orphanage.<sup>41</sup> Comparable abuses occur at the hands of orphanage administrators as well, some of whom establish orphanages as a way to gain unfettered, foreign-funded access to vulnerable children.<sup>42</sup> Whether it is economic

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37. See Eimer, *supra* note 12.

38. See Helen Nianias, *No Hugs, No One to Talk to: How Ugandan Orphanages are Harming a Generation*, *GUARDIAN* (Nov. 23, 2017, 8:55 PM), <https://www.theguardian.com/working-in-development/2017/nov/23/ugandan-orphanages-harming-a-generation>.

39. See *Nepal Convicts Canadian Orphanage Volunteer of Sexual Assault of Disabled Boy, 15*, *STRAITS TIMES* (Mar. 2, 2015, 1:16 AM), <https://www.straitstimes.com/asia/south-asia/nepal-convicts-canadian-orphanage-volunteer-of-sexual-assault-of-disabled-boy-15> [hereinafter *Nepal Convicts Canadian Orphanage Volunteer*] (noting that, though it is illegal to volunteer in Nepal on a tourist visa, orphanage officials frequently permit tourists to spend time with children in exchange for donations).

40. See *id.* Although foreign charity workers are not voluntourists *per se*, they share many of the same attributes as voluntourists and often engage in similar types of work.

41. Nina Golgowski, *Oklahoma Teen Engaged in Sex Acts with Orphans while Volunteering in Kenya: FBI*, *N.Y. DAILY NEWS* (Aug. 6, 2014, 2:19 PM), <https://www.nydailynews.com/news/national/teen-sexually-abused-orphans-kenya-fbi-article-1.1876208>. Foreign missionaries—like foreign charity workers—also share similar characteristics to voluntourists, especially given the often times short-term nature of their missions and engagement with children.

42. See, e.g., Press Release, U.S. Dep't of Just., Oregon Man Sentenced to Life in Prison for Sexually Abusing Children at Orphanage in Cambodia (Jan. 18, 2019), <https://www.justice.gov/opa/pr/oregon-man-sentenced-life-prison-sexually-abusing-children-orphanage-cambodia> [hereinafter *Oregon Man Sentenced*] (stating a US man was sentenced to life in federal prison for sexually abusing children at an unlicensed orphanage he operated in Cambodia, that he funded using donations from US-based church groups); Bruce Zagaris, *Pennsylvania Missionary Indicted for Alleged Sexual Abuse of Children at Kenyan Orphanage*, 35 *INT'L ENF'T L. REP.*

exploitation or egregious sexual abuse, there is ample documentation of maltreatment occurring in orphanages around the world that harm children who are supposed to be protected under international law from these practices.

## B. THE INTERNATIONAL STANDARD GOVERNING CHILDREN'S RIGHTS

### *i. OVERVIEW OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (UNCRC)*

The UNCRC is a legally binding international agreement that provides for the civil, political, economic, social, and cultural rights of every child.<sup>43</sup> It is both the most widely and most rapidly ratified human rights treaty in history and is in force in virtually every

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271, 271 (2019) (discussing a man who had previously pled guilty to intent to commit sexual abuse in the US and was later charged with four counts of engaging in illicit conduct in a foreign place after he traveled to Kenya and established an orphanage where he allegedly physically, psychologically, and sexually abused young girls); Anthony Wesaka & Juliet Kigongo, *Suspected German Paedophile Who Died At Luzira Prison to be Cremated*, DAILY MONITOR (May 12, 2020), <https://www.monitor.co.ug/uganda/news/national/suspected-german-paedophile-who-died-at-luzira-prison-to-be-cremated--1889280> (reporting that a German national who founded a community-based private shelter in Uganda that advocated for children's rights and the education of young girls was charged with 19 counts of aggravated trafficking of children, five counts of aggravated defilement, one count of indecent assault and one count of operating an unapproved children's home); Butk Reaksmeay Kongkea, *Arrested American to first face rape charges here*, PHNOM PENH POST (Dec. 11, 2013, 10:37 AM), <https://www.phnompenhpost.com/national/arrested-american-first-face-rape-charges-here> (describing that another man faces charges in Cambodia and the US for sexually abusing and raping three underage girls at an unauthorized orphanage he established and ran in Cambodia).

43. See *UN Convention on the Rights of the Child (UNCRC)*, SAVE THE CHILDREN, <https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-the-child> (last visited Nov. 22, 2020) [hereinafter *UN Convention*].

country.<sup>44</sup> Uganda ratified the treaty in 1990,<sup>45</sup> and Cambodia acceded in 1992.<sup>46</sup>

The Convention serves as the first formal commitment under international law for ensuring the realization of children's rights and its Committee, the UN Committee on the Rights of the Child, serves as the mechanism for monitoring progress to that end.<sup>47</sup> Most notably, the UNCRC advanced the idea that children are not just subordinate bodies to which decisions should be made for, possessions of their parents, or helpless objects of charity, but are rather individuals with their own rights.<sup>48</sup>

The 54 articles that constitute the UNCRC lay out specific children's rights and detail how governments should make those rights available to all children.<sup>49</sup> Included in the UNCRC are the rights to protection from violence, abuse or neglect; the rights to life, survival, and development; and the right to be raised by or have a relationship with parents.<sup>50</sup> Through ratification, state parties to the UNCRC vow to undertake all appropriate measures to ensure that the rights provided for in the Convention are realized.<sup>51</sup>

*ii. INTRODUCTION TO ARTICLE 19 OF THE UNCRC*

General Comment No. 13 states, "A child rights-based approach to

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44. See *Frequently Asked Questions on the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/frequently-asked-questions> (last visited Nov. 22, 2020) [hereinafter *FAQs on the UNCRC*] (providing that 196 countries have become Parties to the Convention as of October 2015, the United States being the only country to have not ratified the Convention, though it is a signatory).

45. UNCRC, *supra* note 5, at 44.

46. See *id.* (noting the lack of Cambodia in the original signing); Convention on the Rights of the Child, Depositary Notifications, Nov. 20, 1989, 1577 U.N.T.S. 3, 3 [hereinafter *Depositary Notifications*].

47. See *FAQs on the UNCRC*, *supra* note 44.

48. See *id.*

49. See *UN Convention*, *supra* note 43.

50. See *id.*

51. See UNCRC, *supra* note 5, at 56. See generally *Implementing and Monitoring the Convention on the Rights of the Child*, UNICEF, <https://www.unicef.org/child-rights-convention/implementing-monitoring> (last visited April 16, 2021) (overviewing the UN Committee on the Rights of the Child's role in helping state parties translate UNCRC principles into action).

caregiving requires a paradigm shift towards respecting and promoting the physical and psychological integrity of children as rights-bearing individuals rather than perceiving them as ‘victims.’”<sup>52</sup> To actualize this goal, Article 19 provides:

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.<sup>53</sup>

The first provision of Article 19 asserts that states “shall take all appropriate measures to protect children from the types of harm then listed by the Article.”<sup>54</sup> According to General Comment No. 13, this language provides no leeway for state parties which are under a strict obligation to undertake all appropriate measures to fully implement the Article.<sup>55</sup> State parties are responsible for meeting their obligations towards children at the national, provincial, and municipal levels.<sup>56</sup> These measures apply across all sectors of government and must be used and be effective in preventing and responding to all forms of violence.<sup>57</sup>

State parties are responsible for preventing and responding to *all forms* of violence against children.<sup>58</sup> General Comment No. 13 provides that this language indicates that there are no exceptions.<sup>59</sup> Prevention and response are essential for promoting the full set of rights provided for in the Convention.<sup>60</sup> This provision has been applied, for example, by the European Court of Human Rights to support the assertions that children are vulnerable populations in need

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52. Comm. on the Rights of the Child, General Comment No. 13, ¶ 3(b), U.N. Doc. CRC/C/GC/13 (Apr. 18, 2011).

53. UNCRC, *supra* note 5, at 50.

54. *Id.*

55. General Comment No. 13, *supra* note 52, ¶ 37 (defining “shall take”).

56. *Id.* ¶ 5.

57. *Id.* ¶ 39 (defining “all appropriate . . . measures”).

58. See UNCRC, *supra* note 5, at 50.

59. General Comment No. 13, *supra* note 52, ¶ 17 (defining “all forms of”).

60. See *id.* ¶ 13 (proclaiming the importance of stopping violence against children as an approach to securing their human rights).

of protection from exploitative work<sup>61</sup> and domestic abuse,<sup>62</sup> and by the Supreme Court of the Philippines in recognizing the state's duty to take all steps necessary to protect children from being sexually abused or exploited.<sup>63</sup>

Under Article 19, violence also encompasses non-physical and non-intentional forms of harm such as neglect and exploitation.<sup>64</sup> Mental violence is defined to specifically include “exploiting and corrupting.”<sup>65</sup> Generally, mental violence includes “all forms of persistent harmful interactions with the child” such as “conveying to children that they are worthless, unloved, unwanted, endangered or only of value in meeting another's needs.”<sup>66</sup>

Article 19 requires states to protect against these types of violence while the child is in the care of parents, guardians, or any other person who has responsibility over the child.<sup>67</sup> State parties must ensure that everyone who is responsible for the prevention of, protection from, and reaction to violence in their work addresses the needs and respects the rights of children.<sup>68</sup> General Comment No. 13 defines caregivers to include “parent(s), legal guardian(s), or any other person who has the care of the child, [and] covers those with clear, recognized legal, professional-ethical, and/or cultural responsibility for the health, development, and well-being of the child.”<sup>69</sup> This definition includes governmental and non-governmental personnel in the position of caregivers, such as those in residential care settings.<sup>70</sup> For example, the High Court of Kenya applied Article 19 in deciding that two schoolchildren's rights were violated when they were sexually

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61. See *Siliadin v. France*, 2005-VII Eur. Ct. H.R. 335, 356; *Freedom from All Forms of Violence*, CANADIAN BAR ASS'N, <https://www.cba.org/Publications-Resources/Practice-Tools/Child-Rights-Toolkit/theChild/Freedom-from-all-forms-of-violence> (last visited Dec. 26, 2020).

62. See *D.M.D. v. Romania*, App. No. 23022/13, ¶¶ 30–32 (Oct. 3, 2017), <http://hudoc.echr.coe.int/eng?i=001-177226>.

63. See *People v. Abadies y Claveria*, G.R. No. 139346-50 (July 11, 2002) (Phil.), <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/51893>.

64. See General Comment No. 13, *supra* note 52, ¶ 4 (defining violence).

65. *Id.* ¶ 21(b).

66. *Id.* ¶ 21(a).

67. UNCRC, *supra* note 5, at 50.

68. General Comment No. 13, *supra* note 52, ¶ 5.

69. *Id.* ¶ 33.

