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Corruption & Voluntourism

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1 Introduction

1.1 Theme and Timeliness

1.1.1 What Is Voluntourism?

This study concerns voluntourism and the potential challenges related to corruption. Voluntourism can be traced to the 1970s, maybe even as far back as the creation of the Peace Corps in 1961.¹ Regardless of the exact date, the accepted industry consensus is that there was a tourism boost in the 1990s. This upturn in tourism is relevant to the evaluation of today's agencies, as their offered products resemble a combination of tourism and volunteering. The Oxford English Dictionary defines voluntourism as “A form of tourism in which travellers participate in voluntary work, typically for a charity: at the core of voluntourism is the desire to help others.”² Other definitions are worth considering. For example, Voluntourism.org defines voluntourism as, “[t]he conscious, seamlessly integrated combination of voluntary service to a destination and the best, traditional elements of travel — arts, culture, geography, history and recreation — in that destination.” This definition is also used in the *International Voluntourism Guidelines*,³ developed by The International Ecotourism Society⁴ and the Planeterra Foundation.⁵ To summarise the key points that these definitions share, voluntourism consists of organised trips in which the participant combines tourism and volunteering. In *The Volunteer Traveller's Handbook* Shannon O'Donnell (deemed traveller of the year by National Geographic in 2013)⁶ says, “[t]he two main sectors of the mainstream international volunteering industry include independent volunteering and voluntourism through tours/middlemen.”⁷ The focus of the research question in this thesis is on the latter - voluntourism through tours/middlemen.

1.1.2 What Is Corruption?

There are many definitions of corruption. The origin of the word is from the Latin corruptus (spoiled) and corrumpere (to ruin; to break into pieces).” According to the United Nations (UN),

¹ Volunteering in America/Corporation for National and Community Service

² English Oxford Living Dictionaries

³ Ecotourism

⁴ the International ecotourism Society

⁵ the Planeterra Foundation

⁶ Stone (2013)

⁷ O'Donnell (2012) p.9

“[t]here is no comprehensive, and universally accepted definition of corruption. Alternatively, NORAD simplifies it as, “the original latin meaning...is a person who lacks integrity meaning corruption has to do with unethical behaviour.”⁸ Because of the problem of defining corruption as a concept, there is currently no definition of it in the UN Convention Against Corruption. To counter the problem of having no exact definition, the convention contains, throughout the text, frequent examples of what could constitute corruption.⁹ Transparency International (“TI”, a global politically independent organisation working against corruption)¹⁰ defines it as “the abuse of entrusted power for private gain.”¹¹ The World Bank defines a corrupt practice as, “the offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.”¹² Some definitions of corruption do not include the private sector but TI, the World Bank and The UN have all taken into account occurrences in the private as well as public sectors. The UN demonstrates this by exemplifying what corruption can be and when it can occur, while TI and the World Bank give the same result by offering a broad definition of the term.

1.1.3 Why Is It Important to Research Corruption Within the Voluntourism Sector?

Companies offering voluntourism products generate profit from volunteers going on trips, while frequently also cooperating with non-profit organisations. Some partner organisations define themselves as non-profit, yet sell exactly the same product as other companies defined as commercial. This fact makes the industry difficult to place legally. For example, do the World Tourism Organization (UNWTO) guidelines for ethical tourism apply or not? One purpose of this thesis is to contribute to raising the general awareness of what ethical responsibility this industry should have. For instance, may an initially legal project develop in conjunction with other illegal activities? If yes, is it ethical to support such a project?

This thesis explores corruption related to voluntourism. To an external observer, it is difficult to find information about how the voluntourism companies work to prevent corruption, as their websites generally contain little or no information about this. This is problematic as voluntourism is inextricably linked to developing countries where the level of corruption is

⁸ Norad (2011)

⁹ United Nations (2004) p.23

¹⁰ Transparency International (TI)

¹¹ TI

¹²the World Bank

high. Arvis and Berenbeim say "[i]n a situation of competition in a corrupt environment, the firm will fear that if it does not pay bribes, it might lose business to competitors willing to pay, and so everyone pays bribes."¹³ Further, they say that, "[t]he private sector response to corrupt practices is especially important given that bribery and extortion take many forms, follow many channels, and mutate, like viruses, into new strains."¹⁴ These statements suggest how vital it is for the industry to have a system in place to avoid corruption. In my view, it is important to find out if the companies are aware of their responsibilities, if they're working against corruption and if so, how.

1.2 Research Questions

Voluntourism and corruption will first be explored related to national and international corruption laws to find out what responsibility the Norwegian industry has when operating overseas. Next, I will explore what knowledge the industry has about its own responsibilities, after which I will investigate whether they have broken the law or not. The final question is what ethical responsibility the industry might have in such cases where the projects are not necessarily illegal, but could lead to other illegal activities.

The voluntourism sector is special because corruption is prevalent in many developing countries where voluntourism activities are arranged. Apparently, the legal aspects of voluntourism in Norway have never been researched before. Therefore, it is vital to establish what responsibilities the industry has when creating projects in foreign countries, and for sending volunteers and employees to various projects. This study will paint a multi-faceted picture of corruption in different international circumstances, and will attempt to understand the driving factors behind this as well as the legal implications of any violations of corruption law.

1.3 Scope and Limits of Research

Although my research questions are restricted to the Norwegian voluntourism industry, several of the companies discussed operate in Norway with parent companies registered abroad. This requires analysis of which relevant foreign corruption laws can apply, and how. The analysis is modelled through a number of possible scenarios and outcomes where the correct theoretical application of these laws is discussed. I have selected three developing countries where voluntourism activities are high. The three countries represent different overall situations, as

¹³ Arvis (2003) p.7

¹⁴ Arvis (2003) p.7

well as varying levels and kinds of corruption. Nepal is a country in which I have first hand knowledge of the volunteer industry, that has experienced a recent natural disaster, and has cultural practices that can lead to corruption. Both Cambodia and South Africa have had cases in which Norwegian companies were investigated for corruption. Cambodia has wide poverty and a turbulent recent history leading to potential for corruption, and a rapidly growing orphanage voluntourism industry. South Africa is richer and less corrupt than the other examples, however a specific area within the country has high potential for corruption. To provide contextual understanding, I will consider the country's history, culture and general level of corruption. From this information the potential dangers of corruption will be extrapolated and explored.

In order to arrive at concise conclusions and avoid over-saturating the study, I will focus on a few key areas. The purpose of this dissertation is to analyse potential structural corruption at an organisational level, and beyond that to see, in legal terms, if the law has been violated. The main area of analysis will be Norwegian corruption law with the international commitments and potential limitations that follows. Rather than attempt to review the law in all countries linked to the agencies, this investigation will target two major ones illustrating how different the legal framework can be, the UK Bribery Act(UKBA)¹⁵ and the American "Foreign Corrupt Practices Act" (FCPA).¹⁶ The UKBA has been selected as it is commonly regarded as the most stringent bribery law in existence.¹⁷ The FCPA has been selected as it "is the most widely enforced anti corruption law".¹⁸ Many voluntourism companies or Non-Governmental Organisations (NGOs) are registered in the US and the UK, and both of the acts can apply to Norwegian companies.

1.4 Methods

Because the purpose of this study is to apply legal analysis to an evolving industry, I will use four different methods to make the analysis comprehensive and to validate the findings.¹⁹

The main approach is a legal analysis, applying Norwegian and international law to the core

¹⁵ UKBA

¹⁶ FCPA

¹⁷ TI- United Kingdom (UK)

¹⁸ GAN Business Anti-Corruption Portal (GAN)

¹⁹ Fusch, Fusch, & Ness (2017)

question of the thesis. Norway has committed to numerous international conventions and is expected to be transparent and thorough in implementing them. I will analyse how these conventions are adhered to, how Norwegians may be breaking them and what can be done to combat this. Further, I will compare Norwegian law to International law, using UK and US law as examples, to assess how the Norwegian Voluntourism Industry can be held accountable for their actions abroad.

Next, I will investigate how voluntourism organisations understand and comply with legal regulations related to corruption. The method applied here is interview and survey by e-mail.²⁰ I have targeted well-known organisations offering voluntourism experiences in Norway and invited them to participate in a survey, where the first step is an online analysis and a second is a personal semi-structured interview. The purpose of this is to assess the prevalence and type of legal knowledge existing in these organisations.

A third method is analysis of archival materials. As described later, there was reluctance from some organisations to participate in the survey and interviews. Where possible, I have therefore also relied on archival sources²¹ such as the websites of the organisations, governmental websites, and information collected by TI.

Finally, as is sometimes the practice in situations where participants do not want to be studied due to risk of prosecution or reputation loss, I have engaged in direct observation. I have volunteered in one organisation and worked in another that operate in this market, and I have had an internship with Transparency International Nepal(TI-Nepal). This has given me access to informal reports and experiences, a practice which is widely used in cases studying the intersection of NGO, crime, and recipients of helping agents.²²

In summary, I believe that my use of varied sources has enabled a “thick description”,²³ allowing a balanced and valid discussion of an area where there can be no absolute certainty. All methods are reported and clarified with Norwegian Centre for Research Data (NSD)

²⁰ Kvale & Brinkmann (2009)

²¹ Arnulf & Gottschalk, 2012; Koehler (2015)

²² Atkinson-Sheppard, 2016; Becker (1963)

²³ Geertz (1973)

2 About Voluntourism and Corruption

2.1 An introduction to voluntourism

2.1.1 Description

Over the past 20 years, voluntourism has become increasingly popular. As mentioned in chapter 1.1.1, voluntourism can be defined in many ways. The common consensus is that it is a form of tourism where people combine work and travel, and that the work involves donating your time and skills to help others. Volunteering is special as the experience is designed to benefit both helper (the volunteer) and receiver. When done ethically and with the correct legal processes, volunteering can have an extensive and long lasting positive impact on needy communities. Ethical volunteering focuses on projects, areas and communities that require help but don't have the means to provide it themselves. Without external input life or the community would be worse off, so the volunteering achieves its first goal of helping others. The second goal is achieved through a personal feeling of altruism for the volunteer.

2.1.2 Corruption related challenges to voluntourism

Awarevolunteer.com states that “[d]ue to the great demand on volunteer trips, the quality of these programs (both organized by tour agencies and international organizations) declined and corruption is finding its way to get to altruistic tourists.”²⁴ This is unsurprising, as creating a corruption-free program often proves extremely difficult.²⁵ Volunteers pay to help out on various projects, often in developing countries where the endemic level of corruption is already high, and this is one of many reasons why voluntourism is complicated. Importantly, because these companies depend on income from the volunteers they need to make the projects as attractive as possible so that people choose their company and not the competition. This can lead to corruption in orphanages for example, where non-orphans are brought in for financial gain and kept in deplorable conditions to attract the business of well meaning volunteers. Long-term projects such as teaching placements can in some ways be safer to run corruption-wise than, for example, 'disaster-relief' projects.

Disaster relief projects are broadly defined as some kind of direct response to a natural disaster, such as a tsunami or earthquake. They attract large numbers of well-meaning volunteers who want to have a hands on impact instead of donating money, and mostly involve reconstruction and sanitation, All kinds of large-scale disasters are popular in the voluntourism trade, probably

²⁴ Aware Volunteer

²⁵ Aware Volunteer

because they receive media attention in multiple countries. To fulfil this media-fuelled spike in demand, the projects are often created in a hasty manner.. These programs can be problematic for many reasons. Usually disaster-relief projects have to be created within a short period of time after the disaster so as not to lose out to competition, and that makes it difficult to analyse potential problems. Due to the amount of global natural disasters and the time-limited nature of first response work, voluntourism companies often don't check the risks before creating projects. Most companies working abroad are advised to analyse the possibility of corruption and human rights violations before they get involved with any projects abroad.

A natural disaster can generate entirely new problems in the country, such as a black market created by a lack of food and other necessary supplies. Even if the voluntourism company is well established in the country it can be difficult to foresee new problems related to corruption. Partnerships and relationships that have been fostered over years may be disrupted following a natural disaster. In this case, new partnerships need to be formed hastily so the company doesn't lose potential business to competitors, which can be risky as there is no time to go through due legal process. Even in the case that the existing relationships still stand, a natural disaster can place immense pressure on them. The parent company may try to force through new demands on the partnership, or potentially push them into areas they are unqualified to deal with. In these situations, it is both likely and very easy for corruption to occur. Transparency International Norway(TI-Norway) has a handbook for companies on how to protect themselves from corruption.²⁶ It is recommended by TI-Norway that all companies in Norway use this handbook.

2.2 Existing literature and research

There is lot of available research on voluntourism but comparatively very little on corruption. Lonely Planet²⁷ has published a book on how to volunteer, similar to O'Donnell's book cited in 1.1, These books explain the definition of good, sustainable projects, involving the local community and other key factors. However, there is sparse information about transparency and corruption. When transparency is mentioned, it is not related to corruption but instead as to how the companies are spending money, meaning how much they themselves use and if any of the volunteer's money is diverted to the local community they are working with.

