Providing Protection or Enabling Exploitation? Orphanages and Modern Slavery in Post-Disaster Contexts

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Abstract

Orphanages are a common child protection response to humanitarian crises spurred on by media and NGO depictions of the disaster orphan. Yet, decades of research attests to the harm that orphanage care can cause. Driven by aid funding, orphanages are often sustained long after the recovery phase. In recent years, research has highlighted the links between orphanages, exploitation and modern slavery, particularly orphanage trafficking. This paper examines how the perpetuation of the disaster narrative sustains orphanage care post-disaster which heightens the risk, and exposure, of children to modern slavery, and makes suggestions for strengthening humanitarian crises responses to protect children.

Keywords: Orphanage; Humanitarian; Natural disasters, Orphanage trafficking; Modern Slavery

Introduction

The institutionalisation of children through the establishment of orphanages is often implemented as a child protection response in post-disaster humanitarian contexts. Despite extensive evidence that institutionalisation can be harmful to the development of children,[1] institutions and orphanages have proliferated over the past three decades as a response to humanitarian crises and the 'increased interest of private financial donors in funding the creation and operation of institutions'.[2] Research shows that orphanages are linked to modern slavery, particularly child trafficking.[3] Whilst inter-country adoption as a post-disaster humanitarian

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[1] Lorraine Sherr, Kathryn J. Roberts, and Natasha Gandhi, "Child violence experiences in institutionalised/orphanage care," *Psychology, Health & Medicine: Know Violence in Childhood Global Learning Initiative* 22, no. 1 (2017): 33.

[2] Marinus H. van Ijzendoorn et al., "Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development," *The Lancet Psychiatry* 7, no. 8 (2020): 706.

[3] Kathryn E van Doore, "Orphanages as Sites of Modern Slavery," in *Modern Day Slavery and Orphanage Tourism* (London: CABI, 2019), 19.

response[4] and its potential links to child trafficking[5] have been extensively considered, the use of orphanages as a child protection response in post-disaster contexts and their associated links with human trafficking and modern slavery have not.

This article aims to respond to that gap by examining how the use of child institutionalisation, particularly through the establishment of orphanages, is rationalised in order to protect children and prevent child trafficking in post-disaster contexts. The article critically analyses the use of institutional care, such as orphanages, as a child protection response in post-disaster contexts and examines how the continued use of the disaster narrative to perpetuate institutional care heightens the risk of modern slavery and child trafficking. We do this in four parts. First, we examine how orphans become the subject of specific humanitarian intervention. Second, we explore how orphanages have been utilised as a response to different forms of humanitarian crises including natural disasters such as earthquakes, tsunamis, epidemics and pandemics, and man-made emergencies such as armed conflict. Third, we examine the links between orphanages and modern slavery. We argue that the perpetuation of the disaster narrative sustains orphanages in the post-disaster recovery phase which heightens the risk and exposure of resident children to modern slavery. Finally, we make recommendations for child protection responses to future humanitarian crises to focus on strengthening the existing child protection system to prevent children being exposed to modern slavery in disaster and post-disaster settings.

Orphans as Subjects of Humanitarian Response

Humanitarian crises including natural disasters, war and health pandemics, create 'new types of vulnerability by disorganising families and disrupting communities'.[6] A common transnational humanitarian response to alleviate orphanhood in post-disaster contexts was previously the implementation of inter-country adoption. Inter-country adoption was first utilised

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[4] Peter Selman, "Adoption in the Context of Natural Disaster," in *The Routledge Handbook of Adoption*, ed. Emily Helder Gretchen Miller Wrobel, Elisha Marr (New York: Routledge, 2020); Patricia Fronek, "Operation Babylift: advancing inter-country adoption into Australia," *Journal of Australian Studies* 36, no. 4 (2012) 445-458; Patricia Fronek and Denise Cuthbert, "History repeating... disaster-related inter-country adoption and the psychosocial care of children," *Social Policy and Society* 11, no. 03 (2012) 429-442; Peter Selman, "Inter-country adoption after the Haiti earthquake: rescue or robbery?," *Adoption & Fostering* 35, no. 4 (2011) 41-49.

[5] Patricia Meier, "Small commodities: How child traffickers exploit children and families in inter-country adoption and what the United States must do to stop them," *J. Gender Race & Just.* 12 (2008) 185-224; David M Smolin, "Inter-country adoption as child trafficking," *Valparaiso Law Review* 39, no. 2 (2005) 281-326; Judith L Gibbons, "Human Trafficking and Inter-country Adoption," *Women & Therapy* 40, no. 1-2 (2017) 170-189; Jini Roby and Taylor Brown, "Birth Parents as Victims of Trafficking in Inter-country Adoption," in *The Inter-country Adoption Debate: Dialogues Across Disciplines*, ed. Robert Ballard et al. (Cambridge Scholars Publishing, 2015) 303-328; David M. Smolin, "Child laundering as exploitation: applying anti-trafficking norms to inter-country adoption under the coming Hague regime," *Vermont Law Review* 32 (2007) 1-56; David M. Smolin, "Child laundering: How the inter-country adoption system legitimizes and incentivizes the practices of buying, trafficking, kidnapping, and stealing children," *Wayne Law Review* 52 (2006) 113-200.

