



## Protecting children from violence in the family and alternative care settings

This briefing note<sup>i</sup> is designed to:

- highlight the vulnerability of children to violence in the family and alternative care settings,
- encourage members of CAT Committee to consider the potential added value of reference to the Guidelines for the Alternative Care of Children - A/RES/64/142 (Guidelines) in developing their arguments and recommendations, especially when reviewing State Party reports<sup>ii</sup>

### Children in the family and in alternative care:

Millions of children around the world cannot live with their parents, for a wide variety of reasons. While the majority are cared for on an informal basis by relatives or others in their immediate community, a significant proportion are placed in “formal” settings with foster parents or residential care – in the case of most countries – more frequently in large institutional facilities.

All children without or at risk of losing parental care are particularly vulnerable – hence, indeed, the development and acceptance of the Guidelines by the UNGA. Regrettably, children in some family and alternative care settings are especially at risk of violence:

- Enhanced recourse to alternative care for children stems from parents’ felt-inability to cope – and lack of available support of all kinds to do so – and, in many societies, violence within the family home. Such violence can therefore be a factor leading to the child’s abandonment, relinquishment or their removal - as has been found in countries such as Peru.<sup>iii</sup> The safety of children is especially jeopardised when prevention mechanisms are lacking. For example, in Norway, the “Child Welfare Services in some areas of the country do not have the resources or the competencies to identify and support children who are exposed to violence and that the existing helpline is not well enough known to children.”<sup>iv</sup>
- Without an adequate legal or supportive framework, essential safeguards against violence are wanting. For example, in Peru domestic violence including sexual abuse, “is widespread in the society and that the Criminal Code does not provide for adequate protection against these forms of abuse.”<sup>v</sup> Moreover incestual sexual abuse is not characterised as a crime.<sup>vi</sup>
- Harmful traditional practices can also lead to the child’s abandonment or relinquishment due to public policies and societal views.<sup>vii</sup> For instance in Togo, parents may relinquish their children in exchange for a bride price or in lieu of debts, where the Togolese Personal and Family Code allow discriminatory practices of levirate, repudiation and polygamy.<sup>viii</sup> In Tajikistan, “especially in rural areas of the practice of religious unregistered marriages (nikah) of very young girls into polygamous arrangements.”<sup>ix</sup> Early marriage of girls and polygamy has also been identified as a problem in the Northern Caucasus in the Russian Federation.<sup>x</sup>

- Once alternative care becomes necessary, often there are limited options available. Hence, children may be forced to live on the streets or in inappropriate settings, where children may become subject to exploitation. In 2011, the CRC Committee noted with regret the large number of child sex tourists and high number of children involved in prostitution in Mexico.<sup>xi</sup> In 2010, the CEDAW Committee noted the high prevalence of trafficking, including of minors in the Russian Federation as it is a source, transit and destination country.<sup>xii</sup>
- When alternative care is provided, children are particularly vulnerable to their rights being contravened. In informal settings such as extended family, it is not uncommon for children to be employed as household aids to the detriment of their full development. In Togo, “children, especially girls as young as 9 years, working as domestics work very long hours, without days of rest, no or very little remuneration, and are regularly subjected to verbal, physical and sexual violence.”<sup>xiii</sup>
- Formal care settings include foster care as well as residential care such as small group homes and larger institutions. In 2010, in formal care there were about 736 000 children in the Russian Federation (431 000 in foster care and under guardianship)<sup>xiv</sup> and in Tajikistan about 15 000 children in formal care (4 000 in foster care and under guardianship).<sup>xv</sup> In Senegal, Human Rights Watch found that at least 50,000 children (talibés) - mostly boys under twelve years old - attended residential Quranic schools were subject to physical violence and were forced by the teachers in their position as guardians (marabouts) to beg on the streets. If the quota of money and food set by the marabouts was not forthcoming, they experienced severe punishment including being beaten with electric cables or clubs.<sup>xvi</sup>
- In institutional settings, research shows that children are exposed to even higher risks of abuse and violence.<sup>xvii</sup> The long term impact of institutionalisation on children includes “severe developmental delays, disability, irreversible psychological damage, and increased rates of suicide ...”<sup>xviii</sup> Besides, there are fewer opportunities for reporting of violence due to the closed nature of the environment. This is concerning where corporal punishment is not prohibited in alternative care settings such as in Qatar.<sup>xix</sup> In 2010 the number of children in institutions in the Russian Federation, was about 306 000 and in Tajikistan, 11 000.<sup>xx</sup>
- Among those children living in institutions, babies and infants under three are particularly vulnerable. “Early childhood, the period from 0 to 3 years, is the most important developmental phase in life ... The institutionalization of infants is a serious concern because of the damaging effect it has on young child health and development. Impact on physical and cognitive development, on emotional security and attachment, on cultural and personal identity and developing competencies can prove to be irreversible.”<sup>xxi</sup> In 2010, there were approximately 31 000 infants living in institutions in the CEE/CIS, showing a slight decrease in previous years – except for countries such as Tajikistan, where there is an upward trend.<sup>xxii</sup>
- Similarly unaccompanied and separated children, chiefly those outside of their country of habitual residence are at heightened risk of exploitation and regularly are housed in inappropriate settings. It was well documented in 2011 that Mexico has a “large number of