70. *Id.*

assaulted by their teacher.<sup>71</sup>

The care setting is defined as a place where children spend time while under the supervision of their primary or proxy caregiver, “for periods of time which are short-term, long-term, repeated, or only once.”<sup>72</sup> Even if a child is physically unsupervised within a care setting, the child is still within the care of a primary or proxy caregiver.<sup>73</sup> General Comment No. 13 emphasizes that violence is not limited to that which is perpetrated solely by caregivers in a personal context.<sup>74</sup> Additionally, referencing Articles 18<sup>75</sup> and 27,<sup>76</sup> General Comment No. 13 provides that states have a positive obligation to assist parents and other caregivers in securing the living conditions necessary for the child’s optimal development.<sup>77</sup>

The final provision of Article 19 provides a list of measures the state is responsible to take to protect children.<sup>78</sup> Specifically:

Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.<sup>79</sup>

The High Court of Kenya interpreted this provision as obligating the state to investigate and punish those responsible for committing violence against children.<sup>80</sup> More broadly, according to General

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71. *W.J. & Another v. Astarikoh Henry Amkoah & 9 others* (2015) eKLR 19–20 (H.C.K.) (Kenya), <http://kenyalaw.org/caselaw/cases/view/109721/> (using Article 19 to emphasize that state representatives—in this case teachers—are obligated to take measures to protect children from all forms of abuse).

72. General Comment No. 13, *supra* note 52, ¶ 34.

73. *See id.*

74. *Id.* ¶ 36.

75. UNCRC, *supra* note 5, at 50.

76. *Id.* at 53.

77. General Comment No. 13, *supra* note 52, ¶ 5.

78. UNCRC, *supra* note 5, at 50.

79. *Id.*

80. *See C.K. (through Ripples International) & 11 others v. Commissioner of Police* (2012) eKLR 15 (H.C.K.) (Kenya), <http://kenyalaw.org/caselaw/cases/view/89322>.

Comment No. 13, the government is responsible for implementing rights-based child protection procedures as well as professional ethics codes and standards of care.<sup>81</sup> The state is also responsible for identifying risk factors for particular groups of children and caregivers and recognizing signs of maltreatment.<sup>82</sup>

General Comment No. 13 also indicates that the state itself may cause harm when it lacks the effective means of implementing obligations under the Convention.<sup>83</sup> For example, failing to adopt legislation, or having insufficient capacities to identify, prevent, and react to violence against children may cause harm as a consequence of lacking effective means for implementation.<sup>84</sup> Harm may also arise when measures and programs are not equipped with sufficient means to assess, monitor, and evaluate the progress or shortcomings of the activities employed to end violence against children.<sup>85</sup> Article 19 is explicit in setting forth both children's rights and protections and the obligations of states and governments to ensure that these are met.

### C. CASE STUDIES ON A GLOBAL PRACTICE: ORPHANAGE VOLUNTOURISM IN CAMBODIA

#### *i. THE CONDITION OF VOLUNTOURISM IN CAMBODIA*

Cambodia is a popular destination for orphanage voluntourism— orphanages there receive more foreign volunteers than domestic ones.<sup>86</sup> Though the number of actual orphaned children in Cambodia is the lowest in decades, the number of the country's orphanages has sharply increased in correspondence with an increase in tourists.<sup>87</sup>

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81. General Comment No. 13, *supra* note 52, ¶ 47(d)(ii).

82. *See id.* ¶ 48.

83. *Id.* ¶ 32.

84. *See id.*

85. *Id.*

86. MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., MAPPING OF RESIDENTIAL CARE FACILITIES IN THE CAPITAL AND 24 PROVINCES OF THE KINGDOM OF CAMBODIA 30 (2017); *cf.* Guiney, *supra* note 30, at 11 (finding that out of fifteen orphanages interviewed, visitors were encouraged at all but two facilities, and accepted at all but one).

87. Guiney, *supra* note 30, at 9 (“ . . . [O]rphanage numbers have undergone a 76 percent increase in the last five years, coinciding with a 76 percent increase in tourist numbers.”).

Many orphanages in Cambodia actively seek out volunteers by advertising in local hotels and shops, distributing pamphlets, or sending orphans to busy tourist areas to encourage donations and visits.<sup>88</sup> Without the income generated from tourists' response to such advertising, many orphanages would not survive.<sup>89</sup>

According to UNICEF, seventy-two percent of the approximately 12,000 children living in Cambodian orphanages have at least one living parent or other close relations.<sup>90</sup> As in many other places, children end up in these orphanages as a result of recruiters who trick parents into giving their children away.<sup>91</sup> Subsequent attempts by the parents to recover their children, or even visit them, are often refused.<sup>92</sup> Additionally, some parents relinquish their children to orphanages so that the children can make money to supplement the family income.<sup>93</sup> While this may benefit the family, many orphanages in Cambodia lack firm child protection policies.<sup>94</sup> This phenomenon of sending children to orphanages to make an income is especially alarming because Cambodia has a rampant and well-documented child sex tourism problem.<sup>95</sup>

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88. *Id.* at 11.

89. *See id.* (explaining that Cambodian orphanages rely on international funding as a result of the government's lack of support).

90. *See* Eimer, *supra* note 12.

91. *See Cambodia's Orphan Business: The Dark Side of 'Voluntourism'*, AL JAZEERA (Sept. 15, 2019), <https://www.aljazeera.com/program/episode/2019/9/15/cambodias-orphan-business-the-dark-side-of-voluntourism> [hereinafter *The Dark Side of 'Voluntourism'*] (revealing that many Cambodian orphans have families but are lured away under the guise of better education opportunities).

92. *Child Rights*, COUNCIL FOR THE DEV. OF CAMBODIA, [http://www.cdc-crdb.gov.kh/cdc/ngo\\_statement/child\\_rights.htm](http://www.cdc-crdb.gov.kh/cdc/ngo_statement/child_rights.htm).

93. *See* Steinmetz & Feck, *supra* note 33 (discovering that some children willingly choose to stay in orphanages for monetary reasons, despite having parents and/or guardians).

94. Eimer, *supra* note 12.

95. *See, e.g.*, Alaina Caliendo, Note, *What Happens Abroad Does Not Stay Abroad: United States v. Pendleton and Congress's Constitutional Authority to Regulate Child Sex Abuse Abroad*, 10 SETON HALL CIR. REV. 375, 378 (2014) (noting that Cambodia's lax law enforcement has drawn in both pedophiles and opportunistic sex tourists since other prime sex-tourism destinations have been cracking down); *see also* Guiney, *supra* note 30, at 13 ("... [U]p to 22 per cent of all tourists to Cambodia came for sex. . .").

ii. *POLICIES AND BODIES GOVERNING ALTERNATIVE CARE INSTITUTIONS IN CAMBODIA*

Cambodian orphanages are regulated under the Ministry of Social Affairs, Veteran and Youth Rehabilitation (MoSVY).<sup>96</sup> The MoSVY sets policy, creates service standards, writes legislation and guidelines, and monitors orphanages for quality control.<sup>97</sup> Orphanages must register with the MoSVY and follow the Policy on Alternative Care for Children,<sup>98</sup> as well as the Minimum Standards on Alternative Care, both of which were drafted by the MoSVY.<sup>99</sup>

Unfortunately, the MoSVY has failed to adequately oversee orphanages, in part due to a shortage of inspectors.<sup>100</sup> In 2014, the MoSVY knew of 139 “residential care” institutions in five of the country’s twenty-five provinces.<sup>101</sup> One year later, a survey conducted by the MoSVY found 267 facilities in those same provinces, more than thirty of which had not registered with the government.<sup>102</sup> Orphanages that fail to register with the MoSVY do not have to follow the Ministry’s standards, are not under its jurisdiction, and cannot be shut down, since the government is technically unaware of their operations.<sup>103</sup>

Nonetheless, Cambodia adopted the Policy on Alternative Care for

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96. Guiney, *supra* note 30, at 11.

97. CAROLYN HAMILTON ET AL., UNICEF CAMBODIA, PROMOTING AND PROTECTING THE RIGHTS OF CHILDREN: A FORMATIVE EVALUATION OF UNICEF’S CHILD PROTECTION PROGRAMME IN CAMBODIA 7 (2018).

98. *See generally* MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., NO. 907 MOSVY, POLICY ON ALTERNATIVE CARE FOR CHILDREN (2006).

99. *See* MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 86, at 16; Guiney, *supra* note 30, at 11.

100. *See* Astrid Zweynert, *Cambodia Faces Uphill Struggle to Reform its Orphanages*, IRRAWADDY (July 6, 2015), <https://www.irrawaddy.com/news/asia/cambodia-faces-uphill-struggle-to-reform-its-orphanages.html> (finding that orphanages were not visited regularly nor were standards checked thoroughly).

101. Robert Carmichael, *Children as Commodities: Combating Cambodia’s Orphanage Racket*, UNICEF CAMBODIA (Mar. 30, 2016), <https://unicefcambodia.blogspot.com/2016/03/children-as-commodities-combating.html>.

102. *Id.*

103. *See* Guiney, *supra* note 30, at 11 (explaining that orphanages that choose not to register with MoSVY cannot be closed down by the Ministry).

Children in accordance with the UNCRC as a means of ensuring that children without a family or home receive alternative care.<sup>104</sup> The Policy is premised on the idea that children should be raised in families and communities, and that institutional care should be a last resort.<sup>105</sup> To this end, the Policy provides that contact between children living in alternative care and their parents should be encouraged when possible.<sup>106</sup>

After discovering abuse in a number of alternative care facilities, the MoSVY issued the Minimum Standards on Alternative Care to Supplement the Policy on Alternative Care for Children.<sup>107</sup> Despite the relatively comprehensive regulatory framework on alternative care in the Minimum Standards,<sup>108</sup> it does not directly address orphanage voluntourism.<sup>109</sup> The Minimum Standards does, however, provide that all visitors to children must obtain permission from management first, and that management will appoint a staff member to accompany the visitor at all times.<sup>110</sup> In fact, the Minimum Standards provides that the facility's management is responsible for ensuring children's safety from violence, exploitation, and abuse, and as such, is required to be trained on identifying child abuse.<sup>111</sup>

Additionally, the Minimum Standards substantiates the Policy on Alternative Care for Children by stating that residential care facilities shall encourage children to maintain contact with their biological parents, relatives, or friends and community when the contact would

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104. MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 98, at 12.

105. Chivith Rottanak, *Cambodian Children Need Better Alternative Care Options*, FXB CTR. FOR HEALTH & HUM. RTS. (May 6, 2015), <https://fxb.harvard.edu/2015/05/06/cambodian-children-need-better-alternative-care>; *see also* Zweynert, *supra* note 100 (recognizing that the increasing number of Cambodian children in orphanages is alarming considering the government's policy is that they should be the last available option).

106. MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 98, at 12.

107. Rottanak, *supra* note 105.

108. *See* MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 86, at 16; Guiney, *supra* note 30, at 11 (describing some of the provisions set forth by the Minimum Standards).

109. *See generally* MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., NO. 616 MOSVY, MINIMUM STANDARDS ON RESIDENTIAL CARE FOR CHILDREN (2006).

110. *Id.* at 7.

111. *Id.*

not place the children at risk of harm.<sup>112</sup> The Minimum Standards goes a step further than the Policy on Alternative Care for Children by stating that the facility shall provide the children with a budget for visiting relatives if possible.<sup>113</sup>

#### D. CASE STUDIES ON A GLOBAL PRACTICE: ORPHANAGE VOLUNTOURISM IN UGANDA

##### *i. THE CONDITION OF VOLUNTOURISM IN UGANDA*

Although thousands of miles from Cambodia, Uganda is a similarly popular destination for orphanage voluntourism and serves as another example of a party to the UNCRC that embraces the practice. The number of children living in Ugandan orphanages has seen a fiftyfold increase since the 1990s.<sup>114</sup> While this number is often erroneously believed to be a consequence of the HIV/AIDS epidemic,<sup>115</sup> it actually coincides with the growth of the country's tourism sector, which boasts one of the largest growth rates in Africa.<sup>116</sup>

Uganda's orphanages make almost a quarter of a billion in U.S. dollars a year from using online campaigns to solicit<sup>117</sup> international donors, mostly from the U.S., Canada, Australia, and Europe.<sup>118</sup> Orphanages in Uganda are often established in tourism hotspots<sup>119</sup> and, similar to those in Cambodia, cater to the tourists' wishes rather than the children's needs.<sup>120</sup> Regulations are equally scant as there are often

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112. *Id.* at 3.

113. *Id.*

114. See *Uganda: Tourist Visits to Orphanages Putting Children at Risk*, ECPAT INT'L (Apr. 29, 2019), <https://www.ecpat.org/news/orphanage-tourism-children-uganda> ("... [T]he number of children in orphanages in Uganda has increased from approximately 1,000 in the 1990s to more than 50,000 today.")

115. See Guiney, *supra* note 30, at 109 (citing Linda M. Richter & Amy Norman, *AIDS Orphan Tourism: A Threat to Young Children in Residential Care*, 5 VULNERABLE CHILD. & YOUTH STUD. 217 (2010)) (discussing how the perception of an AIDS orphan crisis has caused an explosion of voluntourism to aid children).

116. Cf. BADRU BUKENYA ET AL., ECPAT INT'L, UGANDA: COUNTRY OVERVIEW 15 (2019) (noting that a large portion of Uganda's tourism sector includes orphanage voluntourism programs).

117. See Landau et al., *supra* note 29.

118. *Id.*

119. Darling, *supra* note 12.

120. See Nianias, *supra* note 38 ("When they are here, we allow them to suggest

no volunteer background or criminal record checks.<sup>121</sup>

An estimated four out of five children in Ugandan orphanages have at least one living parent,<sup>122</sup> who may have been motivated to send their children away at the prospect of them receiving a free education, food, and clothing.<sup>123</sup> The relinquishing of children to orphanages is a relatively recent phenomena, since traditionally, Ugandan orphans are absorbed within their extended families or communities.<sup>124</sup>

*ii. POLICIES AND BODIES GOVERNING ALTERNATIVE CARE INSTITUTIONS IN UGANDA*

The Ministry of Gender, Labour, and Social Development (MGLSD) is responsible for alternative care—specifically through the Commission for Children and Youth Affairs.<sup>125</sup> The Ministry is in charge of reviewing the orphanages' operations across the country.<sup>126</sup> It is responsible for the registration of residential care facilities,<sup>127</sup> policy development, and national oversight.<sup>128</sup> The MGLSD is guided by The National Orphans and Other Vulnerable Children Policy (NOP), which provides that vulnerable children are not to be treated as helpless victims but as actors in their own right.<sup>129</sup> NOP informs programs of legal and administrative actions affecting the safety, well-being and development of orphans, vulnerable children, and their

whatever they want to do. . . .”).

121. See, e.g., *id.* (finding that a particular orphanage does not conduct any significant background checks on foreign volunteers aside from questioning dietary restrictions).

122. Landau et al., *supra* note 29.

123. *Uganda: Tourist Visits to Orphanages Putting Children at Risk*, *supra* note 114.

124. See MINISTRY OF GENDER, LABOUR & SOC. DEV., THE NATIONAL ORPHAN AND OTHER VULNERABLE CHILDREN POLICY 2 (2004) (finding that families and local communities typically take in orphans, but struggle to care for them financially, ultimately relinquishing them to an orphanage).

125. IAN MILLIGAN, SOS CHILD.'S VILLS. INT'L, ALTERNATIVE CHILD CARE AND DEINSTITUTIONALISATION 9 (2016).

126. See Bill Oketch, *Government Plans to Close Orphanages*, DAILY MONITOR (May 15, 2018), <https://www.monitor.co.ug/uganda/news/national/government-plans-to-close-orphanages-1756474> (noting studies that recognize negative development patterns in children within orphanages).

127. MILLIGAN, *supra* note 125, at 9.

128. *Id.*

129. MINISTRY OF GENDER, LABOUR & SOC. DEV., *supra* note 124, at 6.

caregivers, and stresses that institutional care should only be used as a last resort.<sup>130</sup>

Another key legal instrument regarding children's rights in Uganda is The Children Act (2003),<sup>131</sup> which serves as implementing legislation for the UNCRC.<sup>132</sup> The Children Act is the principal legislation governing care for children who have been separated from their parents,<sup>133</sup> and was amended in 2016 in hopes of better regulating the country's unregulated orphanage voluntourism industry.<sup>134</sup> The Act mandates specific regulations for children living in alternative care, such that contact should be maintained with a child's parents and relatives.<sup>135</sup> More broadly, the Children (Amendment) Act states that "every child has a right to be protected against all forms of violence."<sup>136</sup>

Though its progress remains unclear, the MGLSD is working to review the operations of orphanages across the country.<sup>137</sup> The Children (Approved Home) Regulations Assessment Toolkit (2013) assists child-care institutions in achieving compliance with the Children (Approved Homes) Rules and the NOP in alignment with principles based on the UNCRC.<sup>138</sup>

However, the government lacks the resources to conduct

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130. *Id.* at iii.

131. *See id.* at 3 (explaining that Uganda has a longstanding commitment to their children's wellbeing, evidenced by the 1995 Constitution and the 2003 Children Act).

132. *See Justice for Children Legal Framework in Uganda*, JUST. L. & ORD. SECTOR, <https://www.jlos.go.ug/index.php/about-jlos/projects/sgbv/sgbv-special-sessions/item/481-the-legal-framework-relating-to-justice-for-children-in-uganda> (last visited Dec. 31, 2020) (expounding that, as a signatory to the UNCRC, Uganda adopted The Children Act seven years later in order to meet its obligations).

133. MILLIGAN, *supra* note 125, at 53 (listing Ugandan legislation pertaining to alternative care).

134. *See* Landau et al., *supra* note 29 (noting that The Children Act was amended as a result of the significant increase of orphans since 1992).

135. *See* Jane Stella Ogwang, *Care Reform in Uganda: Achievements and Challenges*, MEASURE EVALUATION (Sept. 11, 2017), <https://www.slideshare.net/measureevaluation/care-reform-in-uganda-achievements-and-challenges> (outlining the focus of The Children Act).

136. The Children (Amendment) Act § 11(1) (Act No. 9/2016) (Uganda).

137. Oketch, *supra* note 126.

138. *See generally* MINISTRY OF GENDER, LABOUR & SOC. DEV., CHILDREN (APPROVED HOME) REGULATIONS ASSESSMENT TOOLKIT 46 (2013).

assessments and inspections as regularly as required by the Children (Approved Homes) Rules.<sup>139</sup> Nevertheless, the Children (Approved Homes) Rules sets forth the basic minimum standards and procedures for the approval of orphanages and contains various operating requirements.<sup>140</sup> The Rules states that a warden of a home shall be qualified in social sciences and have practical experience relevant to the operation of an approved home.<sup>141</sup> The Rules also states that a visitor to an approved home shall visit the child in a specified place or room and in the presence of a staff member.<sup>142</sup>

Using the relevant language of Article 19 and the pertinent background information on orphanage voluntourism, the next section will argue that orphanage voluntourism is a violation of Article 19.

### III. ANALYSIS

#### A. THE CAMBODIAN GOVERNMENT DOES NOT REGULATE ORPHANAGE VOLUNTOURISM AND IS THUS VIOLATING ARTICLE 19 OF THE UNCRC

Article 48 of Cambodia's Constitution recognizes the rights of children as stipulated in the UNCRC—in particular the right to life, education, and freedom from economic or sexual exploitation.<sup>143</sup> In line with this recognition, Cambodia has established various strategies and mechanisms at both the national and sub-national levels in order to develop a child protection system.<sup>144</sup> General Comment No. 13 provides that state parties are responsible for meeting their obligations

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139. ISMAEL DDUMBA-NYANZI & MICHELLE LI, MEASURE EVALUATION, ASSESSING ALTERNATIVE CARE FOR CHILDREN IN UGANDA 28 (2018); *see also* The Children (Approved Homes) Rules § 15(1) (Rules Supplement No. 52/2013) (Uganda) (requiring that each approved home be inspected at least once every six months).

140. Ogwang, *supra* note 135.

141. The Children (Approved Homes) Rules, *supra* note 139, § 10(2).

142. *Id.* § 25(3).

143. WORLD VISION, CHILD PROTECTION – POLICY BRIEF 1 (2015), [http://ticambodia.org/library/wp-content/files\\_mf/1449843471WorldVisionCambodiaChildProtectionPolicyBrief20151.pdf](http://ticambodia.org/library/wp-content/files_mf/1449843471WorldVisionCambodiaChildProtectionPolicyBrief20151.pdf).

144. *Id.*

towards children at the national, provincial, and municipal levels.<sup>145</sup> Cambodia is making strides towards achieving this goal through its targeted interventions such as the MoSVY's Policy on Alternative Care for Children<sup>146</sup> and the Minimum Standards on Alternative Care for Children.<sup>147</sup> However, even with such seemingly far-reaching bodies and policies in place, Cambodia fails to protect the rights provided for in Article 19 by not promulgating adequate regulations for orphanage voluntourism.<sup>148</sup>

Under Article 19, Cambodia is required to take all legislative, administrative, social, and educational measures to protect children from exploitation and other forms of violence.<sup>149</sup> Orphanage voluntourism, especially as it occurs in Cambodia, is an exploitative practice<sup>150</sup> that facilitates forms of both mental<sup>151</sup> and physical violence against children.<sup>152</sup> Orphanage administrators often exploit children as a means of garnering donations from overseas donors as well as voluntourists who pay to spend time with the children.<sup>153</sup> Some orphanages even send children to busy tourist areas to encourage donations and visits.<sup>154</sup>

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145. General Comment No. 13, *supra* note 52, ¶ 5.