[6] Barbara Tizard, "Inter-country adoption: A review of the evidence," *Journal of Child Psychology and Psychiatry* 32, no. 5 (1991) 743-756; Manuel Carballo, Bryan Heal, and Mania Hernandez, "Psychosocial Aspects of the Tsunami," *Journal of the Royal Society of Medicine* 98, no. 9 (2005): 396.

as a form of child protection following the Second World War where religious organisations facilitated the international adoption of orphaned and abandoned children from Germany, Greece and the Baltic States to the United States of America and other European countries.[7] In more recent years, the use and abuse of inter-country adoption as a form of aid specifically targeting children has been documented after natural disasters[8] and war.[9] However, with increased scrutiny on both sending and receiving countries in relation to inter-country adoption due to extensive documentation of what Smolin refers to as 'child laundering',[10] the manner in which the west is encouraged to aid orphaned children has evolved. Development models such as orphanages are opened and run by foreigners who heed the call to aid and engage in 'rescue fantasies of childhood as well as actual children in this enterprise'.[11] Rather than removing children from their native countries, the emphasis is on maintaining them in their own countries through the provision of education, food and housing. Thus, a common response following a natural disaster is now to found, build and support orphanages.[12]

Extensive media coverage of large-scale disasters often results in significant humanitarian outpouring and gives rise to an influx of funding and new aid actors. Many of these are organisations established post disaster, without previous experience in the country or humanitarian sector and who operate outside of the established humanitarian framework.[13] These new aid actors typically originate from foreign donor communities and are without direct experience of the events. As such their interpretations are subjective and based upon mediated portrayals of news outlets, whose depictions of the aftermath shape their understanding of

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[7] Tizard, "Inter-country adoption: A review of the evidence,": 745.

[8] Ian Atzet, "Post-crisis actions to avoid international child trafficking," *Journal of Law and Family Studies* 12 (2010) 499-510; Selman, "Inter-country adoption after the Haiti earthquake: rescue or robbery?,"; Diane M Hoffman, "Saving children, saving Haiti? Child vulnerability and narratives of the nation," *Childhood* 19, no. 2 (2012) 155-168; Fronek and Cuthbert, "History repeating... disaster-related inter-country adoption and the psychosocial care of children,"; Annemarie Samuels, "Narratives of Uncertainty: The Affective Force of Child-Trafficking Rumors in Postdisaster Aceh, Indonesia," *American Anthropologist* 117, no. 2 (2015): 229.

[9] Karen Smith Rotabi, Alexandra W Morris, and Marie O Weil, "International child adoption in a post-conflict society: A multi-systemic assessment of Guatemala," *Journal of Intergroup Relations* 34, no. 2 (2008): 9; Fronek, "Operation Babylift: advancing inter-country adoption into Australia,": 445.

[10] David M Smolin, "Child laundering: how the inter-country adoption system legitimizes and incentivizes the practices of buying, trafficking, kidnaping, and stealing children," *Wayne L. Rev.* 52 (2006): 113.

[11] Erica Burman, "Innocents abroad: Western fantasies of childhood and the iconography of emergencies," *Disasters* 18, no. 3 (1994): 245.

[12] Claire Bennett, "Does this 'Nepal' image make you want to build these children a home? Think again," *The Guardian (online)* (2015) accessed 30 July 2020, https://www.theguardian.com/commentisfree/2015/may/07/nepal-children-image-orphanages-donate.

[13] Patrick Daly and R. Michael Feener, *Rebuilding Asia Following Natural Disasters: Approaches to Reconstruction in the Asia-Pacific Region* (Cambridge: Cambridge University Press, 2016), 26.

Journal of Modern Slavery, Slavery and Humanitarian Response Supplemental, Volume 6, Issue 3. 2021.

48

impacts and needs, frame their disaster discourse and inform the nature of their response.[14] In a 2017 study on Thailand and the effect of the Boxing Day tsunami in 2004, for example, it was found that 'the combination of a natural disaster in a developing country and media coverage has the potential to create a profound impression on individuals'.[15]

These portrayals are a product of the marketization of news and are economically incentivised to be sensational in nature. They therefore rarely give an accurate or balanced picture of the scale of the disaster or actual impacts on affected communities. Jamieson and Van Belle noted that foreign news coverage of disasters in countries with a low human development index rank were more likely to be epitomised by othering; involve appeals that construct a victim-saviour relationship between affected and observing communities and place the onus for rescue on the latter.[16] This is perhaps most readily observed with respect to post-disaster reporting on children, where grossly exaggerated numbers of disaster orphans[17] and a focus on child trafficking[18] accompanied by images of children alone, without parents or adults, beseeching for assistance, create what Burman refers to as 'the iconography of the emergency'.[19]

Portrayals of children appearing alone, without visible adult input or family, and in need of support and assistance, are commonly used to fundraise for child development and protection programs. As Burman states, 'children are figured heavily in aid appeals: they plead, they suffer, and their apparent need calls forth help in the form of donations'.[20] The depiction of the 'orphaned child' in the midst of humanitarian crisis lifts children out of their social and family context and creates an 'orphan identity'[21] that is awaiting benevolent humanitarian

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[14] Sara Bonati, "Multiscalar narratives of a disaster: From media amplification to western participation in asian tsunamis," *Culture Unbound* 7, no. 3 (2015): 499.

[15] Raweewan Proyrungroj, "Orphan Volunteer Tourism in Thailand: Volunteer Tourists' Motivations and On-Site Experiences," *Journal of Hospitality & Tourism Research* 41, no. 5 (2017): 580.

[16] Thomas Jamieson and Douglas Van Belle, "How Development Affects News Media Coverage of Earthquakes: Implications for Disaster Risk Reduction in Observing Communities," *Sustainability (Basel, Switzerland)* 11, no. 7 (2019): 10.

[17] Florence Martin and Tata Sudraja, *A Rapid Assessment of Children's Home in Post-Tsunami Aceh* (Save the Children and Ministry of Social Affairs, Indonesia, 2006), 66.

[18] Heather Montgomery, "Rumours of Child Trafficking after Natural Disasters: Fact, fiction or fantasy?," *Journal of Children and Media* 5, no. 4 (2011): 398.

