CELCIS Centre for excellence for looked after children in Scotland

MOVING FORWARD:
Implementing the 'Guidelines for the Alternative Care of Children'

In association with

International Social Service
Service Social International
Servicio Social Internacional
General Secretariat • Secrétariat Général • Secretariado General

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Published by:
The Centre for Excellence for Looked After Children in Scotland (CELCIS)
University of Strathclyde
141 St James Road
Glasgow
G4 0LT
Scotland, United Kingdom

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International Social Service
Quai du Seujet 32
1201 Geneva
Switzerland

ISBN
978-0-947649-91-3

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Cite as:
Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012). *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*. UK: Centre for Excellence for Looked After Children in Scotland.

www.alternativecareguidelines.org

FOREWORD

The situation of children deprived of parental care has been the subject of constant and serious concern expressed by the Committee on the Rights of the Child over its two decades of work to monitor and promote the implementation of the Convention on the Rights of the Child. This concern is not only evident from the Committee's findings when reviewing individual States' compliance with the treaty's provisions, but was also manifested clearly and in global terms when it decided to devote its annual Day of General Discussion to that issue in 2005.

The Committee's preoccupations are based on a variety of factors. These include:

- the large number of children coming into alternative care in many countries, too often essentially due to their family's material poverty,
- the conditions under which that care is provided, and
- the low priority that may be afforded to responding appropriately to these children who, lacking the primary protection normally assured by parents, are particularly vulnerable.

The reasons for which children find themselves in alternative care are wide-ranging, and addressing these diverse situations – preventively or reactively – similarly requires a panoply of measures to be in place. While the Convention sets out basic State obligations in that regard, it does not provide significant guidance on meeting them.

This is why, from the very outset of the initiative in 2004, the Committee gave whole-hearted support to the idea of developing the *Guidelines for the Alternative Care of Children* that would gain the approval of the international community at the highest level.

The acceptance of the *Guidelines* by the UN General Assembly in 2009 signalled all governments' general agreement that the 'orientations for policy and practice' they set out are both well-founded and desirable. Since that time, the Committee has been making full use of the principles and objectives established in the *Guidelines* when examining the reports of States Parties to the Convention and in formulating its observations and recommendations to them.

As with all internationally agreed standards and principles, however, the real test lies in determining how they can be made a reality throughout the world for those that they target – in this case, children who are without, or are at risk of losing, parental care. Identifying those measures means, first of all, understanding the implications of the 'policy orientations' proposed in the *Guidelines*, and then devising the most effective and 'do-able' ways of meeting their requirements. Importantly, moreover, the *Guidelines* are by no means addressed to States alone: they are to be taken into account by everyone, at every level, who is involved in some manner with issues and programmes concerning alternative care provision for children.

This is where the *Moving Forward* handbook steps in. As its title suggests, it seeks precisely to assist all concerned to advance along the road to implementation, by explaining the key thrusts of the *Guidelines*, outlining the kind of policy responses required, and describing 'promising' examples of efforts already made to apply them in diverse communities, countries, regions and cultures.

I congratulate all the organisations and individuals that have contributed to bringing the *Moving Forward* project to fruition. This handbook is clearly an important tool for informing and inspiring practitioners, organisations and governments across the globe who are seeking to provide the best possible rights-based solutions and care for their children.

Jean Zermatten
Chairperson UN Committee on the Rights of the Child
31 October 2012

ACKNOWLEDGEMENTS

The research, collaboration and consultation for this project involved many partners and contributors, and the authors would like to express their sincere gratitude to all who helped to bring this work to fruition.

Firstly, our thanks go to the members of the Working Group on Children without Parental Care of the NGO Group for the Convention on the Rights of the Child, who ambitiously initiated this project.

The project's **Steering Group** members then led the vision for this project, and provided guidance throughout the process. They helped to identify important policy orientations, 'promising practice' examples and other key resources; they facilitated contact between the project team and a wide range of experts, international professional networks, and key regional contacts; and they oversaw the field testing process.

We therefore express special appreciation to Mia Dambach (ISS), Alan Kikuchi-White (SOS Children's Villages International), Amanda Cox (Family for Every Child), Emily Delap (Family for Every Child), Janet Nelson (ATD Fouth World), Kathleen Riordan (Better Care Network), Mara Tissera Luna (RELAF), Matilde Luna (RELAF), Megumi Furubayashi (ATD Fourth World), Peter Gross (UNICEF) and Séverine Chevrel (Better Care Network).

The **main funders** of the project enabled this vision to become reality, and we gratefully acknowledge the financial support granted by International Social Service (ISS), Oak Foundation, SOS Children's Villages International and UNICEF.

Additional funds from the NGO Group for the Convention on the Rights of the Child, Save the Children and The U.S. President's Emergency Plan for AIDS Relief through USAID has allowed this project to be widely disseminated and we appreciate their support.

We are also very grateful to the **numerous individuals** who gave their time and expertise to provide feedback and/or review sections of earlier drafts: Benyam Dawit Mezmur (University of Western Cape and University of Addis Ababa); Brussels Mughogho (Family for Every Child Malawi); Bill Bell (Save the Children, UK); Delia Pop (Hope and Homes for Children); Diane Swales (UNICEF, East Asia and Pacific); Ghazal Keshavarzian (Maestral International); Jean-Claude Legrand (UNICEF); Jenny Degeling (Attorney General's Department, Australia); John Pilkington (Queen's University of Belfast); John Williamson (Displaced Children and Orphans Fund (DCOF) or USAID); June Thoburn (University of East Anglia); Keith White (Mill Grove, UK); Maria Herczog (Eszterházy Károly College and Family Child Youth Association); Mike Stein (University of York) and Rebecca Smith (Save the Children).

Special thanks are due to Oliver Robertson of the Quaker United Nations Office in Geneva for his invaluable inputs on 'the care of children whose primary caregiver is in custody'.

We also extend warm thanks to the **many other individuals and organisations** that supported the project by recommending resources, contacts, policy and practice examples, as well as to those who participated in the field test consultations. In particular: Aaron Greenberg (UNICEF); Alison Lane (JUCONI); Andro Dadiani (Georgian Foster Care Organisation); Andy Elvin (Children and Families Across Borders, International Social Service UK); Anna Nordenmark Severinsson (UNICEF); Barsukova Tatiana Mitrophanovna (State Governmental Institution Social Rehabilitation Center Otradnoye, Russia); Bep Van Sloten (Better Care Network, Netherlands); Chabad Lubavitch (IELADEINU, Argentina); Christina Baglietto (UNICEF); Christine Gale (UNICEF); Claudia Cabral (Terra dos Homens and RELAF, Brazil); Daniel Miranda (Institute of Childhood and Adolescence of Uruguay (INAU); Daniela Koleva

(National Network for Children, Bulgaria); Denny Ford (Who Cares? Scotland); Eduardo Garcia-Rolland (International Rescue Committee); Elize Coetzee (Give A Child A Family); Emmanuel Sherwin (SOS Children's Villages International); Evren Guncel Ermisket (Ministry of Family and Social Policies of Turkey); Flora Vivanco Giesen (National Childhood and Youth Service, Government of Chile); James Kofi Annan (Challenging Heights, Ghana); Jini Roby (Brigham Young University); Jo Rogers (Partnership for Every Child, Russia); Kelley Bunkers (Independent Consultant); Kristīne Venta-Kittele (Ministry of Welfare of the Republic of Latvia); Larisa Buchelnikova (Partnership Family to Children, Yekaterinburg, Russia); Laura Martínez de la Mora (RELAF and Patronato Pro-Hogar del Niño Irapuato, México); Leonel Asdrubal Dubón Bendfeldt (Refugio de la Niñez, Guatemala); Lisa Lovatt-Smith (Orphan Aid Africa); Maki Noda (UNICEF); Marketa Hrodkova (Ministry of Labour and Social Affairs of the Czech Republic); Marova Alexandra (The Charitable Foundation of Social Orphanhood Prevention, Russia); Marta Iglesias Benet (ATD Fourth World); Martha Eugenia Segura (KidSave, Colombia); Matthew Dalling (UNICEF); Feride Dashi (UNICEF); Maxine King (Child Welfare Organizing Project, USA); Meseret Tadesse (Forum on Sustainable Child Empowerment); Milena Harizanova (UNICEF); Mir Anwar Shahzad (Society for Sustainable Development, Pakistan); Mooly Wong (The Chinese University of Hong Kong); Moushira Khattab (Woodrow Wilson International Center for Scholars); Munir Mammadzade (UNICEF); Naira Avetisyan (UNICEF); Néstor Álvarez (Governmental technical team, Argentina); Rachel Szabo (Myers-JDC-Brookdale Institute); Rawan W. Ibrahim (Columbia University Middle East Research Center); Rusudan Chkheidze (SOS Children's Villages International); Sarah Mbira (Pendekezu Letu Kenya); Sylvia Lupan (UNICEF); Omattie Madray (ChildLink Inc); Tata Sudrajat (Save the Children Indonesia) and Todijin Jalolov (Childs Rights Centre, Tajikistan).

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The support of the **CELCIS team** has been second to none and we are deeply appreciative of our colleagues' contributions to this project. In particular, Heather Lawrence has expertly coordinated this project with an outstanding combination of professionalism, commitment and good humour that was invaluable in ensuring completion within the timescale required. The literature research undertaken by Zoe Tennant provided a solid foundation for our work. Our thanks also go to Graham Connelly, John Paul Fitzpatrick, Katie Hunter, Lillemor McDerment, Lorraine McGuinness, Louise Hill and Vicki Welch for their helpful reflections, translation and proofreading.

We are very grateful to photographer Maureen Anderson and friends at Vatsalya, India for use of their inspiring images. Much appreciation also goes to the team at Transform Brands who worked patiently and tirelessly with us to create an attractive and reader-friendly publication out of a daunting mass of text.

Finally, the translators for this project, and those who step in to disseminate the handbook's messages in the coming months and years, will be instrumental in ensuring it can reach a wide audience and we recognise in advance the significant value of these efforts.

We hope that the product of this joint exercise will make everyone mentioned – as well as those whose names we may have inadvertently omitted – feel that their considerable efforts were worthwhile.

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SYMBOLS & ACRONYMS

§ – refers to a paragraph within a document

AIDS – Acquired Immunodeficiency Syndrome

ATD (Fourth World) – *'Aide à Toute Détresse'*

BCN – Better Care Network

Beijing Rules – Standard Minimum Rules for the Administration of Juvenile Justice

BID – Best Interests Determination

CAT – Convention against Torture

CEDAW – Convention on the Elimination of Discrimination against Women

CELCIS – Centre for Excellence for Looked After Children in Scotland

CESCR – Covenant on Economics, Social and Cultural Rights

CoE – Council of Europe

CRC – Convention on the Rights of the Child

CRC Committee – Committee on the Rights of the Child

CRPD – Convention on the Rights of People with Disabilities

HIV – Human Immunodeficiency Virus

HRC – Human Rights Council

ISS – International Social Service

NGO – Non-Governmental Organisation

OHCHR – Office of the High Commissioner for Human Rights

OVC – Orphans and Vulnerable Children

Paris Principles – Principles relating to the status of national human rights institutions

RELAF – Latin American Foster Care Network

The *Guidelines* – *Guidelines for the Alternative Care of Children*

The handbook – Moving Forward: Implementing the '*Guidelines for the Alternative Care of Children*'

UN – United Nations

UNGA – United Nations General Assembly

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations Children's Fund

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THE MOVING FORWARD PROJECT: PUTTING THE *GUIDELINES* INTO PRACTICE

In this chapter you will find:

1a. Need for the handbook

1b. Use of the handbook

1c. Overview of the handbook

i. Context: Understanding the *Guidelines*
ii. Implications for policy-making
iii. 'Focus' boxes
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CLICK TO REFER TO THE *GUIDELINES*

The last decade has seen big steps taken toward the goal of placing children's rights at the heart of alternative care.

From the initial concept, to the development and approval of the *Guidelines for the Alternative Care of Children* (the *Guidelines*) by the United Nations General Assembly in its resolution A/RES/64/142, we now have a more coherent policy framework. Today, the *Guidelines* shape how policy-makers, decision-makers and professionals approach both the prevention and the provision of alternative care for children.

This handbook, *Moving Forward*, has been created to take us even further along the road to embedding children's rights in alternative care provision. It aims to support implementation of the *Guidelines* by making strong connections between national policy, direct practice and the *Guidelines* themselves.

Moving Forward reflects the core message in the *Guidelines* – that children must never be placed in alternative care unnecessarily, and where out-of-home care must be provided it should be appropriate to each child's specific needs, circumstances and best interests.

This chapter explains why and how this handbook was developed and outlines its contents.

1a. Need for the handbook

It is not always easy to interpret the intended meaning of international instruments, and understand the thinking behind their provisions, on the basis of the texts alone. Consequently, the real implications of putting them into effect are often difficult to determine. That is why additional documents are prepared to clarify the origins, development and intended purpose of each instrument.

These documents can take different forms. For binding international treaties, such as the Convention on the Rights of the Child (CRC), the background to the drafting is often recorded in '*travaux préparatoires*' (records of the debates). In some instances, such as the **1993 Hague Convention on Intercountry Adoption**, an Explanatory Report is drawn up after the event. Whatever their form, such documents help those responsible for implementing and monitoring the treaties to understand why certain provisions were included (or, in some cases, excluded), why they are phrased in particular way, and what basic intentions lie behind their inclusion. They contribute to interpreting obligations under the treaties and can, therefore, usefully guide their practical enforcement.

CLICK TO REFER
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In the case of non-binding instruments such as declarations, rules and guidelines, an Explanatory Report may also be prepared – examples include a number of Council of Europe texts, such as the Recommendation on the Rights of Children in Residential Institutions and the Guidelines for Child-Friendly Justice. In rare instances (the UN's 1985 Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) being a good example) an explanatory commentary is incorporated in the official text after each provision.

None of these potential sources of guidance and inspiration existed for the *Guidelines for the Alternative Care of Children*. This handbook, therefore, sets out the reasoning behind the main orientations of the *Guidelines* and indicates legislative, policy and programming initiatives that should enable the provisions to be put into practice effectively.

1b. Use of the handbook

The handbook is designed as a resource tool for legislators, policy-makers and decision-makers in the field of child protection and alternative care for children. Like the *Guidelines* themselves, however, it should also be of interest to all professionals and care providers. In other words, it is intended for the broadest range of entities and individuals, in the governmental, private and civil society sectors.

It can be used in a variety of ways:

- To enhance understanding of the various provisions in the *Guidelines*: why they were included and what their ramifications might be for policy and practice
- As an advocacy tool
- As a basis and/or instigator of debates, with a view to adjusting alternative care systems
- As a reference base or benchmark for assessing and monitoring current alternative care systems, and for reporting to national and international bodies

1c. Overview of the handbook

The handbook provides key information on the approach taken and the main issues raised by the *Guidelines*. It links to policy and 'promising practice' examples, and provides signposts to useful additional resources. To this end, the main body of the handbook is organised around 'clusters' of provisions that follow, as far as possible, the structure of the *Guidelines*, and are considered from the standpoints of **Context**, **Implications** and **Examples**.

i. Context: Understanding the *Guidelines*

In the sections entitled '**Understanding the *Guidelines***', our aim is to highlight the main innovative points and indicate the thinking behind the inclusion or wording of certain provisions. Given the length and detail of the *Guidelines*, it would be impossible for this handbook to summarise or comment on every aspect of the text. It follows that the handbook cannot *replace* the *Guidelines*, and should therefore be consulted in *conjunction* with them.

ii. Implications for policy-making

We recognise that each State develops policy according to its own social, political, cultural and economic context. Nevertheless, the **Implications for Policy-Making** sections of the handbook are important in highlighting areas where national governments should provide leadership and oversight for a range of policy activities (legislation, policy frameworks, guidance and programmes). Policy implications are offered in eleven stand-alone sections entitled 'Implications for Policy-Making', where they correspond to the *Guidelines* provisions being considered. 'Implications for Policy-Making' sections are also located within groupings of relevant 'Focus boxes' and 'promising practice' examples. These eleven sections outline policy-making implications relating to:

- Demonstrating a commitment to children's rights
- Supporting the rights and needs of children with disabilities and other special needs
- Providing the policy framework for alternative care
- Providing a range of care options to meet children's needs
- Implementing rigorous processes for assessment, planning and review
- Supporting an evidence-based approach to policy-making
- Ensuring complaints mechanisms are in place
- Use of discipline, punishment and restraints
- Setting standards for staffing formal care services and facilities

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- Providing residential care option
- Providing care for children outside their country of habitual residence

iii. 'Focus' boxes

Within each cluster of provisions, certain topics are examined in more depth, and are analysed in **'Focus' boxes**. The topics were selected not because they are necessarily more important than other issues, but because it was felt that they needed more explanation and illustrative examples of how they can be put into practice. Fifteen topics are examined:

1. Participation of children and young people in care decisions and care settings
2. Placement of children aged 0-3 in family-based settings
3. Strategies for de-institutionalising the care system
4. Protection and support for child-headed households
5. Supporting families to prevent abandonment and relinquishment
6. The care of children whose primary caregiver is in custody
7. Promoting sustainable reintegration of children into their family from an alternative care setting
8. Gatekeeping: The development of procedures to screen referrals, assess need and authorise placement
9. State involvement in informal care arrangements
10. Supporting appropriate traditional care responses
11. Developing family-based alternative care settings
12. Preparation for leaving care and aftercare support
13. Financing care to avoid unwarranted placements
14. Developing reliable and accountable licensing and inspection systems
15. Providing alternative care in emergency situations

iv. 'Promising practice' examples

For each topic, an explanation of the issues at stake is followed by at least two **'promising practice' examples** drawn from countries in all regions of the world. These examples have been submitted by experts and NGOs or identified by our own research. They are deliberately called examples of 'promising' rather than 'best' practices, and their inclusion does not represent an endorsement from the handbook authors as to their on-going quality. Nevertheless, we believe that there is sufficient evidence for them to be described as the kind of 'promising' development that the *Guidelines* are intended to encourage. Importantly, they link the *Guidelines* and the handbook to work that is already happening 'on the ground'. Where possible, we provide a publicly available account of the project and, in some cases, we are able to provide a link to an evaluation.

v. Further resources

An appendix is provided that includes further resources and the full text of the *Guidelines*. The Further Resources section includes: International instruments and guidelines, Commentaries on international instruments and guidelines, a selection of key Literature on alternative care and websites of major Children's rights organisations and networks.

Key resources used in developing the handbook are listed here, along with all the instruments and guidelines referred to in the text – many with web-links provided. All the resources listed are provided in their English-language version and, in the case of United Nations instruments, the web-links give access to other UN language versions. The Alternative Care section of resources is an indicative, but in no way exhaustive, list of references that signposts readers to valuable sources of information for further learning. Only documents that have relevance across a variety of contexts or regions of the world have been included.

1d. Methodology

Policy implications, 'promising practices' and resources were identified during an extensive consultation process. The handbook steering group contacted a wide range of experts and, using existing international professional networks, identified key contacts in regions. The handbook was field tested in Argentina (through RELAF) and Malawi (through BCN-Malawi), and went through a robust grey and academic literature review.

Researchers from the handbook team have drawn from a range of resources including reports and studies on alternative care in a global context, international documents, and responses to the consultation process.

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A particular search strategy was used for selecting the 'promising practice' examples. They were retrieved using various combinations of search terms based on the selected topics, well-specified geographical gaps, and terms relating to inspiring practice. The search used various general terms relating to each of the topics (e.g. 'aftercare', 'informal care', 'kinship care', etc). Articles were retrieved based on database findings, and specific journals suggested by the steering group were then targeted. After academic databases were reviewed, a hand-search was conducted of report documents suggested by consultation respondents, steering group members and the project team. The steering group was also asked to circulate requests for practice examples to its members, which helped to identify further examples. Finally, the project team reviewed all the examples against the topic descriptor and agreed on which to include.

The range of practice studies aims to reflect the richness and diversity of 'promising practice' internationally, therefore no more than one practice example per country was included in the handbook for all but one of the topics in the text. Due to the limited number of countries that have needed to develop emergency responses, and the resulting limited examples of accessible good practice within this context, countries were referred to again in the chapter on 'Providing alternative care in emergency situations'.

Overall, there is a very good regional spread of practice examples. While it was not possible to provide a regional spread for every topic, selecting no more than one example per country was balanced with other considerations. There was a desire to have strong evidence for every example of 'promising practice' and to represent the work of diverse sectors (e.g. governmental, NGOs, civil society) as well as a wide range of different agencies. Ensuring this was the case limited opportunities to achieve better regional balance for some topics.

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DEVELOPMENT AND KEY FOUNDATIONS OF THE *GUIDELINES*

In this chapter you will find:

2a. Background to the *Guidelines*

i. Why and how the *Guidelines* were developed and approved
ii. Purpose of the *Guidelines*

IMPLICATIONS FOR POLICY-MAKING:
Demonstrating a commitment to children's rights

2b. Pillars of the *Guidelines*

i. Respecting the 'necessity principle'
ii. Respecting the 'suitability principle'
iii. Applying the principles of necessity and suitability
iv. Taking account of the 'best interests of the child'

Focus 1: Participation of Children and Young People in Care Decisions and Care Settings

- Implications for policy-making
- Promising practice:
  - Case Study 1: Mkombozi, Tanzania
  - Case Study 2: Collective participation in child protection services, Norway
  - Case Study 3: Who Cares? Scotland training initiative, Scotland, United Kingdom

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2a. Background to the *Guidelines*

i. Why and how the *Guidelines* were developed and approved

The Convention on the Rights of the Child (CRC) seeks to protect children who are unable to live with their parents or remain in a stable family setting (notably, though not only, in Article 20). However, the CRC does not describe in any depth what measures should be taken. The same applies to many other topics covered by the CRC. As a result, more detailed, internationally recognised guidance is necessary. For example, the CRC is already supplemented by a substantial set of standards relating to juvenile justice, a major treaty devoted to intercountry adoption, and a guide to best interests determination for refugee and unaccompanied children.

CRC Article 20

1. *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*
2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*
3. *Such care could include, inter alia, foster placement, kafala of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

The desirability of having specific 'Guidelines on the Use and Conditions of Alternative Care for Children' was first broached by the Child Protection Section at UNICEF Headquarters. In 2004, they commissioned International Social Service (ISS) to draw up a series of working papers on children who lack adequate family care. ISS were also tasked with developing a 'call for action' on the subject. This 'call' was submitted for consideration to a number

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of bodies, including the Committee on the Rights of the Child (CRC Committee).

The CRC Committee agreed with the need for the *Guidelines* and transmitted its 'decision' to the (then) Commission on Human Rights in late 2004. The CRC Committee went on to devote its Day of General Discussion in September 2005 to the question of children without parental care.

One of the main recommendations to emerge from that discussion was for the international community to formulate draft guidelines to improve the implementation of the CRC for children deprived of their family. UNICEF and international NGOs joined forces in a working group of the NGO Group for the CRC, as well as with a number of individual experts and young people with experience of alternative care to complete the text by early 2006.

In August 2006, the Brazilian authorities hosted an inter-governmental meeting of experts to review that draft *Guidelines* text. Some 40 governments attended, along with UNICEF, concerned international NGOs and three members of the CRC Committee. A revised draft that took into account views and suggestions aired at the meeting was then circulated for comment in the first half of 2007.

A 'group of friends' of the *Guidelines* also emerged from that 2006 meeting. Coordinated by Brazil, it initially comprised government representatives from Argentina, Chile, Egypt, Georgia, Ghana, India, Mexico, Morocco, Philippines, Portugal, Sudan, Sweden, Ukraine and Uruguay, and several others – including Austria, Finland, Italy, Netherlands and Switzerland – became associated with its work. The group continued to have an important role during subsequent negotiations on the text. Delegates from many other countries worldwide were also deeply involved and played a very significant and constructive part in the drafting process.

The first expression of support for the *Guidelines* from the UN Human Rights Council (HRC) was contained in a wide ranging resolution on the rights of the child adopted in March 2008 (A/HRC/RES/7/29, § 20), which 'encourage[d] the advancement' of the draft. Progress was reported to the HRC's 9th session six months later, when a specific resolution (A/HRC/RES/9/13) invited States 'to dedicate all their efforts, in a transparent process, with a view to taking possible action' on the draft at its next session.

In response, Brazil officially circulated a draft of the *Guidelines* through the Office of the High Commissioner for Human Rights (OHCHR) and called for formal comments by the end of January 2009. Brazil then organised a series of open inter-governmental consultations from March to June 2009 in Geneva, where all comments were reviewed in a transparent participatory forum. A revised draft was prepared as a result.

On 17 June 2009, the 11th session of the HRC adopted by consensus a procedural resolution (A/HRC/RES/11/7) and submitted the new draft of the '*Guidelines for the Alternative Care of Children*' to the United Nations General Assembly (UNGA) in New York for consideration and possible adoption on 20 November, the 20th anniversary of the CRC.

At its meeting on 20 November 2009, the Third Committee of the UNGA indeed recommended approval. Then, on 18 December 2009, through its Resolution A/RES/64/142, the UNGA itself duly 'welcomed' the *Guidelines* by consensus – signalling that no country in the world had objections to their content.

ii. Purpose of the *Guidelines*

The *Guidelines* are a non-binding international instrument. So, while their general merit for informing the approach to alternative care for children is clearly recognised, they comprise no obligations on the part of States or any other concerned parties. As a result, provisions of the *Guidelines* are formulated using the term 'should' rather than 'shall' or 'must', except when existing fully-fledged rights (notably those in the CRC) are being referred to.

The *Guidelines*, being grounded in the CRC (see Guidelines § 1), are designed to 'assist and encourage' governments to optimise the implementation of the treaty (§ 2.c), and to 'guide policies, decisions and activities' at all levels and in both the public and private sectors' (§ 2.d). This statement of purpose also reflects the considerable emphasis that the drafters placed not only on the need for the *Guidelines* to be viewed as 'desirable orientations for policy and practice' (§ 2) rather than required standards, but also on the fact that they are addressed to 'all sectors directly or indirectly concerned', and by no means just to governments.

While they are not binding, the *Guidelines* can have a potentially very significant impact on practice in this

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sphere. Their status as a UN-approved set of principles is important in itself and enables them to serve, among other things, as a basic reference for the CRC Committee in its Concluding Observations on States' compliance with relevant provisions of the treaty. They can also similarly be taken into account by the bodies monitoring several other treaties, such as the Convention Against Torture and the Convention on the Rights of Disabled Persons.

It is also important to acknowledge, however, that (as is the case for virtually all similar international instruments) the 'orientations' of the *Guidelines* do not take account of the availability of resources in any given country for full implementation. While the *Guidelines* encourage the allocation of resources (§ 24-25), their primary role is to set out a path that should be followed. This handbook reflects that stance.

IMPLICATIONS FOR POLICY-MAKING

Demonstrating a commitment to children's rights

Guidelines: § 1, 6, 7, 72, 73

States should lead on implementing children's rights in all aspects of legislation, policy and practice. This commitment to children's rights should be demonstrated in support and services to all children who require alternative care.

National policy should:

- Ensure that national legislation, policy and practice fully supports the implementation of the CRC and other human rights instruments such as the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention Against Torture.
- Establish independent bodies such as children's ombudsmen or children's commissioners in line with the 'Paris Principles' in order to monitor children's rights
- Require that children's rights are capable of being taken into account in law and that children have access to remedies, including judicial remedies
- Allocate appropriate levels of resources to services for children and their families so that children's rights can be supported
- Ensure that the rights of all children are upheld regardless of status or circumstances and without discrimination including poverty, ethnicity, religion, sex, mental and physical disability, HIV/AIDS or other serious illnesses whether physical or mental, birth outside of marriage and socioeconomic stigma
- Promote awareness of children's rights, including the right to participate, to: children and their families; policymakers and those caring for children and families; and wider society using public campaigns and the media
- Ensure that a commitment to children's rights is reflected in all legislation, policy and practice relating to children in alternative care
- Ensure that children and their rights in alternative care are protected while also recognising the importance of children being able to take informed decisions which may involve some acceptable risk and is in line with those of children who live with their families (§ 94)

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2b. Pillars of the *Guidelines*

The *Guidelines* have been created to ensure respect for two basic principles of alternative care for children, namely:

- that such care is genuinely needed (the 'necessity principle'), and
- that, when this is so, care is provided in an appropriate manner (the 'suitability principle').

Each of these principles comprises two main sub-sets.

i. Respecting the 'necessity principle'

Acting on the 'necessity principle' first involves **preventing situations and conditions** that can lead to alternative care being foreseen or required. The range of issues to be tackled is considerable: from material poverty, stigmatisation and discrimination to reproductive health awareness, parent education and other family support measures such as provision of day-care facilities. It is worth noting that, as the *Guidelines* drafting process progressed, government delegates expressed an increasing interest in ensuring that preventive responses were given the most comprehensive coverage possible.

The second action point for the 'necessity principle' concerns the establishment of a robust '**gatekeeping**' mechanism capable of ensuring that children are admitted to the alternative care system only if all possible means of keeping them with their parents or wider (extended) family have been examined. The implications here are two-fold, requiring adequate services or community structures to which referrals can be made, and a gatekeeping system that can operate effectively regardless of whether the potential formal care provider is public or private.

Furthermore, the necessity of a placement must be regularly reviewed. These are clearly significant challenges for many countries but experience shows that they need to be confronted if unwarranted placements are to be avoided.

ii. Respecting the 'suitability principle'

If it is determined that a child does indeed require alternative care, it must be provided in an appropriate way. This means that **all care settings must meet general minimum standards** in terms of, for example, conditions and staffing, regime, financing, protection and access to basic services (notably education and health). To ensure this, a mechanism and process must be put in place for authorising care providers on the basis of established criteria, and for carrying out subsequent inspections over time to monitor compliance.

The second aspect of 'suitability' concerns **matching the care setting with the individual child concerned**. This means selecting the one that will, in principle, best meet the child's needs at the time. It also implies that a range of family-based and other care settings are in place, so that a real choice exists, and that there is a recognised and systematic procedure for determining which is most appropriate ('gatekeeping').

In developing this **range of options**, priority should clearly be given to 'family and community-based solutions' (§ 53). At the same time, the *Guidelines* recognise family-based settings and residential facilities as complementary responses (§ 23), provided that the latter conform to certain specifications (§ 123, 126) and are used only for 'positive' reasons (i.e. when they constitute the most appropriate response to the situation and the needs of the child concerned (§ 21)).

For example, a child who is taken into care as a result of a negative family experience may be unable to cope with an immediate placement in another 'family-based' setting and may, therefore, first need a less intimate or emotionally-demanding environment. Equally, if foster care is envisaged as the most favourable solution, the foster-family will need to be selected according to its potential willingness and ability to respond positively to the characteristics of the child in question. Again, the suitability of a placement must be subject to regular review – when and how often being dependent on the purpose, duration and nature of the placement – and should take account of all pertinent developments that may have occurred since the original decision was made.

