

American University of Central Asia

Senior thesis

Legal Protection of Orphans from child abuse in
children`s residential institutions in Kyrgyzstan

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International and Business Law

Bishkek 2013

Outline of entire senior project:

Introduction

Chapter 1-Legal framework

1. Concepts, history of legal normative acts:
 - History and Concept of the Constitution of KR and international treaties;
 - History and Concept of the Code on Children of KR;
 - History and Concept of all other laws legal normative acts of KR regarding protection of children from abuse in children`s institutions;

Chapter 2-Enforcement of norms

1. Observation of the rights of the children in children`s institutions:
 - Rights of the children which are violated;
 - Types of violence in children`s institutions;
 - Violations in law system and law enforcement system;
 - Analysis of implementation of norms;

Recommendations

Conclusion

Bibliography

Abstract

This thesis is centered on question: Whether the Kyrgyzstan fulfils all the obligations on protection of orphans from child abuse in children`s residential institutions. While there is much research on child abuse in many countries, similar research in Kyrgyzstan is in its beginning phases. Child abuse has become a major issue that can no longer be ignored. It has been happening all over the world to many children, but many of these things are kept hidden, because the children are too scared to speak on these issues at children`s institutions. In this paper I intend to explain the forms of child abuse in detail, also it will show the analysis and conclusion of the survey on child abuse in children`s institutions, that was conducted through the monitoring by international and non-governmental organizations. As a result, having studied the issue on child abuse in our country, it can be concluded that we have many gaps in law system and law enforcement system, which in turn lead to violence in children`s residential institutions.

Introduction

In every country and in every society there will always be orphans and children who, for various reasons, are left without parental care. In this case, the society and the state take care of the development and education of these children. A child, who lost his parents, lives in a special and truly tragic world. The need to have a family, a father and mother is one of the strongest needs of the child. Children, for whom there is no one to take care, usually live in children`s residential institutions. Children`s residential institutions are special institutions, in which children live the whole time, which means every day and every night. These institutions include not only children`s homes and orphanages, but also many other institutions for children, such as rehabilitation centers for children, centers for disabled children, children`s prison, special centers for children who are in conflict with the law and so on. But in terms of my senior project, I will touch only children`s homes for orphans and boarding institutions. The issue that I will raise concerns children who are victims of any kind of abuse in children`s and boarding institutions. As we know, all children have the right to be protected from violence, exploitation and abuse. Violence, exploitation and abuse are often practiced by someone known to the child, including parents, other family members, caretakers, teachers, employers, law enforcement authorities, state and non-state actors and other children. Violence, exploitation and abuse occur in the homes, families, schools, care and justice systems, workplaces and communities across all contexts, including as a result of conflict and natural disasters. Many children are exposed to various forms of violence, exploitation and abuse, including sexual abuse and exploitation, armed violence, trafficking, child labor, physically and emotionally violent child discipline, and other harmful practices. There is significant evidence that violence, exploitation and abuse can affect the child`s physical and mental health in the short and longer term, impairing their ability to learn and socialize, and impacting their transition to adulthood with adverse consequences later in life.

As I mentioned above, in my thesis I am going to write about child abuse which takes place not in families, schools or workplaces, but specifically in children`s institutions. In the Kyrgyz Republic there are the following types of state boarding institutions for orphan children and children deprived of parental care; These are pre-school children`s home, children`s home of a mixed type (for children of preschool and school age and preschool age only), boarding school for orphans and children deprived of parental care (common and supporting) and children`s home of family type.¹ The activity of children`s homes is based on the principles of democracy, humanism, availability accessibility, common values priority, citizenship, free personality development, protection of children`s rights and interests, and a secular-type of education autonomy. For non-governmental children`s homes, regulations “On state children`s home of the system of the Ministry of Education, Science and Culture of Kyrgyz Republic”, adopted by an order of the Ministry of Education, Science and Culture dated April, 1998 № 168/1 performs the functions of a modal one.² Every state has problem with child abuse and there are many children who suffer from violence in children`s institutions and Kyrgyzstan is not exception to that. So my thesis is devoted to the analyzing of the legal framework regarding the issue of child abuse in children`s institutions.

International treaties on Children

Understanding the importance of protecting the rights and freedoms of the younger generation, the international community has developed a strategy and tactics to protect and defend the rights and freedoms of minors. The basic principles of these strategy and tactics are set out in the following international instruments: the Convention on the Rights of the Child, the Geneva Declaration of the Rights of the Child, the Declaration of Rights of the Child and of course in national legislation such as Constitution of the Kyrgyz Republic, Code on Children of the Kyrgyz Republic and other

¹ Modal Regulations “On state boarding educational institutions for orphan children and children deprived parental care”, adopted by a resolution of the government of the Kyrgyz Republic ,dated December 21, 1995 № 556.

² The Regulations “On state children`s home of the system of the Ministry of Education, Science and Culture of Kyrgyz Republic”, adopted by an order of the Ministry of Education, Science and Culture, dated April , 1998 № 168/1.

normative legal acts. It is important to mention that international law prevails over national legislation. It is written in Article 7 of Family Code of the Kyrgyz Republic and in Code on Children of the Kyrgyz Republic that in case if in international treaty which is entered into force there are set other rules than rules provided by national legislation of Kyrgyz Republic, the rules of international treaty must be applied. The Constitution of Kyrgyz Republic is a supreme law of this country.³ The Universal Declaration of Human Rights which was adopted by the UN General Assembly on 10 December 1948 was the result of the experience of the Second World War.⁴ World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The entire text of the Universal Declaration of Human Rights was composed in less than two years. At a time when the world was divided into Eastern and Western blocks, finding a common ground on what should make the essence of the document proved to be a colossal task. The Universal Declaration of Human Rights consists of 30 rights.⁵ This paper will consider Articles (1) and (2), meaning that all human beings are born free equal in dignity and rights. Everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.⁶

Besides international treaties on protection of the rights of the children like Universal Declaration of Human Rights, there are also special international bodies which protect the rights of the children. Let`s start with the main international body on protecting of children, which is United Nations Children`s Fund. It is part of Global Movement for Children, which aimed to improve the life of every child. UNICEF`s mission is to advocate for the protection of children`s rights, to help

³ KR Constitution, Art 6, amend (2010)

⁴ Available at <http://www.ohchr.org/en/udhr/pages/introduction.aspx>

⁵ Available at <http://www.un.org/en/documents/udhr/index.shtml>

⁶ Universal Declaration of Human Rights (UDHR), Art (1), (2), adopted in 1948

meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided in doing this by the provisions and principles of the Convention on the Rights of the Child.⁷ The Convention on the Rights of the Child is the first legally binding international instrument to incorporate the full range of human rights—civil, cultural, economic, political and social rights.⁸ In 1989, world leaders decided that children needed a special convention just for them because people under 18 years old often need special care and protection that adults do not. The leaders also wanted to make sure that the world recognized that children have human rights too.