146. *See generally* MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 98.

147. *See generally* MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 109.

148. *See generally* Guiney, *supra* note 30, at 14 (discussing the pitfalls of orphanage voluntourism despite the current regulations in place).

149. UNCRC, *supra* note 5, at 50.

150. *See generally* Guiney, *supra* note 30, at 11–13 (illuminating the various ways children living in Cambodian orphanages are exploited as a means of generating donations).

151. *See* Mulheir, *supra* note 2 (explaining that interaction with so many transient volunteers is disruptive to children's emotional and psychological development).

152. *See, e.g.,* Oregon Man Sentenced, *supra* note 42 (noting the experiences of Cambodian children who were molested by an American who ran an unlicensed orphanage).

153. *See* Sascha Kouvelis, *Horrible People Are Exploiting Cambodia's Orphans*, VICE (May 16, 2013, 1:00 PM), <https://www.vice.com/en/article/xd4bp4/cambodian-orphanages> (finding that some individuals set up orphanages and siphon off donations intended for children to line their own pockets).

154. *See* Guiney, *supra* note 30, at 11 (finding that some orphanages will market themselves in an effort to solicit donations, rather than for the benefit of the children).

Although Cambodia adopted the Policy on Alternative Care for Children in accordance with the UNCRC, and even explicitly recognized the necessity of integrating aspects of the Convention, the Policy fails to address issues surrounding orphanage voluntourism such as who can have access to children.<sup>155</sup> This policy, therefore, does not meet Article 19 obligations as elucidated by General Comment No. 13, which provides that state parties are required to assist parents and other caregivers in securing the living conditions necessary for the child's optimal development.<sup>156</sup> Failing to regulate a constant stream of volunteers that has proven to cause harm to children indicates that Cambodia is not adequately assisting caregivers in securing the living conditions necessary for a child's optimal development.<sup>157</sup> The Minimum Standards of Care, however, does provide that all visitors to children must obtain permission from management of the orphanage, and will be accompanied by a staff member at all times.<sup>158</sup> Unfortunately, it appears this policy is often ignored given reports of orphanage administrators allowing, and even encouraging, volunteers to take children on excursions unsupervised.<sup>159</sup>

The failure to regulate who accesses children in orphanages has led to reports of sexual abuse at the hands of directors<sup>160</sup> and volunteers.<sup>161</sup> A failure to take all necessary steps to protect children from being

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155. See MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 98, at 13.

156. General Comment No. 13, *supra* note 52, ¶ 5.

157. See *id.* (“States parties have a positive and active obligation to support and assist parents and other caregivers to secure . . . the living conditions necessary for the child’s optimal development.”).

158. MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 109, at 7.

159. See Eimer, *supra* note 12 (finding that some orphanage administrators are unprosecuted sexual predators that often allow volunteers to take children on day trips); Juliana Ruhfus, *Cambodia’s Orphan Business*, AL JAZEERA (June 27, 2012), <https://www.aljazeera.com/program/episode/2012/6/27/cambodias-orphan-business> (explaining that one orphanage director seemed extremely happy to allow two undercover volunteers to take children on an excursion and had children lined up so that the “Western volunteers” could choose which ones they want).

160. See, e.g., Oregon Man Sentenced, *supra* note 42; Kongkea, *supra* note 42.

161. See Caliendo, *supra* note 95, at 378 (noting that Cambodia’s lax law enforcement has drawn in pedophiles and opportunistic sex tourists); cf. *Nepal Convicts Canadian Orphanage Volunteer*, *supra* note 39; Golgowski, *supra* note 41.

sexually abused or exploited is counter to Article 19.<sup>162</sup> More specifically, state parties are required to ensure that caregivers, including those in residential care settings, address the needs and respect the rights of children.<sup>163</sup> Instead, in Cambodia the orphanage administrators allow children to be sexually exploited for profit.<sup>164</sup>

While the Policy on Alternative Care for Children does not promulgate regulations for volunteers, the Policy does provide that alternative care provider staff “shall be carefully selected, trained and appropriately remunerated.”<sup>165</sup> Under Article 19, state parties are responsible for implementing rights-based child protection procedures as well as ethics codes and standards of care.<sup>166</sup> Though this provision of the Policy on Alternative Care for Children sets forth a standard of care, General Comment No. 13 stresses that measures must both be used and be *effective* in preventing and responding to all forms of violence.<sup>167</sup> It is dubious that alternative care provider staff are carefully selected and trained given the prolific reports of unscrupulous orphanage administrators<sup>168</sup> as well as rampant corruption.<sup>169</sup>

The Minimum Standards on Alternative Care for Children, which purports to outline requirements for the creation and management of residential care facilities and for the children living in them,<sup>170</sup> contains similar gaps. The Minimum Standards provide that residential care facilities should encourage children to maintain contact with their families, and even states that the facilities should allocate a budget to

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162. See *People v. Abadies y Claveria*, G.R. No. 139346-50 (July 11, 2002) (Phil.), <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/51893>.

163. See General Comment No. 13, *supra* note 52, ¶¶ 5, 33.

164. Cf. Eimer, *supra* note 12 (noting that some orphanages in Cambodia allow visitors to take children away on day trips).

165. MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 98, at 13.

166. General comment No. 13, *supra* note 52, ¶ 47(d)(ii).

167. *Id.* ¶ 39.

168. See Kouvelis, *supra* note 153 (explaining that, in 2007, an organization rescued 14 children from an orphanage where the director had been sexually and physically abusing the children in his care).

169. See *id.* (mentioning that some individuals set up orphanages and siphon off donations intended for children to line their own pockets).

170. MINISTRY OF SOC. AFFS., VETERANS & YOUTH REHAB., *supra* note 109, at 2.

the children for visiting family where possible.<sup>171</sup> However, this encouragement is unlikely since parents are often refused contact with their children by orphanage personnel.<sup>172</sup> Providing a budget for children to visit relatives is likewise highly improbable and almost certainly not for want of funds.<sup>173</sup> General Comment No. 13 provides that states have a positive obligation to assist parents and other caregivers in securing the living conditions necessary for the child's optimal development.<sup>174</sup>

Orphanages are not ideal for a child's development.<sup>175</sup> By enforcing the Minimum Standards' requirement that children be encouraged to keep in touch with their families, reunification would be more likely to occur,<sup>176</sup> which would be optimal for development.<sup>177</sup>

Finally, Cambodia faces significant deficiencies in oversight

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171. *Id.* at 3.

172. *See Child Rights, supra* note 92.

173. *Cf. Protecting Children from Orphan-Dealers, supra* note 19 (stating that even a small orphanage in Ghana might have a budget of up to \$70,000 USD a year, with only an estimated 30% of funds actually going towards childcare).

174. General Comment No. 13, *supra* note 52, ¶ 5.

175. *See Darling, supra* note 12 (stating that the UK government's official position is that orphanages and other institutions are harmful to a child's physical, psychological, and emotional development and place them at a heightened risk of harm and abuse); BROWNE, *supra* note 25, at 1 (adding that young children growing up in institutional care have reduced intellectual, social, and behavioral abilities compared with those growing up in a family home); Rosenberg, *supra* note 3 ("Even in a well-run facility, children do not develop normally."); Eric Rosenthal, *A Mandate to End Placement of Children in Institutions and Orphanages: The Duty of Governments and Donors to Prevent Segregation and Torture, in PROTECTING CHILDREN AGAINST TORTURE IN DETENTION: GLOBAL SOLUTIONS FOR A GLOBAL PROBLEM* 303, 315–17 (2017) (explaining that, in an orphanage, the mere presence of adequate nutrition and healing, or the absence of open violence and physical neglect, is not enough).

176. *Cf. Child Rights, supra* note 92 (providing that once in orphanages, attempts by biological parents to recover their children or even visit are often refused).

177. *See Volunteering In Nepal?, supra* note 1 (stating that it has been long established that it is better for a child to grow up in a family environment, and that institutionalization should only be a last resort); *Volunteering in Orphanages*, UNICEF, <https://www.unicef.org/rosa/what-we-do/child-protection/volunteering-orphanages> (last visited Jan. 2, 2021) (noting that "the family is a nurturing and caring environment" and therefore "is the ideal place to raise a child"); *cf. VAN DOORE ET AL., supra* note 12, at 1 (providing that the institutionalization of children is contrary to the best interests of the child and their right to family as understood by the UNCRC).

regarding childcare institutions. General Comment No. 13 recognizes that incapacities such as this may ultimately cause harm to children that are supposed to be protected under Article 19,<sup>178</sup> which appears to be the case in Cambodia. In 2015, a survey found almost two times the number of “residential care” facilities than the number recorded by the MoSVY just a year prior.<sup>179</sup> More than 30 of these 267 facilities did not register with the government and were able to operate out of sight.<sup>180</sup> This transgression occurs with dangerous impunity given the MoSVY’s shortage of inspectors,<sup>181</sup> since orphanages that do not register with the MoSVY do not have to follow the Ministry’s standards and are not under their jurisdiction.<sup>182</sup> Consequently, these unregulated facilities cannot be shut down by the government for failing to meet the relevant standards,<sup>183</sup> as the government does not even know that they exist.<sup>184</sup> As predicted by General Comment No. 13,<sup>185</sup> it is the children living in these facilities who are ultimately harmed.<sup>186</sup>

## B. THE UGANDAN GOVERNMENT DOES NOT REGULATE ORPHANAGE VOLUNTOURISM AND IS THUS VIOLATING ARTICLE 19 OF THE UNCRC

As a party to the UNCRC, Uganda has pledged to implement the

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178. General comment No. 13, *supra* note 52, ¶ 32.

179. See Carmichael, *supra* note 101 (describing the numbers of orphanages that are not registered with the government).

180. See *id.* (concluding that there is no known official number of orphanages in Cambodia, which makes monitoring child health and well-being difficult).

181. See Guiney, *supra* note 30, at 11 (noting that orphanages were not visited regularly nor were standards checked thoroughly).

182. See *id.* (describing how a lack of registration status for an orphanage means they do not need to comply with government regulations).

183. *But see Child Protection Policy*, VOLUNTEER BLDG. CAMBODIA, [https://www.volunteerbuildingcambodia.org/wp-content/uploads/2018/01/child\\_protection\\_policy.pdf](https://www.volunteerbuildingcambodia.org/wp-content/uploads/2018/01/child_protection_policy.pdf) (last visited Jan. 2, 2021) (requiring that volunteers declare any past child protection breaches and criminal records, as well as provide references and proof of identity).