unaccompanied children entering the State party from neighbouring countries, at risk of trafficking for purposes of sexual or labour exploitation.”<sup>xxiii</sup>

- Children in emergency situations are likewise prone to being subjugated. During wars children are often abused by competing factions but also by aid workers and peacekeeping troops.<sup>xxiv</sup> In the aftermath of natural disasters, children may similarly become temporarily separated from their families and become easy prey. Taking advantage of the absence of identification and registration measures, children may be targeted in emergency care settings. For example two weeks after the earthquake in Haiti, UNICEF reported that since the earthquake about 15 children had gone missing from temporary makeshift hospitals.<sup>xxv</sup>

### **International Conventions including the UNCAT provide general protection for children against violence in the family and in alternative care:**

The UN Convention on the Rights of the Child (UN CRC) as well as other key international conventions including the UN CAT have provisions to address the above situation. They recognise the child's right to be cared for by his or her parents wherever possible, and set out States Parties' obligations to provide suitable alternative care if this becomes necessary. Suitable alternative care would by definition mean settings without violence.

The UN CAT affords children with protections, firstly through the broad scope of what torture includes (article 1), protection against care-givers as appointed by the State (articles 10 and 16) as well as safeguards against violence within residential settings (article 11). The CAT Committee regularly makes recommendations against violence within the home as well as against women and violence within closed facilities. However, CAT Committee is often provided less information regarding children and violence in the family and in alternative care settings such as institutions and temporary shelters used in emergencies.

### **UN Guidelines on Alternative Care – supplementary protection for children against violence:**

Grounded in the CRC in particular, the UN Guidelines for the Alternative Care of Children not only set out more detailed policy orientations regarding appropriate care provision for all children but, in addition, contain specific references to the protection of children against violence in the family and in alternative care settings. Among these are:

- Para 5 ... It is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided.
- Para 9b To provide appropriate care and protection for vulnerable children, such as child victims of abuse and exploitation ...
- Para 13 Children must be treated with dignity and respect at all times and must benefit from effective protection from abuse, neglect and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves
- Para 32. States should pursue policies that ensure support for families in meeting their responsibilities towards the child and promote the right of the child to have a relationship with both parents ... by promoting measures to combat poverty, discrimination, marginalization, stigmatization, violence, child maltreatment and sexual abuse, and substance abuse.
- Para 46 Specific training should be provided to teachers and others working with children in order to help them to identify situations of abuse, neglect, exploitation or risk of abandonment and to refer such situations to competent bodies.

- Para 87 The specific safety, health, nutritional, developmental and other needs of babies and young children, including those with special needs, should be catered for in all care settings, including ensuring their ongoing attachment to a specific carer.
- Para 91 Accommodation in all alternative care settings should meet the requirements of health and safety.
- Para 92 States must ensure through their competent authorities that accommodation provided to children in alternative care, and their supervision in such placements, enable them to be effectively protected against abuse. Particular attention needs to be paid to the age, maturity and degree of vulnerability of each child in determining his/her living arrangements...
- Para 93 All alternative care settings should provide adequate protection to children from abduction, trafficking, sale and all other forms of exploitation...
- Para 96 All disciplinary measures and behaviour management constituting torture, cruel, inhuman or degrading treatment, including closed or solitary confinement or any other forms of physical or psychological violence that are likely to compromise the physical or mental health of the child, must be strictly prohibited in conformity with international human rights law. States must take all necessary measures to prevent such practices and ensure that they are punishable by law. Restriction of contact with members of the child's family and other persons of special importance to the child should never be used as a sanction.
- Para 97 Use of force and restraints of whatever nature should not be authorized unless strictly necessary for safeguarding the child's or others' physical or psychological integrity, in conformity with the law and in a reasonable and proportionate manner and with respect for the fundamental rights of the child
- Para 99 Children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement ...
- Para 159 As unaccompanied or separated children may be at heightened risk of abuse and exploitation, monitoring and specific support to carers should be foreseen to ensure their protection.

