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To,

**Committee on the Rights of the Child (CRC)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)**

***Sub: Submission for Day of General Discussion (DGD) on “Children’s Rights and Alternative Care”: Measures to Prevent Sexual Abuse of Children*** ***in Residential Care Homes in India***

According to a [recent report](https://www.unicef.org/media/70731/file/Global-status-report-on-preventing-violence-against-children-2020.pdf) by the World Health Organization, globally, it is estimated that one out of two children aged 2-17 years’ experience some form of violence each year including sexual abuse. Further, at least 120 million girls are estimated to have suffered some form of forced sexual contact before the age of 20 years. However, the actual number is said to be even higher because many victims of sexual violence, including young boys, never share with anyone.

Sexual abuse is one of the most unsettling of children’s rights violations and it can take place anywhere. Often children who are at risk of being physically or psychologically abused or face neglect in their homes under the care of parents and other family members are placed under residential care as part of formal care by a competent administrative body or judicial authority. Disturbingly, children who are removed from their homes and placed in residential care are often re-victimized by those who are responsible for providing them a supportive, protective and caring environment. [In India](https://www.newindianexpress.com/nation/2020/nov/17/40-shelter-homes-have-no-measurein-place-to-prevent-childrens-abuse-2224353.html), nearly 40% of such residential homes do not have adequate measures in place to prevent physical or sexual abuse of children.

We, as human rights advocates, academics and members of the civil society, have a few suggestions to offer as measures to prevent sexual abuse of children in residential care homes in India in order to ensure their high-quality alternative care.

Yours faithfully,

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**1. Alternative Care under the UN Convention on the Rights of the Child**

Article 20 of the UN Convention on the Rights of the Child addresses children who are not able to live with their families, either because they have lost or become separated from them for a wide variety of reasons or because a competent authority has determined that it is in the child’s best interest to be removed from his/her family environment. Further, as per the scope of Article 20, States Parties are required to provide alternative care for children who live outside their family environment.

But, as per several concluding observations by the Committee on the Rights of the Child (CRC), there appears to be an apparent lack of international, regional and national legislative and administrative measures regarding the improvement of the situation of children without parental/family care.[[1]](#footnote-1) Most States Parties reports do not include precise disaggregated data for children living outside their family environment, nor do most States have comprehensive monitoring tools and standards to ensure that alternative care institutions (many of which are provided by private actors) follow the highest standards possible and ensure the best interests of the child.[[2]](#footnote-2) For instance, the Committee in its [concluding observation on the combined third and fourth periodic reports of India](https://www.refworld.org/docid/541bee3e4.html) stated that, institutionalization remains dominant in India instead of prioritizing family-based care. The Committee also underlined:

‘(a) The lack of disaggregated data on children in need, children provided with services and in different forms of alternative care, support services for parents and kinship caregivers, abandonment, neglect and abuse of children and measures adopted, other than legislation;

(b) The lack of information on the assessment, selection, training, remuneration and supervision of foster parents and kinship caregivers, review procedures for children in care, as well as accreditation, minimum requirements for and supervision of children’s homes and a complaint mechanism for children in public care, including State, private, NGO or church-run facilities.’[[3]](#footnote-3)

The frequency with which the above issues are cited by the Committee in its concluding observations demonstrates that infringements of the rights of children deprived of their family environment continues to remain a widespread problem. The violation of the rights of the child continue to take place despite the existing ‘[Guidelines for the Alternative Care of Children](https://www.refworld.org/docid/4c3acd162.html)’ (2010). One of the core principles of the guidelines is that 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.

The next section highlights the existing lacunae in current policies and programmes enacted to ensure protection of children placed under alternative care in India, especially children placed under residential care.

**2. Protecting the Rights of Children and Alternative Care in India**

According to the [National Policy for Children, 2013](http://nlrd.org/wp-content/uploads/2013/05/npc2013dtd29042013.pdf) it is the duty of the State to secure the rights of children temporarily or permanently deprived of parental care. It is also the duty of the State to ensure that family and community-based care arrangements give due regard to the best interests of the child and guarantee quality standards of care and protection.

