GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN

A United Nations framework

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SOS Children's Villages advocates for the rights of children without parental care and those at risk of losing parental care. Founded in 1949, its operations are guided by the spirit of the UN Convention on the Rights of the Child. www.sos-childrensvillages.org

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FOREWORD

Millions of children around the world are without, or at risk of losing, parental care and face significant challenges in their daily lives which often have long term implications well into adulthood.

Through its work monitoring the United Nations Convention on the Rights of the Child (UNCRC) the UN Committee on the Rights of the Child came to realise that many of these challenges affecting children and families were not adequately understood and therefore not taken into account in policy and practice.

This recognition of the gaps between the rights of children and the reality of implementation on the ground inspired the Committee to hold its 2005 Day of General Discussion on the topic of children without parental care. As a result of this day, the Committee made a key recommendation calling on the international community of States, United Nations agencies, NGOs, experts, academics and professional organisations to come together to develop a set of international standards that would ultimately give expert guidance to States and other duty-bearers on the implementation of the UNCRC.

The Committee therefore warmly welcomes the important and vital recognition given to the Guidelines for the Alternative Care of Children by the United Nations General Assembly on the 20th anniversary of the UNCRC on November 20, 2009. They are the direct result of the call from the Committee in 2005 and of five years of work including extensive consultation and negotiation.

I would like to thank the government of Brazil for its leadership in convening the Group of Friends and tirelessly working towards the recognition of the Guidelines for the Alternative Care of Children. Of course, this work would not have been possible without the dedicated support from NGOs and other relevant partners, most notably the Geneva-based NGO Working Group on children without parental care.

I am very happy to express the UN Committee on the Rights of the Child's sincere hope that the Guidelines for the Alternative Care of Children will provide invaluable guidance in the implementation of the UNCRC, and welcome this publication as a first step in the dissemination of the Guidelines.

Prof. Yanghee Lee
Chairperson, UN Committee on the Rights of the Child

Seoul, Korea
November 20, 2009

PREFACE

On November 20, 2009, to mark the 20th anniversary of the United Nations Convention on the Rights of the Child (UNCRC), the United Nations General Assembly formally welcomed the Guidelines for the Alternative Care of Children. We, SOS Children's Villages International and International Social Service, welcome this new international framework with much enthusiasm. It has the potential to promote children's rights and improve the lives of millions of children, their families and communities around the world. With the aim of promoting dissemination and supporting implementation, this publication introduces the official text of the Guidelines for the Alternative Care of Children (General Assembly A/RES/64/142) and provides questions for reflection on some of the key content areas outlined in the Guidelines.

BACKGROUND

The Guidelines for the Alternative Care of Children were borne from a recognition of significant gaps in the implementation of the UNCRC for millions of children worldwide either without, or at risk of losing, parental care. The international community has therefore come together and developed these Guidelines for the Alternative Care of Children. They are the result of five years of discussions and negotiation between the UN Committee on the Rights of the Child, governments led by Brazil, UNICEF, experts and academics, representatives of non-governmental organisations and, last but not least, young people with care experience.

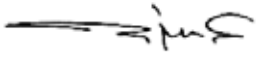
KEY PRINCIPLES

The Guidelines for the Alternative Care of Children outline the need for relevant policy and practice with respect to two basic principles: *necessity* and *appropriateness*. At the heart of *necessity* we find the desire to support children to remain with, and be cared for by, their family. Removing any child from his/her family should be a measure of last resort, and before any such decision is taken, a rigorous participatory assessment is required. Concerning *appropriateness,* the Guidelines for the Alternative Care of Children define a range of suitable alternative care options. Each child in need of alternative care has specific requirements with respect to, for example, short or long-term care or keeping siblings together. The care option chosen has to be tailored to the individual needs of the child. The suitability of the placement should be regularly reviewed to assess the continued necessity of providing alternative care, and the viability of potential reunification with the family.