The literature focuses on ethical volunteering and ensuring the community benefits from the

²⁶ Transparency International Norway (2017) (TI Norway)

²⁷ Lonely Planet (2013)

project and is involved throughout the process. This is a positive step, but there are crucial elements missing. Extremely few or no questions are asked about how the money is spent after allocation to the project, or how to be alert to corruption. O'Donnell discusses "Dependency",²⁸ essentially how a project can become dependent on money from the organisations. In certain cases the organisations solely fund the projects, meaning that the project itself wouldn't exist without their volunteers. Logically this is a perfect place to add information about corruption related to these solely organisation-funded projects, but the opportunity is missed. O'Donnell has a guide²⁹ on choosing the best company, in which she states that "[t]he best voluntour companies have strong ethical guidelines."³⁰ But what is a strong ethical guideline? It seems like the focus is on protecting children and the environment. Should corruption not be included to keep the children and the environment safe? Do these companies follow their own guidelines or deliberately keep volunteers in the dark? Even if they do not have a complete guideline on how to deal with corruption, they must follow national as well as international law and they have a responsibility to the volunteer. When travelling with a company the volunteer should have opportunities to investigate and ask relevant questions before leaving.

Caroline Bodreaux is the founder of the Miracle Foundation, a "non-profit organisation that works to empower all orphans to reach their full potential."³¹ In her interview with O'Donnell about 'unfinished projects in voluntourism' she states, "Sometimes with voluntourism travel, the winners are the people who travel. And the people the volunteers visit end up worse for it."³² Based on the definition offered at the start of this chapter, this misses one key goal of volunteering; that it should be beneficial to others. To combat this, Bodreaux suggests to "support your projects financially once you return home".³³ This thesis demonstrates how supporting projects financially is very complicated and can potentially be harmful. If the volunteer is unaware of their lack of meaningful impact, they will probably feel that they have contributed to the community, so may volunteer again with the same company. Therefore the company continues to make money and this turns into a self-perpetuating cycle. It should be noted that the company may be unaware about unethical or corrupt practices, as supported by

²⁸ O'Donnell (2012) p.20-22

²⁹ O'Donnell (2012) p.34-38

³⁰ O'Donnell (2012) p.34

³¹ O'Donnell (2012) p.55

³² O'Donnell (2012) p.57

³³ O'Donnell (2012) p.58

evidence from the surveys and interviews. Bodreaux offers further advice to "follow the dollar" when researching volunteering opportunities. Like O'Donnell's suggestions this misses the crux of the issue as the focus is on administration, marketing and company costs, with little or nothing to do with corruption.

2.3 An introduction to corruption

2.3.1 Description

Transparency International US(TI-US) says

"the true cost of corruption goes far beyond mere dollars and cents. When government is for sale, it destroys public trust in democratic institutions and denies people the right to accountable, responsive government and the rule of law. What's more, corruption disproportionately burdens the poor, diverting scarce resources that could otherwise help lift millions out of poverty. It raises the costs of education, nutrition, clean water, and health care, often denying people these essential public services. It impedes investment, undermines economic growth, reduces market opportunities for legitimate business, and diverts international development assistance. Corruption can also destabilize societies with serious implications for security worldwide".³⁴

This encapsulates the devastating, far-reaching effects of corruption. Whilst companies involved in corrupt practices may think that they are only having a limited impact on a few projects or placements for a short time, TI's assessment demonstrates that this is not true. This is supported by Stein Hansen who says, "Corruption particularly affects the unprivileged and the poorest of the population and is at threat to environmental sustainability".³⁵ It is not just a case of a few volunteers going to a project for a limited time, barely contributing and then leaving, it goes far beyond that and cuts deep into the fabric of society.

2.3.2 Definitions

The focus of this thesis is legal practices related to corruption in voluntourism. There seems to be a lack of awareness of corrupt practices in voluntourism companies and their customers, and this may be because there is no commonly accepted non-legal definition of corruption. Arvis and Berenbeim say "The first step in resisting corrupt practices is to define them."³⁶ To provide an overview of corruption, I will define some general terms used by organisations central to

³⁴ Transparency USA

³⁵ Hansen (2013) p.20

³⁶ Arvis (2003) p.9

global economic development, such as the OECD. These are not precise legal definitions as those vary by country and by law. For legal terms see chapter 3. The following definitions clarify some key terms that will be used throughout this study.

2.3.2.1 Active bribery

The OECD: “Active corruption or “active bribery” is defined as paying or promising to pay a bribe.”³⁷ It is common to include requesting a bribe in this definition, and Norwegian law includes “demanding” a bribe, Section 387 (b). There are many types of active corruption, and TI-Norway has a list of examples.³⁸ Some are obvious, like bribing someone to do a job faster or to get a contract. Others include sexual favours and promising to do a personal favour in return for a contract. It can be difficult for everyone involved to see where the line goes between acceptable behaviour and corruption.

2.3.2.2 Passive bribery

According to the OECD, “[p]assive bribery is the offence committed by the official receiving the bribe.”³⁹ Some definitions, like in Norwegian corruption law, include the private sector, while others do not. In the American FCPA a bribe must be made to an official, but this can go through a private party 3.4. An example of passive bribery in voluntourism could be a public official accepting a bribe for a volunteer agency’s partner NGO to host a project, or to win a contract. Alternatively, it could be accepting a bribe to do a job faster or issue permits. Notably, in some countries the actor can be punished for merely knowing about the bribe, while in others they have to receive it.

2.3.2.3 Nepotism

TI defines nepotism as a “[f]orm of favouritism based on acquaintances and familiar relationships whereby someone in an official position exploits his or her power and authority to provide a job or favour to a family member or friend, even though he or she may not be qualified or deserving.”⁴⁰ In voluntourism, jobs or contracts may be awarded to friends or relatives who don’t have the necessary qualifications, as seen in 5.3.2. This can lead to monopolised industries or misdirecting funds. TI-Norway states that “Corruption for personal

³⁷ OECD (2007)

³⁸ TI Norway (2017) p.25

³⁹ OECD (2007)

⁴⁰ TI

gain can include nepotism”⁴¹.

2.3.2.4 Petty corruption

“Petty corruption in its mildest form is similar to tips”⁴² TI defines petty corruption as “[e]veryday abuse of entrusted power by public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies”⁴³ This is an important type of corruption in voluntourism. Police, social services or other officials can be paid to ‘look the other way’ when on duty, for example assessing work conditions or volunteer visas.

2.3.2.5 Facilitation payments

TI defines facilitation payments as “[a] small bribe... made to secure or expedite the performance of a routine or necessary action to which the payer has legal or other entitlement”⁴⁴ This kind of corruption is particularly relevant to voluntourism. It can help to speed up the opening of new projects, especially in times of high demand after a disaster. It can also occur in the visa process or during other administration, to fast-track a volunteer through the process.

2.4 Organisational structures

To identify legal responsibility it is important to understand the different organisational structures of voluntourism companies. A frequent business objective of such structures is to split between income in valuable global currencies and costs incurred by inexpensive labour. Customers usually pay in USD, GBP or EUR at international locations. Inexpensive labour is then employed, such as volunteers working at local contract conditions or the hiring of a local work force. This results in a geographical separation between payments, contracts and actual work, which may have legal ramifications for some or all parties. This complexity may be intentional when the company wants to create a distance between themselves and possible local problems, or unintentional as a way to handle lack of trust in locals or low-level employees. As most companies declined to participate in the study, I have studied their websites and made three different examples of potential company structures.

⁴¹ TI Norway

⁴² Arvis (2003) p.9

⁴³ TI

⁴⁴ TI

The actual structures may vary, but the following figures show how this business process can be structured, and its potential responsibilities. The purpose is to illustrate how these processes create complexities that are hard to understand and foresee for customers and employees alike. The figures below do not depict strictly different models, but are presented as stepwise illustrations showing the increasing complexity of such business processes:

Figure 1a: International parent company, branch in Norway

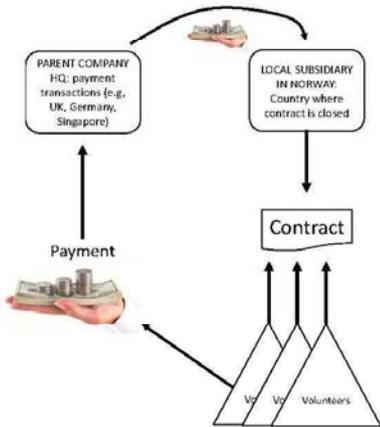


Figure 1a illustrates one of the more complicated structures I encountered. A company that operates in Norway may have its headquarters abroad. To the Norwegian customer and employee, the company may appear like a Norwegian business entity, but the international headquarters may involve these parties in global business processes involving money transfers and labour contracts. Several illicit transactions may be hidden in such systems, such as transferring corruption money to international accounts held by recipients or hiring people on contracts that are not strictly legal in the country of work.

Figure 1b: International parent company operates in a developing country

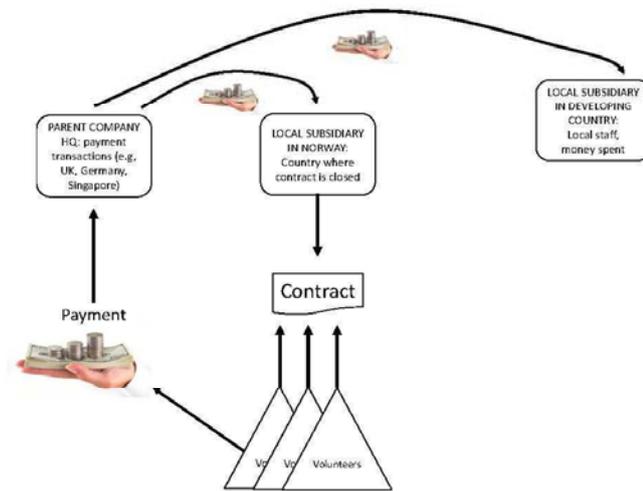
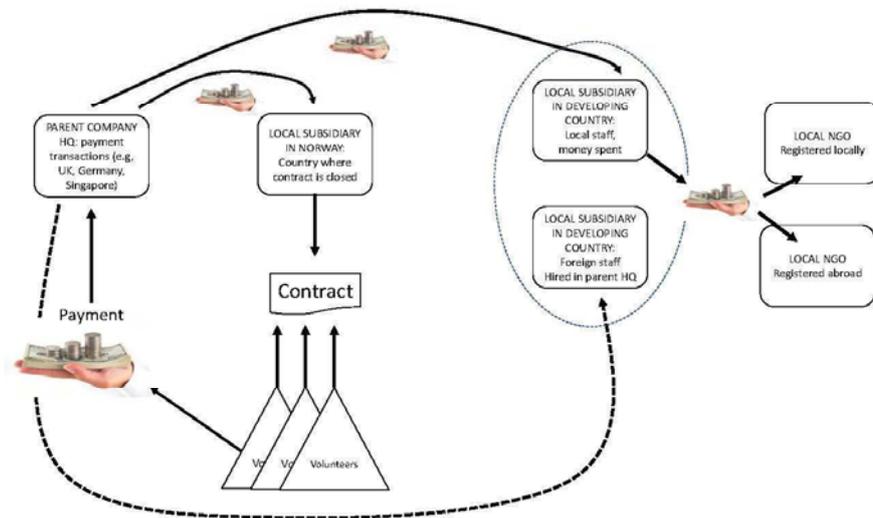


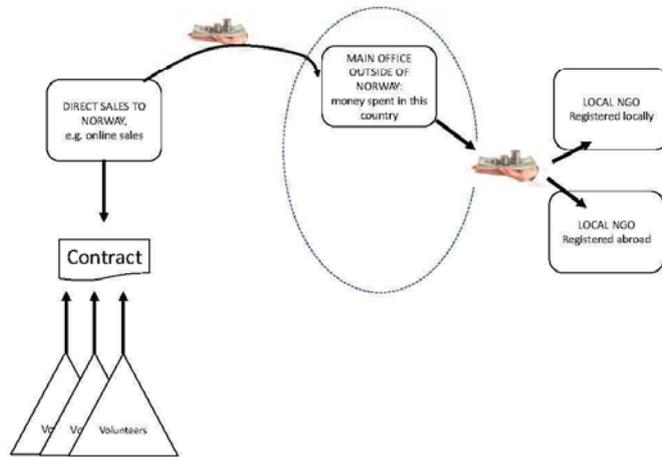
Figure 1b adds a further wrinkle, a local office in the developing country. The volunteers pay directly to an account in the country where the parent company is located. However, the money paid by the volunteers goes to administrative fees. This can include salaries in Norway and at the local office in the developing country, meaning the money the volunteer originally paid directly to the parent country circles back to Norway and possibly a third country. The money can be used to pay foreign staff in the developing country.

Figure 1c: Local subsidiary in developing country is entangled in further potential liabilities.