184. See Guiney, *supra* note 30, at 11 (describing how there is no official count for the number of orphanages in Cambodia).

185. See General comment No. 13, *supra* note 52, ¶ 32.

186. See *generally* Dillon, *supra* note 25, at 27 (arguing that children living in institutions must be seen by the outside world, or they are at risk of suffering permanent neglect under the auspices of those charged with their care).

Convention's provisions by undertaking administrative and institutional measures.<sup>187</sup> Although the government directly acknowledges its obligation to take these measures under the UNCRC, the laws and regulations currently in place in Uganda fail to protect the rights provided for in Article 19.

Under Article 19, Uganda must take all legislative, administrative, social, and educational measures to protect children from exploitation and other forms of violence.<sup>188</sup> Uganda has issued a number of policies and regulations applicable to children living in orphanages such as the National Orphans and Other Vulnerable Children Policy (NOP),<sup>189</sup> The Children (Amendment) Act,<sup>190</sup> and the Children (Approved Homes) Rules.<sup>191</sup> These policies and regulations, however, are not adequately enforced.<sup>192</sup> In order to comply with Article 19, measures must both be used and be *effective* in preventing and responding to all forms of violence.<sup>193</sup> As is the case in Cambodia, Uganda lacks the capacity to adequately enforce its orphanage regulations; the government does not have the resources to regularly conduct assessments and inspections of orphanages as required by law.<sup>194</sup>

As acknowledged by General Comment No. 13, a failure to adequately assess, monitor, and evaluate the measures taken to end violence against children may ultimately render regulations useless.<sup>195</sup> This sentiment plays out in Uganda, as one of the regulations affected by shortcomings in enforcement is The Children (Approved Homes)

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187. See *Justice for Children Legal Framework in Uganda*, *supra* note 132 (noting that Uganda also signed and ratified The African Charter on the Rights and Welfare of the Child, which purported to localize the provisions of the UNCRC within the African context).

188. See UNCRC, *supra* note 5, at 50.

189. See generally MINISTRY OF GENDER, LABOUR & SOC. DEV., *supra* note 124.

190. See generally The Children (Amendment) Act (Act No. 9/2016) (Uganda).

191. See generally The Children (Approved Homes) Rules (Rules Supplement No. 52/2013) (Uganda).

192. See DDUMBA-NYANZI & LI, *supra* note 139, at 28 (describing the shortcomings of the Ugandan government for enforcing regulations to monitor facilities).

193. See General Comment No. 13, *supra* note 52, ¶ 39.

194. See DDUMBA-NYANZI & LI, *supra* note 139, at 28 (describing how the lack of government resources means that the government cannot easily conduct follow up inspections of the facilities).

195. General Comment No. 13, *supra* note 52, ¶ 32.

Rules.<sup>196</sup> The Children (Approved Homes) Rules sets forth the basic minimum standards and procedures for the approval of orphanages and contains various operating requirements.<sup>197</sup> The Rules mandates that wardens of childcare facilities be qualified and have relevant practical experience.<sup>198</sup> Additionally, it requires that visitors have permission from and are supervised by a staff member while interacting with children in specified locations.<sup>199</sup> However, while visiting a Ugandan orphanage, a journalist observed that in some cases unsupervised children were allowed to go into volunteers' rooms.<sup>200</sup> This transgression is unsurprising because The Children (Approved Homes) Rules, which directly prohibits this type of interaction,<sup>201</sup> cannot be adequately enforced since so many orphanages in Uganda operate out of sight.<sup>202</sup>

However, even if seemingly helpful policies were adequately enforced, some would likely remain mere aspirations without first rectifying the problems caused by orphanage voluntourism. For example, the National Orphan and Other Vulnerable Children Policy states that orphans "are not to be treated as helpless victims but as actors in their own right."<sup>203</sup> This ideal directly aligns with Article 19, which strives to shift caregiving towards an approach that respects children as rights-bearing individuals rather than perceiving them as helpless victims.<sup>204</sup> However, the orphanage voluntourism model is

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196. See generally The Children (Approved Homes) Rules (Rules Supplement No. 52/2013) (Uganda).

197. See Ogwang, *supra* note 135 (providing an objective goal of achieving minimum standards for facilities).

198. The Children (Approved Homes) Rules § 10(2) (Rules Supplement No. 52/2013) (Uganda).

199. *Id.* § 25(3).

200. See Nianias, *supra* note 38 (describing the lack of safeguards for child interactions with volunteers in Ugandan facilities).

201. See The Children (Approved Homes) Rules, *supra* note 139, § 25(3).

202. See MILLIGAN, *supra* note 125, at 37 (stating that most childcare homes are not registered with the MGLSD, and the owners are reportedly unaware and uninterested in the statutory duties associated with running a childcare institution in Uganda, including guidance on the standards of care). *But see* Darling, *supra* note 12 (noting that, when The Children's Act was amended, the Ugandan government claimed it oversaw the closure of 500 unlicensed orphanages, at least 60 of which received funding from the UK).

203. MINISTRY OF GENDER, LABOUR & SOC. DEV., *supra* note 124, at 6.

204. General Comment No. 13, *supra* note 52, ¶ 3(b).

premised on the very idea that orphans are helpless victims in need of saving by Western tourists.<sup>205</sup> This falsity is especially prevalent in Uganda, where the recent rise in orphan numbers is often erroneously conflated as a consequence of the HIV/AIDS epidemic.<sup>206</sup>

Similarly, another of the Policy's objectives is ensuring that the basic physical, cognitive, and psychological needs of orphans and other vulnerable children are met.<sup>207</sup> However, volunteering in orphanages for short periods of time without appropriate skills can lead to abandonment issues in children<sup>208</sup> because a constant stream of transient volunteers can lead to problems with children's emotional and psychological development.<sup>209</sup> This objective, therefore, cannot be met without regulating orphanage voluntourism through curtailing the quantity of untrained volunteers who are granted access to children.<sup>210</sup>

As a consequence of this shortcoming, it is also more difficult for Uganda to comply with Article 19, which obliges state parties to

205. See generally Tess Guiney, *Orphanage Tourism in Cambodia: The Complexities of 'Doing Good' in Popular Humanitarianism* (June 2015) (Ph.D. thesis, University of Otago) (on file with the University of Otago Library) (applying a critical geography approach to analyzing orphanage voluntourism and stating that orphanages conform to stereotypical representations of poverty to garner donations).

206. See generally Guiney, *supra* note 30, at 10 (discussing the "AIDS orphan tourism" phenomenon).

207. MINISTRY OF GENDER, LABOUR & SOC. DEV., *supra* note 124, at 10.

208. See *Volunteering In Nepal?*, *supra* note 1 (discussing how, volunteers can cause more harm than good to vulnerable children, regardless of volunteers' well-meaning intentions).

209. See Mulheir, *supra* note 2 (describing the effects of voluntourism on vulnerable children, specifically how the practice impacts a child's attachment process).

210. Cf. Harold Goodwin, *The Problem: Why Are Orphanage Visits Harmful?*, RESPONSIBLE TOURISM PARTNERSHIP (Oct. 30, 2019), <https://responsibletourismpartnership.org/the-problem-why-are-orphanage-visits-harmful/> (noting that in North America, Europe, and Australia there are strict laws and policies regarding who can work with or have contact with vulnerable children based on professional qualifications and experience, but that these standards do not apply to tourists and volunteers visiting orphanages in low-income countries). See generally Rosenberg, *supra* note 3 (detailing the "white savior industrial complex" in which untrained voluntourists work in orphanages to validate their own privilege); Steinmetz & Feck, *supra* note 33 (describing a scene at an orphanage in which "a young woman is desperately trying to get the children to calm down . . . when all else fails, the frustrated volunteer grabs her selfie stick and beats it on the desk in front of her until the children finally quiet down").

protect against all forms of violence, including exploitation and sexual abuse, while the child is in the care of parents, guardians, or any other person who has the care of the child.<sup>211</sup> The High Court of Kenya recognized the state's duty to protect the rights of children from sexual abuse at the hands of their teacher,<sup>212</sup> who is someone in a "caregiving position" as stated by General Comment No. 13.<sup>213</sup> Under Kenya's application of Article 19, state parties also have a responsibility to shield children from all forms of violence experienced while under the care of those working in residential care settings, including exploitation and sexual abuse.<sup>214</sup> This is because shortly after mentioning teachers as being included in the definition of caregivers, General Comment No. 13 lists institutional personnel, explicitly including those working in "residential-care settings."<sup>215</sup> The state, therefore, has the same duty to protect children from all forms of violence while in the orphanage setting as it does in the educational environment.<sup>216</sup>

The aforementioned provision from General Comment No. 13 is actually mimicked in The Children Act, which states that "any person having custody of a child shall protect the child from discrimination, violence, abuse, and neglect."<sup>217</sup> However, orphanage administrators permit outsiders to interact with children for profit, thereby failing to protect children from such harms.<sup>218</sup> Additionally, the numerous reports of children being sexually abused in Ugandan orphanages<sup>219</sup> shows that orphanage administrators are not adequately protecting children from violence. The failure of government to intervene means

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211. UNCRC, *supra* note 5, at 50.

212. *See* W.J. & Another v. Astarikoh Henry Amkoah & 9 others (2015) eKLR 26–27 (H.C.K.) (Kenya).

213. General Comment No. 13, *supra* note 52, ¶ 33.

214. *See id.* ¶¶ 33–34.

215. *Id.* ¶ 33.

216. *See* W.J. & Another v. Astarikoh Henry Amkoah & 9 others, eKLR at 26–27.

217. The Children Act (1997) Cap. 59 § 5(2) (Uganda).

218. *Cf.* VAN DOORE ET AL., *supra* note 12, at 1 (noting that some orphanages have been established solely to satisfy the western desire to volunteer); Ahern, *supra* note 36 (mentioning that one US family paid \$2,900 USD to host two young Ukrainian orphans without a home visits or background check).

219. *See, e.g.,* Wesaka & Kigongo, *supra* note 42 (providing an example of a pedophile who abused underprivileged children under the preface of voluntourism).

that the state is not adequately meeting its Article 19 obligations to ensure that they do.

The Children Act also requires that contact is maintained with a child's parents and relatives.<sup>220</sup> This provision aligns with Article 19, which provides that states have a positive obligation to assist parents and other caregivers in securing the living conditions necessary for the child's optimal development.<sup>221</sup> Research demonstrates that it is best for a child to grow up in a family environment,<sup>222</sup> and maintaining contact with a child's parents may be the first step in reunification.<sup>223</sup> However, orphanage voluntourism incentivizes unscrupulous individuals to take children from their parents and place them in orphanages where they can be used to draw in profits from foreign volunteers.<sup>224</sup> It is not uncommon for parents to be denied access to their children or be forced to pay to get them back.<sup>225</sup> Therefore, so long as orphanage voluntourism occurs, The Children Act's provision that contact be maintained with a child's family is likely to go unrealized, and compliance with Article 19 will remain unachieved.