[19] Burman, "Innocents abroad: Western fantasies of childhood and the iconography of emergencies,": 241.

[20] Burman, "Innocents abroad: Western fantasies of childhood and the iconography of emergencies,": 241.

[21] Kristen Cheney, "Malik and his three mothers: AIDS orphans' survival strategies and how children's rights hinder them," in *Reconceptualizing Children's Rights in International Development: Living Rights, Social Justice, Translations*, ed. Karl Hanson (Cambridge University Press, 2012), 155.

intervention.[22] This imagery creates the child as a subject of identification for the donor.[23] The child, as the subject, is alone and in need of help and 'competent donors' emerge to assist.[24] However, the assistance that is offered is on the donors terms.[25] Therefore whilst the iconography of emergency is essential in driving aid responses to humanitarian crisis, it results in conditional, donor-selected and donor defined aid.[26]

Such media draws international support to orphans to the exclusion of others and 'invites the application of inappropriately homogenised or culturally chauvinistic development models'.[27] As children are 'a primary signifier for international aid and development',[28] the depiction of the orphaned child in humanitarian crises evokes child protection development models like orphanages despite a long history of research indicating that institutional care is harmful to children.[29] Such signifiers are appropriated by corrupt orphanages[30] where unscrupulous operators and traffickers take advantage of the humanitarian crisis to recruit children into their orphanage in order to profit from their exploitation.

Orphanages as a Response to Humanitarian Crisis

It is currently estimated that there are between 2.7 million[31] – 5.37 million[32] children residing in institutions, or orphanages, globally with up to 80% of resident children having one or both parents alive, many of whom could raise them at home if they were supported. In some countries, the percentage of children residing in orphanages who have a living parent is much higher. The disparity in estimates is due to some governments not knowing how many

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[22] Andrea Freidus, "Unanticipated outcomes of voluntourism among Malawi's orphans," *Journal of Sustainable Tourism* 25, no. 9 (2016):13.

[23] Burman, "Innocents abroad: Western fantasies of childhood and the iconography of emergencies,": 241.

[24] Burman, "Innocents abroad: Western fantasies of childhood and the iconography of emergencies,": 241.

[25] Erica Burman, "Constructing and Deconstructing Childhood: Images of Children and Charity Appeals," in *Psychological Research: Innovative Methods and Strategies*, ed. John Haworth (Routledge, 1996), 178.

[26] Burman, "Innocents abroad: Western fantasies of childhood and the iconography of emergencies,": 246.

[27] Burman, "Innocents abroad: Western fantasies of childhood and the iconography of emergencies,": 243.

[28] Tess Guiney and Mary Mostafanezhad, "The political economy of orphanage tourism in Cambodia," *Tourist Studies* 15, no. 2 (2014): 150.

[29] van Ijzendoorn et al., "Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development,": 703.

[30] Guiney and Mostafanezhad, "The political economy of orphanage tourism in Cambodia,": 150.

[31] Nicole Petrowski, Claudia Cappa, and Peter Gross, "Estimating the number of children in formal alternative care: Challenges and results," *Child Abuse & Neglect* 70 (2017): 388.

[32] Chris Desmond et al., "Prevalence and number of children living in institutional care: global, regional, and country estimates," *The Lancet Child & Adolescent Health* 4, no. 5 (2020): 370.

orphanages are in their country, or the number of children living in them, despite having legislative and policy frameworks that require orphanages to register or seek authorisation to operate as a residential care centre for children.[33] This is particularly an issue with privately run orphanages where 'in many countries, local or international organizations have been able to open and operate such facilities with little or no government oversight'.[34] Guiney argues that because orphanages are perceived as a legitimate child protection response in developing nations, 'donors fail to be as critical as they would be of other charitable organizations'.[35] In addition, in countries where the population is experiencing, or impacted by, conflict, displacement, health crises, low socio-economic conditions or a combination of these, the number of orphanages is increasing.[36] Research has documented the establishment and maintenance of orphanages as a child protection response in diverse humanitarian emergency settings ranging from natural disasters such as the Indian Ocean Tsunami impacting Indonesia[37] and Thailand[38] and earthquake in Haiti,[39] and Nepal[40] to armed conflict in Uganda[41] and Cambodia[42], to the perceived 'AIDS orphan crisis' in Sub-Saharan Africa.[43]

Two relatively recent examples of the proliferation of orphanages following humanitarian crisis are the responses to the 2010 earthquake in Haiti and the 2015 earthquakes in Nepal. In the aftermath of the 2010 Haitian earthquake, a child protection response saw the Haitian government expedite inter-country adoptions that were already under way with eighty Haitian children having their adoptions into the United States finalised within ten days of the earthquake

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[33] John Williamson and Aaron Greenberg, *Families, not orphanages* (Better Care Network, 2010), 3.

[34] Williamson and Greenberg, *Families, not orphanages*, 3.

[35] Guiney and Mostafanezhad, "The political economy of orphanage tourism in Cambodia,": 141.

[36] Williamson and Greenberg, *Families, not orphanages*, 3.

[37] Martin and Sudraja, *A Rapid Assessment of Children's Home in Post-Tsunami Aceh*.

[38] Proyrungroj, "Orphan Volunteer Tourism in Thailand: Volunteer Tourists' Motivations and On-Site Experiences,".

[39] Georgette Mulheir and Mara Cavanagh, *Orphanage Enterpreneurs: The Trafficking of Haiti's Invisible Children*, Lumos (2016).

[40] Martin Punaks and Katie Feit, "Orphanage voluntourism in Nepal and its links to the displacement and unnecessary institutionalisation of children," *Institutionalised Children Explorations and Beyond* 1, no. 2 (2014): 180.

[41] Mark Riley, *Baseline Study: The State of Institutional Care in Uganda*, Ministry of Gender, Labor and Social Development (Kampala, 2012).

