**Subject: Comments on the Draft General Comment on the right of persons with disabilities to equality and non-discrimination**

**About the Opening Doors for Europe’s Children Campaign[[1]](#footnote-1)**

The Opening Doors for Europe’s Children campaign aims to support national efforts to develop child protection systems that strengthen families and ensure high-quality family- and community-based alternative care for children, by leveraging EU funding and policy and building capacity in civil society.

It is a partnership between 5 international organisations, Eurochild, FICE Europe, Hope and Homes for Children, IFCO (International Foster Care Organisation) and SOS Children’s Villages International. The Opening Doors for Europe’s Children Campaign operates in 16 European Countries, of which 12 are EU Member States, 2 enlargement and 2 neighbourhood countries.

The Opening Doors for Europe’s Children Campaign is represented at the European Expert Group on the Transition from Institutional to Community based Care by Eurochild.

**About the Submission of Comments**

The Opening Doors for Europe’s Children Campaign welcomes the opportunity to submit its comments on the CRPD Committee’s draft General Comment on the right of persons with disabilities to equality and non-discrimination (Article 5).

Our comments mainly concern article 7 on children with disabilities (par. 42 and 43), article 11 on situations of risk and humanitarian emergencies (par 52) and the cross cutting theme of stigmatisation (para 2, 5 and 44).

**Article 7 – Children with disabilities**

We strongly support the statement in paragraph 43 that violence and institutionalisation of children with disability must be addressed as a matter of discrimination. As explicitly referred to in article 23 of the UNCRPD, children must not be separated from their parents on the basis of a disability of either the child or one or both of the parents. In case that such a separation is necessary and in the best interests of the child, every effort should be undertaken to provide alternative care within the wider family, and failing that, within the community in a family setting. As mentioned in article 19 of the UNCRPD, persons with disabilities, including children, should have access to a range of in-home, residential and other community support services which are necessary to support living and inclusion in the community, and to prevent isolation or segregation.

More specifically, across Eastern Europe and Central Asia, children with a disabilities are almost 17 times more likely to be institutionalised as children who are not disabled, according to UNICEF[[2]](#footnote-2). This region has inherited a ‘defectology tradition’[[3]](#footnote-3) common under the communist regime, where abandonment of infants with disabilities was culturally accepted or even encouraged. Prejudice, discrimination and the belief that the complex needs of disabled children cannot be met with appropriate care in their families have resulted in medical and psycho-social personnel in maternity wards encouraging mothers to leave their newborns with disabilities in state care. Despite the growing awareness of international norms, such practice is still commonplace[[4]](#footnote-4)

The usual causes of institutionalisation, such as the family’s precarious socioeconomic situation and lack of public services are compounded for children with disabilities. Many families lack access to appropriate and affordable treatments and assistive technologies for children with disabilities.

Research overwhelmingly demonstrates that institutional care is harmful for children in particular[[5]](#footnote-5), causing long-term effects on their health and psychosocial development[[6]](#footnote-6). Children growing up in institutions are deprived of the possibility to develop a continuous attachment to a primary caregiver, due to the rigidity and impersonality typical of this form of care, the insufficient children-staff ratio, the limited availability of qualified professionals and the inherent nature of shift work[[7]](#footnote-7). Under-stimulation can cause long-lasting deficiencies in terms of motor skills and physical growth[[8]](#footnote-8), while absence of interaction and other unresponsive care-giving practices result in poor cognitive performance and lower IQ scores, particularly when institutionalisation takes place at an early age[[9]](#footnote-9). The UN Secretary General’s study on Violence against Children explicitly recommended that family-based care should be the only option for infants and very young children[[10]](#footnote-10). Finally, the UN Committee on the Rights of the Child recognised that institutions are a particular setting “where children with disabilities are more vulnerable to mental, physical, sexual and other forms of abuse as well as neglect and negligent treatment”[[11]](#footnote-11).

There are a range of provisions under international law that determine that children should not be separated from their parents against their will, unless such separation is necessary for the best interests. Furthermore, States should ensure special protection and suitable care for those children deprived from their family environment. The guiding legal framework consists of the Convention on the Rights of the Child (UNCRC) and the UN Guidelines for the Alternative Care of Children and, for children with disabilities, the Convention on the Rights of Persons with Disabilities (UNCRPD) as well.

We recommend that all States should subscribe to the principles of Necessity and Suitability of the UN Guidelines for the Alternative Care of Children”. The principle of Necessity embedded in the CRC and the Guidelines dictates that no child should be placed in formal care when measures could be taken to ensure their care and protection in the family or other informal environment, e.g. within the extended family. The principle of suitability embedded in the CRC and the Guidelines outlines that any care option must respect the rights and best interests of the individual child and cater to his/her specific needs, characteristics, situation and, as far as possible, wishes. This means that a full range of quality alternative care options needs to be put in place. For children with disabilities, according to article 19 and 23 of the UNCRPD, all efforts should be made that will allow children to grow up in within the wider family, and failing that, within the community in a family setting. Children with disabilities, as all persons with disabilities, should have access to a range of in-home, residential and other community support services which are necessary to support their inclusion in the community.

We also very much welcome the statement in par. 43 concerning States parties adopting age-appropriate support measures to enable all children with disabilities to exercise their right to be heard. Indeed, this should be a priority of the States and as stated in Article 12 of the UN Convention on the Rights of the Child, children should be meaningfully included in decisions affecting their lives including placement into care and the use of personal assistance.

