

**LEGAL ANALYSIS
OF THE
CHILD PROTECTION SYSTEM
IN TAJIKISTAN**

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List of Abbreviations

CIS	Commonwealth of Independent States
CRC	Child Rights Commission
CRD	Child Rights Department
COM	Commission on Minors
ILO	International Labour Organisation
MOE	Ministry of Education
MOH	Ministry of Health
MOI	Ministry of Interior
MOJ	Ministry of Justice
MLSP	Ministry of Labour and Social Protection
NCCR	National Commission on Child Rights
NCWFA	National Committee on Women's and Family Affairs
NGO	Non-governmental organisation
NPA	National Plan of Action
SS	Special School
SVS	Special Vocational School
TIC	Temporary Isolation Centre
UN	United Nations Children's Fund
UNCRC	United Nations Convention on the Rights of the Child
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations

EXECUTIVE SUMMARY

In 2007, the Government of Tajikistan established a Working Group on Child Protection and Child Welfare. The remit of this group is to look at the child protection system with a view to implementing reforms to bring it into line with international standards.

The Children's Legal Centre was asked by UNICEF Tajikistan to complete the following situational analysis of the child protection system, including laws, policies and practices, in the light of international standards. This report focuses on how effectively the current system safeguards and meets the needs of children and their families while highlighting areas in which improvement and change is needed.

Framework of Child Protection

The UN Convention on the Rights of the Child is the primary international instrument governing child rights and child protection. Tajikistan ratified this Convention on the 26th October 1993 and is legally bound to fulfil its terms by promoting and protecting the rights of children. Under the UNCRC, Tajikistan has an obligation to provide support to parents and families carrying out child-rearing responsibilities, to protect children from harm and to provide alternative care for children deprived of family care. The complete international child protection framework includes guidance from other international treaties such as the Convention on Inter-Country Adoption and the Palermo Protocol, which focus on protection of particularly vulnerable groups and children.

The existing Tajik domestic legislation includes provisions for the protection of children but lacks a comprehensive child protection law. Laws relevant to child protection include the Constitution of the Republic of Tajikistan (1994) and the Family Code of the Republic of Tajikistan (1999), which establish the duty of the State to protect the family, the obligations of parents to their children and the obligations of the State to intervene if parents fail in their duties. These laws, along with regulations of administrative bodies, form the general framework for child protection in the country. Unfortunately, many pieces of this framework overlap and there are significant gaps in the legislation. This leads to confusion over who is in charge of delivering each stage in the child protection system.

We recommend that:

- The Family Code be amended or a new Children Law developed, covering the role of the State when a child is at risk of suffering abuse, neglect, violence or exploitation.
- Central Government together with relevant Ministries and bodies should decide which Ministry or Body shall have prime responsibility for the development of policy and for planning to ensure that an integrated child protection system exists in each local executive committee area.
- There should be a National Inspection Body to ensure that all child protection services meet minimum quality standards.
- The role, functions, staffing and funding of the new Child Rights Commissions should be reviewed.

- The Regulations of the new Child Rights Commissions should be amended to require CRCs to be responsible for producing an annual child care plan for the area, for ensuring adequate services exist at local level to meet the needs of children in that area, and for the identification, referral, assessment, planning etc of children at risk of abuse and neglect. The CRCs should also be responsible for commissioning the services needed in their area.
- That Ministries continue to provide services but clarify the role and remit of their services and criteria for use.

Administrative Responsibility for Child Protection Services

Responsibility for child protection is shared between several different agencies both nationally and locally. At the State level, the Ministries of Health, Education and Labour and Social Protection are responsible for children under the age of four, residential schools and schools for children deprived of family care and development of policies for family and child protection, respectively.

Recently, the Regulations on the National Commission on Child Rights were amended to absorb the responsibilities of the Commission on Minors and to make the NCCR the primary body in charge of child protection and child rights policy. However, there is still a lack of clarity over which agency is responsible for developing policy, with the NCCR, MLSP and National Committee on Women's and Family Affairs each having policy development roles. The confusion over which entity sets the child protection strategy and subsequently implements it at each stage can lead to a child not receiving the services and care to which he or she is entitled.

Identification, Referral and Investigation of Child Protection Cases

It is the remit of the Guardianship Authority to protect the rights and interests of children, including those deprived of family care. However, the Family Code does not place an explicit duty on the Guardianship Authority to identify and protect children at risk of abuse, exploitation and neglect. Other bodies, including the Commission on Minors and the Child Rights Departments (now to have their functions absorbed into the new Commission on Child Rights) are under obligation to prevent neglect of children and to look after children deprived of parental care but there is no distinct integrated system of child protection and child welfare at the local level. Awareness of abuse, exploitation and neglect was notably lacking among officials and those working with children in the interviews and visits undertaken by the authors. A coordinated structure of identification, referral and investigation of child protection cases should be developed in order to better protect children at risk of harm.

Local Practice

Local practice varies across the nation and the actions of the Guardianship Authorities, Commissions on Minors and Child Rights Departments are different in each city and district. One of the greatest problems this poses is the lack of a clear mandate to accept referrals of at risk children and to investigate and assess their cases. Consequently, cases of suspected child abuse can remain un-dealt with.

At present, there are no agreed protocols between the bodies responsible for child protection and the various bodies working with children, for the referral of children who are suspected to be at-risk. There is overall confusion over which entity should

receive and deal with referrals. In fact, none of the three main bodies, the Commission on Minors, Guardianship Authority or Child Rights Department, has a mandate to accept such referrals. In practice, those working with children seem reluctant to make referrals either because they require parental consent, in the case of the Family Medical Centre in Dushanbe for example, or because they are more inclined to address the issue with the family concerned. The lack of a common understanding over what child protection and the lack of legislative guidance on child abuse results in a low rate of referrals and, ultimately, places children at a greater risk of harm.

If a child protection referral is made, the Guardianship Authority is under obligation to complete an investigation exploring the living conditions of the child within three days. Such investigations usually take place if a child is without parental care, rather than where there is an allegation of child abuse. Often, following allegations of abuse, police and prosecutors will conduct a criminal investigation where the focus is firmly on the criminal allegations, rather than on the well-being of the child. If there is a direct threat to the child's life or health, the Guardianship Authority has the right to remove the child from the parent or guardian's care immediately. The Commissions on Minors (and their replacement body, the Commission on Child Rights) require a court order to do so.

We recommend that:

- The Family Code be amended to contain a separate chapter on child protection or a new Child Protection Law needs to be drafted that would consolidate and amend existing legislation. The amended legislation should contain: a clear definition of who is a child 'at risk'; procedures for referral and the action to be taken when a referral is received; the roles and responsibilities of bodies at local and national levels for child protection referrals; and criteria covering the removal of a child from the home as a matter of emergency.
- Guidance should set out how to plan and conduct an investigation. Legislation should be amended to ensure that, as part of an investigation, the child is seen on his or her own by an experienced child care professional.
- Practice Guidance should be produced to cover identification of abuse, referral procedures, details about information sharing between the executive authority and other bodies and the steps to be taken during the initial investigation.

Assessment

The UN Draft Guidelines for the Appropriate Use and Conditions of Alternative Care for Children establish the standards for the assessment, planning and review of child protection cases. The comprehensive assessments recommended under these guidelines require both suitably trained multi-disciplinary staff and a establish system and procedures for these staff to work by. Presently, the child protection system in Tajikistan does not contain adequate legislation providing for such assessments and local members of staff who assess children within the child protection system are not sufficiently trained.

We recommend:

- That there should be a national training programme for local staff undertaking child protection functions together with the provision of good practice guidance on assessments.
- That the Family Code and other relevant pieces of primary and secondary legislation should be amended to clarify which body has responsibility for undertaking an assessment, and the nature and remit of that assessment.
- Good practice guidance on assessments should be produced and used by all staff undertaking assessments.

Care Planning

Care planning is an essential practice within a child protection system. Staff should be trained in developing care plans and should be under an obligation to do so for every child in care or for whom entering alternative care is an option. These plans should contain comprehensive information about the necessary actions that should be taken to safeguard and promote the welfare of the child. The purpose of a care plan is to set out the arrangements for a child and the services that should be provided to meet the needs of the child. When developing care plans, permanency should be a key goal. All actions should be planned and taken with the aim of providing a stable home, and where possible, family environment, for the child. The authors' research indicates that few children benefit from individual care plans.

We recommend that:

- Assessment and care planning be undertaken before placement, except in the case of emergency placements.
- Care plans should specify the child's needs and the services to be provided to meet those needs.
- The Government introduce guidance on care planning for the local child protection bodies.
- Care plans are reviewed on a regular basis.
- The programme to train social workers should be given priority and adequate support by the Government.

Record Keeping and Internal Cooperation

There is currently no duty on professionals who identify a child at risk of abuse or on bodies receiving referrals to keep records of referrals and the outcome of any investigation. The Guardianship Authorities and Child Rights Departments are obliged to keep records of children deprived of family care, but, even then, records are not held centrally or electronically. The result is that there is no central database through which bodies can share information about children and child protection, those at risk of or who have suffered abuse, exploitation or neglect and that children in these circumstances lose the protection this might provide.

We recommend:

- There should be a national, uniform policy on recordkeeping for cases of child abuse.
- Criteria on sharing information on cases of child abuse should be developed.

Judicial Intervention

Under the Family Code, parents have the right and duty to bring up their child and the right to demand the return of their child by any person who is keeping him or her without a court order. This right is balanced by Article 19 of the UNCRC which states that parents do not have the right to harm or damage their children and which preserves the rights of the child by requiring that parents act in the best interests of their child.

When there is a dispute between the interests of the parents and the child, the Guardianship Authority must appoint a representative to protect the rights of the child. According to the Family Code, in all issues relating to the upbringing of children, the child's opinion should be taken into account. However, there is no provision within the code allowing a child to present his or her views in a court proceeding and the views of those under the age of 10 are rarely considered.

If a child protection body wishes to remove a child from parental control and the parents object, unless it is an emergency, that body must receive a court order for deprivation or limitation of parental rights. Court applications for deprivation or limitation of children's rights can be submitted by parents, state organs, institutions with a duty to protect the rights of underage children, the prosecutor's office or children's homes. The Family Code sets out the grounds on which parental rights can be terminated or limited. Most commonly, these proceedings are not initiated out of concern for the child's welfare or due to abuse, neglect or exploitation, but by one parent against another as part of private law custody proceedings. It is also possible for a court to reinstate parental rights under the Family Code if the circumstances leading to the deprivation have changed.

Criminal cases against parents who have harmed their children rarely reach court.

We recommend:

- The threshold for seeking an order for deprivation of children's rights be clearly set out in the legislation and that it reflect the threshold that the child has suffered, or is or at risk of suffering, significant harm as a result of the parent's behaviour, or as a result of the child being out of control of the parent.
- Article 68 and 73 of the Family Code should be amended to include the requirement that the Court should make its decision based on the totality of the evidence, and that the best interests of the child be the primary consideration in any decision regarding parental rights.
- That the Family Code be amended to ensure that children can participate in all decisions affecting them, to the extent of their capacity.
- That the Family Code should require the Guardianship Authority to prepare an assessment of the child and family, to be placed before the court whenever an application is made for deprivation or limitation of parental rights.

- The Family Code should be amended to require the child to have a nominated representative in applications for deprivation or limitation of parental rights.
- The provisions relating to adoption after an order for deprivation of parental rights should be reconsidered.

Promotion of Family Care

Under Article 18(2) UNCRC and the UN Draft Guidelines, the Government of Tajikistan must provide assistance and access to services to help parents and families fulfil their responsibilities towards their children. This assistance should include measures to alleviate poverty and support the family financially and provision of services including child care programmes and early intervention family and parenting course, all with a view to reducing family breakdown.

Financial support is provided to families through allowances and pensions distributed by the MLSP. These allowances are provided for under the Constitution of Tajikistan but the support is generally minimal and severely restricted by budgetary constraints. While the financial benefits can assist families to purchase clothing, food or shoes, in reality they are insufficient to prevent family breakdown through poverty.

We recommend:

- Early intervention services should be developed to support parents and assist them in child-rearing, to prevent family breakdown.
- Targeted services should be developed to provide support to families at risk of breakdown.

Community Services

Community services are extremely limited in Tajikistan with only a few local NGOs provide services and support programmes for families and children. The major form of governmental support is the nation-wide network of pre-school educational facilities. Other than these schools, government programmes for children are extremely limited with an activity programme for children at risk of offending at the Temporary Isolation Centre in Dushanbe and a juvenile justice prevention school in Fidarvsi and Khujand notable examples.

Under the present system, there appears to be no government entity responsible for planning, commissioning or delivering community-based services.

We recommend:

- Each local executive committee develop an annual local plan detailing the needs of children in their area and the services planned to meet those needs.
- The current use of community based services be reviewed to determine levels of need and the effectiveness of current services in targeting children most in need.
- The local Executive Committee work with the NGO sector on planning children's community services

Alternative Care

The Family Code sets out several options for a child's placement when a parent has been deprived of parental rights or parental rights have been limited. These include guardianship, tutorship and adoption or, if there are no other alternatives, placement in an institution. These options and the order in which they are contemplated reflect the direction of the UNCRC that institutionalisation should only be as a last resort. The Guardianship Authorities and Commission on Minors have traditionally administered the alternative care system. However, following the development of new Regulations, the Commission on Minors' role will be adopted by the Commission on Child Rights.

Guardianship

The Guardianship Authority is responsible for appointing guardians to children deprived of family care, where it is considered that this is an appropriate action to take. Only suitable adults may apply to be guardians according to the Family Code and Civil Code which preclude adults who have had their parental rights terminated, those who abuse drugs and alcohol and those with other, similar backgrounds from being guardians. The Regulations on Guardianship Authorities establish the procedure for appointing guardians and sets out a timeframe within which decisions should be made. Children in residential care are not assigned guardians as they are the wards of the institutional staff themselves.

When children are placed with guardians, they have the right to live in the house of the guardian while maintaining property rights they may have. Guardians themselves receive a small monthly sum for child maintenance.

Currently, the legislative framework places no duty on the Guardianship Authority to actively seek guardians from a child's family or community.

We recommend that:

- The use of guardianship for children without parental care be encouraged to a greater extent, and be remunerated.
- It should be made clear which body has responsibility for identifying guardians, the placing of children with guardians and the monitoring of such placements.
- The Regulations should place a clear duty on the responsible body actively to seek a guardian for a child who cannot remain with the parents or is without parental care. Priority should be given to placement within the extended family and within the child's community.
- To increase the number of guardians for children, in the absence of a fostering service, consideration be given to enhancing allowances.
- Regulations set out the procedures for applying to be a guardian or trustee of a child.
- The Regulations set out the duty to undertake regular reviews of children placed under guardianship or trusteeship.

Fostering

Fostering is a little known concept in Tajikistan and it is not provided for or regulated by the law.

We recommend, at this stage, that the Government of Tajikistan focus on the development and enhancement of the guardianship system rather than on developing fostering programmes.

Adoption

Article 125 of the Family Code permits adoption of children under the age of 18. Though adoption is rare, small numbers of domestic adoptions do occur each year in Tajikistan. This is in line with the international consensus that adoption into a family environment is preferable to a child being placed in a residential institution. Guardianship Authorities have a duty to determine a suitable placement for children deprived of family are but is under no legal obligation to actively seek adoptive parents for a child.

Under the existing legislation, prospective adoptive parents submit applications to adopt and are only vetted for suitability once a potential adoptive child has been identified. At this stage, the Guardianship Authority is required to assess the general living conditions of the adoptive parents but not to assess them as the prospective adopters of the particular child in question. In practice, adoption occurs when prospective parents visit children's homes and select a child they would like to adopt.

Parental consent is required for an adoption order to be granted unless parents have already been deprived of their rights for at least six months, the parents are unknown, or they have not lived with the child for a period of at least six months and have evaded their responsibility to bring up and support the child.

Inter-Country Adoption

Inter-country adoption has not been permitted in Tajikistan since May 2006. It is unclear, given that several adoption agencies have received official approval to operate in Tajikistan, whether some adoptions still take place.

