

## *Combating Orphanage Tourism*

Position paper for the Roundtable to discuss initiative paper 35069 from MP Van Haga

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Thank you for the opportunity to provide a position paper for the Roundtable on Orphanage Tourism. This position paper focuses on the issue of orphanage tourism as a driver for the institutionalisation of children (including through orphanage trafficking) and makes recommendations for how the Dutch government might combat it. Orphanage tourism includes volunteering at, or visiting, orphanages in developing countries. This is an increasingly popular tourist attraction for tourists visiting Indonesia, Cambodia, Kenya, Nepal and Uganda, as well as many other developing nations. The demand for orphanage tourism creates a demand for children to be available in orphanages to volunteer with, which ultimately drives recruiters to traffic children into orphanages. Orphanage trafficking is the recruitment of children into orphanages or residential care institutions in developing nations for the purpose of ongoing exploitation and profit, particularly through orphanage tourism.<sup>2</sup> It must be noted that orphanage tourism and orphanage trafficking are not synonymous. The effect of orphanage tourism on children can be considered a form of exploitation. The demand for orphanage tourism is a driver for orphanage trafficking but is not a form of modern slavery itself.<sup>3</sup>

### **Orphanage tourism as a threat to child protection**

The prolific and inappropriate use of institutional care is a serious child welfare and protection issue involving the violation of a number of children's rights as outlined in the UN Convention on the Rights of the Child (CRC). Redress is achieved through reforming care systems and the deinstitutionalisation of broader child welfare services systems, including divestment strategies targeting foreign donor and volunteer sending countries and entities. Orphanage tourism is contrary to child rights. The Netherlands has a responsibility to ensure that their obligations as signatories to the CRC are upheld in their interactions with children, whether in the Netherlands or in direct impact overseas. As a party to the CRC, the Netherlands is required to recognise and operationalise its provisions in domestic legal and policy frameworks. In accordance with the CRC, children have the right to grow up in a family environment. This is supported by the United Nations Guidelines for the Alternative Care of Children, which supports the preservation or reestablishment of families and identifies a spectrum of options for alternative care.<sup>4</sup> Institutional care is considered a last resort and avoided for children under the age of three, unless there are very compelling reasons for exception. The Netherlands domestic child protection system recognises out-of-home care is a last resort for the protection of children, and supporting children within their family, or in another family environment through kinship or foster care are the preferred options. However, how Dutch entities interact with vulnerable children overseas is often contrary to this and Dutch citizens who volunteer in, found or fund orphanage care are often celebrated. It is important to realise that despite good intentions, these volunteers and organisations are contributing to the incidence of keeping children institutionalised which is contrary to international standards, and at worse, may be directly contributing to trafficking. For the organisations and volunteers, it is often difficult to know whether an orphanage or residential care centre falls into the latter category. However, regardless of whether they believe they are supporting or volunteering in a "good" orphanage, they are still contributing to the separation of children from their families and contravening the rights of the child to grow up in a family environment.

### **Orphanage tourism as a demand driver for child trafficking**

The second facet of combating orphanage tourism is to recognise it as a demand driver for child trafficking. Orphanage trafficking is a form of modern slavery that has clear links to the orphanage industry and the broader issue of the inappropriate use of institutional care. However, it must be made clear that modern slavery is not synonymous with institutionalisation. Orphanage trafficking is a serious crime involving exploitation and, as with all forms of trafficking, must be addressed through criminal law mechanisms such as extra-territorial trafficking laws. The demand for

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<sup>2</sup> Kathryn E. van Doore, 'Paper Orphans: Exploring Child Trafficking for the Purpose of Orphanages' (2016) 24(2) *International Journal of Children's Rights* 378.

<sup>3</sup> Kathryn E. van Doore and Rebecca Nhep, '*Orphanage Tourism and the Modern Slavery Act in Australia*', E- International Relations, 13 July 2018.

<sup>4</sup> United Nations General Assembly, *Guidelines for the Appropriate Use and Conditions of Alternative Care of Children 2009*, 64/142, Third Comm, Sixty-fourth sess, 65th plenary mtg, Agenda Item 64, UN Doc A/RES/64/142 (18 December 2009) principle 22.

orphanage tourism as a driver for trafficking necessitates an available population of ‘orphans’ for tourists to visit and volunteer with. These children are often not actual orphans but have been recruited for the purpose of exploitation through profit. It must be emphasised that not all children who are resident in orphanages that have living parents are victims of child trafficking. There are many drivers of institutionalisation that lead parents to place their children into orphanages including poverty, lack of access to education, lack of access to social welfare facilities and lack of access to required medical care. However, orphanage trafficking explicates the link between the inappropriate overuse of institutionalisation of children, orphanage tourism and the business model of orphanages.

Effective criminal justice responses are required to counter a culture of impunity and to ensure that those involved in orphanage trafficking are arrested, investigated, prosecuted, and convicted. As orphanage trafficking is a ‘new’ form of trafficking in most countries, perpetrators have not been subject to criminal justice responses as the issue has been treated primarily as one of child protection. With seeming impunity for the trafficking of children into orphanages, orphanage trafficking has thrived. Thus, where children are recruited into orphanages for a purpose of profit, appropriate criminal sanctions must be applied. This must occur in both contributing countries, whose citizens may participate in orphanage trafficking through founding, operating, or volunteering in orphanages, and also in the countries where orphanages are located. The recommendation that orphanage trafficking be criminalised and prosecuted as child trafficking is not made in isolation, but as one mechanism in a multi-sector framework that recognises the complex arena of alternative care and that this is merely one contributing factor to the inappropriate overuse of institutional care.

### **Combating orphanage tourism through policy, legislation and international cooperation**

To combat orphanage tourism as both a threat to child protection and a demand driver for child trafficking, the Netherlands should enact policy and legislation which seeks to end support for institutionalisation of children via reform to taxation, charity regulation, development aid and cooperation assistance, corporate supply chain responsibility, education and criminal law. The specific introduction of legislation and policy addressing the supply chains of volunteers paying for and participating in orphanage tourism and/or orphanage trafficking, as well as organisations funding, sending volunteers to, or founding orphanages, would have a critical impact on the way that the Netherlands engages with vulnerable children internationally.

Whilst it is only one component of combatting orphanage trafficking, criminalisation and prosecution are the lynchpin in the recognition that the exploitation of children in orphanages is not just a child protection issue, but also an offence. As an offence of child trafficking under international law, orphanage trafficking should be criminalised in domestic legislation both by countries where orphanage trafficking occurs and in contributing countries, with an aim of disrupting and ending the orphanage trafficking business model. Dutch trafficking law already recognises a connection between trafficking, exploitation and profit with extraterritorial jurisdiction enacted in s273f of the Criminal Code, which is very promising. However, as this White Paper advocates, orphanage tourism must be recognised as a contributing factor in orphanage trafficking. The inclusion of orphanage tourism as a form of exploitation in policy and legislation is one mechanism for doing so.

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

On an international level, the Dutch government has a unique opportunity to lead the European region in advocating for orphanage tourism to be recognised as harmful to children. This can be achieved via advocating at multilateral mechanisms such as through the United Nations forums, particularly those focusing on children’s rights, alternative care, child trafficking, and the sale and exploitation of children; and through inter-state cooperation to prevent, suppress and prosecute child trafficking as provided for in the Trafficking Protocol.

I agree with the Proposals and Suggestions outlined in the White Paper and strongly advocate for them to be immediately enacted. I look forward to responding to your questions on these issues and working together to ensure the protection of the most vulnerable children of the world.