**Article 11 – Situations of risk and humanitarian emergencies**

In the European context, we have witnessed that migrant and refugee children are being discriminated against due to their status. The rights of unaccompanied, migrant children are not protected and that they are being cared for in reception or detention centers and in segregated residential care facilities where their protection is not secured. The UN Convention on the Rights of the Child (CRC), the UNCRC General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, and the UN Guidelines on Alternative Care for Children, clearly state that children should not be discriminated against due to their migration status and that they should enjoy the same level of protection and care as children deprived of parental care in the State concerned. Migrant and refugee children with disabilities should have access to high quality services in the community, including access to mainstream education. For unaccompanied and separated children according to the Guidelines for the Alternative Care of Children, States must provide individualized family and community-based care to all children who have temporarily or permanently lost parental care, and refugee and migrant children are no exception. In order to do so, States should implement the Guidelines, and in particular: (a) remove barriers to the provision of family and community-based care to unaccompanied and separated children, such as discrimination based on the origin of children, or lack of financial resources or professionals prepared to deliver specialised alternative care; (b) identify and work together with transparent and trusted service providers to ensure a range of alternative care options for children in need, with family and community-based care as preferable options; (c) avoid institutionalisation of children; (d) invest in training of professional and voluntary caregivers in the areas of child protection, care and human rights, so that alternative care meets international standards set out in the Guidelines; (e) constantly review the decision on the type of care to be delivered, case by case, in order to respond to context developments and the child’s evolving needs[[12]](#footnote-12)

**Cross cutting theme of stigmatisation (para 2, 5 and 44)**

Across the European Union children with disabilities are stigmatised in general terms as raised throughout the draft general comment. The bias of competent authorities and medical staff to place children with disabilities in institutions for children purely on the basis of their disability is in contravention of the UN Guidelines for the Alternative Care of Children and the UNCRPD, particularly in light of the recent general comment number 5 and the right to live independently.

Children in care are often stigmatised because of where they grew up. This is prejudice comes from the general public, teachers and some professionals. This stigmatisation follows children into their adulthood, where they struggle to access employment or housing because they do not have a fixed address or may be considered trouble makers or uncontrollable[[13]](#footnote-13). Its manifestations are sometime poorly guided attempts at support, or adults/teacher engaged with the children making assumptions that limit young people's achievement rather than encourage them to do well[[14]](#footnote-14), and in the worst case scenario, ignoring them because of their care background.

States should ensure that children who have experienced alternative care are not subjected to further trauma on the basis of their care experience. This should include the right to redress in the case of refusal of access to necessary services or civil recourse and redress in the care of actions by private person or corporations

1. For more: [www.openingdoor.eu](http://www.openingdoor.eu) [↑](#footnote-ref-1)
2. Children under the age of three in formal care in Eastern Europe and Central Asia: a rights-based regional situation analysis”, UNICEF 2012, page 45. [↑](#footnote-ref-2)
3. Knox, Jane E., and Carol Stevens. "Vygotsky and Soviet Russian defectology." *The collected works of LS Vygotsky*. Springer US, 1993. 1-25 [↑](#footnote-ref-3)
4. Children under the age of three in formal care in Eastern Europe and Central Asia: a rights-based regional situation analysis”, UNICEF 2012, page 45. [↑](#footnote-ref-4)
5. OHCHR, Forgotten Europeans, Forgotten Rights – The Human Rights of Persons Placed in Institutions, 2011, p.6. [↑](#footnote-ref-5)
6. K. Browne, The Risk of Harm to Young Children in Institutional Care, Save the Children, 2009, pp. 9 – 17. [↑](#footnote-ref-6)
7. J. Williamson, A. Greenberg, Families, Not Orphanages, Better Care Network Working Paper, 2010, pp. 5 - 6. [↑](#footnote-ref-7)
8. “The effects of institutionalisation for children - even where the institutions in question have good material conditions and qualified staff - can include poor physical health, severe developmental delays, (further) disability, and potentially irreversible psychological damage”. Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-Based Care, 2009, p. 12 [↑](#footnote-ref-8)
9. R. Johnson et al, Young children in institutional care at risk of harm, 2006. See also the Bucharest Early Intervention Project, which examined the effects of institutionalisation for brain and behavioral development on a sample of young children. Results showed that children raised in institutional care have significantly lower IQs. Bucharest Early Intervention Project, Caring for Orphaned, Abandoned and Maltreated Children, 2009, PowerPoint available http://goo.gl/kQLVy [↑](#footnote-ref-9)
10. United Nations Secretary-General, Report on Violence against Children, 2006, par. 112. [↑](#footnote-ref-10)
11. UN Committee on the Rights of the Child, General Comment No. 9 - The rights of children with disabilities, 2006, par. 47. [↑](#footnote-ref-11)
12. SOS Position paper on Migrant and Refugee Children, p4\ [↑](#footnote-ref-12)
13. Office for Standards in Education, Children's Services and Skills (OFSTED) Children's Rights Director for England, corp creators. (2009) Care and prejudice: a report of children's experience by the Children's Rights Director for England. [↑](#footnote-ref-13)
14. Improving Outcomes for Looked After Children: A practical guide to raising aspirations and achievement [↑](#footnote-ref-14)