[42] Tess Guiney, "'Orphanage Tourism' in Cambodia: When Residential Care Centres Become Tourist Attractions," *Pacific News* 38 (2012) 9-14.

[43] Linda M Richter and Amy Norman, "AIDS orphan tourism: A threat to young children in residential care," *Vulnerable Children and Youth Studies* 5, no. 3 (2010) 217-229.

occurring.[44] The Haitian government temporarily suspended new adoptions in order to prevent child trafficking.[45] Despite this measure, scandal in Haiti soon erupted when ten missionaries were charged with child abduction after trying to take 33 children who were not orphans out of the country without permission.[46] Another 54 children were airlifted for adoptions to be arranged by the United States Governor for Pennsylvania, Edward G. Rendall, only to discover that 12 of them were not in fact orphans.[47] The Haitian situation revealed the complex issues associated with inter-country adoption as an emergency relief mechanism. Whilst there was a ban on inter-country adoptions being commenced, there was no ban on orphanages opening and taking in children, which subsequently occurred at a rapid rate. The ultimate legacy of the 2010 earthquake was an estimated 32,000 children residing in orphanages, around 80 percent of whom had at least one living parent.[48] A report on the links between the Haitian earthquake and the establishment of orphanages found that children were being recruited or purchased into orphanages, which were poorly maintained in order to encourage funding from foreigners.[49]

In Nepal, there was a significant rise in the institutionalisation of children in orphanages between 1996 and 2006 where children were displaced into orphanage care as a result of civil unrest.[50] Following the earthquakes in Nepal in April and May 2015, the government issued a moratorium on all inter-country adoptions, not just a suspension on new adoption proceedings, in addition to a moratorium on the establishment and registration of new orphanages. Existing orphanages were also prohibited from receiving new children without government approval.[51] However, even following these stricter measures, 245 children were intercepted from being trafficked either to illegal and unregistered orphanages or for other illicit purposes in the first two months after the earthquakes. In a press release pertaining to the post-earthquake trafficking, UNICEF stated 'in some cases children are deliberately separated from their families and placed in orphanages so they can be used to attract adoptive families, fee-paying volunteers and

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[44] Matthew Bigg, "Haiti orphans at risk from traffickers -government, UNICEF", *Reuters,* (25 January 2010), accessed 30 July 2020, http://www.reuters.com/article/us-quake-haiti-orphans-sb-idUSTRE60O2A120100125.

[45] Selman, "Inter-country adoption after the Haiti earthquake: rescue or robbery?,": 41.

[46] Karl Penhaul, Dan Simon and Jill Dougherty, "U.S. missionaries charged with kidnapping in Haiti", *CNN Edition,* (5 February 2010), accessed 30 July 2020, http://edition.cnn.com/2010/CRIME/02/04/haiti.arrests/.

[47] Ginger Thompson, "Questions Surface After Haitian Airlift", *New York Times*, (23 February 2010) accessed 30 July 2020, http://www.nytimes.com/2010/02/24/world/americas/24orphans.html?_r=0.

[48] Mulheir and Cavanagh, *Orphanage Enterpreneurs: The Trafficking of Haiti's Invisible Children*, 7.

[49] Mulheir and Cavanagh, *Orphanage Enterpreneurs: The Trafficking of Haiti's Invisible Children*, 27.

[50] Martin Punaks and Katie Feit, "Orphanage voluntourism in Nepal and its links to the displacement and unnecessary institutionalisation of children,": 180.

[51] Kathryn Johnson, "Nepal's Earthquakes, 'Orphans,' and Volunteers", *Human Trafficking Search,* (5 October 2015), accessed 30 July 2020, http://www.humantraffickingsearch.net/wp1/nepals-earthquakes-orphans-and-volunteers.

donors'.[52] It was also reported that there was a proliferation of 'pop up' orphanages that were not registered officially but had been established and were operating unlawfully to capitalise on the aid pouring into the country[53] and an increase of 486 children institutionalised in orphanages.[54]

For children who are already regarded as vulnerable, humanitarian crises exacerbate their existing vulnerability in a variety of ways. Children may become separated from their parents or caregivers by virtue of the humanitarian crisis itself, be it a health issue, natural disaster or displacement caused by conflict. Children with pre-existing vulnerabilities are also more likely to experience secondary separation, which occurs when caregiver's capacities are stretched, overwhelmed or eroded by the impacts of the crisis. The concentration of aid directed towards orphanages and the disconnection between this intervention and the actual needs of affected communities, exacerbates the risk of secondary separation by incentivising relinquishment rather than offering families more appropriate support.[55]

As such, separation in a humanitarian context is not always a direct consequence of the crisis. For example, many children are placed in orphanages, or residential care centres, due to a perception that they will be better protected in times of humanitarian crisis.[56] For families who may have been living in endemic poverty, a humanitarian crisis may be the tipping point leading their parents to relinquish the child to an orphanage seeking better circumstances. Orphanhood is therefore not the primary driver of admissions into institutional care in emergency contexts as is usually assumed,[57] but a variety of other drivers including illness or disability, socio-economic conditions result in children being relinquished, transferred or even trafficked into orphanage care.

Orphanages or institutions, can therefore create a 'pull factor' where children are admitted not because they are orphans, but simply because the orphanage exists and it is perceived as a means of ameliorating vulnerability, both pre-existing and crisis related.[58] As such, child admissions can be driven by the donor prerogative, and ironically this can create the

[52] UNICEF, "Nepal: in earthquakes' wake, UNICEF speeds up response to prevent child trafficking", UN News, (22 June 2015), accessed 30 July 2020, https://news.un.org/en/story/2015/06/502262-nepal-earthquakes-wake-unicef-speeds-response-prevent-child-trafficking.