Children need to benefit from such protections in order to:

1. Ensure that children do not find themselves in alternative care unnecessarily; and
2. That where out-of-home care is provided, it is delivered under appropriate conditions without violence responding to the child's rights and best interests

### Recommendation:

Given the significant policy orientations relevant to protecting children from violence in alternative care settings – by the Guidelines, it is respectfully suggested that the CAT have regard to them when examining State Parties' reports and reflect them in their Concluding Observations, as is being regularly done by the CRC.<sup>xxvi</sup> Since the CRC does not always explicitly address the issue of violence against children in alternative care, such an initiative on the part of the CAT would constitute a vital step towards ensuring that children are less discriminated in alternative care matters.

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### Further reading:

- Better Care Network <http://www.crin.org/BCN/initiatives.asp>
- International Social Service <http://www.iss-ssi.org/2009/index.php?id=25>
- NGO Group for the CRC (UN translations)  
<http://www.childrightsnet.org/NGOGroup/childrightsissues/WithoutParentalCare/>

- RELAF (child and adult friendly version) <http://www.relaf.org/aplicacion.html> and [http://www.relaf.org/aplicacion\\_eng.html](http://www.relaf.org/aplicacion_eng.html)
- SOS- Children's Villages International <http://www.sos-childrensvillages.org/What-we-do/Child-Care/Quality-in-Care/Advocating-Quality-Care/Pages/UNGuidelinesontheAlternativeCareofChildren.aspx>
- UNICEF [http://www.unicef.org/protection/57929\\_58004.html](http://www.unicef.org/protection/57929_58004.html)

## Annex 1: Development of the Guidelines

The need for detailed international standards to address the situation of children deprived of their family or at risk of being so was first pinpointed by UNICEF which, in 2004, allied itself with International Social Service to produce evidence-based documents in support of developing such an instrument. These joint efforts bore fruit in 2005, when the United Nations Committee on the Rights of the Child held a day of general discussion on children without parental care. In its final report, the Committee recommended that the international community prepare a set of international standards for the protection of children without parental care for the UNGA.

A draft text was submitted for consultation at an intergovernmental meeting convened by Brazil in August 2006. Subsequent consultations were held in Cairo, Geneva and New York with interested Governments, UN Agencies, NGOs and young people with experience of alternative care. In 2009, a text was agreed upon and on June 17, 2009 the Human Rights Council adopted by consensus a procedural resolution A/HRC/11/L.11 submitting the "Guidelines for the Alternative Care of Children" for the consideration of the UNGA. The Guidelines were formally endorsed at the 3<sup>rd</sup> Committee on 20 November 2009 and later welcomed by consensus in the UN General Assembly (UNGA).

<sup>i</sup> Prepared by Mia Dambach, International Social Service, 31 October 2012

<sup>ii</sup> E.g.: concluding observations 2012 Canada/Cuba <http://www2.ohchr.org/english/bodies/cat/cats48.htm>

<sup>iii</sup> El derecho de los niños, niñas y adolescentes a vivir en una familia: la situación de los Centros de Atención Residencial estatales desde la mirada de la Defensoría del Pueblo (2010) at page 154

<sup>iv</sup> CRC Concluding observation 2010 <http://www2.ohchr.org/english/bodies/crc/crcs53.htm>

<sup>v</sup> CRC Concluding observation 2006 <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/PER/CO/3>

<sup>vi</sup> CEDAW Concluding observation 2007 <http://www2.ohchr.org/english/bodies/cedaw/cedaws37.htm>