The Convention sets out these rights in 54 articles and two Optional Protocols.⁹ It spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child.¹⁰ Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services. By agreeing to undertake the obligations of the Convention which means by ratifying this Convention, national governments have committed themselves to protecting and ensuring children's rights and they have agreed to hold themselves accountable for this commitment before the international community. States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.¹¹

Kyrgyzstan is a party to this Convention; therefore it is obliged to observe all the provisions of this Convention. In 1994, Kyrgyzstan ratified the UN Convention on the Rights of the Child, which

⁷ available at http://www.unicef.org/about/who/index_introduction.html

⁸ Convention on the Rights of the Child (CRC), adopted in 1989

⁹ Convention on the Rights of the Child (CRC), adopted in 1989

¹⁰ Convention on the Rights of the Child (CRC), adopted in 1989

¹¹ Available at <http://www.unicef.org/crc/>

includes reference to the rights of children deprived of their family environments.¹² The Convention requires States Parties to provide for adoption the law in the best interests of the child, to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, and provide rehabilitative care and treatment for children who have suffered abuse or neglect.¹³ Under Article 25 of the Convention, States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.¹⁴ The Convention provides the requirement to reform the system of care for orphans and children deprived of parental care throughout the world, as life in institutions interferes with healthy development and is harmful for children.

There are several rights in Convention relating to the topic on child abuse. As my topic is about children who were victims of violence, we will cover those Articles, which discuss the prohibition of any kind of discrimination and abuse. Article 2 is about non-discrimination, it says that Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.¹⁵ Article 19 states that Children have the right to be protected from being hurt and mistreated, physically or mentally.¹⁶ Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

¹² available at http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11&chapter=4&lang=en

¹³ See *id.*, Convention on the Rights of the Child

¹⁴ Convention on the Rights of the Child, (CRC), Art 25

¹⁵ Art 2, Convention on the Rights of the Child

¹⁶ Art 19, Convention on the Rights of the Child

In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is prohibited.¹⁷ There are ways to discipline children that are effective in helping children learn about family and social expectations for their behavior – that are non-violent, appropriate to the child's level of development and take the best interests of the child into consideration. In most countries, laws already define what sorts of punishments are considered excessive or abusive. It is up to each government to review these laws in light of the Convention.

Under Article 4 of the Convention on the Rights of the Child, Governments have a responsibility to take all available measures to make sure children's rights are respected, protected and fulfilled.¹⁸ When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children's rights and create an environment where they can grow and reach their potential. Now, we will discuss the legislation of Kyrgyz Republic, specifically the legal normative acts concerning the protection of the rights of the children.

Regarding the domestic laws and norms on protection of children, it is important to start from the supreme law of the Kyrgyz Republic which is Constitution. The Constitution was adopted on 5 May 1993; a year and a half after the country had gained independence from the former Soviet Union.¹⁹ The 1993 constitution had been amended several times: first on 10 February 1996, then on 2 February 2003, and finally twice in quick succession on 9 November 2006 and 15 January 2007 after the Tulip Revolution of March 2005. The last amendment was on 27 June of 2010.²⁰

¹⁷ See *id.*, Convention on the Rights of the Child

¹⁸ Art 4, Convention on the Rights of the Child

¹⁹ Available at <http://www.wipo.int/wipolex/en/details.jsp?id=10576>

²⁰ K.R. Constitution, last amendment in 2010

As Constitution of the Kyrgyz Republic is the main law, all the norms and obligations prescribed by it, must be followed. According to Article 6 point 1 of the Constitution, the Constitution has the supreme legal force and direct application in the Kyrgyz Republic.²¹ Under point 3 of this Article, international treaties to which the Kyrgyz Republic is a party that have entered into force under the established legal procedure and also the universally recognized principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic. The provisions of international treaties on human rights shall have direct action and be of priority in respect of provisions of other international treaties.²² Thus, UDHR and CRC are part of the legal system.

In Article 16 of Constitution it is said that no one may be subject to discrimination on the basis of sex, race, language, disability, ethnicity, belief, age, political and other convictions, education, background, proprietary and other status as well as other circumstances.²³ Article 22 point 1 says that no one may be subject to torture as well as other inhuman, cruel and degrading forms of treatment or punishment.²⁴ In addition, in Article 23 it is written that exploitation of child labor, slavery and human trafficking is prohibited in the Kyrgyz Republic. As this paper is related to the orphans, it is necessary to highlight the Article discussing their rights. So, Article 36, point 2, 3 and 4 stating that each child shall have the right to the level of life, necessary for his/her physical, mental, spiritual, moral and social development.²⁵ The responsibility for ensuring living conditions necessary for the development of a child shall be borne by each of the parents or other persons rearing a child within their capacity and financial possibilities. The state shall ensure the maintenance, upbringing and education to child orphans and children deprived of parental care. All these children`s rights are like children`s immunity, and I am mentioning these articles on children`s rights in order to show based

²¹ Art 6, Constitution of KR

²² Art 3, Constitution of KR

²³ Art 16, Constitution of KR

²⁴ Art 22, Constitution of KR

²⁵ Articles 23, 36 point 2, 3, Constitution of KR

on what the Government of our country must implement its obligations on protection of the rights of the children. Besides the Constitution of the Kyrgyz Republic, there is a special Code on Children, which is devoted specifically to the rights of the children.