[53] "Trafficking of 'orphans' already on in post-earthquake Nepal, government fears", SouthAsia.com.au, (21 May 2015), accessed 30 July 2020, http://www.southasia.com.au/2015/05/21/trafficking-of-orphans-already-on-in-post-earthquake-nepal-government-fears/.

[54] Nepal Central Child Welfare Board, The State of the Children in Nepal 2016 (Ministry of Women, Children and Social Welfare, Nepal, 2016), 115-116.

[55] Neil Boothby et al., "What are the most effective early response strategies and interventions to assess and address the immediate needs of children outside of family care?," Child abuse & neglect 36, no. 10 (2012): 713.

[56] Boothby et al., "What are the most effective early response strategies and interventions to assess and address the immediate needs of children outside of family care?,": 713.

[57] Sherr, Roberts, and Gandhi, "Child violence experiences in institutionalised/orphanage care,": 32.

[58] Williamson and Greenberg, Families, not orphanages, 3.

very separation donors purport to resolve. This in turn creates an environment conducive to child trafficking and the sale of children connected with orphanages, under the guise of humanitarian action. Such conditions may be attractive for unscrupulous orphanage operators to take advantage of the situation and traffic children into an orphanage seeking to benefit from the increased aid available due to a humanitarian crisis.

This risk is intensified where disasters occur in countries where child protection systems are characterised by an over-reliance on under-regulated privatised institutional care, weak rule of law and a documented history of fraudulent practices in alternative care.[59] Disasters, and the ensuing disruption, can exacerbate systemic weaknesses as well as vulnerabilities within already at-risk communities. Families may be forced to take risks, including relinquishing their children, to cope with the economic impacts of disasters or the demands and implications of rebuilding. Governments without strong regulatory control over private institutions pre-disaster are even less likely to be able to enforce gatekeeping, standards and uphold registration requirements post disaster. This creates an opportunity for unscrupulous intermediaries who are cognisant of the commercial opportunities arising from humanitarianism. They may seek to establish new institutions or recruit children into new or existing institutions to access aid funds. In turn, donations and aid then incentivises the recruitment and maintenance of children in orphanages as a necessary means of expending the over-investment.[60] Indeed, the funding flow into orphanages from commercial and fundraising activities associated with orphanage tourism, where people pay to visit or volunteer in an orphanage, has been linked to the establishment and maintenance of orphanages, and the recruitment of children into orphanages to meet the demand for such experiences.[61]

Perpetuating the Disaster Orphan Narrative: Enabling Exploitation

Humanitarian crises such as natural disasters 'heighten the risk, and create the right environment, for traffickers to exploit the vulnerabilities of the affected population' with children being particularly vulnerable.[62] During humanitarian crises, 'children face specific life-threatening risks, including malnutrition, separation from their families, trafficking, recruitment into armed groups and physical or sexual violence and abuse, all of which require immediate

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[59] Kathryn E. van Doore and Rebecca Nhep, "Orphanage Trafficking, Modern Slavery and the Australian Response," *Griffith Journal of Law & Human Dignity* 7, no. 2 (2019): 119.

[60] Martin and Sudraja, *A Rapid Assessment of Children's Home in Post-Tsunami Aceh*, 68.

[61] Kristen Cheney and Karen Smith Rotabi, "Addicted to Orphans: How the Global Orphan Industrial Complex Jeopardizes Local Child Protection Systems," in *Geographies of Children and Young People*, ed. Kathrin Hörschelmann Christopher Harker, Tracey Skelton (Berlin: Springer, 2015) 90-104; Karen Smith Rotabi, Jini L. Roby, and Kelley McCreery Bunkers, "Altruistic Exploitation: Orphan Tourism and Global Social Work," *British Journal of Social Work* 47, no. 3 (2016) 648-665; Leigh Matthews, "People, Money and Resources: The Drivers of Institutionalisation," in *Modern Day Slavery and Orphanage Tourism*, ed. Leigh Matthews Joseph M Cheer, Kathryn E van Doore, Karen Flanagan (London: CABI, 2019), 45.

[62] International Office for Migration, *Addressing Human Trafficking and Exploitation in Times of Crisis*, IOM (Geneva, 2015), 5.

action'.[63] Orphanages proliferate as a child protection response yet are 'frequently understaffed, poorly organized, and unable to meet national minimum standards'.[64] Whilst humanitarian crises are often the impetus for a humanitarian response of mass institutionalisation of children,[65] there is a sustained prevalence of institutionalisation following the cessation of such unrest often due to the continued availability of aid and donations.

Orphanages that were established as a result of humanitarian disaster often continue to perpetuate the disaster narrative to justify the ongoing use of institutional care. Following the genocide in Rwanda, a UNICEF report on children in unaccompanied child centres, another term for orphanages, noted that 'closer examination of children in centres reveals that in recent years- in a period absent of civil strife- children are continuing to enter centres' as families believed that such centres were a better alternative than raising them at home.[66] Research undertaken in Thailand in 2017 found that there was a strong relationship between natural disaster and the motivations of volunteers to assist. The study found the 'most dominant motivational factor' was a 'desire to help the children' which was 'strongly influenced by the volunteer tourists' knowledge of the 2004 Boxing Day tsunami',[67] an event that had occurred some thirteen years previous. Another example of the continued proliferation of orphanages is found in Cambodia where the civil war was resolved in 1975 and the Khmer Rouge regime overturned in 1979. Many non-government organisations in Cambodia are still reliant on the civil war narrative for their fundraising. One example is an Australian non-government organisation operating in Cambodia that continues to outline the civil war as a rationale for their continued operation of orphanages.[68] The same organisation has been critiqued for their use of alone, dirty children in their fundraising campaigns.[69] In Cambodia, a mapping published in 2017 estimated that 26,187 children were living in residential care settings, with 16,579 of those in institutions with 79%

[63] Sphere Association, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response* (Geneva, Switzerland, 2018), 12.