HOW TO USE THIS PUBLICATION

Included in each section of the Guidelines for the Alternative Care of Children, you will find questions relating to national policy. While the questions are neither exhaustive, nor part of the official text, they aim at inspiring reflection on the implementation of the key principles of the Guidelines for the Alternative Care of Children at the national level. The Guidelines for the Alternative Care of Children will only have a concrete positive impact on the lives of children, their families and communities if what is written is also done. We commit ourselves to transforming words into deeds.

Richard Pichler, Secretary-General,
SOS Children's Villages International



Jean Ayoub, Secretary-General,
International Social Service

GUIDELINES FOR THE ALTERNATIVE CARE OF CHILDREN

I. PURPOSE

1 The present Guidelines are intended to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so.

2 Against the background of these international instruments and taking account of the developing body of knowledge and experience in this sphere, the Guidelines set out desirable orientations for policy and practice. They are designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care, and seek in particular:

(a) To support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and kafala of Islamic law;

(b) To ensure that, while such permanent solutions are being sought, or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child's full and harmonious development;

(c) To assist and encourage Governments to better implement their responsibilities and obligations in these respects, bearing in mind the economic, social and cultural conditions prevailing in each State; and

(d) To guide policies, decisions and activities of all concerned with social protection and child welfare in both the public and the private sectors, including civil society.

II. GENERAL PRINCIPLES AND PERSPECTIVES

A. THE CHILD AND THE FAMILY

3 The family being the fundamental group of society and the natural environment for the growth, well-being and protection of children, efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members. The State should ensure that families have access to forms of support in the caregiving role.

4 Every child and young person should live in a supportive, protective and caring environment that promotes his/her full potential. Children with inadequate or no parental care are at special risk of being denied such a nurturing environment.

5 Where the child's own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care, with or through competent local authorities and duly authorized civil society organizations. It is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided.

6 All decisions, initiatives and approaches falling within the scope of the present Guidelines should be made on a

case-by-case basis, with a view, notably, to ensuring the child's safety and security, and must be grounded in the best interests and rights of the child concerned, in conformity with the principle of non-discrimination and taking due account of the gender perspective. They should respect fully the child's right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information. Every effort should be made to enable such consultation and information provision to be carried out in the child's preferred language.

7 In applying the present Guidelines, determination of the best interests of the child shall be designed to identify courses of action for children deprived of parental care, or at risk of being so, that are best suited to satisfying their needs and rights, taking into account the full and personal development of their rights in their family, social and cultural environment and their status as subjects of rights, both at the time of the determination and in the longer term. The determination process should take account of, inter alia, the right of the child to be heard and to have his/her views taken into account in accordance with his/her age and maturity.

8 States should develop and implement comprehensive child welfare and protection policies within the framework of their overall social and human development policy, with attention to the improvement of existing alternative care provision, reflecting the principles contained in the present Guidelines.

9 As part of efforts to prevent the separation of children from their parents, States should seek to ensure appropriate and culturally sensitive measures:

(a) To support family caregiving environments whose capacities are limited by factors such as disability, drug and alcohol misuse, discrimination against families with indigenous or minority backgrounds, and living in armed conflict regions or under foreign occupation;

(b) To provide appropriate care and protection for vulnerable children, such as child victims of abuse and exploitation, abandoned children, children living on the street, children born out of wedlock, unaccompanied and separated children, internally displaced and refugee children, children of migrant workers, children of asylum-seekers, or children living with or affected by HIV/AIDS and other serious illnesses.

10 Special efforts should be made to tackle discrimination on the basis of any status of the child or parents, including poverty, ethnicity, religion, sex, mental and physical disability, HIV/AIDS or other serious illnesses, whether physical or mental, birth out of wedlock, and socio-economic stigma, and all other statuses and circumstances that can give rise to relinquishment, abandonment and/or removal of a child.

B. ALTERNATIVE CARE

11 All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life.

12 Decisions regarding children in alternative care, including those in informal care, should have due regard for the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a key goal.

13 Children must be treated with dignity and respect at all times and must benefit from effective protection from abuse, neglect and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves.

14 Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child's return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child, in keeping with the assessment foreseen in paragraph 49 below.

15 Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.