On May 31, the Parliament of Kyrgyzstan adopted the new reduction of the Code on Children of the Kyrgyz Republic. The New Code on Children contains provisions on the protection of children from vulnerable families, children with disabilities, children in difficult situations, as well as on the transfer of powers to protect the rights of children to local governments. This Code sets out the basic guarantees of rights and legal interests of children in the Constitution of the Kyrgyz Republic, and aims to ensure the state standard of living adequate for physical, mental, moral, spiritual and social development of children.²⁶

The Code on Children regulates the protection of the rights and interests of children in the territory of the Kyrgyz Republic, as well as children - the citizens of the Kyrgyz Republic outside of the Kyrgyz Republic. Article 5 of the Code defines the orphans as the children aged 18 or younger, who lost both parents or have a single parent or parents are unknown. In addition, this Article includes the best interests of the child such as inadmissibility of discrimination based on race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, or any other circumstances and the protection of the child from all forms of violence.²⁷ Under Article 16 point 1, every child has the right to protection of honor, dignity and integrity of the person. The state provides personal immunity of the child, protects him or her from the physical and (or) mental, sexual violence, cruel, brutal, or degrading treatment, involvement in crime and antisocial actions and other actions that infringes on the Kyrgyz human rights and freedoms of citizen.²⁸

²⁶ Code on Children of the Kyrgyz Republic, last amendment in 2012

²⁷ Art 5, Code on Children of KR

²⁸ Art 16, point 1, Code on Children of the KR

While we have seen the legal requirements protecting the rights of the child, we know that they also must be implemented in reality. In order to make sure that these rights work in practice, which means not only de jure, but also de facto, we also have a specific procedure for implementation the rights by certain organs and state officials of the country. In the Code on Children of the Kyrgyz Republic it is written that state policy in the field of protection of the rights and interests of children is the priority for the public authorities and local government. Under Article 17 of this Code, the Government of the Kyrgyz Republic is responsible for ensuring the rights and interests of children, as well as other bodies of executive power, bodies of local self-government, courts, prosecutors, Akyikatchy (Ombudsman) of the Kyrgyz Republic.²⁹ However, this thesis is not about children generally, it is specifically about the orphans who were victims of any kind of abuse in children institutions. That is why it will cover only those organs of executive power, which are responsible for abused orphans. But, first of all I want to write more deeply about violence in children institutions itself, what types of violence exist there, and also I will provide some cases which will describe the situation with orphans who are abused in children institutions.

The government of the Kyrgyz Republic and United Nations Children`s Fund (UNICEF), within the framework of Cooperation Program, is working at resolving the problem of protecting children from violence, exploitation, negligence and discrimination in children`s institutions. As I wrote in chapter1 of my thesis, the United Nations Children`s Fund it is a part of the Global Movement for Children which is broad coalition dedicated to improving the life of every child. In other words UNICEF is the driving force that helps build a world where the rights of every child are realized.³⁰

Currently in children`s institutions throughout our country, there is a big problem of child abuse. There is direct evidence that employees abuse their responsibilities and facts of physical and

²⁹ Article 17, Code on Children of KR

³⁰ available at http://www.unicef.org/about/who/index_introduction.html

sexual abuse that have been committed by both employees and among children at these institutions.³¹ A few years ago UNICEF conducted a sociological survey to study a problem of violence against children in children's institutions of all types.³² From this survey, there were developed recommendations and analysis of a possibility to introduce efficient measures to reveal cases of inadequate treatment of children deprived of parental care and also procedures for the rehabilitation of children who have suffered violence. The main goal of this survey was to reveal and assess the existing regulations of violence against children in children's institutions. Another aim was to identify and analyze the observance of children's rights in accordance with Convention on the Rights of the Child in children's institutions of Kyrgyzstan.

As it turned out during the survey, not all the children's rights are observed in children's institutions. They found violations of the fundamental rights of the child, such as right to an adequate life level. This right includes the basic things such food, heating, clothes, water supply, toilet, sanitary units, washing and cleaning items and etc. Children in children institutions do not get even basic school education, which means that it is a violation of the right to education. The problem is that in all boarding schools and children's homes there is a shortage of teachers.³³ As a rule, experienced teachers are not interested in such work because of low salaries and difficult labor conditions.³⁴ The right to health protection also is not observed. None of the institutions are able to render assistance to children with serious diseases. In wintertime a lot of children have colds. In some of them (exclusively children's homes) there are isolation wards for children's treatment. They seldom have heating and often require repairs.³⁵

It is also important to note that because failures to observe the right to access to information, the children in children institutions do not know what their rights are and how they must be

³¹ Report of UNICEF "The Untold Stories of Silent Walls", page 9, 10

³² Report of UNICEF "The Untold Stories of Silent Walls", page 10

³³ See id, Report of UNICEF, page 10, 11

³⁴ See id, Report of UNICEF, page 10, 11

³⁵ See id, Report of UNICEF, page 8

protected.³⁶ In the majority of institutions, children do not know the content of provisions of their institution's Regulation and do not have a clear idea about their rights and obligation. According to institutions' employees, in practically all institutions they conduct various activities to educate children and provide them information about their rights in the form of informational lessons, conversations and trainings on children's rights and norms of the Convention on the Rights of the Child. In some cases caregivers include lessons on children's rights in training plans and develop various handouts on the topic. On the other hand, the survey identified that children frequently do not understand the content of the Convention on the Rights of the Child and have very superficial knowledge about their rights.³⁷ Besides children, caregivers themselves are not fluent in children's rights and they do not really know how to work with children. In almost all institutions, employees have access to the Regulation of the institution. It is such document, which provides certain rules and instructions on behavior with children. In most cases caregivers' familiarization with the text of the Regulation and functional instructions takes place at the time of recruitment. Caregivers rarely re-read or refreshed their knowledge of the Regulation. The majority of caregivers are rarely guided with the provisions of the Regulation in their work with children, relying on their experience and common sense. In many institutions there is a deficit of qualified experts for the positions of caregivers and teachers.³⁸ This is related to unattractive conditions and a salary. In addition, there is a high turnover among those employees. Due to a shortage of qualified personnel, frequently persons without adequate education, experience or long-term plans to work in this area are recruited as caregivers.

The caregivers' knowledge of norms and principles of the Convention on the Rights of the Child (CRC) in the majority of cases is limited; caregivers rarely review the CRC content independently. Many caregivers know the CRC content poorly because they read it long ago or did not understand the meaning. In the majority of institutions, the activity of administration in

³⁶ See id, Report of UNICEF, page 12

³⁷ See id, Report of UNICEF, page 12

³⁸ See id, Report of UNICEF, page 13

exercising control over caregivers' knowledge of CRC norms and principles and application of CRC norms and principles in everyday work with children is inadequate.³⁹ Moreover, the conditions of work for caregivers are very bad; therefore this also affects the quality of work with children. The majority of institutions' caregivers are not able to conduct permanent supervision of children. Caregivers frequently leave children without care and are unable to control situations or resolve conflicts among children, stop various abuses, or prohibit the use of alcohol and drugs.⁴⁰ In other words children are more exposed to violence in institutions where caregivers have to work with big groups of children.