[64] Boothby et al., "What are the most effective early response strategies and interventions to assess and address the immediate needs of children outside of family care?,": 715.

[65] Boothby et al., "What are the most effective early response strategies and interventions to assess and address the immediate needs of children outside of family care?,": 713.

[66] K.F Greenwell, *A profile of children in Rwanda's unaccompanied children [UAC] centers: A report based on statistical indicators for 24 UAC centers in 2000*, UNICEF-Rwanda and Ministry of Local Administration and Social Affairs of Rwanda, (2002), 44.

[67] Proyrungroj, "Orphan Volunteer Tourism in Thailand: Volunteer Tourists' Motivations and On-Site Experiences,": 579.

[68] "Sunrise- About us", Sunrise Cambodia, accessed 30 July 2020, http://sunrisecambodia.org.au/about/.

[69] Lindsay Murdoch, "'Poverty porn' and 'pity charity' the dark underbelly of a Cambodia orphanage," *Sydney Morning Herald*, (2016) accessed 30 July 2020, http://www.smh.com.au/world/poverty-porn-and-pity-charity-the-dark-underbelly-of-a-cambodia-orphanage-20160602-gpacf4.html.

having a living parent.[70] It was found that 75% of the children were placed in the orphanage due to poverty and to access education.[71]

Rather than providing protection, orphanage care is well-documented as exposing children to a much higher risk of abuse. A 2020 Lancet Commission found that children residing in institutional care were 'at risk of severe physical or sexual abuse, violation of fundamental human rights, trafficking for sex or labour, exploitation through orphan tourism, and risk to health and wellbeing after being subjected to medical experimentation.'[72] The United Nations has documented abuse in orphanages including 'torture, beatings, isolation, restraints, sexual assault, harassment, and humiliation'.[73] The 2019 United Nations Global Study on Children Deprived of Liberty reported that 'conditions in institutions are often characterised by violence, sexual abuse and neglect, amounting to inhuman and degrading treatment' and that child protection systems that favoured institutionalisation were sometimes characterised by 'profit motives or the commodification of the care of children'.[74]

The links between institutional care and trafficking have been in particular focus in recent years. In the United States Trafficking in Persons Report 2018, a special section entitled 'Child Institutionalization and Human Trafficking' highlighted how children are both trafficked into and out of orphanages outlining that the 'physical and psychological effects of staying in residential institutions, combined with societal isolation and often subpar regulatory oversight by governments, place these children in situations of heightened vulnerability to human trafficking'.[75] Such heightened vulnerability results in the exploitation of children being more likely, with the Report detailing cases of orphanages doubling as brothels, and children being forced into commercial sexual exploitation and forced labour.[76] It further particularises how profits from voluntourism 'incentivise nefarious orphanage owners to increase revenue by expanding child recruitment operations in order to open more facilities' thereby facilitating 'child trafficking rings'.[77]

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[70] Ministry of Social Affairs Veterans and Youth Rehabilitation of Cambodia, *Mapping of residential care facilities in the capital and 24 provinces of the Kingdom of Cambodia*, Royal Government of Cambodia (2017), 10.

[71] Lindsay Stark et al., "National estimation of children in residential care institutions in Cambodia: a modelling study," *BMJ Open* 7, no. 1 (2017): 1.

[72] van Ijzendoorn et al., "Institutionalisation and deinstitutionalisation of children 1: a systematic and integrative review of evidence regarding effects on development,": 706.

[73] UNICEF, *Violence against Children in Care and Justice Institutions*, UNICEF (2006), 175.

[74] Manfred Nowak, *Report of the Independent Expert leading the United Nations Global Study on Children Deprived of Liberty*, UN Doc A/74/136 (2019), 13/23.

[75] United States Department of State, *Trafficking in Persons Report 2017* (2017), 22.

[76] United States Department of State, *Trafficking in Persons Report 2017* (2017), 22.

[77] United States Department of State, *Trafficking in Persons Report 2017* (2017), 22.

Where children are recruited or transferred into orphanages for the purpose of exploitation or profit, it is known as 'orphanage trafficking'. Orphanage trafficking is one form of modern slavery that is documented as occurring in orphanages as a result of the profit motivation driven by aid funding.[78] The profit motive leads orphanages to utilise children 'as a commercial entity to attract funds' who 'may be sent out to beg or perform on behalf of centres' to elicit donations.[79] A UNICEF report on residential care in Cambodia found that in 'some cases residential care facilities are being used to raise money in a way that begins to resemble a business. Tourism generates funds that are often unmonitored and therefore more susceptible to corruption'.[80]

Orphanage tourism is where foreigners volunteer in, or visit, orphanages as part of their overseas traveling experience.[81] Voluntourism globally generates an estimated US$2.6 billion per year in revenue.[82] Orphanage tourism is a form of voluntourism that objectifies children as commodities to be 'consumed'.[83] The demand for orphanage tourism experiences has led to what Cheney terms the 'orphanage industrial complex'.[84] Orphanage tourism results in children being vulnerable to forms of labour and sexual exploitation with children residing in the most corrupt centres 'often perceived to be accessible for more than humanitarian activities'. [85] In 2016, the Special Rapporteur on the sale of children, child prostitution and child pornography to the Human Rights Council found that

> Research has provided evidence of systems in which the owners of orphanages use intermediaries to get children who look poor to orphanages, in order to satisfy a fee-based volunteering demand, generating significant profits. Traffickers lure poverty-stricken families into giving away their children, under promises of good living conditions and

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[78] Kathryn E. van Doore, "Paper Orphans: Exploring Child Trafficking for the Purpose of Orphanages," *International Journal of Children's Rights* 24, no. 2 (2016): 378.