THE PRINCIPLE OF NECESSITY

This principle presents a clear preventative role for national policy and the need for resources to ensure supportive social work services that seek to prevent the separation of children from their families.

DOES NATIONAL POLICY..

..clearly establish that the removal of a child from the family should be an action of necessity and last resort?

..dictate that poverty alone is never the primary justification for children being removed from their family and placed in alternative care?

..ensure that comprehensive criteria are used to assess the capacity of the family to care for the child when a risk to the child in that family has been identified?

..promote and support the development and implementation of a range of appropriate family support services as preventative measures to ensure children can be cared for within their families?

..guarantee that parents and children fully participate in the decision-making process and are kept informed of their rights, particularly their right to appeal against a decision to remove a child?

..provide for parenting education, and other relevant supports to parents in particular, for example, adolescent parents, to prevent child abandonment?

..guarantee that any placement of a child in alternative care is subject to periodic reviews to assess the continuing necessity for a placement outside the family, and the possibility for reunification with the family?

16 Attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including, but not limited to, access to education, health and other basic services, the right to identity, freedom of religion or belief, language and protection of property and inheritance rights.

17 Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests.

18 Recognizing that, in most countries, the majority of children without parental care are looked after informally by relatives or others, States should seek to devise appropriate means, consistent with the present Guidelines, to ensure their welfare and protection while in such informal care arrangements, with due respect for cultural, economic, gender and religious differences and practices that do not conflict with the rights and best interests of the child.

19 No child should be without the support and protection of a legal guardian or other recognized responsible adult or competent public body at any time.

20 The provision of alternative care should never be undertaken with a prime purpose of furthering the political, religious or economic goals of the providers.

21 The use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests.

22 In accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings. Exceptions to this principle may be warranted in order to prevent the separation of siblings and in cases where the placement is of an emergency nature or is for a predetermined and very limited duration, with planned family reintegration or other appropriate long-term care solution as its outcome.

23 While recognizing that residential care facilities and family-based care complement each other in meeting the needs of children, where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy, with precise goals and objectives, which will allow for their progressive elimination. To this end, States should establish care standards to ensure the quality and conditions that are conducive to the child's development, such as individualized and small-group care, and should evaluate existing facilities against these standards. Decisions regarding the establishment of, or permission to establish, new residential care facilities, whether public or private, should take full account of this deinstitutionalization objective and strategy.

Measures to promote application

24 States should, to the maximum extent of their available resources and, where appropriate, within the framework of development cooperation, allocate human and financial resources to ensure the optimal and progressive implementation of the present Guidelines throughout their respective territories in a timely manner. States should facilitate active cooperation among all relevant authorities and the mainstreaming of child and family welfare issues within all ministries directly or indirectly concerned.

25 States are responsible for determining any need for, and requesting, international cooperation in implementing the present Guidelines. Such requests should be given due consideration and should receive a favourable response wherever possible and appropriate. The enhanced implementation of the present Guidelines should figure in development cooperation programmes. When providing assistance to a State, foreign entities should abstain from any initiative inconsistent with the Guidelines.

26 Nothing in the present Guidelines should be interpreted as encouraging or condoning lower standards than those that may exist in given States, including in their legislation. Similarly, competent authorities, professional organizations and others are encouraged to develop national or professionally specific guidelines that build upon the letter and spirit of the present Guidelines.

THE PRINCIPLE OF APPROPRIATENESS

In cases where alternative care is deemed necessary, and in the child's best interests, the Guidelines seek to ensure that the choice of the care setting and the period spent in care are appropriate in each case and promote stability and permanence.

DOES NATIONAL POLICY..

..ensure the availability of a suitable range of alternative care options appropriate to the individual needs of children requiring care and protection?

..include a clear National Plan for the de-institutionalisation of the care system and the development of family-based and other appropriate alternative care options?

..obligate care providers to conduct appropriate background checks to ensure the suitability of potential carers?

..include the need to consider the desirability of keeping siblings together in alternative care settings as a key requirement in assessing appropriateness?