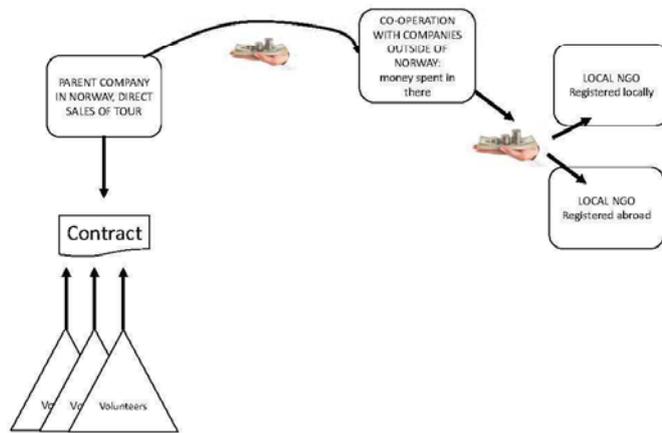
Often the companies work with a partner organisation in the developing country. This can be a commercial company or an NGO. Even if the partner organisation is characterised as ‘local’ it can be registered in a different country. A large amount of NGOs in developing countries are founded by Western “angel investors”, meaning they can be registered for example in the UK or the US.

Figure 2: International company, direct sales



Another form of company structure is where the parent company is located in a different country and they handle everything from contracts to monetary transactions. The parent company can be located in one of the developing countries where the projects are or somewhere in Europe. These companies have in common that they target Norwegian volunteers without any other connection to Norway. These companies also cooperate with a third party, usually local NGOs.

Figure 3: Parent company in Norway, direct sales



This company structure is similar to the one in figure 2 but the difference is that the parent company is located in Norway. They handle everything from contracts to money transactions and in some cases insurance for the volunteers. These companies are also in contact with a third party.

2.4.1 Conclusion

All of these companies may be in contact with further organisations. There can, for example, be a fourth party cooperating with the third party. As exemplified, this can theoretically result in legal responsibilities in maybe 3 to 4 different countries.

3 Legal Responsibilities

3.1 Introduction

The focus of this section is how the law applies to Norwegian voluntourism companies abroad. A key area is Norwegian law, as this also applies abroad. International conventions will be introduced to provide a broader investigation, with a supporting analysis of both UK and US corruption laws. The UK and US laws have been selected as many voluntourism companies and their partner NGOs are either registered in or have direct dealings with one or both of those countries.

3.2 International Commitments

3.2.1 United Nations(UN) Convention Against Corruption

The only legally binding universal anti-corruption instrument⁴⁵ is the UN Convention Against Corruption, which was finalised in 2003.⁴⁶ In the foreword, Kofi Anan says “corruption is an insidious plague that has a wide range of corrosive effects on societies” and that “[t]his evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive”⁴⁷. Currently there are 181 parties and 140 signatories.⁴⁸ Only a few have not signed or ratified it.⁴⁹ None of the unsigned countries are places where the presence of voluntourism is high or even existing. A summary of the five areas covered describes “preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector.”⁵⁰ It offers no specific definition of corruption, and the term is defined by examples in the text. This shows that the Convention has broad coverage of both the private and public sectors, and allows countries to form their own legislation freely as long as they regulate the areas listed within. The first of four highlighted areas⁵¹, “Prevention”, is covered by an entire chapter as corruption can be

⁴⁵ UNODC

⁴⁶ UNODC

⁴⁷ UNODC

⁴⁸ UNODC

⁴⁹ UNODC

⁵⁰ UNODC

⁵¹ UNODC

prosecuted after the fact, but ideally it requires prevention. Second, “Criminalization” is targeted, stating that countries should establish criminal and other offences to deal with a wide range of corrupt activities, if they are not already crimes under domestic law. Next, “International Cooperation” is important for voluntourism as countries must combine forces to investigate and prosecute offenders. Finally, “Asset Recovery” is key for developing countries where actors involved in high level corruption have plundered the national wealth.

3.2.2 OECD Anti-Bribery Convention

The Organisation for Economic Co-operation and Development (OECD) has 35 members,⁵² including Norway. All OECD countries have ratified the Anti-Bribery Convention including 6 non-OECD countries, Russia, Argentina, Brazil, Bulgaria, Colombia and South Africa. The “(c)onvention incorporates the FCPA principle that corrupt practices are illegal no matter whether inside or outside the home country”.⁵³ It is a legally binding international agreement that requires all parties agree to investigate, prosecute and sanction bribery of foreign public officials as a criminal offence under their laws. “The Anti-Bribery Convention is the first and only international anti-corruption instrument focused on the “supply side” of the bribery transaction – the person or entity offering, promising or giving a bribe.”⁵⁴

The Convention targets six key areas.⁵⁵ These are listed and described as:

- “-Criminalisation: Prohibits the bribery of foreign officials.
- Enforcement: Includes an obligation to prosecute companies suspected of bribing public officials abroad.
- Cooperation: Encourages enhanced collaboration between the law enforcement agencies of signatory countries.
- Tax Deductions: Bans the tax deductibility of bribes to foreign public officials. -
- Whistleblowing: Recommends the establishment of effective whistleblowing mechanisms.
- Monitoring: The OECD carries out rigorous peer-review examinations monitoring the level of implementation of the OECD Convention and OECD recommendations.”

Alignment with the UN Convention shows good cohesion between international bodies in the

⁵²OECD

⁵³ Arvis (2003) p.35

⁵⁴OECD

⁵⁵ GAN

fight against corruption. The OECD Convention also has a rigorous monitoring process,⁵⁶ which consists of 4 phases each finalised with a review from a working group. The first phase is a review of the legal framework and implementing legislation, with peer reviews from two examining countries. The second phase is a review of practical implementation and application of the legislation, with a country visit by experts from examining countries. The third phase targets enforcement and cost cutting issues and the 2009 Anti-Bribery Recommendation. In the final phase the enforcement and cost cutting issues are tailored to country specific needs, and all outstanding recommendations are dealt with.

3.2.3 Norway's EEA commitments

Norway, as an EEA member, is required to implement all EU commitments and must adhere to the Council of Europe Criminal Law Convention on Corruption.⁵⁷ This Convention is “an ambitious instrument aiming at the co-ordinated criminalisation of a large number of corrupt practices.” It covers active and passive bribery of domestic and public officials, national, foreign and international parliamentarians, international civil servants, domestic, foreign, and international judges or court officials, and the private sector. It also covers active and passive trading in influence, money laundering of proceeds from corrupt practices, and accounting offences tied to corruption. Wide-ranging, it aims to complement existing legal instruments. Norway must also adhere to the Council of Europe Civil Law Convention on Corruption (COE Civil Law Convention). ”The COE Civil Law Convention aims to define common international rules of civil law and corruption. Parties are required to compensate persons who have suffered damage as a result of corruption. It entered into force in 2003, and compliance is monitored by the Group of States against Corruption (GRECO).”⁵⁸

3.3 Norwegian Corruption Law

3.3.1 Criminal law

3.3.1.1 Introduction

Norway has implemented its international commitments through the Norwegian Criminal Code of 2005 Sections 387-389, covering corruption in Section 387, gross corruption in 388 and facilitation payments in 389. TI-Norway claims that this has resulted in one of the world's

⁵⁶OECD

⁵⁷Council of Europe Portal ETS No.173

⁵⁸GAN

strictest laws against corruption.⁵⁹ Ot.prp.nr.78(2002-2003)⁶⁰ states that “the law is based on a wide definition of corruption, setting punishment for acts of corruption both in the public and private sector” Coupled with its stringent laws, the Norwegian government recognises the damage corruption creates and says, “Corruption could often create a risk of extensive damaging or other negative consequences for society, even though the act has not given a substantial financial advantage, or is suited to cause a substantial financial loss.”⁶¹ As stated in the Proposition, this is an explicit expression of the ministry’s attitude towards corruption. This study targets those elements of the sections which directly apply to legal questions concerning voluntourism. This allows for in-depth analysis of the research questions, whilst maintaining a broad view of corruption across all of Norwegian law.

Violations of all three sections are punishable by law abroad, but there is a difference between how this applies to Sections 387 and 388 compared to 389. According to Sections 387 and 388, cf. section 6, Norway can only fulfil its international commitments abroad. This means that none of the stricter laws apply and both sections only pertain to Norwegians.⁶² Conversely, Section 389 is punishable by law in Norway even if the act was committed abroad, according to cf. section 5 “Undue influence activity which is aimed at influencing the performance of a position, office or assignment abroad, can therefore give grounds for punishment in Norway”.⁶³ To fulfil the conditions listed in cf. section 5, subsection one, the act must be committed by either a Norwegian citizen, a person living in Norway, or a company registered in Norway. This is an important distinction, as many voluntourism companies are structured so they wouldn’t incur all three of these sections if engaging in corruption abroad.

3.3.1.2 Section 387 Corruption

Matningsdal claims that “Section 387 goes further in criminalising corrupt behaviour than the Criminal Law Convention on Corruption of the Council of Europe requires”.⁶⁴ Section 387, subsection 1(a) covers passive corruption, while 1(b) addresses active corruption.”⁶⁵ The

⁵⁹ TI-Norway

⁶⁰ Proposition to the Odelsting 78(ot.prp.nr.78(2002-2003)) p.60

⁶¹ Ot.prp.nr.78 (2002-2003) p.34

⁶² Matningsdal (2010) p.446-447

⁶³ Ot.prp.nr.78 (2002-2003) p.61

⁶⁴ Matningsdal (2010) p.437

⁶⁵ Matningsdal (2010) p.437

Norwegian legal definitions for both active and passive corruption are

“Passive corruption is present when one demands, receives or accepts an offer of an undue advantage in the performance of a position, office or performance of an assignment, while active corruption is present when one gives or receives an undue advantage in an equivalent situation. In the first case, the perpetrator is called a passive briber, while the person in the second case is called an active briber.”⁶⁶

It is important to note that “Common for passive and active corruption is that both alternatives are only connected to advantages in relation to the passive briber’s «position, office or performance of assignments».”⁶⁷ Legally this means that the bribe cannot be offered or received outside of the workplace, and that it can not be made by the recipient’s own employer. Position, office and performance of assignments, are deliberately broadly defined⁶⁸. They are important factors to be considered throughout but are not relevant for the main scope of the study, so will not be expanded further.

For Section 387 to be violated an “offer” has to be made or accepted, which according to subsection 1(a) and (b) must be considered an “undue advantage”. ‘Advantage’ is “taken to mean any object, service or similar with which the passive party considers having an advantage, comprising money, objects, distinguished positions or sexual favours.”⁶⁹ Further “An “advantage” in the sense of the provision will normally have an independent financial value, and a typical bribe will probably come in the form of money or objects of a certain value. Services can also have a financial value.”⁷⁰ Violation of the section does not have to be solely for personal gain. Ot.prp.nr.78(2002-2003) states that “Punishment can be imposed even though the advantage is intended to benefit others than the passive briber, cf «for him or herself or others» in 1(a) and the word «someone» in 1(b).” This means that the ‘advantage’ that causes the violation could go to the briber’s children, for example through admission to a private school.⁷¹ It is stated in Norwegian Official Report(NOU)2002-22(p.36) that “In business life it may also often be difficult to draw the line between improper bribes and legal distribution or facilitation of gifts and advantages”. Furthermore, if certain conditions are met for when a gift

⁶⁶ Matningsdal (2010) p.437

⁶⁷ Matningsdal (2010) p.438

⁶⁸ Matningsdal (2010) p.438

⁶⁹ Proposition to the Odelsting (Ot.prp.nr.22 (2008-2009)) C.16.11 notes for S387

⁷⁰ Ot.prp.nr.78(2002-2003) p.55

⁷¹ Ot.prp.nr.78(2002-2003) p.55

or given advantage is suspect, such as if “there is transparency regarding the relationship” it is generally defensible, but if it is “secretly offered”, this is regarded as improper.

According to Matningsdal the formulation of the word “others” in Section 387 also means those other than physical persons, for example an association of which the passive briber is a member.⁷² This is especially relevant to voluntourism, as there are often numerous foundations, NGOs and satellite organisations involved. Matningsdal continues “The recipient can be punished for assistance if the person has shown intent in relation to the actual circumstances which make the situation corruption.”⁷³ Voluntourism companies must be aware of this, as though they might be the root of the violation, their partner organisations can share the responsibility as recipients.

Matningsdal explores the relationship between the giver and recipient “it is of great significance for the assessment whether, and if applicable, what position of power the person concerned holds”.⁷⁴ This considers the issue proximity of the receiver, as well as their professional role. In private sector industries such as voluntourism, the recipients are generally able to accept larger gifts, while a judge is not. The preparatory works offer the example⁷⁵ of a judge accepting a gift with no relevance to any legal cases he is or has presided over, compared with acceptance of a gift close to a verdict concerning the sender. The potential for corruption is clear in the latter instance. Whilst in the private sector and voluntourism industry gifts may be commonplace, similar standards need to be followed as in the ‘judge’ example. People in high positions in the company, as those who allocate contracts, assign new placements, or partner with NGOs need to be under closer scrutiny.