Due to the fact that children do not know their rights and how to use them, they cannot protect themselves from any kind of abuse in children` institutions, which is a huge and unsolved problem. The closed and often isolated nature of institutional care, together with the fact that many resident children are unaware of their rights and are powerless to defend themselves, make institutionalized children significantly more vulnerable to violence. Various studies have recorded a wide range of abuses against children in institutions.⁴¹ These include systematic rape and other forms of sexual abuse; exploitation, including trafficking; physical harm such as beatings and torture; and psychological harm including isolation, the denial of affection and humiliating discipline. According to report that was conducted by UNICEF, the most common forms of violence in children institutions are the physical, emotional and sexual abuses.⁴²

Children living in all institutions are subjected to forms of physical abuse. In many organizations the use of physical violence is a daily practice.⁴³ Physical violence in various forms is broadly used by caregivers, teachers, and night nurses and in rare cases by cooks and/or administrators. The use of physical violence is an element of educational culture in many institutions,

³⁹ See id, Report of UNICEF, page 13

⁴⁰ See id, Report of UNICEF, page 13

⁴¹ Report of UNICEF, page 14,15

⁴² Report of UNICEF, page 14, 15

⁴³ Report of Youth Human Rights Group, "The Observation of human rights in children`s residential institutions", 2009-2010, page 77

where practically every child risks being beaten or humiliated. In several institutions there are no any mechanisms of control over the actions of caregivers by the administration. The system of children's complaints does not work because of caregivers or teachers suppression.⁴⁴ Children are frequently abused by caregivers and teachers without any reason. Caregivers use various forms of physical violence against children.⁴⁵

Corporal punishment is widely used in children's institutions. In many institutions, such demonstrations of physical violence as kicks, punches on the head, and stabs in the back are common and are not considered by children as cruel punishments. It is considered as an educational methodology. Caregivers usually punish children for the fact that they do not clean up the playroom, do not take off footwear and walk on the carpet. In addition, there are cases when caregivers applying measures of physical pressure, such as taking away personal belongings from children. Most frequently they take watches, new things, sunglasses and so on. Disobedient children who are difficult to teach, who are inclined to hooliganism, running away, who are in violation of the institution procedures, infringement of responsibilities and so on are punished more frequently and severely.⁴⁶ According to one child living in the institution, caregivers beat more frequently children who do not have parents or people close to them, so there is no one for them to complain to.⁴⁷

Examples; Interview between interviewer and child:

I: Did caregivers beat you?

C: When we come to a playroom they beat us because children leave the toys all over the room and do not put them in their place when they leave they go out and leave everything for me to clean up. They say that if I do not clean up they will beat me.

⁴⁴ Report of Youth Human Rights Group, "The Observation of human rights in children's residential institutions", 2009-2010, page 78

⁴⁵ Report of UNICEF, "Untold Stories of Silent Walls", page 16

⁴⁶ See id, Report of Human Rights Group, page 78

⁴⁷ See id, Report of UNICEF, "Untold Stories of Silent Walls", page 16

C: - Once I was beaten by a caregiver, one girl took the bedclothes from my sister because she lost hers and I told her to put the bed clothes back but she went and complained to a caregiver saying that I had beaten her. The caregiver strongly beat my back after that.

I: - What did she beat with?

C: - With her hand.

I: - Did you to take the bedclothes?

C: - She asked me why I had taken it and I said that it was the bedclothes of my sister and if she did not believe I could show her the name in the corner of the bedclothes. We came to see what was written there and actually there was the name of my sister ...⁴⁸

The physical abuse in children`s institutions is common not only between children and caregivers, but also among children themselves. Use of physical abuse is an element of relationships among children. In children`s institutions, inevitably they formulate a children`s hierarchy, which is maintained and changed mainly through the use of physical force.⁴⁹ Large concentrations of children, lack of adequate employees` control and a lack of a system for launching children`s complaints promote physical abuse among children. The results of this survey demonstrate that the most frequent and violent forms of physical abuse exist in the institutions where employees practice the same active use of violence against children.⁵⁰ Disclosure of the facts of physical abuse is mainly made through the complaints by children. Nevertheless children of middle and older ages do not report violence against them because they are afraid of mental pressure and revenge of children of the same age. In some cases caregivers do not render any assistance in responding to children`s complaints or ignore the cases of abuse.

Examples:

⁴⁸ Report of UNICEF, "Untold Stories of Silent Walls", page 45

⁴⁹ Report of UNICEF, "Untold Stories of Silent Walls", page 17

⁵⁰ See id, Report of UNICEF, "Untold Stories of Silent Walls", page 17, 18

Frequently older children beat younger ones to maintain their higher position in the hierarchy. Such actions can take the form of beating without any reason, insults, beating with the aim of exploitation, and other displays of the “rule of the elder.”

I: - Do elder pupils also beat you?

C: - Yes.

I: - And who do they beat?

C: - 11th grade pupils beat.

I: - Do they beat you for being small?

C: - Yes.

I: - With what do they beat?

C: - Kicks.

I: - Why do they choose you?

C: - Once they simply kicked...⁵¹

In some cases younger and weaker children give their portion of food to older or other children if they demand it. Due to the fact that caregivers are close and look after the children when they have meals in the dining room it happens rarely. In some institutions younger children are forced to give massages too elder children, or wash their feet:

I: - Did they force you to give a massage every day?

C: - Yes.

I: - And for how long: a month, a year?

C: - For instance, if one girl liked how you do and she calls you every evening until she goes asleep I must do her massage.

I: - How long did you do it?

⁵¹ See id, Report of UNICEF, “Untold Stories of Silent Walls”, page 57

C: - About a month.

I: - And did you do to others afterwards? Did you go and do massage to everybody?

C: - No, only to three, my hands would get tired...⁵²

According to survey conducted by UNICEF, many children in children`s institutions are subject to exploitation as by caregivers, and by other children. The practice of exploitation of children by employees is frequent in institutions located in rural areas. Usually caregivers use children for doing types of work in their houses: cleaning, washing and so on. Caregivers hide it from the administration, using the moments when administrators are absent.⁵³ Moreover, caregivers use the assistance of their colleagues who “shield” them if necessary. The exploitation of children takes place in institutions where there is no a system for reporting children`s complaints or other mechanisms of control over employee`s actions. Exploitation among children is present in various forms in all the institutions. The most widespread are cases when elder children make younger ones to wait on them, bring them something (water, cigarettes, drugs.), or do certain work (work on duty, cleaning, making the bed, washing and so on).⁵⁴ There are also cases when elder children force younger children to give them massages or wash their feet. In many institutions elder children exploit younger ones, forcefully taking their New Year presents, collecting some kind of “tribute” from the younger children, making them sell something, and bring them money. Practically always children use physical and emotional pressure. Often children do it secretly from employees, choosing the time when they are away, closed in their rooms, or secluded in other places. In the majority of cases the victims are afraid to make complaints to employees because it leads to revenge from those who committed the violence.⁵⁵