With regards to adoption procedures, we would recommend that the Family Code should be amended so that:

- Adoption is part of an integrated child welfare service and a child is considered for adoption on the basis of his or her assessed needs and the ability of the parents to meet those needs.
- Abandonment is no longer a ground for adoption.
- Criteria for determining the suitability of adoptive or foster parents are specified.
- Local child protection bodies have a duty to undertake matching of a child to potential adoptive parents.
- Prospective adopters receive training and preparation for adoption.

- A child is placed with the prospective adopters for a period of 6 months and an assessment of the progress of the placement undertaken before an application can be made for adoption.
- An adoption order is only granted where this is in the best interests of the child.
- Removing the requirement for consent to be given to an adoption by the Director of an institution at which the child is resident or a foster parent.
- Consideration should be given to amending the ground for dispensing with parental consent to enable the court to grant an order where this is in the best interests of the child.
- The secrecy of adoption is abolished and the ability of an adoptive parent to change the name or date of birth on the child's birth certificate. At least when children reach the age of 18 – with appropriate safeguards.
- The Court is required to seek the views of all verbal children.
- Regulations are issued for the relevant local body detailing procedures and good practice.

Residential Care

The Republic of Tajikistan has relatively low rate of institutionalisation compared to its international neighbours. However, institutionalisation is on the rise.

The Ministry of Health is responsible for two baby homes in Dushanbe and two infant houses in Sughd. The Ministry of Education is responsible for homes for children aged 3-6 and for boarding schools and children's homes for children aged 4-15, as well as homes for children with sensory difficulties and the Republican Special School. The Ministry of Labour and Social Protection is responsible for homes for children with disabilities. The Ministry of the Interior is responsible for the Temporary Isolation Centres in Dushanbe and Khujand.

The Guardianship Authority have legislative responsibility for determining the appropriate placement of children. Practically speaking, however, children are placed in institutions through many different routes. The Regulations of institutions rarely contain any criteria for placement and children can simply end up at homes after been taken there directly from maternity hospitals, by the police or by parents who no longer wish to or feel able to look after them. The Guardianship Authority is often not involved in the placement of a child and only confirms the placement sometime after the event.

We recommend that:

- Placement in residential care is used only as a last resort and when it is in the best interests of the child.
- A regulatory framework is established to ensure a standard process for the referral or admission of a child to residential care. This process should be overseen by a single gate keeping body.

- Admissions policies for residential institutions should be reviewed as part of the de-institutionalisation programme.
- Conditions in institutions should be monitored regularly by an independent body that is separate from Ministry overseeing the institution.
- Monitoring of state residential institutions include assessment of gaps in the training and capacity of staff.
- Each residential care facility should have a child protection policy on which staff are regularly trained.
- Legislation should be developed detailing the responsibility of the local executive body and the services to be provided to children who are leaving care.
- Each child approaching leaving age or who is returning to their family have an individualised after-care plan, which focuses on reintegrating the child into society and is prepared with the participation of the child while he or she is still in care.

With regards to baby homes, we recommend that:

- Every child admitted to the baby home should be assessed and a care plan prepared.
- The National Commission on Child Rights review current policy on the placement of babies and consideration should be given to effective family support, either through the provision of allowances or perhaps, more effectively, through the provision of day care.
- There be a progressive programme of closure of baby homes. Babies should be cared for by short-term guardians in a family setting, supervised by the new Commission on Child Rights.

Residential Care Standards

The UN Draft Guidelines require that States develop and uphold certain minimum standards for residential care facilities. It is not clear, under the existing system, which Government agency holds responsibility for setting and implementing these standards and for monitoring and inspecting residential care units.

The Ministry of Education is responsible for establishing and funding boarding schools and children's homes other than those for infants, which are administered by the Ministry of Health. Local Departments of Education are also directly responsible for the maintenance, upbringing and education of children in these institutions. The Commission on Minors/ newly reformed Commission on Child Rights and the Guardianship Authorities play a role in both referring children to placements and protecting the rights and interests of these children.

In practice, conditions in residential institutions are often inadequate. Facilities lack sufficient heating, electricity and sanitation supplies and meals don't contain the nutrition required for growing children. The authors recognise that the country's

economic constraints make it difficult to meet minimum standards in these areas but stress that it is essential to

It is essential to a child's development and reintegration into society that all children in care institutions have comprehensive care and after-care plans. Despite provisions for these in the Standards Regulations on Boarding Schools, not enough planning of this type currently occurs.

We recommend:

- The current residential care standards should be reviewed by the National Commission on Child Rights to ensure that they accord with international norms and should be applied in all institutions.
- Staff of institutions should be specifically trained on standards.
- Institutions should be inspected on a regular basis to ensure that standards are met and adhered to.

The De-institutionalisation Programme

Children have a right to be brought up in a family or family-like environment and should only be institutionalised where it is in their best interests as a last resort for the shortest period of time necessary. Under the UN Draft Guidelines, States should 'actively develop' alternatives to institutionalisation 'in the context of an overall de-institutionalisation strategy, with precise goals and objectives'¹.

In 2004, the Swedish International Development Cooperation Agency (SIDA) funded a De-institutionalisation Project in Tajikistan with the aim to promote the upbringing of children within a family environment. The de-institutionalisation programme established Child Rights Departments at local level in five, and subsequently nine, pilot areas. The drive for de-institutionalisation took place at five pilot institutions: four boarding schools and one children's home located in the same district as the five pilot CRDs.

There are, at present, few viable alternatives to institutionalisation of children. On the one hand, day care centres and community support centres for parents might reduce the need for institutionalisation in the first place. At the same time, removal of children from their families will sometimes be necessary and it is therefore essential to establish appropriate alternatives such as guardianship/fostering services and adoption.

Despite the de-institutionalisation programme and the creation of the CRDs, children are still being referred to institutions and the vast majority of these children have at least one living parent. While attitudes have changed since the de-institutionalisation programme started, all staff involved in the child protection system should receive continual awareness training to reinforce the concept that that institutionalisation should be a last resort.

We recommend that implementation of the de-institutionalisation programme should be prioritised, with particular focus on:

¹ Guidelines 22 UN Draft Guidelines.

- Refining criteria for admission to institutions and providing necessary support to prevent institutionalisation.
- Providing assistance and support to de-institutionalised children who have reached the age of majority
- Developing community-based care services, including day care, after-school care, respite care, rehabilitation centres and the guardianship system to both prevent institutionalisation and provide support to de-institutionalised children
- Raising awareness in the community of a child's right to be brought up in a family environment and of services available for vulnerable families
- Strategies for closing or converting institutions should be based on the needs of the community and the children in those institutions.
- A training programme should be developed to build the capacity of staff in institutions for providing services in the community.

The authors recognise that the changes envisaged in this report are substantial and will need to be implemented over a period of time. However, these changes are necessary for the Government of Tajikistan to fulfil its obligations with regards to international standards and norms. Legislative and systemic change is also essential to promote and safeguard the most precious component of the country's future – its children.

1. THE SITUATION OF CHILDREN IN TAJIKISTAN

The Republic of Tajikistan achieved independence from the Soviet Union in 1991. Following independence it became engulfed in civil war that lasted from 1992 until 1997. Since the end of the civil war, the population of Tajikistan has increased significantly and is now over 7 million. Nearly half of the population are children.² However, the percentage of children in the population has been slowly decreasing, from 48% in 2002 to 44.7% in 2006.³ Notwithstanding this decrease, the percentage of children in the population and the child dependency ratio (i.e., the ratio of the population aged 0-14 as against the ratio of the population aged 15-59) is high compared to other ex-CIS states.⁴

Largely due to the civil war, the Republic of Tajikistan is the poorest of the Central Asian countries, with a Gross Domestic Product per capita of \$402.⁵ It is estimated that 66% of under-18s live in poverty.⁶ This is a cause of concern as poverty is known to play a significant role in increasing the vulnerability of children and young people to family breakdown, running away, trafficking, and institutionalisation.

Family separation is a very real problem in Tajikistan, with large numbers of men, and a significant number of women seeking work outside the Republic. Estimates of economic migrants from Tajikistan range from 250,000 to 800,000.⁷ Children of migrants tend to be left behind with family members, often lone mothers or grandparents, or placed in institutions. In 2006, Tajikistan had 12,969 children in state residential care⁸, of which 10,538 were in general boarding schools⁹. This represents approximately 0.4% of all children. It is estimated that only 20% of the children in residential care have no living parents.¹⁰ A significant number of children with disabilities are also institutionalised. Recent figures suggest that nearly 1,700 children with disabilities are in residential institutions,¹¹ or 8.8-14.7% of children with disabilities¹².

² State Committee on Statistics of Tajikistan, 'Socio-Demographic Sector: Number of Constant Population' (noting a total population of 7,063,800 in 2007). See also UNICEF Innocenti Research Centre, *TransMonee 2007 Features: Data and Analysis on the Lives of Children in CEE/CIS and Baltic States*, UNICEF, Florence, 2007, pp.30-31 (3,094,000 aged 0-17 in a total population of 6,920,000) [hereinafter *TransMonee 2007*].

³ *TransMonee 2007*, pp.30-31.

⁴ *TransMonee 2007*, pp.30-31.

⁵ World Bank, *World Development Indicators 2007*, Washington, DC. April 2007.

⁶ Baschieri, Angela and Jane Falkingham, *Child Poverty in Tajikistan*, UNICEF, Dushanbe, January 2007, p.3. Young children under 6 years of age are more likely to be poor than older children: it is estimated that 69% of children 0-6 are poor compared with 61% of 15-17 year olds (see *Ibid.*, p.25).

⁷ Robson, Melinda, 'Estimating Russia's Impact on the Economic Performance of the Commonwealth of Independent States since 1991: The Cases of the Kyrgyz Republic, Tajikistan, Armenia, Georgia and Ukraine', Overseas Development Institute, London, ESAU Working Paper 16, May 2006, p.84 (citing a figure of 250,000 from the Department for External Migration in the Ministry of Labour and Social Protection and a figure of 800,000 from the Security Council).

⁸ This represents an estimated rate of 416 per 100,000 children in residential care. (*TransMonee 2007*, p.47).

⁹ *TransMonee 2007*, p.47.

¹⁰ UNICEF Tajikistan, Annual Report 2007, internal document, p.8.

¹¹ *TransMonee 2007*, p.47.

¹² The calculation depends on which statistics used. According to UNICEF, the Ministry of Health reported that 11,300 children were suffering from a disability in 2006, whereas 19,000 children are registered as disabled in the Ministry of Labour and Social Protection (UNICEF Tajikistan, Annual Report 2007, internal document, p.8).

There is a low rate of adoption in Tajikistan. Only 392 children were adopted domestically in 2005, rising to 481 in 2007. Tajikistan is not a party to the Hague Convention on Inter-Country Adoption¹³ and inter-country adoption has been prohibited since 2006. There were no officially recorded inter-country adoptions in 2007.

In the first nine months of 2007, 233 children were admitted to the Temporary Isolation Centres, having been discovered on the streets or reported as being without parental care or supervision. Of these, 217 were returned to their families, while 11 were sent to institutions (including the Republican Special School, the Special Vocational School and boarding schools)¹⁴.

Anecdotally, trafficking of children appears to be a growing problem. Children from poor or marginalised families, street children and children in residential institutions are particularly vulnerable to trafficking. However, due to the hidden nature of the crime, estimates of the number of trafficking victims, and particularly children, are generally unreliable and low. In 2006, the Ministry of the Interior reported that 420 women were trafficked from the country for the purposes of sexual exploitation.¹⁵ However, other reports suggest that the total number of trafficked persons in 2006 was closer to 1,000.¹⁶ According to the General Prosecutor's Office, 20% of persons identified as victims of trafficking from 2003 to 2005 were children.¹⁷ Most commonly, girls and women are trafficked from Tajikistan, through Kyrgyzstan and Russia, to the United Arab Emirates, Turkey, Russia, Saudi Arabia, Kuwait, Pakistan and Iran for the purposes of sexual exploitation and forced labour. Men are trafficked to Russia and Kazakhstan for forced labour and boys and girls are both trafficked internally for begging and labour.¹⁸

2. THE INTERNATIONAL LEGAL FRAMEWORK FOR CHILD PROTECTION

The principle international instrument on child protection is the UN Convention on the Rights of the Child (1989) (UNCRC)¹⁹, acceded to by the Republic of Tajikistan on the 26th of October, 1993. Article 19 of the UNCRC sets out the 'protection' that should be provided by the State. It both sets out those categories of harm from which children should be protected: "*all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.*" and specifies the concrete steps that States should take to ensure such protection: "*all appropriate legislative, administrative, social and educational measures ... to provide necessary support for the child ... as well as for other forms*

¹³ Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, adopted 29 May 1993, 32 I.L.M. 1138 (entered into force 1 May 1995).

¹⁴ Report on implemented activities by Juvenile Temporary Isolation Centre of the MOI of the Republic of Tajikistan, 2007. Five children remained resident at the TIC at the time figures were compiled.

¹⁵ US Department of State, *Country Reports on Human Rights Practices 2006: Tajikistan*, 6 March 2007.

¹⁶ *E.g.*, *Ibid.*

¹⁷ UNICEF Tajikistan, Annual Report 2007, internal document, p.9.

¹⁸ US Department of State, *Trafficking in Persons Report, 2008*.

¹⁹ Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (entered into force 2 Sept. 1990), reprinted in 28 I.L.M. 1448 (1989) [Hereinafter UNCRC. acceded to by the Republic of Tajikistan 26 October 1993.

of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment".²⁰

Article 20 of the UNCRC provides that when a child has been deprived of parental care, the State must ensure that the child is provided with alternative care. This should, wherever possible, be in a family setting, either through placement with the extended family or through fostering, adoption or kefala. Where this is not possible and as a matter of last resort, the child may be placed in an institution for children.²¹

Further guidance on child protection can be found in other international treaties providing protection for particularly vulnerable groups. Tajikistan has ratified the Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution and Child Pornography (2000);²² the UN Convention against Transnational Organized Crime²³, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)²⁴ and its Protocol against the Smuggling of Migrants by Land, Sea and Air²⁵; the Convention concerning Forced or Compulsory Labour (1930)²⁶; and the Convention Relating to the Status of Refugees (1951)²⁷ as well as the ILO Convention Number 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour²⁸.

Two other international Conventions which are relevant are the Hague Convention on Inter-country Adoption²⁹ and the Convention on the Rights of Persons with Disabilities³⁰, neither of which has been ratified by Tajikistan. There are also a number of other instruments, including the UN Draft Guidelines for the Appropriate Use and Conditions of Alternative Care, which have been presented to the UN

²⁰ Article 19(2) UNCRC.

²¹ Article 20 UNCRC.

²² *Adopted* 25 May 2000, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (*entered into force* 18 January 2002). Tajikistan acceded to this Protocol on 5 August 2002.

²³ *Adopted* 15 November 2000, G.A. Res. 55/25, Annex II, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/25 (*entered into force* 29 September 2003). Tajikistan ratified the Convention on 8 July 2002.

²⁴ *Adopted* 15 November 2000, G.A. Res. 55/25, Annex II, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/25 (*entered into force* 29 September 2003). Tajikistan acceded to the Convention on 8 July 2002.

²⁵ *Adopted* 15 November 2000, G.A. Res. 55/25, Annex II, U.N. GAOR, 55th Sess., U.N. Doc. A/RES/55/25 (*entered into force* 29 September 2003) Tajikistan acceded to the Convention on 8 July 2002.

²⁶ ILO Convention No. 29, *adopted* 28 June 1930, 39 U.N.T.S. 55 (*entered into force* 1 May 1932). Tajikistan ratified the Convention on 26 November 1993.

²⁷ Convention Relating to the Status of Refugees, *adopted* 28 July 1951, U.N. Doc. A/CONF.2/108, 189 U.N.T.S. 150 (*entered into force* 22 April 1954). Tajikistan acceded to the Convention on 7 Dec 1993.

²⁸ ILO Convention No. 182, *adopted* 17 June 1999, 2133 U.N.T.S.161 (*entered into force* 19 November 2000). Tajikistan ratified the Convention on 8 June 2005.

²⁹ Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, *adopted* 29 May 1993, 32 I.L.M. 1138 (*entered into force* 1 May 1995).

³⁰ The Convention will come into force when 20 States have ratified or acceded to it. As at 10 March 2007, there were 17 ratifications and 125 signatories to the Convention.

