9.1.2023

**To,**

**Office of the United Nations High Commissioner for Human Rights (OHCHR),**

**United Nations Office at Geneva,**

**CH 1211 Geneva 10,**

**Switzerland**

Respected High Commissioner,

***Sub: Submission of written contribution to inform the High Commissioner’s report on the rights of the child and inclusive social protection to be presented at the 54th session of the Human Rights Council in September 2023***

We welcome the OHCHR’s initiative to prepare a report on the rights of the child and inclusive social protection, to be presented to the Council at its fifty-fourth session. As members of academia and the civil society we are submitting our inputs on the following question:

**2. What are the main gaps and challenges to children’s enjoyment of social protection in law, policy, and practice in your country and the impacts on children’s rights? Please provide any relevant statistical or disaggregated data based on age, gender, disability, ethnicity, religion, sexual orientation and gender identity, migration status, or other categories. Please consider the specific situation of marginalized children and those in vulnerable situations in your response.**

Kindly note that, our input answers the above question in relation to rights of the child and inclusive social protection in India.

We also consent to our contribution being published on the OHCHR website.

Yours sincerely,

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**Written contribution on the rights of the child and inclusive social protection in India**

**2. What are the main gaps and challenges to children’s enjoyment of social protection in law, policy, and practice in your country and the impacts on children’s rights? Please provide any relevant statistical or disaggregated data based on age, gender, disability, ethnicity, religion, sexual orientation and gender identity, migration status, or other categories. Please consider the specific situation of marginalized children and those in vulnerable situations in your response.**

**A.)** Social protection as an essential economic tool has been at the center of the world’s effort in bringing down poverty and improving the well-being of adults and children. Yet economic growth has taken place unevenly across countries disproportionately affecting children’s development opportunities. For instance, as per the [KidsRights Index 2021](https://files.kidsrights.org/wp-content/uploads/2021/06/03095317/KidsRights-Index-2021-Report.pdf) (which annually synthesizes the performance records of States on the most crucial aspects of children’s lives such as right to life, health, education, protection and enabling environment for child rights) developed countries like Germany and France feature in the top 10 position while countries like Chad and Afghanistan are placed at the bottom. [India](https://www.news9live.com/india/kids-rights-index-india-moves-up-1-place-education-mental-health-key-concerns-35515.html) is ranked 112 out of 182 countries in the Index (there were [148,185 cases of crime against children](https://www.outlookindia.com/website/story/india-news-india-recorded-over-350-crimes-against-children-each-day-in-2020/396394) recorded in 2019 in India which meant that each day over 400 such crimes were committed in the country).

Poverty affects children differently than adults. For children, decent living standards are not only significant but are also fundamental in allowing them to enjoy rights such as good physical and emotional health, education etc. Note that, children have limited ability to claim their own rights, as they are mostly [depended for their well-being on those that care for them](https://theconversation.com/child-protection-in-england-here-is-what-social-work-experts-know-must-change-in-the-system-182072). “Children have specific basic needs and failure to meet them jeopardizes their development and deprives them in their capabilities. Deprivation in childhood (particularly early childhood) causes irreparable damage in physical, emotional, and cognitive development. When experiencing poverty, children are exposed to a multitude of issues: malnutrition, deprivations in housing conditions, poor health, low cognitive stimulation in early childhood, low education outcomes.”[[1]](#footnote-1) It is believed that social protection policies will be helpful in mitigating most such issues while also addressing issues of discrimination and social exclusion which are particularly relevant in ensuring access to valuable support to children belonging to vulnerable groups (poor socio-economic setup).[[2]](#footnote-2)

In this backdrop, we would want to bring to attention the issue of deprivations in housing conditions, as one of the main gaps and challenges to children’s enjoyment of social protection in India, mostly due to lack of parental care and how that negatively affects the rights and interests of the most vulnerable children when they are placed in residential care homes.

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.

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.[[3]](#footnote-3) 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.[[4]](#footnote-4) 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 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.

According to the [National Policy for Children, 2013](http://nlrd.org/wp-content/uploads/2013/05/npc2013dtd29042013.pdf) it is the duty of the Indian 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](https://www.indiatoday.in/india/story/the-girls-returned-crying-child-reveals-details-of-abuse-at-up-shelter-home-1306417-2018-08-06) (Uttar Pradesh) in 2018.

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)[[5]](#footnote-5) 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 2018 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.[[6]](#footnote-6)

**B.)** Another significant aspect related to providing protection and enabling environment to children that requires attention is the [adoption policy in India](https://cara.nic.in/PDF/adoption_regulations_2022_2709.PDF) which is reflective of gender bias. Any person can adopt in India under the Juvenile Justice Act or the Hindu Adoptions and Maintenance Act (HAMA) except for couples in live-in relationships, and a minimum of 2 years of a stable marriage is required for a couple to be eligible to adopt. Since there has been no law legalizing same-sex unions in India - this actively deprives members of the LBGT community of being able to adopt as a couple. The only way for a member of the LGBT community to adopt would be to apply as a [single parent](https://economictimes.indiatimes.com/news/india/parliament-panel-recommendation-on-adoption-raises-bigger-question-of-recognising-same-sex-union-experts/articleshow/93455670.cms). The current adoption eligibility deprives the children of the rights that come along with a couple-parenthood of an LGBT couple like the inheritance of property rights of both parents.

The adoption process is dismal even for heteronormative couples in India. According to a study conducted by the Department of Community Medicine, Armed Forces Medical College in Pune- titled: “A Study of Knowledge and Attitude Towards Adoption Among Infertile Couples”, the findings indicate that 89% of couples surveyed were aware of adoption as an option to have a child, and about 77% of these couples viewed adoption in a positive light however only 54% of them were willing to adopt in case of failure of assisted reproductive technology (ART). To add to this, the study discovered that only 8% of these couples surveyed had any knowledge about the legal process of adoption.[[7]](#footnote-7) This prejudice against adoption operates within the very systems that work under the [Central Adoption Resource Authority (CARA)](https://economictimes.indiatimes.com/news/politics-and-nation/despite-a-favourable-law-why-do-single-women-and-men-struggle-to-adopt-a-child-in-india/articleshow/70621618.cms?from=mdr). For instance, during the Home Study step of the process, the persons that conduct these checks are known to discourage potential parents from adopting if they are capable of biologically conceiving a child. The children are abandoned and scarred for life, and for these couples to not adopt a child from northeast India as they would have “skin problems”- are some of the remarks made by individuals that are in charge of conducting important steps in the adoption procedure. Adding to the societal stigma around the adoption of children who are desperately in the need of a loving family must be avoided at all costs. There is a need for a nationwide campaign that brings awareness and transparency about the adoption policy to remedy the damage caused by stigma and the lack of awareness about the same.

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1. Franziska Gassmann and Eszter Timar, ‘The Importance of Social Protection for Children in the Balkans’ (Policy Brief, 2018) <https://www.merit.unu.edu/publications/uploads/1528374157.pdf> accessed 19 December 2022. [↑](#footnote-ref-1)
2. Convention on the Rights of the Child 1989, art. 26. [↑](#footnote-ref-2)
3. 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-3)
4. 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-4)
5. 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-5)
6. As per the 2018 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. [↑](#footnote-ref-6)
7. Saumaya Vinod Joshi, Rupesh Prasad, Arvind Singh Kushwaha. A Study of Knowledge and Attitude Towards Adoption Amongst Infertile Couples. International Journal of Public Health Research. Vol. 3, No. 6, 2015, pp. 318-326. [↑](#footnote-ref-7)