Now, let`s define the next form of violence in children`s institutions which is emotional abuse. In all institutions there are symptoms of emotional violence committed by caregivers and

⁵² See id, Report of UNICEF, “Untold Stories of Silent Walls”, page 58

⁵³ See id, Report of UNICEF, “Untold Stories of Silent Walls”, page 18

⁵⁴ See id, Report of UNICEF, “Untold Stories of Silent Walls”, page 18, 19

⁵⁵ See id, Report of UNICEF, page 15

teachers against children in the form of shouting, threats, or insults. Most frequently caregivers, teachers and other employees use such methods in respond to children’s disobedience, abuse and other offences. For many caregivers and teachers emotional measures of influence are a part of educational and training methodology. In many cases employees believe such methods of work are necessary because they work with “children from children’s home,” bearing in mind that it difficult to teach such children. There are cases when employees label children calling them “orphans,” “bastards,” and so on.⁵⁶

Examples:

The use of foul language and insults both by caregivers and teachers is especially frequently met some state children institutions with a big number of children (children’s homes, boarding schools, supporting boarding schools). Moreover, in those institutions there are malicious insults made by caregivers with the use of emotional abuse. Many employees of such type of institutions have biased and humiliating attitudes toward children based on negative stereotypes of “children’s homes children.” Due to that reason caregivers and children believe it is necessary to beat, shout, and insult children.

I: - How do they offend?

C: - Use foul language.

I: - Do caregivers use foul language?

C: - Yes.

I: - What foul words do they use?

C: - They use.

I: - What foul language do they use?

C: - They use foul language, I do not know.

I: - You cannot say this word; do they say “stupid”?

⁵⁶ See id, Report of UNICEF, page 15

C: - Yes.

I: - What words do they use?

C: - Different words...⁵⁷

Emotional abuse is also common among children themselves. The most widely spread form of emotional abuse among children is insulting and humiliation with the use of foul language. Certain groups of children who occupy the lowest hierarchy in an institution are subject to especially intensive emotional abuse. Emotional abuse is used among children in combination with physical abuse or separately.⁵⁸ Alongside with physical abuse, emotional abuse is used by children to support superiority of one child over another. In the majority of cases, the offender is not punished because it is difficult for a caregiver to determine who is guilty. In some cases caregivers do not interfere in cases of emotional pressure used by children believing that the children will settle that themselves. Insults and humiliation with the use of foul language is the most widespread form of emotional abuse among children. Though in majority of cases, this happens with children only in some situations: during games, quarrels, and so on. This is quite frequent in cases when oral insults, humiliating nicknames and offenses used are against a specific category of children. In such cases the use of mental pressure with insults is part of maintaining a hierarchy status among children as well as being one of the forms of domination of a certain group of children over the other. As a rule, the use of various forms of emotional abuse among children takes place in the absence of employees. In many cases employees were not able to catch and punish guilty children because it was done secretly from the others. In other cases caregivers do not pay much attention to the complaints of children about insults and the use of foul language and do not investigate the situations. The most serious forms of emotional abuse among children are practices in institutions where there is no adequate employees' control over children.⁵⁹

⁵⁷ See id, Report of UNICEF, "Untold Stories of Silent Walls", page 65

⁵⁸ See id, Report of UNICEF, page 15

⁵⁹ See id, Report of UNICEF, page 15

Most of all, I was surprised by the fact, that there is a sexual abuse in children`s institutions. This form of violence is the most cruel and disgusting. According to survey of UNICEF, Sexual abuse committed by children institutions` employees against children takes place in 2 out of 12 institutions. Those institutions investigated are state organizations where the number of children exceeds 90 children.⁶⁰ Sexual abuse committed by employees takes place due to several reasons. First of all, there are no mechanisms for administration control over such employees. Secondly, the offender frequently enjoys the support of other employees, who ignore certain actions and “shield” a colleague. The survey of UNICEF disclosed various forms of sexual abuse committed by employees: demonstration of porno films, touching, caressing, raping, and so on. In many cases of sexual harassment, offenders used physical hitting, beating and emotional abuse such as threats and insults.⁶¹ Usually, victims of sexual abuse are subject to physical and emotional pressure of children the same age who are aware of the facts of sexual abuse. Unfortunately, children in children`s institutions are subjects to violence not only by employees, but also by other children. Due to the fact that most sexual violence takes place at nighttime, inadequate employees` control is one of the reasons of such cases.⁶² Frequently this is related not only to a shortage of night working personnel but also with negligence of employees working at night. Serious cases of sexual abuse among children take place in institutions where employees themselves practice various forms of violence (including sexual abuse). In those institutions there is no system for launching complaints and employees cannot permanently supervise the children.⁶³

The research of UNICEF identified five factors of emerging of sexual abuse committed by employees. First of all, there is a lack of adequate control exercised by employees in the evening and night time (nurses, night caregivers). In some institutions, night employees work ineffectively. In

⁶⁰ See id, Report of UNICEF, page 16

⁶¹ See id, Report of UNICEF, page 16

⁶² Report of UNICEF, “Untold Stories of Silent Walls”, page 17

⁶³ Report of Youth Human Rights group, “Observation of Human Rights in children`s residential institutions”, 2009-2010, page 80

particular, in one such institution where bedrooms of boys and girls are situated on different floors, night employees do not control the situation because they often sit together and talk and sometimes drink vodka. Besides, there is a possibility of entering into bedrooms through alternative entrances, which are not controlled by night employees.⁶⁴ Secondly, there is participation of other institution employees in committing sexual abuse against children. In all cases of committing sexual violence against children, apart from an employee-aggressor there participated also other employees who shielded the aggressor, who shut their eyes to some aggressor's actions, intimidated victims to keep everything in secret, and allowed an aggressor committing actions prohibited in the institution such as taking children out of the institution territory, showing porno films, going into children's bedrooms at night, and so on. Often other employees knew about the facts of an aggressor's sexual harassments.⁶⁵ Thus a child becomes a victim not of an employee-aggressor but a whole group of employees acting conjointly with an aggressor.