..obligate care providers and carers to ensure the full participation of the family and the child in planning, reviewing, and other decision-making processes regarding the alternative care placement?

..provide a rights-based framework that takes a holistic approach to ensuring the rights of the child, taking into account not only care and protection but also, for example, education, health, identity, faith, or privacy?

III. SCOPE OF THE GUIDELINES

27 The present Guidelines apply to the appropriate use and conditions of alternative formal care for all persons under the age of 18 years, unless, under the law applicable to the child, majority is attained earlier. Only where indicated do the Guidelines also apply to informal care settings, having due regard for both the important role played by the extended family and the community and the obligations of States for all children not in the care of their parents or legal and customary caregivers, as set out in the Convention on the Rights of the Child.

28 Principles in the present Guidelines are also applicable, as appropriate, to young persons already in alternative care and who need continuing care or support for a transitional period after reaching the age of majority under applicable law.

29 For the purposes of the present Guidelines, and subject, notably, to the exceptions listed in paragraph 30 below, the following definitions shall apply:

(a) Children without parental care: all children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances. Children without parental care who are outside their country of habitual residence or victims of emergency situations may be designated as:

(i) "Unaccompanied" if they are not cared for by another relative or an adult who by law or custom is responsible for doing so; or

(ii) "Separated" if they are separated from a previous legal or customary primary caregiver, but who may nevertheless be accompanied by another relative.

(b) Alternative care may take the form of:

(i) Informal care: any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body;

(ii) Formal care: all care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures.

(c) With respect to the environment where it is provided, alternative care may be:

(i) Kinship care: family-based care within the child's extended family or with close friends of the family known to the child, whether formal or informal in nature;

(ii) Foster care: situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children's own family, that has been selected, qualified, approved and supervised for providing such care;

(iii) Other forms of family-based or family-like care placements;

(iv) Residential care: care provided in any non-family-based group setting, such as places of safety for emergency care, transit centres in emergency situations, and all other short and long-term residential care facilities including group homes;

(v) Supervised independent living arrangements for children.

(d) With respect to those responsible for alternative care:

(i) Agencies are the public or private bodies and services that organize alternative care for children;

(ii) Facilities are the individual public or private establishments that provide residential care for children.

30 The scope of alternative care as foreseen in the present Guidelines does not extend, however, to:

(a) Persons under the age of 18 years who are deprived of their liberty by decision of a judicial or administrative authority as a result of being alleged as, accused of or recognized as having infringed the law, and whose situation is covered by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty;

(b) Care by adoptive parents from the moment the child concerned is effectively placed in their custody pursuant to a final adoption order, as of which moment,

for the purposes of the present Guidelines, the child is considered to be in parental care. The Guidelines are, however, applicable to pre-adoption or probationary placement of a child with the prospective adoptive parents, as far as they are compatible with requirements governing such placements as stipulated in other relevant international instruments;

(c) Informal arrangements whereby a child voluntarily stays with relatives or friends for recreational purposes and reasons not connected with the parents' general inability or unwillingness to provide adequate care.

31 Competent authorities and others concerned are also encouraged to make use of the present Guidelines, as applicable, at boarding schools, hospitals, centres for children with mental and physical disabilities or other special needs, camps, the workplace and other places which may be responsible for the care of children.

IV. PREVENTING THE NEED FOR ALTERNATIVE CARE

A. PROMOTING PARENTAL CARE

32 States should pursue policies that ensure support for families in meeting their responsibilities towards the child and promote the right of the child to have a relationship with both parents. These policies should address the root causes of child abandonment, relinquishment and separation of the child from his/her family by ensuring, inter alia, the right to birth registration, and access to adequate housing and to basic health, education and social welfare services, as well as by promoting measures to combat poverty, discrimination, marginalization, stigmatization, violence, child maltreatment and sexual abuse, and substance abuse.

33 States should develop and implement consistent and mutually reinforcing family-oriented policies designed to promote and strengthen parents' ability to care for their children.

PROMOTING PARENTAL CARE

Emphasising the preventative role of social work, the Guidelines present the need to support and empower vulnerable families with the necessary capacities to care for children themselves.