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iii. Applying the principles of necessity and suitability

The following are among the key elements to take into account to ensure that alternative care is used only when necessary and is appropriate for the child concerned.

Reduce the perceived need for formal alternative care

- Implement poverty alleviation programmes
- Address societal factors that can provoke family breakdown (e.g. discrimination, stigmatisation, marginalisation…)
- Improve family support and strengthening services
- Provide day-care and respite care opportunities
- Promote informal/customary coping strategies
- Consult with the child, parents and wider family to identify options
- Tackle avoidable relinquishment in a pro-active manner
- Stop unwarranted decisions to remove a child from parental care

Discourage recourse to alternative care

- Ensure a robust gate-keeping system with decision-making authority
- Make available a range of effective advisory and practical resources to which parents in difficulty can be referred
- Prohibit the 'recruitment' of children for placement in care
- Eliminate systems for funding care settings that encourage unnecessary placements and/or retention of children in alternative care
- Regularly review whether or not each placement is still appropriate and needed

THE NECESSITY PRINCIPLE

Ensure formal alternative care settings meet minimum standards

- Commit to compliance with human rights obligations
- Provide full access to basic services, especially health-care and education
- Ensure adequate human resources (assessment, qualifications and motivation of carers)
- Promote and facilitate appropriate contact with parents/other family members
- Protect children from violence and exploitation
- Set in place mandatory registration and authorisation of all care providers, based on strict criteria to be fulfilled
- Prohibit care providers with primary goals of a political, religious or economic nature
- Establish an independent inspection mechanism carrying out regular and unannounced visits

Ensure that the care setting meets the needs of the child

- Foresee a full range of care options
- Assign gatekeeping tasks to qualified professionals who systematically assess which care setting is likely to cater best to a child's characteristics and situation
- Make certain that residential care is used only when it will provide the most constructive response
- Require the care provider's cooperation in finding an appropriate long-term solution for each child

THE SUITABILITY PRINCIPLE

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iv. Taking account of the 'best interests of the child'

There are frequent references in the *Guidelines* to the 'best interests of the child'. However, much confusion surrounds the meaning and implications of this concept in the context of promoting and protecting children's rights. **Misinterpreting the aims and scope of the 'best interests principle' can lead in practice to highly inappropriate and harmful responses** to children who are, or are at risk of being, without parental care.

The child has the right to have his/her 'best interests' taken into account as 'a primary consideration' when decisions affecting the child are made by 'public or private social welfare institutions, courts of law, administrative authorities or legislative bodies' (CRC Article 3.1.). These decisions can have far-reaching consequences. So, it is all the more important to be clear about the way 'best interests' are to be approached when implementing the *Guidelines*.

Essentially, three interdependent requirements emerge from CRC Article 3.1:

1. **Whenever the entities mentioned above are involved, they must determine the best interests of the child.** This means making a decision on the basis of all information requested and/or made available. This responsibility for determining best interests is particularly important where there is a conflict of opinion or where there is no primary caregiver.

2. In coming to a decision that affects the child, these entities should also take account of **the rights and legitimate interests of any other party** (e.g. parents, other individuals, bodies or the State itself) as well as other pertinent factors. Thus, although priority to the child's best interests is seen as the guiding rule in practice, decision-makers are not actually bound to follow this in every instance. Requirement 2 should be balanced with requirements 1 and 3 and should not be interpreted outside the context of these three CRC requirements.

3. When **a 'best interests' decision has to be made between various appropriate and viable options for a child**, it should in principle favour the solution considered to be the most positive for the child – immediately and in the longer term. At the same time, any final decision should be thoroughly compliant with all the other rights of the child.

Importantly, from a rights perspective, 'best interests' do not transcend or justify ignoring or violating one or more other right – if that were so, the concept could never have figured in the CRC. The 'right' in the CRC simply seeks to ensure that the child has his or her best interests duly considered when decisions are made about the most effective way to safeguard overall rights. The responsibility for that decision-making clearly lies with the bodies specified; it cannot be taken over arbitrarily by others.

In a field such as alternative care – both in practice and from a policy perspective – it is reasonable to expect that **in the vast majority of situations, the child's duly determined best interests should be followed.** If and when this is not the case, it has to be demonstrated that doing so would seriously compromise the rights and interests of others. One example of this, provided in the UNHCR Guidelines (see below), would be a decision not to place a child with an infectious disease in a foster family before treatment, even if family-based care has been determined as being in his/her best interests. Similarly, it is not unknown for the physical security of foster carers looking after a particular child to be threatened by third parties, resulting in the need to relocate that child to a group setting where staff protection can be better assured. It follows that situations where the child's initially-determined best interests cannot be prioritised are truly exceptional.

Furthermore, the **'best interests of the child' are the determining factor in two situations** that are directly relevant to alternative care: examining the need to separate a child from his/her parents (CRC Articles. 9.1 & 20.1); and exploring adoption as an option for a child who has been taken into alternative care (CRC Article 21). In these cases, the child's best interests should clearly take automatic precedence but it is still vital to remember that **the two other core elements of CRC Article 3.1 (decision-making responsibility and the rights-compliant nature of the chosen solution) remain intact.**

While the responsibility for deciding on best interests is thus established by the CRC, it leaves a vital question unanswered: what information, factors and criteria should constitute the basis for that decision? In other words, how are best interests to be determined?

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To date, the most comprehensive attempt to respond to that question at international level is undoubtedly the 'Guidelines on Determining the Best Interests of the Child' drawn up by the UNHCR (2008). Although the **Best Interests Determination (BID)** model it proposes was largely designed with unaccompanied and separated refugee children in mind, it is a prime source of inspiration when any significant decisions are to be made about a child and his/her future.

With children for whom alternative care is, or may be, a reality, BID should be grounded in **an assessment undertaken by qualified professionals, and should cover at least the following issues**:

1. The child's own freely expressed opinions and wishes (on the basis of the fullest possible information), taking into account the child's maturity and ability to evaluate the possible consequences of each option presented.

2. The situation, attitudes, capacities, opinions and wishes of the child's family members (parents, siblings, adult relatives, close 'others'), and the nature of their emotional relationship with the child.

3. The level of stability and security provided by the child's day-to-day living environment (whether with parents, in kinship or other informal care, or in a formal care setting):

    a) Currently (immediate risk assessment)
    b) Previously in that same environment (overall risk assessment)
    c) Potentially in that same environment (e.g. with any necessary support and/or supervision)
    d) Potentially in any of the other care settings that could be considered.

4. Where relevant, the likely effects of separation and the potential for family reintegration.

5. The child's special developmental needs:

    a) Related to a physical or mental disability
    b) Related to other particular characteristics or circumstances.

6. Other issues as appropriate. For example:

    a) The child's ethnic, religious, cultural and/or linguistic background, so that efforts can be made, as far as possible, to ensure continuity in upbringing and, in principle, maintenance of links with the child's community
    b) Preparation for transition to independent living.

7. A review of the suitability of each possible care option for meeting the child's needs, in light of all the above considerations.

The results of such an assessment should form the basis of BID by the competent bodies, who will also consider all other factors (including the availability of options in practice, and the interests and rights of others) before coming to a decision. The reason for their decision should be explained to the child, especially if it does not correspond to the opinion s/he expressed. A BID assessment should also be carried out each time a placement comes up for review (see CRC Article 25, *Guidelines* § 67).

In certain egregious situations, the danger facing a child will require **immediate protective action**. Here, it is vital to ensure that the full BID process is launched as soon as practicable after the initial emergency response – ideally with an agreed protocol for doing so. In particular, no definitive and durable solution must ever be arranged before the assessment process has been completed, and its findings have been taken into account by a competent authority.

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Focus 1: Participation of children and young people in care decisions and care settings

OVERVIEW

Too often, children are placed in alternative care without fully understanding why, or without being given a chance to express their opinions. This clearly contravenes CRC Article 12, which gives children the 'right to be heard' in all judicial or administrative procedures affecting their lives. In many cases, children who are arbitrarily or inappropriately placed in care subsequently make their views known in various 'non-verbal' ways, such as withdrawal, refusal to cooperate, absconding or otherwise disrupting the placement. This means that their overall experience of alternative care will be resolutely negative and may have serious repercussions for their present and for their future.

The drafters of the *Guidelines* therefore paid special attention to the need to consult with every child for whom an alternative care placement might be envisaged. They stated that consultation should cover all decision-making related to the care setting, throughout the placement and prior to leaving the care system. The drafters not only included this in the General Principles of the *Guidelines* (§ 6-7) but also recalled it at many specific points in the text (see § 40, 57, 65, 67 for example). This is a key component of the individualised, case-by-case theme promoted in the *Guidelines* regarding alternative care decision-making.

There is clearly an intimate connection between such 'child participation' and consideration of the best interests of the child, and this is reflected in § 7. Any determination of best interests must be based in part on the preferences and concerns of the child in question, while taking account of a wide variety of other opinions and factors. These include the foreseeable short-term and longer-term consequences of a given solution for the effective protection of all other rights, and are also determined by the availability of suitable options provided or promoted by the State.

Equally, as reflected in § 6 (and again in § 64 for example), children must have access to all the information they need to allow them to reach well-founded conclusions about the options open to them.

'Child participation' is inexorably linked to consultation with the child's family, appointed representative and/or other persons they see as important and trusted. This point is emphasised frequently in the *Guidelines*. Seeking the views and, ideally, the approval of those on whom the child has come to rely helps ensure that decisions about an alternative care placement correspond as far as possible to the child's own expectations. This clearly enhances the likelihood that an alternative care placement will have a positive outcome.

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 6, 7, 40, 49, 57, 64, 65, 67, 94, 98, 99, 104, 132

The *Guidelines* are underpinned by a commitment to children's right to be heard in matters that affect them, in line with Article 12 of the CRC. This is a General Principle of the *Guidelines* which should be reflected in all policy and practice related to alternative care.

National policy should:

Embed children's rights to participate in legislation and policy

- Ensure that a commitment to children's views being heard is embedded in all legislation and policy relating to children and their families in line with Article 12 of the CRC

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Focus 1: Participation of children and young people in care decisions and care settings (cont.)

IMPLICATIONS FOR POLICY-MAKING (cont.)

- Establish independent human rights institutions such as children's ombudsmen or children's commissioners to uphold children's right to be heard
- Take into account the UN General Comment No. 12 *The right of the child to be heard* to inform children's participation in processes and administrative proceedings
- Promote awareness of children's rights, including the right to participate, to: children and their families; policymakers and those caring for children and families; and wider society using public campaigns and the media
- Ensure that all children have the right to participate regardless of status or circumstances and without discrimination
- Ensure that there is no lower age limit to children's participation and provide support for children in their communication needs, including support for non-verbal forms of communication
- Encourage organisations or groups, which are peer-led or which significantly support children's participation, to contribute to the development and implementation of policy and practice on alternative care

Support the participation of children in alternative care procedures and processes

- Ensure legislation and national policies on child protection and alternative care include a commitment to children's participation and are underpinned by a child rights approach
- Require children's views to be sought for decisions regarding their placement, the development of care assessments, plans and reviews. This should include seeking children's views on services which can support children and their families and carers
- Provide children with information so that they can make informed choices and can fully participate in decision-making processes. This should include access to child friendly versions of their rights and free legal representation of lawyers trained in care matters where appropriate
- Preserve information on children's background and origins so that children, or others with children's permission, can research their origins
- Ensure that the child's family, or other significant people that a child trusts, are also consulted on decisions
- Require that children have access to a trusted adult where they want support and to talk to someone confidentially
- Make provision so that a child can be heard directly through a representative or body where a child is very young or is unable to express an opinion verbally or through other means of communication
- Ensure that children's views are taken into account in decisions on contact with, and during visits to, their families

Support children to raise concerns and complaints (§ 98-99)

- Require mechanisms to be in place so that children can raise informal concerns
- Put in place clear mechanisms for formal complaints so that children in alternative care can safely report infringements of their rights including abuse and exploitation
- Ensure that children are informed of their right to make complaints. They should have access to an independent trusted adult to support them take forward a complaint where required

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Focus 1: Participation of children and young people in care decisions and care settings (cont.)

IMPLICATIONS FOR POLICY-MAKING (cont.)

- Ensure that children have access to legal remedy and judicial review. They should have access to legal representatives and support from independent trusted adults as required
- Ensure that children are aware of the extent and limits of confidentiality when making complaints and that making complaints is without retribution. Children should receive systematic feedback on how their concerns and complaints have been dealt with and what the outcomes are
- Require that complaints are recorded and are regularly reviewed. Establish an identifiable, impartial and independent body which can monitor complaints
- Seek the views and ongoing participation of children in how to improve complaints mechanisms

PROMISING PRACTICE 1.1

Mkombozi, Tanzania

Mkombozi works with children at risk of migrating to the streets in the Arusha and Kilimanjaro regions of northern Tanzania. It supports moving away from residential care of street-involved children towards care within families and communities. As a result, it has transformed its original residential facility into a 'transition home'. Mkombozi appreciates the value and impact of meaningful child participation and enabling opportunities for former and current street-involved children and young people to raise their voices and to be heard. Young people participated in the *Baraza la Watoto* (Children's Council) in Arusha Municipality, which has led to the municipal authority recognising issues facing children and young people and finding ways to assist them.

Throughout 2010, children also contributed much to Mkombozi's strategic planning processes through meetings, discussions and reflections.

Some of the older children acted as ambassadors and shared their own life experiences whilst discussing the negative consequences of longer term institutional care. In 2010 the annual child satisfaction survey was conducted with children and older youth staying at the transition home. The survey highlighted communication between social workers and children as an area for development. The results of the satisfaction survey were presented to staff and provided an opportunity for staff to reflect on progress from the perspective of young people.

For more information see: The Mkombozi Annual Report (2010) www.mkombozi.org

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Focus 1: Participation of children and young people in care decisions and care settings (cont.)

PROMISING PRACTICE 1.2

Collective participation in child protection services, Norway

'User participation and professional practice in child protection services' is an action research project run in cooperation with two child protection services in Norway looking at how to strengthen the participation of young people in decisions about their care. It uses a dialogue-based participation group for young people in child protection and a group for parents who have lost custody of their children. The initiative for young people resulted in changes in the practice of the child protection centre so that young people were now fully involved in meetings that would make decisions about their future care. The parents group provided the parents with the opportunity to influence child protection services by enabling parents to develop greater consciousness concerning possibilities for taking effective action in relation to care decisions affecting their own children. The experience from this project suggests that there is a need to support the development of models of collective user participation in order to provide service users with the power to influence service delivery.

For more information see: Seim, S. and Slettebo, T. (2011). Collective participation in child protection services: partnership or tokenism? *European Journal of Social Work*, 14(4), 497-512. DOI: 10.1080/13691457.2010.500477

PROMISING PRACTICE 1.3

Who Cares? Scotland training initiative, Scotland, United Kingdom

In 2010 Who Cares? Scotland received three years of funding to design, develop and deliver a national training initiative aimed at raising awareness and developing the capacity of locally elected representatives and key agencies with decision-making responsibilities for children's services. Children and young people in formal alternative care and care leavers have been involved throughout the development and delivery of the national training programme. 127 young people were involved in this process via making local training films for the training sessions and involved in the delivery of the training sessions to these senior people. Positive evaluations showed young people's involvement in the training sessions made the training particularly effective. Young people have gone on to be employed as trainers on the programme and have represented the organisation internationally. The programme has resulted in changes to local policy and practice in a number of ways including improvements in local housing policy for young people leaving care, enhanced opportunities for training and employment, better access to sport and leisure facilities and improved participation in decision-making.

For more information visit:
www.corporateparenting.co.uk

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SCOPE AND TERMINOLOGY OF THE *GUIDELINES*

In this chapter you will find:

3a. Scope of the *Guidelines*

3b. Terminology used in the *Guidelines*

i. Alternative care in an existing family
ii. Other care settings
iii. Concepts are not absolute

CLICK TO REFER TO THE *GUIDELINES*

3a. Scope of the *Guidelines*

For the most part, the *Guidelines* apply to the provision of formal alternative care for all children (i.e. persons under the age of 18, unless majority is attained earlier, in line with the CRC) without parental care or at risk of being so [§ 27]. At the same time, the *Guidelines*' coverage extends to young people leaving the formal care system and needing support after reaching the age of majority [§ 28]. They may also be applicable in settings that do not constitute 'alternative care' as such but have a responsibility to care for children (e.g. boarding schools, school hostels and treatment centres [§ 31]).

However, the *Guidelines* are also the first international instrument to **cover not only all types of 'formal' alternative care but also 'informal' arrangements** [§ 27]. They do so for two main reasons:

- Alternative care for most children who cannot live with their parents is, in fact, informal in nature. In other words, the majority of alternative care throughout the world is organised spontaneously between private individuals – most often parent(s) and relatives – through informal, societally accepted practices. The drafters felt that this reality needed to be fully acknowledged. However, the *Guidelines* are not intended to cover a child's occasional informal care with relatives or friends, say for holidays or during short parental absences [§ 30.c].
- While informal arrangements are by definition not the result of formal official intervention and decisions (and therefore difficult to be covered by set standards) they may require oversight and/or may benefit from State support to ensure optimum child protection. It is here that standards have their role to play.

This said, it should always be borne in mind that **the overall standards and principles set out in the Guidelines only concern formal care** [§ 27]; **those that apply to informal care are specifically mentioned as such** [notably § 56, § 76-79] [See also Focus 9].

Two groups of children are explicitly **excluded** from coverage in the *Guidelines*:

- Children who are **deprived of their liberty as a result of being in conflict with the law**, or alleged as such, since their situation is already covered in other international instruments in the sphere of juvenile justice [§ 30.a].

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- Children who have been **adopted** (§ 30.b). This is because an adopted child is in parental care as soon as the adoption order is made. Therefore, a completed adoption is not a form of alternative care, since it establishes a full parent-child relationship. It is not subject to the many facets of alternative care management, such as a care plan or periodic review. Nevertheless, the period prior to the adoption being finalised is logically considered to come within the scope of the *Guidelines*. Furthermore, it is important to note that efforts foreseen in the *Guidelines* to prevent family breakdown apply as much to adoptive families as to any others.

On this second point, the complex question of ***kafala* under Islamic law** and its relationship to adoption needs to be addressed.

Islamic law does not recognise adoption, and adoption-type care arrangements are generally possible only for abandoned young children whose parents are unknown. Such arrangements consequently concern an extremely small proportion of children without parental care.

Thus, in recent decades (and notably during the drafting of the CRC), there has been a tendency to refer to the far more widespread practice of *kafala* – the nearest Islamic equivalent to adoption. The *Guidelines* follow this trend of linking adoption and *kafala* (e.g. § 2.a, 123, 161). However, the way in which *kafala* is conceived in practice varies greatly from one country to another – ranging from anonymous financial support for a child in a residential facility to a quasi-adoptive relationship where the child may, under certain circumstances, take on the family name of, and be allowed to inherit from, the carer in virtually the same manner as an adopted child.

In the context of the *Guidelines*, interpretation of the term '*kafala*' can therefore only be very pragmatic. The *Guidelines* cover the practice when it involves direct day-to-day care for a child. However, that care may be arranged on an informal or more formal basis – something that must be taken into account when determining obligations to the child. In the relatively rare instances where *kafala* is tantamount to a legalised life-long care arrangement, it may well fall outside the scope of the *Guidelines* in the same way that adoption does.

3b. Terminology used in the *Guidelines*

There are a number of important points to highlight about the concepts used, and definitions given (§ 29), in the *Guidelines* when referring to different forms of alternative care.

Informal care (§ 29.b.i) is seen as an active or tacit arrangement between a child's parents or guardians and one or more individual (usually relatives or persons close to the family) who have no officially-sanctioned mandate as carers at the time of taking on that responsibility. Informal care also covers spontaneous offers of care by private individuals in the absence of parents or other primary caregivers.

It follows that **formal care** encompasses all placements with a recognised caregiver, regardless of how they are arranged and on whose initiative (§ 29.b.ii). Of special note in this respect is that every admission to a residential facility is considered to be 'formal'. In other words, since the *Guidelines* require that all facilities be registered and authorised to operate, it is assumed that they are 'recognised'. Importantly, this means that States and care providers cannot invoke the supposedly 'informal' nature of any placement in residential care – even when it was, for example, at the sole request of the parent or guardian – to justify non-compliance with protection standards regarding the child concerned, as set out in the *Guidelines*.

The *Guidelines* refer to two distinct groups of formal care providers (§ 29.d):

- **Agencies** that organise alternative care placements (such as a social service or gatekeeping body)
- **Facilities** that are establishments providing residential care to children

Agencies and facilities may be **public or private** in nature, with 'private' taken to mean 'non-State'. Private agencies, therefore, include NGOs, associations and faith-based organisations as well as private enterprises. The *Guidelines* make no distinction between for-profit and non-profit operations, but specify that profit should not be 'a prime purpose' of the provider (§ 20).

There is a vast array of alternative care settings throughout the world. For the purposes of the *Guidelines*, they are

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divided into two basic types: those where an **existing family** is the care provider, and those founded on a **different care arrangement**.

i. Alternative care in an existing family

The *Guidelines* pinpoint three types of care under this heading:

- **Kinship care** (§ 29.c.i) is provided by relatives or other caregivers close to the family and known to the child. While such arrangements have so far tended to be informal, some countries are now making increased use of formalised placements within the extended family (**kinship foster care**). This enables all parties concerned to benefit from levels of guidance and support on a par with those of any other foster care placement.
- **Foster care** (§ 29.c.ii) is provided by authorised couples or individuals in their own homes, within the framework of formal alternative care provision.
  - **Short-term foster care** may be provided to cover a temporary crisis, or as planned 'respite care' for a few days to relieve parents, particularly those who care for a child with a disability or other special needs.
  - **Medium-term foster care** may be required while support is being offered to parents or the wider family to enable them to resume care for the child, or where efforts are being made to trace a family.
  - **Long-term foster care** meets the needs of certain children – such as those for whom adoption cannot be envisaged or is against their wishes – by providing family-based care for many years, sometimes into adulthood.
- **Other family-based care** (§ 29.c.iii) covers care settings where an existing family plays a formal care role similar to that of a foster carer – but does not operate within the foster care service. For example, families may be designated to look after children transitioning out of residential care, or to act as 'guardians' for children with long-term alternative care needs.

ii. Other care settings

For the purposes of the *Guidelines*, all alternative care settings that are not family-based are classified as 'residential'.

- **'Family-like' care** (§ 29.c.iii) is included under residential care because, in contrast to 'family-based' care, it refers to the way that care is organised rather than to any pre-existing 'family' status of the care setting. Family-like care is provided in largely autonomous small-groups under conditions that resemble a family environment as much as possible. One or more surrogate parents serve as caregivers, although not in those persons' normal home environment.

  The family-like characteristics of a residential care setting is an important criterion when determining its general suitability. For example, Recommendation 2005(5) of the Committee of Ministers of the Council of Europe specifies that, to be consistent with children's rights, 'a small family-style living unit should be provided' in residential facilities. A similar stance is taken by the *Guidelines* (§ 123).
- **Residential care** (§ 29.c.iv) encompasses a wide range of settings, from emergency shelters and small-group homes to the biggest residential facilities. The *Guidelines* look on residential care as a necessary component in the range of alternative care options that must be in place, provided it satisfies a number of conditions. A small group setting with trained staff can provide therapeutic care or treatment for children who have suffered trauma or severe abuse or neglect. To enable large sibling groups to remain together, a residential care setting may also be the best option. Children can value residential care when it focuses on providing individualised opportunities for social and emotional development. Thus, while the *Guidelines* set out strict standards to be met, and clear restrictions on recourse to residential care, they also recognise the 'constructive' role it can play (§ 21).

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It is vital to distinguish between '**residential facilities' and 'institutions'**. The latter term is used only once in the *Guidelines* – to describe 'large residential facilities' (§ 23). It is of course 'institutions', and not residential facilities as a whole, that are to be targeted through a 'de-institutionalisation strategy' [see Focus 3].

In truth, there is no universally agreed definition – in the *Guidelines* or elsewhere – of what constitutes an 'institution' as opposed to other residential care settings. According to the *Guidelines*, size is one factor, but this is largely because of the now well-documented negative impact that large-scale group care frequently has on the well-being and development of children, and on the capacity to safeguard and promote their rights.

So, rather than simply focus on every residential facility above a given size, it is important to tackle what is often called an 'institutional culture' – the regimes and day-to-day organisation that take little account of individuality, or psychological and emotional needs, and tend to isolate children from the outside world. In other words, a degree of pragmatism is required to determine whether or not a given facility should be considered as an 'institution'.

Finally, the *Guidelines* also mention '**supervised independent living arrangements**' (§ 29.c.v). These are designed for children and young people in transition from a formal care setting to an independent life in the community.

iii. Concepts are not absolute

The above review of the nomenclature and categories within alternative care settings is intended to provide the necessary foundations for a common understanding of the scope and intentions of the *Guidelines*. Such a common understanding is particularly important because the same or similar terms may be used around the world to define what are significantly different care settings and/or diverse legal and administrative requirements and responsibilities.

But the categories cannot be seen as watertight or definitive concepts. The variety of recognised care settings that exist in practice do not always correspond perfectly to generic descriptions; some have been described as 'hybrid'. For example, a residential facility may be both 'family-like' and smaller than certain family-based settings, and a 'family-type home' may not only look after children but also young people who, having been placed there as children, remain there while they set out on the path to achieving an independent life.

The main concern for implementing the *Guidelines* is the extent to which any alternative care option, no matter how it is defined, provides necessary and individualised quality care in line with international standards, and respects the overall rights and best interests of the child.

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GENERAL PRINCIPLES AND PERSPECTIVES OF THE *GUIDELINES*

In this chapter you will find:

4a. Basic and overarching approaches and measures

IMPLICATIONS FOR POLICY-MAKING:
Supporting the rights and needs of children with disabilities and other special needs

4b. Fundamental policy orientations

Focus 2: Placement of children aged 0-3 years in family-based settings
- Implications for policy-making
- Promising practice:
  - Case Study 1: UNICEF Sudan: Alternative Family Care
  - Case Study 2: UNICEF Kosovo Alternative Care Services
  - Case Study 3: Child's i Foundation, Uganda
  - Case Study 4: Foster Care Network, Paraguay

4c. De-institutionalisation of care systems

Focus 3: Strategies for de-institutionalising the care system
- Implications for policy-making
- Promising practice:
  - Case Study 1: De-institutionalisation strategy, Moldova
  - Case Study 2: De-institutionalisation strategy, Georgia
  - Case Study 3: De-institutionalisation strategy, Malawi

4d. Principles underlying the measures to promote application of the *Guidelines*

IMPLICATIONS FOR POLICY-MAKING:
Providing the policy framework for alternative care

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Context: Understanding the *Guidelines*

The **general principles and perspectives** in the *Guidelines* (§ 3-26) are important for two main reasons.

4a. Basic and overarching approaches and measures

Firstly, the 'general principles and perspectives' set out certain **basic and overarching approaches and measures** that should shape the way alternative care for children is handled. These are echoed, re-emphasised and developed in subsequent provisions of the *Guidelines*.

The main principle that underpins the *Guidelines* is that all preventive actions to strengthen families, and provide suitable alternative care when necessary, should be founded on **case-by-case decisions**. This leads to appropriately tailored responses to specific circumstances that are, at all times, in the best interests of the child(ren) concerned (§ 6).

Other 'principles and perspectives' include:

- prioritising efforts to enable children to remain with their families,
- making decisions on care placements that take account of each child's opinion and best interests [see Focus 1],
- non-discrimination,
- the vital role played by informal care [see Focus 9], and
- ensuring that a child in alternative care always has a legal guardian or analogous person or body to rely on.

These topics are covered in more detail later in the handbook.

A substantial sub-paragraph (§ 9.b) in the *Guidelines* provides an indicative (but not exclusive) list of what constitutes '**special needs**' – a term that is used at various points in the text, often in conjunction with issues relating to disability and HIV/AIDS. 'Children with special needs'

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include victims of violence and exploitation, children living on the street, and those displaced within or outside their country of habitual residence. The description gives rise to another important principle: that not only must the 'special' needs' of these children be considered in the context of every needs assessment and response, but also that they should be the subject of particular attention, given their vulnerability, as far as care and protection measures are concerned.

IMPLICATIONS FOR POLICY-MAKING

Supporting the rights and needs of children with disabilities and other special needs

Guidelines: § 9, 10, 34b, 38, 117, 132

Children with disabilities and other special needs are often placed in alternative care unnecessarily. National policy and services should provide support to children, and their families and carers to prevent children with disabilities and other special needs being placed in alternative care where they could live with their families. Where this is not possible, States should ensure that alternative care meets the needs of children with disabilities and other special needs.

National policy should:

Ensure policy, guidance, planning and assessment is in place

- Implement the provisions of the CRC, the Convention on the Rights of People with Disabilities (CRPD), other international instruments as appropriate, and the *Guidelines* in upholding the rights of children with disabilities and other special needs in legislation and policy
- Develop strategies and services to ensure that children with disabilities are not placed, and do not remain, in alternative care on the basis of their or their parents' disability alone, in line with Article 23 (4) of the CRPD
- Provide integrated planning and support across services including health, education, child welfare, social protection and housing to meet the needs of children with disabilities and other special needs and their families
- Ensure that children with disabilities and other special needs are not placed in institutions, and that this includes children aged 0-3 years. A range of care options appropriate to the needs of individual children should be provided as alternatives to institutions and where children cannot live at home

Provide appropriate care and support

- Require mechanisms to be in place so that the needs of children with disabilities and other special needs can be fully assessed and ensure that there is input from specialist professionals where needed
- Ensure children with disabilities have access to education (including vocational training and tertiary education), rehabilitation services, occupational therapy, health care and child welfare
- Provide support for families caring for children with disabilities and other special needs. This could include financial support, day care and respite care, education, health, community support and rehabilitation services in order that parents and he extended family can care for their children
- Provide planned, short term, temporary respite care for children with disabilities as one means to prevent placement in long-term formal care
- Provide support including financial support so that foster carers and carers in family-based care appropriately care for children with disabilities. Where appropriate, children with disabilities should continue to receive support as they move into adult life
- Ensure that attention is given to the importance of early childhood development and early intervention to ensure that the needs of children with disabilities and other special needs are met

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IMPLICATIONS FOR POLICY-MAKING (cont.)