Examples:

In one of the institutions, in the course of the survey there were identified incidents of sexual abuse where some employees knew about it but kept silent, or shielded a teacher aggressor in every way. When a girl who was the subject of the teacher's harassment told a female teacher about it, the teacher told her to keep quiet and threatened telling that if someone else knew about it she would suffer:

- "I immediately told other girls and then to a female teacher. She said, "Do not tell anybody, if there are people who will tell, you will suffer and will treat you bad ...". After that I did not tell anyone."⁶⁶

Thirdly, the results of the survey demonstrate that cases of sexual abuse take place in institutions with a widespread practice of physical and emotional abuse committed both by employees against children and amongst children themselves. In those institutions sexual abuse is

⁶⁴ Report of UNICEF, "Untold Stories of Silent Walls", page 18, 19

⁶⁵ See id, Report of UNICEF, "Untold Stories of Silent Walls, page 19

⁶⁶ See id, Report of UNICEF, "Untold Stories of Silent Walls, page 69

one of the elements of a repressive institutional culture, where use of violence is a key practice.⁶⁷ Fourthly, this is a lack of administrators' control over the work of caregivers, teachers and night employees (night caregivers, nurses). It is specifically more relative to employees, who with a big share of probability are able to cause damage to children. And finally, there is a lack of direct contact and communication channels for launching children's complaints to the administration and authorized bodies.⁶⁸ As it will be mentioned below, it is common that children meet strong resistance of the caregivers, teachers and other employees in cases when children want to tell or complain to someone.

Recommendations

All States have the obligation to protect all children from all forms of violence, wherever they are placed and irrespective of who is providing their care. To effectively prevent and address violence against children in care system, a range of actions must be taken, and a variety of organizations and constituencies need to be engaged. It is essential that action plans be formulated, costed and fully discussed in order to bring societies 'on board' with their objectives. In doing so, the voices of children and their families must be listened to and heeded. A variety of responses is required to prevent and respond to violence against children in care system. As with other settings in which violence against children occurs, primary prevention to avoid violence before it takes place in institutions is highly important.

It is also necessary to establish preventive measures. For example, in one of the children adaptation and rehabilitation centers the director directly speaks to children, pushing them to establish a direct contact and complaints channel. The director also instructs caregivers on duty to

⁶⁷ See id, Report of UNICEF, "Untold Stories of Silent Walls, page 19, 20

⁶⁸ Report of UNICEF, "Untold Stories of Silent Walls", page 20

disclose and inform about the facts of various types of violence among children.⁶⁹ Children should have opportunities to express themselves freely and verbalize their concerns, particularly for those reluctant to access formal complaints mechanisms. Children and their families should also have an appeals process if they are not satisfied with the response to their complaint. The secondary prevention measures focused on responding immediately to violence in institutions.⁷⁰ Existing institutions and all alternative care placements must be made safe places for children. These include better training and appropriate remuneration for staff, more and better services to meet a wide range of children's needs, including those related to sex and disability, improved supervision and administrative transparency, and more openness to the voices and involvement of children and their families.

Also essential is action to address the impunity of those who are responsible for violence against children, by establishing effective and transparent monitoring, investigation and accountability mechanisms. Legislation must ensure that simple, accessible, independent and safe complaint mechanisms should be provided to children in institutions.⁷¹ Children and their representatives should also have access to an appeals process if they are not satisfied with the response to their complaint. Moreover, there should be effective sanctions against perpetrators. For example, the Government should adopt and apply a continuum of appropriate criminal, civil, administrative and professional proceedings and sanctions against individuals who are responsible for violence against children as well as against those who are responsible for institutions where such violence takes place.⁷²

According to research about child abuse in children's institutions conducted by UNICEF, the recommendations are the following:

⁶⁹ See id, Report of UNICEF, "Untold Stories of Silent Walls", page 77

⁷⁰ Report of UNICEF, "World Report on Violence against Children in Care Institutions", page 217

⁷¹ World Report on Violence against Children in Care Institutions, page, 216-217

⁷² See id, World Report on Violence against Children in Care Institutions

- 1) Strengthen control over observation of norms and regulations of the Regulation by institution employees, paying special attention to caregivers and teachers;
- 2) Regularly update internal normative documents of institutions in accordance with the changes of the legislation of the Kyrgyz Republic dealing with protection of child's rights;
- 3) Develop internal normative documents based on the current legislation of the Kyrgyz Republic, introducing clear principles and norms of employees' work with children, specific criteria of employees' reporting, and also a mechanism for launching children's complaints about the violation of their rights by employees and other children;
- 4) Develop clear mechanisms for the institution of administrative control over actions of employees;
- 5) Improve the selection of employees to positions of caregivers and teachers in state children's institutions making it stricter. Set up stricter functional requirements for employees working in children's institutions;
- 6) Conduct trainings of children institutions' employees on the issues of violence committed against children by both adults and children;
- 7) Revise methods of caregivers' work in children's institutions in order to ensure an adequate level of control over children.⁷³

Analysis of internal documents of the children`s residential institutions showed that they are still based on the principles of the Regulation on State Orphanage from 3 April 1998 and they are not aligned with the recommendations of the UN Committee on the Rights of the Child. There have not been made the relevant changes that were suppose to oppose cruel, degrading treatment or punishment. According to the results of the analysis of 15 Regulations of children`s residential institutions, it was found out that these documents do not provide

⁷³ Report of UNICEF, "The Untold Stories of Silent Walls", page 77

specific details, for violation of which norms of institution`s regulation the child can be punished and what type of penalties can be applied in a particular case. The lack of direct prohibition of torture and any cruel treatment of children in the document, which should be guided first of all by its employees, is one of the reasons that there are still many cases of torture and cruel, inhuman and degrading treatment of orphans in children`s residential institutions.

Conclusion

Due to their physical and mental abilities deprived of parental care and living in children`s institutions, children need active and multi-sided protection. Under conditions of the market economy when such children do not have means for existence, jobs or housing, it is difficult for them to adapt to the realities of modern life and they find themselves in a disastrous situation. Child`s rights must be retained and actively protected irrespective of the fact whether a child lives in his or her family or in a state children`s institution. It is important to provide every child with protection from all the forms of physical, mental, or sexual abuse, insult or abuse, lack of care or negligence, rough treatment, or exploitation. Regulation of issues related to combating against children`s abuse is reflected in a number of standard legal acts of the Kyrgyz Republic.