DOES NATIONAL POLICY..

..ensure the systematic collection of relevant data on the causal factors of family vulnerability and ensure that relevant data informs service delivery in support of families?

..foresee appropriate interventions to support and strengthen families in order to prevent separation and ensure that these interventions are consequently resourced, targeted, and implemented?

..guarantee that family-oriented policies are in place and implemented to strengthen family environments without discrimination based on, for example, marital status, birth status, poverty or ethnicity?

..recognise and promote the common responsibilities of mothers and fathers and ensure that they are equally empowered with the relevant attitudes, skills, capacities, and tools to provide a caring environment for the child?

..ensure coordinated service provision and a range of relevant services to ensure tailored and appropriate responses to families facing difficulties?

34 States should implement effective measures to prevent child abandonment, relinquishment and separation of the child from his/her family. Social policies and programmes should, inter alia, empower families with attitudes, skills, capacities and tools to enable them to provide adequately for the protection, care and development of their children. The complementary capacities of the State and civil society, including non-governmental and community-based organizations, religious leaders and the media should be engaged to this end. These social protection measures should include:

(a) Family strengthening services, such as parenting courses and sessions, the promotion of positive parent-child relationships, conflict resolution skills, opportunities for employment and income generation and, where required, social assistance;

(b) Supportive social services, such as day care, mediation and conciliation services, substance abuse treatment, financial assistance, and services for parents and children with disabilities. Such services, preferably of an integrated and non-intrusive nature, should be directly accessible at the community level and should actively involve the participation of families as partners, combining their resources with those of the community and the carer;

(c) Youth policies aiming at empowering youth to face positively the challenges of everyday life, including when they decide to leave the parental home, and preparing future parents to make informed decisions regarding their sexual and reproductive health and to fulfil their responsibilities in this respect.

35 Various complementary methods and techniques should be used for family support, varying throughout the process of support, such as home visits, group meetings with other families, case conferences and securing commitments by the family concerned. They should be directed towards both facilitating intrafamilial relationships and promoting the family's integration within its community.

36 Special attention should be paid, in accordance with local laws, to the provision and promotion of support and care services for single and adolescent parents and their children, whether or not born out of wedlock. States should ensure that adolescent parents retain all rights inherent to their status both as parents and as children, including access to all appropriate services for their own development, allowances to which parents are entitled, and their inheritance rights. Measures should be adopted to ensure the protection of pregnant adolescents and to guarantee that they do not interrupt their studies. Efforts should also be made to reduce the stigma attached to single and adolescent parenthood.

37 Support and services should be available to siblings who have lost their parents or caregivers and choose to remain together in their household, to the extent that the eldest sibling is both willing and deemed capable of acting as the household head. States should ensure, including through the appointment of a legal guardian, a recognized responsible adult or, where appropriate, a public body legally mandated to act as guardian, as stipulated in paragraph 19 above, that such households benefit from mandatory protection from all forms of exploitation and abuse, and supervision and support on the part of the local community and its competent services, such as social workers, with particular concern for the children's health, housing, education and inheritance rights. Special attention should be given to ensuring that the head of such a household retains all rights inherent to his/her child status, including access to education and leisure, in addition to his/her rights as a household head.

38 States should ensure opportunities for day care, including all-day schooling, and respite care which would enable parents better to cope with their overall responsibilities towards the family, including additional responsibilities inherent in caring for children with special needs.

Preventing family separation

39 Proper criteria based on sound professional principles should be developed and consistently applied for asessing the child's and the family's situation, including the family's actual and potential capacity to care for the child, in cases where the competent authority or agency has reasonable grounds to believe that the well-being of the child is at risk.

40 Decisions regarding removal or reintegration should be based on this assessment and should be made by suitably qualified and trained professionals, on behalf of or authorized by a competent authority, in full consultation with all concerned and bearing in mind the need to plan for the child's future.