Committee on the Rights of the Child and are likely to be adopted by the General Assembly in the near future.³¹

These instruments, while not ratified by the Republic of Tajikistan, are nevertheless helpful in indicating current notions of good practice. In addition, the UN Committee on the Rights of the Child has provided further guidance on the role of the family and states' obligations where children are without parental care.³²

3. THE DOMESTIC LEGAL FRAMEWORK

The main legislative instruments concerning the protection of children are the Constitution of the Republic of Tajikistan and the Family Code. Provisions that protect children from exploitation, abuse and neglect can also be found in a number of different laws and in numerous pieces of secondary legislation. Some of the legislation appears to overlap, particularly in relation to responsibility of bodies at local level. In addition, it is on occasions difficult to ascertain whether secondary legislation is still in force or has been repealed.

a) The Constitution of the Republic of Tajikistan

This provides that the State shall protect the family as the basis of society³³ and that a mother and child are entitled to the special protection and care of the State. The Constitution also highlights the responsibility of parents for the care of their children. While the Constitution imposes a duty on the State to care for, bring-up and educate orphan children,³⁴ it does not impose a specific duty on the State to protect children who are risk of abuse, neglect or exploitation. However, the obligation to provide special protection and care to children could be taken as encompassing this role.

b) The Family Code

This is the main instrument regulating relationships between parents and defining parents' obligations to their children, and the responsibility of the State when parents fail to carry out their obligations. The Family Code includes provisions regarding children deprived of parental care, guardianship and adoption, and places the family and childhood under the protection of the State.³⁵ The Family Code specifically provides that where there is a conflict between an international treaty ratified by the Republic of Tajikistan and family legislation, the international treaty shall have precedence.³⁶

³¹ These draft guidelines were previously called Guidelines on the Protection and Alternative Care of Children without Parental Care. The latest draft of the Guidelines was presented to the UN Committee on the Rights of the Child in May 2007.

³² Day of General Discussion on the Role of the Family in the Promotion of the Rights of the Child (Committee on the Rights of the Child, Report on the Seventh Session, U.N. Doc. CRC/C/34, 8 November 1994); Day of General Discussion: Children without Parental Care (Committee on the Rights of the Child, Report on the Fortieth Session, U.N. Doc. CRC/C/153, 17 March 2006).

³³ Article 33 Constitution of the Republic of Tajikistan, 6 November 1994.

³⁴ Article 34 Constitution of the Republic of Tajikistan.

³⁵ Article 1.1 Family Code of the Republic of Tajikistan, 13 November 1998, No. 683.

³⁶ Article 6 Family Code.

The Family Code of the Republic of Tajikistan provides, in accordance with the UN Convention on the Rights of the Child, that a child is a person under the age of 18³⁷, and that every child has a right to live and be brought up in a family.³⁸ Under the Code, the child has a right to the care of his parents, for the maintenance of his interests, for all round development, and for the respect of his human dignity. In the absence of family care, or where parents are deprived of their parental rights or where care is lacking for other reasons, the rights of the child to be brought up in a family is assured by the organs of guardianship and trusteeship (the Guardianship Authority).

The Code does not contain a fixed definition of what child protection services should encompass, but Article 19 of the UNCRC gives a good starting definition. It requires States to provide protection to children from “*all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse*”. It then specifies the concrete steps that States should take to ensure such protection – “*all appropriate legislative, administrative, social and educational measures ... to provide necessary support for the child ... as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment*”.³⁹

These provisions are not specifically included within the Family Code. The Code imposes a duty on parents not to abuse their children⁴⁰ and provides that the child has a right of protection from abuse by his parents or persons substituting for them⁴¹ and a right to apply independently for protection to the Guardianship Authority when he or she reaches the age of 14⁴². The Family Code places responsibility for receiving referrals about potential abuse, neglect or exploitation on the Guardianship Authority and gives them the right to visit families and take the necessary measures to protect the rights and interests of the child.⁴³ While the law appears to provide protection for children at risk of abuse, neglect or exploitation, in reality it provides only a general framework, with no details on how children are to be identified, referrals investigated, child protection procedures initiated, decisions taken or measures to be applied.

The Family Code does not lay down clearly the roles and responsibilities of the respective bodies at local and national level and the administrative measures for delivering the integrated child welfare system envisaged by Article 19 of the UNCRC are unclear. Up until the promulgation of the new Regulations on Child Rights Commissions at local level, passed on 1st August 2008, there has been a lack of clarity as to which body has responsibility for ensuring the protection of children or for the provision of child protection services. It is now clear that the Child Rights Commissions have this responsibility, though there are still limitations on their functions. In addition, there appears to be no system for inspection of child protection services and no minimum quality standards for such services, as required by Article 3 of the UNCRC. The lack of clearly allocated responsibility poses a real risk to

³⁷ See Article 55.1 Family Code and Article 1 UNCRC.

³⁸ Article 55.2 Family Code. See also Preamble and Article 7 UNCRC.

³⁹ Article 19(2) UNCRC.

⁴⁰ Article 65.2 Family Code.

⁴¹ Article 57.2 Family Code.

⁴² Article 57.2 Family Code.

⁴³ Article 57.3 Family Code.

children, while the lack of standards and training of personnel providing child protection services provides little opportunity to staff who wish to improve services and address out-of-date or poor practice.

Recommendations

- That the Family Code should be amended or a new Children Law developed, covering the role of the State when a child is at risk of suffering abuse, neglect, violence or exploitation.
- That Central Government together with relevant Ministries and bodies should decide which Ministry or Body shall have prime responsibility for the development of policy and for planning to ensure that an integrated child protection system exists in each local executive committee area.
- That there should be a National Inspection Body to ensure that all child protection services meet minimum quality standards.
- That the role, functions, staffing and funding of the new Child Rights Commissions should be reviewed.
- That the Regulations of the new Child Rights Commissions should be amended to require CRCs to be responsible for producing an annual child care plan for the area, for ensuring adequate services exist at local level to meet the needs of children in that area, and for the identification, referral, assessment, planning etc of children at risk of abuse and neglect. The CRC should also be responsible for commissioning the services needed in their area.
- That Ministries continue to provide services but clarify the role and remit of their services and criteria for use.

c) The Law on Combating Trafficking in Humans

The purpose of the Law is to implement state policy on combating trafficking, to fulfil the Republic of Tajikistan's international obligations and to decrease the risk of persons becoming the victims of trafficking⁴⁴. The Law sets out the state bodies involved in combating trafficking. The MLSP is responsible for assisting trafficking victims generally and the MOH is responsible for developing medical and psychosocial assistance.⁴⁵ The new Law also establishes specialised anti-trafficking police units and an inter-departmental Commission on Combating Trafficking. The role of the Commission is to develop State policy on combating trafficking; collection and analysis of information on trafficking, co-ordination of regional commissions; the development of international agreements and improvement of legislation.

Articles 13-15 of the Law cover the establishment of Centres to render support and assistance to the victims of trafficking. These Centres provide short-term accommodation of up to a month for trafficking victims, though in the case of a victim who is a witness in a trial of a trafficker including where a child is involved, the child's

⁴⁴ Article 3.1 Law on Combating Trafficking in Humans No. 147 of 15th July 2004. See also Haarr, Robin N., 'Reducing Violence, Harm and Exploitation of Children in Tajikistan', UNICEF Tajikistan, Dushanbe, October 2004, p.26-7.

⁴⁵ Article 6 Law on Combating Trafficking in Humans No. 147 of 15th July 2004.

stay can be extended for the period of the trial at the suggestion of the prosecutor, the regional commission, the investigation body or court if the child also consents to remain at the Centre. The Government has not established any such Centres as yet, but has reached a Memorandum of Understanding with the IOM to establish trafficking shelters or support centres and has also approved the efforts of NGOs to establish such centres.

The Law refers specifically to children, providing that in the case of a child who is a victim of trafficking, bodies involved in combating trafficking and the Centres for Support and Assistance,⁴⁶ must inform the Guardianship Authority. It is unclear, especially in the light of the new Regulations on the Child Rights Commissions, exactly what action should be taken in the light of such a referral.

If a child is accommodated at the Centre, the child is to be kept separately from adults. If the child is without parental care or is not aware of his or her family, measures are to be taken to find the family or guardianship will need to be taken by the Guardianship Authority.⁴⁷

In addition to the Laws above, there are numerous sets of Regulations relating to child protection, including the Guardianship Regulations, the Commission on Minors Regulations, the new Regulations on the Child Rights Commission. In addition, there are a considerable number of draft regulations currently under consideration.

There have been a number of national action plans affecting children. The most important of these is the National Plan of Action for the Interests of the Child 2003-2010. While the plan sets out its objectives, which include progressive implementation of the UN Convention on the Rights of the Child in the area of protection of the rights of the child to survival and medical care, juvenile justice, special protection measures, gender discrimination and violence and drugs, and HIV/AIDS, as well as expected outcomes, the plan is very general. As far as child protection is concerned, the Action Plan simply sets out that social services should be developed for the most vulnerable group of children, and their situation improved. It lists possible partners in this activity, but says nothing more than that. There are no details of how social services are to be developed, the vision for social services, the costs or any time line. The Action Plan must, therefore, be regarded as very largely aspirational.

There is a further National Action Plan, 'the Comprehensive Programme on Counteracting Human Trafficking, 2006-2010', which has, as part of its objective, the elimination of social problems that contribute to human trafficking. The Plan calls for the regulation of youth centre activities, the establishment of youth centres in rural areas, and the development of vocational guidance and training for the young unemployed. There is no evidence as yet of the extent to which the Plan has been implemented, or of whether the new services are able to engage with those most susceptible to trafficking, including orphaned, abandoned, and street children, as well as runaways and children already in prostitution and informal labour markets.

⁴⁶ See Articles 13 and 14 Law on Combating Trafficking in Humans No 147 of 15th July 2004. State bodies may establish these centres or co-operate with NGOs or public associations in their establishment and running.

⁴⁷ Article 19.5 Law on Combating Trafficking in Humans No. 147 of 15th July 2004.

4. ADMINISTRATIVE RESPONSIBILITY FOR CHILD PROTECTION SERVICES

At present, responsibility for child protection in Tajikistan is spread across a number of different bodies at national and local level.

The National Commission on Child Protection, now known as the National Commission on Child Rights, is responsible for coordinating policy on child protection at national level. It was established by Decree No. 423 of the 7th September, 2001. The Commission is a permanent, interdepartmental, consultative body, established to coordinate the activities of state, non-governmental bodies and international organisations and bodies involved in working with children in need of special measures of protection. The members of the Commission, which include government ministries, agencies, local executive bodies of government, non-governmental organisations and religious figures, are also responsible for raising awareness and promoting the UN Convention on the Rights of the Child to employees of law-enforcement agencies, teachers, medical personnel, parents and children. Very recently, following a Decree of the President in January, 2008, draft Regulations were issued for the National Commission on Child Rights. These were subsequently approved by Presidential Decree on 1st August 2008.⁴⁸ The new Regulations give the Commission responsibility for the tasks formerly performed by the Executive Committee on the Commission on Minors and establish that all Commissions of Minors report to, and are accountable to, the National Commission on Child Rights. Under the 2008 Regulations, the Commission on Minors was abolished and its responsibilities transferred to the Commission on Child Rights. The functions of the COM will now be performed by the new Commission on Child Rights established in each local authority area.

One of the principal tasks of the Commission when first established was to draft a National Plan of Action (NPA)⁴⁹ along with monitoring mechanisms. The NPA was finalised in 2003 and covers the years up to 2010.⁵⁰

A number of Ministries also have responsibility for aspects of child protection. The **Ministry of Health (MOH)** has responsibility for all children 0-3. The Ministry has four baby homes for children aged 0-4 and an institution for children suffering from tuberculosis. The baby homes fall within its sphere of responsibility and it is responsible for the staff, management and care of children within these homes.

The **Ministry of Education (MOE)** is responsible for residential children's homes, schools for children deprived of parental care, the Special School and the Special Vocational School. It sets the criteria for entry and, as is responsible for the care, management, treatment and care of children within the institutions.

The **Ministry of Labour and Social Protection (MLSP)** has recently established a new Department for Rendering Social Services and Family and Child Protection Issues⁵¹. The new Department, and its corresponding departments at local level, will be responsible for the development of policy on family and child protection issues and the implementation of that policy; for coordination issues of social protection, re-

⁴⁸ Regulations on the National Commission on Child Rights, No. 377 of 1st January 2008.

⁴⁹ National Plan of Action for the interests of the child for 2003-2010 years, No. 309 of 4th July 2003.

⁵⁰ Ibid., para. 51, text.

⁵¹ Order on the Department for Rendering Social Services and Family and Child Protection Issues (2007).

integration of children, prevention of forced labour and other forms of exploitation of children. The Department at Central Government level will coordinate the activity of local child protection offices and supervise child protection services provided both by governmental and NGO bodies. The Department will take responsibility for organising after-care services; making recommendations for the improvement of legislation and the development and implementation of measures on improving services to families with children. Lastly, the Department would take responsibility within its area of competence for implementation of the UNCRC and other international standards and norms.

At present, it is unclear what impact this will have on the work of the National Commission on Child Rights and the local Child Rights Commissions, whose work would be duplicated by the new local body proposed by the MLSP. In addition, while the creation of this new Department is to be welcomed, there is no published strategy, nor a time-line, for the creation of the new departments at local government level.

The Ministry of Labour and Social Protection also oversees the administration of economic support for families with either no income or insufficient income, as well as economic support for persons with disabilities. In addition, this Ministry has responsibility for the 16 homes for children with disabilities, and for services for disabled children. As with other Ministries, the MLSP sets the criteria for admission to and operation of the disabled children's homes, as well as staffing, care, treatment and education of the children.

The **Ministry of the Interior** and the Commission on Minors (now superseded by the Child Rights Commission) have responsibility for the prevention of juvenile delinquency and for taking preventive measures towards children who have been abandoned or are homeless (i.e., street children). The Ministry is responsible for the Temporary Isolation Centres in Dushanbe and Khujand. It is planned to open a further Temporary Isolation Centre in Khatlon. The Centres are governed by Regulations and operate as temporary welfare centres.

The **National Committee on Women's and Family Affairs (NCWFA)** was established in 2004 and the most recent Regulations were approved in December 2006.⁵² Its functions are to develop state policy to promote and protect the rights and interests of women and the family, gender equality and equality and to promote the participation of women. Its role is largely advisory rather than one of service delivery. However, it is particularly concerned with the protection of girls, and especially girls who have been trafficked or exploited.

While a number of bodies, especially the MLSP, the NCWFA and the NCCR have a mandate to develop policy, it is still not clear which of these bodies has responsibility for the development of policy on child protection and the delivery of services. There needs to be a consensus at central government level as to which Ministry or Body shall have primary responsibility for this task. Whichever Ministry or body is chosen should also be responsible for setting national minimum quality standards in partnership with other relevant Ministries and NGOs providing child protection services.

⁵² Decree On "Committee for women and family affairs under the Government of the Republic of Tajikistan", No. 608 of 28th December 2006.

The lack of policy in the field of child protection since independence has meant that there has been little change in the structure or provision of child protection services at local level. The lack of accountability of the Guardianship Authority to a body at national level and the lack of ministerial responsibility for the Commission on Minors has also resulted in a lack of focus on the delivery of child protection in line with modern ideas of good practice. This situation has now changed to a degree, with the establishment of the Child Rights Commissions as a result of the new Regulations passed on August 1st 2008, but it is to be regretted that the Regulations were passed without a real vision or agreement on what services should be delivered and how. This may mean that an opportunity to improve practice and delivery has been lost. In addition, there are no costings for the changes proposed, but considerable resources are likely to be needed to implement the changes successfully. However, at present, no budget appears to have been allocated for this task.

5. IDENTIFICATION, REFERRAL AND INVESTIGATION OF CHILD PROTECTION CASES

Articles 122 and 123 of the Family Code provide that the Guardianship Authority shall protect the rights of interests of children where parents are ill, when they are deprived of parental rights, or their parental rights have been limited, where the parents are absent for a long period of time or have failed to bring up their children or protect their rights or interest, including where parents refuse to take their children from educational institutions, medical institutions, institutions of social protection of the population and other analogous institutions and also in other cases of absence of parental care. The language of the Code is different to that of Article 19 of the UN Convention on the Rights of the Child and does not refer explicitly to a duty on the Guardianship Authority to identify and protect children at risk of abuse, exploitation and neglect.

