

POSITION PAPER

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# **The NCPCR Directive to Restore CNCP in CCIS to Families**

Save The Children India | October, 2020

The National Commission for Protection of Child Rights (NCPCR) was instituted with the objective of ensuring that all children enjoy their rights and has been mandated with the core responsibility of monitoring the implementation of all regulations with regards to child rights. On September 24, 2020, the commission released a directive aimed at all district level authorities (District Magistrates and Collectors) to restore and repatriate children in need of care and protection (CNCP) living in Child Care Institutions (CCI) within their jurisdictions, to their families. They are given a stipulated period of 30 days to present repatriation and restoration plans, with orders from the Child Welfare Committees, for children living in CCIs of eight districts.

This directive raises several concerns on the practicality as well as the capacity to create suitable and safe restoration plans of over 180,000 CNCP (citation) residing in CCIs in these states.

## BACKGROUND

The NCPCR's directive to restore and repatriate CNCP living in CCI was based on a social audit that was conducted nationwide. Primary findings showed that the CCIs in eight states housed children far more than their capacity, posing a huge risk to a child's rights and protection. The directive said that the children were in 'pitiable states' and that such a great number of children being deprived of a life with their families, in their natural environments is a matter of grave concern. The directive has further underpinned its recommendations on precedents as well provisions in the UNCRC, the Constitution of India and the JJ ACT, which decrees the fundamental rights of a child to live in a family, the deinstitutionalisation of children as well as states that the primary objective of all institutions is the restoration and repatriation of children under its care, to their natural family.

The directive was addressed to district authorities and is mandated for all CCIs excluding Specialised Adoption Agency (SAA) and Observation homes in the eight states of Tamil Nadu, Karnataka, Telangana, Maharashtra, Andhra Pradesh, Kerala, Meghalaya and Mizoram, where the number of CCIs violating the basic tenets of institutional care were found to be in a greater number. The Commission plans to conduct this in a phased manner, due to limited resources, beginning with these states and then extending it to other parts of the country.



## The Notable Points of this Directive are:

- All CNCP placed in the CCIs have to be produced before the concerned CWC and restored to their families immediately. Due to the ongoing Covid-19 situation, the production of children can be conducted virtually, wherever it is suitable and needed.
- Present to the Commission a list of children who could not be restored and repatriated for valid reasons, with an appropriate Individual Care Plan.
- The directive states that abject poverty of the family cannot be reason enough to detain a child in the institution and that it is the state's obligation to link such families to various Social Welfare Schemes and Entitlements that have been introduced by the State Government, for the economic betterment of these families.
- In case the child is studying in a school and is in the middle of an academic session, the state is duty bound to ensure the child's admission in a school in his/her locality.
- In case the child originates from a different district or state from the CCI, the concerned District Magistrate is to be connected with in order to expedite the restoration or repatriation.
- The Commission has also mandated the strict adherence to the Guidelines issued by the Ministry of Home Affairs and Ministry of Health and Family Welfare from time to time to contain the spread of COVID-19.



## RECOMMENDATIONS

Principles from the Juvenile Justice (Care and Protection of Children) Act, 2015<sup>1</sup> say that every child in the Juvenile Justice system has the fundamental and constitutional right to be re-united with his/her family at the earliest, so that the child is not deprived of her socio-cultural identity, language and customs. Moreover, Article 9 and other articles of the UNCRC<sup>2</sup>, also state that a CNCP should be restored at the earliest, as the family is the foremost protective environment for a child, unless it is not in his/her best interests.

<sup>1</sup> Government of India. "The Juvenile Justice (Care and Protection of Children) Act, 2015." <https://www.indiacode.nic.in/>, 2015, [www.indiacode.nic.in/handle/123456789/2148?sam\\_handle=123456789/1362](http://www.indiacode.nic.in/handle/123456789/2148?sam_handle=123456789/1362).

<sup>2</sup> UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html> [accessed 28 October 2020]

Save The Children India (STCI) upholds this guidance and unerringly endorses the view that a child should enjoy and partake the benefits of a full family and community life, and does not in any way encourage the detaining of children in an institution, when other affirming options are available. The concern that arises from the directive is the duration mandated for its implementation, which carries with it inherent risks and a high potential of the minor being restored without adequate due diligence, resulting in the child losing the very benefits that the directive propounds. Several intersectional effects come to play when restoring minor CSE victims and they have to be factored in. Primarily, restoration may possibly re-endanger the CNCP, who has ended up in an institution due to the perpetration of her rights deceptively or wilfully, in the first place, from the protective environs of her family. Especially in the case of trafficked children, where the risk of being re-trafficked is high or there is imminent danger of retribution from accused traffickers. There are also several victims who hail from nomadic tribes such as the Nat community from Rajasthan or the Bedia Community from Madhya Pradesh, for whom sex work is a traditional profession and girls are socialised into the trade.

STCI has come across minor victims who appear more vulnerable when restored and recommends that the family and home situation is investigated thoroughly with an independent risk assessment, and if homes are found risky - the child should not be

restored to the family and suitable alternate care placements are explored. Besides protection, the state has to uphold a child's fundamental right to participate and right to freedom from exploitation, making it pertinent to listen carefully to the child's own expression of needs, views and experiences before arriving at a placement plan, especially, if suitable care givers are not from the immediate family. It should be obligatory that CNCP be made aware of their rights, encouraged and empowered to participate in demanding of his/her rights as well as in the creation of reintegration and rehabilitation plans.