41 States are encouraged to adopt measures for the integral protection and guarantee of rights during pregnancy, birth and the breastfeeding period, in order to ensure conditions of dignity and equality for the adequate development of the pregnancy and the care of the child. Therefore, support programmes should be provided to future mothers and fathers, particularly adolescent parents, who have difficulty exercising their parental responsibilities. Such programmes should aim at empowering mothers and fathers to exercise their parental responsibilities in conditions of dignity and at avoiding their being induced to surrender their child because of their vulnerability.

42 When a child is relinquished or abandoned, States should ensure that this may take place in conditions of confidentiality and safety for the child, respecting his/her right to access information on his/her origins where appropriate and possible under the law of the State.

43 States should formulate clear policies to address situations where a child has been abandoned anonymously, which indicate whether and how family tracing should

PREVENTING FAMILY SEPARATION

In line with the principle of necessity, the prevention of family separation focuses on ensuring sound and rigorous decision-making processes.

© C. Lesske

DOES NATIONAL POLICY..

..ensure that assessment processes are informed by multi-disciplinary perspectives on, for example, education, health, and other relevant areas of concern?

..require assessment processes to give all due consideration to identifying necessary supports for the family and make referrals to relevant services as an alternative to separation?

..guarantee that assessment processes identify and seek to address root causes for the unnecessary separation of children, such as discrimination, poverty, or disability?

..support and encourage the training of professional groups, such as teachers and doctors, in identifying children at-risk and oblige them to make referrals to relevant services and responsible authorities?

..ensure vulnerable parents seeking to relinquish their children have access to counselling and financial or material support to care for children to prevent child abandonment?

..make provision for procedures which support those children who have been abandoned in gaining confidential access to relevant and appropriate information on their background?

be undertaken and reunification or placement within the extended family pursued. Policies should also allow for timely decision-making on the child's eligibility for permanent family placement and for arranging such placements expeditiously.

44 When a public or private agency or facility is approached by a parent or legal guardian wishing to relinquish a child permanently, the State should ensure that the family receives counselling and social support to encourage and enable them to continue to care for the child. If this fails, a social worker or other appropriate professional assessment should be undertaken to determine whether there are other family members who wish to take permanent responsibility for the child, and whether such arrangements would be in the best interests of the child. Where such arrangements are not possible or are not in the best interests of the child, efforts should be made to find a permanent family placement within a reasonable period.

45 When a public or private agency or facility is approached by a parent or caregiver wishing to place a child in care for a short or indefinite period, the State should ensure the availability of counselling and social support to encourage and enable him or her to continue to care for the child. A child should be admitted to alternative care only when such efforts have been exhausted and acceptable and justified reasons for entry into care exist.

46 Specific training should be provided to teachers and others working with children in order to help them to identify situations of abuse, neglect, exploitation or risk of abandonment and to refer such situations to competent bodies.

47 Any decision to remove a child against the will of his/her parents must be made by competent authorities, in accordance with applicable law and procedures and subject to judicial review, the parents being assured the right of appeal and access to appropriate legal representation.

48 When the child's sole or main carer may be the subject of deprivation of liberty as a result of preventive detention or sentencing decisions, non-custodial remand measures and sentences should be taken in appropriate cases wherever possible, the best interests of the child being given due consideration. States should take into account the best interests of the child when deciding whether to remove children born in prison and children living in prison with a parent. The removal of such children should be treated in the same way as other instances where separation is considered. Best efforts should be made to ensure that children remaining in custody with their parent benefit from adequate care and protection, while guaranteeing their own status as free individuals and access to activities in the community.

B. PROMOTING FAMILY REINTEGRATION

49 In order to prepare and support the child and the family for his/her possible return to the family, his/her situation should be assessed by a duly designated individual or team with access to multidisciplinary advice, in consultation with the different actors involved (the child, the family, the alternative caregiver), so as to decide whether the reintegration of the child in the family is possible and in the best interests of the child, which steps this would involve and under whose supervision.

50 The aims of the reintegration and the family's and alternative caregiver 's principal tasks in this respect should be set out in writing and agreed on by all concerned.