But it should also be mentioned that the national legislation of the Kyrgyz Republic does not yet include specific legal provisions in the sphere of combating against violence in children`s institutions of Kyrgyzstan. However, stipulation of the basic norms regulating this issue in the Constitution of the KR plays a significant role. “Thus, Article 18 of the Constitution of the Kyrgyz Republic stipulates that no one shall be subject to torture or humiliating punishment.”⁷⁴ “Also, the Kyrgyz Republic joining the Convention on the Rights of the Child in 1994, the Faculty Protocol to the Convention on the Rights of the Child dealing with child trafficking, child prostitution and child pornography, and to the Faculty Protocol to the Convention on the Rights of

⁷⁴ Art 18, Constitution of KR

the Child dealing with participation of children in armed conflicts provides for the protection of children from inhuman treatment both at the international and national levels.”⁷⁵ In accordance with Article 12 of the Kyrgyz Republic Constitution, the enacted, in accordance with the established international treaties and agreements are a part of the legislation of the Kyrgyz Republic.⁷⁶

The list of normative acts includes fundamental international documents and internal normative legal acts on this issue. Enforcement of the norms of the International law as well as the national legislation of Kyrgyzstan plays an important role in protection of child’s rights. In 1994 Kyrgyzstan ratified the Convention on the Rights of the Child containing universal international legal norms thus supporting a policy in the area of enabling child’s rights, guaranteeing to children the fundamental human rights. With regard to this the Kyrgyz Republic undertook an obligation to incorporate it into the national legislation and ensure those rights economically and socially.

Thus, norms of the Convention on the Rights of the Child are reflected in a number of legal acts of the Kyrgyz Republic. Article 19 of the Convention on the Rights of the Child states that member states take all the necessary legislative, administrative, social and, educational measures to protect a child from all forms of physical or mental violence, insult or abuse, lack of care or negligence, rude treatment or exploitation, including sexual abuse committed by parents, trustees-at-law or any other taking care of a child person.⁷⁷ Employees of children’s homes, boarding schools and other boarding institutions who committed anti-pedagogical or immoral actions against children are subjected to firing from those institutions in the accordance with the procedure established by the legislation of the Kyrgyz Republic. “Employees of children’s homes and other children`s institutions who committed anti-pedagogical or immoral actions against children are subjected to firing from those institutions in the accordance with the procedure established by the legislation of the Kyrgyz Republic.”⁷⁸ Thus, it can be concluded that the legislation of the Kyrgyz Republic made a solid

⁷⁵ See id, Report of UNICEF, page 17

⁷⁶ Art 12, Constitution of KR

⁷⁷ Art 19, Constitution of KR

⁷⁸ Labor Code of the Kyrgyz Republic, dated August 4, 2004, № 106

foundation for protection of rights and interests of children, including the ones in children's institutions. Standard legal basis for enabling children's rights was established to a considerable extent. It is necessary, however, to improve further a mechanism for current legislation enforcement, financial support of the established legal norms, for observing all the norms stipulated by the legislation, envisioning protection of children's rights and we believe that there is no need to adopt a special standard legal act regulating children's rights in children's institutions.

The stabilization of children's status is mainly predetermined by the activity aimed at improvement of the legislation in the sphere of guaranteeing of children's rights and interests, making it in compliance with the international legal norms. As for incorporation of the international norms into the national legislation, we state, that as it was mentioned above, in accordance with the Article 12 of the Constitution of the Kyrgyz Republic, enacted in accordance with the established by the law procedure international treaties and agreements, in which the Kyrgyz Republic is a participant, and also generally recognized principles and norms of the international law, are a part of the legislation of the Kyrgyz Republic.⁷⁹ As a rule, legislative acts of the Kyrgyz Republic have a provision that in case of incompliance of norms of some normative legal act with the enacted norms of international treaties, the norms of an international agreement are applicable.

It should be mentioned that during the last years countries have faced serious economic and social problems caused by a transition to the market economy, which include unemployment and poverty growth, which negatively influenced the most vulnerable population group, children. At the same time it should be mentioned that in spite of the measures undertaken, in practice there are cases of various demonstrations of cruel treatment of children.⁸⁰ Incorrect educational methods, mental and physical violence, humiliation of human dignity are disclosed in families, pedagogical, educational and others institutions. The reason of that, as I mentioned, is an absence of launching children`s

⁷⁹ See id, Art 12, Constitution of KR

⁸⁰ Report of Youth Human rights Group, "The Observation of Human Rights in Children`s Residential Institutions", page 33

complaints, they do not complain anyone because they are afraid of suppression from people who committed such acts against them.

Under survey of child abuse in children`s institutions conducted by UNICEF, Inadequate protection of children from abuse and violence in children`s institutions is caused by a number of circumstances:

- 1) legal unawareness of children, teenagers, youth;
- 2) lack of sufficient funds for effective activity of fostering and trusteeship organs, committees on minor`s affaires that are responsible for exercising control over childhood protection;
- 3) Impossibility to outreach all requiring physical and mental rehabilitation and the social reintegration of children.⁸¹

Thus, due to legal unawareness of children, teenagers, youth and the lack of sufficient funds for effective activities of those bodies, children are not sufficiently protected from abuse and violence. There is also no system of physical and mental rehabilitation and social reintegration. There are no established mechanisms to control the degree of occurrence of various forms of violence, lack of care in a family and special educational-pedagogical, correctional institutions. For a complete enforcement of international and domestic legislative norms in the sphere of protection of children`s rights, especially of those who are in children`s educational institutions, effective measures should be taken to eliminate the above mentioned negative circumstances, which face the children deprived of parental care.

In addition, there are problems with employees` work and knowledge about the Regulation, functional responsibilities and other documents. Work of employees in children`s institutions must be built on clear principles and criteria, ensuring safety, care and protection of a child. In this content, regular use of formal regulatory documents by institution employees and also following

⁸¹ See id, Report of UNICEF, page 21

norms and principles, are the most important conditions for the work of children's institutions. This is especially important for prevention of self-willed institution employees' treatment of children constantly contacting with children living in institutions. Usually, caregivers limit themselves with reading the Regulation and specific extracts from the Regulation related to work with children such as functional responsibilities, rules of behavior, and so on. In the majority of cases, caregivers' familiarization with the text of the Regulation and functional instructions takes place prior to their recruitment.⁸² Furthermore caregivers practically do not reread and do not refresh their knowledge of the Regulation. In some cases, it is difficult for the practical use of norms, Regulation requirements and its functional instructions.

According to a caregiver in one of children's homes, in case of crisis situations in their work with children such as conflicts, children infringements, and so on, caregivers are not guided by the Regulation norms and act according to their own discretion.⁸³ Such situations are results of a lack of detailed instructions and norms related to the behavior and principles of caregivers' work with children living in an institution. Especially dangerous is the fact that in crisis situations a caregiver does not have any instructions or leading principles therefore is alone in facing the problem. As a rule, a caregiver does not have access to the necessary methodological and other literatures on work and education of children.⁸⁴ Thus, caregivers are not able to refresh their knowledge constantly and in the majority of cases rely on formal documents in the form of the Regulation, functional instruction and their experience. For instance, relying on his or her experience, qualification and common sense, a caregiver cannot always adequately assess the situation, especially in crisis situations, when the probability of violence or rude treatment increases, and that can lead to damaging consequences for a child.