- Require appropriate physical access to be provided within homes, residential facilities and services supporting children and their families
- Ensure that children with disabilities and other special needs are fully protected by having child protection measures in place wherever they live
- Provide appropriate care for children with disabilities in emergency settings
- Require planning, resources and support to be available to children with disabilities and other special needs when leaving care and aftercare

Promote awareness and counter stigmatisation and discrimination

- Challenge and develop measures to counter discrimination and stigmatisation of children with disabilities and other special needs and their families. This should include training and awareness raising for carers
- Promote awareness of the rights of children with disabilities and other special needs and encourage the extended family, community and civil society to provide informal support
- Collect and analyse data and undertake research to better understand the needs of children with disabilities and other special needs and to inform alternative care services

4b. Fundamental policy orientations

Secondly, the *Guidelines* stipulate a number of **fundamental policy orientations** that are **not referred to subsequently** in the text and therefore need to be highlighted here. They are:

- **Poverty** alone should never justify the admission of a child into formal alternative care. On the contrary, it should be the trigger for providing appropriate support for the family (§ 15). Research has shown that this principle is of particular significance worldwide, where regardless of a country's economic situation, children are often relinquished or removed from the care of their parents ostensibly because of the parents' inability to meet their material needs. This means that the provision of cash or other material support would, in principle, be enough to keep the family together.
- As a general rule, **siblings should not be separated from each other** in care placements unless there are compelling reasons for doing so. These reasons must always be in the best interests of any of the children concerned (§ 17). While this may seem an obvious policy directive, the number of documented cases where siblings are separated without regard to their best interests made it necessary to stipulate it as a general principle of the *Guidelines*.
- Care providers should never be motivated principally by **political, religious or economic goals** (§ 20). Pursuing such aims can lead to, among other things, active searches ('harvesting') for children to take in, especially by those running residential facilities that are privately financed and/or funded on the basis of the number of children in their care.
- While **residential facilities** are recognised as a necessary component of care provision, placements in them should only be made for positive reasons, based on an assessment of what is best for the child (§ 21). In other words, a lack of alternatives or time/resources to find a more appropriate setting is no excuse. [See paragraph on residential care].
- **Children aged 0-3 years** should not be placed in residential facilities, but in family-based settings, subject to a number of exceptions (§ 22).

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Focus 2: Placement of children aged 0-3 years in family-based settings

OVERVIEW

Special attention has been paid in recent years to the negative effects of institutional care on younger children, particularly those in the 0-3 year age group. A number of studies have shown that there is a high probability that young children will suffer lasting damage if they are not in a care setting where they receive individual attention and, more importantly, have the opportunity to bond with a caregiver.

According to the UN's World Report on Violence against Children (2006), such children may suffer from 'poor physical health, severe developmental delays, disability and potentially irreversible psychological damage'. These findings, and others, have prompted many international agencies to take action. For example, in 2011, UNICEF and the UN Office of the High Commissioner for Human Rights launched a 'Call for Action' in Central and Eastern Europe, urging an end to the placement of all children aged 0-3 years (including those with disabilities) in institutions.

But the *Guidelines* go even further. Stipulating that, 'in accordance with the predominant view of experts', children aged under three who need alternative care should be placed in family-based settings (§ 22), they implicitly exclude all residential care options, not just 'institutions', In other words, they are saying that, for these youngest children, the condition that residential care only be used when it is beneficial for the child (§ 21) cannot generally be met.

However, it is also recognised that a *short-term* placement in a residential facility (that otherwise meets standards set out in the *Guidelines*) is unlikely to have a lasting and severe negative impact on the child. Here, findings suggest that significant and potentially permanent effects on development usually begin only after three months in residential care. As a result, a number of exceptions to the ban are foreseen:

- for short-term placements in an emergency
- when family reintegration or another family-based solution is planned within a short period, and/or
- when siblings need to be kept together and other care settings immediately available would mean separating them.

Experience in certain countries that have sought to implement a policy of partial, priority de-institutionalisation has highlighted the need to ensure that sufficient preventive measures and suitable family-based substitute options are in place. This will help avoid the situation in some countries where the closure of 'baby-homes' has simply led to children relinquished or abandoned in maternity clinics being relocated to paediatric wards for many months. Once again, this underlines the need for a fully-fledged and comprehensive strategy when envisaging the closure of facilities [see Focus 3].

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Focus 2: Placement of children aged 0-3 years in family-based settings (cont.)

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 22

The *Guidelines* state that residential care should only be used when it is deemed to be more beneficial for the child than any other setting (§ 21). Since this is normally not the case for young children, those aged 0-3 years should invariably be placed in family-based settings.

National policy should:

Place young children in family-based care where alternative care is required

- Ensure that legislation is in place to limit the placement of children aged 0-3 years in residential care. Exceptions are: where short term placements are made in an emergency, when family reintegration or another family-based solution is foreseen within a short period and/or when siblings need to be kept together
- Provide resources to local services so that adequate alternative approaches are developed to avoid the placement of children aged 0-3 years in residential care

Ensure that the national plan on de-institutionalisation takes account of the needs of young children

Support the rights of children and their families

- Take the needs of young children with disabilities and other special needs and their families into account in response to the high number in residential facilities
- Provide support to families who need it so that children aged 0-3 years can remain in the family. This may include: day care and respite care, financial and welfare support, parenting education and counselling and access to appropriate housing
- Explore ways of communicating changes in care to young children in ways which are appropriate to their age and capacity and providing them with support as part of this transition
- Provide guidance so that children aged 0-3 years are placed in family-based settings with their siblings

PROMISING PRACTICE 2.1

UNICEF Sudan Alternative Family Care

Research from 2003 indicated that 110 newborn babies on average were being abandoned in Khartoum every month. This was driven by the social stigma attached to children born to unmarried parents. It was recognised that current institutional care arrangements were not in the best interests of the child and that the potential for developing forms of alternative family-based care existed. Against this background UNICEF set out with Government and NGO partners, to examine the potential for an alternative to institutional care. In addition to stabilising conditions in institutional care, key aims of the programme included the design of acceptable alternative family care arrangements, and changes in attitudes, procedures and laws relating to the abandonment of young children. In doing so the programme is a good example of overcoming obstacles to developing family-based care through its success in engaging with Islamic leaders and gaining their support through issuing a fatwa which contributed to a change in social perceptions of abandoned children. The programme has run since 2003, initially funded by UNICEF and NGO partners but now primarily by the State Ministry of Social Affairs. Initial results have been positive in terms of the de-institutionalisation of vulnerable children with a total of 500 emergency family placements and 2,000 permanent family placements made between 2003 and 2007. The programme has also helped to shape policy affecting vulnerable mothers and children. The Child Act 2010 places an emphasis on the primary source of care for abandoned children to be within a family unit and also guarantees access to education and health care for abandoned children.

For more information see 'UNICEF Sudan Technical Briefing Paper 1': Alternative Family Care www.unicef.org/sudan/UNICEF_Sudan_Technical_Briefing_Paper_1_-_Alternative_family_care.pdf

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Focus 2: Placement of children aged 0-3 years in family-based settings (cont.)

PROMISING PRACTICE 2.2

UNICEF Kosovo Alternative Care Services

Political change and instability, economic and social distress related to the post-conflict situation and lack of adequate social safety nets, have contributed to an increase in child abandonment in Kosovo. More than 600 infants have been abandoned in Kosovo since 1999. Initially a 'transit baby house' was established for infants abandoned in the hospital, attempting to move the children to adoption, foster care or reintegrate them back to birth families. UNICEF, the Ministry of Labour and Social Welfare and EveryChild implemented a Short Term Professional Foster Care Project, focusing exclusively on under- twos deprived of parental care, as the number of abandoned infants in state hospitals increased.

The government through the Centres for Social Work recruited foster carers through radio, TV, newspaper articles, publicity materials and meetings with community groups. Initially the project was funded by UNICEF but now the Ministry of Labour and Social Welfare has built foster care allowances into the Kosovo national budget, thereby demonstrating commitment to developing family-based foster care as an alternative to institutional care. By 2011 around 400 children were placed in foster care and 40 foster families became active foster carers for all categories of children in need of care and protection in Kosovo.

For more information visit www.unicef.org/kosovo

PROMISING PRACTICE 2.3

Child's i Foundation, Uganda

The Child's i Foundation in Uganda aims to maintain or reunite children with their families or, if necessary, to find alternative family placements for them. It therefore works to prevent abandonment, provide temporary short-term residential care if required, reunite families, provide on-going support to families, promote domestic adoption and find new families.

Results achieved during its first two years of operation were positive. Thus, for example, more than 200 mothers were successfully encouraged and enabled not to abandon their children as a result of the provision of these services. Short-term care was provided for 100 children and families found for them within an average of 4 months. There were 65 children reunited with their biological families and given on-going support for a further year to ensure child safety and to ensure the family could fulfil its caretaking role. Domestic adoption within Uganda has been promoted through television and radio advertising, leading to 150 families contacting the adoption hotline and resulting in a waiting list of prospective adopters. Within an 18 month period, 21 children were placed with adoptive parents in Uganda. Thorough assessments were carried out in line with the Children's Act and approval by a multi-agency panel.

For more information visit www.childsifoundation.org

CLICK TO REFER TO THE *GUIDELINES*

Focus 2: Placement of children aged 0-3 years in family-based settings (cont.)

PROMISING PRACTICE 2.4

Foster Care Network, Paraguay

In Paraguay, some 5,000 children are living in institutions, and the actors in the field of child care and protection have been cooperating since 2006 to develop and promote foster care as an alternative care measure to institutionalisation, with the support of the international NGO, RELAF. A Paraguayan Foster Care Network has been set up, comprising civil society organisations and the State government, represented by the Centre of Adoptions of the National Childhood and Adolescence Secretariat. A key step forward was the publication of a Presidential Decree in 2010 establishing a foster care programme for children and adolescents in need of protection and support. Another major achievement was the closure of the *Hogarcito*, a 'baby-home' under the auspices of the National Childhood and Adolescence Secretariat. The 22 babies there were placed with foster families, and procedures for reintegrating them with their families of origin or identifying suitable adoptive families were initiated. Other significant signs of progress are the reorganisation of governmental institutions for children and the approval by the State of a National Welfare Policy for children deprived of parental care.

There is a strong commitment on the part of governmental authorities, NGOs and professionals to ensuring babies are cared for in family-based and family-like care settings. Their work revolves around creating awareness among judges responsible for determining the care setting of children deprived of parental care; the promotion of foster care in wider society; and the recruitment, training, support and monitoring of foster families. In addition, specialists from the government and NGOs are preparing to launch a Foster Care Implementation Handbook.

For further information visit:
www.corazonesporlainfancia.org.py/doc/relaf.pdf
and www.enfoque.org.py/acogimiento-familiar/

4c. De-institutionalisation of care systems

While forms of residential care are recognised as a necessary component within the range of options to meet the different needs of children requiring alternative care, 'institutional placements' are not seen in such a positive light.

The term 'institution' has generally taken on a very negative connotation, but there is still no international agreement on its definition: The CRC (Article 20) merely mentions 'institutions' as the only example of a non family-based care setting, while the Guidelines simply use the term to describe 'large residential facilities'.

Furthermore, what is considered 'large' varies from country to country. Many specialists describe a group living arrangement for more than 10 children as large, while others set a higher baseline. There is general consensus, however, that size itself is not the only, or determining, factor.

There is also broad agreement on the likely (but not always automatic) consequences of managing a 'large' facility. These can include impersonal (or depersonalising), rigid regimes that are built around the inherent limits of day-to-day systems – such as the need for care staff to work pre-determined shifts.

Although the drafters of the Guidelines were reluctant to recommend an outright ban on the construction of new institutions, they did agree on the need for the well-planned and (eventually) complete de-institutionalisation of care systems. Any decisions on setting up new facilities should therefore be made in the context of that strategy (§ 23).

CLICK TO REFER TO THE *GUIDELINES*

Focus 3: Strategies for de-institutionalising the care system

OVERVIEW

The potentially damaging and long-term impact on children placed in 'institutions' is now well documented. These negative outcomes are due to many factors, including the absence of a primary caregiver with whom to bond, a lack of stimulation and constructive activity, poor access to basic services, violence, and isolation from the family and the 'outside world'. In many care systems, there are even more problems associated with institutionalisation, caused when there are no attempts to achieve family reintegration, no periodic review of the suitability of (or need for) the placement, and a lack of preparation for life after leaving the facility.

As a result, many countries have already phased out institutional care for children, or are on the way to doing so. However, there are other countries where, for varied reasons, the current alternative care system consists almost entirely of 'institutions'. Here the challenge of phasing them out is considerable. That challenge is all the greater where facilities are in the hands of private providers. A worldwide phasing out of institutions is further complicated by the fact that many States do not yet believe that a full-scale move towards de-institutionalisation is justified. In a small number of cases, moreover, large facilities may manage to avoid the harmful practices and inadequacies described above. None of this, however, should stand in the way of the overall objective, set in the *Guidelines*, to phase out institutions as a care option.

In light of all of the above, the drafters of the *Guidelines* opted, in § 23, to call on each State to draw up its own strategy for progressively de-institutionalising its alternative care system – rather than proposing an outright ban on institutions. The *Guidelines* also recommend that any initiative to set up a new institution should be critically examined within the context of the relevant strategy.

It is important to emphasise here that while such strategies may include procedures for finding alternative care settings for children *already* in institutions, they should be primarily focused on **de-institutionalising the system itself**. In other words, the priority should be to prevent the future need for, and recourse to, alternative care and to develop a range of non-institutional options when such care is required. Special attention has to be paid to fully include children with disabilities and other special needs in each State's strategy – in practice, they have generally been the last to benefit.

Experience has clearly demonstrated that de-institutionalisation – if it is to be successful and protect children's rights – is a highly complex and multi-faceted process. It requires careful planning. Furthermore, because not everyone supports change, it is important that all concerned individuals and agencies agree on the reasons behind a de-institutionalisation policy and understand its implications.

Among other things, particular attention should be paid to securing the broad support of institutional staff at all levels, and to ensure wherever possible that those with suitable skills and expertise can be retained in other roles within the new system.

CLICK TO REFER TO THE *GUIDELINES*

Focus 3: Strategies for de-institutionalising the care system (cont.)

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 23

The *Guidelines* call on each State to draw up its own strategy for progressively de-institutionalising its alternative care system. National policy should ensure that there are alternatives to institutional care available for children, with a range of family-based options in place.

National policy should:

De-institutionalise the care system

- Develop a national strategic plan to de-institutionalise the alternative care system
- Develop alternatives to institutions with a range of options including small-group homes, foster care (from temporary respite care to long-term care), support to parents and extended family, and support to children living independently
- Ensure that de-institutionalisation plans take into account the needs of children with disabilities and other special needs
- Explicitly prohibit the placement of young children between 0 and 3 years in institutions except in exceptional circumstances: to prevent siblings being separated; as a planned temporary measure; or as an emergency short-term response
- Ensure that plans to move away from institutional care include support to families so that children can be re-integrated with their families where this is possible or, if not, placed in a more appropriate care setting

Support the rights and needs of children and their families

- Provide support to parents so that newborn and young children, including young children with disabilities and other special needs, are not placed in institutional care
- Ensure that children are involved in planning their move from institutions to other forms of care and are provided with up to date information on the process
- Provide specialist support to children who have lived in institutions and who may find the transition to other forms of care challenging
- Ensure that siblings are placed together in family-based care wherever possible and that contact is maintained between parents and children
- Have a process for deciding that a child who is well settled in a foster family or family-like care should remain there as a long-term placement where this is appropriate
- Pay specific attention to providing appropriate care for children with disabilities and other special needs. This should include access to respite care and day care as well as providing for their health and education needs
- Support families to receive children who have been de-instutionalised so that children's return to families is durable and sustainable

Ensure the infrastructure is in place

- Provide financial resources to support national planning for the development of new care services and the consequent closure of institutions
- Provide retraining and redeployment opportunities for carers employed in institutions where possible
- Collect and analyse data at national level to monitor the number of children who remain in institutional care and those who have moved out of care (for more details see Manual for the Measurement of Indicators for Children in Formal Care)
- Provide awareness raising for carers and other professionals on the inappropriateness of institutional care for the developmental, emotional, social and physical needs of children
- Provide opportunities to explore the problems associated with institutional care for children with providers and funders of such care in order to build consensus and support for change
- Instigate public awareness campaigns in partnership with media and civil society on the damaging effects of institutional care over time

CLICK TO REFER TO THE *GUIDELINES*

Focus 3: Strategies for de-institutionalising the care system (cont.)

PROMISING PRACTICE 3.1

De-institutionalisation strategy, Moldova

Moldova has introduced de-institutionalisation reforms as part of its 2007-2011 Strategy and Action Plan. The number of children in residential institutions has decreased by 50 % since the beginning of the reform from 11,442 at the end of 2006 to 5,723 at the end of 2011. This has been achieved through more successful preventive work to help families to continue to care for their children at home and the reintegration of over 900 children into their community, the majority (86 %) with biological or extended family. For children who cannot continue to live with their families, family-based alternatives are overtaking residential care as the most likely option for the alternative placement of children. The Government has taken ownership of the reforms, which has been crucial to their success, and the strategy has involved forging partnerships with a wide range of NGOs to provide coordinated support to Government in implementing these reforms. A number of important sustainable changes have been introduced to help achieve these changes, including a national network of social workers within the community, a nationwide system of gatekeeping commissions, development of family-type alternatives with the number of children in foster care having doubled, the development of family support services and the closure/transformation of residential institutions.

For more information visit: www.unicef.org/moldova/reallives_20084.html

PROMISING PRACTICE 3.2

De-institutionalisation strategy, Georgia

The Government of Georgia has led a major child protection reform process in recent years, using the entry point of ending the use of institutional care to strengthen the overall child protection system. As institutions have closed, funds have been diverted to: increase the number of state statutory social workers; increase the foster care allowance; introduce emergency short-term foster care for infants; and strengthen prevention services, such as day care. A new gatekeeping policy – so far just for State-run facilities – is being rolled out across the country to try and ensure children come into the care system only for valid reasons.

At the same time, the number of trained state social workers has steadily expanded, from just 18 in 1999 to over 160 in 2009 and with 250 in place by 2012. A remaining challenge, however, is that delivery of social services currently targets only children in difficulty rather than foreseeing a family-wide approach, thus limiting the possibility of intervening with parents in a preventive manner to avoid the need for recourse to alternative care.

The results of the reform have nonetheless been significant. The number of children living in all forms of large state run institutional care decreased from nearly 2,500 to under 250 between 2008 and 2012. Approximately 33 % of all children from institutions have been reunited with their families. In 2010, the Government re-doubled its efforts to support reunification by introducing a two year package of $50 per month per child to enable families to take their children back, health insurance for the child, free school textbooks, and day care. Foster care has also expanded and strengthened. For those children who could not be reunified with family, the number of small group homes was increased from 15 to 45 in just two years, housing approximately 400 children.

For more information visit: www.unicef.org/georgia/OPM_report_edited.pdf

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Focus 3: Strategies for de-institutionalising the care system (cont.)

PROMISING PRACTICE 3.3

De-institutionalisation strategy, Malawi

The Malawian Government is seeking to reduce reliance on institutions for children requiring alternative care. The government is therefore currently scaling down the number of 'orphanages' in the country. In addition, the government introduced the Malawi Child Care, Protection and Justice Act 2010, which provides the overall legal policy framework for care and protection of children in Malawi. The new law approaches child welfare in a more holistic way by: providing for a child as a subject of care and protection; strengthening adoption procedures; and legally recognising foster care. The law also strengthens the family and community-based care model of addressing child welfare. The effect of the law has supported efforts towards de-institutionalising the child care system. There has been a reduction in the number of children living in institutional care, with an increase in the number of foster parents, community-based childcare centres and other community-based structures, such as support groups. The new law is also a culmination of the outcomes of the National Plan of Action for Orphans and other Vulnerable Children and its related policy, the National Early Childhood Development Policy and its implementation framework. These provide a framework for directing attention towards family and community-based care for children without parental care or for children at risk of losing parental care.

For more information see: Ministry of Gender, Children and Community Development (2010). *Monitoring Of Orphans And Other Vulnerable Children (OVC) Programme In Malawi: 2009 Annual Report*. Malawi

4d. Principles underlying the measures to promote application of the *Guidelines*

A number of important principles support the 'measures to promote application' of the *Guidelines* (§ 24-26):

- The need for **cooperation among all governmental bodies** directly or indirectly concerned. In many instances, ministries and other governmental entities have been found to be working in isolation – or, in extreme cases, virtual competition – on both the prevention and provision of alternative care.
- The desirability of using the *Guidelines* to inspire country-specific or profession-specific texts. This will encourage 'ownership' of the policy perspectives, and make them more relevant to national realities.
- The **responsibility of each State** to determine whether it needs international assistance to implement these **Guidelines**, and the requirement that any assistance provided is in line with the *Guidelines*. One of the main and vital intentions here is to avoid situations where pressure is exerted from abroad to introduce alternative care solutions that are neither in line with government policy nor the situation on the ground. For example, this can result in the unwarranted development of institutional forms of alternative care, or undue recourse to inter-country adoption.

CLICK TO REFER TO THE *GUIDELINES*

IMPLICATIONS FOR POLICY-MAKING

Providing the policy framework for alternative care

Guidelines: § 8

The *Guidelines* highlight the need for transformative policy that guarantees children's rights, prevents children entering care where possible and provides high quality alternative care when it is required.

Although each State develops policy and services according to its own political, social, cultural and economic context, the legislative and policy framework should:

Implement international rights conventions, standards and guidelines

- Comply with international conventions, standards and guidelines, in particular the CRC and the *Guidelines*
- Ensure policy includes clear definitions of alternative care in line with the *Guidelines*
- Develop an overarching national plan for how the State will implement, monitor and review the provisions contained in the *Guidelines*
- Actively promote children's rights in all aspects of legislation, policy and practice
- Provide legal protection for the rights of children without parental care and ensure that there are remedies for children whose rights are not protected

Develop national frameworks for supporting, protecting and caring for children

- Put in place comprehensive social welfare and child protection policies so that children are only placed in suitable alternative care where necessary
- Ensure the active cooperation of all relevant authorities and government ministries with a role in supporting children and their families
- Coordinate policy so that there are working links between services including child and social protection and other areas including education, health, police, justice, housing and social welfare
- Allocate adequate financial resources to ensure that legislation, policy and practice can be put in place

Support children and their families to prevent separation

- Proactively implement measures that can prevent separation of children from their families and communities, including anti poverty strategies
- Develop a range of strategies to support parents, including professional and financial support across a range of agencies and services
- Provide support to families by empowering them, providing capacity development and supporting them to utilise their own resources
- Ensure that all services support children with disabilities and other special needs and their families, and that specialist services are available where required
- Ensure that children are not placed for adoption, either in country or inter-country, without the free and informed consent of parents (or, in their absence, a legally mandated person or body), and are not separated from their families unless there is no appropriate alternative

Ensure that children and their families participate fully

- Guarantee children's right to be heard so that they are involved in decisions that affect them, and are supported to have their views taken into account
- Ensure that children are provided with sufficient information so that they can make informed choices and can fully participate in decision-making processes
- Support the participation of parents and families in all processes and decision-making
- Ensure that children can maintain contact with their families, including situations where their parents are in prison or are hospitalised, unless this is not in the best interests of the children
- Provide training, guidance and support to carers so that they can support the participation of children and their families

CLICK TO REFER TO THE *GUIDELINES*

IMPLICATIONS FOR POLICY-MAKING (cont.)

Provide a range of care options

- Provide a range of high quality care options where alternative care is required with a preference for placing children in family-based care
- Develop a national plan to de-institutionalise institutions
- Ensure children aged 0-3 years are placed in family-based settings with a ban on using residential care for young children except where there are good reasons for short-term placements
- Respond to the needs of children living on the street without adult care and ensure that appropriate care is available without forcibly or arbitrarily placing them in care. Appropriate alternative care should be among the services offered to children living on the street
- Ensure that children's transitions in and out of care are duly planned, managed and effectively supported

Ensure the provision of high quality care

- Provide independent mechanisms for formal complaints so that children in alternative care can safely report abuse and exploitation
- Outline a system of registration, licensing, regulation and inspection which ensures that providers of formal care meet quality standards
- Provide policy guidance on record keeping which allows for the collection of data and information at national and local level in order to inform the development of a range of care options

Develop a skilled workforce of carers and professionals

- Assess the competence of those who provide services and support for children and their families
- Ensure that there is national guidance on recruitment, selection, supervision and monitoring of carers and access to training for carers in line with their role
- Ensure that there is training for other professionals involved in providing support to families, child protection and alternative care
- Identify appropriate staffing levels for alternative care services so that children's care meets their needs and they are safe and protected
- Foresee conditions of work, including remuneration, that enable and motivate staff to fulfil their responsibilities to a high standard and avoid the negative effects of high staff turnover for children

Promote inclusion of all children and their families

- Promote inclusive approaches to supporting all children and their families
- Develop and implement measures to counter discrimination so that all children and families have access to the support and services that they need
- Ensure that all children and their families are included and have access to services regardless of status or circumstances and without discrimination or stigmatisation. These include: poverty, ethnicity, religion, sex, mental and physical disability, HIV/AIDS or other serious illnesses whether physical or mental, birth outside of marriage and socio-economic stigma (§ 10)

CLICK TO REFER TO THE *GUIDELINES*

THE 'NECESSITY PRINCIPLE': PREVENTING THE NEED FOR ALTERNATIVE CARE

In this chapter you will find:

5a. Primary level of prevention
i. Child-headed households

Focus 4: Protection and support for child-headed households
- Promising practice:
  - Case Study 1: CARE Rwanda's Nkundabana Programme, Rwanda
  - Case Study 2: Isibindi, South Africa
  - Case Study 3: Supporting Child-Headed Households in Tanzania

5b. Secondary level of prevention
i. Children at risk of being relinquished

Focus 5: Supporting families to prevent abandonment and relinquishment
- Implications for policy-making
- Promising practice:
  - Case Study 1: Short-break services for children with disabilities, Russia
  - Case Study 2: Family support programmes, Malaysia
  - Case Study 3: Community-based rehabilitation of children with disabilities, Nepal
  - Case Study 4: *Kafala* Excellence Project, Syria

ii. Considering the removal of a child from parental care

iii. The care of children whose primary caregiver is in custody

Focus 6: The care of children whose primary caregiver is in custody
- Promising practice:
  - Case Study 1: Mandatory regulation within Federal Court of Appeals, Argentina
  - Case Study 2: Children's Officers in Prisons, Denmark
  - Case Study 3: Crèches and nursery schools for prisoners' and prison officials' children, India

5c. Tertiary level of prevention

Focus 7: Promoting sustainable reintegration of children into their family from an alternative care setting
- Promising practice:
  - Case Study 1: National Working Group on Family and Community Living, Brazil
  - Case Study 2: Reintegration in Sierra Leone
  - Case Study 3: Walking Together – Family Support Project for Children in Residential Care, Hong Kong Special Administrative Region

CLICK TO REFER TO THE *GUIDELINES*

Context: Understanding the *Guidelines*

The first step towards applying the '**necessity principle**' is to combat the factors that contribute to family breakdown. This is the focus of § 32-52 of the *Guidelines*.

While each of these paragraphs is important in itself, it is perhaps collectively that their significance is greatest. The length and substance of the provisions on prevention demonstrate the drafters' level of concern at the high numbers of children in the alternative care system who do not need to be there. As the drafting process progressed, increasing emphasis was placed on the preventive aspects of the 'alternative care' issue.

Family breakdown and separation are the result of many single or multiple factors. These include poverty, inadequate housing, lack of access to effective health, education and social welfare services, HIV/AIDS or other serious illness, substance abuse, violence, imprisonment and displacement, as well as birth to an unmarried mother and discrimination on the basis of ethnicity, religion, gender and disability.

The approach taken by the *Guidelines* for tackling this wide spectrum of issues is built **around the three basic levels of preventive action**.

5a. Primary level of prevention

At its primary level, prevention is achieved by ensuring the general population's access to basic services, social justice and the protection of human rights without discrimination. Prevention is therefore grounded in a wide range of CRC provisions, from health care (CRC Article 24) and education (CRC Article 28) to birth registration (CRC Article 7), social security (CRC Article 25) and non-discrimination (CRC Articles 2, 30). The overall aim is to enable and empower parents to care for their children so that families can remain together.

With this in mind, the *Guidelines* list key policy issues to be addressed (§ 32), and set out a number of specific measures to be taken to strengthen families (§ 33, 34.a), provide family support (§ 34.b, 38), empower young people (§ 34.c) and help single and adolescent parents (§ 36).

The *Guidelines* also highlight the necessary and complementary roles of the State and non-State sectors to provide these services.

i. Child-headed households

Of particular significance is the approach taken to **child-headed households** (§ 37). Under certain conditions, they are seen as family groups whose members require support and protection, rather than children without parents who need alternative care.

CLICK TO REFER TO THE *GUIDELINES*

Focus 4: Protection and support for child-headed households

OVERVIEW

Although there have always been children living in households without an adult caregiver, the perception of such child-headed households as a significant child protection issue dates back only to the 1980s and the first major impact of the HIV/AIDS pandemic. Since then, large numbers of sibling groups who have lost their parents to the disease have decided to remain together – sometimes taking in cousins or friends as well – rather than seek protection from their extended family or elsewhere. Similar responses have been noted in post-disaster situations (e.g. children orphaned in the Rwanda genocide of 1994).

While it is often seen as a predominantly sub-Saharan Africa phenomenon, it is certainly not confined to that region. Many children in all parts of the world today are serving as household heads – as 'carers' for one or both parents and/or taking day-to-day responsibilities in the family home due to parental illness or other incapacity.

Because the scale of this phenomenon was only beginning to emerge at the time the CRC was being adopted, the Convention does not provide explicit guidance on the status of child-headed households or obligations towards their members. For many years, debate raged as to whether these children were in need of alternative care or, in contrast, should be viewed as an especially vulnerable family group requiring empowerment and protection in a family-support approach.

In recent times, the latter view has gained increasing sway (CRC Committee's General Comment No. 3 on HIV/AIDS and the rights of the child (2003)), not least because children have been directly consulted.

Research findings invariably show that a solid majority of children prefer the family-support solution to any other feasible option – provided, naturally, that they receive effective protection and can access education and other basic services. Many fear losing the family home if they leave it, or being deprived of their inheritance rights, or being otherwise exploited – even if they go to live with members of their extended family. They resist separation from their siblings, an outcome that would in many cases be inevitable in anything other than a residential care setting.

The *Guidelines* have, therefore, taken a major step forward in clarifying an internationally-approved approach: they come down unequivocally in favour of enabling children to remain as a household with their rights safeguarded (§ 37). Of course, this is conditional on the household head being able to play that role and wanting to do so. The same provision in the *Guidelines* also sets out the general conditions that need to be met for the household head and all others in the group to benefit from necessary assistance, guidance and protection.

CLICK TO REFER
TO THE *GUIDELINES*

Focus 4: Protection and support for child-headed households (cont.)