But, in the first ever national level audit of shelter homes undertaken by the National Commission for Protection of Child Rights (NCPCR) in 2018, it was revealed that nearly 2,764 (which accounts for 40% of such homes) shelter homes did not have adequate measures in place to prevent physical or sexual abuse of children. This audit was only initiated after cases of mass sexual abuse of girls was reported at state-funded shelter homes in [Muzaffarpur](https://www.bbc.com/news/world-asia-india-45124802) (Bihar) and Deoria (Uttar Pradesh) in 2018. In the Muzaffarpur case, sexual abuse, rape and torture of 34 out of 42 girls at the shelter home was confirmed in medical examination. In the [Deoria](https://www.indiatoday.in/india/story/the-girls-returned-crying-child-reveals-details-of-abuse-at-up-shelter-home-1306417-2018-08-06) case, 24 girls were rescued by the police from the shelter home upon receiving information from a 10 year old girl who managed to escape from the shelter home. She informed the police that girls were drugged before they were sexually exploited in exchange for money. Note that, there might have been more cases of sexual abuse which could not be confirmed by medical examination, since samples taken after a particular period of time, do not give accurate results when it comes to confirming sexual abuse.

The NCPCR [social audit](https://www.outlookindia.com/newsscroll/2764-childcare-homes-have-no-adequate-measures-to-prevent-abuse-of-children-govt-report/1976820) which was carried out in 7,163 Child Care Institutions (CCIs)[[4]](#footnote-4) found that in 1,504 of the surveyed homes there were no toilet facilities, while 434 of such homes did not have privacy in toilets and bathing areas. The report also found that 373 of such homes lacked provision for individual, clean, seasonal and age appropriate clothes, articles and toiletries, and 1,069 homes did not have individual beds for children. Further, 28.5 per cent of such homes were not even registered. 29 per cent of the homes had staff who did not have training on the rehabilitation process of children.

The concerns raised in the NCPCR social audit were also highlighted by the Ministry of Women and Child Development, Government of India in its [2018 Report](https://wcd.nic.in/sites/default/files/CIF%20Report%201.pdf) for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 and Other Homes.

The report mentioned that, out of a total number of 9,589 CCIs/Homes studied, 8,744 CCIs/Homes i.e. 91% of the total CCIs/Homes, were run and managed by Non-Government Organizations, whereas, 845 CCIs/Homes i.e. only 9% were Government supported Homes. As per the report, the different categories of children residing in the CCIs/Homes included Children who were Orphan, Abandoned, Surrendered, Sexually Abused, Victims of Child Pornography, Trafficked for domestic work, Trafficked for labour/Rescued from Labour, Trafficked for Commercial Sexual Exploitation, Victims of Child Marriage, Children affected and infected by HIV/AIDS, Children affected by natural disasters and manmade disasters and conflict, Homeless, Runaway/Missing, Mentally and Physically Challenged Children.

The report mentioned that in many CCIs/Homes basic facilities to the children were not being provided. Basic facilities include:

* individual bedding
* proper nutrition and diet including special meals
* toys for the children
* hygiene and maintenance of the CCI/Homes
* clean and sufficient water
* health assessment at the time of admission and regular check-ups
* special measures for children with special need
* educational facilities based on the age and special needs of the child

Another area of concern highlighted in the report was with respect to the privacy and safety of children, especially in CCIs/Homes that did not have adequate safety and security measures for children, including privacy in toilets and bathing areas. In some CCIs/Homes, bathrooms were not available for children exclusively; bathrooms/bathing areas and toilets/latrines were also not available for boys and girls separately. About 10 percent of the CCIs/Home across the country did not have separate toilet facilities for young children/toddlers. Further, in many CCIs/Homes there were no mechanisms for grievance redressal options available for children to express their views and concerns to the appropriate authorities.

The next section provides measures to prevent sexual abuse of children in residential care homes in India.

**3. Measures to Prevent Sexual Abuse of Children in Residential Care Homes in India**

In light of the observations made under:

I. The national level audit of shelter homes undertaken by the National Commission for Protection of Child Rights (NCPCR) in 2018,

II. The Ministry of Women and Child Development, Government of India 2018 Report for Analysing Data of Mapping and Review Exercise of Child Care Institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 and Other Homes, and,

III. The Government of India’s commitment to provide a safe, secure and protective environment for children under the National Policy of Children, 2013 along with India’s commitment under the United Nations Convention on the Rights of the Child which it has ratified in 1992.