Matningsdal says that “public officers are subject to a stricter norm in general”⁷⁶ but goes on to state that this “can apply to others”. This is significant in NGOs, as their company structure and activity is often based on financial contributions from several sources. Crucially, it is the intent of the payment that needs to be analysed, as Matningsdal points out: “The purpose of the payment is central to the concrete assessment. If it can be proved that the advantage was

⁷² Matningsdal (2010) p.440

⁷³ Matningsdal (2010) p.440

⁷⁴ Matningsdal (2010) p.442

⁷⁵ Ot.prp.nr.78(2002-2003) p.55

⁷⁶ Matningsdal (2010) p.442

intended to influence the passive briber's performance of a position, an office or an assignment, it will normally be improper. But since the criterion of guilt is intent, it is assumed that the passive briber understood this".⁷⁷ For example, a local service provider may give a valuable gift or payment to a decision-maker in an NGO, signalling a bid to be entrusted with a lucrative project in turn. This demonstrates the importance of clarity of intent.

Another relevant area is the attachment of the bribe to a specific act, and "it is not a condition for punishment that the bribe can be connected to a certain act or omission."⁷⁸ Although, it is more common.⁷⁹ Further, "there is no requirement that the advantage must have an independent material value"⁸⁰ An example is that "the bribe can be put into an account that is used by a limited company or a relative of the passive briber. Even advantages that go to a charitable organisation can provide grounds for punishment in accordance with Section [387]."⁸¹ According to Ot.prp.nr.22 (2008-2009) the advantage must be "undue". For this, there must be a «clearly censurable circumstance» in order for the provision to be applied.⁸² Moreover "[t]he standard for impropriety is not fixed but should vary depending on the implied parties' position and relationships, and over time depending on the prevailing perceptions of moral and ethics in society."⁸³ This appears to be a vague criterion for application of the law, as moral and ethical standards are transient both in terms of time and location. Taking in a new area, "Pure cases of bribing are also covered, if the advantage is undue and it is clear that it has a connection with the passive briber's position, office or assignment."⁸⁴ While the assignment of the 'undue' value may be changeable, the attachment to the position, office or assignment is solid.

Generally, less valuable gifts and other advantages are not regarded as undue if criminalisation of such giving would be inconsistent with a general sense of justice.⁸⁵ "If the advantage has a financial value, this value will provide a natural starting point for the assessment of

⁷⁷ Matningsdal (2010) p.442

⁷⁸ Ot.prp.nr.78(2002-2003) p.55

⁷⁹ Ot.prp.nr.78(2002-2003) p.55

⁸⁰ Ot.prp.nr.78(2002-2003) p.55

⁸¹ Ot.prp.nr.78(2002-2003) p.55

⁸² Ot.prp.nr.22 (2008-2009) C16.11 notes for S387

⁸³ Ot.prp.nr.22 (2008-2009) C16.11 notes for S387

⁸⁴ Ot.prp.nr.78(2002-2003) p.55

⁸⁵ Ot.prp.nr.78(2002-2003) p.56

impropriety.” This means that smaller gifts such as advertising are generally considered acceptable and treated as normal practice. Similarly, natural expressions of thanks for work completed, such as a bottle of wine or chocolates, are generally not considered as undue. The clarification for this is transient in that the recipient may receive gifts that he “According to custom or internal guidelines is entitled to receive”⁸⁶ As in the ‘judge example’, what is clear is that if one accepts a gift from a potential partner in the process of, for instance, choosing a new contract assignment, this can be considered as corruption. An example in voluntourism could be a gift received from a local company before a building contract is assigned to them.

The transparency of the transaction is paramount when assessing corruption. This is stated in NOU 2002:22(p.36) “The degree of transparency is relevant to the situation.” and “One factor could be whether the employer or senior management have been informed regarding the payment and have given their consent to the gift being accepted.” As the voluntourism industry is private in nature, as long as the employer or principal is made aware of the gift then it is normally not undue, even if the gift is valuable⁸⁷. This is supported by NOU 2002-22(p.36) which states that transparency with the employer “[c]arries more weight in the private sector where consent from the supervisor carries larger weight”. There is a clear distinction between the two sectors here, to be observed by all organisations involved in voluntourism. Transparency has proven itself to be key, however the primary focus of the assessment will always be on the purpose of the payment. For example, evidence that the payment was intended to influence performance normally means that the advantage will be considered undue. The nature of such a payment assumes that the passive briber understood or regarded it as very probable.⁸⁸

Companies can take measures to ensure that their employees and partners are well versed in these laws, and are as transparent as possible. Both employment contracts and internal guidelines can discuss acceptance of advantages. If this is actioned, it can carry substantial weight in the assessment of impropriety, though there must be a clearly censurable circumstance.⁸⁹ Some industries may not apply these guidelines habitually, as there are

⁸⁶ Ot.prp.nr.78(2002-2003) p.56

⁸⁷ Ot.prp.nr.78(2002-2003) p.56

⁸⁸ Ot.prp.nr.78(2002-2003) p.56

⁸⁹ Ot.prp.nr.78(2002-2003) p.56

differences in custom between the industry and companies.⁹⁰ Importantly, this does not imply that industries with negative cultures are “excused”, and Ot.prp.nr.78p.56(2002-2003) states that courts are not prevented from prosecuting such advantages. This area is particularly relevant for the voluntourism industry and therefore the central question of this study, researching “... areas where an industrial organisation has drawn up guidelines for which gifts and other advantages can be received, and under which circumstances, there is reason to lay emphasis on whether these guidelines have been broken.”⁹¹ The ministry says⁹² that

“There can be large differences from country to country regarding business ethics, administrative practices, and custom. In the Ministry’s view, the assessment of impropriety cannot remain unaffected by the circumstances in another country where bribes are received or given, or where the passive briber has his or her operation.”

It also references ‘facilitation payments’ in which the briber feels forced to pay a certain amount for example to get his or her passport back, and will not be punished, cf. Section 389.

Industry customs or standards do not provide ample grounds to exonerate companies from violations of Section 387. Similarly, legal systems which engender corrupt practices are also no excuse for violating the Section, “Punishment according to the proposal can therefore be imposed even though the passive briber could not have acted in any other manner within the framework of current laws and regulations”.⁹³ This is important because the level of corruption is high in many developing countries, especially those studied here in relation to voluntourism. One factor may be a lack of other options than offering or participating in corruption. It is also a demonstration of how important integrity due diligence reports⁹⁴ are, to find out what the chances of corruption are before setting up an operation in such a country. If the only options are to violate the law or not participate, the decision should be clear.

Finally, these potential violations must all occur through either active or passive bribery, as defined in 2.3.2. According to Matningsdal “[a] completion of a violation is normally contingent on the other party being aware of the demand.”⁹⁵ This means that the offer, demand

⁹⁰ Ot.prp.nr.78(2002-2003) p.56

⁹¹ Ot.prp.nr.78(2002-2003) p.56

⁹² Ot.prp.nr.78(2002-2003) p.56-57

⁹³ Ot.prp.nr.78(2002-2003) p.57

⁹⁴ PwC Norway

⁹⁵ Matningsdal (2010) p.444

or request has been made by the briber, and how the recipient responds has no significance to the legal outcome for the briber. The violation is completed even if the recipient chooses to ignore the demand. The violation of active bribery is described as “Regarding the active briber, a completed violation of letter b is already present in that the recipient is already aware of it. For the passive briber, there is only a completed violation when the acceptance has reached the active briber.”⁹⁶ This means that as soon as the active bribe is offered, the section has been violated. The action of the passive recipient in this case is significant, as acceptance of the active bribe can cause them to also be in violation of the Section. The sentence given for both active and passive bribery in violation of Section 387 is fines or imprisonment for up to three years.⁹⁷

3.3.1.3 Section 388 Gross Corruption

According to Subsection one, the sentence for breach of this law is imprisonment for up to 10 years. Importantly “The provision must be read in conjunction with Section 387, which contains the essential elements of the offence of corruption⁹⁸.” A clear distinction must be drawn between corruption and gross corruption, and according to Subsection two “To decide if an act of corruption is to be seen as gross, an overall assessment must be made, cf. Ot.prp.nr.22(2008-2009)”. The main condition for the rule to be applied is in the case of “qualified improper behaviour”. An explanatory list of qualifiers is found in Section 388,⁹⁹ but it can never be exhaustive. To find out if something is “qualified improper behaviour” an overall assessment must be made, which entails assessing all necessary factors with special focus on those listed in Section 388. One instance may occur without necessarily being deemed as gross corruption, cf. Ot.prp.nr.22(2008-2009). “if one of the elements is present, it is normally gross”.¹⁰⁰ To assess if the act of corruption is deemed as gross, it is mandatory to regard the identity of the perpetrator or the beneficiary. According to the preparatory works, extra weight must be added if the act is done by or to the benefit of a public servant or similar position of ‘special trust’, such as managers of corporations. Other employees in the private sector (who do not require ‘special trust’) are not included.¹⁰¹

⁹⁶ Matningsdal (2010) p.445

⁹⁷ the Norwegian Criminal Code of 2005(Strl) S387

⁹⁸ Matningsdal (2010) p.449

⁹⁹ Matningsdal (2010) p.449

¹⁰⁰ Matningsdal (2010) p.449

¹⁰¹ Matningsdal (2010) p.449

The section can be violated in ways seemingly contrary to a layman's understanding of 'gross corruption'. According to ot.prp.nr.78(2002-2003) "Section 388 can be violated even though the matter does not involve considerable values, and there was no risk of considerable damage." The main factor is the behaviour of the perpetrator, and how much this "represents a marked deviation from propriety". As Section 388 and 387 must be read together, this means that "There shall exist a space in these situations as well where only the provision regarding petty corruption is applicable." Even though Section 388 covers exclusively 'gross corruption', because of its attachment to 387 in practice it can cover other kinds of corruption. Individual assessment for each case is therefore essential, and can be particularly relevant in the voluntourism industry. When taking into account the complex company structures, various satellite organisations or partner NGOs, leaders and other employees, Section 388 can cover many of the potential legal violations in voluntourism. Notably, in this section both active and passive bribery are handled in the same way.

Section 388 supplies additional explanations of exactly how the section can be violated. For example, in s388(b)(1), 'considerable financial advantage' must be either offered or received in an act of active or passive bribery. Further, the bribe need not be fulfilled in order to violate this section, only offered by the perpetrator. Even in a case where the offer has not yet been received by the addressee, there can be grounds for punishing an 'attempt at active bribery'. Next, s388(c)(1) states that the act can be considered gross corruption if there exists a risk of "considerable damage of a financial or other nature". 'Risk' means that the damage does not need to have taken place, merely that the potential exists. According to the preparatory works,¹⁰² "damage of other nature" can be severe personal injury or severe environmental damage. The limit for "considerable financial damage" is set to the same figure as "considerable financial advantage"¹⁰³, cf. (b)(1). Different sources cite different amounts, such as in ot.prp.nr.78(2002-2003) that the bribe should be between NOK 75 000 and 100 000 to be considered gross corruption. In Rt-1999-1299, NOK 75 000 is not enough. Finally, Matningsdal suggests that the limit at present is around NOK 100 000.¹⁰⁴ In terms of these advantages or damages, "The limit must be deducted from other crimes of gain".¹⁰⁵

¹⁰² Ot.prp.nr.22(2008-2009) C16.11 notes for S388

¹⁰³ Ot.prp.nr.22(2008-2009) C16.11 notes for S388

¹⁰⁴ Matningsdal (2010) p.450

¹⁰⁵ Ot.prp.nr.22(2008-2009) C16.11 notes for S388

S388(d)(1) states that “incorrect accounting information has been registered, incorrect accounting documentation or incorrect annual accounts have been prepared”. According to ot.prp.nr.78(2002-2003) “accounting violations are usually connected to corruption” and

“In accordance with Article 14 of the Council of Europe Convention, Norway is obligated to criminalise behaviour that aims «to prepare or use an invoice or other accounting document or book which contains false or incomplete information» or «contrary to law to omit entering a payment into the books», if the violation is wilful and takes place «to commit, hide or cover up the punishable circumstances that are mentioned in Articles 2 to 12». If the perpetrators have behaved as described in Article 14 of the Council of Europe Convention, or assisted in such accounting violation taking place, the case will often be regarded as gross.”

S388(d)(1) can therefore be important for Norwegian companies operating in developing countries. With complicated company structures, use of different international currencies, local or foreign labour and partner companies channeling funds, there are many potential instances in which corruption can be committed. Additionally, due to the nature of the acts mentioned, they are very likely to be considered as gross corruption, as stated in ot.prp.nr.22(2008-2009) “Perpetration of legal acts regulating accounting and auditing in order to hide corruption speaks in favor of deeming the act of corruption as gross.”