PROMISING PRACTICE 4.1

CARE Rwanda's Nkundabana Programme, Rwanda

Christian Action Research and Education (CARE) Rwanda's Nkundabana approach provides a community-based solution to the overwhelming problem of child-headed households. Challenged by the impact of civil war, genocide and HIV/AIDS, Rwanda is confronted with one of the highest percentages of orphans in the world. Communities already overburdened by social fragmentation, loss of labour from the HIV/AIDS pandemic, and crippling poverty are unprepared to provide care for the children left behind. Even the capacity of extended family members to absorb orphaned children often reaches its limits; and frequently children are left to their own devices. The Nkundabana model mobilises adult volunteers from the community – Nkundabana – to provide guidance and care for children living in households without adult support. Trained and supported by CARE in counselling, active listening, and life skills instruction, these volunteers provide the best alternative for children with no adult family members available for guidance and care. By making regular visits, Nkundabana has supported children to attend school or seek medical assistance, as well as provide an important emotional outlet in the form of psychosocial support. Learning from the project suggests the Nkundabana model provides a foundation for establishing economic and food security and a basis from which advocacy and child protection functions can be initiated.

For more information see: Lessons Learned: a model for community-based care for orphans and vulnerable children – Nkundabana, www.crin.org/docs/Rwanda%20Nkundabana.pdf

PROMISING PRACTICE 4.2

Isibindi, South Africa

An example of work with child-headed households is part of the overall Isibindi programme. Isibindi was launched by the National Association of Childcare Workers and is a recruitment and training programme of child and youth care workers using innovative distance learning techniques. Care workers visit identified orphans and vulnerable children in their homes and provide comprehensive services. They work with some of South Africa's most vulnerable children, including those affected by HIV/AIDS where children are orphaned and live in child-headed households. *Liyema Ikhaya*, an adolescent development programme for child-headed households, was launched in February 2010, with 25 young people attending weekly life skills training courses designed to equip them with the necessary skills and knowledge to care for their siblings and for themselves, and to make responsible life choices.

A range of services are provided including advocacy work, accompanying and representing children at schools, health services and government offices, psychological support through memory box activities, grief work, building of relationships, identifying needs and feelings, providing developmental care, behaviour management, activity programming, risk assessment and life space counselling, material assistance to access government grants and provide food parcels, ensuring that children attend school (and receive the material and educational support to continue attending and succeeding in the classroom); drawing up a developmental plan for each family (based on the values of independence, mastery, belonging and generosity); and offering life skills training (covering areas such as health, hygiene, children's rights, budgeting and nutrition). Isibindi is financed using a 'social franchising' model, which enables its replication both within South Africa and elsewhere without major resource implications.

For more information visit: www.jameshouse.org.za/isibindi.html

CLICK TO REFER TO THE *GUIDELINES*

Focus 4: Protection and support for child-headed households (cont.)

PROMISING PRACTICE 4.3

Supporting Child-Headed Households in Tanzania

Three decades of the HIV epidemic have led to changing patterns of care and inheritance in eastern and southern Africa and the loss of the parental 'middle generation' has led to the emergence of new household forms, such as child- and youth-headed households. A study found that material and emotional support from NGOs played a significant role in sustaining these households. In this programme, individually tailored approaches that take a holistic perspective were targeted to support child- and youth-headed households. Non-governmental organisations provided children and young people with a range of services and support, including food, regular cash support, school fees, uniforms and materials, health care, emotional support, peer support clubs, life skills and vocational training, self-defence clubs, capital for income-generation projects and community volunteer schemes. Young people saw this support as crucial in helping them to care for their siblings and live independently.

Findings suggest that support for child- and youth-headed households needs to recognise young people's agency and adopt a holistic approach to their lives that analyses the physical assets, material resources, human and social capital available to the household, as well as individual young people's well-being, outlook and aspirations. It was also recognised that support needs to foster peer solidarity and youth-led collective mobilisation. It suggests that such practices can enhance young people's capacities to care for their siblings and enable them to sustain their households over time, as well as help to build more supportive social environments that challenge stigma and safeguard young people's inheritance.

For more information see: The experiences and priorities of young people who care for their siblings in Tanzania and Uganda www.crin.org/docs/Sibling%20Caregivers_Evans.pdf

Also see: Evans, R. (2012) Safeguarding inheritance and enhancing the resilience of orphaned young people living in child- and youth-headed households in Tanzania and Uganda, *African Journal of AIDS Research*, 11(3): 177-189. DOI: 10.2989/16085906.2012.734977

5b. Secondary level of prevention

i. Children at risk of being relinquished

Secondary prevention is the 'safety net' and is targeted at individuals and families (and sometimes groups) who are identified or have declared themselves as being vulnerable, and for whom, for whatever reason, primary prevention measures have proved inadequate. The children concerned here include those who are **at risk of being relinquished** and those whose **removal from the parental home** on protection grounds may have to be considered.

- The first set of measures are directed towards providing tailored family support for parents experiencing difficulties in caring for their child (§ 34), with special attention to adolescent parents (§ 41).
- The second set of measures focuses on children for whom the risk of being relinquished or withdrawn from the parental home is imminent or current.

If a parent or guardian approaches an agency or facility with a view to **relinquishing the child**, immediate steps should be taken to prevent this happening – as far as possible (§ 44). These steps include offering counselling and social support to enable the parents to continue looking after the child themselves, as well as examining the possibility of making appropriate care arrangements with relatives. Similar assistance should be offered to parents seeking to place their child with an agency or in a facility for a temporary or indeterminate period (§ 45).

It is important to note that, in both instances, the *Guidelines* place an obligation on all **agencies and facilities (not only public but also those that are privately run)** to ensure that potential alternatives to placement are followed up. This follows concern among the drafters that some private facilities were willing to accept children into their care without question and without seeking first to refer the parents to an appropriate service.

CLICK TO REFER TO THE *GUIDELINES*

Focus 5: Supporting families to prevent abandonment and relinquishment

OVERVIEW

The *Guidelines* devote considerable attention to efforts required to minimise the abandonment or surrender (relinquishment) of children. This is part of a deliberate emphasis on overall preventive and family-strengthening efforts.

Many of the initiatives proposed by the *Guidelines* are conceived at the primary prevention level to address 'root causes' – in other words, policies and actions with general application to tackle societal factors that can lead a parent to abandon or relinquish a child. These wide-ranging measures include strategies to combat poverty, discrimination and stigmatisation, to change attitudes towards disability and single parenthood, and to adopt social policies promoting family empowerment and parenting skills (§ 10, 32, 34, 36).

Perhaps less immediately obvious in the *Guidelines*, however, are the **targeted programmes** at the secondary prevention level. These important programmes are designed to provide individualised counselling and support in cases where there is a specific risk (or even a stated intention) of abandonment or relinquishment. They complement broader preventive measures but their implementation often presents a major challenge in terms of the human and financial resources involved. The programmes not only require qualified respondents to deal with self-referrals, they also need an outreach dimension so those at risk can be identified and offered assistance.

Among measures explicitly mentioned in the *Guidelines* (over and above financial help and income generation opportunities), are services for parents and children with disabilities (§ 34.b), home visits, and discussion with other families in difficulty (§ 35). Support and care should also be anticipated for single and adolescent parents (§ 36) with particular attention to the period before and after birth of a child, as well as at the time of the birth itself (§ 41). This implies the need for a qualified preventive presence at facilities such as pre-natal and maternity clinics, for example.

The final safety net – as far as projected relinquishment is concerned – lies in an effective gatekeeping system [see Focus 8] to refer parents applying to place their child in alternative care to appropriate psycho-social and practical support services (§ 44).

CLICK TO REFER
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Focus 5: Supporting families to prevent abandonment and relinquishment (cont.)

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 3, 9, 15, 32, 33, 34, 35, 36, 37, 38

The *Guidelines* emphasise that States should seek to prevent the separation of children from their parents and families where possible. States should have national policies in place which support families and prevent children being placed unnecessarily in alternative care.

National policy should:

Provide a national framework for supporting families:

- Develop national strategies on the range of measures that are needed to support families. This should include integrated approaches to: financial support; access to basic services; parenting support and specialist services
- Develop anti-poverty strategies, including financial assistance, so that children do not need to be separated from their families due to financial reasons such as poverty, low income, unemployment and the impact of disability or ill health
- Strengthen child protection services so that assessment processes fully consider measures which can prevent separation of families
- Undertake research to gain a better understanding of what contributes to family separation and use this knowledge to inform policy and services
- Increase understanding of the best approaches to providing family support and facilitate opportunities for sharing learning with those who provide support to families

Provide services to support families:

- Ensure that there is a comprehensive assessment process for families so that support can be put in place where it is needed from different services such as health, social welfare, housing, justice and education
- Provide support to parents through a range of approaches including: parenting courses and education; providing accessible information; access to trained professionals who support families; home visits; groups where parents can meet together; family centres; and access to informal community support
- Provide support for families in local communities which is available to mothers and fathers so that both parents contribute to providing a caring environment
- Provide specialist family strengthening support to those who need it. This could include: conflict resolution and mediation; counselling; substance abuse treatment; and family case conferences
- Provide support to families by empowering them, providing capacity development and supporting them to utilise their own resources
- Facilitate contact between children and their families, where a child is placed in alternative care and where this is in a child's best interests

Target services at families in specific circumstances

- Provide services for children with disabilities and other special needs so that parents and families get the support they need. This could include: the provision of day care and respite care; access to education and vocational training for children; health and rehabilitation services; and physical adaptations and equipment
- Provide support to young parents including: pre and post natal care; public awareness raising to reduce stigma; financial assistance; and support for young parents in continuing their studies
- Provide support to single parents including: public awareness raising to reduce stigma; access to day care; and financial assistance where required
- Provide support to families in parenting of older children, specifically those who are vulnerable through disability and other special needs or circumstances

CLICK TO REFER TO THE *GUIDELINES*

Focus 5: Supporting families to prevent abandonment and relinquishment (cont.)

IMPLICATIONS FOR POLICY-MAKING (cont.)

- Provide support to parents whose children have challenging behaviour due to behavioural or emotional problems
- Provide support to parents who were unable to grow up with their own parents and were in alternative care as children
- Provide support to parents who have disabilities, are in ill health or are vulnerable for other reasons
- Provide support to children in child-headed households (§ 37) with specific attention to their needs including: child protection and legal protection; financial assistance; and access to a range of supportive services

Strengthen work with families:

- Ensure that support to families is provided without discrimination or stigmatisation and is culturally sensitive. This should be supported through awareness raising and by promoting anti-discriminatory policies
- Provide training for professionals including carers, teachers, doctors, health visitors and police officers so that they are able to identify children who are at risk and families needing support
- Involve children and parents with experience of family support services or alternative care in the training of professionals, to give professionals a better understanding of the needs of families and the obstacles that need to be addressed to meet them
- Ensure that there is involvement of parents in developing family strengthening services and in planning the support that they need
- Provide leadership so that public, private, NGO and civil society organisations develop coordinated and collaborative approaches to supporting families
- Work in partnership with the media to encourage wider societal awareness of the needs of families and the importance of supporting parents

PROMISING PRACTICE 5.1

Short-break services for children with disabilities, Russia

Short-break services for children with disabilities have been developed in order to prevent these children entering institutional care. The service was developed in St Petersburg and provides respite care in a family who have received training in supporting children with disabilities. The service is flexible in meeting the needs of each individual family and the care can be provided in the child's own home or the carers' home. An evaluation of the programme has demonstrated that it has successfully prevented admission to institutional care. To date, all of the 61 children with disabilities (many of whom have profound disabilities) involved in the programme have remained in the care of their families. In addition the evaluation has identified significant quality of life benefits for the child with disabilities, the parents and other children in the families involved in the programme, including: the continued care of the child at home when normal caring arrangements within the family are disrupted due to illness or family conflict; assistance to the parents isolated from extended family members; practical support for exhausted parents at times when they need it most; improved confidence of the parents when caring for the child with disabilities; and practical assistance in enabling visits for medical or physical treatments essential to the child's well-being.

For more information see: Enabling Reform: why supporting children with disabilities must be at the heart of successful child care reform. www.crin.org/docs/Enabling%20Reform_March2012.pdf

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Focus 5: Supporting families to prevent abandonment and relinquishment (cont.)

PROMISING PRACTICE 5.2

Family support programmes, Malaysia

Family support programmes are the first level of care to prevent children entering institutional care. A range of services such as financial assistance and psychosocial interventions are provided to families in crisis situations in order to try to prevent a child being separated from his or her family. The Department of Social Welfare runs programmes to help families improve their socioeconomic situations and to enhance their quality of life. These programmes are two-fold: 1) direct financial assistance and psychosocial support to poor families and their children; and 2) community-based preventive services provided to children at risk and their families through child activity centres supervised by child protection teams. These services were mandated to be set up throughout Malaysia under the Child Act 2001, which requires that groups of people form protection teams to coordinate locally based services to families and children, if children are, or are suspected of being, in need of protection.

This programme for assistance was established to help poor families, single parents and relatives who take care of their own children or kin. A means test assesses financial need while the capacity of parents or relatives to provide care and a safe environment is evaluated, with grants available for up to 30 months. It is planned that the programme will assist more than 17,000 families and over 52,000 children. Children of poor families will also receive government assistance to cover the cost of books, clothing and other materials needed for their schooling. Support is provided to enable families to access micro-finance and engage in livelihood projects. Meanwhile, child activity centres serve as a resource where community members can meet and exchange ideas, thus fostering community spirit among specific target groups such as poor families, families with problems and/or in crisis, and children at risk. Other services include counselling and crisis intervention services, educational support services, child development activities, seminars/workshops/lectures on parenting and other family-oriented topics, as well as motivational camps for children and young people.

For more information see: Alternative care for children without primary caregivers in tsunami-affected countries: Indonesia, Malaysia, Myanmar and Thailand, www.unicef.org/eapro/Alternative care for children.pdf

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Focus 5: Supporting families to prevent abandonment and relinquishment (cont.)

PROMISING PRACTICE 5.3

Community-based rehabilitation of children with disabilities, Nepal

Large numbers of children with disabilities continue to be placed in institutional care. The community-based rehabilitation (CBR) model has been developed to prevent institutionalisation by providing support to children with disabilities and their carers in a number of settings. The CBR approach has been adopted as a national programme for children with disabilities in Nepal, which comprises of direct services, advocacy and social inclusion. Direct services included providing preventive health care and corrective surgery to reduce the overall numbers of children with disabilities and training parents to assist in the rehabilitation of their children, including helping parents to communicate with children with hearing impairments by teaching them sign language. Advocacy work has involved: working to integrate 10,000 children with disabilities into mainstream schools or providing them with access to special schools, including over 500 children with hearing impairments who are learning in mainstream schools; raising awareness to reduce stigma against those with disabilities and increasing the understanding of disabilities in families; and also advocating for legislative change to provide disability scholarships and creating a disability identity card system to ease access to allowances. Social inclusion work has involved helping to ensure that children with disabilities have access to children's clubs in schools and promoting employment opportunities through providing vocational training for young people with disabilities and training, micro-finance and help with employment for parents.

For more information see: Final Evaluation of Community Based Rehabilitation Program: A Report. www.norad.no/en/tools-and-publications/publications/publication?key=381038

PROMISING PRACTICE 5.4

***Kafala* Excellence Project, Syria**

In Syria, external *kafala* enables a child to remain with his/her parent(s) instead of being placed in a residential facility. It involves a private person (*kafil*) providing the parent(s) with regular financial support for the child's upkeep and education. Hufez Al Nemah NGO has developed the *Kafala* Excellence Project, which is designed to ensure external kafala for children who are looked after within their vulnerable extended families and focuses on broad care needs; physical, educational, health and psychological. Currently some 3,100 children benefit from the scheme. As well as a monthly financial payment, the project also provides various supplementary forms of in-kind support and access to specific services based on individual need.

For more information see: Cantwell, N. and Jacomy-Vite, S. (2011) Assessment of the Alternative Care System in the Syrian Arab Republic, UNICEF.

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5b. Secondary level of prevention (cont.)

ii. Considering the removal of a child from parental care

When it comes to **removing a child from parental care**, the competent decision-making authority must first ensure that a professional and participatory assessment is made of the parents' actual and potential caring capacities (§ 39-40). Removal should not proceed unless the results show it is the sole way to adequately safeguard the well-being of the child – and only after judicial review if the parents object (§ 47).

It should always be remembered that the general principles of the *Guidelines* stipulate that removing a child from parental care is a 'last resort' (§ 14) and that poverty and its direct and unique consequences can never be sufficient cause to do so (§ 15).

However, **in extreme circumstances**, immediate removal may be required for the child's safety or survival. In such cases, a protocol should be in place setting out the criteria, responsibilities and follow-up actions that need to be applied.

iii. The care of children whose primary caregiver is in custody

Finally, the *Guidelines* (§ 48) devote special attention to **children whose sole or main carer is deprived of their liberty** [see Focus 6]. The *Guidelines* propose that alternatives to detention in custody should be considered in such cases wherever possible. But they do not take a position on whether young children should accompany their mother when she is imprisoned and, if so, what conditions should apply to ensure that the best interests and other rights of children are preserved. Instead, the *Guidelines* require individualised solutions – based on the same criteria as those used for deciding whether to separate a child from his or her parents in any situation.

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Focus 6: The care of children whose primary caregiver is in custody

OVERVIEW

When a child's primary caregiver (usually, but not always, the mother) is detained in custody, the issue of the on-going care of the child is inevitably raised. Separation and the need for alternative care can be short- or long-term. Separation is possible at various points: upon arrest, in pre-trial detention (also called 'remand'), following conviction and, in some cases, following release.

In terms of policy and practice, current approaches and responses vary widely around the world. At the worst extreme, babies born to women who are in prison for a criminal offence (pre-trial or sentenced) may be automatically removed from maternal care within a few days. Elsewhere, children may be cared for, under more or less favourable conditions, by the incarcerated mother (and sometimes the father) until a relatively advanced age (in some cases, up to six years or even above). Against that background, setting out a consensual child-focused standard or 'orientation' in the *Guidelines* (§ 48) was particularly challenging.

The first principle established in the *Guidelines* is, not surprisingly, that alternatives to a custodial response should be considered wherever possible for a sole or primary caregiver (usually the mother) who has infringed penal or administrative laws. This corresponds not only to concerns about a child's immediate care situation but also to at least two other factors:

- The longer-term consequences of separation for the child
- The mother's ability to resume the primary care-giving role after release

When detention or imprisonment is ordered, it is first necessary to discuss the child-care options with the child (where feasible) and determine their wishes. The mother, too, should be consulted.

It is often the case that a mother cannot envisage incarceration without her child. In principle, this should be seen as a positive factor for the child's welfare and development even if material conditions are poor.

Many custodial facilities for women have special mother-and-child units and/or child-friendly spaces, where mothers can provide mutual support and, in the best cases, the children can avoid the most detrimental consequences of life behind bars. However, other mothers prefer not to subject their child(ren) to this experience and opt to rely on family members or other alternative care arrangements during their sentence.

Family relations are strained, often severely, by imprisonment and there can be a host of practical and policy difficulties for maintaining contact, either face-to-face (through visits to prison by children or temporary release for parents) or by letters, telephone calls or other forms of communication. This can affect the children's experience during the period of imprisonment and reduce the likelihood of a successful reunification afterwards.

Where parents are detained for violations of immigration laws, the family is rarely separated but the overall conditions and consequences of detention may be particularly disturbing for children. Often, immigration centres are not set up specifically for families, and there may be changes in location and a constant atmosphere of anxiety and insecurity awaiting deportation. Here, the call for 'adequate care and protection' in the *Guidelines* is clearly of special importance.

To sum up, the *Guidelines* do not take a position of principle on whether young children should accompany (usually) their mother when she is imprisoned and, if so, what conditions should apply to ensure that the best interests and other rights of the children are preserved. Consistent with their overall approach, the *Guidelines* require case-by-case solutions that are based on the same criteria for deciding on the separation of the child from parents in any situation.

The Day of General Discussion on 'Children of Incarcerated Parents', organised by the Committee on the Rights of the Child in 2011, came to similar conclusions. It recommended particular consideration of CRC Article 9 (on separation from parents against their will), but also expressed the need for case-by-case determination.

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Focus 6: The care of children whose primary caregiver is in custody (cont.)

PROMISING PRACTICE 6.1

Mandatory regulation within Federal Court of Appeals, Argentina

The Federal Court of Appeals for San Martín in Argentina has a mandatory regulation that its judges must verify whether arrested persons are the sole carers for children. To enable this, police officers ask each person arrested if they are sole carers. If this is the case and the detained person has provided the name and address of an alternative temporary carer, the children are taken to the alternative carer. The police must take the name, address and signature of the new carers so that they stay in touch with parents and a competent child protection body. The caring arrangements will be considered at court, with opportunities for children to voice their opinions and for arrested parents and new carers to confirm or change their mind about the care arrangements after being interviewed by court social workers.

For more information see: Collateral Convicts: Children of incarcerated parents. Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011. www.quno.org/geneva/pdf/humanrights/women-in-prison/201203Analytical-DGD-Report-internet.pdf

PROMISING PRACTICE 6.2

Children's Officers in Prisons, Denmark

In Denmark, a joint initiative between individual prisons, the Department of Prison and Probation Service and the Danish Institute of Human Rights has led to the creation of 'children's officers' in prisons, who 'work on securing the rights and needs of children of imprisoned parents'. These 'children's officers' may include prison officers or social workers; they receive training from professionals working in the areas of human rights, prisons, psychiatric and prisoners' family support, and learn from visits to institutions with existing good practice.

For more information see: Collateral Convicts: Children of incarcerated parents. Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011. www.quno.org/geneva/pdf/humanrights/women-in-prison/201203Analytical-DGD-Report-internet.pdf

PROMISING PRACTICE 6.3

Crèches and nursery schools for prisoners' and prison officials' children, India

Following a Commission of Investigation and Supreme Court ruling in 2006, Indian prisons have to provide a crèche for children below the age of three and a nursery for children below the age of six. Prisons in Karnataka state, India, have set up crèches and nursery schools attended by children imprisoned with their parents, children of prison officials and children living close to the prison. These joint facilities prevent duplication of provision or the creation of crèches with very small numbers of users. The scheme helps to mitigate the problem of children living in prison becoming socially isolated by allowing them to mix with children from the surrounding area.

For more information see: Collateral Convicts: Children of incarcerated parents. Recommendations and good practice from the UN Committee on the Rights of the Child Day of General Discussion 2011. www.quno.org/geneva/pdf/humanrights/women-in-prison/201203Analytical-DGD-Report-internet.pdf

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5c. Tertiary level of prevention

Tertiary prevention is the name given to actions taken in cases where neither primary nor secondary prevention have succeeded, making – in this instance – entry into the alternative care system unavoidable. Efforts at this stage focus on securing conditions that enable a positive re-start and prevent a return to alternative care.

Prevention at this level is aimed at returning a child in alternative care to the care of his or her parents wherever possible, at an appropriate moment and under appropriate conditions (cf. § 2.a, 3, among others).

The section on 'promoting family reintegration' in the *Guidelines* (§ 49-52) implies a professional assessment of the possibilities for reintegration, and outlines the tasks and responsibilities that need to be assigned and carried out if the assessment is to take place in the child's best interests.

Crucially, reintegration is conceived in the *Guidelines* as a gradual process, both before and after the event. Indeed, the drafters were concerned that, too often, 'returning home' – and not only from alternative care placements – has simply meant the moment and fact of the child's physical return to the family household.

The drafters have, therefore, emphasised that not only must the return be well-prepared with both the child and the family, it must also be followed up assiduously since, depending on the length of the separation and the reasons it occurred, there are likely to be as many difficulties as there are steps forward. Developing the renewed relationship is not a linear process, and demands supervision and support to different degrees in every case.

Finally, it should be noted that the promotion of effective tertiary prevention is also one of the major justifications for two important requirements of the *Guidelines*:

- Providing alternative care as close as possible to the child's habitual place of residence (§ 11) so that contact with family is facilitated
- Regularly reviewing the suitability and necessity of the placement (§ 67 and CRC Article 25) so that reintegration can take place at the earliest appropriate time if that corresponds to the wishes and best interests of the child

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Focus 7: Promoting sustainable reintegration of children into their family from an alternative care setting

OVERVIEW

From the start, the *Guidelines* set family reintegration as the desired outcome of placing children in alternative care (§ 2.a, 3). It is reiterated at various other points in the text (§ 14-15, 49-52, 60, 123, 166-167). This primary goal also underpins provisions in the *Guidelines* that promote the child's contact with the family while in alternative care, and seeks to ensure that placement settings are located as close as possible to the child's usual place of residence (§ 11, 81, 119).

A return to the family, whenever this is possible and deemed consistent with the best interests of the child, clearly involves much more than simply ensuring a physical reunion, after which the child and family are left to rebuild their relationship. But all too frequently, and in many cases because of resource constraints, this is how family reintegration is carried out in practice. Instead, it should be a 'gradual and supervised process' (§ 52).

To be sustainable, family reintegration first requires a comprehensive assessment of whether a return home is appropriate (with judicial involvement if removal was ordered by a court). In particular, the assessment should ensure that the problems that prompted the placement in the first place have been tackled and adequately resolved. Special consideration should be paid to the child's emotional attachments with parents and other family members, and of course to their own wishes.
If reintegration is decided, careful preparation and the full participation of all concerned will be necessary. As well as the child and parent(s), this includes siblings and others in the household, close relatives and current alternative caregivers. It also requires follow-up support as reintegration may not prove to be a linear process of readjustment. Depending on the situation, there is often a risk that previous problems reappear or new ones need to be confronted.

In short, the *Guidelines* do not simply confirm family reintegration as the most desirable aim of alternative care, they also recognise the considerable challenges of successfully achieving this. In addition to prescribing the general need to prepare a child for any change of care setting (§ 68), the *Guidelines* call for a written agreement between the family and the current care provider that specifies the responsibilities of each in working towards reintegration (§ 50). They also underline the need for professional guidance and supervision at both the preparatory stage for reintegration (§ 49, 51) and during the period following the child's return (§ 52).

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Focus 7: Promoting sustainable reintegration of children into their family from an alternative care setting (cont.)

PROMISING PRACTICE 7.1

National Working Group on Family and Community Living, Brazil

Composed of representatives from civil society and from municipal, state and federal governments, the National Working Group on Family and Community Living promotes common guidelines regarding the care of children that are or are about to be separated from their families. They have developed a National Plan, which aims to break with the culture of systematic institutionalisation of children and adolescents and commit to a programme of de-institutionalisation. A major aim of the programme is to support the reintegration of the child to the family of origin. To support this process the Working Group has supported the development of a number of pilot projects in North-East Brazil. One programme, 'Casa de Passagem Diagnostica' in Pernambuco, provides short-term residential care for families in crisis to support family reintegration, or if not possible, to find another alternative. Between 2005 and 2009 the programme welcomed 555 children, of whom 73 % were re-integrated into their family. Another programme is 'Family and Community Reintegration for Street Children and Adolescents' in Recife, which was implemented over 3 years from 2006 to 2008. By prioritising and investing in collaborative work with the family of origin, the programme has doubled the number of successful cases of family reintegration with street children. The Foster Family Programme in Maranhao arranges for children and adolescents separated from their families to be received into foster families as a protective measure until the time that family reintegration is possible. In all its work, the Group promotes the importance of working with families of origin and reinforces the premise that whenever possible, care outside of the home should be seen as a temporary and exceptional measure.

For more information visit: www.saoluis.ma.gov.br/semcas

PROMISING PRACTICE 7.2

Reintegration in Sierra Leone

In 2008, a study found that there were 1,871 children (1,070 boys and 801 girls) living in the country's 48 children's homes – 52 % because of poverty, 30 % because their carers had died, 8 % because they had been abandoned and 5 % because they had been neglected or abused. The Child Rights Act 2007 gives child welfare staff greater responsibility to protect children and requires the Ministry to establish Child Welfare Committees in every village and Chiefdom. Minimum Standards for Care were drawn up, based on the Act and the 2008 assessment, in collaboration with the children's homes, the Ministry and district councils. A regulatory framework was also developed and staff in the children's homes, Ministry and councils received training in implementing this. At least one further assessment has been done of each home using an inspection guidance form, which specifies the improvements they need to make before they can be licensed. Care reviews of all children in homes were carried out and already 317 children had been reunited with their families by the end of 2008, with plans to reunite 250 more in 2009. An assessment of the reunification process is ongoing. Two homes have decided to change into community care organisations and close down their childcare institutions.

For more information see: Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care www.savethechildren.org.uk/resources/online-library/keeping-children-out-of-harmful-institutions-why-we-should-be-investing-in-family-based-care

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Focus 7: Promoting sustainable reintegration of children into their family from an alternative care setting (cont.)

PROMISING PRACTICE 7.3

Walking Together – Family Support Project for Children in Residential Care, Hong Kong Special Administrative Region

Many children who are referred to a child residential care service have a disadvantaged family background. However, the service in Hong Kong had adopted an exclusively child-centred approach, without taking account of the child's wider family. Based on the encouraging results of a pilot project in 2011 to 2012, a new project, 'Walking Together – Family Support Project for Children in Residential Care' was launched in April 2012 to better address the child's family context. This project is a collaborative effort between the Department of Social Work of the Chinese University of Hong Kong and Sheng Kung Hui St. Christopher's Home. This Home is a residential facility for children and young people aged 4 to 18 years whose families are experiencing various problems and crises. Since its goal was already to provide care until the children can return to their families or, if necessary, be placed in a long-term alternative care setting, the Home was already organising regular case conferences for all the children and their parents to strengthen family relationships.

The rationale of the Walking Together project is to take this further by adopting a family-centred approach designed to support families whose children are currently in residential care at the Home. Its specific goals are to: decrease parental stress; enhance family cohesion; and break the social isolation and stigmatisation that these families may experience. In this way, preparations can be made for reintegrating the child on the basis of a stabilised family relationship, with follow-up after family reunion. The project includes staff training, research study and direct service. While the university offers family-centred practice training to the staff of the Home and heads up the research study, two staff-persons from the Home provide clinical and group work for the families.

For more information visit: www.skhsch.org.hk

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THE 'SUITABILITY PRINCIPLE': DETERMINATION OF THE MOST APPROPRIATE FORM OF CARE

In this chapter you will find:

6a. Gatekeeping

Focus 8: Gatekeeping: the development of procedures to screen referrals, assess need and authorise placement
- Implications for policy-making
- Promising practice:
  - Case Study 1: Child and Family Support Centre, Indonesia
  - Case Study 2: Gatekeeping systems in Azerbaijan

6b. A range of care options

IMPLICATIONS FOR POLICY-MAKING:
Providing a range of care options to meet children's needs

6c. Residential care when necessary and appropriate

6d. Placement determination

i. A rigorous process

ii. Clear aims

6e. Follow-up reviews

IMPLICATIONS FOR POLICY-MAKING:
Implementing rigorous processes for assessment, planning and review

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Context: Understanding the *Guidelines*

6a. Gatekeeping

There is no explicit mention of 'gatekeeping' in the Guidelines, but the aims, tasks and responsibilities that the term implies are represented consistently throughout the text. Gatekeeping is seen as a key process to ensure that alternative care for children is used only when necessary and that the chosen setting is the most appropriate for each child. It plays a pivotal role by, for example:

- preventing children coming into alternative care solely because of poverty (§ 15),
- ensuring that family support and informal kinship care opportunities are considered before a formal care placement is envisaged (§ 44),
- examining the best care options for a child whose main caregiver is deprived of liberty (§ 48) and/or

implementing the 'rigorous screening' required for admission to residential care (§ 21, 125).