The directive mentions legislations and precedents saying that institutionalisation should never be the first option and alternatives such as foster placement, adoption and sponsorship should be exhausted. However, these options are replete with issues such as lack of funds, unavailability of trained staff to prospect families and assess them, the large numbers of children in need and also that often families prefer to adopt or foster younger children, leaving very little choice in terms of alternate care for older children<sup>3</sup>. A state-run protective home is normally the first stop for all CNCP and there is enough evidence that children in institutional care suffer from developmental issues as they do not get the safe, secure and stimulating environments of a family and are further deprived of all social connections that they would otherwise have had. Moreover, the inadequate number of staff in CCIs and the lack of a sensitized attitude of care takers can lead to neglect and abuse, or violence that can continue unobserved and unchecked, having long term effects<sup>4</sup>. However, it is sometimes a safer option for children, when their family situation is deemed unsafe and till suitable alternate care is available.

Further, a CNCPs protection and rights are the primary responsibility of the state and STCI advocates strongly for the strengthening of these care options by sustained training of caretakers and staff to provide a healthy and stimulating environment for children under their care. Also, concrete steps must be taken, such as implementing recommendations from 'Guidelines for the Alternative Care of Children'<sup>5</sup>, that was accepted by the UN as a set of principles to ensure that children in Institutions, who are deprived of parental care, receive the type and quality of care that they **deserve as their right** and that are **specific to their individual needs**. It defines the appropriateness of alternate care placements and also stipulate the government's close monitoring, regulation and oversight to warrant these standards of care.

To aid children's safe reintegration, the commission further directs that the state fulfils its obligation of linkages to entitlements that may aid the economic empowerment of the family, as abject poverty cannot be the reason for the continuance of CNCPs stay in the institutional home. While this mandate is relevant, it is simplistic and does not consider the challenges that the marginalised face in accessing entitlements even in normal conditions, given the lack of identity documents or proof of address. It is then valid to ask if families can get empowered and households get financially stabilized within the period stipulated for this instant restoration? Practical implications favour inaccessibility and instability, especially in the conditions presented currently by the pandemic that has had long term effects on employability and

<sup>3</sup> Naaz, Seema, and Zubair Meenal. "Alternative Care in India: Issues and Prospects." *Researchgate*, June 2019, [www.researchgate.net/publication/333666554](http://www.researchgate.net/publication/333666554).

<sup>4</sup> Eapen, Doncy J. "Institutionalized Children: The Underprivileged." *International Journal of Nursing Practice*, vol. 15, no. 5, 2009, pp. 349–52. *Crossref*, doi:10.1111/j.1440-172x.2009.01785.x.

<sup>5</sup> UN General Assembly, *Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly*, 24 February 2010, A/RES/64/142, available at: <https://www.refworld.org/docid/4c3acd162.html> [accessed 28 October 2020]

livelihood options posed by an affected, contracted and dynamic labour market. There is also a presumption that entitlements received will be employed in the wellbeing and security of the child's family environment and does not reflect on the typical fungibility of cash entitlements received<sup>6</sup>.

Despite several findings on the negative effects of institutionalisation, there are more investments made for institutional care than on the livelihood support of families and STCI believes that for a child to be safe again in the very conditions that were exploitative, the entire family should be rehabilitated and assisted in a systematic and fostering process, which will potentially ensure sustained benefits for the child. It would be worthwhile to consider the Protective Factors Approach that is underpinned on building in of protective factors that may reduce the potential risks of abuse for children, to promote the child's healthy development. In other words, minimize factors in a family such as stressful events that may lead to poor outcomes for the child and support families at risk with individual and household level attributes to mitigate these outcomes, resulting in a stable environment for the growth and development of the child<sup>7</sup>.

## RECOMMENDATIONS

While the rights of the child to a family is the primary objective of this directive, concerns arise out of the oversimplification of a complex process, at the heart of which lie **the protection and rights** of CNCP. It has been STCI's experience that the restoration of a child to his or her natural environment, is beneficial only when the child's wellbeing is not endangered and his/her rights are upheld. This can only happen when a thorough due diligence is conducted that considers all the risks that arise from the intersectionality of socio-economic factors, cultural and traditional norms. When a child is restored, there should be oversight and monitoring of the child and support should be extended to the family as a whole, to ensure that the child is not at risk again. Suitable alternate care options should be taken into account till a child can be restored and the state bears responsibility for the protection of CNCP in the CCI and should exercise all its powers to ensure that alternate care is strengthened and sensitized so that it is a safe and nurturing option for children who cannot be restored to their natural environments.



<sup>6</sup> Das, Jishnu and Do, Quy Toan and Ozler, Berk, Conditional Cash Transfers and the Equity-Efficiency Debate (April 21, 2004). Available at SSRN: <https://ssrn.com/abstract=610325>

<sup>7</sup> Child Welfare Information Gateway. (2014). Protective Factors Approaches in Child Welfare. Washington, DC: U.S. Department of Health and Human Services.



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