[79] Erica Browne, *Children in care institutions* (Institute of Development Studies, 2017), 2.

[80] UNICEF, *With the best intentions: A study of attitudes towards residential care in Cambodia* (UNICEF & Ministry of Social Affairs, Veterans and Youth Rehabilitation, Cambodia, 2011), 65.

[81] Tourism Research and Marketing, *Volunteer tourism: A Global Analysis* (European Association for Tourism and Leisure Education and Tourism Research and Marketing, 2008).

[82] Proyrungroj, "Orphan Volunteer Tourism in Thailand: Volunteer Tourists' Motivations and On-Site Experiences,": 560.

[83] P. Jane Reas, ""Children That are Cute Enough to Eat": The Commodification of Children in Volunteering Vacations to Orphanages and Childcare Establishments in Siem Reap, Cambodia," *Tourism, culture & communication* 20, no. 2 (2020): 83.

[84] Cheney and Rotabi, "Addicted to Orphans: How the Global Orphan Industrial Complex Jeopardizes Local Child Protection Systems,": 97.

[85] Guiney and Mostafanezhad, "The political economy of orphanage tourism in Cambodia,": 141.

education. Children are then often left in poor conditions, in order to prompt foreign charity, and forced to perform activities to please foreign volunteers.[86]

Orphanages are often established as a child protection response to humanitarian crisis, however it is the perpetuation of orphanage care propped up by funding streams including aid and orphanage tourism that leads to the exploitation and trafficking of vulnerable children. Whilst some form of emergency residential care may be required at the time of the humanitarian crisis, such care should be provided by existing services that are already operating as part of the formal alternative care system, temporary in nature and used for the shortest duration possible with the aim of reunifying the child with their family or arranging for permanent care in a family-based setting via kin or domestic adoption.[87]

Advocating for Appropriate Child Protection Responses in Humanitarian Crisis

Formal humanitarian sector actors have long since recognised the risks and detriments of proliferating orphanages in humanitarian settings. Through various interagency initiatives, the sector has issued authoritative guidance to discourage its practice. For example, the Interagency Guiding Principles on Unaccompanied and Separated Children drew attention to the risk of humanitarian action provoking separation and exacerbating children's vulnerabilities. The Guiding Principles outline a strong framework for integrating international child rights norms into humanitarian action, including the prioritisation of family preservation and family-based care.[88]

Similarly, the Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response recognises that humanitarian responses can positively or negatively impact children's care and protection and expose children to risks of child recruitment, abduction and separation.[89] The Minimum Standards for Child Protection in Humanitarian Action (Standards) call for caution in labelling separated or unaccompanied children 'orphans' until such time that the living status of both parents has been verified.[90] The Standards promote a system strengthening approach to child protection in humanitarian settings as opposed to siloed issue specific interventions. This is a critical safeguard against child rights regressions that can occur when aid actors seek to ameliorate one issue, perceived or actual, without taking into

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[86] Maud de Boer-Buquicchio, *Report of the Special Rapporteur of the Human Rights Council on the sale of children, child prostitution and child pornography*, UN Doc A/HRC/34/55 (22 December 2016): 16/25.

[87] *Guidelines for the Alternative Care of Children*, UN Doc A/RES/64/142, (18 December 2009, adopted 24 February 2010): Guidelines 153-154.

[88] International Committee of the Red Cross, *Interagency Guiding Principles on Unaccompanied and Separated Children*, International Committee of the Red Cross (2004), 46.

[89] Sphere Association, *The Sphere Handbook: Humanitarian Charter and Minimum Standards in Humanitarian Response*, 12.

[90] The Alliance for Child Protection in Humanitarian Action, *Minimum Standards in Child Protection in Humanitarian Action* (2019), 153.

account the impact on children's holistic rights. Rights regressions can increase the risk of trafficking and exploitation. This is particularly so when the right being encroached upon is the child's right to family life, as child vulnerability is known to increase when a child is removed from the protective environment of the family. As such it is imperative that donors and aid actors, both new and established, prioritise action that strengthens families and the family-based care system. As the Standards, suggest, this is best achieved through measures that enhance the readiness, capacity and responsiveness of the existing child protection system rather than through parallel and disjointed efforts. Such an approach not only improves the outcomes for children, it protects children from trafficking and exploitation in institutions by starving the unregulated 'orphan industrial complex'[91] of the financial incentives that drive it.

The problem remains however that it is not the absence of authoritative guidance or even law that has enabled this phenomenon to occur. It is the amateurization of aid and child protection that 'othering' seems to sanction resulting in the bypassing of the formal humanitarian and government frameworks by donors and 'amateur aid actors' who operate on the basis of their assumptions.[92] Fueled by the 'iconography of emergency' in media depictions, their altruism plays into the hands of intermediaries and operators seeking to profit or disguise their intent to exploit children behind the convenient guise of humanitarianism. As such it points to the need for greater regulation of foreign charities overseas activities and increasing accountability and awareness raising amongst donors and the western media.

Charities should be required, under the regulations of their registering country, to operate in conformity with the laws and policies of their host country. This must include the international laws to which host countries have acceded and laws and orders or regulation made pursuant to emergency powers legislation, including those pertaining to moratoriums on new institutions, inter-country adoption and prohibitions on irregular movement of children. The Australian Not for Profit Commission's recently introduced External Conduct Standards (ECS) are a good example of such charity sector regulation.[93] Comprised of a set of four standards applicable to all Australian charities with overseas activities, the ECS limit charities involvement with overseas institutions to those that operate in conformity with law and minimum standards. Whilst there are concerns regarding self-reporting and weak enforcement, it is expected this will curtail funding and involvement with institutions that are unregistered and practice irregular admission, including orphanage trafficking.