We would like to make the following suggestions in order to prevent sexual abuse of children in residential care homes in India:

**1. It shall be the duty of every state to establish adequate number of CCIs/Homes with qualified staff to ensure quality standards of care and protection of children. It shall also be mandatory for all CCIs/Homes, housing children in need of care and protection to be registered under the Juvenile Justice (Care and Protection of Children) Act, 2015.**

**2. The authority empowered to register CCIs/Homes under the Juvenile Justice (Care and Protection of Children) Act, 2015 shall ensure that all necessary information is provided by the concerned CCI/Home in the application for registration. Failure to properly scrutinize the application for registration by the said authority shall be regarded as a cognizable offence.**

**3. Since, 91% of CCIs/Homes are run and managed by non-government organizations in the country, it is important that each such non-government organization in every state is thoroughly scrutinized every year by an independent committee headed by a retired Judge of the concerned High Court of each state. The committee constituted should conduct independent examination of the physical and mental health of children placed under such CCI/Home run by non-government organization. The committee should also conduct inspection of the upkeep of such CCI/Home to ensure that basic facilities are being provided to the children as per existing guidelines.**

**4. It shall be the duty of every State Human Rights Commission to conduct its own annual investigation of every CCI/Home run by non-government organization as well as those CCI/Home that are state-funded and submit its findings to the concerned State Legislature for necessary action.**

**5.** **It shall be the duty of** **every** **Department of Women and Child Development in each state to frame a policy for conducting a six-month review** **of all CCIs/Homes run by non-government organizations in the state. The policy guidelines for the review shall be published on the website of the Department of Women and Child Development and advertised in all national/regional newspapers.**

**The following shall mandatorily be part of the six-month review:**

**a. The profile of all the individuals who form the top management of** **the non-government organization running the CCI/Home.**

**b. The profile of all the staff members working in such CCI/Home and their responsibilities.**

**c. The number of boys and girls placed in such CCI/Home under the care of non-government organization.**

**d. The monthly health check-up report of all the children in the CCI/Home run by non-government organization from the designated Chief Medical Officer of the district in which such CCI/Home is located.**

**The six-month review report of all CCIs/Homes run by non-government organizations shall be published on the Department’s website.**

**6. It shall be the duty of every Department of Women and Child Development in each state to frame a policy for conducting a six-month review of all CCIs/Homes that are state-funded.** **The six-month review report shall be published on the Department’s website.**

**7. It shall be the duty of all CCIs/Homes in each state to maintain appropriate records and take necessary actions according to the guidelines issued either by** **the Department of Women and Child Development or any other competent authority.**

**8. Every CCI/Home shall mandatorily provide all the documents for any review or inspection carried out either by the Department of Women and Child Development or any other competent authority.**

**9. Every CCI/Home shall mandatorily ensure that children from marginalized communities, such as children from scheduled castes and scheduled tribes, children with disabilities, children with HIV/AIDS, and children who have been sexually abused, have equal access to all basic services provided by the CCI/Home without any kind of discrimination.**

**10. Every CCI/Home shall mandatorily install CCTVs in all common areas and the office of the head of the CCI/Home. The CCTVs of all CCIs/Homes shall also be connected with concerned district authorities through internet so that the authorities are able to reach the children at any time through video conferencing.**

**11. Every state shall also ensure positive mental health and well-being of children in such CCIs/Homes through the help of state approved child therapists.**

**12. Existing criminal legislations on protection of children should be amended to include strict punishment for those found guilty of physical or sexual abuse of children placed under alternative care.**

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1. See for example CRC Committee, *Concluding Observations: Mexico* (UN Doc. CRC/C/MEX/CA/3, 2006), paras 37-38; CRC Committee, *Concluding Observations: India* (UN Doc. CRC/C/IND/CO/3-4, 2014), paras 55-56. [↑](#footnote-ref-1)
2. All of the CRC Committee’s concluding observations contain a section on ‘Family environment and alternative care’ and most of them voice concern over the situation of children without parental care. [↑](#footnote-ref-2)
3. CRC Committee, *Concluding Observations: India* (UN Doc. CRC/C/IND/CO/3-4, 2014), para 55. [↑](#footnote-ref-3)
4. The definition of CCI was introduced by the Juvenile Justice (Care and Protection of Children) Act, 2015 which came into force from January 2016. This definition includes various categories of Homes viz. Children Home, Open Shelter, Observation Home, Special Home, Place of Safety, Specialised Adoption Agency and fit facility. [↑](#footnote-ref-4)