When there is information that a child falls within the situations specified above, officials of institutions (preschool educational institutions, institutions of general education, medical institutions and other institutions) and other citizens having such information are under a duty to inform the Guardianship Authority.⁵³ Within three days of receiving such information, the Guardianship Authority is under a duty to conduct an inspection of the child's living conditions, and if the absence of parental care is established, to provide protection of the child's rights and interests and resolution of where the child should be placed.⁵⁴

The focus of Articles 122 and 123 Family Code is firmly on the identification of children without parental care, and not on children at risk of abuse, exploitation and neglect. The duty to investigate also relates specifically to determining whether or not a child is without parental care, rather than whether a child is at risk of suffering significant harm from abuse and is in need of protection.

In order to ensure that children are protected from abuse, exploitation and neglect consideration should be given to amending the Code and placing a clear duty on

⁵³ Article 123 (1) Family Code.

⁵⁴ Article 123 (1) Family Code and Regulation 5 Regulations on Guardianship Authorities, No. 98 of 11th March 2000.

local executive authorities to identify children at risk and a duty both to investigate and, where there is cause for concern, to undertake a full assessment of the family.

Such an amendment will not, by itself, be enough to ensure that an adequate child protection system exists in every local area. Any such change would need to be accompanied by a public awareness campaign. Many of those working within the child protection system are unaware of the incidence of abuse and showed little understanding of the risks that children can face within the home. A number of Directors of children's homes, Guardianship Authority secretaries and CRD staff denied that sexual abuse existed in Tajikistan. Some recognised that physical abuse did occur but believed that community disapproval of such behaviour was enough to ensure that parents did not abuse their children. There was also a general view amongst professionals that if physical abuse was taking place, once it was recognised that, and the parents' spoken to, that such abuse would cease. Neglect was a little understood concept amongst those working with children.

a) Responsibility of Local Bodies

Responsibility for child protection at local government level lies with the Commission on Minors and the Guardianship Authority. However, over the last 5 years, some Khukumats, under a pilot scheme developed by the Government and UNICEF, have introduced Child Rights Departments, which also play a role in child protection, albeit an informal one until August 1st 2008, when new Regulations were approved. Prior to the new Regulations (and their implementation), the allocation of responsibility between the Commission on Minors, Guardianship Authority and the Child Rights Departments varied from district to district. All three bodies have responsibility for children at risk of abuse, neglect or exploitation. However, their functions are largely confined to receiving applications, investigation, assessment and allocation to residential care, if that is needed.

The Khukumats do not have what would be recognised as a fully integrated child welfare service, largely because prior to the 1st August none of the bodies at local level had a clear responsibility for child protection, or the provision or delivery of community based and alternative family services. This is partially corrected by the abolition of the Commission on Minors and the absorption of their functions of the Child Rights Departments into the new Commission on Child Rights at local level. However, the Family Code is un-amended and thus the functions of the Guardianship Authority would appear to remain intact, once again leading to duplication between the two bodies.

Under the Family Code and the Regulations on Guardianship Authorities,⁵⁵ the organs of tutelage and guardianship at local level, known as the Guardianship Authority, are accountable to the executive authority (the Khukumats). The Guardianship Authority is responsible for the protection of a child's rights where the child's parents are dead, incapacitated, are deprived of parental rights or their rights have been limited, or the parents are sick, absent or refuse to take care of the child. The Guardianship Authority has a right to establish and appoint guardians or trustees, care for and manage the property of children under guardianship, pay allowances to guardians, to make an application to the court to remove a child from

⁵⁵ The Order on Approval of Regulations on Guardianship Authorities, No. 98 of 11th March 2000.

home where the child in danger, to consent to foster care, the assessment of prospective adopters, cancellation of adoption and responsibility for ascertaining the opinion of a child over the age of 10 to adoption. While the Guardianship Authority has a wide range of tasks, it has a very limited complement of staff. There is usually only one person in a Khukumat responsible for Guardianship

b) The Commission on Minors

The Commission on Minors operated at a number of local government levels, until absorbed into the new Child Rights Commission established on 1st August 2008. Prior to the passing of these Regulations, and until their implementation, the Commission on Minors bodies are to be found at, oblast level, Khukumat level and in Jamoats (Local Government). The Regulations on the Commission on Minors⁵⁶ (now repealed) set out their responsibilities. According to these Regulations, the Commission on Minors held a wide responsibility for the protection of children within their area, and specifically for the organisation of work to prevent child neglect and juvenile offending, and ensuring and protecting children's rights. Apart from this responsibility, the Commission was also mandated to hear the cases of children accused of criminal acts⁵⁷ or cases referred to it, among others, by the police and education authorities.⁵⁸ These functions have now been passed, virtually unchanged, to the new Child Rights Commission.

In undertaking their duty to prevent neglect of children, the city and district Commissions on Minors (now the Child Rights Commission) are responsible for co-ordinating the efforts of other Ministries, bodies, agencies and professionals working with children.⁵⁹ The Child Rights Commission / Commission on Minors has responsibility for children left without parental care, those who are not receiving adequate care, who are not in school or are unemployed, as well as for other children who need state and public assistance.⁶⁰ The Commissions consider cases referred to them or identified by them, and may decide on placement of the child away from home, in residential care. The decision will then be sent to the relevant departments and institutions, including Departments for Public Education and other State and public bodies responsible for boarding schools, children's homes and special schools, including those for children with disabilities. The Commission may also refer a child for guardianship or adoption (to the Guardianship Authority), to health institutes and, in the case of children with disabilities, to the disabled children's homes.

In addition to this already wide role, the Child Rights Commission / Commission on Minors have the right to inspect children's homes, and other institutions for children. Inspect arrangements for children in schools and other institutions, places of work and those who are home educated, as well as being responsible for children who are in conflict with the law or are anti-social but are either below the age of criminal responsibility or who have committed administrative or minor offences.

⁵⁶ Decree on Approving the Regulations for Commissions on Minors, No. 178 of 23rd February 1995.

⁵⁷ Ibid., Regulation 29(a).

⁵⁸ Ibid., Regulation 29(b-d).

⁵⁹ Regulation 8 Regulations for Commissions on Minors No. 178 of 23rd February 1995.

⁶⁰ Regulations 9 Regulations on Commission on Minors No. 178 of 23rd February 1995.

The Commission is made up of such members as are defined by each local Khukumat, and depends on the workload of the Commission.

c) Child Rights Departments

In addition to these bodies, Child Rights Departments (CRDs) were introduced in five pilot areas in 2003,⁶¹ and have now been established in nine areas. The CRDs have never been the subject of regulation, but it is understood that these departments will cease to exist and that their functions will be absorbed by the new Child Rights Commission. These departments currently operate under a protocol agreed with the NCCR specifying their functions and tasks. The Draft Regulations for the CRD describes the CRD as a structural division in the system of local government established on the initiative of the National Commission on Child Rights. The objective of the CRD is to protect the rights and interest of children and to provide assistance to parents in implementation of this activity. In particular, the CRD's tasks are:

- To coordinate the work of local government relating to child protection;
- To take decisions on institutionalisation and de-institutionalisation of children;
- To cooperate with administrative, law-enforcement and other structures to eliminate and prevent infringements of child's rights and interests;
- To monitor all aspects of the CRD work on a constant basis;
- To advocate and raise awareness of the UNCRC and issues relating to the community, families and children amongst the local population;
- To coordinate the family support process, ensuring the right of the child to live and develop in the family;
- To monitor the situation of children in institutions;
- To arrange social workers activities and to analyse their work;
- To work on integrating children leaving institutions;
- To collect and analyse information about children from all structures and divisions dealing with children's issues;
- To identify unregistered children and monitoring their registration to ensure their right to a name and citizenship;
- To monitor the conditions and implementation of guardianship and trusteeship
- To submit information about violations of children's rights to the NCCR;
- To provide consultation during working hours and hot-lines;
- To provide assistance to relevant law enforcement bodies to prevent illegal displacement of children, the selling of children, child prostitution and abduction;
- To provide assistance to the mass media in disseminating information useful to children;
- To collect information on disabled children, children without care or without provision of financial or moral support; and
- To ensure the development of juvenile justice in the region.

d) The Commission on Child Rights

⁶¹ The pilot scheme was funded by UNICEF.

Under the Regulations approved on the 1st August 2008⁶², the new district and city Commission on Child Rights will consist of not less than three and not more than 12 persons.⁶³ Confusingly, Regulation 11 appears to duplicate the role of the Guardianship Authority and gives the new Commission on Child Rights the power to organise, control, inspect and check the conditions of living and care, education and training of a child including his place of residence. The Regulations do not, however, indicate on what basis the Commission on Child Rights may exercise this power. The Commission also has the power to apply to the court for protection of the child's rights or interests.

Thus, it would appear that the new Commission on Child Rights will not only absorb the functions of the Commission on Minors but also, to an extent, that of the Guardianship Authority. However, as the Family Code, which is the primary legislation and takes precedence over these Regulations, has not been amended, the Guardianship Authority continues to have legal responsibility for the child protection functions set down in the Code. Further, given the lack of budgeting for change to local child protection services, establishing new Commission on Child Rights in those areas which do not already have a CRD may consist of little more than a change of name for the COM. The lack of any central budget for training local authorities and the staff of the new Commission on Child Rights, and the requirement on local authorities to fund the establishment of the new CRDs themselves raises a concern that the change of structure may be little more than a change of name.

At present, the current CRDs employ social workers, whose task is one of identification, assessment and the provision of assistance to children at risk and the prevention of institutionalisation. The social workers also work with the families in the process of de-institutionalisation and provide assistance to the Guardianship Department in choosing guardians and trustees. For those areas, the transition to the Commissions of Child Rights is likely to present less of a problem. The competence of the new Commission expressed in the Regulations is wide but is still essentially concerned with children who are without parental care and/or homeless children. It is not primarily concerned with providing protection to children at risk of abuse or exploitation.

6. LOCAL PRACTICE

At present, the work of the Guardianship Authority, the Commission on Minors and the CRD varies from area to area, according to local arrangement. For the nine areas with CRDs, the situation was more diffuse due to the addition of a third body in the child protection system.

In Gafurov, where there is a pilot CRD, the role of the Guardianship Authority appears to be that of managing the paper work, while the CRD takes responsibility for the social work, even though according to the Family Code and the Guardianship Regulations this work should be undertaken by the Guardianship Authority.

⁶² No. 377.

⁶³ Regulation 10.

In Khujand, the COM and the CRD seem to have become virtually one body, and are working under a protocol developed with the National Commission on Child Rights. In Isafara, once again, the CRD works with families, under a protocol developed with the National Commission on Child Rights, and has responsibility for areas of work which would formerly have been regarded as falling within the remit of the Guardianship Authority or the COM. The Guardianship Authority retains responsibility for adoption, but responsibility for most acts of child protection has been passed to the CRD, despite the fact that the Family Code places responsibility for child protection upon the Guardianship Authority and the Commission on Minors.

A CRD also exists in Dushanbe City. At the time of our visit in March 2008, the plan was to incorporate the Guardianship Authority and the Commission on Minors into the CRD. The head of the CRD was also the Secretary of the Commission on Minors, and the CRD deals with all child protection issues and criminal cases where children under the age of criminal responsibility have committed criminal acts. However, the decision on whether or not to institutionalise a child was taken by the Commission on Minors.

Visits were also made to Shukrani, Gissar, Fidarvsi and Varsob districts. The division of responsibilities in these areas remained the traditional division: with the Guardianship Authority being responsible for child protection, including applications for institutionalisation and adoption, while the Commission on Minors dealt with criminal matters.

It is clear from discussions in the various local government areas that were visited, that staff of the Guardianship Authorities, Commission on Minors and CRDs are often confused about their roles. Responsibilities are duplicated in both legislation and practice while, at the same time, none of the three bodies has responsibility for raising awareness or preventing child abuse and neglect. Nor are any of the bodies responsible for investigating and assessing families or for the provision of services to families. The new Regulations on Commissions on Child Rights will go some way towards addressing this difficulty, but the Regulations do not appear to place a clear duty on the new Commission specifically to protect children at risk of harm through abuse, neglect or exploitation. A further concern is the continued dual role of the Commission on Child Rights, dealing both with civil issues of child protection and its essentially 'criminal' jurisdiction for under-age children who commit anti-social and criminal acts, and older children committing minor or administrative offences. The Commission on Child Rights retains the power to deprive children of their liberty by placing them in the special school or the special vocational school. As a matter of good practice, it is considered undesirable to mix criminal and civil jurisdictions and to give a welfare body the power to deprive a child of his or her liberty. It becomes increasingly difficult for staff to separate their criminal and civil role, and research has shown that such a mixed role tends to stigmatise children in the civil system (i.e. those in need of protection). There is no objection to the Commission on Child Rights addressing the needs of those children who are offending, provided a civil approach is taken. In other words, offending should be seen as an issue of child protection and not as a criminal matter requiring the application of a sanction.

At national level, if the Order on the Department for Rendering Social Services and Family and Child Protection Issues (2007)⁶⁴ was in force, responsibility for policy on

⁶⁴ Order No. 72 of 12th October 2007.

child protection, co-ordination, standard setting for services and responsibility for child protection provision at local level would sit with the MLSP. However, due to the lack of implementation of this order, there is no body at national level currently holding responsibility for national policy or for ensuring that there is an integrated child protection system at local level.

a) Referrals

At present, there are no agreed protocols between the bodies responsible for child protection and schools, hospitals, medical practices, NGOs or other bodies working with children, for referral of children who are suspected of being at risk of abuse, exploitation or neglect.

There appears to be a general confusion amongst the Commissions of Minors, the Guardianship Authorities and the Child Rights Departments as to who should be receiving referrals. Further, there is confusion amongst professionals: they are not always clear as to which body a referral should be made. In addition, the power of some professionals to refer suspected child abuse is limited.

None of the three bodies involved in child protection at local level has a clear mandate to accept referrals for child abuse. However all three see child protection as within their remit, although the meaning of the term 'child protection' is defined very differently. Responsibility for referrals differs according to the geographical area, but, overall, few referrals are received by any of the three bodies with respect to children at risk of abuse.

Responsibility also differs according to whether or not there is a CRD in the area. Generally, in the North of the country, in Sughd oblast, the CRDs are seen as holding the main responsibility for child protection referrals. The CRD in Gafurov accepts referrals relating to child abuse, but see themselves more as a clearing house rather than as the body responsible for dealing with such referrals. The CRD reports serious allegations of abuse to the police, prosecutors, the Guardianship Authority or to their own social workers. When a referral is made to the Guardianship Authority, responsibility for the referral may come back to the CRD if the Guardianship Authority doesn't take swift enough action, even though the main role of the CRD is de-institutionalisation and not assessment of children at risk. The CRD does not have a memorandum of understanding or an agreed protocol with the police or the prosecutors on how such cases should be managed. Neither have any partnership working arrangements been agreed with the Guardianship Authority. In addition, neither this CRD, nor any other, has any instruction or guidance on what action to take when it receives a referral.

In those areas where the CRD does not exist, responsibility varies, sometimes one body sees itself as primarily responsible, in others both retain responsibility.

In general terms, it was clear that there are few referrals. It was also clear that there was little understanding of what should happen once a referral was made. There was no concept of strategic planning: in other words, little consideration is given to the terms and nature of the referral and there is rarely any discussion about the best method of approaching the family in order to protect the child. This can be clearly seen in one case detailed by a CRD.

A referral was made to the CRD from a hospital that they suspected that a child had suffered from non-accidental injury. The CRD called the Director of the school the child attended and asked the Director to talk to the girl. The girl said that she had fallen down and had not been hit, but made comments that led the Director to suppose that she might be suffering from sexual abuse. The prosecutors were informed and went to see the parents. The parents denied that they had assaulted the child and also declared that she had fallen. They also denied that she was being sexually abused. The child was left at home and no further action was taken by anybody, but the child continues to be 'monitored' by the school.