3.3.1.4 Section 389 Trading in influence

The major difference between Sections 387 and 389 is the phrase ‘to influence’. This means the person who is giving or receiving the ‘undue advantage’ is an intermediary or third party,¹⁰⁶ so the act of corruption is no longer confined only to the offerer and recipient. These acts must be “directed towards undue advantages that are demanded, offered, accepted, given or received «in order to influence the performance of another’s, that is to say, a third party’s – position, office or assignment»”. If the agent of influence receives an undue advantage in connection with his or her own position, office or assignment, the circumstance is subsumed under Section 387 as corruption.¹⁰⁷ Identically to Section 387 there must be an advantage offered or accepted, and an impropriety assessment must be made to find out if the advantage is undue. There is a difference between Sections 387 and 389 in these assessments, as “[i]t is assumed that the impropriety assessment in accordance with Section 389 may deviate somewhat from the

¹⁰⁶ Ot.prp.nr.78 (2002-2003) p.59

¹⁰⁷ Matningsdal (2010) p.455

equivalent assessment in accordance with Section 387.”¹⁰⁸ A key factor in both impropriety assessments is the financial value.

One fundamental question in investigating violations of Section 389 is ‘who is sought influenced?’ Some positions are more important to protect against undue or improper acts of influence, for example judges, elected officials,¹⁰⁹ and those close to parliament¹¹⁰. As Matningsdal puts it “If the person who is sought influenced has no connection with the agent of influence’s activity, etc., Section 389 shall then be applied as the starting point. For example, this means that if an employee in a private activity receives undue advantages in order to influence a government official, punishment of the individual must take place with the statutory basis in Section 389.”¹¹¹ This example is relevant for this dissertation as voluntourism companies operate in the private sector and generally have private partners in developing countries. This opens the possibility that voluntourism companies may be working with locals in those countries who may be influencing local public officials. In both the public and private sectors,¹¹² a person receiving a bribe for a decision to be made by his or her company will be investigated under Section 387. “In borderline cases, there can be reason to look at whether the behaviour of the agent of influence appears as a breach of trust in relation to the person’s own employer or principal, something which is normally a sign of ordinary corruption.”¹¹³ An individual assessment is essential in apportioning correct and appropriate responsibility.

Some forms of influencing activity can be considered corruption and fall under Section 387¹¹⁴. Examples of this include advantages offered to the person who is sought influenced, and the main criterion is if the advantage appears ‘undue’. An area which can be in violation of Section 389 is lobbying. The lobbying agent must be open¹¹⁵ about their intention to influence to the person acting on behalf of a client, if not then it is normally considered a breach of Section

¹⁰⁸ Matningsdal (2010) p.456

¹⁰⁹ Ot.prp.nr.22 (2008-2009) C16.11 notes for S389

¹¹⁰ Ot.prp.nr.78 (2002-2003) p.61

¹¹¹ Matningsdal (2010) p.454

¹¹² Ot.prp.nr.22 (2008-2009) C16.11 notes for S389 and ot.prp.nr.78 (2002-2003) p.61

¹¹³ Ot.prp.nr.78 (2002-2003) p.60-61

¹¹⁴ Ot.prp.nr.78 (2002-2003) p.61

¹¹⁵ Ot.prp.nr. 78 (2002-2003) p.61

389.¹¹⁶ “If the agent of influence does not give information that he is acting on behalf of someone else, and there is no reason to believe that the person sought influenced has been made aware of this in another manner, the main rule must be that the circumstances shall be regarded as improper.”¹¹⁷ Additionally, the agent must give the impression of trying to influence¹¹⁸, and not try to hide his intentions through his actions or manner. The degree of transparency is essential to those trying not to violate Section 389. The lobbying agent must signal clearly his intention to influence the other party, whom is representing if acting on behalf of a principal¹¹⁹, and that he be open about influencing intentions during the process.

To violate Section 389, it is not required that the agent actually tries to influence the decision maker. It is enough that the agent demands, receives or accepts an offer of undue advantage¹²⁰. “Neither is it a requirement for punishment that the agent of influence makes an actual attempt to influence the decision-maker. It is sufficient that he or she demands, receives or accepts an offer of an undue advantage «in order to» do this.”¹²¹ The purpose of the act is more important than the physical outcome, and mere intention is required to qualify as violation. Transparency requires that the agent must state his aims and intentions, and act in a representative manner. Conversely, the agent of influence is not usually required to detail how much he is being paid for the assignment, or who has offered it to him.¹²² Objections can be raised against those agents who refuse to disclose their principals’ identity, but this is not usually sufficient to trigger ‘criminal reactions’. This situation assumes that the agent does not disclose any information regarding the identity of who gave the assignment, and the compensation. This is important, as “If the agent of influence consciously communicates incorrect or misleading information regarding the principal or compensation he receives, the situation must often be characterised as improper.”¹²³

This provision applies to those making decisions in the public sector as well as in the private

¹¹⁶ Ot.prp.nr.22 (2008-2009) C16.11 notes for S389

¹¹⁷ Ot.prp.nr.78 (2002-2003) p.61

¹¹⁸ Ot.prp.nr.22 (2008-2009) C16.11 notes for S389

¹¹⁹ Ot.prp.nr.78 (2002-2003) p.61

¹²⁰ Ot.prp.nr.78 (2002-2003) p.61

¹²¹ Ot.prp.nr.78 (2002-2003) p.61

¹²² Ot.prp.nr.78 (2002-2003) p.61

¹²³ Ot.prp.nr.78 (2002-2003) p.61

sector, which is in contrast to the Council of Europe’s Convention. Thus the section gains more relevance to voluntourism and the focus of this study. Section 389 can be violated even if the agent does not have any real chance of making contact with the person they claim to be able to influence, meaning that they can be in violation even if they are lying or pretending to have the ability to exert influence. The impression given by the agent must be that they intend to “influence the performance of another’s position, office or performance of an assignment.”¹²⁴ This stretches to ‘influencing of acts or omissions’, not only decisions, and demonstrates that the Section shows an extremely rigorous assessment of the intention and potential of the agent. An example from Article 12 of the Council of Europe Convention states “it can be that the agent of influence is married to a journalist, and takes payment to influence the spouse to write about a company, a political party, a film or a theatre production.”¹²⁵

3.3.2 Jurisprudence

3.3.2.1 *Yara*¹²⁶

This verdict is from the Court of Appeal where the Yara-case was found to be an example of gross corruption. The Yara-verdict was chosen as an example of economic crime¹²⁷ by ØKOKRIM “the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime.”¹²⁸ A brief summary of the Yara-case describes how four former top executives from a Norwegian-listed company were indicted for gross corruption involving government employees in Libya and India. The Court of Appeal acquitted three of the four persons indicted. The fourth – the company’s former director of the legal department – was sentenced to imprisonment for 7 years for three counts of gross corruption. The bribes involved were in excess of NOK 14.5 million. In January 2014 Yara accepted a fine from ØKOKRIM of NOK 295 million.

The case illustrates how a Norwegian employee or employees can become responsible for corruption committed abroad, making it particularly relevant for this study. As suggested in Section 387 and 388, the defendant’s position as director of the legal department proved crucial. “In sentencing it was also emphasised as aggravating circumstances that the defendant was a member of the company’s group management, and that he was very central in the corruption

¹²⁴ Matningsdal (2010) p.457

¹²⁵ Ot.prp.nr.78 (2002-2003) p.61

¹²⁶ LB-2015-138815-2

¹²⁷ ØKOKRIM (2017)

¹²⁸ ØKOKRIM (2017)

acts.” This abuse of position was central to the case, given that “A had the overall professional responsibility for Yara’s ethical rules and guidelines for good business practice.” The court further emphasised that “The acts appeared as well planned, and that it was of little consequence that the initiative for corruption came from others in the company.”, and that “he also made the decision to hide the transfer of money through an external, foreign company - for the purpose of making it especially difficult to trace the bribe back to Yara.” Both of these points are salient to the main question of this study, most especially the second about tracing the bribe. The often complex company structures and financial channels in voluntourism organisations, where money is transferred through external foreign companies, are open for intentional and unintentional corruption.

Confirming the violation and sentencing, the court notes that “In the case at hand, the act of corruption has not given A some form of personal gain or other advantages, and there is nothing to indicate that own gain in any way has been an aim.” Thus it is not always required that the perpetrator receives immediate personal gain or advantage. Finally, “The circumstance that the act of corruption has been committed in a country which does not have just as well-functioning public administration as the Norwegian, and from experience is more exposed to corruption, can in the view of the Court of Appeal not be any mitigating factor in sentencing.” This shows that corruption in industries or legal set ups in other countries may not be used as an excuse for corrupt practices, despite the countries in question here not being ‘stable democracies’.

This case is currently undergoing an appeal at the Supreme Court, but loses no relevance to the study.¹²⁹

3.3.2.2 *Norconsult*¹³⁰

Norconsult presents itself as “Norway’s largest and one of the leading multidisciplinary consultancy firms in the Nordic region”¹³¹. It has worked internationally in more than 150 countries over the last 50 years. Norconsult became involved in a case where actions of an employee caused the court to motion for a corporate penalty, Norconsult arguing against it. The judge responded “there are several examples in case law showing that corporate penalty has been imposed despite the fact that the act has been committed by a subordinate.” This penalty was ultimately avoided because of the long timeline of the case, and therefore that they had

¹²⁹ ØKOKRIM (2017)

¹³⁰ RT-2013-1025

¹³¹ Norconsult

already implemented new preventative guidelines between when the incident occurred and the sentencing, as the judge states “In an overall assessment I also emphasise that according to the Court of Appeal, Norconsult has implemented several measures to prevent corruption. Amongst them new guidelines have been passed where corruption is addressed and organisational measures have been implemented.” Also, they stated that they would lose an unreasonable amount of money.

Norconsult argued that all of their employees knew what corruption was, and that should be sufficient with no additional guidelines needed. The judge responded “I am not in agreement that a possible bad standard in the industry or in society in general is relevant to the assessment.”. This corroborates previously discussed areas stating that poor industry practice is no excuse. The Court of Appeal stated:

“Norconsult had many assignments abroad, including in Africa, where it is known that corruption has been and still is a considerable problem. This indicates that corruption should be taken up explicitly in the ethical guidelines, cf. the amendment in 1999 to Section 128 of the Criminal Code regarding bribing of government officials abroad. Routines should have been drawn up for handling of questions of corruption, including the obligation to take such circumstances up via the supervisory line. For employees who worked in countries that are strongly exposed to corruption, there should be frequent enforcement and refreshing of routines if corruption circumstances are met abroad.”

The focus of the case was that Norconsult had not taken enough preventative measures, which can be equated to much of the voluntourism industry. In this example the time frame of the case and financial aspect proved decisive, though if the same charges were brought to many voluntourism companies operating in a similar manner, the outcome may well have been different.

The Supreme Court judge began his closing statement “When the various elements are weighed against one another, I find it clear that general deterrence, the gravity of the act and the company’s lack of guidelines, instructions, training and control clearly point to that corporate penalty should be imposed.” In normal circumstances, this would have been a clear cut case. As the time elapsed had allowed Norconsult to undertake preventative measures, the judge continued “I am of the opinion that it must weigh heavily that the company has undertaken several measures to prevent corruption in the future” and “I have therefore arrived at the conclusion that corporate penalty should not be imposed.” Preventative measures are integral

to the OECD and UN conventions, which clearly influenced the outcome of this case.

3.4 Corruption law in the UK and the US

3.4.1 The UK Bribery Act (UKBA)

the UKBA was implemented as a result of the OECD Anti-Bribery Convention "to update and enhance UK law on bribery including foreign bribery in order to address better the requirements"¹³². It applies to public officials and the private sector alike.¹³³ According to Transparency International UK "it is now among the strictest legislation internationally on bribery"¹³⁴. A unique difference between the UKBA and other types of international bribery legislation is that "it introduces a new strict liability offence for companies and partnerships failing to prevent bribery"¹³⁵. This means that there is no excuse for not knowing about the corruption, or not having a system to prevent bribery in place. It is not required according to international commitments, but shows the UK's commitment to stringent bribery laws.

The UKBA applies to all citizens living in the UK, companies registered in the UK and all companies doing business on British soil. Section 7 "Failure of commercial organisations to prevent bribery"¹³⁶ "applies to any relevant commercial organisation defined as a body incorporated under the law of the United Kingdom (or United Kingdom registered partnership) and any overseas entity that carries on a business or part of a business in the United Kingdom".¹³⁷ This liability offence is important to Norwegian subsidiaries with a British parent company, Norwegian parent companies with a British subsidiary and Norwegian companies doing business in Britain. Any of the listed companies above can be prosecuted in Britain. This also goes for any actions taking place in a third country. The voluntourism industry is likely to be affected due to the high representation of British volunteers and companies. It is also relevant for companies registered in Norway or operating in Norway if they have any connections to the UK.