In other words, after it has been established and agreed that a formal out-of-home care placement is necessary, a decision has to be made on the care setting that will correspond best to the child's needs, characteristics, experiences and circumstances. This involves applying the '**suitability principle**' – the second main responsibility of the gatekeeping function [see Focus 8].

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Focus 8: Gatekeeping: Developing procedures to screen referrals, assess need and authorise placement

OVERVIEW

Gatekeeping is the link between the preventive and reactive child protection services envisaged by the Guidelines – a guarantee of the proper use of alternative care, according to the principles of 'necessity' and 'suitability'

Gatekeeping involves **a systematic, recognised process**. Firstly, to determine whether a child needs to be placed in an alternative care setting. Then, to either refer the child and his/her family to appropriate forms of family support and other services. Finally, to decide from the available range, which is the alternative care arrangement that best corresponds to the child's situation.

The *Guidelines* are not prescriptive about how that process is to be carried out. They recognise that it might be undertaken by a designated body, a multi-professional team, or even by different decision-makers, to establish necessity on the one hand and the appropriate form of care on the other. The *Guidelines* do, however, demand that thorough assessments and subsequent decisions are made by authorised professionals on a case-by-case basis in every instance where alternative care is envisaged.

Implicit in that demand is the necessary independence of those responsible for gatekeeping, especially in relation to providers whose interests may lie in securing a low threshold for admitting children into their care.

It is important to note that as the gatekeeping mechanism is not in itself a service provider, it can only function effectively if family support, casework and therapy services have been developed (cf. § 44-45 for example) and a 'range of care options' are in place. If gatekeepers cannot refer families to viable and trustworthy agencies for assistance, or if their hands are tied because there are few real choices among approved care settings, they have little or no chance of fulfilling their role adequately.

There is a special challenge for gatekeeping in the many **countries where alternative care provision is largely in private hands**. Even where they exist, officially sanctioned and operational gatekeeping mechanisms often do not apply to private providers. As a result, there are no admission safeguards. Nevertheless, to adhere to the *Guidelines*, it is essential that private providers agree to refer a child and his/her family to such mechanisms each time they are approached (§ 44-45) – as is the case with public agencies and facilities.

Agreement to a robust gatekeeping procedure should simply be considered one of the basic criteria when licensing all agencies and facilities. However, obtaining a commitment to enforce adequate authorisation rules, establish a viable gatekeeping mechanism and ensure that the necessary preventive and reactive responses are in place remains a difficult task under current conditions in many countries.

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Focus 8: Gatekeeping: Developing procedures to screen referrals, assess need and authorise placement (cont.)

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 19, 21, 54, 55, 57, 69

Effective gatekeeping mechanisms should ensure that children are not admitted into care unnecessarily and that there are a range of care options for those children who require alternative care. There should be national policy direction on the role of the gatekeeping agencies and the processes which determine how children's needs will be met.

National policy should:

Provide national leadership and coordination on the gatekeeping role

- Ensure that there is legislation and policy guidance that define a systematic process to determining if a child needs to be placed in alternative care in line with the *Guidelines*
- Require that decisions on children's care are made by an authorised gatekeeping agency
- Ensure gatekeeping agencies use authorised and appropriately trained professionals in all cases. Those in a gatekeeping role should be independent in their decision-making so children only enter care where it is necessary
- Prohibit the placement of children in alternative care settings where there is no gatekeeping process and ensure that children have a legal guardian at all times
- Require decisions about children's care to be made on an individual case by case basis
- Require gatekeeping processes to apply to all public, private, NGO and civil society providers of alternative care
- Link gatekeeping to licensing, regulation, monitoring and inspection services with enforcement measures for these requirements

Ensure effective gatekeeping services are in place:

- Provide a range of high quality care options with a special emphasis on promoting informal care and, where appropriate, formal care in family and community-based settings
- Ensure adequate financing for a range of care options based on information about what services are required and appropriate. These options should take into account the need for a planned and strategic move away from institutional care
- Provide leadership to ensure collaboration between child protection agencies, services for children and families and alternative care services
- Ensure that there are multi-disciplinary approaches to meeting the needs of children from health, education, child welfare, housing, social protection, justice and other services as required
- Put in place financial assistance and other kinds of support for families in order to prevent family separation and to support family reintegration

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Focus 8: Gatekeeping: Developing procedures to screen referrals, assess need and authorise placement (cont.)

PROMISING PRACTICE 8.1

Child and Family Support Centre, Indonesia

The aim of the child and family support centre in West Java Province is to provide professional, effective and direct support to children in need of care and protection. Through comprehensive assessment of the child's needs, the best course of action is determined to prevent unnecessary institutionalisation. This has been achieved through the development of a gatekeeping system in the Department of Social Affairs within the Bandung municipality in order to create procedures and tools to respond most appropriately to children in need of care and protection. A case management approach is used to ensure that alternative care for children is used only when necessary and that the chosen setting is the most appropriate in terms of each child's needs and circumstances. A referral system has been established involving key local government agencies and social service providers to improve access to services for children and their families. A number of options are open to the case managers including: reunification of children from institutions to their family with appropriate follow up support provided for families – 30 children have been reunified with their parents and other family members (kinship care); prevention of institutionalisation of children through family support and support for educational needs – 450 children have benefitted from this initiative; an initiative to establish a formal foster care mechanism and foster parent group to promote family-based alternative care. There has also been work to establish effective monitoring of childcare institutions within the context of national care standards and the piloting of the standard of care for three selected childcare institutions within the province.

For more information visit: Family support centre and good parenting training (5 minutes): vimeo.com/24906564

Research on the quality of care in childcare Indonesia: Part 1: youtu.be/HUq8VriEFO8 and Part 2: youtu.be/dfOtuFYHxSQ

PROMISING PRACTICE 8.2

Gatekeeping systems in Azerbaijan

Azerbaijan has developed gatekeeping systems to keep the number of children in state care at a minimum level. By developing a filter system in each region and at each point of entry into and exit out of the system, United Aid for Azerbaijan has developed a gatekeeping system in Guba and based this system on a number of components of entry/exit mechanisms. First, there is an agency coordinating the assessment of children's situations, considering possible alternatives to institutional placement and referring to appropriate service providers. In Guba this is provided by the *Internat* (institution) in the absence of any governmental coordination at this stage, which although may not be viewed as ideal, means that a gatekeeping policy has been introduced. Second, a range of services have been developed in the community to provide help and support to children and their families. In addition, decision-making is based on assessment and review of children's needs and family circumstances through the development of a Child Protection Council, which reviews care plans and ensures each child's needs are being met as well as highlighting the needs of families whose children are at risk of institutionalisation. Finally, there has been the development of a simple information system which keeps track of all children that enter and exit state care. This provides the necessary information for performance indicators which are useful for assessing the role of social workers, the changing function of an institution and the efficacy of each service within a community.

Experience in Guba has shown that it is possible to develop gatekeeping mechanisms in accordance with international standards of social work practice. The gatekeeping system has made it possible to prevent some children from being placed in institutions. However, it is recommended that local reforms need national commitment from government to succeed and gatekeeping mechanisms must be adapted to local and regional needs.

For more information see: Trialing Gate-Keeping Systems in Azerbaijan www.crin.org/docs/Gatekeeping%20UAFA.pdf

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6b. A range of care options

If deciding on 'suitability' is to be a meaningful exercise, there must clearly be a range of valid care options from which to choose. The *Guidelines* require that States ensure that such a range exists, 'with priority to family and community-based solutions' (§ 53-54), but add that residential settings also may be 'appropriate, necessary and constructive' for given children at given moments (§ 21).

The importance of determining the most suitable care option for a child is underlined by the need to avoid 'frequent changes in care setting' (§ 60). For this to be achieved, the range of options must first be available, then thoroughly assessed against the child's needs, and reviewed as the placement progresses.

IMPLICATIONS FOR POLICY-MAKING

Providing a range of care options to meet children's needs

Guidelines: § 29, 53, 54

Children should not be separated from their families where it is possible to support them to stay together, in line with the *Guidelines* principles. Where children do require alternative care, a range of high quality care options should be available with the choice of care setting appropriate for each child.

National policy should:

Provide a range of care options

- Ensure legislation and national policy outline appropriate high quality care options which meet the needs of children
- Provide leadership on the development of family-based and family-like care settings, with a planned move away from institutional care
- Require that placements for individual children are decided on a case by case basis in order to meet their needs
- Provide placements that respond to the needs of children whether these placements are emergencies, respite care, short term or longer term
- Require effective gatekeeping and proper planning so that no child is placed in alternative care or placed for adoption and cut off from their family of origin, either in country or inter-country, unless appropriate

Provide appropriate high quality placements for children

- Ensure that licensing, regulation, monitoring and inspection processes are in place to ensure the quality of alternative care services
- Implement legislation and guidance which outlines decision-making processes around assessment, planning and review processes
- Require that checks are always undertaken on the suitability of potential carers and that carers are trained to meet the needs of children
- Ensure that children and their families participate fully in assessment, planning and reviews of their placements
- Require placements to be monitored and supported by trained professionals

Ensure that the rights and needs of children are met

- Ensure that children and their parents are provided with information on placement options and have their voices heard and taken into account in decision-making
- Make specialised therapeutic treatment and assistance available for children who require support
- Ensure that the needs of all children are met including those of children with disabilities and other special needs
- Ensure that placement options take into account the cultural and religious needs of children and their families
- Provide suitable guidance on the importance of keeping siblings together
- Require children to be placed near to their families and communities where possible

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6c. Residential care when necessary and appropriate

Developing a range of informal and other family-based solutions will meet the alternative care needs of most children. But there are several reasons that can make residential care the best option for a small minority of children at a given point in their lives. A child with a negative experience of family life may find it impossible to settle immediately into a foster care setting, leading to the placement breaking down. In such circumstances, a determination to provide family-based care 'come what may' may only lead to the highly damaging serial foster placements that some children go through. Indeed, some adolescents express a preference for living in a small-group home with peers, for example, as they feel unable to cope with the intimacy and expectations of life in a family environment. And some children need specialised treatment and assistance, for a time at least, that could not usually be provided by a foster family.

Acknowledging this reality is sometimes seen as potentially diluting advocacy – or even jeopardising practical efforts to develop family-based care. Such concerns are misplaced, however. The *Guidelines* do indeed reflect the fact that too few children who need alternative care currently benefit from a family-based environment. But they also acknowledge that the availability of appropriate residential care settings, within a range of alternative care options, is vital to cover all children's individual needs and situations at any given time.

6d. Placement determination

The *Guidelines* highlight two main aspects of **placement determination**: the process and the aims.

i. A rigorous process

The determination process should be both rigorous and – in keeping with the general approach of the *Guidelines* – participatory (§ 57, 65). Here, the drafters were anxious to ensure that established judicial or administrative mechanisms and procedures are always in place, that they are used systematically, and that the assessment is carried out by a team of qualified professionals. They also sought to make certain that, at all stages of the process, there would be consultation with the child, the parents or legal guardians and, where appropriate, other persons important to the child.

Such consultation implies two things in particular: that all parties receive full information about the choices to be made (§ 64), and that suitable opportunities are given for them to express their views. For the child, in line with CRC Article 12, this will include providing a child-friendly setting where s/he can **freely make known any concerns and suggestions**.

The *Guidelines* also place emphasis on ensuring that the child, the parents or other representatives are able to apply for judicial review of a placement determination if they wish to challenge it (§ 66).

ii. Clear aims

Simply put, **the objectives** of the process are to provide the most appropriate alternative care setting for the child and to plan for 'permanency'. The *Guidelines* set out a number of specific factors that need to be taken into account before achieving that dual aim.

Placement determination and the assessment on which it is based need to take a short-term and a long-term view; the appropriateness of the immediate care setting should be decided in the context of an overall plan to secure the child's 'permanency' in due course. That is why, ideally, planning should start before the placement begins (§ 61).

The term '**permanency**', though frequently used in the field of alternative care, is not always perceived in the same way. In some quarters, for example, it is seen as meaning either living in (or returning to) the parental home or being formally adopted by another family. Without denying the child's need to retain or put down roots, the *Guidelines* take a flexible view, emphasising the 'stable' (and of course appropriate) nature of the placement rather than the setting itself (§ 60). This very much reflects the line taken by children and young people with experience of alternative care: their primary concern is not so much 'permanency' in its 'forever' meaning but a sense of belonging and being cared for in a safe, stable and supportive environment. In alternative care situations, this would imply that the same feeling of security and support must be ensured even when changes in setting are proposed. Thus, both desirably and realistically, the *Guidelines* indicate that a wide range of informal and formal care options, in addition to returning to the parental home wherever possible, can constitute potential solutions for 'permanency' if they meet those conditions.

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Echoing the CRC (Article 20.3), the *Guidelines* place considerable emphasis on taking account of the child's **ethnic, cultural, linguistic and religious background**, both at the time of the initial BID process to determine the alternative care option that would best meet his/her needs, and when planning for 'permanency' in the longer-term (§ 58, 62).

The *Guidelines* also restate 'the desirability of the child remaining within his/her community and country' when planning for care provision and permanency (§ 62). This consideration reflects both the reference to 'the desirability of continuity in a child's upbringing' in CRC Article 20.3 and the priority that is to be given – notably regarding adoption – to identifying suitable care solutions in the child's country of habitual residence (CRC Article 21.b).

The drafters of the *Guidelines* were not only keen to promote 'local' responses to avoid disruption of all kinds for the child, but also actively sought to combat initiatives that tend to downplay the significance and repercussions of such changes. A child's familiarity with an environment (even when some of its aspects may seem objectively negative or unimportant) is usually an essential part of his/her well-being. Uprooting a child – to an unknown part of town, to another area or region, to another country or to another cultural context – is undoubtedly a move that, while it may in the end be necessary in certain cases, must be regarded as a potentially destabilising event and treated accordingly. The *Guidelines* provide the basis for such an approach.

6e. Follow-up reviews

The CRC states that any placement for care, protection or treatment must be subject to '**regular review**' to determine its continuing appropriateness (CRC Article 25). The drafters of the *Guidelines* have given a more precise indication of what is required, specifying that 'regular' should be interpreted as 'preferably at least every three months' (§ 67).

Some concerns were expressed, during drafting, that this interval was too short. However, it is clear that if real efforts are being made to secure 'permanency' – including, in particular, the child's return to their parents or extended family – significant changes can occur within that timeframe. Reviews at least every three months will ensure that the period a child needs to remain in alternative care is kept to a minimum.

The same provision of the *Guidelines* also makes explicit reference for the first time to the fact that the review, in addition to being thorough and participatory, is designed to examine both 'the adequacy and necessity of the current placement'. This is a significant and very welcome clarification of 'treatment […] and all other circumstances relevant to [the] placement', the term used in CRC Article 25.

This said, such reviews should not be undertaken or perceived as inherently 'aggressive' exercises. This could easily lead to anxiety that a positive and stable care placement was going to be disrupted by the review (cf. § 59). In addition, any change or termination of placement as a result of a follow-up review must be determined and managed in accordance with relevant provisions of the *Guidelines*, notably regarding proper preparation (e.g. § 68) and the procedures to be respected (e.g. § 49, 65).

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IMPLICATIONS FOR POLICY-MAKING

Implementing rigorous processes for assessment, planning and review

Guidelines: § 11, 12, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67,68

The *Guidelines* identify that there should be rigorous approaches in all processes related to alternative care. These should be transparent and comprehensive and take into account the rights and needs of children and their families.

National policy should:

Ensure processes are planned and thorough

- Ensure that there are comprehensive and thorough assessment, planning and review processes in place. Decision-making processes should be recorded with written plans which include outlines of placement goals and timetables for review
- Require that assessment, planning and review processes are monitored, evaluated and reviewed and that professionals are fully trained in using these processes
- Ensure that there is adequate recording and confidential record keeping for every child and that these records should 'travel' with the child to ensure well-informed processes and care arrangements. There should be a requirement that children can review and contribute to their confidential records
- Collect information on decision-making processes in order to inform resource allocation and the planning of services
- Ensure that there are thorough and regular reviews of children's care and that these are timetabled, preferably every three months in line with the *Guidelines* (§ 67). Reviews should be handled sensitively so that they are not intrusive and are adapted, as appropriate, to take account of whether a child is in a temporary or longer term placement
- Require assessment, planning and review processes to support children's participation so that children's views are taken into account in decisions that affect them. This involvement should include the initial move into care, any proposed movements when in care and proposed moves back to families
- Ensure that children have access to support, through trusted adults or legal representatives as appropriate, to make their views known and make representations
- Ensure that parents and families are involved in decisions and have means to make their views known. They should be able to choose to be accompanied to any proceedings, if they so wish, by a person of their choice, such as from another agency or civil society organisation

Ensure placement decisions are in children's best interests

- Provide accurate and up to date information to children and their families on the care options that are available
- Have a focus on the stability of placement in order for children to have continuity of care in a stable home which allows for the development of positive relationships with carers, meets children's development needs and recognises the importance of attachment
- Manage transitions in and out of care by having adequate planning processes which require information to be provided for the child and ensure that a child's views inform decision-making
- Require planning and placement processes to take into account the need to place a child with his/her siblings unless this is not in the best interests of the child
- Take account of, and respect, children's cultural and religious backgrounds and their linguistic preferences when placing children in care
- Ensure that assessment, planning and review processes consider the needs of children with disabilities and other special needs, with input sought from professionals with specific knowledge of their needs as required

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DEVELOPING POLICIES FOR ALTERNATIVE CARE

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In this chapter you will find:

7a. Informal care arrangements

Focus 9: State involvement in informal care arrangements
- Promising practice:
  - Case Study 1: Assessment framework for kinship carers, New Zealand
  - Case Study 2: Government support of family group conferencing to enhance kinship care in the Marshall Islands
  - Case Study 3: Statutory Care Allowance, Australia

7b. Basic policy orientations

IMPLICATIONS FOR POLICY-MAKING: Supporting an evidence-based approach to policy-making

7c. Conditions in formal alternative care settings

i. Children knowing their rights
ii. Complaints mechanisms

IMPLICATIONS FOR POLICY-MAKING: Ensuring complaints mechanisms are in place

iii. Private provision of alternative care
iv. Culturally – and religiously-specific care options

Focus 10: Supporting appropriate traditional care responses
- Promising practice:
  - Case Study 1: Touchstones of Hope Initiative, Canada
  - Case Study 2: Traditional foster care in Iraqi Kurdistan

v. Child development and protection
vi. Stigmatisation
vii. Religion
viii. Use of force and restraints

IMPLICATIONS FOR POLICY-MAKING: Use of discipline, punishment and restraints

ix. Over-protection

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Context: Understanding the *Guidelines*

Not surprisingly, the longest section of the *Guidelines* (Part VII, § 69-136) is devoted to the consideration of what conditions the alternative care system itself should meet. This chapter covers the first half of Part VII of the *Guidelines*: basic policy orientations governing the system (§ 69-75) and conditions to be respected by caregivers and care providers in all formal alternative care settings (§ 80-100). The intervening sub-section (§ 76-79) deals separately with informal care provision [see Focus 9], which is not subject to policies and conditions that apply to formal care.

7a. Informal care arrangements

In most countries around the world, a sizeable majority of children who are unable to live with their parents are cared for under informal arrangements made with grandparents, other relatives or, in some cases, other persons who are close to the family. This is often known as 'informal kinship care'.

The *Guidelines* acknowledge this reality and address this significant form of alternative care for children. No other international standards have explicitly done so to date. However, situations where children voluntarily stay with relatives for reasons not linked to their parents' general inability or unwillingness to take care of them (§ 30.c) are deliberately excluded from consideration.

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Focus 9: State involvement in informal care arrangements

OVERVIEW

The drafters of the *Guidelines* agreed that a clear distinction had to be made between State responsibilities in the case of an informal setting and those in 'formal care' situations. Generally, therefore, the *Guidelines* only apply to informal care when this term is explicitly mentioned (§ 56 and 76-79).

Working with children in informal kinship care means striking a delicate balance between adhering to the State's child protection obligations (§ 79) and respecting decisions by parents (or, in their absence, the informal carers themselves) that are made with the best interests of the child in mind. By definition, official agencies are not directly involved in informal care initiatives, and their scope of action is relatively limited in such cases. Nevertheless it is desirable that children's whereabouts are known to the competent services so they are in a position to offer protection and support as required.

Rather than requiring kinship carers to notify the authorities of their role, emphasis has instead been placed on offering carer support and services (which might include preparation and advice as much as financial help) to actively encourage voluntary registration. As many informal carers, especially grandmothers, are themselves in difficult circumstances, the provision of such assistance helps to ease their psychological and material burdens, thereby potentially improving overall conditions for the child in their care.

There are instances where formalising a well-established and successful informal care arrangement can be beneficial to all concerned. The *Guidelines* encourage informal carers to consider doing this if all parties agree and if such a move corresponds to the best interests of the child in the longer term (§ 56).

PROMISING PRACTICE 9.1

Assessment framework for kinship carers, New Zealand
A caregiver assessment and approval framework was developed for kinship carers as a way of offering informal carers support and services as an active encouragement to voluntary registration. Alongside this, a health and education assessment for children entering care was undertaken so that agencies implementing services could ensure their health and education needs are met. The formal aspects of the assessment process are the same for non-family caregivers and family caregivers (or, in the Maori context 'whanau', meaning extended family). Police, referee checks, background departmental information checks, assessment of home and physical environment, and social work interviews, are carried out for both groups.

A medical report is also required for non-family caregivers, but with the family caregiver applicant medical assessment can be done directly in discussion. Where there are any concerns the social worker will seek permission to get a written report from the applicant's doctor. The interview/discussion with family is intended to be a joint exploration of the needs of the child and the caregiver's needs with respect to their support of the child. In this way formalising a well-established informal care arrangement can be beneficial to both the child and the carers.

For more information see: A Framework of Practice for Implementing a Kinship Care Program www.bensoc.org.au

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Focus 9: State involvement in informal care arrangements (cont.)

PROMISING PRACTICE 9.2

Government support of family group conferencing to enhance kinship care in the Marshall Islands

The Republic of the Marshall Islands Government introduced the practice of family group conferencing for kinship networks as a key part of the process of making and implementing plans for the care and well-being of children and young people. Utilising the principles of cultural competence and strengths-based solutions, the Government recognised that the extended family must be part of the decision-making process for a child's stability. As a result, the country's adoption code mandates the Central Authority to meet with the extended family to explore solutions for the child. The Islands' child welfare services have integrated family group conferencing as a best practice, with the goal of empowering the extended family to have a voice in the placement of their young relatives. Early signs of this practice are encouraging. Extended families have generally been very willing to participate in the process and according to Central Authority staff, inter-country adoption placement has been prevented in about 70-80 % of the cases through extended family involvement.

For more information visit: www.crin.org/bcn/details.asp?id=29191&themeID=1000&topicID=1000

Also see: Rotabi, K.S., Pennell, J., Roby, J.L. and Bunkers, K.M. (2012) Family Group Conferencing as a culturally adaptable intervention: Reforming intercountry adoption in Guatemala, *International Social Work*, 55 (3), 402-416. DOI: 10.1177/0020872812437229

PROMISING PRACTICE 9.3

Statutory Care Allowance, Australia

In New South Wales, kinship carers are provided with allowances in order to support them in their role of looking children within the extended family. These allowances are at the same level as those of foster carers. Statutory Care Allowance is provided to kinship carers where parental responsibility is with the Minister; while other kinship carers receive a Supported Care Allowance. The payment regime for kinship carers includes provisions for enhanced rates for children with high and complex needs, as well as additional financial support for goods and services, (e.g. medical needs, counselling, and assistance in supporting contact by the child with their birth family). After the new payment system was introduced in 2006, members of carer support groups fed back that this change was of great benefit to grandparent carers in particular. One of the key challenges to overcome in implementing this policy was ensuring that carers were aware of and able to access their entitlements as it was noted that individual managers and workers took a variable approach in pointing out the existence of this allowance.

For more information see: A Framework of Practice for Implementing a Kinship Care Program www.bensoc.org.au

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7b. Basic policy orientations

To best respond to children's rights and needs:

- it is essential to develop an **integrated approach to formal and informal care provision**, so that the role and strengths and weaknesses of both can be recognised and the use of either is determined in a coordinated and coherent fashion (§ 69),
- **policy-making must be evidence-based**, informed by 'sound information and statistical data' (§ 69) to determine needs, identify successful practices and single out problem areas, rather than accepting how something has been done in the past and/or pursuing an ideologically-based perspective,
- a process should ensure that **the person or entity responsible for the child** is clearly designated at all stages. This responsibility should lie with the parents or principal caregivers in the absence of any decision to the contrary (§ 69: see also 'Legal responsibility' at § 101-104). This is important for clarifying the roles and functions of alternative care providers in relation to those of parents and guardians, and for avoiding conflicts arising from different viewpoints.
- **Cooperation** among and between public and private entities ensures that information-sharing and contacts can be maximised to provide the best protection and most appropriate alternative care for each child (§ 70).

IMPLICATIONS FOR POLICY-MAKING

Supporting an evidence-based approach to policy-making

Guidelines: § 69, 70

The national collection and analysis of data and sound information is essential for developing an evidence-based approach to policy and service development. This should be complemented by clear policies on sharing information which protect the confidentiality and anonymity of children and families.

National policy should:

- Develop effective systems for the national collection of data in order to provide evidence which informs policy-making and practice (for further details see Manual for the Measurement of Indicators for Children in Formal Care)
- Undertake regular collection and analysis of data (annually where possible) to identify the number of children who need alternative care (those already in care and those at risk of being placed in care). Ways of collecting information on children in informal care should be explored
- Ensure that data collection includes: the number of children in formal alternative care settings, by age, sex and type of setting; average length of stay in each formal setting and age at which first placement commences; frequency of the re-assessment of the placement, aims of placement (emergency, short-term and longer term perspectives); and child well-being outcomes in each situation.
- Lead on national collaboration with agencies and organisations providing formal care in order to design and implement an information system which gathers data regularly
- Require gatekeeping agencies and alternative care services to keep appropriate records and collate formal care indicators. These should be monitored through appropriate inspection processes
- Collect statistical data on factors which may lead to children being placed in alternative care including poverty, disability, family separation, irregular living conditions, health including HIV/AIDS and social exclusion
- Ensure that data collection takes into account the need to protect the confidentiality of children and their families. Data collection should focus on anonymised data sets required for national and local data analysis and planning systems. It should not use identifying case information on individual children and their families
- Establish guidance on sharing information to inform services for children and ensure effective networking and partnership working

7c. Conditions in formal alternative care settings

i. Children knowing their rights

It is vital that children know and **understand their rights** and obligations in formal alternative care settings (§ 72). A lack of understanding can lead to conflicts that could otherwise be avoided and may have a negative impact on the outcome of the placement.

ii. Complaints mechanisms

Linked to this, the *Guidelines* recognise the need for children in alternative care to be able, without fear of retribution, to express concerns about their situation or treatment by confiding in a person they can trust (§ 98), and by having access to an effective complaints mechanism (§ 99). Young people with experience of alternative care should be invited to play a role in the complaints process.

IMPLICATIONS FOR POLICY-MAKING

Ensuring complaints mechanisms are in place

Guidelines: § 98, 99

National policy should explicitly support children's right to raise concerns and make complaints.

Is there adequate guidance on complaints mechanisms?

National policy should:

- Require mechanisms to be in place so that children can raise informal concerns
- Put in place clear mechanisms for formal complaints so that children in alternative care can safely report infringements of their rights including abuse and exploitation
- Ensure that children are informed of their right to make complaints. They should have access to an independent trusted adult to support them take forward a complaint where required
- Ensure that children have access to legal remedy and judicial review. They should have access to legal representatives and support from independent trusted adults as required
- Ensure that children are aware of the extent and limits of confidentiality when making complaints and that making complaints is without retribution. Children should receive systematic feedback on how their concerns and complaints have been dealt with and what the outcomes are
- Require that complaints are recorded and are regularly reviewed. Establish an identifiable, impartial and independent body which can monitor complaints
- Seek the views and ongoing participation of children in how to improve complaints mechanisms

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iii. Private provision of alternative care

One of the major problems with providing formal alternative care in many countries is the fact that most services are privately run. Providers often operate without being **authorised** or monitored by the State, despite the State's clear child protection obligations under the CRC. The *Guidelines* stipulate that authorities need to draw up criteria against which to assess the ability of all individuals and facilities to care for children, and to use these criteria to authorise and then monitor their activities (§ 55).

One way of securing such authorisation is to require that the care provider submits **a document setting out the objectives of their services**, their responsibilities for providing these services, and the form in which these services will be monitored. This document should be in accordance with the CRC, the *Guidelines* and national law (§ 73). The main aim of this document is to secure from the provider a written commitment that they will adhere to international and national standards. This serves both to sensitise the provider to the standards and expectations of the State, and to provide an agreed benchmark against which to assess the quality of their services on an on-going basis [see Focus 14].

iv. Culturally- and religiously-specific care options

When considering policy, it is important to respect different **culturally- and religiously-specific** forms and settings of alternative care – as long as they are consistent with the CRC (§ 75). This is an important but often sensitive issue for many countries and concerns both formal and informal alternative care provision [see Focus 9].

As regards formal care settings, the issues raised in § 75 relate particularly to the widespread use of residential facilities, often set up by a religious base, and/or where the development of family-based alternative care settings currently meets a number of cultural and religious obstacles. If these settings do not conform strictly to the policy orientations of the *Guidelines*, they must be carefully debated locally and in context. According to the *Guidelines*, the guiding principle for establishing the acceptability of promoting such practices lies in a broad consultation process involving cultural and religious leaders, child protection professionals and the community.

CLICK TO REFER TO THE *GUIDELINES*

Focus 10: Supporting appropriate traditional care responses

OVERVIEW

The *Guidelines* (§ 75) highlight the need to ensure that traditional coping mechanisms for children lacking parental care are respected and promoted.

Among the most vocal advocates for including this provision were representatives of industrialised States whose populations include First Nations (minority indigenous communities). They wanted to ensure that the *Guidelines* did not prescribe policy orientations or governmental responsibilities that might (passively or actively) undermine the long-standing alternative care practices of these indigenous communities; practices that clearly needed to be supported and preserved. A similar position was adopted by certain States with multi-cultural populations. In both cases, their main concern was to preclude any discriminatory approach towards the traditional coping systems of their indigenous and ethnic minority communities. Instead, the representatives wanted to recognise and enhance these coping systems by incorporating them into overall alternative care policy.

On a wider level, there is a growing tendency to promote formalised (and often legalised) alternative care arrangements as the most desirable. This view has been partly inspired by the 'Western' approach to resolving social problems. It is claimed in some quarters that only formal arrangements can provide the accountable guarantees necessary for safeguarding the best interests and other rights of the children concerned. But this view has a number of negative consequences. It is somewhat dismissive of (and underrates) the benefits of care arrangements that are based more on custom and oral commitments. In doing so, it actually discourages support for informal systems and carers.