Such an approach leaves the child at clear risk of further abuse. Good practice would require that first, the CRD should plan how the allegations should be addressed and which, if any, other bodies should be involved. Second, a trained and experienced social worker should have seen the girl separately from the parents. It is highly unlikely that the girl would reveal abuse to the school principal. Third, sexual abuse was suspected, there should have been a further planning meeting with the police and the prosecutors. Fourth, the child should have been interviewed once more by personnel from the police or by a social worker experienced in sexual abuse cases. If there was any remaining concern once the parents denied the allegations, good practice would require that there be a comprehensive assessment of the family to determine whether the girl was at risk, and whether any further work needed to be done with the family. Last, any requirements for monitoring of the child should contain clear aims and targets and should be managed by the CRD in charge of child protection

The lack of clear mandate for dealing with referrals of children at risk is a matter of concern. So too, is the fact that CRD admit they have no experience or skill at carrying out assessments and rarely work with children directly. The CRDs see their major roles as de-institutionalising children. Guardian Authorities faced the same difficulty. The degree to which they took action to assess the family depended largely on their experience and interest.

A further difficulty appears to be the restraint placed on the ability of professionals to refer. For instance, the Family Medical Centre in Dushanbe stated that they can only report suspected abuse cases to the Commission on Child Rights if the parents consent. Where consent is not forthcoming, the doctor can only give a warning. Obviously such a situation is unsatisfactory and does not provide adequate protection to children.

Generally, it would seem that, teachers and other professionals who had concerns often preferred to try and work with the family to solve the issues themselves.

None of the bodies indicated that there were referrals from the public.

There are a number of probable reasons for the low rate of referral of potential abuse cases to the three local bodies. First, there is no common understanding amongst professionals about what constitutes 'abuse' or indeed 'child protection.' This is partly due to the low level of discussion and understanding in Government and society in general about child abuse. The authors of this report were told, in a series of interviews with government officials and staff in state institutions for children, that reporting abuse is not a problem in Tajikistan. It was generally recognised that there was physical abuse of children, but the view was taken that this could be kept within

acceptable bounds by giving parents a warning. There was an overall denial that sexual abuse of children occurred, the view being that community pressure prevents this.

The legislation also has to bear its share of blame. It does not place a clear duty on any of the bodies to receive referrals or undertake assessments of families. The role of the CRD is to coordinate child protection at local level, that of the Commission on Minors to prevent child neglect, while the Guardianship Authority is responsible for the protection of a child's rights where the child's parents are dead, incapacitated, are deprived of parental rights or their rights have been limited, or the parents are sick, absent or refuse to take care of the child, but not, it would seem, where a child is at risk of abuse, exploitation or neglect. The focus of the legislation is on children without families and not on protecting children in families. This has an inevitable impact on the attitude of professionals working with children and the actions they take on receiving a referral.

It was hoped that the introduction of CRDs would increase the capacity of local executive bodies to address child protection issues. It is difficult to say whether the CRDs have been successful in achieving this, but those visited as part of this project did not provide significantly better services than those areas without a CRD. It is to be regretted that the CRDs were established largely as a coordination body and do not have a clear mandate to investigate referrals of child abuse. Further, while addressing de-institutionalisation, staff appear to have a limited understanding of the issues associated with providing an integrated child protection system. There is a pressing need for a very significant training programme for staff at local level dealing with child protection. The vast majority of such staff have no qualifications for such work and have received very limited training.

Consideration needs to be given to restructuring child protection services at local level. It is recommended that there be only one local body with responsibility for receiving referrals and investigating allegations of child abuse.

b) Who is a Child at Risk?

Most States provide a definition, generally in the terms used in Article 19 of the UNCRC, of children who are considered to be 'at risk' and thus in need of referral to the child protection authorities. This includes children who are subject to physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. It would be helpful if the Family Code could be amended and set out a similar definition for children at risk, rather than the definition currently contained within Articles 122 and 123 of the Family Code. This would make it very much clearer, both to professionals working with children and to the general public, exactly when abuse should be reported.

Amending the legislation to include a definition of a child at risk, while helpful, will not, however, address the view of many people working with children that abuse simply does not occur with Tajikistan. It is often difficult for Governments, professionals working with children and the public to accept that abuse of children occurs within their society and, indeed, abuse is often well hidden and vehemently denied. While the authors do not believe that the professionals working with children are simply ignoring abuse, the reality of abuse does need to be faced if children are to be protected. There are a number of studies that attempt to compare rates of child

maltreatment, physical and sexual abuse across different States, although this has proved difficult, as different States use different definitions and collation methods. However, maltreatment studies involving Australia, Canada, England and the United States showed that the number of substantiated child abuse cases ranged from 0.27% of the child population in England in the year 2002-3 to 1.24% of children in the United States in 2001⁶⁵. Approximately five times as many cases were reported as were finally substantiated. The biggest category of abuse was neglect. It is unlikely that Tajikistan differs from every other country and highly likely that children are suffering from abuse.

A further reason for the low rate of referral is the lack of any protocols on information sharing between education, health, the police and the local executive authority. The authors were unable to find any formal referral policies for professionals or bodies working with children giving guidance on when, how, or to whom, child protection cases should be referred. The lack of such guidance or policies militates against the effective protection of children. It also leaves professionals very unsure of what steps to take to protect children.

There is no evidence of any training for care workers, health professionals, members of the police and others who work with children. We would recommend that good practice guidance should be made available to professionals working with children to enable them to identify and understand abuse, and how to respond. This should be accompanied by training on a regular basis.⁶⁶

c) Investigation

Where a child protection referral is made under Article 123 of the Family Code, there is no legislation or guidance setting out the purpose and aim of the investigation, the procedures to be followed or the steps to be taken to protect the child. Article 123 of the Family Code simply requires that the Guardianship Authority undertake an investigation within three days and explore the living conditions of the child. The Guardianship Authority is also under a duty to ensure protection of the child's rights and interests until such time as a decision is made about where the child shall live.

While it is common for the Guardianship Authority or the CRD to see a family where the child appears to be without parental care, it is rare for anybody to visit the family where an allegation of abuse is made, although the Guardianship Authority have the power under Article 77 to remove a child where there is a direct threat to the child's life of health, and both the Guardianship Authority and the COM are able to make an application to court to deprive parents of parental rights. All the Guardianship Authorities interviewed stated that they had not used their powers under Article 77.

Where a referral of abuse is made, it is more likely that the police or the prosecutor's office will be informed and they will undertake an investigation. While this is appropriate to address criminal behaviour by parents against children, police and

⁶⁵ See Creighton, Susan J., *Prevalence and Incidence of Child Abuse: International Comparisons*, NSPCC, London, 2004.

⁶⁶ For example, the Council of Europe has called for training to recognise signs of abuse for all paediatricians, school doctors, general medical practitioners, child psychologists, social workers, teachers, members of the police and all professional workers who may see cases of abuse. CoE Recommendation on Child Protection, op. cit., paras. 4(d) and 4(e). Although this Recommendation is nearly 30 years old, it remains equally valid today.

prosecutors are generally not skilled at working with children. If there is insufficient evidence to prosecute, no further action will be taken and the issues of abuse and protection will remain

Child abuse investigations need to be well planned and structured if they are to be meaningful and generally require input from a range of professionals working with the child. Children should, as a matter of good practice, be seen on their own as part of the investigation, and should be medically examined, but there was no indication that this occurs in practice in Tajikistan.

d) Emergency Removal

Article 77 of the Family Code makes it clear that where there is a direct threat to the child's life or health, the Guardianship Authority has the right to take the child away from the parent or guardian immediately. Where this power is exercised, the Guardianship Authority must inform the prosecutor immediately. After investigation, the Guardianship Authority can make an application to the court for an order either for limitation of a parent's rights or deprivation of parental rights within seven days after removing the child.

The Guardians interviewed did not, on the whole, know that they have the power to remove a child while a case is being investigated. As a result, not surprisingly, this power appears to be rarely used. Part of the reason that this provision is rarely used may be due to the lack of definition in the Code as to what constitutes a 'direct threat' to the child's life or 'health.' Guardians receive little training and there is no written guidance available detailing the situations in which guardians should exercise this power.

The Commission on Minors also has power to remove a child, but only with a court order. Where parents don't fulfill their obligations to educate their children, or reduce a child to a drunken state, or give the child narcotics without a doctor's prescription, or where a child has committed a violation of traffic regulations under the age of 16, and for other unspecified violations, the COM at district and city level are entitled to make an application to court to restrict parents' powers, deprive them of parental rights, take children away from parents without depriving them of parental rights and to expel parents deprived of their rights from their homes if it is impossible for them to live with their children, being deprived of parental rights.⁶⁷ There was, again, little evidence that children are removed without their parents' consent, even where there is evidence of abuse or exploitation.

Recommendations

- The Family Code should be amended to contain a separate chapter on child protection. Alternatively, a new Child Protection Law needs to be drafted that would consolidate and amend existing legislation. The amended legislation should contain:
 - > A clear definition of who is a child 'at risk';
 - > Procedures for referral and the action to be taken when a referral is received;

⁶⁷ Article 19 Regulation for Commission on Minors, No. 178 of 23rd February 1995.

- > The roles and responsibilities of bodies at local and national levels for child protection referrals; and
- > Criteria covering the removal of a child from the home as a matter of emergency.
- Guidance should set out how to plan and conduct an investigation. Legislation should be amended to ensure that, as part of an investigation, the child is seen on his or her own by an experienced child care professional.
- We would recommend that Practice Guidance be produced to sit alongside the legislation. This should cover identification of abuse, referral procedures, details about information sharing between the executive authority and other bodies and the steps to be taken during the initial investigation.

7. ASSESSMENT

According to the UN Draft Guidelines, decision making about children in need of protection should be based on rigorous assessment, planning and review, through established structures and mechanisms, and carried out on a case by case basis by suitably qualified professionals in a multi-disciplinary team. It should involve full consultation with the child according to his age and maturity and with his parents or guardians.⁶⁸ An assessment should be carried out expeditiously, thoroughly and carefully. It should take into account the child's immediate safety and well-being, as well as his or her longer term care and development and should cover the child's personal and developmental background, characteristics, ethnic, cultural, linguistic and religious background, family and social environment, medical history and any special needs. The resulting report should be used as an essential tool for planning decisions.⁶⁹

At present, Tajikistan would have difficulty meeting these proposed standards. Just as it is not clear which body at local level is responsible for receiving referrals and investigating them, it is equally unclear which body is responsible for carrying out an assessment of a child. There is no explicit statutory obligation on any particular body to undertake an assessment of a child who is the subject of a child protection referral, although Regulation 5 of the new Regulations on the Commission on Child Rights passed in August 2008, does require CRDs to participate in organisation of activities to reveal abuse, etc., against a child. Regulation 12 also gives CRDs the right to plan and carry out family surveys and to conduct consultation of minors, their parents, legitimate representatives and other persons. There is, however, no duty on the local authority to undertake such surveys or consultations, and it is far from clear that this would impose a direct requirement on the CRD to assess a child who is at risk of harm.

In addition to the lack of a body with a duty to undertake assessments, there is little understanding at local level of the purpose and remit of an assessment. This is compounded by a lack of qualified social workers. While a group of 25 social workers

⁶⁸ Guideline 58 UN Draft Guidelines on the Appropriate Use and Conditions of Alternative Care, 18 June 2007, [hereinafter UN Draft Guidelines].

⁶⁹ Ibid., Guideline 59.

have been trained in a joint programme between the Government, Stockholm University and UNICEF, there is a general lack of skill and experience in social work and assessment at local level.

Recommendations

- While appreciating the problems of procedure and capacity faced by local bodies, rigorous assessments of the child's family situation and needs is essential if the child's welfare is to be safeguarded and promoted. Local child protection bodies would benefit from a programme of basic social work training for staff working with families. We would recommend that there be a national training programme for local staff undertaking child protection functions together with the provision of good practice guidance on assessments.
- The Family Code and other relevant pieces of primary and secondary legislation should be amended to clarify which body has responsibility for undertaking an assessment, and the nature and remit of that assessment.
- Good Practice Guidance on Assessments should be produced and used by all staff undertaking assessments.

8. CARE PLANNING

As a matter of good practice, once the body responsible for child protection has undertaken an assessment of a child and family, it should determine whether the child protection concerns are such that further action needs to be taken to safeguard and promote the welfare of the child. The necessary actions to be taken should be contained in a care plan. The purpose of the care plan is to set out the arrangements for a child and the services that should be provided to meet the needs of the child – this should include details of any family support, health and education services and, where necessary, the form of alternative care placement that should be provided.⁷⁰ Permanency should be a key goal and due regard should be given to the importance of ensuring a stable home and consistent caregiver for the child.⁷¹ Evidence from interviews indicates that, at present, very few children have care plans. In the case of many children presented to the Commission on Minors or the Guardianship Authority, there is no assessment of their individual needs as required by the UN Draft Guidelines, but rather just a consideration of whether the child fulfils the admission criteria for entry into a residential home (usually related to the financial status of the parents). The new The Regulations on the Commissions on Child Rights do not place a duty on the CRD to ensure that a care plan is developed for every child. Thus, there is no formal requirement for care planning or review by any state body involved in child protection.

Recommendations

- Assessment and care planning should be undertaken before placement, except in the case of emergency placements.

⁷⁰ See Guideline 65 UN Draft Guidelines (The care plan should contain the goals of the placement and the measures to achieve them).

⁷¹ Ibid., Guideline 11.

- Care plans should specify the child's needs and the services to be provided to meet those needs.
- The Government should introduce guidance on care planning for the local child protection bodies.
- Care Plans should be reviewed on a regular basis and no more than 3 months after the placement and then at least every 6 months.
- The programme to train social workers should be given priority and adequate support by the Government.

9. RECORD KEEPING AND INTERNAL COORDINATION

There is no duty on professionals who identify a child at risk of abuse (for example, doctors or health care workers, schools or the police), or the relevant bodies who receive the referral, to keep records of the referral and the outcome of the investigation, although Guardianship Authorities at local level are required to keep records on children who are without care or are deprived of parental care. The new CRDs are also obliged to keep records of such children and also of children with limited liabilities in need of state care, children living in families, including those at social risk, neglected and homeless children as well as those who have left educational institutions and other children in need of state support.⁷²

At present, although the local child protection bodies keep records, these cannot be accessed by anyone other than the body holding the records. In order to ensure that children are adequately protected, thought needs to be given as to how information can be shared with other relevant bodies both in the area and in other areas. Records are not sent to a central body, and neither on the whole are they held electronically. The lack of hard statistical data at central and local government level also makes it difficult to plan effective child protection services to meet proven need. We would recommend that Practice Guidance should be produced on how to keep child protection records. In addition, consideration should be given to establishing a national data base for child protection cases.

Recommendations

- There should be a national, uniform policy on recordkeeping for cases of child abuse, as well as staff training to understand its importance.
- Criteria for information sharing should be developed.

10. JUDICIAL INTERVENTION

The Family Code gives parents the right and duty to bring up their child⁷³, and the right to demand the return of their child from any person who is keeping the child other than where there is a court order or juridical resolution granting the right to

⁷² Regulation 13 Regulations on the Commissions for Child Rights.

⁷³ Article 63 Family Code.

another person.⁷⁴ However, in keeping with Article 19 of the UN Convention on the Rights of the Child, parents are not permitted to act contrary to the best interests of the child and don't have the right to cause damage to the physical or psychological health of their child. The Family Code also specifies that parental upbringing should not include slighting, rude or cruel treatment, humiliation or any abuse or exploitation of the child.⁷⁵ All issues relating to the upbringing of children should be resolved, whether by the parents or the court in the child's best interests, taking into account the child's opinion.⁷⁶

Where there is a dispute between the interests of the parent and the child, the Guardianship Authority has a duty to appoint a representative to protect the rights and interests of the child.⁷⁷ The Code does not, however, place a specific duty on the Guardianship Authority or any other body to take action in order to protect a child who appears to be at risk of abuse, exploitation or neglect.

Where a local child protection body decides to intervene and take action to protect a child, it may only remove the child from the care of the parent (other than in an emergency) when the parents consent. In the absence of such consent, an order must be obtained from the Court for deprivation or limitation of parental rights before removal.⁷⁸ The requirement to obtain an order is consistent with good practice and the recognition of Article 7 of the UN Convention on the Rights of the Child.