<sup>vii</sup> SRSRG on Violence Against Children and Plan International, Harmful Traditional Practices: Protecting Children from Harmful Practices in Plural Legal Systems - with a special emphasis on Africa (2012) <http://www.crin.org/violence/search/closeup.asp?infoID=29602> and International NGO Council on Violence against Children : Violating Children's Rights Harmful practices based on tradition, culture, religion or superstition (2012) [http://www.crin.org/docs/InCo\\_Report\\_15Oct.pdf](http://www.crin.org/docs/InCo_Report_15Oct.pdf)

<sup>viii</sup> CRC Concluding observations 2012 [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_TGO\\_CO\\_3-4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_TGO_CO_3-4.pdf)

<sup>ix</sup> CRC Concluding observations 2010 <http://www2.ohchr.org/english/bodies/crc/crcs53.htm>

<sup>x</sup> CEDAW Concluding observation 2010 <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

<sup>xi</sup> CRC Concluding observation 2011 [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.MEX.CO.1\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.MEX.CO.1_en.pdf)

<sup>xii</sup> CEDAW Concluding observation 2010 <http://www2.ohchr.org/english/bodies/cedaw/cedaws46.htm>

<sup>xiii</sup> CRC Concluding observations 2012 [http://www2.ohchr.org/english/bodies/crc/docs/co/CRC\\_C\\_TGO\\_CO\\_3-4.pdf](http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_TGO_CO_3-4.pdf)

<sup>xiv</sup> Transmonee database <http://www.transmonee.org/>

<sup>xv</sup> Transmonee database <http://www.transmonee.org/>

<sup>xvi</sup> Human Rights Watch, 2010, *Off the Backs of the Children: Forced Begging and Other Abuses against Talibés in Senegal*, available at [www.hrw.org/sites/default/files/reports/senegal0410webwcover.pdf](http://www.hrw.org/sites/default/files/reports/senegal0410webwcover.pdf) (as cited by Global Initiative to End Corporal Punishment)

<sup>xvii</sup> <http://www2.ohchr.org/english/bodies/crc/study.htm>

<sup>xviii</sup> <http://www2.ohchr.org/english/bodies/crc/study.htm> at 16

<sup>xix</sup> Qatar submission 2012 by Global Initiative to End Corporal Punishment

<sup>xx</sup> [http://www.transmonee.org/Gallery\\_en/7\\_Children\\_with\\_and\\_without\\_disabilities\\_in\\_residential\\_care.htm](http://www.transmonee.org/Gallery_en/7_Children_with_and_without_disabilities_in_residential_care.htm)

<sup>xxi</sup> [http://www.unicef.org/ceecis/UNICEF\\_A\\_call\\_to\\_action\\_En\\_Web\(1\).pdf](http://www.unicef.org/ceecis/UNICEF_A_call_to_action_En_Web(1).pdf)

<sup>xxii</sup> [http://www.transmonee.org/Gallery\\_en/8\\_Children\\_in\\_infant\\_homes\\_and\\_child\\_population\\_0-3\\_in\\_16\\_countries.htm](http://www.transmonee.org/Gallery_en/8_Children_in_infant_homes_and_child_population_0-3_in_16_countries.htm)

<sup>xxiii</sup> CRC Committee Concluding Observations 2011 [http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.MEX.CO.1\\_en.pdf](http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.OPSC.MEX.CO.1_en.pdf)

<sup>xxiv</sup> [http://www.un.org/en/pseataforce/docs/no\\_one\\_to\\_turn\\_under\\_reporting\\_of\\_child\\_sea\\_by\\_aid\\_workers.pdf](http://www.un.org/en/pseataforce/docs/no_one_to_turn_under_reporting_of_child_sea_by_aid_workers.pdf)

<sup>xxv</sup> <http://www.iss-ssi.org/2009/assets/files/Haiti%20ISS%20final-%20foreword.pdf> at page 24

<sup>xxvi</sup> An analysis of the CRC's recommendations over the last two years shows that the Committee regularly makes recommendations to apply the UN Guidelines on Alternative Care of Children (e.g.: Turkey, Viet Nam, Cook Islands, Madagascar, Myanmar, Thailand, Italy, Panama, Korea, Seychelles, Syria, Bahrain, Cambodia, Costa Rica, Czech Republic, Egypt, Finland, Afghanistan, Belarus, Denmark, Laos, Singapore and Ukraine).