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220. See Ogwang, *supra* note 135.

221. See General Comment No. 13, *supra* note 52, ¶ 5.

222. See *Volunteering In Nepal?*, *supra* note 1 (claiming that institutionalization for vulnerable children should be a last resort because of the increased risk of abuse).

223. Cf. *Protecting Children from Orphan-Dealers*, *supra* note 19 (providing that often times when parents give their child to an orphanage, they have no idea that they are giving their child up forever – “[T]he concept of never seeing their child again is inconceivable.”).

224. See, e.g., Josephine Morgan, *Liberia, “The Orphanage was Taking our Pictures and Sending Them to America.”*, NEW HUMANITARIAN (Aug. 7, 2007), <https://www.thenewhumanitarian.org/q-and/2007/08/07/josephine-morgan-liberia-orphanage-was-taking-our-pictures-and-sending-them-america> (quoting a boy from Liberia who said “the man who owned the orphanage was always taking our pictures and sending them to America.”).

225. See, e.g., *Child Rights*, *supra* note 92 (noting that, in Cambodia, attempts by biological parents to recover their children, or even visit them once in orphanages, are rejected); BETTER VOLUNTEERING BETTER CARE, *supra* note 21, at 6 (adding that, in Ghana, there are reports of orphanage administrators purposefully recruiting children from faraway places to ensure separation).

### C. ORPHANAGE VOLUNTOURISM IS AN EXPLOITATIVE PRACTICE THAT IS COUNTER TO ARTICLE 19 OF THE UNCRC

General Comment No. 13 emphasizes that a child rights-based approach to caregiving requires a paradigm shift towards respecting and promoting the physical and psychological integrity of children as rights-bearing individuals, rather than perceiving them as victims.<sup>226</sup> Orphanage voluntourism capitalizes on the very notion that children living in orphanages are victims and in need of saving.<sup>227</sup> The resulting practice in which transient volunteers have unfettered access to children and repeatedly abandon them<sup>228</sup> neither respects nor promotes children's physical and psychological integrity. Contrarily, it harms them.<sup>229</sup>

Under Article 19, state parties are responsible for preventing and responding to *all* forms of violence.<sup>230</sup> This definition includes non-physical and non-intentional manifestations of violence, such as neglect and exploitation.<sup>231</sup> Mental violence is also included, which encompasses “all forms of persistent harmful interactions with the child,” including conveying to children that they are worthless, unloved, or unwanted.<sup>232</sup> Orphanage voluntourism facilitates a cycle of persistent harmful interactions with the child.<sup>233</sup> As a result of the

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226. General Comment No. 13, *supra* note 52, ¶ 3(b); *see also FAQs on the UNCRC*, *supra* note 44 (contextualizing this assertion as one of the primary concepts advanced by the UNCRC as a whole).

227. *See* Guiney, *supra* note 205, at 48 (explaining how “orphanage tourism is largely based on tourists’ desire for contact with the children within these spaces”); Rottanak, *supra* note 105 (emphasizing that “some orphanages go to great lengths to display children in miserable conditions in order to attract more donations from tourists.”).

228. *See* Ahern, *supra* note 31 (arguing that children are vulnerable to abuse not only from the orphanage staff, but also from the presence of volunteers).

229. *See* Mulheir, *supra* note 2 (exploring how volunteers are unknowingly contributing to the harm that occurs to children at such institutions).

230. UNCRC, *supra* note 5, at 50.

231. *See* General Comment No. 13, *supra* note 52, ¶ 4.

232. *Id.* ¶ 21(a).

233. *See* Mulheir, *supra* note 2 (“A constant stream of volunteers to orphanages, showing affection to children and then leaving, disrupts [their] attachment process. . .”).

constant stream of volunteers coming and going to orphanages,<sup>234</sup> children may be left feeling worthless, unloved, and unwanted.<sup>235</sup>

Medical and psychological research demonstrates that children can only reach their full potential under conditions of relative stability and permanency.<sup>236</sup> According to General Comment No. 13, state parties are obligated to assist parents and other caregivers in securing the living conditions necessary for the child's optimal development.<sup>237</sup> A constant stream of transient volunteers interacting with children who have already been relinquished by their parents<sup>238</sup> is not optimal. Instead, this cycle exacerbates children's sense of abandonment and undermines their development.<sup>239</sup> Additionally, orphanage voluntourism facilitates the continued use of orphanages, which are harmful in themselves<sup>240</sup> and do not constitute the living conditions

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234. *See id.*

235. *See Volunteering In Nepal?*, *supra* note 1 (stating that short term volunteers may contribute to a repeated sense of abandonment by already vulnerable children).

236. *See* Dillon, *supra* note 25, at 31 (explaining that children's cognitive and emotional development relies on permanency and stability of interactions); Mulheir, *supra* note 2 (noting that interactions with many transient volunteers disrupt children's emotional and psychological development and can leave them vulnerable to exploitation and abuse later on due to their lasting desperation for love and affection).

237. General Comment No. 13, *supra* note 52, ¶ 5.

238. *See The Dark Side of 'Voluntourism'*, *supra* note 91 (discussing how some orphanages trick parents into giving away their children); Steinmetz & Feck, *supra* note 33 (adding that some children are voluntarily given away by their parents so they can make money for the family).

239. *See* Mulheir, *supra* note 2 (explaining how the constant stream of volunteers to orphanages disrupts a child's attachment process); Christine Ro, *Why J.K. Rowling Is Right To Discourage Orphanage Voluntourism*, FORBES (Nov. 7, 2019), <https://www.forbes.com/sites/christinero/2019/11/07/why-jk-rowling-is-right-to-discourage-orphanage-voluntourism/?sh=327796042637#373199142637> (acknowledging that "while orphanage visitors may love it when children run up to them and shower them with affection, this is actually a sign of an attachment disorder. Developmentally normal children aren't loving towards strangers.").

240. *See* Ahern, *supra* note 31 (explaining how orphanage tourism creates a business model that depends on vulnerable children being available to volunteers); *see also* Dillon, *supra* note 25, at 27 (mentioning that children who are hidden in institutions risk suffering permanent neglect at the hands of those charged with their care); Laurie Ahern, *Orphanages are No Place for Children*, WP (Aug. 9, 2013), [https://www.washingtonpost.com/opinions/orphanages-are-no-place-for-children/2013/08/09/6d502fb0-fadd-11e2-a369-d1954abcb7e3\\_story.html](https://www.washingtonpost.com/opinions/orphanages-are-no-place-for-children/2013/08/09/6d502fb0-fadd-11e2-a369-d1954abcb7e3_story.html) ("Even in facilities with the best of intentions, damage is done. The custodial setting itself,

necessary for the child's optimal development.<sup>241</sup>

Orphanage voluntourism is also an exploitative practice that promotes the idea that children living in orphanages are helpless and in need of saving.<sup>242</sup> This notion is counter to General Comment No. 13, which emphasizes that children should not be perceived as victims, but as rights-bearing individuals.<sup>243</sup> The distorted idea that children living in orphanages need saving by voluntourists is presented not only to those who actually volunteer in orphanages, but to individuals around the world who are exposed to vast literature and advertisements published by orphanages and the organizations that fund them.<sup>244</sup> Those who donate or volunteer in orphanages as tourists

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no matter how humanely or responsibly run, creates lasting psychological and physical damage.”); Dillon, *supra* note 17, at 44 (adding that it is for this reason that UNICEF, and the international child welfare establishment generally, advocate for “community based” forms of care, though this is often done in vague terms that are difficult to implement).

241. Cf. Rosenthal, *supra* note 175, at 315-17 (stating that there is high levels of suicide among children and young adults who grow up in orphanages); Goodwin, *supra* note 210 (noting that in many countries, a person's family and community serve as their safety net and can provide help with getting a job, arranging their marriage, giving advice, lending money, or passing down land, and that growing up in an orphanage takes this support system away from children).

242. See Guiney, *supra* note 205 (explaining that geopolitical representations of poverty and suffering are taken advantage of by orphanages in order to garner donations from tourists who desire contact with the children; who they perceive as vulnerable and in need of saving); Andrea Freidus, *The Problem with Volunteer Tourism for NGOs is it Doesn't do Much Good*, QUARTZ (Nov. 9, 2017), <https://qz.com/africa/1124920/voluntourism-ngo-volunteers-turned-tourists-are-a-problem-in-africa/> (connecting the psychological effect of “needy” children and the use of modern technology to exploit those children); cf. Harriet Grant, *Outcry Over 'Saviour Complex' Fuelling Exploitation of Kenyan Children*, GUARDIAN (Nov. 19, 2018), <https://www.theguardian.com/global-development/2018/nov/19/outcry-over-saviour-complex-fuelling-exploitation-kenya-orphanages> (adding that, ironically, “for the cost of a flight from the US to Kenya, we could pay for a senior psychotherapist to around 20 children and families a month.”).

243. General Comment No. 13, *supra* note 52, ¶ 3(b).

244. See Guiney, *supra* note 30, at 11 (providing an overview on how orphanages advertise to tourists in Cambodia); *Australia Says Orphanage Trafficking is Modern-Day Slavery*, BBC NEWS (Nov. 29, 2018), <https://www.bbc.com/news/world-australia-46390627> (finding that more than 57% of universities in Australia advertise orphanage placements for student volunteers); cf. MILLIGAN, *supra* note 125, at 24 (discussing how one church-run facility in Uganda, which was more of a boarding school than an orphanage, advertised to overseas funders as a facility housing “orphans and vulnerable children”).

reinforce a cycle in which children are commodified and exploited by orphanage administrators as a means of generating “charitable” donations from Westerners who want to help.<sup>245</sup> While the idea that children living in orphanages are victims in need of saving is certainly profitable,<sup>246</sup> it is counter to Article 19.<sup>247</sup>

Under Article 19, caregivers are responsible for protecting children from exploitation<sup>248</sup> and should not benefit from their commodification.<sup>249</sup> However, rather than protecting the children under their care from violence, orphanage personnel advance the children’s exploitation by turning orphanages into businesses.<sup>250</sup> Orphanages are encouraged to portray stereotypical representations of

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245. See Guiney, *supra* note 205; cf. Rachel Chason, *Choir of Orphaned African Children to Perform at Cary Church*, NEWS & OBSERVER (Dec. 8, 2016), <https://www.newsobserver.com/news/local/counties/wake-county/article119745048.html> (describing the Watoto Children’s Choir, a group of orphans who travel the world to sing worship songs, share their stories, and collect donations for the Watoto Child Care Ministries); Rosenberg, *supra* note 3 (adding that wealthy countries consider orphanages harmful for their own children, yet nonetheless provide a stream of donations that make orphanages viable businesses abroad).