The Family Code does, however, give the Guardianship Authority the power to remove a child where there is a direct threat to the child's life or health, and to keep the child for a period of seven days, before applying to the court for deprivation or limitation of parental rights.⁷⁹ This appears to be a little used power, perhaps partly because of the failure of the Code to define the terms and the criteria on which a court might find a direct threat to the child's life or health.

Parents, the State organs and institution who have a duty to protect the rights of underage children (i.e. the Guardianship Authority), the prosecutor or a children's home⁸⁰ may apply to the Court for an order depriving the parents of their rights. The Family Code sets out the grounds on which such orders will be granted. They include not carrying out parental duties or malicious failure to pay alimony; failing without any valid reason to take their child from the maternity unit, or from any other medical or educational institution, an institutions of social protection or any other analogous institution; abusing parental rights; cruelty to a child, including physical or mental violence or sexual abuse; chronic alcoholism or drug addiction or the commission of an intentional crime against the life or health of their own child or the life and health of the spouse.⁸¹ Applications for deprivation of parental rights are considered with the participation of the Prosecutor and the Guardianship Authority.⁸²

⁷⁴ Article 68 Family Code.

⁷⁵ Article 68.1 and 68.2 Family Code.

⁷⁶ Article 65.3 and 65.4 Family Code.

⁷⁷ Article 64.2 Family Code.

⁷⁸ Articles 69, 70 and 73 Family Code.

⁷⁹ Article 77 Family Code.

⁸⁰ Article 70, Family Code.

⁸¹ Article 69 Family Code.

⁸² Article 70.5 Family Code.

Where an order is granted depriving parents of their rights, and the child cannot be passed to another parent, or where both parents are deprived of their rights, the child is passed to the care of the Guardianship Authority.⁸³ The child may be adopted, but not for a period of six months after the order has been made.⁸⁴

The lesser order of limitation of parental rights can also be applied for, and allows the removal of the child from the parents.⁸⁵ This order can be made if it is dangerous to leave the child with the parent due to circumstances beyond parental control, including physical disorder or other chronic disease. A child may also be removed under this provision where it is dangerous to leave the child with the parents, because of their behaviour but there are not sufficient reasons to deprive the parents of their rights. If the parent does not change his behaviour during a period of six months after removal, the Guardianship Authority has the right to seek an order for removal of parental rights. Where the interests of the child require, the Guardianship Authority may seek an order for deprivation of parental rights before the six month period is up.⁸⁶ Yet again, where an order is made for limitation of parental rights, the care of the child is passed to the Guardianship Authority.⁸⁷

The Family Code allows for the restitution of parental rights on an application by a parent in certain situations, namely if the circumstances causing the removal of rights have changed, and in particular, the behaviour, manner of life and attitude to bringing up the child has changed. A court may deny recovery of parental rights on the basis that it is not in the interests of the child. The court in considering their decision must take into account the opinion of a child over the age of 10.⁸⁸ Parental rights cannot be recovered if the child has been adopted unless the adoption order has been set aside.⁸⁹ A parent may also apply to set aside an order limiting parents' rights. Once again, the court may reject such an application where this would not be in the child's best interests.⁹⁰

There are a number of procedural safeguards for children. Article 78.1 of the Family Code provides that when the court considers any case where there is conflict connected to the upbringing of a child, the Guardianship Authority must participate in the case and must inspect and report to the court on the child's life conditions (Article 78).

Article 12 of the UNCRC provides that children have a right to be heard and to express their views on issues affecting them, and should have these views taken into account, according to their age and maturity.⁹¹ This provision can be implemented either by the child participating directly in proceedings or through the use of specially trained professionals, such as social workers, court guardians or lawyers who represent the child's views and/or best interests. Article 78 does not make it clear that the Guardianship Authority has a duty to convey the child's views to the court. Nor, it seems, is it necessary to consider the views of a child under the age of 10.

⁸³ Article 71.5 Family Code.

⁸⁴ Article 71.6 Family Code.

⁸⁵ Article 71 Family Code.

⁸⁶ Article 73 Family Code.

⁸⁷ Article 73.5 Family Code.

⁸⁸ Article 72.4 Family Code.

⁸⁹ Article 72.4 Family Code.

⁹⁰ Article 76.1 Family Code.

⁹¹ This right is enshrined in Article 12 of the UNCRC.

The Family Code does not expressly provide for an intermediary to assist the child to present his or her views.

Although the Guardianship Authority is able to use these provisions to remove a child from a parent, and thus ensure effective protection of the child, it would appear from interviews with Guardians that, in practice, such orders are rarely sought. Rather, orders for deprivation or limitation of parental rights are generally sought in private law proceedings between parents, especially when one parent seeks to remove a child from the country. The reason for lack of use is not clear, but may be related to the prevailing attitude that parental rights should not be interfered with and the chronic understaffing of the Guardianship Authority. Frequently, there is only one member of staff in a local Guardianship Authority to fulfil the wide functions of the Guardianship Authority. The lack of use of these provisions raises questions as to whether the Guardianship Authorities are able to protect children in danger of abuse effectively where removal from the family is essential to protect the child, but the parent will not consent.

In addition to a civil order of deprivation of parental rights, parents who have abused their children or harmed their interests or rights can, depending upon the circumstances, face administrative and criminal charges. For example, assault, battery, rape and causing harm to the health of an individual are all offences under the Criminal Code and, where the offence is committed against a child, higher penalties are called for under the Code. In practice, few criminal charges are brought against parents.

Recommendations

- We would recommend that the threshold for seeking an order for deprivation of children's rights should be clearly set out in the legislation as, at present, the threshold is too general. In the UK, the threshold for deprivation of parental rights is that the child has suffered or is or at risk of suffering significant harm as a result of the parent's behaviour, or as a result of the child being out of control of the parent.⁹² Some similar form of child-centred threshold would be helpful.
- Articles 68 and 73 of the Family Code should be amended to include the requirement that the Court's decision be made based on the totality of the evidence, and that the best interests of the child be the primary consideration in any decision regarding parental rights. The Articles would also be improved by requiring the Court to take into account a detailed assessment of the child, prepared by the executive body at local level.
- Rather than setting an age at which a child can be heard by the Court, the law should require participation of children in all decisions affecting them, to the extent of their capacity.
- The Family Code should be clear that the Guardianship Authority should prepare an assessment of the child and family to be placed before the court whenever an application is made for deprivation or limitation of parental rights.
- The Code should require the child to have a nominated representative in applications for deprivation or limitation of parental rights.

⁹² This is the legal threshold in England.

- The provisions relating to adoption after an order for deprivation of parental rights should be reconsidered. It should be possible for the Court to order that the children be placed for adoption immediately where the circumstances are such that it is clear the children cannot return home to the parents.

11. PROMOTION OF FAMILY CARE

Article 18(2) of the UN Convention on the Rights of the Child provides that, for the purpose of guaranteeing and promoting the rights contained in the Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children. The Draft UN Guidelines expand Article 18 of the UNCRC and requires governments to ensure that their policies support the family in meeting its responsibilities towards the child, and promotes the right of the child to have a relationship with both parents.

Guideline 31 of the Draft UN Guidelines provides that an effective child protection system requires preventive measures. These should include measures to tackle poverty and support the family, in order to provide parents with the tools and resources they need to raise their children. Additionally, targeted services are needed specifically for children at risk and families on the verge of breakdown. Guideline 35 states that social protection measures should include family strengthening services, such as day care and parenting courses, opportunities for employment, income-generation and, where required, social assistance. Supportive services include mediation services, drug and alcohol services, financial assistance and services for parents and children with disabilities.

The National Action Plan on Children, which runs from 2003 to 2010⁹³, sets out plans for the prevention of violence against children, the creation of mechanisms to support victims and the development of family support services. There is, however, as yet little evidence of these plans being implemented on the ground. In addition, a National Expert Group on Violence against Children was established by the National Commission on Child Rights in March 2003 to raise public awareness of children's and women's rights, prepare a proposal for development of a child monitoring and rapid response system, prepare recommendations for legislative reform on prevention of violence against children and rapid response, and lay the groundwork for setting up a hotline for children exposed to violence.⁹⁴ As yet, the Expert Group does not appear to have had much impact and the hotline for children is not up and running. Nor does the rapid response system appear to have been developed or implemented.

Programmes for family support can be implemented with little financial resource and at grass roots community level with some initial assistance and training. Local governments, NGOs and religious bodies should be encouraged to assist these community groups to develop, including day care, parenting classes and mother and baby groups.

⁹³ National Plan of Action for the interests of the child for 2003-2010 years No. 309 of 4th July 2003.

⁹⁴ Haarr, Robin N., 'Reducing Violence, Harm and Exploitation of Children in Tajikistan', UNICEF Tajikistan, Dushanbe, October 2004, p.20.

Article 34 of the Constitution of the Republic of Tajikistan gives special protection to mothers and children, while Article 39 guarantees social security to every person who loses their guardian and in other instances covered by law. Financial support is available⁹⁵ from the Social Protection Fund. However, financial support is only available in limited circumstances and the amounts payable are small. We were informed that the amount paid is around 20 somoni as a one-time payment, and is intended to provide short term assistance to families to purchase necessities such as clothing and food. The amount paid is not sufficient to make a real difference to families struggling to feed and clothe their families, and must be regarded as remedial rather than preventing poverty.

The Ministry of Labour and Social Protection is the responsible body for providing support to families and children nationally, though several agencies within the government are also engaged in providing financial and social support. Following a governmental resolution and a memorandum of understanding with UNICEF in May 2007, the Ministry of Labour and Social Protection set up a Department for Social Services and Social Protection of Families and Children. The Ministry provides economic support to families under this department, which is part of the state agency on Social Protection, Labour, Immigration and Family Protection. The Department for Social Services and Social Protection of Families and Children works directly with families in need of advice, counselling or assistance. Local level departments are also able to provide financial assistance to families under their jurisdiction.

12. COMMUNITY SERVICES

There has been, as yet, no consistent development of community based 'prevention' services providing support to families where children are at risk of abuse or separation in the Republic of Tajikistan. Nor does it appear that development of such services is a priority of the Government. The National Plan of Action for the Interests of the Child 2003-2010 barely mentions community based services.

Apart from some limited pre-school provision, there are very few government funded community based services for children at risk of abuse, neglect or exploitation. The Ministry of Interior run an activity programme for children at risk of offending at the Temporary Isolation Centre in Dushanbe, and local Governments support a juvenile justice prevention scheme for children at risk in Fidarvsi District in Dushanbe and in Khujand and Isfara.

The lack of state-funded community services is partially due to a lack of direction from the central Government and partly due to resource restrictions. There would appear to be no Ministry, Body or Agency at national level, or indeed at regional level, responsible for the planning, commissioning or delivery of child protection services. In addition, local executive bodies do not review the needs of children in their area or plan for community services to meet these needs. As recommended above, there is a need for a national body responsible for the development of child protection policy and planning. We would also recommend that each local executive

⁹⁵ Decree "On Payment of Monetary Allowances To Needy Families With Children Studying In General Secondary Schools of the Republic of Tajikistan" No. 244 of 2nd May 2007. It is not clear, however, whether this Decree is still in force.

body should be under a duty to prepare an annual children's plan which reviews the needs of the child population and the services that should be made available to meet those needs. While recognising that, due to financial constraints, the provision of community based services is likely to be restricted over the short-term, effective planning and, in particular, effective targeting would go a long way to meeting the needs of the most vulnerable and at risk children in the population.

The NGO sector has, in a limited way, stepped into the gap of provision and has developed some community based services. However, due to the limited funding sources, these services focus mainly on day care services for disabled children and trafficked children, with some provision for street children, rather than family support services. The NGOs providing child protection services include⁹⁶ ORA International, the Children's Legal Centre and Save the Children and a number of national NGOs, including the Child Rights Centre, NGO Childhood, Rainbow NGO, Helping Hands, Aurora, NGO Modar, NGO Chashmai Hayot and the Norwegian Refugee Service.

While NGOs are helping to fill the gap in services, in some cases they are under-funded or their funding is time limited and the future of the service is not assured. Children would benefit from a more planned, sustainable and long term delivery of community based services. In addition, community services are not, at present, subject to minimum quality standards and are not monitored and inspected. It is, therefore, difficult to ascertain the quality and effectiveness of such services.

Recommendations

- Each local executive committee should develop an annual local plan detailing the needs of children in their area and the services planned to meet those needs.
- The current use of community based services should be reviewed to determine levels of need and the effectiveness of current services in targeting children most in need.
- The local Executive Committee should work with the NGO sector on planning community based services for children.

13. ALTERNATIVE CARE

Where a parent consents to removal of the child, or where a parent has been deprived of parental rights or their rights have been limited, the Family Code sets out several options for the child's placement: guardianship, tutorship, fostering and adoption or, if there are no other alternatives, placement in an institution.⁹⁷ Having institutional care as a last resort reflects the hierarchy indicated in the UNCRC.⁹⁸

In practice, the Commission on Minors (and when the Regulations on Commissions on Child Rights are implemented, their successors, the Commissions on Child Rights), and the Guardianship Authority are the bodies responsible for ensuring provision for children without parental care. However, the division of authority and responsibility is not always clear, and in many instances, seems to overlap. These

⁹⁶ This list is not meant to be exhaustive, but rather to show a range of services.

⁹⁷ Article 124 Family Code.

⁹⁸ See Article 20 UNCRC.

local bodies have a responsibility to make sure that a child deprived of parental care is looked after – either in family based or residential care. Where a child is placed in a Republican residential institution, consent to that placement will generally have to be obtained from the Ministry responsible for the institution as well.

a) Guardianship

The purpose of tutelage and guardianship is to provide children without parental care with maintenance, support and education and to protect their rights and interests. Under the Family Code⁹⁹, children under the age of 14 can be subject to guardianship and over the age of 14 to tutelage. Guardianship and tutelage may be exercised by an individual, by an institution or by the Guardianship Authority, which is the local executive body with responsibility.

An individual may seek to be a guardian or tutor of a child where the parents are dead, where the parents have been deprived of their rights or their rights have been limited, where the parents are recognised as incapacitated, sick, absent for a long period or where the parents have refused to take care of a child.

Article 148 of the Family Code and Article 33 of the Civil Code provide that only adults with capacity may be guardians. Persons who have been deprived of parental rights, former guardians whose guardianship was cancelled as a result of their failure to fulfil the duties laid on them, those who are chronic alcoholics or drug addicts and those who because of their health cannot care for a child may not be considered as guardians.

The procedure for establishing guardianship is contained with the Regulations on Guardianship Authorities¹⁰⁰. Heads of educational and social protection organisations, who have information on children deprived of parental care, are obliged to inform the Guardianship Authority within one week.¹⁰¹ Within three days of receiving the information, the Guardianship Authority should undertake an assessment of the child's living conditions, and, if it established that the child is deprived of parental or any relative's care, the Guardianship Authority is under a duty to ensure the child's rights and interests until the matter can be satisfactorily resolved.¹⁰² Within one week from receiving the information about the necessity for a placement for the child, a guardian or trustee must be appointed.¹⁰³ Regulation 6 provides that where a child is deprived of parental care, the child shall be referred for family adoption, and if there is no opportunity to be adopted, will be referred to an orphanage or a similar institution. Guardians are not appointed for children who are in placed full time in educational institutions, medical institutions, MLSP institutions and other analogous institutions, as the duty of care for these children lies on the administrative officers of these institutions.¹⁰⁴ Once a child graduates from such an institution, however, guardianship once more reverts to the Guardianship Authority.

Interestingly, neither the Family Code, nor the Guardianship Regulations, places a duty on the Guardianship Authority to seek a guardian for the child from within the

⁹⁹ Article 147 Family Code.

¹⁰⁰ No 98 of 11th March 2000.

¹⁰¹ Regulation 4 Regulations on Guardianship Authorities No 98, 11th March 2000.

¹⁰² Regulation 5 Regulations on Guardianship Authorities No 98, 11th March 2000.

¹⁰³ Regulation 11 Regulations on Guardianship Authorities No 98, 11th March 2000.

¹⁰⁴ Article 152.1 Family Code.

family or the child's community. Rather, it is up to an individual to apply to be a guardian. Once a child has been placed, whether with an individual or in an institutional setting, the Guardianship Authority is under a duty to monitor the child's maintenance, upbringing and education.¹⁰⁵ However, the Regulations do not specify what form the monitoring is to take, how often or with what objective.