¹³² TI-UK

¹³³ TI-Norway (2017)

¹³⁴ TI-UK

¹³⁵ TI-UK

¹³⁶ Bribery Act Section 7

¹³⁷ TI-UK

3.4.2 The American "Foreign Corrupt Practices Act" (FCPA)

The FCPA was created in 1977 as the first law to combat corruption directly. The FCPA is regarded as the most widely enforced anti-corruption law¹³⁸, and was pioneering in being the "the first to introduce corporate liability, responsibility for third parties and extraterritoriality for corruption offences, meaning companies and persons can be held criminally and civilly responsible for corruption offences committed abroad."¹³⁹ The FCPA amended in 1988 and 1998, the latter implementing the OECD anti-bribery act¹⁴⁰, meaning that the FCPA no longer only applied to American citizens. "With the enactment of certain amendments in 1998, the anti-bribery provisions of the FCPA now also apply to foreign firms and persons who cause, directly or through agents, an act in furtherance of such a corrupt payment to take place within the territory of the United States."¹⁴¹ The Convention established the following:

"(1) bribery of a foreign official as a criminal offense; (2) requirements for corporate accounting and for internal corporate financial controls; and (3) a basis for mutual assistance among the signatories for the investigation and prosecution of offenses arising from the bribery of foreign officials."¹⁴² It also makes clear the difference between bribery and "facilitating payments" to foreign officials, the latter being defined as "payments that are solely intended "to expedite or secure the performance of a routine governmental action by a foreign official, political party, or party officer".

It is important to specify what is considered as US territory. A company outside of the US that processes a transaction through a US partner or bank account can violate this act if the transaction is related to corrupt practices. An example of this is "in prosecutions for money laundering, which require proof of a transaction "affecting interstate or foreign commerce, it has been held that "[a] minimal effect on interstate commerce is sufficient to meet this requirement."¹⁴³ A well documented example of this is the VimpelCom case¹⁴⁴, in which funds used ultimately in bribing the Uzbekistan telecoms market were at one point moved through US financial institutions before being deposited in various European accounts. The funds were

¹³⁸ GAN

¹³⁹ GAN

¹⁴⁰ Brown (2001)

¹⁴¹ The United States Department of Justice (2017)

¹⁴² Brown (2001)

¹⁴³ Brown (2001)

¹⁴⁴ France-Presse (2016)

not used on US soil or directly affected US interests, but that they were associated with corrupt practices and had passed through US institutions was enough to violate the FCPA. They had to pay \$167.5m to the US Securities and Exchange commission and \$230.1m to the Department of Justice. This is relevant to voluntourism companies and the NGOs or satellite organisations they partner with. A UK company researched for this study was partnered with an NGO in a developing country, while the NGO was registered in the US. Therefore any payment processed from the UK company to the NGO would be under US jurisdiction, and if found to be corrupt would violate the FCPA.

The Act covers a broad scope of persons

“The FCPA’s anti-bribery provisions apply broadly to three categories of persons or entities: 'issuers', 'domestic concerns' and certain persons and entities under 'territorial jurisdiction'. These provisions prohibit (1) US persons and companies (domestic concerns), (2) companies organised under US laws, (3) companies that have their principal place of business in the US, (4) companies listed on stock exchanges in the US or (5) companies required to file periodic reports with the SEC (issuers), and (6) certain foreign persons and businesses acting while in the territory of the US (territorial jurisdiction) from making corrupt payments to foreign officials to obtain or retain business.”¹⁴⁵

This comprehensive list shows how the Act can apply to the voluntourism sector. Any company working in, registered to or with financial attachments to the US is under its jurisdiction. This includes any partner organisations that are registered in the US or have dealings with US interests or institutions. Employees of the company are vulnerable as “This principle of jurisdiction applies equally to individuals and entities”¹⁴⁶. Many voluntourism companies have US citizens working in developing countries, and with local branches or partner organisations in other countries. In the study, a UK company had numerous US citizens working both at the headquarters and in various developing countries. To have only one US employee automatically means that the company would fall under US jurisdiction and the FCPA. Foreign nationals operating in the US fall under the Act, though these are less relevant for the study as most voluntourism takes places outside of the US.

The FCPA provides a

¹⁴⁵ GAN

¹⁴⁶ Brown (2001)

”narrow exception for facilitation payments. The exception applies only to payments made to foreign officials with the purpose to 'facilitate or expedite routine governmental action'. The exception focuses on the purpose of the payment rather than on its value. Facilitation payments that are not properly documented may violate the FCPA’s accounting provisions.”

This differs from Norwegian law, as the FCPA exception only applies to “foreign officials”. The definition of “foreign officials” is wide.

“On May 16, 2014, the U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit) issued its opinion in *United States v. Esquenazi* , a case important for being the first federal appellate court decision to provide guidance for and flesh out the definition of the term “foreign official” under the Foreign Corrupt Practices Act (FCPA or Act).”¹⁴⁷ A “foreign official” is approximated as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof.”

If a foreign national is involved in a potential FCPA violation, a full investigation must be made by the courts using the “conduct doctrine”. This means that particularly where transactions are predominantly foreign, it is incumbent upon a court "to determine whether Congress would have wished the precious resources of United States courts and law enforcement agencies to be devoted to these foreign transactions rather than leave the problem to foreign countries. The "conduct doctrine" is an analytical framework that courts have developed to make this determination.”¹⁴⁸ Jurisdictional acts that may be assessed using the conduct doctrine for a foreign national with no other contact with the US can include phone calls or mailed goods from outside the US. These acts may not be enough to violate the FCPA alone, but in the case that “(1) the action was more than mere preparation; (2) the action was material to the perpetration of the violation; and (3) it could fairly be said that the action directly caused the violation.”¹⁴⁹, thus an individual assessment would be made.

¹⁴⁷ Seitzinger (2014)

¹⁴⁸ Brown (2001)

¹⁴⁹ Brown (2001)

4 Interviews With the Norwegian Industry

4.1 About the Interview

The Norwegian industry is here defined as all voluntourism agencies reaching out to Norwegian customers. These agencies are located all over Scandinavia or in other countries, for example some are located in Asia but sell trips to Scandinavians. Those selected for the interview were asked to answer a series of questions related to corruption and their own practices. Additionally they were asked if they knew their international and national responsibilities related to corruption. The term 'local responsibilities' is used to encompass both the laws of the country that the project is based in, and the relevant Norwegian laws. Companies with offices in other Scandinavian countries were given the opportunity to explain anything pertaining to the laws that apply in that country. Finally, there was a section covering ethics and how the agencies assess projects within the industry.

-See interview appendix 1

4.2 Response

Most were unwilling to participate in the study. After numerous emails, allowing almost three months to answer, and the offer of not having an interview but just to answer selected questions over email, a limited number participated. One national branch declined, explaining that the parent company is responsible, and that any interview had to be with them. Another company declined by saying they were proud of their transparency, and that they have taken part in multiple studies on ethical aspects of volunteering. They refused to take part in this study because of its title. This shows that there is a focus on certain ethical aspects of volunteering, but the focus on preventing corruption is missing. Altogether the industry seems very limited in terms of transparency related to corruption issues, and there is reason to believe that in certain cases this lack of transparency is deliberate.

All participants had the option to decline an interview and merely send an email response targeting self-selected questions, meaning that the idea that the agencies chose not to participate due to time constraints can effectively be ruled out. As communication was flatly refused, there is room for speculation as to the reasons why participation was declined. One potential reason is that the agency does not have anti-corruption policies in place. Another is that they would not know how to answer, as they do not understand the legal framework and their status within it well enough. Further, a more serious example is that the agency does know the law, but is aware that they are breaking it. Finally, it could be that they are scared of attracting criticism. Whatever the real reasons, the refusal of discussion or offering of any kind of information

appears suspicious. With no valid explanations offered by the agencies, it appears as if some of them have something to hide. Positive responses from those who were happy to participate prove that it is not an industry-wide attitude.

Those willing to participate were interested in working on the issue. They were all clear that they follow local legislation, pay tax and do not tolerate corruption. However, when asked if all the volunteers were allowed to work on their visa, all participants answered yes or that they thought so. When cross-checked with the destinations offered, government websites, embassies and previous volunteers in a separate questionnaire (appendix 2) this was proven to be untrue, meaning that either the companies didn't know or deliberately lied. Most agencies operating in Norway offer at least one destination where obtaining a legal working visa for volunteers is difficult or nearly impossible, and in these cases more than one volunteer had been working illegally (see C5.5). When asked how they handled the international regulations most seemed unsure. The industry seems to perceive that their sole responsibility lies to the developing country and that they only have to follow local regulations. It is true that they have a responsibility to the developing country and it is positive that the industry wants to follow the relevant regulations. However, their responsibilities go much further.

Multiple companies with a branch office in Norway did not know anything about Norwegian corruption legislation. In one case the parent company said they did not look into local legislation as the company had an international approach, and in another the Norwegian branch office said they trusted the parent company. That a parent company has an international approach can have multiple meanings. One is that they follow the same conventions as the ones Norway has implemented, which is one step closer to making sure they're following Norwegian legislation. A second meaning is that the parent company is following one or more international guidelines, though these might not be specific or thorough enough. A third is that the parent company has developed their own central ethical guidelines, and they distribute these to individual national branches. There is reason to believe that is the case here as one company focused solely on their self-made guidelines throughout the interview. As discussed in C2.1, in these guidelines there is insufficient emphasis on corruption and how to avoid or combat it. A risk is that company employees see the internal ethical guidelines as more comprehensive or legally sound than they really are, so do not look beyond them for guidance on corruption.

One company said that they encourage volunteers not to give donations directly to placements or local NGOs cooperating with the agency to prevent dependency and avoid corruption. This

is a positive, but when crosschecked, more than one of their volunteers had been encouraged to donate money while travelling with the agency. This suggests that the Norwegian national branch, and possibly the parent company, doesn't know enough about what happens in the countries hosting their projects. Lack of awareness about local practices is not sufficient to absolve the agency from their responsibility. The danger for parent company or the national branches is that if corruption happens on the projects without their knowledge, the responsibility still falls upon them. To combat this, one agency said that they conducted a form of integrity due diligence assessments before opening new projects. This is a positive step, however it is flawed because no external regulatory body is involved in these assessments.

The following figures show legal responsibilities in voluntourism, both perceived and actual. The differences can be substantial. Refer to 2.4 for explanations of the organisational structures.

Figure 4: Perceived legal responsibilities in voluntourism:

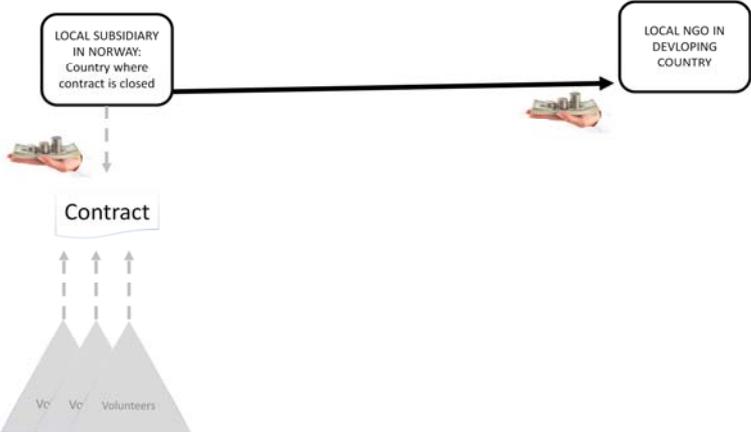
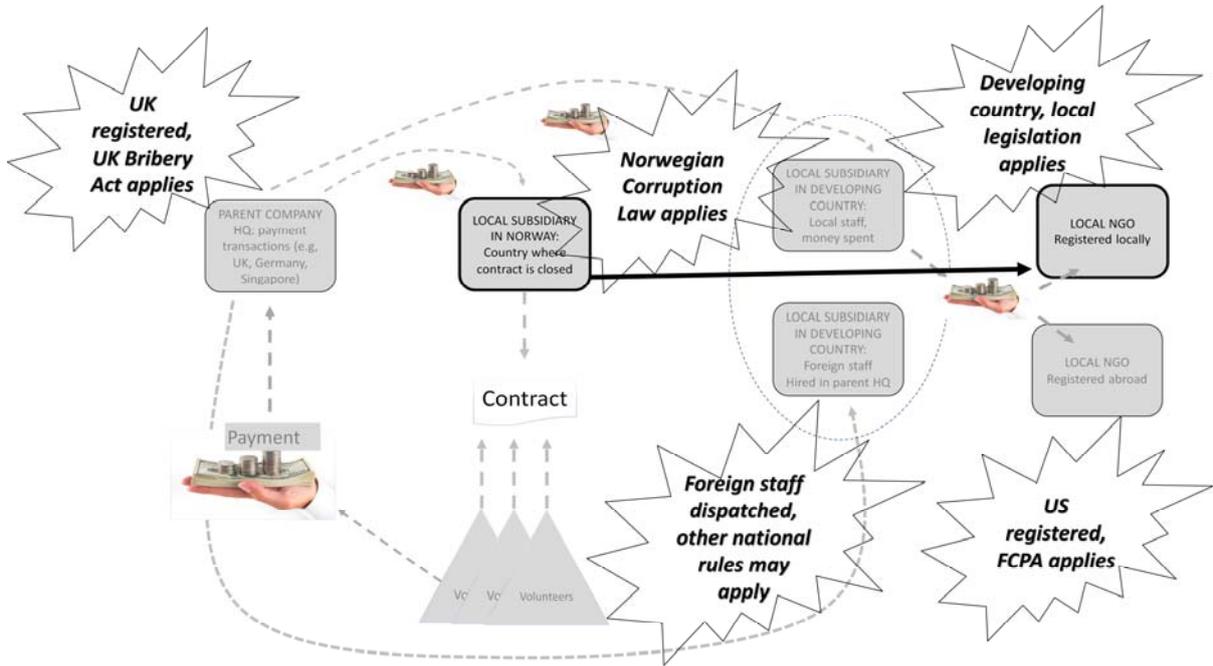


Figure 4: Examples of legal responsibilities in the voluntourism industry:



4.3 Conclusion

While there is insufficient data to draw conclusions with certainty, the reluctance to respond indicates that the industry may suffer from a lack of transparency and possibly insufficient knowledge about corruption. Confusion within agencies and lack of knowledge about in-country practices can pose a risk to local and international agencies, and the communities in which they operate. The industry does not appear well informed about their legal obligations, or corruption practices, indicating a need for solutions. To prevent these problems they can take more precautions, such as hiring a legal consultant, ensuring that communication between all branches, projects, volunteers and parent companies is clear, and reading TI-Norway’s corruption handbook.