The combined consequence of this, especially in economically disadvantaged countries and communities where international intervention is common, include the unwarranted establishment of residential facilities, the introduction of culturally-unknown alternative care practices (e.g. formal foster care and adoption), or the promotion of inter-country adoption. The *Guidelines* militate against such initiatives.

At the same time, it also has to be recognised that certain traditional practices are not always respectful of the rights of the child. There is evidence from many countries of children who are placed with relatives (especially uncles and aunts) only to be exploited or discriminated against. Not surprisingly, this is a genuine fear of many children who choose to set up and remain in child-headed households instead (§ 37, and see Focus 4).

There is even greater concern at practices that involve sending a child to distant locations, often from rural to urban areas, to live with family members, acquaintances or even strangers, and where instead of receiving an education in return for light work in the home, they are ruthlessly exploited.

As a result, the acceptability and promotion of culturally and religion based responses is subject to two major conditions in the *Guidelines*. Firstly, those practices should be determined, through a 'broadly participatory' process, as being in line with recognised children's rights (§ 75). Secondly, since States remain ultimately responsible for protecting children from all forms of maltreatment and exploitation in informal care, they should pay special attention to practices that involve carers who are not previously known to the child and/or who are far from the child's habitual residence (§ 79).

CLICK TO REFER TO THE *GUIDELINES*

Focus 10: Supporting appropriate traditional care responses (cont.)

PROMISING PRACTICE 10.1

Touchstones of Hope Initiative, Canada

The Touchstones of Hope initiative is a grassroots movement for reconciliation in Aboriginal child welfare systems. The Touchstones of Hope are guiding principles, interpreted by Aboriginal communities to respect the diversity of cultures and contexts. They are the foundation for a reconciliation movement that aims to strengthen relationships among individuals, with a focus on child welfare. The overall goal is to identify gaps in services and policies, define what is needed for improvements and implement next steps for a healthier population. The movement aims to remodel child welfare systems so that they foster Aboriginal cultures and values in order to ensure the success of all Aboriginal children, youth and families.

As part of the process of developing this initiative, a participatory evaluation was conducted to provide their insights into the cultural understandings that constitute Aboriginal communities' experiences with child welfare services. This helped increase collaboration among groups working in child welfare, support more respectful practice by child welfare staff members, and supported families to learn new coping skills, which enabled them to be reunited with their children as a result. Participants emphasised the self-determination as crucial to realising a better future for Aboriginal children and youth. Gains have been made by professionals, community members and leaders as a result of sharing knowledge with one another. Child welfare staff members reported more collaborative interactions with Aboriginal families and improved outcomes for children and youth as a result of their involvement with the Touchstones of Hope initiative. Participants also expressed their enthusiasm for and deep engagement in the reconciliation process, while recognising the challenge of keeping key people actively involved over the long-term.

For more information see: Reconciliation in Child Welfare: Touchstones of Hope for Indigenous Children, Youth, and Families www.reconciliationmovement.org/docs/Touchstones_of_Hope.pdf

PROMISING PRACTICE 10.2

Traditional foster care in Iraqi Kurdistan

Support for appropriate traditional alternative care responses can be found in Iraqi Kurdistan, where orphaned children are cared for either by relatives or a non-relative family in the region. This provision of support is based on the traditional family system in Kurdistan that allows the orphaned child to be integrated into the foster family. Taking care of an orphan confers social status and is seen as securing a place in paradise according to Islam. A study was undertaken to compare these children's development in traditional foster care (n=94) and 'orphanages' (n=48) and found greater improvement in activity levels and reductions in psychological symptoms and levels of post-traumatic stress amongst those in traditional foster care as compared with those in 'orphanages'. The study highlights the benefit of the system of traditional care as an important social policy that should be applied to avoid unexpected negative consequences of imported interventions from overseas.

For more information see: Ahmad, A., Qahar, J., Siddiq, A., Majeed, A., Rasheed, J., Jabar, F. and Von Knorring, A.-L. (2005). A 2-year follow-up of orphans' competence, socioemotional problems and post-traumatic stress symptoms in traditional foster care and orphanages in Iraqi Kurdistan. Child: Care, Health and Development, 31, 203-215. doi: 10.1111/j.1365-2214.2004.00477.x www.anst.uu.se/abduahma/Original%20articles/c6.%20A%20two-year%20follow-up%20of%20orphans.pdf

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v. Child development and protection

Although the **general conditions** of care provision set out in the *Guidelines* naturally address the physical and **material needs** of children – nutrition (§ 83), health care (§ 84) and accommodation (§ 89, 91) – their main emphasis is on other aspects of child development and, particularly, protection.

Provisions for **child development** range from access to education and vocational training (§ 85), to insistence that children can maintain contact with family and other familiar persons (§ 81, 82), the optimal development of children with special needs (§ 86) and of babies and toddlers (§ 87), and the importance that carers should place on creating nurturing relationships with the children they are looking after (§ 90). The selection and professional skills of carers are clearly critical in promoting child development and ensuring protection: this is recognised in a general manner in § 71, with more detailed consideration later in the *Guidelines* (notably § 105-107 and 113-117).

It is in the **protection** field, however, that most of the more innovative provisions in the *Guidelines* are to be found.

vi. Stigmatisation

The *Guidelines* pay specific attention to avoiding the **stigmatisation** of children in alternative care settings – an issue on which young people with experience of alternative care have often expressed special concern. Two provisions can be mentioned in this regard:

- When a child is taken into care, particularly if it is contested by the parents, the transfer needs to be well organised. Failure to plan ahead can make this a highly disturbing process for the child, and can also shame the child in front of the family and community. This explains the reference (§ 80) to the involvement, in principle, of non-uniformed personnel who can be much less visible and therefore less stigmatising. The insertion of the term 'in principle' in the *Guidelines* was requested by certain delegations who, while agreeing with the fundamental idea of this provision, felt there were occasions when the intervention of uniformed officials might be necessary to resolve an exceptionally difficult situation more effectively.
- The mention of the need to 'minimise the identification of a child as being looked after in an alternative care setting' (§ 95) is an important step forward in combating stigmatisation. Residential facilities should not be identified by large signboards as being an 'orphanage' or 'home for the disabled', for example, nor should any vehicles used to transport the children in their care be similarly labelled. Such distinctive markings are common worldwide, but respect for the children concerned undoubtedly means that their acceptability must be questioned.

vii. Religion

Noteworthy too is the provision that not only preserves children's rights to participate in **religious and spiritual life** but also prohibits attempts by the care provider to modify their religion or belief (§ 88). This links in with one of the 'general principles' of the *Guidelines*: that the provision of alternative care should never be aimed at furthering the religious goals of the providers (§ 20). It responds to the regrettable frequency with which this occurs, more commonly in countries where alternative care is provided by private providers with little supervision.

viii. Use of force and restraints

Treatment and punishment while in an alternative care settings are covered under international law on torture and associated acts (§ 96). The *Guidelines* echo these and deal in particular with the '**use of force and restraints**' (§ 97). While such measures should constitute a last resort and be subject to strict limitations under the law, it is recognised – including by young people with experience of alternative care – that there are extreme occasions when force and/or restraint are necessary to protect other children and adults in the care setting. In contrast, the administration of drugs and medication for anything but therapeutic ends should be banned in all circumstances.

CLICK TO REFER TO THE *GUIDELINES*

IMPLICATIONS FOR POLICY-MAKING

Use of discipline, punishment and restraints

Guidelines: § 96, 97

The *Guidelines* recall that international law prohibits the use of discipline or behaviour management which constitutes 'torture, cruel inhuman or degrading treatment' (§ 96). In addition, the *Guidelines* place severe restrictions on the use of force and restraints (§ 97), and the prohibition of all treatment that may compromise a child's physical or mental health.

Provide adequate guidance on discipline and punishment

- Prohibit by law all forms of violence against children in alternative care
- Ensure that all professionals and carers are aware of different forms of violence including physical, psychological and verbal abuse
- Establish clear and enforced instructions throughout the alternative care system regarding acceptable behaviour management techniques and disciplinary measures
- Have child safeguarding policies in place which ensure that children's needs are adequately met
- Ensure that training and awareness raising for appropriate approaches to discipline and punishment in line with the CRC, the *Guidelines* and international human rights law are provided for professionals and carers
- Require training for carers in techniques using non-violent de-escalation techniques and where necessary, the appropriate use of physical restraint
- Ensure that children are aware of policies on disciplinary measures, behaviour management and the use of force and restraints and know how to raise concerns and make complaints
- Require records to be kept and monitored on the use of discipline generally and physical restraints
- Ensure that the administration of drugs and medication is used only for therapeutic needs and overseen by specialists

ix. Over-protection

Alongside all these protective measures, young people with experience of alternative care pointed out the dangers of '**over-protecting**' children in care. Their concerns are reflected in three points in the *Guidelines*. Firstly, there are important warnings against taking measures that would unreasonably restrict children's 'liberty and conduct' in the name of protection (§ 92-93), and a similarly important provision that children should be encouraged to take responsibility for making decisions that may involve an 'acceptable' degree of risk (§ 94). Too frequently, the young people stated, they are prevented from taking initiatives on 'health and safety' grounds that children in the care of their own families would be allowed to take. It was felt that these rules were designed more to make care management easier, and to protect the care provider rather than the children. Young people believed it put them at a disadvantage in relation to their peers when leaving the alternative care setting.

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CARE SETTINGS

In this chapter you will find:

8a. Legal responsibility

8b. Key issues for agencies and facilities responsible for formal care

IMPLICATIONS FOR POLICY-MAKING:
Setting standards for staffing formal care services and facilities

8c. Foster care and residential care settings

i. The foster care option

Focus 11: Developing family-based alternative care settings
- Implications for policy-making
- Promising practice:
  - Case Study 1: Miracle Encounters – Family Links, Colombia
  - Case Study 2: Strategy of care for vulnerable children in foster care, Togo
  - Case Study 3: Fostering programme developed by the Farm Orphan Support Trust in Zimbabwe

ii. The residential care option

IMPLICATIONS FOR POLICY-MAKING:
Providing the residential care option

iii. Children in conflict with the law

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Context: Understanding the *Guidelines*

This chapter covers the second group of issues considered in Part VII of the *Guidelines* (§ 101-136), focusing on the roles and responsibilities of those involved in providing formal alternative care.

8a. Legal responsibility

The first issue broached is that of **legal responsibility** for the child when the latter's parents are absent or not in a position to make 'day-to-day decisions' deemed to be in the child's best interests. The objective of these provisions (§ 101-104) is to ensure that there is always a legally-recognised person or body tasked with making decisions when the parents are unable to do so. The foundations for this concern are set out as a 'general principle' of the *Guidelines* (§ 19).

Despite general agreement on this objective, the drafting of these provisions proved difficult for several reasons. In many countries, a 'guardian' would be given legal responsibility, but, in others, the concept of 'guardianship' implies looking after the child in one's own home. Thus, the term 'guardian' could not be used in this section of the *Guidelines*. In some countries, legal responsibility can be entrusted to an agency instead of a designated individual, hence the necessary reference here to 'person or entity'. Elsewhere, even if the law provides for the possibility of bestowing legal responsibility, this is very rarely the case in practice: it is more likely that responsibility will be recognised on a pragmatic basis, in line with the idea that principal caregivers can be presumed responsible for the child in the absence of parents (§ 69).

In summary, the key message of the *Guidelines* is that a child should never be left in a 'no-man's-land', where no one is competent and responsible for ensuring that his or her best interests and other rights are protected and promoted. This protective role should be approved and accepted, where possible by legal decision, or by custom that is not challenged before a court of law.

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8b. Key issues for agencies and facilities responsible for formal care

The section dealing with '**agencies and facilities responsible for formal care**' (§ 105-117) provides a detailed review of general requirements to be made of care providers, some of which are referred to earlier in the *Guidelines*. For example, in addition to recalling that providers must be registered and authorised to operate (cf. § 55), it highlights the issues to be taken into account when considering applications to do so (§ 105). Similarly, the need for written policy and practice statements, initially stipulated in § 73, is further explored here (§ 106).

Additionally, certain key issues find their first mention in this section. One of these is the importance of **record-keeping** (§ 109-112), especially as it relates to data on each child in the care setting. Emphasis is placed on the scope of information required (for example, to include family situation), the requirement to be up-to-date and thorough, and the question of access to the file. The principle of confidentiality is upheld, but access is granted to authorised professionals in addition to the child and, generally, the family concerned. When the child and/or family consult the file, counselling must be available before, during and after. Possibly contentious or sensitive issues can be discussed and, where necessary, aspects of the record can be explained.

This part of the *Guidelines* also deals with **staffing** issues. It requires that recruitment standards be established in writing (§ 106) and that a code of conduct be developed for all staff and for each function (§ 107). It also demands that, prior to employment, an assessment be made of an applicant's fitness to work with children (§ 113). This assessment might include criminal and other background checks, though it was not possible to specify such requirements in the *Guidelines*, given the diversity of country realities.

One of the problems in alternative care provision is the frequently low status of caring staff, reflected in low salaries and often inadequate training. Such conditions of work have a negative effect on motivation and on quality of care. They may also lead to high rates of staff turnover, further affecting the quality of care. The *Guidelines* highlight the importance of positive working conditions (§ 114) and appropriate training for staff (§ 115), including how to deal with challenging behaviour (§ 116) and how to respond to children with special needs (§ 117).

CLICK TO REFER TO THE *GUIDELINES*

IMPLICATIONS FOR POLICY-MAKING

Setting standards for staffing formal care services and facilities

Guidelines: § 71, 84, 87, 89, 90, 106,107, 113-117

Ensuring high quality recruitment, selection, training, employment, supervision, support and registration of formal carers (§ 71) helps to ensure that people caring for children have the skills, knowledge, qualities and values required to effectively meet the wide ranging needs of the children in their care.

National policy should:

- Provide leadership on the training and qualification of carers
- Provide national leadership on high quality caring through investing in a carers' workforce which is committed to the inclusion of all children and recognises the importance of individual children's needs being met
- Ensure that there is recognition of the professional status of those working in alternative care
- Provide for working conditions, including remuneration, that reflect the professional status of the carers' workforce and enable them to carry out their duties to the highest standard at all times
- Have a commitment to carers in formal care being suitably qualified and trained with access to regular professional development opportunities
- Ensure adequate training and employment of social workers with specialist skills in child protection and child welfare

Outline the skills and knowledge to be covered in training. Core elements should include:

- General care which promotes children's health and well-being, with specific attention to training on the care of children with disabilities and other special needs
- Training on the central importance of child development, attachment theory, supporting children's resilience, maintaining family relationships and children's rights
- Training on family tracing in order to support reintegration of children into their families
- Emphasis on the importance of appropriate relationships between carers and children including recognition of the role of trusted adults in supporting children to speak out
- Proactive awareness-raising efforts in order to counter stigmatisation and discrimination of children in alternative care

Put in place national policy on standards of professional practice

- Ensure that carers undergo appropriate selection procedures during the recruitment process. These procedures should identify the skills, experience and vocational requirements that are required and include child protection checks
- Provide carers with clearly identified roles and regular supervision, and ensure that procedures are in place for the monitoring and evaluation of standards of care
- Employ adequate numbers of carers to undertake realistic workloads with specific attention to the caseloads for social workers and carers
- Ensure carers are able to support children's participation and their right to have a say in formal proceedings and in their everyday activities
- Enable carers to support children reaching their full potential in areas that promote their well-being including education, health and play
- Ensure carers support and facilitate contact between children and their parents, families and communities where this is appropriate
- Build awareness among service providers and carers of the potentially negative effect of institutional care on child development and provide training in other and new approaches to alternative care
- Ensure service providers and carers are trained in facilitating family tracing in order to support the reunification of families
- Require that a commitment to confidentiality and to involving children is reflected in assessment and planning processes

CLICK TO REFER TO THE *GUIDELINES*

8c. Foster care and residential care settings

The following two sub-sections look at issues specific to the two basic types of formal alternative care: foster care (§ 118-122) and residential care (§ 123-127).

i. The foster care option

The main focus areas of these provisions are the need for appropriate preparation and training, and the need for a procedure for matching a child with foster carers most apt to meet his or her needs, so as to maximise the likelihood of a positive outcome for the placement. The *Guidelines* are also innovative in seeking improvements. It was agreed that foster care is a complex and highly specialised task that deserves greater recognition. One complaint often heard from foster carers is that they lack opportunities for expressing their concerns and ideas that could positively influence policy on this alternative care option. This is addressed in § 121. There was also acceptance of the potential benefits of encouraging foster carers to form associations. These can serve both as a means of providing mutual support through a forum where they can express concerns and/or gain from the experience of others, and as a more effective means of putting forward their views to influence practice and policy (§ 122).

CLICK TO REFER TO THE *GUIDELINES*

Focus 11: Developing family-based alternative care settings

OVERVIEW

Among the range of alternative care options required to ensure the availability of care settings that can respond to the different needs and circumstances of each child (§ 54), priority is to be given to promoting 'family- and community-based solutions' (§ 53). These may be formal, customary or informal (§ 69, 75, 76). Developing such solutions is also a necessary pre-condition for implementing a viable de-institutionalisation strategy.

Where this involves providing enhanced support for the extension of traditional coping strategies, the main problem is often one of resource allocation. It can be difficult getting agreement to divert funds from other care settings and identifying additional sources of financing. Securing these kinds of changes in funding can be a long and delicate process, and active resistance to such moves is normally restricted to certain groups. The interests of these groups often lie in preserving the current allocation system [see Focus 13].

In contrast, where the promotion of more formal types of family-based care is envisaged, the process can be far more complex. For most countries in the world, **formal foster care and similar arrangements are unknown practices**. In some societies, the idea of taking an unrelated child into one's family home goes against customs and values. It may also be difficult to conceive of taking children into one's home and bonding with them, only to see them leave. Elsewhere, there is little or no experience of an administrative system whereby children are placed with a substitute family. In these instances, there is a fundamental hurdle of acceptance to be overcome. This issue is in addition to the need to set in place a functional decision-making mechanism that may be alien to the way in which communities approach child protection problems. While meeting these challenges successfully has proved possible in many instances, such situations have to be approached and handled sensitively and pragmatically.

In addition to pointing to the benefits for most children of family-based over residential care, it is often argued that the cost of supporting a child in foster care is lower. This can lead to family-based care being viewed as a far cheaper option. Such would surely be true if it required little more than attracting a sufficient number of volunteer families with minimal financial compensation. This, however, is not the case.

The *Guidelines* are clear on the need for 'conditions of work, including remuneration, [to] be such as to maximise motivation' of carers (§ 114). The importance of setting in place quality assurance regarding 'the professional skills, selection, training and supervision of [all] carers' (§ 71), providing 'special preparation, support and counselling services for foster carers' before, during and after placements (§ 120), and foreseeing a system for matching the child with potential foster carers (§ 118) are also detailed. These various aspects of quality assurance that enable foster care to constitute a valid response to children's needs have considerable resource implications. Immediate costs-per-child in foster care may not be dissimilar to those of certain residential care settings.

The point is that **family-based care tends to be more *cost-effective* for most children**. It not only responds more appropriately to most children's needs but often avoids longer-term expenditures linked with unsatisfactory care outcomes. It is vital that cost-effective high quality alternative care rather than simply a 'low cost' objective be the driver for developing policy and practice in this sphere.

CLICK TO REFER TO THE *GUIDELINES*

Focus 11: Developing family-based alternative care settings (cont.)

IMPLICATIONS FOR POLICY-MAKING

Guidelines: §118-122

Foster care is generally to be seen as an integral part of alternative care and provides care for children in family-based settings. Foster carers require specific support and access to training and development to ensure that they can provide high quality care for children.

National policy should:

Support high quality foster care

- Develop a national policy framework for foster care which contributes to the State's national plan on alternative care
- Provide financing so that foster care can be adequately supported and developed as alternative care where children require this form of care
- Ensure that there is regulation and monitoring of foster care
- Promote awareness of the role of foster care in order to recruit new carers and highlight its contribution to the care of children
- Promote awareness of the range of foster care options including emergency placements, respite care, short term and longer term placements
- Ensure that the child welfare workforce supports children and foster carers as part of its role in supporting children's care and protection

Support children's rights in foster care

- Ensure that foster carers support children's right to participate in decisions that affect them
- Ensure that children in foster care have contact with their parents, wider family, friends and community
- Provide mechanisms so that children can raise informal and formal concerns or complaints
- Require that siblings are placed together in foster care unless there are compelling reasons for not doing so

Invest in foster care

- Invest resources in foster care programmes so that foster care is available widely as a family-based option for alternative care
- Recognise the diversity of foster care placements that should be available and ensure that they are appropriate for children with a range of needs
- Provide financial support to foster carers for the upkeep of children and as remuneration for their caring
- Undertake research on the impact and outcomes of foster care for children

Provide support and training for foster carers

- Establish strategies to recruit, select and accredit foster carers
- Provide appropriate support and training which includes child development and attachment, children's rights and child well-being
- Provide support and training for foster carers who care for children with disabilities and other special needs
- Ensure foster carers have access to day care and respite care, health and education services in order to meet the needs of children with disabilities and other special needs
- Ensure that foster carers can participate in discussions and decisions on matters relating to the children in their care as well as contribute to the development of policy on foster care
- Support the development of foster carer networks in order to facilitate the exchange of learning, expertise and support

CLICK TO REFER TO THE *GUIDELINES*

Focus 11: Developing family-based alternative care settings (cont.)

PROMISING PRACTICE 11.1

Miracle Encounters – Family Links, Colombia

This Project, developed by a local NGO, Kidsave Colombia, in partnership with the Colombian Government, aims to provide children and young people with an opportunity to live within a foster family where necessary. The programme was developed over 27 months from 2006 to 2008. The children and young people involved in this project were from family backgrounds where they had suffered abuse, neglect, lack of affection and poor attachment to their birth parents and many of the children and young people had addiction problems. Overall the majority of the children and young people had spent a third of their lives in the care system. The Project had four main components: training and capacity building of agencies; support for children/young people and the foster families to improve interaction and relationship building; awareness-raising to influence the attitudes of political leaders and decision-makers in relation to children/young people without birth families. External evaluation found children and young people were helped to develop social competencies and their social network, which helped to strengthen family integration, with the children and young people showing positive interaction towards both adults and children within the foster family. The feedback from the foster families was also very positive and the programme had exceeded their expectations.

For more information visit: www.kidsave.org.co

PROMISING PRACTICE 11.2

Strategy of care for vulnerable children in foster care, Togo

Institutional care has long been the favoured option for the protection of vulnerable children in Togo, where there are more than 250 private institutions. A number of problems result from this, including lack of access to protection and risk of exploitation, violence and abuse. The Togolese government has developed, in collaboration with partners UNICEF, Plan Togo and Terre des Hommes, the strategy of care for vulnerable children in foster care. The objective is to improve the protection and well-being of children without parental care. In order to implement this strategy in family-based settings, a number of activities were conducted including: awareness raising to recruit foster carers, training for potential foster families, accreditation of host families, placement within foster families and monitoring of children. The government, with support from UNICEF, strengthened its national system of protection of vulnerable children by creating a centralised system for the referral of children without parental care, an orientation centre providing emergency shelter and monitoring of all children without parental care or at risk; and an interdisciplinary team providing support (counselling, rehabilitation and reintegration) for children within foster families. The application of this strategy has decreased the number of vulnerable children in institutions, established a national mechanism for collecting information on vulnerable children and supported the development of a welfare system for children in alternative care. Currently, the Government is documenting the strategy, extending it to all communities including rural areas, and strengthening members of the specialised child protection committees at village level so they can effectively monitor children in foster care.

For more information see: Azambo-Aquiteme, A. (2012, May), Mobilisation around the Strengthening of Family and alternative care conference, Senegal: 'Presentation: Guidelines on Alternative Care' (In French). 'Lignes Directrices sur la Prise en Charge Alternative. Impact sur la prise en charge des enfants privés de protection parentale au Togo. www.conf-familleprise encharge-dakar.org/

CLICK TO REFER TO THE *GUIDELINES*

Focus 11: Developing family-based alternative care settings (cont.)

PROMISING PRACTICE 11.3

Fostering programme developed by the Farm Orphan Support Trust in Zimbabwe

The Farm Orphan Support Trust (FOST) programme was implemented as a means of responding to the problems of children who had been orphaned (mainly by HIV/AIDS) in the commercial farming areas of Zimbabwe. Because these communities of migrant labourers had become largely detached from their extended family networks, when children were orphaned the most usual option was to place them in an institution far removed from their familiar surroundings. As an alternative, fostering was a culturally unfamiliar concept and careful work had to be undertaken to promote the concept within farming communities.

At local level, child welfare committees (CWCs) were set up, often supported by a childcare representative appointed by FOST. Together, they identified and supported children affected by HIV/AIDS and, following the death of their parents, took all possible steps to ensure the children were placed within the extended family. Where that was impossible, they sought foster homes for the children. Potential foster carers were identified by the CWCs and a pattern of regular meetings with carers was established to discuss questions and problems of mutual concern, with informal training provided on issues such as psychosocial care. The childcare representative undertook regular visits to the foster home to monitor and support the placement. Material support (e.g., school fees and uniforms) was provided where necessary and a farmer's assistance with growing crops was encouraged to facilitate the family's self-sufficiency.

Foster carers took on their role voluntarily, which contributed to the quality of the care, preferring an informal type of fostering to any more formal arrangement such as guardianship or adoption. The reason appeared to be that, in the Shona culture, traditional beliefs about ancestors make it difficult for families to take in a child unless s/he has the same totem. Fostering places the child in the role of 'guest', which builds on the tradition of treating guests well.

For more information see: A Sense of Belonging: Case studies in positive care options for children www.savethechildren.org.uk/resources/online-library/a-sense-of-belonging-case-studies-in-positive-care-options-for-children

ii. The residential care option

Regarding the requirements to be met by **residential care providers**, the *Guidelines* stipulate that the facilities should be small, and organised to resemble, as far as possible, a family-type or small-group situation. This echoes the recommendations of the Council of Europe (2005) and highlights the difference between what may be 'suitable' residential care as opposed to an 'institutional' placement (§ 122). Linked to this is the need for sufficient staff to provide individualised attention (§ 126). Residential facilities are generally expected to take on a temporary care role while efforts are made to identify a stable family-based care arrangement for the child (§ 122). This does not preclude longer-term care provision in a small-group setting in accordance with duly determined best interests, and especially if this corresponds with the wishes of the child concerned.

CLICK TO REFER TO THE *GUIDELINES*

IMPLICATIONS FOR POLICY-MAKING

Providing the residential care option

Guidelines: § 21, 123-127

Residential care should be an integral part of alternative care, providing care for children in family-like settings. High quality residential care in small family type or group settings should be used as a temporary measure or where other informal or formal care is not suitable for children.

National policy should:

Use residential care appropriately as a care option

- Require that assessment, planning and review processes are thorough so that children are only placed in residential care when it is the best response to their individual needs and circumstances
- Ensure that residential care is based on small-group living which is of high quality and promotes appropriate caring relationships between carers and children
- State that residential care is a temporary placement in line with the *Guidelines*, with a placement objective to return children to the care of their families where possible. However, consideration should be given to the needs of a small number of children who might need longer term placement in residential care where they cannot return to their families and for whom foster care is not appropriate
- Plan for, and provide, separate facilities or units for children who are solely in need of protection and those whose care needs must take account of involvement with the criminal justice system
- Take into account the importance of attachment and supporting relationships with specific carers to children's well-being
- Recognise that some children may prefer residential care to foster care which may not meet their needs or preferences

Support high quality residential care

- Develop a national policy framework for residential care which contributes to the State's national plan on alternative care
- Provide finance so that residential care can be adequately supported and developed as an alternative care service where children require this form of care
- Ensure that there is regulation, monitoring and inspection of residential care
- Ensure that the child welfare workforce works closely with carers in residential care as part of their role in supporting children's care and protection

Support children's rights in residential care

- Ensure that carers in residential care support children's right to participate in decisions that affect them
- Ensure that children in residential care have contact with their parents, wider family, friends and community
- Provide mechanisms so that children can raise concerns or complaints
- Require siblings to be placed together in residential care unless there are compelling reasons for not doing so. This should be a temporary measure until longer term options for care are identified which keeps siblings together. Where siblings are separated, facilitate contact so that meaningful links can be maintained
- Undertake research on the impact and outcomes of children in residential care

Provide support and training for residential care workers

- Establish strategies to recruit, select and accredit carers in residential care
- Provide appropriate support and training which should include child development, attachment, children's rights and child well-being
- Identify suitable staff-to-child ratios in order to meet the needs of children
- Provide support and training for carers in residential care who care for children with disabilities and other special needs
- Ensure that carers for children with disabilities and other special needs in residential settings can access day care and respite care, health and education services in order to meet those children's needs

CLICK TO REFER TO THE *GUIDELINES*

iii. Children in conflict with the law

In the final decades of the 20th century (especially in industrialised countries), there was a tendency to promote the idea that, since **children in conflict with the law** clearly required care and protection, they could be accommodated in residential facilities together with children who only needed protective measures. The *Guidelines* take the view (§ 124) that, while this may be so in some cases, it is necessary to make provision for separate accommodation 'where necessary and appropriate'. Since the *Guidelines* do not apply to children whose situation is covered by juvenile justice standards, the best interests of the children who are not in conflict with the law should prevail when coming to a decision on placements of this kind.

The two other provisions in this sub-section deliberately reaffirm concerns taken up elsewhere in the *Guidelines*. The need for **screening admissions** to avoid unnecessary placements (§ 125) falls within gatekeeping [see Focus 8]. The prohibition, by law, of **procuring children for residential care** (§ 127) relates to avoiding unwarranted care procedures as well as to the question of how alternative care is financed [see Focus 13].

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SUPPORT FOR AFTERCARE

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In this chapter you will find:

Focus 12: Preparation for leaving care and aftercare support

- Implications for policy-making
- Promising practice:
  - Case Study 1: SOS Children's Village, Ghana
  - Case Study 2: 'Permanent parents for teens' project, United States
  - Case Study 3: Supporting Care Leavers in Jordan

CLICK TO REFER TO THE *GUIDELINES*

Context: Understanding the *Guidelines*

During the drafting process, young people with experience of out-of-home care underlined the importance of timely and adequate preparation for leaving care, and for support during the aftercare phase. The resulting Guidelines (§ 131-136) promote effective follow-up and counselling for children and young people transitioning out of the alternative care system. They also highlight the need for careful preparation of the transition during the care placement [see Focus 12].

Focus 12: Preparation for leaving care and aftercare support

OVERVIEW

As well as highlighting the need to plan for a child's return to his/her family after a period in alternative care [see Focus 7], the *Guidelines* also deal with preparing for the transition of children or young people from the alternative care system to independent living (§ 131-136).

