

DRAFT

June 7 2011

Geneva, Switzerland
OHCHR, SRSG, IPU, NGO Committee Meeting on Legal Frameworks

Dr. Susan L. Bissell
Chief, Child Protection
Associate Director
UNICEF

**Alternative Care As Protected Space -
if not now, then when + if not us, then who?**

Introduction

Honoured guests, Members of Parliament, Experts, Ladies and Gentlemen, colleagues,

Thank you for your continued support in our collective effort to protect children – all children, everywhere – from violence, abuse and exploitation. With 150,000 children worldwide who are exploited in child labour, and more than 200,000 million without birth certificates, another 1 billion children living in countries and territories effected by armed conflict, and half the children in the work in detention being neither pre-tried nor pre-sentenced....well....our collective effort is timely, important, and – frankly – urgent.

UNICEF appreciates the kind invitation of SRSR Santos Pais, whom we hold in high regard, our wonderful IPU colleagues and leaders, the tireless Special Rapporteur on the Sale of Children, Child Prostitution and Pornography, and of course dear friends in the NGO and civil society world. It is, as always, an honour to be among you. I am here in my official role as the head of UNICEF's work in child protection globally, but I suppose what I really bring is some hands on 'roll the sleeves up' experience, wrestling with law reform, and what it means – and can and SHOULD mean – in the lives of real children.

The Intersection of Public and Private Law

Where do private and public worlds intersect in some very fundamental ways - in the life of a child. Since the Convention on the Rights of the Child was approved in 1989, the Hague Conference on Private International Law has approved three conventions relating to children. These are in addition to the Convention on Civil Aspects of Child Abduction, which were signed in 1980. The three newer conventions refer to adoption and inter-country adoption, recovery of child support and maintenance, and finally a convention related to matters of jurisdiction and other matters in the context of parental responsibility. So we have an impressive body of private law that is relevant to the protection of children – including in alternative care settings, and of course the CRC and its Optional Protocols. There are also universally agreed upon – if not legally binding – guidelines to protect children. Most relevant

for the focus of our deliberations are, of course, the Guidelines on Alternative Care of Children.

These two legal spheres – public and private - are complimentary in their intent. Article 21 of the CRC, however, challenges us just a little in its inclusion of adoption as a form of alternative care. National and inter-country adoption are, indeed, alternatives for children, however they have a permanent nature that is recognized in many – though not all - legal systems. When we think of alternative care in our discussions here I will refer to adoption and inter-country adoption. However consistent with the Alternative Care Guidelines I have just mentioned, we must consider permanent ‘solutions’ for children – like adoption - as a ‘separate-but-related’ category.

Systems and Norms and Child Protection

It is essential that we consider the legal frameworks protecting children from violence in alternative care and pre- and post-adoptive settings, in a broad context. What do I mean by this? First and foremost, legal reform in this area cannot be seen as yet another ‘vertical programme’. That is, we do ‘law reform’ here, and we figure all the rest out later. Law reform, as I am certain SRSB Santos Pais has already noted, is a process of social change, Our efforts to protect children from violence in all settings –including in institutions, and in the processes of adoption and foster care, for example – have to include laws,

together with budgetary commitments, training, concomitant policies, and more. In short, law reform and laws are part of an holistic child protection system.

I've mentioned social change. If law reform is part of a process – and UNICEF agrees with the SRSG that it is – then context matters. How willing or able are parents, officials, functionaries like judges and social workers and care providers, to accept the change? Contextual norms, at family, community and other levels, affects the ability of laws to protect children.

Let me give you an example or two of what I mean by this. In an Eastern European country with a UNICEF presence there was a focus on the de-institutionalization and protection of children. However, there was a gap in the numbers of foster carers to take care of the children leaving institutions. Where children were placed with foster families, the dearth of training and monitoring was glaring. Fostering as a form of alternative care was legislated, but not the norm. This is something for us to think about.

In a South-east Asian country UNICEF is assisting in, the faith based community plays a big role in supporting families. This builds on a culture of people leaving their children in 'alternative care' – a sort of boarding school type of system - with the leaders in this faith based community. It's a sort of 'leap of faith' in some ways, built on a norm, however where this is little in the form of oversight or monitoring. This is not to suggest that everything we do to protect children needs to be

legislated, but we do need to think about the alternative care settings in which we find children, which are wholly unregulated, and to make some decisions about what protection means in the absence of legislation.

Think about a small island country affected by a massive earthquake a year and a half ago. Thousands of institutionalized children were in the heart of the capital city, but they could not have been further from protection. They resided in those institutions, in wholly unregulated and oftentimes violent conditions. Happily, we are now supporting the registration of these institutions and the children in them. We are also, with a range of partners, helping the Government to introduce the Guidelines on Alternative Care.

A final example. I'm fresh off a plane from a Latin American country, where the protection of children is both urgent and important. It's a small country with, at this time, about 6000 children in institutions, countless more in the 'care' of NGOs and the faith based community, and endless numbers in families and communities where extreme violence is simply 'part of life'. I've seen a great deal in my UNICEF career, but nothing could have prepared me for what I saw, and what I heard. This is an important example of a nation with the presence of a robust judiciary, the existence of legal standards, and the inter-section of Hague and CRC. Even against this backdrop – and a quest by many in the country to end impunity for those violating the rights of children to protection – the violence statistics are mounting. Children are suffering from violence in alternative

care settings in the face of protection laws. Why? Peace, safety, security and the sanctity of childhood are not the norm.

Violence is the norm.

Children in alternative care settings that are the under the purview of the State are not compliant with protections standards. I visited alternative care settings operated benevolently, thankfully, but unregulated I hasten to add.

In this country, as in many, there is much to be done, to accompany legal standards to protect children from violence.

The CRC and The Hague – the big picture

To conclude, I would like to reiterate three key points:

First, with public and private international laws that we have, and other guidelines and standards, we are – as a global community – in a very good position to protect children from violence in institutions and other alternative care, or pre- and post-adoptive settings. In many cases these international standards need to be translated into national laws and policies.

Second, the legal standards that are developed nationally need to be seen as part of an integrated child protection system, not as a stand-alone measure. They need to be costed and financed....

And, third, we need to work together to address the norms, including in alternative care, that perpetuate violence.....

UNICEF stands ready to support.