Article 153 of the Family Code details the rights of children who are under individual guardianship and tutelage. This includes the right to live in the family of the guardian, the right to receive such payments as are due to them and the preservation of any housing rights. 4,180 children were under individual guardianship in 2005,¹⁰⁶ the latest date for which figures are available. However it is unclear whether this figure forms part of a cumulative total of children under guardianship during the year, or the number of children placed under guardianship in that year alone.

Under Article 155 of the Family Code, guardians are to be given a monthly sum for maintenance of children in their care, but are not otherwise paid.¹⁰⁷ The amount of the payment is currently TJS 30 (US\$10) per month for each child. This rate is based on the minimum salary and pension rates, which were last increased in mid-2007 by Presidential Decree. Over the past five years, the minimum rates have risen from 14 to 30 TJS per month per person.

The Guardianship Authority is responsible for monitoring how these funds are used and should report any misuse to the Deputy Head of the Khukumat. In practice, local authorities do not seem to have the resources to make these payments and guardians are dependent on other social assistance measures, such as the quarterly payment programme for poor families with school aged children being implemented by the World Bank and MLSP.

Recommendations

- Guardianship has a long history, and is a well-known and accepted form of family care in Tajikistan.¹⁰⁸ The use of guardianship for children without parental care should be encouraged to a greater extent, and should be remunerated.
- It should be made clear which body has responsibility for identifying guardians, the placing of children with guardians and the monitoring of such placements. At present both the Guardianship Authority and the new Commissions on Child Rights have overlapping responsibility.
- The Regulation should place a clear duty on the responsible body to seek a guardian for a child who cannot remain with the parents or is without parental care. Priority should be given to placement within the extended family and within the child's community.

¹⁰⁵ Article 152.2 Family Code and Regulation 8 Regulations on Guardianship Authorities No 98 of 11th March 2000.

¹⁰⁶ *TransMonee 2007*, pp.47 and.50.

¹⁰⁷ Art. 155.5 and 155.6.

¹⁰⁸ For more information on Guardianship in Tajikistan, see International Rights Protective Organisation "Rights and Prosperity", *Evaluation Report: Efficiency of institutional and legislative basis for ensuring rights of people under guardianship and protection*, 2005.

- At present, only those guardians receiving targeted social assistance are compensated. To increase the number of guardians for children, in the absence of a fostering service, consideration should be given to enhancing allowances.
- Regulations should set out the procedures for applying to be a guardian or trustee of a child.
- The Regulations should set out the duty to undertake regular reviews of children placed under guardianship or trusteeship. We would recommend that such reviews take place no less than once every six months.

b) Fostering

At present fostering is a little known concept in Tajikistan, and is not provided for or regulated by law. A small number of NGOs are considering fostering programmes, but these are only in development stage. Introducing a fostering service would be expensive for Tajikistan and it would take some time to develop. Given the pressing need for alternative family care at present, and the time taken to develop fostering, we would recommend at present, that the focus be on development and enhancement of guardianship.

c) Adoption

The number of domestic adoptions in Tajikistan is small. In 2005 there were 244 adoptions, with 432 in 2006 and 481 in 2007. There is no data available on the age of children when adopted. Nor is it clear to what extent these were intra-family adoptions as opposed to stranger adoptions.

Article 20 of the UN Convention on the Rights of the Child provides that where a child is deprived of family care and cannot be allowed to remain in the family environment, alternative care should be considered. As a matter of good practice, and in accordance with the Convention, adoption is considered preferable to a child spending his or her childhood in an institution. Historically, adoption was seen as providing a child for a childless couple or as an altruistic act on the part of an adopter, providing a family to a needy child. However, since the 1960s, views on adoption have changed. Adoption is now seen as one element in an integrated child protection system, and is to be regarded as a service to meet the needs of the child, and not the needs of potential adopters.

The Guardianship Authority in each local authority area within the Republic of Tajikistan is under a duty to care for children who are without parental care. Having identified such children, the Guardianship Authority should determine the circumstances surrounding the lack of parental care and determine the appropriate placement for the child.¹⁰⁹ It is unlikely at present, due to the lack of care planning, that the Guardianship Authority would determine that a particular child should be placed for adoption with an as yet unknown person. Equally, the Guardianship Authority is not under a duty to find an adoptive family for a child. Rather, its role is to assess the suitability of those who put themselves forward as potential adopters of a child. As a result, the legislation relating to adoption, contained in the Family Code,

¹⁰⁹ See Articles 123 and 124 Family Code.

the Civil Code and the Regulations on Guardianship Authorities is all concerned with process once an application is made.

Article 125 of the Family Code specifies that only children under the age of 18 may be adopted, and that the adoption of siblings by different people is not allowed, except where this is in the child's interest. The Family Code also gives a list of persons who may not be considered as adopters¹¹⁰ and requires as a general rule that adopters must be 16 years older than the child to be adopted¹¹¹ but provides no further detail about the selection of adopters.

There would appear to be no requirement to assess the suitability of an adopter prior to an application for adoption being made. In other words, there is no assessment of suitability until a particular child has been identified. Article 277.2 of the Civil Procedure Code requires the Guardianship Authority to annex to the application for adoption a report on the living standards of the adoptive parents as well as certain documents relating to the child and the necessary consents to the adoption. Regulation 9 of the Guardianship Regulations reiterates this but provides little more information on the form that such a report should take. The Regulation requires only that the Guardianship Authority conduct an investigation related to the living conditions of the potential adopter. There is no requirement on the Guardianship Authority to consider the suitability of the adoptive parents as adopters, nor their suitability to adopt the specific child in relation to which they have made an application. Whilst it is important to ensure that adoptive parents have sufficient income to house, clothe, feed and educate a child, this is only part of the 'suitability' criteria. The adoptive parents' understanding of the child's needs and the extent to which the adoptive parents and their wider family comprehend these needs is also very important to a successful adoption.

It would appear, in practice, that children available for adoption are not matched with prospective adopters by the local Guardianship Authority. Rather, approved adopters appear to attend at an institution in which children available for adoption are resident and select a child, thereafter making an application to adopt.

After choosing a child to adopt, the parents must petition the court for approval of the adoption. The petition must include the name of the adopting person or persons and their residence and the name and place of residence of the child to be adopted and of the birth parents. In addition, the circumstances justifying the request to adopt must be supplied, as must any request to change the adopted child's birth registration document, whether this is birth date (for a child under the age of 1), the name of the child or place of birth.¹¹² Once the application is filed, the judge will ask the Guardianship Authority to provide the court with its conclusions on the validity of the adoption and whether the adoption serves the child's interests.¹¹³

¹¹⁰ Article 127 Family Code.

¹¹¹ Article 128 Family Code.

¹¹² Article 275 Civil Procedure Code.

¹¹³ The Guardianship Authority must also provide: information on the adopting parents' living conditions (as examined by the Authority); birth certificate of the child, a medical opinion on the health condition, physical and intellectual development of the child; the child's birth certificate, the consent of the child, if he or she has attained the age of 10; the consent of the child's parent to the adoption,

An adoption order may only be granted if the parents consent to the order or, the court decides to dispense with the parents' consent on the grounds set out in Article 130 of the Family Code. Parental consent to adoption may be given generally, or when a specific adopter makes an application to adopt. It may also be given orally when the application is before the court. Parents may withdraw their consent up until the time the adoption order is made.¹¹⁴ Where a guardianship or trusteeship order exists, the guardian or trustee must consent to the adoption, as must the Director of an institution where the child is resident, although their consent may be dispensed with by the court in the interests of the child.¹¹⁵

Consent is not required if the parents are unknown or the court declares that they are residing in an unknown place, are considered by the court to be incapable or they have been deprived of parental rights by the Court for at least six months, or if they have not lived with the child for a period of more than six months, and have evaded their responsibility to bring up and support the child.¹¹⁶

Once the appropriate documents have been submitted to the Court, the final hearing will be heard in closed court. The adopting persons and the Guardianship Authority must both participate, as must the prosecutor and a child who has attained the age of 14. Where necessary, other interested parties and a child who is between the ages of 10 and 14 may also participate. The views of a child aged 10 or over must be placed before the court. The Court will, at this point, make a decision to approve or reject the application for adoption.¹¹⁷ If the application is successful, the adoption will be granted and registered. Once the adoption is approved the secrecy of the adoption is protected by law.¹¹⁸

In practice, decisions on which children are eligible for adoption appear to be made by the Child Rights Departments and the Guardianship Authorities, as well as by institutions in which the child is placed. The role and responsibility of each of these bodies is not clear and does not appear to be set out in any Regulations. It is not clear whether children are considered for adoption as part of an assessment and care planning process or whether the decision to place a child for adoption depends purely on the behaviour of the parents (i.e., the child is abandoned).

It would appear that in some institutions, and particularly the baby homes, there is an element of matching by the institution in which the child is resident, and sometimes by the Guardianship Authority. In practice, however matching does not really take place at all. Rather, the adopters select a child from amongst those eligible for adoption. As a matter of good practice, children should be matched to adoptive parents by specialist social workers to ensure an appropriate placement that meets the child's needs, rather than selected by the adopters.

unless consent is not required under the law; the consent of the child's guardian or the head of the institution in which the child lives (if these if no other guardian). Article 277 Civil Procedure Code.

¹¹⁴ Article 129 Family Code. The consent must be given in writing and confirmed by a notary or by the administration of the institution where the child is placed or the Guardianship Authority. The consent may also be expressed directly in court during the adoption proceedings.

¹¹⁵ Article 130 Family Code.

¹¹⁶ Ibid., Article 123.

¹¹⁷ Article 279 Civil Procedure Code.

¹¹⁸ Article 139 Family Code.

Once adopters have selected a child, the institution puts together the relevant documentation on the child (the child's registration, medical history, etc.) for the Guardianship Authority. In most institutions from which children are adopted, the staff informed us that they encourage parents to spend time with the child they hope to adopt. If the petition to adopt is successful, a copy of the decision shall be sent by the Court within three days from the day the decisions takes effect to the civilian registry office.¹¹⁹

As a matter of good practice, an application to adopt should ideally not be made until the child has been placed with the adopters and the progress of that placement reviewed. This would give the Guardianship Authority time to assess whether the adoption is likely to be successful and prevent later placement breakdown. The authors could find no evidence of any post-adoption support services provided at local executive level. Additionally, there is no evidence of the level of adoption breakdown.

The grounds for dispensing with parental consent would benefit from reconsideration. At present, the requirement in Article 130 of the Family Code that consent can be dispensed with a year after parents are deprived of their parental rights, or six months after there has been no contact between the parent and the child, is not sufficiently child-focused. The decision to place a child for adoption should be based on an assessment of the child's needs and the ability of the parents to care for the child. If the assessment indicates that it is not in the best interests of the child to be cared for by their parent or a member of the extended family and the care plan is for adoption, the Guardianship Authority or the new Commissions on Child Rights (under the new Regulations) should be able to place the child immediately rather than waiting for six months of abandonment. The ground for dispensing with parental consent should be based on the needs and interests of the child and the inability of the parents to meet those needs. Without such a change, many young children will have to wait for a considerable period of time, usually in an institution, before being placed for adoption. Six months or a year is a very long time in the life of a young child. It is widely recognised that there should not be undue delay in dealing with a child's case, while research evidence from Western Europe indicates that the younger the child at the age of placement, the more successful an adoption is likely to be. All these factors require that adoption should be available within a timeframe that meets the needs of the child.

The Family Code permits adoptive parents to change the child's name or birth date and the identity of the natural parents on the birth certificate. The ability to issue a new birth certificate in the name of the adoptive parents is quite common, but the requirement of secrecy in adoption is now regarded as not being good practice and potentially violating the child's right under Article 7 of the UNCRC to know his or her background, and especially the fact of adoption. Children frequently discover later in life that they are adopted and the shock of finding out can lead to disruption of family relationships. Most western States have, over the last twenty years, opened up adoption records to children when they reach their majority and adoptive parents are encouraged to discuss adoption with their children at an early stage. To meet international standards and current notions of good practice, we would recommend

¹¹⁹ Article 270.5 Civil Procedure Code.

that an additional Article be added to the Family Code permitting children to access their records and files relating to their adoption when they reach the age of 18.

The Code requires consent from a child once he or she has reached the age of 10. There is no indication whether this has to be given directly or can be given indirectly through a representative. We would recommend that a report of the child's view on adoption should be placed before the Court, whether or not the child has reached the age of 10. Younger children are able to express a view if helped to participate effectively. The weight to be given to the child's views and wishes would obviously depend upon his or her age and maturity. Such a change would ensure that the Family Code complies with the UNCRC provision requiring meaningful participation of children in the decisions that affect their lives – including the obligation to provide children with the opportunity to be heard in judicial and administrative proceedings affecting them¹²⁰.

Babies cannot be adopted from the maternity hospital, but may be adopted once placed in an infant home, provided the necessary consents are in place or the child has been abandoned. Some mothers sign the necessary papers while in the maternity hospital and the child can be placed for adoption at an early stage. A rather larger number of babies are simply placed in the infant home without a care plan or any decision being taken on their long term care. Many of these children will spend their entire childhood in institutional care. The Ministry of Health is responsible for the baby and infant homes but does not see it as part of its functions to promote domestic adoptions. At the same time, the Guardianship Authority, the body responsible for processing adoptions is not under a duty to seek an adoptive parent for a child, nor to run an adoption service. This situation needs to be addressed to ensure that children's needs are met and that children do not languish in an institution for a large part of their lives due to a lack of duty on a relevant body to promote adoption.

An application may be made to annul the adoption by the birth parents, the adopters (or one of them), adopted children who have reached the age of 14 or the Guardianship Authority or Prosecutor. The grounds for annulling the adoption include a failure by the adopters to fulfil their parental duties, abuse of their parental rights or if the adopters are chronic alcoholics or drug addicts. The court can also cancel the adoption for other reasons where this is in the child's interest and taking into account the child's opinion. When an adoption is annulled, the child will be returned to the care of the birth family once more. Where the child does not have parents, the child will be returned to the care of the Guardianship Authority. Court statistics on annulment of adoption are not available, but it would appear that such annulment is rare.

d) Inter-country Adoption

Inter-country adoption has not been permitted since May 2006. However, a non-resident Tajik citizen married to a non-Tajik may adopt and may remove the child from the country. The Republic of Tajikistan is not a member state of the Hague Conference and is not a party to the Hague Convention on Inter-country Adoption. Despite this, it is understood that a number of adoption agencies have received official approval in Tajikistan. Their activities are unclear.

¹²⁰ Article 12 UNCRC.

Recommendations

The Family Code should be amended to include Articles:

- Making it clear that adoption is a service for children in need of a parent. Adoption should be part of an integrated child welfare service and a child should be considered for adoption on the basis of his or her assessed needs and the ability of the parents to meet those needs.
- The grounds for adoption should be amended. Abandonment should no longer be a ground for adoption.
- Specifying the criteria for determining the suitability of adoptive or foster parents.
- Placing a duty on the local child protection body to undertake matching of a child to potential adoptive parents.
- Requiring that prospective adopters receive training and preparation for adoption.
- Requiring that a child should be placed with the prospective adopters for a period of 6 months and an assessment of the progress of the placement undertaken before an application can be made for adoption.
- Stating that an adoption order will only be granted where this is in the best interests of the child. At present, this guiding principle does not appear to apply to applications for adoption.
- Removing the requirement for consent to be given to an adoption by the Director of an institution at which the child is resident or a foster parent.
- Consideration should be given to amending the ground for dispensing with parental consent to enable the court to grant an order where this is in the best interests of the child.
- Abolishing the secrecy of adoption and the ability of an adoptive parent to change the name or date of birth on the child's birth certificate. At the very least, children should be able to access their records and files relating to their adoption when they reach the age of 18 – with appropriate safeguards.
- Requiring the Court to seek the views of all verbal children even if under the age of 10.
- Regulations should be issued for the relevant local body, whether that is determined to be the Guardianship Authority or the Commission on Child Rights, detailing procedures and good practice.

e) Residential care

There is a significantly lower rate of institutionalisation in the Republic of Tajikistan than is found in neighbouring Kazakhstan or Kyrgyzstan or indeed Russia or Azerbaijan. However, worryingly, the rate of institutionalisation has increased from 157 per 100,000 in 2000 to 416 per 100,000 in 2005.