⁸² Report of Youth Human Rights Group, "The Observation of Human Rights in Children's Residential Institutions", page 34

⁸³ Report of UNICEF, "Untold Stories of Silent Walls", page 28

⁸⁴ See id, Report of UNICEF, "Untold Stories of Silent Walls, page 28

Of course the main problem of misunderstanding between caregivers and children is a lack of qualification of caregivers. In accordance with normative documents, people with higher education can work as caregivers, but not all the institutions meet the requirement.⁸⁵ Due to a low salary and difficult working conditions institutions face difficulties in finding qualified personnel. Frequently because of this reason untrained people work as caregivers, who do not have adequate education, working experience, or long-term plans connected with the work of a caregiver. One of the employees of the administration acknowledged that due to a low attractiveness of the work there is a high caregivers' turnover. Low salary, difficult working conditions and stereotypes with regard to children living in institutions make the work of a caregiver non-prestigious and of low status. As a result, people "accidentally" work in this position, who are dangerous for children not only because of a lack of required education and experience but also because of low motivation responsibility and because of the fact that such people treat the caregiver's work as temporary. In such cases the administration's attitude to such people can be more loyal due to a lack of alternative candidates. For instance, in some institutions there were identified the cases when a teacher and a caregiver were fired after having identified the use of violence against children and after some time again recruited to do the work.⁸⁶ As I mentioned above, Article 6 of the Labor Code of the Kyrgyz Republic says that caregivers or teachers using violence against children can be fired from the job.⁸⁷ During the survey it was evident that caregivers' knowledge of norms and principles of the CRC and that application of norms and principles of the CRC in routine work with children is very weak.

The results of the survey demonstrate that children living in big state institutions are exposed to physical, emotional and sexual violence to the most extent; of the personnel in the sample children's institutions and children living in the adaptation and rehabilitation centers, centers for homeless children are exposed to violence to the least extent.⁸⁸ Children living in private children's

⁸⁵ The Code on Children of the Kyrgyz Republic, 2012

⁸⁶ Report of UNICEF, "Untold Stories of Silent Walls", page 29

⁸⁷ Article 6 of Labor Code of the Kyrgyz Republic

⁸⁸ Report of UNICEF, "Untold Stories of Silent Walls, page 75

institutions are less exposed to rude attitudes and violence from the personnel. In the majority of cases, various forms of violence and exploitation used by both personnel and children are interrelated. Aggressor combined physical, emotional, sexual abuse and exploitation depending on the situation and goals. For instance, exploitation and sexual abuse, as a rule, are accompanied with physical and emotional humiliation, and so on. Unfortunately, in some institutions there was formulated a repressive institutional culture, the key element of which is: the use of violent measures of influence, de-facto absolute power of institution employees over children, and the low status of children in the eyes of institution personnel.⁸⁹ In those institutions there exist all forms of violence against children.

As the results demonstrate, violence is broadly applied both as punishments for various children's violations and also without serious reasons. In case of personnel's use of sexual abuse against children, employees use their official position, the created image of a good employee, the lack of direct contact with the administration, the helplessness of children, the assistance and help of other employees, violent measures for threats, and the suppression of children's complaints. Cooperation existing among caregivers who "shield" one another and with joint efforts hide their actions from the institution administration considerably prevents the disclosure and prevention of various types of violence used by employees. It is common that children, in making attempts to launch complaints and deliver information, face resistance not only of one person but the entire group of employees.

The problem is that in children's institutions children cannot complain to anyone for employees' actions because employees threaten children with the use of violence against them. Concerning the violence among children, the main reason of that is that in the majority of institutions' employees are not able to carry out the permanent supervision of children, therefore, frequently children are left without supervision, which creates a favorable environment for emerging

⁸⁹ See id, Report of UNICEF, "Untold Stories of Silent Walls, page 75

physical, emotional, sexual abuse and also exploitation amongst children. Due to the fact that most frequently children are left without supervision at night, many cases of violent actions among children take place after the time they go to bed. Children's complaints about violent actions of other children the same age are very rare or absent at all. In the majority of cases, children are afraid of revenge by children their age. Sometimes children's complaints about actions of other children of the same age are ignored by caregivers. The most frequent and severe cases of violent actions and exploitation amongst children take place in institutions where children themselves become victims of various forms of violence used by employees.⁹⁰ Thus, the data of foreign surveys in the area of violence used against children in children's institutions testifies to a direct connection between employees' violence and violence among children⁹¹ is confirmed in this survey.

Having analyzed situation with child abuse in children's institutions, it can be concluded that institutional violence consequences can be very dangerous for children. Many children, being victims of physical violence, get physical traumas, damages, and some get diseases. Many children are pushed to run away again from institutions due to a constant practice of physical violence. According to the confession of some children, cruelty and injustice of physical punishments discourages many children from studying, deprives them of interest to the institution life, own life, making them depressed, depressive, indifferent and resentful.

The results of the monitoring of children's residential institutions led to the conclusion of the mass violation of children's rights for a family environment, also there is no systematic state control over the institutions of guardianship, the inability of state agencies to create the conditions for effective inter-agency cooperation for the promotion and protection of children without parental care, and it was found out that there is a formal approach to address issues of the violation of children's rights, even if such violations are massive in separate institutions. In addition, monitoring results showed that Kyrgyzstan has not yet established an effective, transparent management system of

⁹⁰ Report of UNICEF, "Untold Stories of Silent Walls", page 76

⁹¹ Colton M. 2002. Factors associated with abuse in residential child care institutions.

institutions for children deprived of a family environment. All identified violations of international norms and national legislation of the Kyrgyz Republic in the field of children's and human rights are the result of the current system of state care, which focuses on the institutionalization of children and their separation from the family. The solution for all the problems in the current system of care is impossible without its substantial reform.

In general, the analysis of the legislation of the KR on the rights of the child shows that even if there are sufficiently complete legal norms on the protection of the rights of the child, a general picture of the cases on the support of children remains unsatisfactory. Thus, it can be concluded that the children`s rights not only must be prescribed by law, but they also must be guaranteed by the state through the establishment and support of mechanisms for current legislation enforcement, and financial support of the established legal norms. So, only then, the child abuse in children`s residential institutions will be reduced.

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