When too little (or no) importance is given to this key transitional period in a child's life, the consequences in all parts of the world are often disastrous. They include indigence, homelessness, offending, substance abuse, renewed placement in an (adult) residential facility, or even suicide.

As with all aspects of alternative care, the *Guidelines* emphasise the need for individualised planning – to directly involve the child in determining the most suitable option for them, and how it is to be organised (§ 132).

To help reduce the challenges of independent living, it is very important that young people are not disadvantaged by being 'cast adrift' from alternative care at an earlier

CLICK TO REFER TO THE *GUIDELINES*

Focus 12: Preparation for leaving care and aftercare support (cont.)

OVERVIEW (cont.)

age than their peers usually leave the family home. Instead, and if they so wish, children and young people should be allowed, encouraged and enabled to remain in touch with, or in the care of, foster parents or other caregivers after 'ageing out' of the system.

Studies show that young people who benefit from gradual, extended and supported transitions from care have better outcomes than those who leave care early and abruptly. Successful transitions are built on solid foundations:

- Good quality placements, providing young people with stability and continuity of care
- A positive experience of education
- Assessing and responding to young people's health and emotional needs
- Preparation in self-care, practical and inter-personal skills

Achieving such goals is clearly anything but a last-minute exercise (§ 131).

It is equally important to work with the young person concerned to determine the most appropriate post-care living environment. This could include accommodation with varying degrees of supervision and assistance according to need, or an independent flat. Whatever is decided upon, it is necessary to ensure the most appropriate support system is also put in place (§ 134). This system should be able to help resolve practical problems and provide psycho-social support when required, recognising that adjustment to independent living is unlikely to be a linear process. Ideally, a 'specialised person' should be designated who can oversee and support the young person during the transition period, and intervene as necessary to facilitate the process (§ 133). Access to basic services should also be assured (§ 136).

The *Guidelines* also underline the need for special support for children with disabilities and other special needs who are leaving care. Clearly, a lack of opportunities to ensure financial independence on leaving care is a major factor in ensuing problems, so pro-active efforts are required to persuade employers to take on young people leaving care, and those with disabilities in particular (§ 132). If no immediate employment is possible, those leaving care should be supported in educational and vocational training courses that will increase their chances of finding a job in the medium term (§ 135).

CLICK TO REFER TO THE *GUIDELINES*

Focus 12: Preparation for leaving care and aftercare support (cont.)

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 131-136

Children who leave care require support through planning, preparation and information in order to prepare them positively for moving on from care. They should have the opportunity to develop skills as preparation for independent or semi-independent living as young adults. Support should be available for young people after they have left care and into young adulthood.

National policy should:

Ensure planning is in place for children leaving care

- Develop and implement legislation and guidance which outlines measures to support children who are leaving care and provides for aftercare support
- Assign a specialised support worker to provide guidance, advice, facilitate and empower each child throughout the process of preparing to leave care and during aftercare support
- Provide consistent assessment, individualised planning and appropriate support for all children leaving care and as early as possible in their placement
- Ensure that children are not leaving care too young by supporting them to remain in their long-term care as they move into young adulthood
- Support foster carers and children so as to encourage the foster family to continue to be there for the child when they move into adult life
- Put in place mechanisms so that children can participate in planning for leaving care and can contribute to how this will be organised
- Ensure that different agencies with, for example, responsibility for housing, welfare, health and education are involved in planning and ongoing support to children leaving care
- Require the monitoring and review of aftercare plans regularly after a child moves on from care until s/he is able to live independently without systematic support

Provide support to children leaving care

- Provide opportunities for children to develop the necessary life skills and to have access to information when they are preparing to leave care
- Require systems to be in place that ensure support for young people after they leave care with a named person available as ongoing contact
- Provide services for children who are leaving care including access to health, social welfare, educational, vocational and employment opportunities. This should include specialist support for children with disabilities and other special needs
- Consult with children leaving care to identify where they would like to live. If this is not close to the community where they were living during or prior to entering alternative care, discuss the implications and respond accordingly
- Ensure that children who are currently in education and wish to continue their studies are supported in the transition to leaving care
- Ensure that a range of different living and housing arrangements are available to children leaving care and that this is of appropriate quality

Provide aftercare support to young people

- Support opportunities for young people to maintain contact with their previous care service, carers and friends, in recognition of the importance of ongoing relationships
- Ensure that contact can be maintained with siblings who remain in care and other family members as appropriate
- Ensure that children leaving care have access to high quality vocational and tertiary education, where appropriate, so that they have the same opportunities as their peers in parental care

CLICK TO REFER TO THE *GUIDELINES*

Focus 12: Preparation for leaving care and aftercare support (cont.)

IMPLICATIONS FOR POLICY-MAKING (cont.)

- Provide support with accessing education and vocational training, including financial support. Consideration should be given to the provision of scholarships or fee elimination to offset the disadvantage experienced by children raised in alternative care
- Collect data on the progress of young people who have left care in order to contribute to greater knowledge and understanding on the outcomes of children in care
- Encourage the extended family, community and civil society to provide support to young people who have left care. This should include support and encouragement for former foster carers and staff in formal care to stay in touch where a child wishes
- Counter stigma and discrimination of young people who have been in care and promote children and young people's contributions as citizens

PROMISING PRACTICE 12.1

Case Study 1: SOS Children's Village, Ghana

The number of children requiring out-of-home care in Ghana has increased in the last two decades because of the growing incidence of poverty and HIV/AIDS. With the gradual disintegration of the extended family system, residential care has become the main form of substitute care. As a result, many care leavers are unprepared for adulthood and face challenges such as poverty and unemployment. Few countries in Africa have mandated the provision of services to support young people leaving care, and such a scheme is indeed lacking in Ghana.

The SOS Children's Village in Tema was established in 1974 to provide support to abandoned and destitute children. It has a specialised programme for preparing its residents for independence through youth homes, located in nearby communities, where young people live together with the support of a group leader and have an opportunity to develop independent living skills in preparation for adulthood. As in many other cases, an independent evaluation found young adults who had exited the village did experience a number of challenges in their preparation for leaving care including finance, accommodation and cultural skills. However, they were able to use a variety of sources in preparing for adulthood including the SOS 'mother' and youth facilities and the secondary school boarding houses.

For more information visit: www.sos-kdiafme.org/Ghana/

Also see: Manso, K.A.F (2012) Preparation for Young People Leaving Care: The Case of SOS Children's Village, Ghana, *Child Care in Practice*, 18 (4), 341-356. DOI:10.1080/13575279.2012.713850

CLICK TO REFER TO THE *GUIDELINES*

Focus 12: Preparation for leaving care and aftercare support (cont.)

PROMISING PRACTICE 12.2

'Permanent parents for teens' project, United States

The project used a 'social capital building' model to achieve permanence for young people at risk of ageing out of care unconnected to permanent families. The goal of the project was to find permanent parents for young people in care. The project model consisted of a combination of specialised case-work activity and parent education and training. A 'child-specific recruitment approach' was used in which family permanency advocates would work with the young person to identify significant others (kin, friends, acquaintances) in their life with whom they had a constructive relationship and who could potentially be a permanent placement for them. Once prospective families had been identified, parent education was delivered to prepare new families for unconditional commitment to teens and to increase the receptivity of trained families for youth placement in the future. The project was highly successful in terms of permanency outcomes. Of the 199 young people referred to the programme, the majority of whom were living in residential care, 98 young people (almost 50 %) were permanently placed into family homes by the end of the project period (Avery 2010). The evaluation found that the strategy of family placement used in the project and the dual strategy of child-specific recruitment and focused parenting training were primarily responsible for the high placement rate.

For more information visit: yougottabelieve.org/about-us/our-story/

Also see: Avery, R.J. (2010). An examination of theory and promising practice for achieving permanency for teens before they age out of foster care, *Children and Youth Services Review*, 32, 399-408. doi:10.1016/j.childyouth.2009.10.011

PROMISING PRACTICE 12.3

Supporting Care Leavers in Jordan

The Ministry of Social Development is the main governmental body responsible for children in need of care until age 18. Annually, 50 to 70 young people leave care homes. The Ministry of Social Development has had a long history of informally and sporadically supporting care leavers and has increased some formal services to include the provision of health insurance and the establishment of a small housing project for female care leavers. Due to continuing challenges faced by care leavers, a committee was formed to advocate for their rights, mobilise existing resources and develop new post-care organisations seeking to offer support with housing, education, work and more general psychosocial needs. The committee was spearheaded by SOS Children's Villages International in Jordan, and includes academics, concerned professionals and care leavers themselves.

Initiatives targeting care leavers in Jordan have gained further momentum through the establishment of the Aman Fund. The Fund secures educational and vocational training scholarships for care leavers, offers career guidance and development, counselling and financial support. All care leavers applying to the fund receive appropriate financial assistance until employment is secure. Additionally, there is an 'open door policy' to respond to the needs of care leavers and the Fund has so far succeeded in supporting 1,700 young people.

For more information visit: www.alamanfund.jo/

CLICK TO REFER TO THE *GUIDELINES*

FINANCING, AUTHORISING AND ENSURING QUALITY CARE

In this chapter you will find:

10a. Financing care

Focus 13: Financing care to avoid unwarranted placements
- Implications for policy-making
- Promising practice:
  - Case Study 1: 'Money follows the child', Ukraine
  - Case Study 2: Financing care in Cambodia

10b. Inspection and monitoring

i. Inspection

Focus 14: Developing reliable and accountable licensing and inspection systems
- Implications for policy-making
- Promising practice:
  - Case Study 1: Programme for the supervision of children's homes, Mexico
  - Case Study 2: The RAF method for quality assurance in residential settings for children, Israel
  - Case Study 3: Minimum standards for residential and foster care in Namibia

ii. Monitoring

CLICK TO REFER TO THE *GUIDELINES*

Context Setting : Understanding the *Guidelines*

10a. Financing care

The wide-ranging second section of Part VII of the *Guidelines* also deals with the important issue of how care placements are financed. The key message here is that funding systems that encourage placing or retaining children in an alternative care setting should be avoided (§ 108).

Focus 13: Financing care to avoid unwarranted placements

OVERVIEW

The issue of resource allocation is fundamental in determining compliance with the 'necessity and suitability' principles contained in the *Guidelines*. Funding models need to be designed to minimise recourse to formal alternative care (e.g. through family support) but at the same time need to be adequate to ensure the psycho-emotional and physical well-being of children who do require such care.

The basis on which resources are secured, granted and distributed ***within*** the alternative care system also has major implications for how the system is used and organised – but is too frequently neglected. For the first time in an international standards text, this question is taken up in the *Guidelines*.

Firstly, the *Guidelines* warn against practices that may lead to **children being unduly admitted to, or retained in, a formal care setting** (§ 108). The principal cause of concern here lies in funding arrangements (for residential facilities in particular) that base resources on the number of children being looked after – and adjust the levels of funding without question.

CLICK TO REFER TO THE *GUIDELINES*

Focus 13: Financing care to avoid unwarranted placements (cont.)

OVERVIEW (cont.)

of children being looked after – and adjust the levels of funding without question.

For public facilities, this will usually mean a per-child subsidy. But the viability of such a facility, and the job security of its staff, depends considerably on maximising these subsidies. As a result, there is a potential disincentive to support or implement effective gatekeeping, cooperate on family reintegration, and undertake objective reviews to determine the on-going need for, and appropriateness of, each placement. In some countries, selected private facilities and agencies also receive government funding on a per capita basis. But an added concern is the case of private facilities being set up and/or financed by foreign donors. The more children taken care of, the greater are the demands that can be made of such charitable donors – so again, there are financial incentives to maintain or expand numbers. With so many private facilities operating outside the effective control of the competent authorities, and with little or no oversight over their financial management, this situation continues to be a major concern.

All these considerations are linked to two other provisions in the *Guidelines*, which were included in light of frequent negative experiences: the banning of alternative care services motivated by economic goals (§ 20) and the prohibition on actively procuring children for care in residential facilities (§ 127).

The way different care providers are financed may also affect **decisions on the placement setting**. For example, a municipality responsible for providing and funding foster care services may choose to place a child in a residential facility funded privately or at State level in order to keep its own expenditures as low as possible.

It follows from the above that special attention must be paid to developing funding models for alternative care settings that will promote, rather than hinder, efforts to keep placements at a minimum, and encourage a shift in placements away from institutional forms of care.

CLICK TO REFER TO THE *GUIDELINES*

Focus 13: Financing care to avoid unwarranted placements (cont.)

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 20, 24, 25, 108

Adequate levels of financing for alternative care are needed in order to resource alternative care services for children and provide support for families. The *Guidelines* recognise that each State will have different economic conditions but emphasise that each State should provide finance to alternative care which is to the 'maximum extent' of the resources they can make available (§ 24).

National policy should:

Ensure financial resources are available to support alternative care

- Allocate financial resources which adequately meet the costs of a national plan for implementing policy and practice on alternative care
- Have a commitment at a national level to financing programmes which tackle the factors which can lead to children being placed in alternative care, including poverty, unemployment, low income, disability, health and conflict

Provide finance to prevent the separation of families

- Provide financial resources for family support in order to prevent the separation of families. This should include: financial assistance, parenting and community support
- Ensure that there are financial resources available to support families caring for children with disabilities and other special needs including financial assistance and services such as day care and respite care, health, education and community support

Provide finance for a range of care services

- Fund new family-based alternative care as a move away from institutional care, identifying and putting in place transitional costs where institutional care is being phased out
- Provide financial and other forms of support to children leaving care and aftercare so that they can live independently
- Provide finance to underpin the training and development of carers and others working with children and families
- Ensure that foster carers are supported financially in caring for children and have access to training and support. The need for this support may also apply to former foster carers where young adults with disabilities or other special needs remain part of their foster family after the age of majority

Require financial resources to be used appropriately

- Put in place monitoring arrangements so that financing of care is linked to children receiving appropriate care and that individual placements are neither undertaken nor prolonged for the financial benefit of the provider
- Ensure financial resourcing and allocation reflects the best interest of each child concerned
- Ensure that licensing and regulation mechanisms require that funding is directed appropriately, and that this also applies to private facilities funded by foreign donors

CLICK TO REFER TO THE *GUIDELINES*

Focus 13: Financing care to avoid unwarranted placements (cont.)

PROMISING PRACTICE 13.1

'Money follows the child', Ukraine

In common with other countries of the former Soviet Union, alternative care for children in Ukraine was essentially provided in institutional facilities. In order to develop family-based and family-type care settings, the way in which care provision was funded was a significant obstacle to overcome. Institutional care – as well as being the easiest to organise – was funded from the central State budget, although managed by local authorities. Local authorities did not have the flexibility to redirect resources to other forms of care.

An important element of Presidential Decree 1086 of July 2005 on priority measures to improve child protection concerned the development of a 'mechanism to finance maintenance costs for orphans and children deprived of parental care' using alternative family-base care, referred to as 'money follows the child'. The basic aim was to provide greater funding opportunities for family-based care, family-type homes and foster care.

As this programme was rolled out experimentally, and while the flexibility it introduced was seen as a positive first step, the Government and its partners have also become aware of some of its limitations. Specifically the subsidies are directed at existing care providers rather than as a means of encouraging innovative and cost-effective responses, and they concern only children who are taken into alternative care, with the result that they may not motivate efforts to keep children out of the alternative care system altogether.

Consequently, there is currently a concerted move to determine how the resource allocation system might be further refined to best meet these challenges.

For more information see: www.unicef.org/ceecis/BilsonCarterReportFinal.pdf

PROMISING PRACTICE 13.2

Financing care in Cambodia

The Government of Cambodia is seeking to reduce reliance on institutions for children requiring alternative care and supports family and community-based care. The Ministry of Social Affairs, Veterans and Youth Rehabilitation promotes family-based care through the Policy on Alternative Care for Children and the Minimum Standards, however the financing of care remains a major barrier with local and international donors supporting residential forms of care. The Ministry, with the support of UNICEF, has produced a report in which it sets out a number of recommendations for supporting a financing system that encourages the development of alternatives to institutional care. Overseas donors have been informed of the negative impacts of residential care and the benefits of family-based and community-based care. Family and community-based care has been promoted through online sources, including weblogs and sites frequented by tourists, volunteers and other key stakeholders, with advocacy against 'orphanage tourism'. Advocacy materials have been developed for various stakeholders to explain the adverse effects of residential care and promote family-and community-based support initiatives. Social protection measures have been expanded, including social transfer programmes targeting vulnerable households, with the explicit objective of family preservation and reunification and de-institutionalisation of children. Finally, local government has been linked with community-based care programmes and school-support programmes so that they can help make families aware of the available support options that enable them to keep their children at home.

For more information see: *A study of attitudes towards residential care in Cambodia* www.crin.org/docs/Study_Attitudes_towards_RC.pdf

CLICK TO REFER TO THE *GUIDELINES*

10b. Inspection and monitoring

i. Inspection

The provisions in this sub-section explicitly devoted to inspection are remarkably brief (§ 128-129). But this belies the crucial importance of inspections in ensuring quality alternative care for children. The provisions do, however, build on previous references to such duties in the *Guidelines*, notably the requirement that alternative care providers are **authorised** by a competent authority responsible for 'regular monitoring and review' of their operation (§ 55), and that 'authorisation should be […] regularly reviewed by the competent authorities' (§ 105). Although there is no mention of 'inspection' as such in those provisions, its role is implicitly recognised as the necessary basis for such monitoring and review.

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In addition to specifying that all care providers must be frequently inspected by officials from a public body, the provisions (§ 128-129) highlight three main issues:

- The need to make both scheduled and unannounced visits
- The need to interact with staff and children
- The desirability of ensuring that inspectors play an oversight role as well as a capacity-building role when required [see Focus 14]

CLICK TO REFER TO THE *GUIDELINES*

Focus 14: Developing reliable and accountable licensing and inspection systems

OVERVIEW

For States to determine the extent to which they are fulfilling their obligation to 'ensure alternative care' (CRC Article 20.b, recalled in § 5) – and in a manner that respects children's rights set out in the Convention – they must have a comprehensive knowledge of where such care is being provided and what the quality of that care is.

Two systems are fundamental to acquiring this knowledge:

- A reliable system of obligatory authorisation for all non-State providers
- An inspection system that oversees compliance with standards, on an on-going basis, in all facilities and agencies - both State and non-State

In many countries, many or most private providers operate without being duly licensed. Sometimes there is no effective inspectorate in place at all. In such instances, the authorities are unaware of the number of children in alternative care in their country, let alone the justification for them being there and the quality of the care they receive. In light of this reality and its implications for child protection, the drafters of the *Guidelines* have paid particular attention to emphasising the requirements for authorisation and inspection.

Authorisation: the fact that civil society organisations involved in care provision should be 'duly authorised' is a general principle of the *Guidelines* (§ 5). Authorisation of all entities and persons providing care is to be granted by 'social welfare services or another competent authority' (§ 105) on the basis of an established set of criteria for assessing a provider's fitness to operate (§ 55).

The core criteria to be taken into account are necessarily broad. They include a written statement of the provider's aims, objectives and responsibilities (§ 73, 105); functioning; staffing issues; conditions of care; and financial management (§ 105-106). Even where criteria for authorisation exist, they are too often focused on material conditions of care, with little reference to issues such as treatment, protection, contact with family, and staff qualifications.

The attempt here is to underline the importance of ensuring that all relevant areas covered by the *Guidelines* and the CRC form part of the assessment process (§ 73). The clear implication is that authorisation to operate requires far more than a form of registration, which is often the norm in practice. The demands made of the provider must be wide-ranging, stringent and systematically applied.

Inspection: every initial authorisation to provide alternative care is to be subject to 'regular monitoring and review' by the competent authority (§ 55, 105). What this means in practice is that the results of the 'frequent inspections' of the provider's services or facilities should be reviewed by the 'specific public authority' to which the provider is accountable (§ 128). Making certain that inspections are carried out rigorously, thoroughly and ethically can be fraught with obstacles. A particular concern is the level of remuneration for inspectors which, given the financial resources available to certain providers, may leave them vulnerable to influence. Investment in ensuring effective monitoring needs to take account of this risk.

CLICK TO REFER TO THE *GUIDELINES*

Focus 14: Developing reliable and accountable licensing and inspection systems (cont.)

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 20, 55, 71, 73, 128, 129

The assessment, authorisation and regular inspection of all formal alternative care providers is fundamental to ensuring appropriate and high-quality responses.

National policy should:

Require registration and evaluation of all non-State care providers and services

- Make it an explicit legal obligation for all persons or entities seeking to offer formal alternative care for children to register that intention with a designated competent authority, ensuring that such registration does not signify a licence to operate
- Foresee severe punitive measures for any person or entity providing formal care that fails to register or that operates purely on the basis of that registration
- Have in place a comprehensive list of conditions to be fulfilled by applicants in order to operate, including written confirmation of the applicant's objectives, verified evidence of relevant qualifications and ethical suitability, capacity to select and supervise appropriate carers, ability to ensure children's material and psycho-social well-being, agreement to promoting and facilitating children's contact and reintegration with family wherever possible, and a guarantee of willingness to cooperate fully and systematically with the designated competent authority
- Ascertain that the proposed form of care provision is necessary and corresponds to national policy on alternative care for children, including its de-institutionalisation strategy
- Foresee refusal of any application that does not satisfy those conditions, and/or that contravenes the requirement that care providers not be primarily motivated by political, religious or economic considerations

Require all non-State services and providers to secure authorisation to operate

- Make it an explicit legal obligation for all persons or entities offering formal alternative care for children to have been duly authorised to do so after satisfying the conditions of the assessment
- Foresee severe punitive measures for any person or entity providing formal care without the necessary authorisation
- Require such care services and providers to apply for re-authorisation after inspection at appropriate intervals (e.g. every two years)

Set in place an effective inspection mechanism for all State and non-State care providers and services

- Ensure that a designated official body is responsible for carrying out both unannounced and regular inspections of all services and facilities providing formal alternative care for children, both State and non-State
- Define its responsibilities as including thorough review of the provider's adherence to national policy requirements regarding the protection and welfare of children in formal alternative care as well as, in the case of non-State providers, to their conditions of authorisation
- Ensure that the inspection body has a recognised status and is both adequately resourced to visit all services and facilities and appropriately staffed to carry out its tasks, including training for consulting directly and appropriately with children in alternative care settings
- Stipulate working conditions, including remuneration, that enable and motivate inspectors to fulfil their roles effectively and objectively
- Have in place a recognised and effective channel for inspection reports to be submitted, considered and acted upon as required
- Make re-authorisation of non-State care providers contingent on their satisfying inspection criteria

CLICK TO REFER TO THE *GUIDELINES*

Focus 14: Developing reliable and accountable licensing and inspection systems (cont.)

PROMISING PRACTICE 14.1

Programme for the supervision of children's homes, Mexico

There have been concerns in Mexico about the well-being and protection of children in alternative care, first prompted by the possible fate of several children who disappeared from a private children's home in Mexico City. The local Human Rights Commission issued observations and recommendations calling for more adequate follow up of children in alternative care by the authorities as well as an efficient system of registration and supervision of alternative care. As a result, Mexico City's local government has created a programme for supervising children's homes, involving agencies with local responsibilities comprising: the Ministry of Social Development, the Attorney General and Public Prosecutor in matters of child protection, the social welfare authority and the umbrella organisation of civil society organisations. The initiative aimed to ascertain that children's homes are operating in accordance with required standards, identify any irregularities in their operation and professionalise the care provided in these homes. To date the programme has assessed the care and services provided by children's homes and developed a register of all children's homes and all the young people placed in these institutions. It now intends to use this information to suggest potential improvements to the provision of alternative care and develop legislation to provide legal recognition and sustainability to a mechanism of supervision of children´s homes. Professional tools and technical standards are also being developed, with UNICEF Mexico's technical assistance.

For more information see: The 'Recommendation of the local Human Rights Commission' (in Spanish): www.cdhdf.org.mx/images/pdfs/recomendasiones/2009/R200904.pdf and portaldic10.cdhdf.org.mx/index.php?id=sere0409

PROMISING PRACTICE 14.2

The RAF method for quality assurance in residential settings for children, Israel

The RAF (Regulation, Assessment and Follow-up) Initiative has been implemented by the Ministry of Social Affairs to improve the quality of care. It involves an external inspection element with an internal quality assurance approach. Developed in Israel, the RAF is a method for regulation and inspection aimed at improving the quality of care provided by a facility or service using an objective, systematic and uniform method of regulation. It was implemented in 85 residential settings serving 5,000 young people aged 6-18, in order to improve the quality of care – and ultimately the quality of life – for the children residing there. The RAF uses a 'tracer' approach, where a set of well-defined problems or conditions, which characterise the residents in a setting, serve as tracers for the evaluation of the quality of care. Examples of tracers include low achievement at school, aggression, depression and anxiety. In addition there is a set of comprehensive indices designed to check the functioning of the institution as a whole. These indices are more general in nature and include for example, safety, personnel and nutrition. Information is collected by inspectors both on the personal and institutional level, with a strong emphasis on utilising the client as a key source of information, along with staff interviews, documentation and observation. The monitoring process has seven main stages and follows a regulation cycle. The data from RAF has served as a basis for a structured treatment plan for each child and there is evidence of an improvement in the quality of care and the well-being of children. In addition, the impact of RAF has been shown in an improvement in work procedures, decision-making processes and personnel qualifications.

For more information see: Zemach-Marom, T. (2008) The Relationship Between Research and Practice in Implementing the RAF Method for Quality Assurance in Residential Settings in Israel. In R.J. Chaskin and J. Rosenfield (eds) Research for Action: Cross National Perspectives on Connecting Knowledge, Policy and Practice for Children, Oxford: Oxford University Press. www.books.google.co.uk/books?isbn=0195314085

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Focus 14: Developing reliable and accountable licensing and inspection systems (cont.)

PROMISING PRACTICE 14.3

Minimum standards for residential and foster care in Namibia

In order to strengthen alternative care services for vulnerable children in need of protection, care and support in Namibia, an alternative care assessment was undertaken in 2008. It identified that there were large numbers of children in unregulated care. As a result, Residential Child Care Standards were introduced to ensure minimum standards were in place for all residential facilities in the country and allow for their registration and monitoring. These addressed issues such as management and staffing, premises, administration and finance, as well as different aspects of the care giving process including admission, participation, case recording, health, education, leaving care and aftercare support. Training took place countrywide with all NGOs and government social workers, and a task force was put together to facilitate implementation. Minimum standards for foster care were also developed, and NGOs and social workers were trained on them too. These standards include guidelines for foster care, a social work training manual for assessing prospective foster parents; a training workbook for prospective foster parents; a manual for training prospective foster parents, and a toolkit for support groups for foster parents. The Ministry was also supported to set up a database for potential foster care service providers, and foster children.

For more information visit:
www.namchild.gov.na/index.php

ii. Monitoring

The monitoring role covered by § 130 in this sub-section of the *Guidelines* is not connected directly with that of 'regular monitoring' (§ 55) or the inspection function (§ 128-129) as such. It focuses on ensuring that an independent but officially-sanctioned body is in place whose status, nature, resources and mandate correspond to the criteria set out in the so-called 'Paris Principles'. These principles were approved by the UN General Assembly in 1993 and concern national institutions for the promotion and protection of human rights – the best-known example of which is the office of ombudsman.

As concerns alternative care, the functions of this monitoring body set out in the *Guidelines* reflect a number of those to be found in the 'Paris Principles'. However, three significant additional points are stressed regarding its operation, including the need for the body to be accessible, and the requirement that children can be consulted in conditions of privacy. The third point is of special interest as it stresses the need for the monitoring body to bear in mind, when making recommendations to government on policies, 'the preponderance of research findings' in the field of alternative care as well as in the wider child welfare and development domains.

While the functions of such a monitoring body are of great importance, it is vital to distinguish between them and the similarly important monitoring function that falls to the inspection service.

Equally, the 'monitoring mechanism' in § 130 is not the same as the 'known, effective and impartial mechanism to which children can notify complaints or concerns' referred to in § 99. The mechanism in that case is a 'first port of call' at the facility or local level. The monitoring mechanism described in § 130 is a national structure (though ideally with regional and local outreach to make it accessible) that might be contacted, for example, if an approach to that first port of call is deemed impossible or unsatisfactory in its results.

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CARE PROVISION ABROAD AND IN EMERGENCY SITUATIONS

In this chapter you will find:

11a. Providing care for children outside their country of habitual residence

i. Placement of a child for care abroad
ii. Provision of care for a child already abroad

IMPLICATIONS FOR POLICY-MAKING:
Providing care for children outside their country of habitual residence

11b. Providing alternative care in emergency situations

Focus 15: Providing alternative care in emergency situations
- Implications for policy-making
- Promising practice:
  - Case Study 1: After disaster strikes: Transforming child protection in Aceh, Indonesia
  - Case Study 2: International Rescue Committee Rwanda Programmes, Rwanda

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Context: Understanding the *Guidelines*

Up to this point, the *Guidelines* expand on the CRC and other texts to provide more specific orientations for policy and practice. In contrast, Parts VIII and IX of the *Guidelines* cover situations that are already the subject of detailed consideration. These Parts are therefore more a condensation of existing international standards and principles than a development of new guidance.

In light of this, they are dealt with together in this handbook, without more in-depth examination of certain issues through "Focus" boxes. Users are invited to consult the relevant instruments and related documentation as required.

11a. Providing care for children outside their country of habitual residence

Alternative care provision has had to confront the challenges resulting from the rapid expansion of cross-border movement in recent decades. As such, it was important to devote a section of the *Guidelines* to the two facets of this issue: children who are sent abroad for care, and children who are in need of care when already abroad.

The *Guidelines* use the term 'country of habitual residence' (§ 137, 140) to ensure that the criterion for application of these provisions is based on the place where the child has been voluntarily living to date. In most cases, this is also the place to which the child will return. However, this is not seen as an absolute condition for determining 'habitual residence' at a given point in time. Instead, primary consideration is given to the current situation, rather than plans for the future.

It is important to note the reference to the 1996 Hague Convention (§ 139). This treaty sets out the division of responsibilities for child protection between the two States involved in any cross-border case. Crucially, it prescribes what protection measures must, may, and may not be undertaken by the State where the child has been sent or has arrived.

Unfortunately, reference to this 1996 Convention in the *Guidelines* is positioned under 'placement for care abroad', whereas it also provides **vital overarching guidance and obligations** for the second category (care for children

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already abroad). Its applicability – and advocacy for its ratification, where still necessary – is therefore **fundamental to safeguarding the rights of the child who is outside his or her habitual country of residence for whatever reason**.

i. Placement of a child for care abroad

Various alternative care arrangements – including informal kinship care – are made for children abroad. One of the main reasons for taking up this question in the *Guidelines*, however, was to address concerns over international short-term 'hosting' and 'respite care' initiatives. Programmes of this kind, involving a stay of several weeks with a volunteer family abroad, are very frequently organised with few safeguards and no oversight, particularly in terms of ensuring the suitability of the host families. This is the first time that an attempt has been made to tackle this issue in an international standard-setting text.