The Ministry of Health has responsibility for two baby homes in Dushanbe and a further 2 infant houses in Sughd province. In 2005, 180 children aged 0 -4 were admitted to the baby homes.

The Ministry of Education is responsible for homes for children aged 3-6 and also for boarding schools and children's homes for children aged 4–15, residential institutions for children with sensory difficulties and the Special School. In 2005, the Ministry of Education were responsible for 14 institutions with 2,592 children.

In the same year, 234 children aged 0-4 were placed in a local government baby home and a further 276 children aged 0-7 were placed in local government infant house in the Khatlon region. In addition, 6,906 children, aged mostly 7-15, were placed in local government children's homes.

The Ministry of Labour and Social Protection is responsible for homes for disabled children. There is one Lycee boarding school for disabled children over the age of 14 and 3 institutions for mentally disabled children. These institutions held a total of 375 children in 2005. Local government establishments held another 799 disabled children. Disabled children are disproportionately likely to find themselves institutionalised, though a considerable number of children in these homes would not, as a matter of general practice, be considered as disabled. Thus the numbers of children institutionalised for child protection reasons as opposed to disability needs to be reviewed upwards to include inappropriately placed children.

The Ministry of Interior is responsible for the Temporary Isolation Centres in Dushanbe and Khujand, with new Centres planned in Khatlon and Isfara. Regulations¹²¹ cover the work of these Centres, which function as temporary welfare centres for children without parental care, especially those who are found by the police or local authority workers on the street. Children stay in the Temporary Isolation Centres only for short periods of time, returning to families where possible, or being placed in children's homes where it is not possible for them to return.

Children in residential care are entitled to certain rights set out in Article 155 Family Code, including the right to alimonies, pension, grants and social payments due to them, preservation of the right to housing and the right to receive housing in accordance with housing legislation

The Guardianship Authorities have legislative responsibility for determining the appropriate placement of children. However, children appear to be placed in institutions through a number of routes with placement often being confirmed by the Guardianship Authority sometime after the event. Interviews indicate that children may be sent directly from the maternity hospital to a baby home if they are abandoned. Sometimes children are brought to the home by a parent and left, or are brought by the police, enforcement bodies or the prosecutors' office.

The Regulations of institutions rarely contain any criteria for placement. The Regulations for Baby Home 1 in Dushanbe certainly do not. In research carried out in this institution by Health Prom, which reviewed 20 files of children, 3 of the children were admitted at birth and never lived with the mother. A further 10 children

¹²¹ Regulations on Temporary Children's Centres, No. 774 of 15th December 2005.

had lived with the mother.¹²² Eight of the children were under the age of 1, while 10 were over one year of age. This is an interesting finding as it would appear that this latter group of babies were not abandoned at birth, but are cared for by their parent for a considerable period of time. Unfortunately, the research does not indicate that precipitating factor that caused the child to be placed in a baby home, but of the 10 cases for which a reason was given for placement, 4 of the children were abandoned, 4 were relinquished and 2 were placed for a 'temporary' period.

Few of the babies placed in the baby homes are adopted domestically. The reasons for this appear to be various and include the fact that the documentation required for adoption is voluminous and difficult to complete, adoptions are not actively encouraged, only children who are relinquished are clearly available for adoption and children in the baby homes do not tend to have good health and are therefore thought of as 'disabled' in some way, though there are few who would not benefit from adoption. A further reason is the lack of strategic planning on the part of the Ministry of Health, for whom child protection is not a major function.

There is little work to prevent institutionalisation. There is little available support for families to assist mothers to keep their children and a lack of family based social work. With respect to babies, there is a low level of interest at central government and NGO level, which has resulted in the failure to seek adoptive placements for these children who are regarded as being of low priority.

Recommendations

- Placement in residential care should be used only as a last resort and when it is in the best interests of the child. More community based services should be available at local level to prevent the unnecessary placement of children in institutions.
- Each child being referred for residential care should be assessed and have an individualised care plan developed.
- A regulatory framework should be established to ensure a standard process for the referral or admission of a child to residential care. This process should be overseen by a single gate keeping body.
- Admissions policies for residential institutions should be reviewed as part of the de-institutionalisation programme.
- Conditions in institutions should be monitored regularly by an independent body that is separate from Ministry overseeing the institution. This body should develop uniform guidelines for such inspections.
- Monitoring of state residential institutions should include assessment of gaps in the training and capacity of staff.

¹²² In five cases there was no evidence as to whether the child had lived with the mother before placement.

- Each residential care facility should have a child protection policy on which staff are regularly trained.
- Legislation should be developed detailing the responsibility of the local executive body and the services to be provided to children who are leaving care.
- Each child approaching leaving age or who is returning to their family should have an individualised after-care plan, which focuses on reintegrating the child into society and is prepared with the participation of the child while he or she is still in care.

Recommendations for baby homes

- Every child admitted to the baby home should be assessed and a care plan prepared. The aim of each child care plan should be for the child to spend a maximum period of 6 months in the baby home. If the child cannot return to the parents or to the extended family within that period, an adoptive placement should be actively sought and an adoption allowance should be paid to the adoptive family.
- The National Commission on Child Rights should review current policy on the placement of babies, and undertake some further research to determine the reason for placement. If, as suspected from the comments of interviewees, the reason is poverty, consideration should be given to effective family support, either through the provision of allowances or perhaps, more effectively, through the provision of day care to allow the mother to work to support herself and her children.
- There should be a progressive programme of closure of baby homes. Babies should be cared for by short-term guardians in a family setting, supervised by the new Commission on Child Rights. This would be in line with the UN Draft Guidelines and is likely to represent a considerable financial saving.

14. RESIDENTIAL CARE STANDARDS

The Family Code and the Constitution of the Republic of Tajikistan provide that all children, including those in residential care, are entitled to certain basic rights and interests. These fundamental rights include the right to leisure, education and healthcare and contact with parents and their family. The duty to protect the 'rights and interests' of children deprived of parental care lies with local Guardianship Authorities and, since August 2008, the Child Rights Commissions who absorbed the duties of the Commissions on Minors.¹²³

Responsibility for residential care homes lies predominantly with the Ministry of Education, which controls all homes for children deprived of family care other than the Baby Homes and the home for children suffering from tuberculosis, which are

¹²³ Articles 56 and 122 Family Code.

administered by the Ministry of Health.¹²⁴ However, existing legislation is not clear on which entity or entities are in charge of monitoring, inspecting and ensuring residential standards. Local Departments of Education through the Guardianship Authority are responsible for the 'maintenance, upbringing and education' of children in institutions¹²⁵ and the Commissions on Minors / new Commission on Child Rights are responsible for controlling 'conditions of keeping and educating children in boarding schools'¹²⁶ and have a right to inspect these facilities.¹²⁷ Without a clear understanding of who is accountable for monitoring standards and conditions in residential care, it is not clear that proper inspections are undertaken and acceptable standards maintained.

Article 3 of the UNCRC requires that States develop minimum standards for residential care facilities. The Standard Regulations on Boarding Schools¹²⁸ establish certain requirements for residential care units in line with the overall objectives of education and development.¹²⁹ Logistically speaking, the Regulations require that homes and schools be licensed and accredited¹³⁰, that teachers and staff are appointed and supervised by the Departments of Education¹³¹, and that there is a Pedagogical Council, Director and Methodological Council at each home governing the home and educational management.¹³² Provisions for infants at Baby Home Number One, which is located in Dushanbe and is under the administration of the Ministry of Health, focus heavily on medical treatment of 'sick children'.

The Regulations also mandate certain minimum conditions for children in residential care. They require that children in residential care receive material provisions including clothing, shoes, books, games, summer clothes and four nutritious meals a day. They also mandate that homes contain the facilities and rooms for the purposes of education, treatment and recreation.¹³³ The Regulations reflect an interest in protecting the rights and interests of children, including healthcare, education and leisure as stipulated in the UNCRC and in the Draft Guidelines. For example, they include provisions for summer care for children deprived of parental care, for educational programming, for medical care, for leisure activities and for vocational training.

However, in practice, the extents to which these standards are met by residential care facilities vary. Many institutions suffer from a lack of resources permitting a full vocational, educational and leisure curriculum. Coupled with a lack of fully trained staff, children may not receive full enjoyment of their right to education and leisure. Institutions can also suffer from a lack of adequately and appropriately trained staff that are competent to work with vulnerable children. Social work is a relatively new

¹²⁴ UNICEF statistics on institutionalisation in Tajikistan, 2008.

¹²⁵ Article 122 Family Code.

¹²⁶ Regulation 10 Regulation on Commission on Minors.

¹²⁷ Regulation 14a Regulation on Commission on Minors.

¹²⁸ Standard Regulation of Educational Institutions of Boarding School Type in the Republic of Tajikistan [hereinafter Boarding School Regulations] No. 347 of 30 June 2007.

¹²⁹ Regulation 10 Boarding School Regulations.

¹³⁰ Id. at Regulation 12, The Law About Licensing and other kinds of activity defines the licensing procedure.

¹³¹ Id. at Section 1, General Provisions.

¹³² Article 3.1 Charter of Baby Home 1.

¹³³ Regulation 44 Boarding School Regulations.

phenomenon in Tajikistan, largely under the control of the Ministry of Labour and Social Protection, who are responsible for the training and licensing of social workers.¹³⁴

While staff at the institutions are appointed by the Ministry of Education, it is not clear that they receive specialised training to work with children deprived of parental care or that this training is repeated. Both staff and children would benefit from the introduction of regular training, which would improve services for the children and increase staff competence and motivation.

It was evident from visits to several Internats that many facilities lack adequate heating, electricity and sanitation supplies and that many of the buildings are in a state of disrepair. Improving conditions is essential to creating an appropriate environment for child development, however, the authors understand that this is limited by financial constraints.

The reintegration and future prospects for children leaving care are cause for concern but the Standard Regulations are clear that children's homes should provide 'favourable conditions for upbringing, education and preparation of children for independent life'.¹³⁵ They also provide that children leaving care should be provided with a job by social service bodies.¹³⁶ Comprehensive care planning, programming and services should be established for children preparing to leave care to aid their reintegration into their communities and to help graduates become functioning members of society. Material support is provided for under Article 154 of the Family Code, which provides that children are entitled to receive pensions, grants and social payments, housing and special privileges in employment, including job placement, on leaving care.¹³⁷ However, it is not clear who is responsible for funding these payments or for arranging the special employment privileges. Furthermore, material support is not sufficient to ensure successful transition to living outside of institutions and must be complemented by psycho-social and vocational programming.

At present, none of the residential care facilities seems to have an impartial mechanism for children to bring complaints concerning their treatment or placement, as is recommended under the Draft UN Guidelines¹³⁸. At best, the Director of the institution may allow children to discuss such issues with him or her but many of the Directors spoken to by the authors appeared reluctant to admit that child abuse, either by parents or by staff members may arise. Given that most children in residential care have at least one living parent and that many children visit their parents during weekends, the lack of child protection awareness or policies is particularly concerning. The insufficiency of monitoring and lack of internal or external complaints mechanisms can leave children in institutions particularly vulnerable to neglect and abuse. However, the Deputy Prime Minister's Office has recently approved a Child Protection Policy for Closed Institutions and has requested that this be expanded to residential care after being piloted at the closed institutions.

¹³⁴ At present, social work training is predominantly provided by external bodies to the MLSP, by Stockholm University and NGOs working in the country including UNICEF, ORA International, Caritas and the Children's Legal Centre.

¹³⁵ Id. at Regulation 3(h).

¹³⁶ Id. at Regulation 22.

¹³⁷ Article 154 Family Code.

¹³⁸ Guideline 92 UN Draft Guidelines.

Recommendations

- The current residential care standards should be set by the National Commission on Child Rights according to international norms and be applied in all institutions.
- Staff of institutions should be specifically trained on standards.
- Institutions should be inspected on a regular basis to ensure that standards are met and adhered to.

15. THE DE-INSTITUTIONALISATION PROGRAMME

Children have a right to be brought up in a family or family-like environment and should only be institutionalised where it is in their best interests as a last resort for the shortest period of time necessary. According to the UN Draft Guidelines, States should 'actively develop' alternatives to institutionalisation 'in the context of an overall de-institutionalisation strategy, with precise goals and objectives'¹³⁹.

In 2004, the Swedish International Development Cooperation Agency (SIDA) funded a De-institutionalisation Project in Tajikistan. This project, supported by UNICEF and the Government of Tajikistan, aimed to promote the upbringing of children within a family environment by:

- Reducing the number of children placed in institutions and preventing unnecessary new admissions in the pilot institutions;
- Establishing a child protection department, the (Child Rights Departments) at local government level;
- Providing short-term social work training modules at national level; and
- Developing national policy guidelines for de-institutionalisation and creating alternative care programmes.¹⁴⁰

The de-institutionalisation programme established Child Rights Departments at local level in five, and subsequently nine, pilot areas. The immediate role of these Departments was to coordinate and supervise the deinstitutionalisation process in the pilot institutions. To this end, the CRDs were responsible for conducting assessments of families to determine the feasibility of reintegrating their children back with them and assisting with the reintegration process.

The drive for de-institutionalisation took place at five pilot institutions: four boarding schools and one children's home located in the same district as the five pilot CRDs. Of these, only one is still a boarding school with the others either closed or providing emergency accommodation and day care facilities. In total, 613 children were deinstitutionalised in the first two years of the programme. Simply removing children from residential care without careful planning and programming can be contrary to

¹³⁹ Guidelines 22 UN Draft Guidelines.

¹⁴⁰ *Promoting the Deinstitutionalisation Process in the Republic of Tajikistan: Project Evaluation*, Children's Legal Centre, 2006.

the best interests of the child. Once a child has spent more than six months away from the family, reintegration is generally problematic. Moreover, without the appropriate measures in place to prevent institutionalisation in the first place, the cycle of over-institutionalisation cannot be broken. There has been little follow up of the de-institutionalised children to assess how they fared, or the extent to which the services offered to these children on de-institutionalisation met their needs.

Despite the de-institutionalisation programme and the creation of the CRDs, children are still being referred to institutions and the vast majority of these children have at least one living parent. A key area of reform will be to reduce the need for institutionalisation by helping parents and families to meet the needs of their children in the home. This calls for the establishment of community-based services for families and children.

In practice, there are few viable alternatives to institutionalisation of children. On the one hand, day care centres and community support centres for parents might reduce the need for institutionalisation in the first place. However, removal of children from their families will sometimes be necessary and it is therefore essential to establish appropriate alternatives such as guardianship/fostering services and adoption.

Finally, while attitudes towards institutionalisation have changed since the de-institutionalisation programme started, all staff involved in the child protection system continual awareness training is needed to reinforce the approach that institutionalisation should be a last resort and resources for community based programmes prioritised. Competency based training should be delivered to staff working in the new Commission on Child Rights and in the Guardianship Authorities with the aim of raising their capacity to work effectively with families and children.

Recommendations

- Implementation of the de-institutionalisation programme should be prioritised, with particular focus on:
 - >Refining criteria for admission to institutions and providing necessary support to prevent institutionalisation;
 - >Providing assistance and support to de-institutionalised children who have reached the age of majority;
 - >Developing community-based care services, including day care, after-school care, respite care, rehabilitation centres and the guardianship system to both prevent institutionalisation and provide support to de-institutionalised children; and
 - >Raising awareness in the community of a child's right to be brought up in a family environment and of services available for vulnerable families.
- Strategies for closing or converting institutions should be based on the needs of the community and the children in those institutions.
- A training programme should be developed to build the capacity of staff in institutions for providing services in the community.

16. CONCLUSION

The Republic of Tajikistan has faced a wide range of difficulties in trying to implement an effective child protection system since independence. The Soviet structure, a civil war, the lack of a social work profession and limited resources have all contributed to a child protection system which relies heavily on institutionalisation and has not developed family support and community based services.

The government, through the National Commission on Child Rights and the MLSP, have, however, set themselves on a road to reform. This will be a difficult task, and one that requires considerable administrative, legal and practice reform. It is to be hoped that these recommendations will assist in that process.