246. See Landau et al., *supra* note 29 (asserting that Uganda’s orphanages make almost a quarter of a billion USD a year from international donors, mostly from the US, Canada, Australia, and Europe); see also *Protecting Children from Orphan-Dealers*, *supra* note 19 (providing that a small orphanage in Ghana might have a budget of up to \$70,000 USD a year depending on the size of its funds from international donors and NGOs); Rosenberg, *supra* note 3 (explaining that Haiti’s orphanages make at least \$100 million USD a year in foreign donations, which is half the amount of US aid that went to Haiti in 2017, five times the budget of Haiti’s social affairs ministry, and 130 times the country’s child protection budget).

247. See General Comment No. 13, *supra* note 52, ¶ 3(b).

248. UNCRC, *supra* note 5, at 50.

249. See Karleen Gribble, *Orphanage ‘Voluntourism’ Makes School Students Complicit in Abuse*, ETHICS CTR. (Oct. 23, 2015), <https://ethics.org.au/orphanage-voluntourism-makes-school-students-complicit-in-abuse/> (noting that some children in orphanages are encouraged to be friendly to visitors in hopes of increasing donations, and that as a result, children in orphanages “act cute” out of necessity).

250. See VAN DOORE ET AL., *supra* note 12, at 2–3 (explaining the process in which children are recruited from their parents, provided with fake documents, and subsequently exploited by orphanages for profit); Rosenberg, *supra* note 3 (noting that one orphanage in Guatemala charges volunteers between \$750 and \$1,000 USD, the more expensive of which gets them an air-conditioned suite with a private bathroom for their stay).

poverty and suffering in order to garner donations,<sup>251</sup> which is why some go so far as to keep children malnourished,<sup>252</sup> shabbily dressed, and living in squalid conditions.<sup>253</sup> Additionally, children are sometimes sent to busy tourist areas to ask for donations<sup>254</sup> and may even be forced to perform for visiting tourists.<sup>255</sup> The European Court of Human Rights applied Article 19 to support the assertion that children are vulnerable populations in need of protection from exploitative work.<sup>256</sup> In that case, the exploitative work involved a minor who served as an unpaid servant and was held with no passport and nowhere to go.<sup>257</sup> Similarly, children exploited in orphanages often are unable to reunite with their families<sup>258</sup> and do not reap the benefits of their labor.<sup>259</sup> Because children living in orphanages are often exploited similar to the unpaid servant, these children constitute a population vulnerable to exploitative work and therefore are in need of protection in accordance with the European Court of Human Rights' application of Article 19.<sup>260</sup>

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251. See Guiney, *supra* note 205, at i.

252. VAN DOORE ET AL., *supra* note 12, at 1.

253. Ahern, *supra* note 31.

254. Guiney, *supra* note 30, at 11.

255. See Madison Bingle, Student Column, *The Link Between Tourism and Child Abuse in Cambodian 'Orphanages'*, 23 HUM. RTS. BRIEF 4, 4 (2020) (finding that some orphanages force children to make crafts or dance for tourists); Guiney, *supra* note 30, at 11 (discovering that some orphanages host cultural night performances); cf. Grant, *supra* note 242 (quoting a man who was trafficked into a Kenyan orphanage as a child who recalls sometimes missing school to practice songs and dances prior to the arrival of volunteers).

256. *Siliadin v. France*, 2005-VII Eur. Ct. H.R. at 356; see also *Freedom From All Forms of Violence*, *supra* note 61.

257. *Siliadin v. France*, 2005-VII Eur. Ct. H.R. at 340.

258. See, e.g., BETTER VOLUNTEERING BETTER CARE, *supra* note 21, at 6 (reporting that in Ghana, some orphanage administrators purposefully recruit children from faraway places to ensure separation); *Child Rights*, *supra* note 92 (noting that in orphanages controlled by adoption facilitators with links to foreign adoption agencies, attempts by parents to recover their children or even visit are often refused).

259. See, e.g., Cruddas, *supra* note 33 (estimating that for every \$100 donated to organizations running orphanages in Rwanda, only \$40 goes towards caring for the children); Steinmetz & Feck, *supra* note 33 (reporting that one orphanage in Cambodia estimates that just 20% of its revenue goes directly towards the children while the rest is used to cover operational costs).

260. See *Siliadin v. France*, 2005-VII Eur. Ct. H.R. at 356.

Additionally, Article 19 explicitly requires state parties to protect children from sexual abuse while the child is in the care of parents, guardians, or any other person who has the care of the child.<sup>261</sup> The Supreme Court of the Philippines recognized the state's duty to take all necessary steps to protect children from being sexually abused or exploited in deciding a domestic child molestation case.<sup>262</sup> The court applied Article 19 to a sexual abuse case that occurred under the child's primary caregiver, however, Article 19 applies to *any* care setting.<sup>263</sup> General Comment No. 13 defines the care setting as a place where children spend time while under the supervision of their primary or proxy caregiver, "for periods of time which are short-term, long-term, repeated, or only once."<sup>264</sup> Unfortunately, there are reports from around the world of orphanage voluntourists committing heinous sexual crimes during their stays at the orphanages.<sup>265</sup> There are also reports of orphanage directors, funded by voluntourists and other donors, who have sexually abused children under their care.<sup>266</sup>

Taking into consideration the various harms to children that are promoted through the practice of orphanage voluntourism, it is evident that orphanage voluntourism is counter to Article 19 of the UNCRC.

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261. UNCRC, *supra* note 5, at 50.

262. *People v. Abadies y Claveria*, G.R. No. 139346-50 (July 11, 2002) (Phil.), <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/51893>.

263. *See* General Comment No. 13, *supra* note 52, ¶¶ 1, 34 (defining "care settings").

264. *Id.* ¶ 34.

265. *See, e.g., Nepal Convicts Canadian Orphanage Volunteer*, *supra* note 39 (reporting that in Nepal, an orphanage volunteer from Canada was convicted of sexually abusing a disabled 15-year-old boy, and that five years prior a French charity worker was convicted of raping ten children); *Golgowski*, *supra* note 41 (announcing that a nineteen-year-old missionary from the US was charged with traveling to Kenya to engage in sex acts with disadvantaged children after volunteering at an orphanage).

266. *See, e.g., Wesaka & Kigongo*, *supra* note 42 (finding that one orphanage director in Uganda was charged with various counts relating to ongoing sexual abuse of children under his care); *Zagaris*, *supra* note 42, at 271 (exposing another man who was charged in the US for engaging in illicit sexual conduct in a foreign place after traveling to Kenya and establishing an orphanage there); *Oregon Man Sentenced*, *supra* note 42 (explaining that yet another man was charged in the US for repeatedly sexually abusing children who lived at an orphanage he operated in Cambodia). *See generally* *Ahern*, *supra* note 31 (noting that once in orphanages "... children are at risk for sexual and physical abuse, not only from staff, but from a steady stream of volunteers and donors who receive unfettered access to them.").

State parties that acquiesce to the practice are therefore in breach of their UNCRC obligations.

#### IV. RECOMMENDATIONS

Orphanage voluntourism, though often well-intentioned, hinders children's development<sup>267</sup> by impinging upon their need for stability and permanency.<sup>268</sup> Unfortunately, many countries in the developing world continue to allow orphanage voluntourism within their borders as a result of their failure to adequately regulate the practice and enforce the regulations that already exist regarding orphanages generally.<sup>269</sup>

The failure to adequately regulate orphanage voluntourism is often due to a lack of resources.<sup>270</sup> Even though existing laws and regulations may appear to comply with Article 19 on paper, they fail to address the issue in practice due to inadequate enforcement.<sup>271</sup> However, the very existence of these laws demonstrates that some countries have taken steps to better regulate their orphanages, even if

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267. See Eimer, *supra* note 12 (reporting the impacts of having strangers drop in and out of a child's life); Mulheir, *supra* note 2 (reporting the impacts of having strangers drop in and out of a child's life); cf. Darling, *supra* note 12 (explaining the cycle of familial destruction).

268. See Dillon, *supra* note 25, at 31.

269. See, e.g., Simone Galimberti, *Few Ideas for Action: A Short Essay on Voluntourism and Orphanage Volunteering*, SHARING 4 GOOD, <http://sharing4good.org/article/few-ideas-action-short-essay-voluntourism-and-orphanage-volunteering> (last visited Dec. 30, 2020) (noting that enforcement of regulations for orphanages and children's homes in Nepal is weak despite regulations and benchmarks existing).

270. See, e.g., DDUMBA-NYANZI & LI, *supra* note 139, at 10 (explaining that the Ugandan government lacks the resources necessary to conduct regular assessments and inspections on orphanages as required by law); Zweynert, *supra* note 100 (providing that the MoSVY in Cambodia faces a shortage of inspectors and cannot execute yearly inspections of orphanages as promised).

271. Compare MINISTRY OF SOC. AFF., VETERANS & YOUTH REHAB, *supra* note 109, at 7 (providing that in Cambodia, visitors to orphanages will be accompanied by a staff member at all times), and The Children (Approved Homes) Rules, *supra* note 139, § 25(3) (stating that in Uganda, all visitors require permission and supervision from staff while interacting with children in specified locations), with Eimer, *supra* note 12 (finding that some orphanages in Cambodia allow visitors to take children away on day trips), and Nianias, *supra* note 38 (observing that, in a Ugandan orphanage, unsupervised children were allowed to go into volunteers' rooms).

the regulations do not explicitly address orphanage voluntourism.<sup>272</sup> The shortcomings in enforcement show that even if these countries were to promulgate laws to regulate orphanage voluntourism, they would not be enforced in practice.<sup>273</sup> The onus to regulate orphanage voluntourism should not be placed on countries that lack the resources and infrastructure necessary to enforce existing orphanage regulations.<sup>274</sup> The following recommendations, therefore, place the onus not on the state parties that receive orphanage voluntourists from abroad, but on the state parties from which the voluntourists come.

#### A. STATE PARTIES TO THE UNCRC SHOULD BAR CITIZENS FROM VOLUNTEERING IN ORPHANAGES ABROAD

Orphanage voluntourists inadvertently support the institutionalization of children.<sup>275</sup> Many orphanages would not survive without voluntourists and the financial benefits they yield.<sup>276</sup> Specifically, without voluntourists and donations, these orphanages could not pay their staff and supply food, rendering them unable to house children.<sup>277</sup> This deficit would harm the facilities and their unscrupulous directors who use children as a means of making profit,<sup>278</sup> not the children themselves, who often have living parents and families capable of taking care of them.<sup>279</sup>

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272. See, e.g., MINISTRY OF SOC. AFF., VETERANS & YOUTH REHAB, *supra* note 109, at 2; The Children (Amendment) Act, *supra* note 136.