It is first reasserted that the *Guidelines* as a whole should be applied in this kind of situation (§ 137). Then, in addition to urging the designation of a body with responsibility for ensuring respect for such safeguards, the *Guidelines* also demand that follow-up to these kinds of visits be ensured (§ 138). This is a crucial requirement. Invariably, the children involved live in situations of deprivation or other difficult circumstances in their country of habitual residence: family poverty, institutional care or even armed conflict situations. Too often, little attention is paid to helping these children readjust to 'normal life' after an experience of relative material comfort in a secure environment. Failure to address this can result in significant behavioural and psychological problems and, in extreme cases, a breakdown in intra-familial relationships. It is therefore a vital component of any temporary planned care programme abroad.

ii. Provision of care for a child already abroad

In contrast to planned formal or informal care provision abroad, this sub-section (§ 140-152) deals with the more common need to ensure alternative care for an unaccompanied or separated child who is outside his/her country of habitual residence. It covers children in a wide range of situations, including refugees and asylum seekers, irregular migrants, and victims of trafficking, abduction or other forms of forced migration.

Since this issue is already well-recognised, the drafters of the *Guidelines* were able to take inspiration from a number of existing international instruments and policy documents, ranging from the above-mentioned 1996 Hague Convention to the UNHCR Guidelines on Determination of the Best Interests of the Child (2008). The *Guidelines* require that alternative care provision in these cases take account of each child's characteristics and also of their individual experience (§ 142). The other main thrusts of the provisions are that such children should not be detained or punished in relation to their presence in the country. They should be systematically advised and assisted in procedures to identify the most appropriate solution for them and all possible information should be obtained on which to base decision-making in that regard. Finally, they should not be returned to their country of habitual residence unless there are sufficient guarantees as to their safety and care arrangements there.

Importantly, the final provision in this sub-section (§ 152) states that definitive care measures in the host country, such as adoption or *kafala*, should never be envisaged before all efforts to trace family or primary caregivers have been exhausted.

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IMPLICATIONS FOR POLICY-MAKING

Providing care for children outside their country of habitual residence

Guidelines: § 137-152

Children who are sent abroad for care, and those who are in need of care when already abroad, require access to support and services in line with the rights and needs of other children. However, they have specific needs which national policy should take into account.

National policy should:

Ensure that international responsibilities are met

- Ratify the 1996 Hague Convention (where it is not already ratified), which outlines responsibilities for child protection between two countries
- Ensure that all policy and services for the care of children abroad are in line with the 1996 Hague Convention as well as other international instruments such as the UNHCR Guidelines on Determination of the Best Interests of the Child (2008)
- Ensure that the *Guidelines* underpin all policy and services for children abroad who are already in, or may require, alternative care
- Identify the agency responsible for standards of care for each child who is abroad. This agency should be experienced in promoting standards of care for all children

Promote children's rights

- Promote awareness of the rights and needs of children who are abroad to all appropriate carers and professionals
- Make provision for children to have a right to be heard in all matters that affect them in line with good practice in alternative care and the *Guidelines*
- Ensure that children have information and know about their rights
- Provide children with access to an independent trusted adult who can provide support as well as any free legal representation that is required
- Require agencies to facilitate communication between children and their families to support reintegration or to maintain contact where reintegration is not possible
- Ensure that support is available to all children without discrimination or stigmatisation, taking account of the child's ethnic, cultural and social background
- Provide access to health, education, play and other services for children so that they access the same rights as other children
- Support children's rights to participate by providing access to a translator and other support, if required, so that a child can communicate and understand communications in their preferred language

Protecting children who are abroad

- Ensure that children who arrive unaccompanied, separated or are victims of trafficking, are placed in environments appropriate for children and are not deprived of their liberty solely on the grounds of their presence in the country
- Ensure that officials who come into contact with children, such as customs, immigration and border officials, are trained to respond to the needs of children sensitively
- Require a legal guardian to be appointed for children as soon as possible in accordance with practice for all children who require care and protection. The guardian should have knowledge and understanding of the specific needs of children who are abroad
- Require child welfare agencies to register and undertake thorough assessments of a child's needs as soon as possible and in collaboration with others including health and education
- Require child welfare agencies to seek documentation from a child's country of usual residence in order to conduct an assessment of the child's needs
- Require processes for tracing a child's family to be in place with trained professionals undertaking tracing. This should happen as soon as the child is taken into care
- Require that appropriate risk assessments be undertaken before returning children to their country of origin or to the care of other family members where this is possible
- Provide leadership on cooperation with other countries to ensure that children's needs are met

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11b. Providing alternative care in emergency situations

While the *Guidelines* as a whole apply in situations of natural or man-made disaster (§ 153), specific concerns also have to be addressed regarding the alternative care of children in such circumstances. Furthermore, there can be confusion regarding the responsibilities and competences of those operating in post-disaster situations. Personnel not normally confronted with child protection issues or decision-making are invariably involved in post-disaster efforts, where they are frequently subject to minimal authority, supervision and guidance. The provisions in the *Guidelines* specifically relating to emergency situations (§ 153-167) attempt to assist all concerned regarding child protection in emergencies.

As initiatives in disaster situations both prior to and following the approval of the *Guidelines* have clearly demonstrated, the risks of highly inappropriate responses to the situation of children identified as being without parental care in such circumstances are severe, frequent and widespread. From the start, this section of the *Guidelines* tackles some of the most basic and egregious problems (§ 154):

- Interventions by inexperienced and unqualified individuals and bodies;
- Recourse to residential care rather than family-based arrangements;
- Unwarranted cross-border displacements
- Refusal to promote and facilitate family tracing

Of particular note here are the references to **residential facilities** (§ 154. c & d, 156.b). In the emergency context, the *Guidelines* take a far stronger line on the use of residential care than their consideration at a general level (notably § 21-23). Thus, in this special case, there is an outright prohibition on setting up new long-term facilities. This hard-line approach is grounded largely in experience of foreign non-State actors arriving in a disaster zone with the intention and resources to establish a residential facility, regardless of existing policies. In the worst instances, they may subsequently decline to cooperate in, or even actively obstruct, family reunification efforts on behalf of children in their care.

As part of efforts to **prevent family separation** in these circumstances, the *Guidelines* highlight the need to ensure that relief work focuses on assistance to families rather than providing aid only to children (§ 155, 156.a).

In addition to reasserting the priority of supporting community involvement and promoting and monitoring family-based alternative care in the child's community, the sub-section on care arrangements in emergency situations (§ 157-161) considers two issues of special concern:

In line with international guidance on **evacuations** (cf. ICRC (2004) pp. 24-26), the *Guidelines* warn that cross-border displacement of children must be carried out only for compelling medical or safety reasons. Even then, it may only take place when the child is accompanied by a relative or known caregiver, and with concrete plans for a return to the country of habitual residence (§ 160). There should be no evacuations or displacements that cannot be justified by imminent or actual life-threatening events, and that take place without due preparation and planning – attention to verifying family status and to ensuring that all necessary documentation has been assembled, for example. This rule thus outlaws, among other things, expedited measures in post-disaster situations to move children for adoption to a receiving country, a phenomenon that remains a major concern.

The *Guidelines* also provide for 'stable and definitive' care measures, such as adoption and *kafala*, to be considered **if family reunification efforts have failed** (§ 161). The term 'adoption' is not qualified, so can be taken to mean both domestic and inter-country. Other long-term alterative care options may be envisaged when such a solution is not feasible. The crucial point here is that sufficient time must have been allocated, and put to good use, to ensure that there is no reasonable prospect of the child being reintegrated with his/her family. The period required may be as long as two years in certain circumstances.

Finally, the sub-section on 'tracing and family reintegration' is a summary of the main conditions set out in more detailed guidance (such as the Inter-agency Guiding Principles on Unaccompanied and Separated Children and *The lost ones: emergency care and family tracing for separated children from birth to five years*), regarding the way in which efforts to trace and reintegrate families should be conducted.

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Focus 15: Providing alternative care in emergency situations

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 153-167

In emergency situations families should be supported to stay together. However, in some instances, children may require alternative care, which should be provided in line with the *Guidelines*. The challenges that are inherent in emergency situations should not undermine the right of children to have their rights and needs met.

In this instance, the policy implications apply to the State and also any foreign or international entity taking on responsibility in the effective absence of national authorities. Policy should:

Provide leadership on planning and coordination of emergency care

- Ensure national plans for coordination and oversight of support to children and families can be put in place in emergency situations
- Adhere to international guidance on evacuations and other international guidance and protocols, specifically to avoid cross-border displacement of children except in compelling situations (§ 160)
- Explicitly state that relief should be targeted at families so that families are not separated and that children remain with their parents and extended family where possible
- Put in place mechanisms to provide holistic support to families and communities
- Supervise and carry out registration of children to facilitate reunification with families. This information should be confidential
- Require all organisations supporting children and families in emergencies to adhere to the *Guidelines* in line with the rights and needs of all children
- Ensure that a range of care options are put in place for children requiring alternative care with a preference for care in family-based community settings
- State specifically that residential care may be foreseen only as a temporary measure with a prohibition on setting up long-term facilities
- Allow for consideration of alternative care options where children cannot be reunified with their families. A definitive response such as adoption or kafala should only be considered after a reasonable period when there is no realistic prospect of family reunification

Ensure that children's rights and needs are met

- Require that children's views are sought in line with all alternative care services
- Require that siblings are kept together and that strenuous efforts are made to keep children in contact with their extended families and communities
- Ensure that support is available to all children without discrimination, taking account of the child's ethnic, cultural and social background
- Provide access to health, education, play and other services for children so that they access the same rights as other children and as soon as possible in the immediate aftermath of an emergency

Require experienced and expert support from organisations

- Ensure that all agencies and organisations are experienced and equipped for responding to emergency situations with staff who are trained and experienced in emergency situations
- Require child protection procedures to be in place so that children are protected from abuse, exploitation and harm
- Require processes for tracing a child's family to be in place with trained professionals undertaking tracing and supporting reunification of families. This should happen as soon as the child is taken into care
- Require agencies to facilitate communication between children and their families to support reintegration or to maintain contact where reintegration is not possible

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Focus 15: Providing alternative care in emergency situations (cont.)

PROMISING PRACTICE 15.1

After disaster strikes: Transforming child protection in Aceh, Indonesia

When the tsunami hit in late 2004, the impact for children in Aceh, one of Indonesia's poorest areas, was immediate. UNICEF estimated that up to 15,000 children were separated from their families, with the vast majority spontaneously taken in by neighbours, friends and extended family overnight.

The Indonesian government reacted decisively, issuing a number of policies to prevent further separation of children from their families, including putting in place a ban on adoption, travel restrictions and deployment of police officers to exit points such as airports and sea ports to prevent children being taken away. As part of the emergency response, government and civil society staff were mobilised to carry out family tracing and reunification, whereby 2,853 children were registered and 82 % were placed in family care. Humanitarian agencies also worked with the government to develop a structured system of family monitoring and support and to advocate against institutionalisation. According to a recent evaluation, these initial emergency responses have now evolved into substantial child protection services in Aceh, with international agency support helping to "pave the way for new child care and placement policies and practices, including a shift in governmental policy away from sole support for 'orphanages' as a childcare option in favour of substantial support for vulnerable families in order to prevent child-family separations".

Key components of Aceh's child protection transformation include: establishment of a child protection unit in Aceh's Ministry of Social Affairs and child protection bodies in sub-districts; revision of laws and policies on child protection including the promotion/regulation of family-based care for children without parental care; a rise in numbers of trained social workers and child protection staff; and a huge increase in government allocations to child protection and social welfare.

For more information see: Misguided Kindness: Making the right decisions for children in emergencies www.savethechildren.org.uk/resources/online-library/misguided-kindness-making-the-right-decisions-for-children-in-emergencies

PROMISING PRACTICE 15.2

International Rescue Committee Rwanda Programmes, Rwanda

Long-term separation between child and family due o conflict creates a number of challenges for family reunification programmes – children placed in institutional care risk becoming institutionalised and ill prepared for community life. Families also change, both as a result of post-conflict circumstances and family reconstitution. A reintegration and reunification programme for unaccompanied children was developed by the International Rescue Committee Rwanda Programme. Its goal was to reunify/reintegrate children living in unaccompanied children's centres with families or communities, and to devise national guidelines and implementation strategies. In 1999, the International Rescue Committee's reunification programme introduced new ways to document and trace 'untraceable children' and in 2000, it designed an innovative community-based reunification project for difficult-to-place children. As a result 736 children were reunited / reintegrated into families. Although much smaller than the high numbers achieved in the early years, these numbers are significant because they represent the most difficult cases, which were effectively considered closed after failed attempts to trace or reunify by previous agencies.

For more information visit: www.rescue.org/where/rwanda

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CLOSING THE GAP BETWEEN INTENTION AND REALITY

In this chapter you will find:

12a. The gap

12b. Collaboration for implementation

12c. Roles and responsibilities as highlighted within this collaboration

i. The role of the State
ii. The role of agency leaders and senior professionals
iii. The role of the judiciary
iv. The role of individual carers and front-line staff
v. The role of licensing and inspection bodies
vi. The role of non-governmental and civil society organisations
vii. The role of the 'international community'
viii.The role of academics
ix. The role of business

12d. Making progress happen

i. The vital foundation of data collection
ii. The impetus of international human rights monitoring
iii. The importance of engagement as a driver for change
iv. Achieving incremental changes

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This final chapter outlines the range of relevant parties who have a key role in implementing the *Guidelines*. Their responsibilities, to initiate and move forward the process to successful implementation of the *Guidelines* are highlighted.

12a. The gap

There is a gap between our collective aspirations for children's well-being and the realisation of their rights in everyday life. Children without or at risk of losing parental care are amongst the most vulnerable people in our communities to violations of their human rights. And while different countries will respond to various aspects of these children's vulnerabilities effectively, ultimately this risk remains global.

The CRC requires States to ensure that a child receives 'special protection and assistance [when] temporarily or permanently deprived of [her or his] family environment, or in whose own best interests cannot be allowed to remain in that environment' (see Article 20). Services for the prevention of family separation and the provision of alternative care for these children are fundamental to States' effective delivery of special protection and assistance.

To address this, the *Guidelines* outline the application of the CRC to children in particular circumstances to ensure that alternative care, where required, meets the needs of childen with their rights upheld. The *Guidelines* indicate the priorities required for a clear policy framework for State parties and civil society to adequately provide special protection. A clear understanding of the *Guidelines* is an essential starting point in their effective implementation.

The term 'implementation' is frequently used with regards to carrying out or fulfilling the responsibilities outlined in the CRC. *Moving Forward* aims to enable the main thrusts of the *Guidelines* to become a reality at a local level. It is hoped that they can be used as a tool to make a critical contribution to this very complex area, ensuring that the systems and services that impact on children and families function in the best interests of children first and foremost, and assist children to achieve their full potential.

12b. Collaboration for implementation

The responsibility to ensure the CRC is implemented lies with the State. Indeed, strong national leadership alongside a robust legislative and policy framework are fundamental to ensuring that children's rights are upheld. Though essential, these alone do not make a sufficient difference

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to the circumstances of children in or at risk of being placed in alternative care. Rather, all actors involved need to be working together and in the same direction to achieve effective implementation of the *Guidelines*. As such, it is worth re-emphasising here that the *Guidelines* are 'desirable orientations for policy and practice' and are addressed not just to governments but to 'all sectors directly or indirectly concerned' (§ 2).

In the *Guidelines*, and in this handbook, emphasis is placed on the importance of working together in collaboration and aiming to achieve consensus on the best approaches to supporting children and their families in both preventing, and providing, alternative care. This can benefit the implementation of the *Guidelines* by ensuring that the State develops effective working partnership relationships with public providers of services as well as NGO and private providers. These can include civil society organisations such as faith based agencies, labour unions and community groups, and national and local bodies representing providers, carers, parents and carers, and children. Cooperation among and between these entities ensures that information-sharing and contacts are maximised to provide the best protection and most appropriate alternative care for every child (§ 70).

12c. Roles and responsibilities as highlighted within this collaboration

i. The role of the State

(including policy-makers, legislators, government officials, civil servants)

The State holds obligations under international human rights conventions and instruments, in particular the CRC, which have a direct relation to children in alternative care. The State creates policy and practice frameworks through which all these international instruments flow. To ensure that these Guidelines are considered, implemented and monitored, the State must reflect on its commitments in terms of legislation, strategic planning and direction, and policy guidance for the well-being of children and their families.

- For the State to uphold its obligations, it implements and monitors the CRC and other human rights instruments, and fulfils reporting obligations to the UN Committee on the Rights of the Child and other UN bodies.
- A thorough knowledge of the characteristics of children in care, the reasons they are there, and thus the situations and conditions that need to be tackled to keep the need for alternative care placements to a minimum is essential for the State to carry out these implementing and monitoring responsibilities effectively. This knowledge base must cover at least all formal alternative care settings, not only those where the State is a direct provider (see also 12d.i, below).
- This vital knowledge base should be seen as a foundation for State initiatives to develop policy and practical responses to prevent the need for alternative care and to ensure that care provision corresponds to the needs, characteristics and situation of each child concerned.
- In addition, the State uses policy mechanisms to strengthen awareness of the CRC and the *Guidelines* for those involved in the care of children and for the wider public. It provides opportunities to increase awareness of public responsibilities for protecting children in order to bring about positive changes in social attitudes and practices towards children.
- The State also works to ensure that children and their families are aware of their rights. It supports high quality practice by ensuring that education, health, social welfare, housing, justice, child protection, family support and other relevant services take into account the rights and needs of children in alternative care.

To execute this leadership role effectively, it is essential that the State also identifies the connections across different ministries, services and professional interests that reach beyond children's services to link together

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the range of agencies involved with children and families. Though the ways the State leads coordinated activities in these areas will depend on the nature of government structures, cooperation among all governmental bodies directly or indirectly concerned is vital. In many instances, ministries and other governmental entities are found to be working in isolation on both the prevention and provision of alternative care.

ii. The role of agency leaders and senior professionals

(including leaders within public and private social welfare organisations, senior service provider professionals, service level policy-makers and professional groups)

Strategic direction to support the *Guidelines*' implementation requires the full participation and cooperation of all service providers. Of particular importance is the role of leaders and professionals providing family support, child protection and alternative care services in the strategic planning, coordination, delivery and continuous evaluation of services. To ensure the alignment of all services to the *Guidelines*, close partnerships – with working links and multi-disciplinary approaches – need to be forged between education, health, social welfare, housing and justice services.

In particular, their leadership is important in:

- addressing the factors which contribute to children being in alternative care,
- tackling stigmatisation and discrimination of children and their families,
- ensuring that a recognised and systematic gatekeeping procedure for determining both that a care placement is needed, and that an individual child's needs are matched with the proposed care setting,
- having an appropriate mechanism and process in place for authorising care services and ensuring minimum standards of care are met and maintained,
- ensuring that children have access to legal remedies and complaints mechanisms guaranteed with access to a trusted adult or legal representative, and
- developing and maintaining a rights-respecting culture within agencies.

iii. The role of the judiciary

(including judges, magistrates and tribunal members in civil, criminal and family jurisdictions)

Courts of law play an important role at several levels. Firstly, judges' decision-making impacts directly on individual children and their families when providing legal remedies and in other specific circumstances outlined in the handbook. For example:

- when judicial involvement is required for the removal of a child from their family, and subsequently when a child is reintegrated into the family following a court ruling,
- when a parent is considered for incarceration, where judges are required to verify whether arrested persons are the sole carers for children and consider at court the caring arrangements for this child [see Focus 6], and/or
- when making a legal decision to approve and accept the designation of a legally-recognised person or body tasked with making decisions for a child when their parents are absent or are otherwise not in a position to make 'day-to-day decisions' (§ 101-104).

Secondly, courts' wider authority influences the development of legislation, especially where explicit commitments are written into legislation. Where appropriate, this can be an important contributor to the *Guidelines* implementation.

Finally, campaigning organisations may bring an individual case before the courts with the intention of achieving broader changes in society. This strategic litigation aims

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to use the courts to have an effect on larger populations as well as to achieve the actual end result of the case itself. In this way, the courts shape the wider policy landscape that can reinforce adherence to the *Guidelines* through the development of jurisprudence.

Given the high level of influence held by the judiciary, cooperation between judges and multi-disciplinary teams, ensuring that all relevant information is secured by the courts in advance of decisions being made, is essential. Judges' awareness of child development and its related implications for an individual child's circumstances is a vital foundation on which sound judgements are formed.

iv. The role of individual carers and front-line staff

The positive relationships that children make with the people caring directly for them, particularly when these carers are supported by effective services more widely, will have a significant and long-term impact on the child's development, experiences and long-term outcomes. Given the complexity of the needs of some children in alternative care, individual carers and front-line staff require support from their agency to deliver consistently high quality care to children. This can include the provision of on-going learning, development and professional support, underpinned by recognition of the value of this workforce.

At a practice level, these carers and staff play a critical role in ensuring that policy and practice meet the rights and needs of children. This is to be achieved in part through foreseeing a recognised consultative forum where they can express their views, concerns and proposals to decision-makers. It also requires a commitment to ensuring children's participation in the decisions that affect them, and families' opportunities to participate and contribute to decision-making.

To ensure high quality care, it is essential that the services:

- support a carer workforce that is equipped to deliver consistently high quality care that meets the individual needs of the child, including effective engagement with the child's family, where appropriate,
- provide leadership on the development and retention of a high quality workforce,
- ensure that checks are always undertaken on the suitability of potential carers and that carers are trained to meet the needs of children,
- follow national guidance on recruitment, selection, supervision and monitoring of carers, and
- provide access to training for carers in line with their role and ensure that there is training for other professionals involved in providing support to families, child protection and alternative care.

v. The role of licensing and inspection bodies

The functions of regulation, licensing, inspection and monitoring of alternative care ensures that providers of formal care meet quality standards. The bodies fulfilling these functions require credibility, authority and resources to ensure providers maintain standards. This calls for States to establish independent bodies which inspect services; independent ombudsman/national bodies that listen to children; and professional regulating bodies which oversee the training, recruitment, registration and regulation of professionals, carers and workforce in alternative care. When effectively implementing the *Guidelines*, these bodies will also:

- provide independent mechanisms for formal complaints so that children in alternative care can safely report abuse and exploitation,
- link 'gatekeeping' to licensing, regulation, monitoring and inspection services with enforcement measures for these requirements,
- require placements to be monitored and supported by trained professionals, and
- ensure that licensing and regulation mechanisms require that funding, including private facilities funded by foreign donors, is directed appropriately.

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vi. The role of non-governmental and civil society organisations

Independent advocacy for children's rights in the context of alternative care contributes a vital mechanism to keep States and others accountable on behalf of children. NGOs and community organisations have a major role to play in monitoring respect for laws and policies. This could include authorisation requirements for service providers, transparency on financial matters, and practices concerning the placement and treatment of children – including a facility's openness to the family and community.

Advocacy also allows for children and their families to voice their experiences individually and collectively. This can function as a key driver for change at both national and international levels and takes many forms, such as analysis of data and targeted campaigning initiatives, enlisting the cooperation of the media for making concerns and proposals widely known, and providing support for children and families claiming rights violations in the context of alternative care. NGO 'alternative' reports to international bodies such as the CRC Committee and within the Universal Periodic Review process at the UN Human Rights Council can inform conclusions that often have a significant impact on government policy.

Influential community leaders and organisations have a responsibility to promote understanding of, and adherence to, the *Guidelines*. Experience shows that a stand taken by such actors can greatly facilitate transformative and sustained change within whole communities.

vii. The role of the 'international community'

States that provide funding to reach across international borders play a significant role in upholding the *Guidelines* through the priorities they set and the decisions they make. These donor countries can:

- in the context of their development assistance strategies and programmes, invite requests for funding child protection and alternative measures that comply with the *Guidelines* and contribute to their implementation, including targeted preventive services and support for traditional coping mechanisms and other forms of informal care,
- resist funding any child protection and alternative care programmes that do not uphold the principles of the *Guidelines*,
- work to prevent private initiatives from within their counties to promote or establish alternative care responses in other countries that do not reflect the *Guidelines*, and
- ensure that private funders within the country understand the reasons why the *Guidelines* should be followed.

States should consider how best to incorporate into their development aid strategy a wide child protection component that includes the proactive promotion of initiatives in line with the *Guidelines*.

The *Guidelines* can serve in the deliberations and considerations of treaty bodies monitoring a number of conventions in addition to the CRC, such as CESCR, CAT, CRPD and CEDAW, where child protection and alternative care issues are relevant. All involved in the reporting and follow-up processes related to the work of these Committees can usefully bear in mind the need to ensure that the *Guidelines* are taken into account.

viii. The role of academics

Academic and research communities contribute to building a collective understanding of the complex problems facing States and services in relation to the implementation of the *Guidelines* and their potential solutions. Their comparative independence often enables them to explore difficult questions with a more critical eye than is possible for those employed within service providers or the State.

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Academics are in a prime position to fulfil an indispensable role in translating research and data into practice and policy to facilitate improvements for children and their families. Their role in *Guidelines*' implementation should not be underestimated: whether it be devising data collection and analytical methodologies to improve the knowledge base, undertaking situation assessments to identify issues that need to be addressed, research to indicate effectiveness of interventions, or longitudinal studies to identify trends and outcomes over a wider time span. Researchers should be able to offer a perspective and analysis that can inform effective planning and reflective reviewing. Where most useful to the implementation of the *Guidelines*', academics, often with the support of professional experts, can make use of methods to translate research knowledge into both practice and policy for the purposes of systems improvement.

ix. The role of business

While business communities do not replace the State in matters concerning children's rights, there is a clear role for business of all kinds to respect and support children's rights. Given the pivotal role businesses play within communities, it is important that businesses also help build strong communities; ultimately, healthy communities are vital to a stable, inclusive and sustainable business environment.

The Children's Rights and Business Principles set out business actions to respect and support children's rights throughout their activities and business relationships, including in the workplace, the marketplace, the community and the environment. These principles identify a comprehensive range of actions that all businesses should take to prevent and address any adverse impact on children's human rights. They also set out measures that will help advance children's rights, ensuring their safety and reinforcing community and government efforts to uphold children's rights.

This principled approach to business develops stronger communities, supports families, and contributes to the prevention of children needing alternative care.

12d. Making progress happen

i. The vital foundation of data collection

Collecting national data and information on children and their families is essential to informing the development of a range of care options through effective service commissioning, decision-making, and resource allocation. It is also required for international reporting. Data collection will include compiling national data systematically to determine the number of children who access or might require informal and formal care, their characteristics and situation. This includes the organisation and oversight of local data collection on children who are at risk of being placed in care and the availability of support, which should include data identifying the root causes of separation of children from their families.

International tools that offer an overview of indicators for data collection are available. These include the Manual for the Measurement of Indicators for Children in Formal Care, which offers a set of common global indicators for children in formal care, allowing States to better understand the strengths and weaknesses of their alternative care system. The Urban Health Equity Assessment and Response Tool is a health-based framework to support systems change by using sound evidence and comparable data to support local communities' and national policy-makers' decision-making. It helps users to better understand their context, advocate for improvements, work more collaboratively across government sectors, and determine solutions in relation to allocation of resources.

ii. The impetus of international human rights monitoring

By implementing the *Guidelines*, States will find that they are better placed to assess their effectiveness in upholding children's rights in alternative care, which can then be reflected in their regular reporting to the CRC Committee, and to other concerned treaty bodies, such as the body monitoring compliance with the Convention on the Rights of Persons with Disabilities. The handbook can assist States in this respect, as well as similarly serving the non-governmental community in each country when drawing up their 'alternative' reports for the Committee. As such, it is one of a number of tools supporting international human rights reporting processes as well as supporting in-country implementation and monitoring. Other such tools providing helpful resources to support implementation

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of the *Guidelines* include the series of General Comments issued by the CRC Committee, which interpret the provisions of the CRC to give practical guidance and are in many cases relevant to alternative care.

iii. The importance of engagement as a driver for change

A rights-based approach requires children and their families to be engaged as participants in administrative processes and systems relating to alternative care. Engagement as described in the *Guidelines* reaches far beyond that of consultation with individuals in specific situations. While important, the *Guidelines* extend this understanding of participation to include incorporating the rich contribution of children and their families to influence legislation, policy and practice at local and national levels. To achieve this participation, States, agencies and civil society will develop and embed culturally specific processes to engage and empower these children and their families, and will also include those adults who have previously experienced alternative care where appropriate. As a result, services, the policies governing these agencies, and the people working within them, are more suitably placed to respond effectively to the rights and needs of these children and their families.

iv. Achieving incremental changes

Implementation of the *Guidelines* requires strategic planning, action and review to develop and improve services that have an influence on children and their families. To move forward, the emphasis will necessarily be on incremental progress. This is an important perspective, given the range of challenges States face in light of the end goal of the *Guidelines*' implementation, not least the challenge of limited resources. With urgency and a focus on step changes, leaders will act in a planned way based on collaborative discussion, and will:

Identify the specific steps necessary for reform of services and systems to achieve progress toward the *Guidelines*. These steps should begin with the identification of the strengths of existing services and systems, and build on these. A sound implementation plan will incorporate 'anchors' to sustain long-term changes. Data collection is essential to define the context, identify the problem and establish the best solution. Determining and engaging the important stakeholders, alongside setting of clear goals and specific objectives, forms the basis of solid planning.

Lead and drive the action plan for each step, working across both policy and practice levels, to achieve law reform, policy and programme development, and tailored service interventions. Bring agencies and the people working within them on board with enthusiasm and interest for using the *Guidelines* in a productive way.

Evaluate what works well and what has been less successful through each step in the journey of change, ensuring the input of all stakeholders in the implementation collaboration. Look for unanticipated, unintended consequences. Adjust planning and actions accordingly.

Incorporate this learning into future cycles of planning and action to ensure effective progression in line with the *Guidelines*. Ensure a strong scrutiny process, with internal and independent mechanisms for accountability and thorough reporting processes, to maintain and improve on these changes.

Implementing the *Guidelines* effectively and sustainably is essential to realising the rights and meeting the needs of children either without, or at risk of losing, parental care. These *Guidelines* present crucial guidance to lead empowering, preventive work with families at risk, and to ensure suitable high quality alternative care is provided only when necessary. The information offered in this handbook on the thinking and implications of the *Guidelines*' provisions, and the specific and practical guidance regarding policy and programmatic initiatives, should help all concerned actors take further steps along the collaborative journey of making the *Guidelines* a reality for children's lived experiences.

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CELCIS is the Centre for Excellence for Looked After Children in Scotland, based at the University of Strathclyde. Together with partners, we are working to improve the lives of all children living in alternative care. We do so by providing a focal point for the sharing of knowledge and the development of best practice, by providing a wide range of services to improve policies, services and the skills of those working with children and families, and by placing the rights and interests of children at the heart of our work.