5 Case Studies and Participant Survey

5.1 Introduction

In this section, case studies have been researched to exemplify developing countries where voluntourism is high and how corruption can occur. A key factor in deciding what to research was choosing countries where Norwegian companies are in operation, and where there have been corruption related issues reported. This keeps the focus as close as possible to the central question of the study. Participant surveys were conducted to corroborate the findings of the case studies. Each of the countries selected has a unique set of circumstances in which corruption can be practiced in different ways, so taken together they act as a broad representation of corruption in developing countries. With a score of 21, Cambodia is ranked at 156 on the 2016 Corruption Perceptions Index (CPI index) out of 176 countries¹⁵⁰. Nepal is currently ranked number 131 on the 2016 CPI index¹⁵¹ with a score of 29, in addition to being one of the world's poorest countries. While South Africa is ranked number 64 on the 2016 CPI index¹⁵² with a score of 45, it is still receiving international financial aid¹⁵³. It is richer than the other countries, but has a corrupt conservation sector. Each of the countries chosen has a turbulent history in terms of violence, oppression, natural disasters and more which there is no room to expand on here.

5.2 Cambodia

5.2.1 Voluntourism in Cambodia

Entering Cambodia legally is not difficult so this does not pose any corruption-based issues in relation to voluntourism. To volunteer in Cambodia a business visa is required, which can be obtained at the airport just as easily as a tourist visa.¹⁵⁴ This information is not on the government website but has been corroborated by previous volunteers. Both the tourism and volunteer businesses in Cambodia are booming, and working with children is extremely popular. Due to the propensity of orphanages across Cambodia, they have become one of the most popular areas for volunteering in the country. "Most volunteers choose to work with Cambodian children, usually by teaching English in orphanages."¹⁵⁵ This can be harmful.

¹⁵⁰ TI (2017)

¹⁵¹ TI (2017)

¹⁵² TI (2017)

¹⁵³ Globalis (2016)

¹⁵⁴ Trip Advisor (2016)

¹⁵⁵ Move to Cambodia

Many of the children in Cambodian orphanages are only there for economic reasons, primarily that their family can't support them. According to UNICEF: “The main reason why families put their children in orphanages is cited as poverty and limited social protection and safety net programmes.¹⁵⁶”

These economic reasons may mean that volunteers are fuelling a business that is unhealthy and potentially harmful for children. Over time, the number of orphanages has increased, and the number of orphans between the age of 0 and 14 has decreased¹⁵⁷. This implies that the number of orphanages may not have increased because they are needed, but for business reasons. According to UNICEF there were only 23 state-run orphanages in Cambodia in 2013 and close to 225 orphanages run by NGOs (154 in 2005)¹⁵⁸. UNICEF says the NGO-run orphanages “are almost exclusively overseas-funded and many are faith-based¹⁵⁹”. Taking into account the statistics, it could be that the primary function of many orphanages has shifted from protecting children to making money, as many develop into lucrative businesses. The companies make money from volunteer donations even after they leave, and this can go to corrupt managers as opposed to the intended destination.

Al Jazeera made a documentary¹⁶⁰ about orphanages in Cambodia and found that they were not properly equipped to take care of the children. One was under investigation by the authorities. This orphanage had a contract with at least one volunteer agency who continued sending volunteers to the orphanage while it was still under investigation. Al Jazeera discovered that some of the orphanages were corrupt, with monetary donations not going to the children as intended. At least one agency involved at the time is operating in Norway today, despite a legal investigation. This shows that even with overwhelming evidence to support it, there can sometimes be a less than serious attitude towards corruption in the region.

Tara Winkler appeared at a TEDx event¹⁶¹ in Sydney in 2016 after setting up and becoming

¹⁵⁶ UNICEF Cambodia

¹⁵⁷ UNICEF Cambodia

¹⁵⁸ UNICEF Cambodia

¹⁵⁹ UNICEF Cambodia

¹⁶⁰ Haan (2012)

¹⁶¹ TEDx (2016)

'Managing Director' of the Cambodian Children's Trust¹⁶². Winkler first volunteered in a Cambodian orphanage in 2006, and after fundraising in Australia she volunteered at the same orphanage again. After returning to Australia she discovered that the orphanage was corrupt and that the director had been embezzling all of the money from donations and funding. Winkler refused to abandon the children, so set up a new orphanage in cooperation with local authorities to rescue them. She learned to speak the local language and discovered some disturbances among the children. Based on her research, it transpired that most of them weren't orphans and the ones that were often had relatives alive. In her TEDx talk Winkler points out that this is a problem all over Cambodia and that tourists, volunteers and donors are contributing to this trend. Her foundation no longer functions as an orphanage, but now works with local staff and communities to try to treat the children's needs in a different way. They call it a "Family-Based Care Model"¹⁶³.

5.3 Nepal

5.3.1 Volontourism in Nepal

Under the Nepal Immigration act 1994 section 20¹⁶⁴, working on a tourist visa is illegal. This applies to both paid and unpaid work. Most agencies tell the volunteers to list themselves as a tourist when entering the country, as applying for a Nepali working visa is expensive and difficult. The result is that most foreigners working in Nepal are there illegally, either on a tourist or student visa. This well-known amongst the immigration department, the universities or colleges, and the government. According to Tumburu Gautam at TI-Nepal: "The main requirement for obtaining a working visa is that the employer must provide evidence that there is no local competent expertise available to do the job.". Notably, this does not apply to volunteer agencies. Mr. Gautam was asked if having volunteers working on a tourist visa in Nepal was a potential problem. He said "Yes, obviously as it creates a big opportunity for corruption to take place.". He also states that the same could be said for other workers staying in Nepal on a false visa.

From these examples we can see that illegal volunteering is not only widespread, but anyone entering the country on illegal grounds has a high chance of causing or being involved in corruption. A quote from Juliet Sorenson, clinical assistant professor of law at Northwestern

¹⁶² Cambodian Children's Trust

¹⁶³ Cambodian Children's Trust

¹⁶⁴ Nepal: Immigration Rules 1994/UNHCR/National Authorities (1994)

University, is appropriate "Natural disasters are breeding grounds for fraud and corruption."¹⁶⁵ After the 2015 earthquake, many projects were created in a very short space of time. Coupled with an already fragile economy, this demand created new problems such as a massive supply need, black market trading and many more. As Sorenson puts it "[t]he need for services... is high. Those services must be provided quickly: electricity, gas and water must function, schools and businesses must open and public transportation must run. Returning to life as we know it as fast as possible boosts not only the local economy, but morale." We can see then that it is not only a few people looking to make money that can get sucked into this cycle, but anyone from almost any level of society.

In certain cases, corruption can occur due to how the project is funded. For example, in one company previous volunteers were asked to donate money to a construction project of their choice, such as schools or houses. A year later it transpired that the organisation had never been granted a building permit for the houses, so the money was allocated elsewhere without telling the donors. This lack of transparency for the donors can be dangerous, unethical and illegal.

Orphanage volunteering is another area of concern in Nepal. One difference to the Cambodian example is the amount of child trafficking, and there are numerous organisations working to combat this. A typical organisation of this type is Next Generation Nepal¹⁶⁶ (NGN). The roots of this trafficking seem to stem from the civil war and continue to the present day, in which according to NGN "traffickers portrayed themselves as boarding school representatives and made promises to parents about modern schools and safe living conditions in Kathmandu", and "...[d]ata suggest that 2 out of 3 children living in 'orphanages' in Nepal are not in fact orphans."¹⁶⁷ Coupled with the fact that almost 90% of all registered orphanages and children's homes in Nepal are located in the 5 main tourist districts, the picture becomes clearer. NGN sums it up by saying "there is a direct link between orphanage trafficking, institutionalization and the phenomenon of orphanage voluntourism". Adding another layer of corruption and immorality to the situation are the stories of "...reports of orphanage owners deliberately keeping children in destitute or unhealthy conditions to attract more financial donations." and "...[f]oreign voluntourists have witnessed children being made to undertake activities,

¹⁶⁵ Sorensen (2014)

¹⁶⁶ Next Generation Nepal

¹⁶⁷ Punaks (2014) XI

sometimes against their will, to please the fee-paying voluntourists.” Donations are gained under false circumstances, which are then likely kept by the owners as opposed to given to their intended target. This shows that corruption can occur at many levels of orphanage voluntourism in Nepal, though as with disaster projects it is unclear exactly how much the donors or volunteers are aware of.

One overriding theme in corrupt practices in Nepal is the local organisation's way of conducting business. An anonymous source reported that accommodation bookings for volunteers, visa processes, and even crime reports are kept "off the books" where possible. The purpose of these practices is so both the company and the volunteers will not have to prove their in country actions or legality to immigration officials. This can be through discouraging volunteers to file reports, and that business is conducted cash in hand with minimal use of cards to keep things untraceable. This goes hand in hand with nepotism to create a tightly guarded system in which the organisations can operate. Another anonymous source reported that almost all employees, projects and services used were somehow related to the upper management, or at absolute minimum part of a very close friendship network. For example, in one case a disaster relief program was started by an organisation. The school site was owned by the manager's cousin, the volunteer accommodation by the cousin's father, extra funding and clearance from a partner organisation run by the manager's sister and her husband, and all employees on the work site directly related to the family. There is a fine line between cultural practices and corruption, and in many cases this has the potential to be overstepped in Nepal.

5.4 South Africa

5.4.1 Voluntourism in South Africa

Africa is known for its diverse wildlife and South Africa is no exception, with wildlife projects being extremely popular in the country. The problem for a well-intentioned volunteer is how to distinguish the good projects from the bad. The more demand there is for a certain kind of project the more it opens itself up to corruption, and that is the case with conservation more than other project types in South Africa. When asked what type of visa is needed to volunteer there, the South African Embassy in Norway answered “The Embassy always advised those who would like to do volunteer work in SA, to apply for visitor visa – with volunteer work endorsement. However, you need to ask advice from the place that you going to volunteer for in SA, if they required you to obtain volunteer visa”. Not all volunteering in South Africa is legal, and it depends on the voluntourism companies checking whether the volunteer has an

appropriate visa. From the interviews of both volunteers and companies, it seems that most companies do not have a checking procedure in place. This increases the potential for volunteers working illegally, although according to the CPI Index South Africa is less corrupt than Nepal, so it is likely to be less of a problem.

Wildlife programs including lion breeding and raising projects have become very popular over the last few years. According to the documentary *Blood Lions*¹⁶⁸ there are two reasons for that. Firstly, “canned hunting” has become more popular, and secondly there has been an increase in demand for lion bones in the Asian market as an alternative to Tiger bones in Chinese medicine¹⁶⁹. The lion breeders call these projects “conservation”, and volunteers are told the breeding is necessary for the lion population in South Africa. A volunteer agency in Norway cooperated with a lion breeding farm who sold lion bones to the leader of the Xaysavang cartel, Vixay Keosavang¹⁷⁰. According to the US ‘Bureau of International Narcotics and Law Enforcement Affairs’ the Xaysavang Network is “an international wildlife trafficking syndicate, facilitates the killing of... species for products such as ivory and rhino horn.¹⁷¹” The breeding farm claimed they didn't know to whom they sold their bones as they only met a middleman, and the Norwegian agency supported them. The farm said that the sale of lion bones is legal, that the lions died of natural causes, and that it is necessary for the species to be bred in captivity to increase the stock¹⁷².