273. See, e.g., DDUMBA-NYANZI & LI, *supra* note 139, at 10 (explaining that part of the problem is a lack of ability to follow up on assessments and inspections); Zweynert, *supra* note 100 (describing the strain of unregistered orphanages on enforcement mechanisms).

274. See *Child Protection – Policy Brief 2015*, *supra* note 143, at 2 (noting that in Cambodia, “coordination between the national, provincial and district levels within and among the ministries with mandates for child protection is weak”); MILLIGAN, *supra* note 125, at 37 (providing that most children’s homes in Uganda operate out of sight of the government).

275. *Volunteering In Nepal?*, *supra* note 1.

276. See Guiney, *supra* note 30, at 12; VAN DOORE ET AL., *supra* note 12, at 1 (“The profit in the orphanage business comes from volunteers and foreign funding.”).

277. Guiney, *supra* note 30 at 12.

278. See Ahern, *supra* note 31 (noting that unscrupulous orphanages require a constant flow of children for their business model to succeed).

279. See VAN DOORE ET AL., *supra* note 12, at 2 (discussing the paper orphan

The best way to ensure that this cycle of abuse and exploitation is truncated is to eliminate voluntourism.<sup>280</sup> State parties to the UNCRC should prohibit their citizens from volunteering in orphanages abroad by regulating their citizens' abilities to obtain tourist visas. This strategy would look like a reverse of the system Nepal has adopted to combat orphanage voluntourism.<sup>281</sup> In addition to outlawing orphanage voluntourism, Nepal made it illegal for foreigners who come to the country on tourist visas to volunteer.<sup>282</sup>

In practice, however, the Nepalese tourism industry encourages voluntourism, and tens of thousands of tourists volunteer each year with impunity.<sup>283</sup> This oversight is unsurprising because of the profound economic benefits of orphanage voluntourism to the cash-strapped countries, which encourages countries to look the other way through a lack of regulations or failure to enforce them.<sup>284</sup> Therefore, rather than admonishing developing countries to regulate their tourism industries, states should be responsible for regulating their citizens' voluntourism activities abroad.

B. STATE PARTIES TO THE UNCRC SHOULD URGE  
INDIVIDUALS, CORPORATIONS, AND NONPROFITS TO  
CEASE ADVERTISING AND FUNDING ORPHANAGES  
ABROAD

In addition to preventing their own citizens from volunteering in

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phenomenon in which children are presented as orphans through false documentation and then exploited for profit by orphanages); *Protecting Children from Orphan-Dealers*, *supra* note 19 (noting that in some West African countries parents sign their children away to orphanages with no conception that they will never see their child again); *see also* Dillon, *supra* note 17, at 39–40 (coining the term “social orphan” to refer to children who have living parents but are not under their care).

280. *Cf.* VAN DOORE ET AL., *supra* note 12, at 1 (indicating that some orphanages exist solely to satisfy the western desire to volunteer).

281. *See* Galimberti, *supra* note 269 (explaining that Nepal has made orphanage volunteering illegal, as well as volunteering while in the country on a tourist visa).

282. Immigration Rules, 1994, Rule 20 (Nepal); *see also* Galimberti, *supra* note 269.

283. MARTIN PUNAKS & KATIE FEIT, *NEXT GENERATION NEPAL, THE PARADOX OF ORPHANAGE VOLUNTEERING* 26 (2014).

284. *See, e.g.*, DDUMBA-NYANZI & LI, *supra* note 139, at 10; Zweynert, *supra* note 100.

orphanages abroad, state parties should prevent individuals, corporations, and nonprofits from advertising and funding orphanages in other countries. Unscrupulous and exploitative orphanages would be unable to sustain themselves without donations from volunteers and foreign entities.<sup>285</sup> These foreign entities, often NGOs and nonprofit organizations, should be urged to curtail their donations to orphanages.

This initiative should come from the state level, following in the footsteps of nations that have already made efforts to mitigate their involvement with orphanage voluntourism. Australia, for example, became the first country in the world to recognize orphanage trafficking as a form of modern-day slavery,<sup>286</sup> and UK Aid Direct will no longer fund orphanages and institutions abroad.<sup>287</sup>

In addition to publicly addressing orphanage voluntourism, state parties should regulate businesses, NGOs, and non-profit organizations with ties to orphanages abroad that encourage orphanage voluntourism. By promulgating these regulations, developed state parties would be doing their part to help developing states come into compliance with Article 19, while complying themselves as well. According to General Comment No. 16 of the UNCRC, state parties have a legal obligation to ensure that private sector enterprises respect the rights of the child, do not hinder the advancement of children's rights, and engage in the realization of those rights.<sup>288</sup> In other words, although non-state service providers must respect the principles and provisions of the UNCRC, state parties have the primary obligation of ensuring its implementation through regulations.<sup>289</sup> State parties, therefore, are required by General

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285. See Guiney, *supra* note 30, at 12.

286. *Australia Says Orphanage Trafficking is Modern-Day Slavery*, *supra* note 244.

287. Chloe Setter, *Hope is on the Horizon for Tackling Orphanage Trafficking*, REUTERS (Mar. 29, 2019), <https://news.trust.org/item/20190329133756-c3x2z/>.

288. Comm. on the Rights of the Child, General Comment No. 16, ¶ 25, U.N. Doc. CRC/C/GC/16 (2013) (“A state will thereby be in breach of its obligations under the Convention when it fails to respect protect and fulfil children’s rights in relation to business activities and operations that impact on children.”); ICJ, *State Obligations Regarding the Impact of the Business Sector on Children’s Rights* at 10 (2015) [hereinafter *State Obligations*].

289. General Comment No. 16, *supra* note 288, ¶ 42; *State Obligations*, *supra*

Comment No. 16 to regulate private sector enterprises that promote orphanage voluntourism, considering it is an exploitative and harmful practice that is counter to Article 19.<sup>290</sup>

### C. INTERNATIONAL DONORS AND VOLUNTEERS SHOULD PROMOTE FAMILY STRENGTHENING AND FAMILY REUNIFICATION INITIATIVES

As an alternative to volunteering in orphanages, those who want to help children should donate to organizations that promote family reunification and strengthening initiatives.<sup>291</sup> In most cases, children are placed into institutions because their families cannot financially support them.<sup>292</sup> Family strengthening initiatives strive to resolve the orphan crisis *ex ante* by providing services that ensure children have the resources they need to thrive within their family environment.<sup>293</sup> Family reunification is the process of maintaining family relationships while children are in a temporary care and working to reunite them with their parents.<sup>294</sup>

Under Article 19, state parties are obligated to take all appropriate

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note 288, at 10.

290. Fortunately, some organizations have already made efforts to cut ties with overseas orphanages. For example, major volunteering company Projects Abroad has recently announced it will sever all links with overseas orphanages, citing fears of child trafficking and exploitation. Christopher Knaus, *Volunteering Company Cuts Ties to Overseas Orphanages Over Child-Trafficking Fears*, GUARDIAN (Nov. 7, 2017), <https://www.theguardian.com/world/2017/nov/08/volunteering-company-cuts-ties-to-overseas-orphanages-over-child-trafficking-fears>.

291. See generally Holly Havens, *The Harms of Orphanage Voluntourism: Misperceptions Among Volunteers* 49 (Feb. 2018) (M.A. thesis, Columbia University) (on file with Columbia University Library) (explaining family reunification and strengthening initiatives).

292. *Id.* at 50; cf. Dillon, *supra* note 17, at 39–40 (discussing the ‘social orphan’ phenomena, in which children who have living parents end up away from their care due to social, cultural, and economic factors).

293. See FAITH TO ACTION INITIATIVE, *TRANSITIONING TO FAMILY CARE FOR CHILDREN: A GUIDANCE MANUAL* 18 (2016) (elaborating that family strengthening services include services that meet economic, educational, psychological, and special needs); cf. @NoWhiteSaviors, INSTAGRAM (Sep. 20, 2020, 8:10 PM), <https://www.instagram.com/p/CFZwXkPhhx1/> (“So much of the time, we are not addressing the root causes of the problems families are facing & we are not investing our energy or resources into giving them a fighting chance to stay together.”).

294. Havens, *supra* note 291, at 49–50.

measures to protect children from the harms that arise from orphanage voluntourism. Family strengthening and reunification initiatives are examples of these programs.<sup>295</sup> However, just as developing state parties often lack the resources to enforce their orphanage regulations, they may also have trouble sustaining family strengthening and reunification measures.<sup>296</sup>

Those who genuinely want to help children abroad should consider funding these initiatives. By donating to family strengthening and reunification programs,<sup>297</sup> international donors can help shift the focus and resources away from problematic institutions that rely on orphanage voluntourism for their survival towards sustainable community-based programs that reunite and keep families together.<sup>298</sup>

## V. CONCLUSION

Orphanage voluntourism is a violation of Article 19 of the UNCRC. While oftentimes well-intentioned, volunteers who are also tourists in orphanages tend to do more harm than good to the so-called orphans they insist on helping. Orphanages often exist to serve the wants of the volunteers and their desire to “help” as opposed to the needs of the already vulnerable children. This type of exploitation, and the harms it enables, constitutes violence as defined by General Comment No.

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295. See *Rwanda Closes Orphanages Created After Genocide*, E. AFRICAN (Apr. 16, 2016), <https://www.theeastafrican.co.ke/rwanda/News/Rwanda-closes-orphanages-created-after-genocide-/1433218-3161774-at7gum/index.html> (noting that, as part of an initiative to close down orphanages in Rwanda, The National Commission for Children was tasked with overseeing the successful reintegration of children into families, the creation of an alternative care system, and the transition towards a strengthened child protection system.).

296. Cf. Rosenberg, *supra* note 3 (reporting that in Haiti, orphanages make five times the budget of its social affairs ministry and 130 times its child protection budget).

297. See Havens, *supra* note 291, at 48 (providing some examples of family strengthening projects including building schools and offering childcare and disability services).

298. See *id.* at 49–51 (detailing alternative options to orphanage volunteering); Ahern, *supra* note 31 (“ . . . the focus of donor dollars should be on reuniting all children with parents or extended family and not constructing buildings that will keep them apart.”); Mulheir, *supra* note 2 (elucidating that “[m]ost developed countries did away with orphanages decades ago because of the harm caused to children, but somehow we have forgotten our histories.”).

13 of the UNCRC. Cambodia and Uganda are just two examples of the many state parties to the UNCRC that are in breach of Article 19 due to their failure to regulate orphanage voluntourism. These breaches can be remedied if state parties prevent their citizens from volunteering in orphanages abroad and discourage non-profits and other entities from advertising and donating to orphanages in violating countries.