Additionally, charities and their registering bodies should be required to establish complaints mechanisms accessible to a range of stakeholders, including local governments and communities. This is a critical means of preventing exploitation which is known to thrive in

[91] Cheney and Rotabi, "Addicted to Orphans: How the Global Orphan Industrial Complex Jeopardizes Local Child Protection Systems,": 97.

[92] Daly and Feener, *Rebuilding Asia Following Natural Disasters: Approaches to Reconstruction in the Asia-Pacific Region*, 26.

[93] *Australian Charities and Notforprofits Commission Regulation 2013* (Cth): Division 50: External Conduct Standards.

environments that lack accountability and oversight.[94] Furthermore, it creates an avenue for the regulatory burden for charities overseas activities to be shared by registering and host governments. This is necessary to address the unrealistic expectation placed on governments in countries with a pre-existing weak rule of law and unregulated alternative care sector to regulate the activities of overseas charities in an emergency context.

Awareness raising efforts targeting donor communities and media outlets should be factored into disaster preparedness frameworks for countries most at risk of experiencing a heightened risk of child trafficking and exploitation in conjunction with an influx of aid. Particular attention should be paid to securing the cooperation of major media outlets with respect to reporting on children and the accuracy of terminology used. Government orders and regulations, including moratoriums on new institutions, inter country adoption and prohibitions on irregular admission of children into institutions in emergency contexts should be circulated to diplomatic posts, media, and relevant charity sector regulatory and peak bodies, in accessible languages, immediately upon declaration of a state of emergency or upon promulgation.

Furthermore, existing criminal law mechanisms need to be strengthened and stringently enforced to ensure humanitarian settings do not offer impunity to offenders seeking to exploit the vulnerability of children and families during emergencies. Child trafficking legislation needs to be reviewed, and where necessary, amended, to ensure child trafficking and exploitation in institutions is a prosecutable offence.[95] This must include the application of extraterritorial jurisdiction to the trafficking offences of key 'donor countries' to aid with the prosecution and deterrence of foreign offenders.

Lastly, efforts to combat child-trafficking and exploitation need to be mainstreamed within emergency response frameworks, including the cluster system. As noted by International Office for Migration, the current lack of attention given to addressing the risks of human trafficking within the cluster system results in 'an important protection gap in crisis settings'.[96] The cluster system could provide a useful platform for information sharing which may assist with the challenge of crime identification in crisis settings.[97] Addressing this gap could result in greater awareness of trafficking and child exploitation crimes in connection with institutions and more concerted action to prevent or respond swiftly to the emergence of unregulated care settings such as unregistered orphanages.

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[94] Stephanie Delaney, *Protecting Children from Sexual Exploitation and Sexual Violence in Disaster and Emergency Situations*, ECPAT International (Bangkok, 2006), 32.

[95] van Doore and Nhep, "Orphanage Trafficking, Modern Slavery and the Australian Response,": 127.

[96] International Office for Migration, *Addressing Human Trafficking and Exploitation in Times of Crisis*, 3.

[97] International Office for Migration, *Addressing Human Trafficking and Exploitation in Times of Crisis*, 3.

Conclusion

This article examined how child institutionalisation, particularly through the establishment of orphanages, is often utilised as a child protection response to situations of humanitarian crisis. As a subject of humanitarian response, the depiction of the 'orphan' promulgated by media, NGO's and governments creates an iconography of emergency that encourages responses that provide specifically for orphans. With inter-country adoption being curtailed and moratoriums being imposed as standard responses to humanitarian crises, the focus in more recent years has been on the establishment and maintenance of orphanages to protect disaster orphans. However, as research has shown, the number of actual orphans requiring such intervention is only perceived to be very high, with the vast majority of children being placed in orphanages as a result of drivers not including parental loss. Such drivers include families struggling with the aftermath of the humanitarian crisis who may require assistance for a short amount of time. However, in most instances, a child will remain in an orphanage for the rest of their childhood once transferred to an orphanage.

We argue that rather than achieving the aim of protecting children, the use and perpetuation of orphanages as a child protection response to humanitarian crises expose children to a heightened risk and increased vulnerability to trafficking and modern slavery. The links between orphanage care and modern slavery, particularly orphanage trafficking, have been the focus of much attention in recent years. In particular, the connection between orphanages, voluntourism and trafficking illustrate how perceived humanitarian responses can harm more than assist.

Whilst the formal humanitarian responses recognise the harms of institutionalisation and advocate for more appropriate forms of child protection responses to humanitarian crisis, it is 'amateur' charity and aid actors that often engage in establishing orphanages in post-disaster contexts. We make a number of recommendations to address these factors including that charities be required to operate in conformity with the laws and policies of their host country, and that they establish complaints mechanisms accessible to communities and governments. To address issues of media and NGO reporting contributing to driving inappropriate child protection responses, there should be awareness raising that targets both media outlets and donor communities as a standard part of disaster preparedness frameworks. Lastly, criminal justice provisions need to be fit for purpose to ensure that exploitation and trafficking in orphanage settings are able to be prosecuted, and efforts to combat child-trafficking and exploitation need to be mainstreamed within emergency response frameworks.

Ultimately much work needs to be done to alter the discourse around orphanages in donor countries to better align popular notions of effective aid with evidence. Until such time as this is achieved, governments in both donor and affected countries will need to institute sufficient protective measures, including those designed to curtail and redirect misguided efforts to 'rescue' children. Whilst this adds a further burden to often already overstretched child protection sector, it will remain indispensable to the protection of children from trafficking and exploitation in humanitarian settings.