Many organisations are critical of this practice, suggesting that it is not conservation and the breeding is not natural or necessary. Country director of 4paws, Fiona Miles, made a statement in a South African article¹⁷³ about Keosavang and the lion bone trade. 4paws is a non-profit organisation operating in South Africa. Their vision is “to be the strong, global and independent voice for animals under human control In an interview for this study Fiona Miles’ assistant Chris de Wet says that breeding animals in captivity is not necessary, and he states that the tourist industry acts as a secondary revenue stream for the breeding facilities. Using lion breeding as an example, de Wet says the cubs are stripped from their mothers and

¹⁶⁸ Chevallier & Young (2015)

¹⁶⁹ *Blood Lions*

¹⁷⁰ Krokfjord (2014)

¹⁷¹ US Department of State

¹⁷² US Department of State

¹⁷³ Du Plessis (2011)

are placed into an environment where tourists can pay to pet and play with them at the same time as volunteers pay for the privilege of helping to raise them. The breeder now has two additional incomes, one from the tourists and one from the volunteers. Once the cubs reach a certain age, they are put into artificial caged environments and killed in a 'trophy hunt', after which the rest of the lion is sold in various areas including the bone and meat trade.

The trade of lion bones is legal in South Africa, as long as the paperwork is in order, with 'proof' that the lion died of natural causes. According to de Wet the South African government is considering putting a quota in place for the trade of lion bones. This is supported by an independent Bloomberg article¹⁷⁴. 4paws and other NGOs are opposing this. De Wet states that no research has been done on the impact the quota would have on the lion population, and 4paws believe that no trade in bones should be allowed until solid scientific data is in place. 4paws is working to ban the trade of any big cat bones, as it is difficult to discern from a pile of bones where they originated. De Wet also says it is an industry rife with corruption and underhanded dealing. When asked if corruption can occur at any point he says corruption both can and does occur up and down the chain at every point, from inspectors turning a blind eye to the animals not being cared for properly, to the smuggling of animals and animal parts out of the country. Product prices are high and this allows for a great deal of financial leverage by the participants. The industry is too big to be properly regulated and there are no resources available for effective monitoring or enforcement.

Julian Rademeyer, author of 'Killing for Profit'¹⁷⁵ supports de Wet's findings, and statements from both show that this is a complicated industry with high potential for corruption. This potential comes from the purchase of lion bones often leading to illegal activities Keosavang also bought ivory, rhinos and other illegal animals on the black market. The rhino market also has ties to rich South Africans paying off poachers in neighbouring countries¹⁷⁶ Keosavang's gateway to the trophy hunters and thus the expansion of his illegal trading network was through the purchase of lion bones. It has been suggested that the government has been involved in or aware of illegal trading and breeding facilities since as far back as the 1970s and 1980s. It is difficult or maybe even impossible to know if the breeding farms are corruption-free, and the network of participants in the trade spreads far beyond South Africa. The network of corruption is far reaching, and has buyers from all over the world. To illustrate this, the co-creator of 'Blood Lions' is coming to Sweden this year to discuss his

¹⁷⁴ Bonorchis (2017)

¹⁷⁵ Rademeyer (2015)

¹⁷⁶ Rademeyer (2015)

findings and ask the politicians to make changes¹⁷⁷. When interviewed by Expressen¹⁷⁸, he specifically stated that the Nordic countries can make a big difference, as a lot of the volunteers in South Africa come from these countries. The government is aware of the trade in lion bones, and regards it as a by-product of the canned hunting industry.

The Norwegian company said they supported the breeding farm because the lions had died from natural causes, but it is close to impossible to know if that's a fact. They published an official statement about lion projects on their website¹⁷⁹ after the exposure saying they do not partner with anyone who supports the canned hunting industry. However, both Blood Lions¹⁸⁰ and the Swedish documentary¹⁸¹ exposed a second breeding farm the company previously cooperated with which is also involved in canned hunting. The first farm they cooperated with - Letsatsi La Africa - has been accused as South Africa's largest trader of lion bones, and the owner invited a wildlife trafficker with close ties to Xaysavang¹⁸² to visit the park in June 2010¹⁸³. When de Wet was asked if voluntourism is harmful to the industry, he answered that voluntourism in an ethical and sustainable manner when applied for legitimate reasons is beneficial to all parties, but voluntourism at breeding facilities can be deadly to the animals as through handling by inexperienced people. The key is education of the public to know what kind of facility they are volunteering with. It may not be illegal for the Norwegian agency to cooperate with the South African breeding farm but in such cases the agency should ask themselves is it ethical? Can it lead to other illegal activities? If yes, is it responsible and ethical volunteering? The answer is probably no.

5.5 Survey given to previous volunteers

5.5.1 Description

In order to gain a better sense of the possible breadth of corruption and awareness around it, a survey with 10 questions was sent out to selected previous volunteers. There were around 15 participants who had been travelling with agencies operating in Scandinavia. Each participant was identified through networking of colleagues, friends, and acquaintances. The participants

¹⁷⁷ Expressen (2017)

¹⁷⁸ Expressen (2017)

¹⁷⁹ GoXplore (2014)

¹⁸⁰ Blood Lions

¹⁸¹ Expressen (2017)

¹⁸² Rademeyer (2015) p.171

¹⁸³ Rademeyer (2015) p.171

were able to add relevant information where they wanted and there was an open question at the end where they could add information about corruption. They did not necessarily have to be volunteering in one of the three countries taken as case studies.

5.5.2 Response

When asked if they had been legally working in the country where they had been volunteering, the participants largely had three different answers. Some answered that they were sure that they entered the country legally for voluntourism, referring to the guidance they received from their agencies before departure. When I double-checked with the authorities in the countries concerned, I found that some of the volunteers were right but others had been working illegally, sometimes for months, without knowing about it. Some volunteers answered that they weren't aware that it was illegal when entering the country but they found out during their stay. Some added that they were told to lie when entering the country and if asked by authorities about the purpose of their visit. The last group of volunteers knew that they were entering the country illegally but chose to do it anyway. All volunteers were asked what the agency told them before entering the country. The volunteers were all happy about the information the agencies had provided on how to apply for a visa but those who later discovered that they had been working illegally were critical of how the agencies had handled the situation. They all felt like the agency should have known and told them before entering the country. None of the agencies provided information about the legality of volunteering to the volunteers before departure. All volunteers stated that the local staff seemed to be well aware of the legal situation.

When asked if they were given the chance to donate money at some point during their stay most participants said yes. They all added that they were not forced in any way. Some volunteers who were given a chance to donate money were travelling with an agency who had stated that they did not want volunteers to donate money directly to any projects, and that all donations should go through them. They said one of the reasons why they don't want direct donations to the projects is to prevent any projects from cooperating with the agency for economical reasons. This inconsistency could suggest that the agency doesn't know enough about what's happening abroad.

The volunteers were asked if the information they were given before they left home was accurate and if the project was as expected. This type of question can be difficult to analyse because the volunteer's expectations may not always be realistic and miscommunication can

sometimes occur between the volunteer and the agency. However, about 50% of the volunteers answered that they were happy with the information they received and that the project met their expectations. The other 50% said the project was very different from what the agencies had told them before they left. Most of them said it seemed like the local staff knew very well what the projects were like but that the agency in Scandinavia did not. Some volunteers also added that it seemed like they were not needed and that the placements were in it for the money, not because they actually wanted the volunteers. There is no single way of interpreting these answers. But they do suggest that in some cases the agencies in Scandinavia do not know enough about the projects they're selling or, in a less likely scenario, that they provide false information on purpose. None of the participants reported exposure to any corrupt activities that they were aware of.

5.5.3 Conclusion

The agencies seem to do their best to inform the volunteers about what to expect before departure. However, they do not appear to have considered the potential consequences of sending volunteers to countries on illegal visas. Not only can it cause corruption but it also a lot of trouble for the volunteer if they get caught. The focus of the company should not be solely on how to enter the country but also on what the potential consequences might be when doing so on the wrong type of visa. The volunteer should always be informed by the agency before departure so he or she can make an informed decision. It is the responsibility of the agency to ensure that corruption is not happening at their placements or with their volunteers. Unfortunately, in a lot of cases the high demand for volunteers and the desire of parent companies to increase profits can lead to corruption taking place.

6 Conclusion

Corruption in voluntourism can occur at different levels, and in many ways. The industry appears to cover many types of organisations operating in the grey zone between developed and developing countries. Financially speaking, this area unites the management of low and high cost labour as well as a mixture of global and local currencies. This environment opens many forms of innovations in business practice, some of which may be true entrepreneurship, but others may border on or cross the line to corruption. Companies that employ these complex

structures and fall into corrupt practices can be assigned into two categories, those who do it knowingly and those who do it unknowingly. Morally there is a clear distinction, but legally both types have to adhere to the same laws, as well as punishments for violations.

Further, a combination of good intentions in the voluntourists and transactional ‘creativity’ in the setup of the voluntourism companies may distort the actors’ perception of the legal ramifications of their decisions. An individual within a company can carry out actions which may not appear to them to be corrupt, but they could be contributing to a corrupt whole. Complex international structures with various offices, financial institutions and partner organisations can exacerbate this issue, especially when the organisation does not have company-wide anti-corruption guidelines in place. This confusion of communication can open the way for a kind of diffusion of responsibility, where an actor can just focus on their area and ignore the other stages of the process. In turn, they can then easily assign their own responsibility to more abstract entities such as ‘the company’ or ‘the industry’.

Across the voluntourism industry it seems that knowledge of exactly what constitutes corruption is insufficient. Coupled with this, there appears to be a lack of understanding about legal responsibility both in terms of where it applies, and to whom. Because of this, companies operating especially in developing countries can actually do more harm than good if they do not properly assess the risk of corruption. While the projects they set up may not directly be corrupt or illegal, they can foster and encourage illegal corrupt activities, as displayed in all of the case studies. With agencies, partners, projects and volunteers registered across the world, companies need to be clear on where their legal responsibilities lie. Neither a lack of understanding about corruption, or deferring to ‘industry norms’, are acceptable excuses, and both are fundamental issues within voluntourism that need to be addressed.

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The quote is therefore no longer available.

(https://www.transparency.org/news/pressrelease/transparency_international_confirms_the_disaccreditation_of_its_chapter_in) [cited 23.05.17]

Appendix 1: Questionnaire used with companies

1. **Is your company registered in: Norway - Abroad - Please specify which country:**
2. **If your company's main office is registered abroad, are you familiar with the legal responsibilities occurring if corruption is taking place in one of their projects or in your office?**
Please specify if you know which responsibility your company carries in xxx.
3. **Are you aware of which responsibility your Norwegian office bears if corruption occurs in projects you are offering abroad? Yes / No**
This is particular to interviews done in Norway, but please answer if you know the answer.
4. **Have you analysed eventual problems that may occur in relation to corruption before you began carrying out your projects?**
5. **If yes, which type of organization helped you analyse? Choose one option: Norwegian - International - Local - We did it ourselves**
6. **Does your company have ethical guidelines that you follow (in regard to corruption)?**
7. **If yes, can you describe the guidelines briefly?**
8. **Are you aware of any international or national guidelines for voluntary work?**
9. **If yes, can you describe the guidelines briefly?**
10. **Are you aware of any problems with corruption taking place in any of your projects?**
11. **Is every volunteer traveling on legal visa?**
12. **Are you offering projects involving animals?**

13. If yes, can you describe briefly how these projects are set up?

14. Are you offering projects in orphanages?

15. If yes, how are you checking your partner?

16. Is a certificate of good conduct issued by the police required to travel with you? Yes/no

17. If yes, to what kind of projects does this apply?

18. Are you offering other services than voluntary work? Yes / No

19. If yes, what kind of services?

20. Other information:

You may fill in auxiliary information here. It may be anything that you see as relevant.

Appendix 2: Questionnaire to ex-volunteers

Corruption exists in many forms. The best known is perhaps situations where public servants are bribed to carry out a procedure faster or to have a project involving a company approved. However, corruption also exists in daily life. You may have been asked to pay more than required for your visa, the police may have collected your passport and asked you to pay to give it back or you may have been part of a project where things do not seem to be quite right. It may be a good project in itself, but you may have noticed peculiar situations. If so, please recapitulate them in this survey.

- 1. With which company did you travel?**
- 2. What kind of project did you work on?**
- 3. Did you check out how the company used your payment?**
- 4. Did the company you chose inform you about how they prevent corruption?**
- 5. How was your experience of the project you took part in?**
 - Did you think it was as expected?
 - Do you think the information you received in advance was accurate compared to how the project turned out to be?
 - Did your organisation seem well informed about processes occurring in the host country and in the project?
- 6. Were you asked to donate money in the course of your trip?**
- 7. If yes, was did this request come from the company arranging your trip, or was a third party involved?**
- 8. Do you know if other people travelling with you were asked to donate?**
- 9. Other information:**

If you have anything to add, please do it here.