51 Regular and appropriate contact between the child and his/her family specifically for the purpose of reintegration should be developed, supported and monitored by the competent body.

52 Once decided, the reintegration of the child in his/her family should be designed as a gradual and supervised process, accompanied by follow-up and support measures that take account of the child's age, needs and evolving capacities, as well as the cause of the separation.

V. FRAMEWORK OF CARE PROVISION

53 In order to meet the specific psychoemotional, social and other needs of each child without parental care, States should take all necessary measures to ensure that the legislative, policy and financial conditions exist to provide for adequate alternative care options, with priority to family- and community-based solutions.

54 States should ensure the availability of a range of alternative care options, consistent with the general principles of the present Guidelines, for emergency, short-term and long-term care.

PROMOTING FAMILY REINTEGRATION

For children who are in alternative care, and in line with ensuring the placement is appropriate, options to reintegrate children in their families are a key part of a care review process.

DOES NATIONAL POLICY..

..facilitate families and children in exercising their right to appeal a decision to place a child in alternative care and thereby to seek reintegration on their own terms?

..ensure that care placements are suitably close to the child's family and community in order to minimise disruption and enable the child to maintain regular contact with the family to support potential reunification?

..emphasise the desirability and need to consider the option to reunify children with their families as a key consideration within the regular reviews of the care placement?

..guarantee that children and families are actively involved in decision-making on the possibility of, and planning for reunification?

..ensure that the decision to reunify a child with his/her family leads to a planned and gradual process during which the family is provided with relevant support?

DETERMINING APPROPRIATENESS

In cases of necessity the question of assessing which alternative care option is appropriate is the next step.

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DOES NATIONAL POLICY..

..oblige care providers to ensure the implementation of rigorous, multi-disciplinary approaches to decision-making that includes the informed participation of children and their families?

..provide a suitable regulatory framework to ensure authorisation, registration, monitoring and accountability of care providers?

..oblige care providers to ensure that comprehensive records are kept from the outset so that, for example, the initial decision-making process provides a solid foundation for future care planning and regular reviews?

..dictate that periodic reviews of the care placement give all due consideration to the general conditions of care experienced by the child, the continued necessity of the placement, and take account of the views of the child?

..oblige care providers to ensure individualised care solutions that promote stability and permanence in planning care, through reunification with the family, or the continued provision of alternative care?

55 States should ensure that all entities and individuals engaged in the provision of alternative care for children receive due authorization to do so from a competent authority and are subject to regular monitoring and review by the latter in keeping with the present Guidelines. To this end, these authorities should develop appropriate criteria for assessing the professional and ethical fitness of care providers and for their accreditation, monitoring and supervision.

56 With regard to informal care arrangements for the child, whether within the extended family, with friends or with other parties, States should, where appropriate, encourage such carers to notify the competent authorities accordingly so that they and the child may receive any necessary financial and other support that would promote the child's welfare and protection. Where possible and appropriate, States should encourage and enable informal caregivers, with the consent of the child and parents concerned, to formalize the care arrangement after a suitable lapse of time, to the extent that the arrangement has proved to be in the best interests of the child to date and is expected to continue in the foreseeable future.

VI. DETERMINATION OF THE MOST APPROPRIATE FORM OF CARE

57 Decision-making on alternative care in the best interests of the child should take place through a judicial, administrative or other adequate and recognized procedure, with legal safeguards, including, where appropriate, legal representation on behalf of children in any legal proceedings. It should be based on rigorous assessment, planning and review, through established structures and mechanisms, and should be carried out on a case-by-case basis, by suitably qualified professionals in a multidisciplinary team, wherever possible. It should involve full consultation at all stages with the child, according to his/ her evolving capacities, and with his/her parents or legal guardians. To this end, all concerned should be provided with the necessary information on which to base their opinion. States should make every effort to provide adequate resources and channels for the training and recognition of the pro-

fessionals responsible for determining the best form of care so as to facilitate compliance with these provisions.

58 Assessment should be carried out expeditiously, thoroughly and carefully. It should take into account the child's immediate safety and well-being, as well as his/her longer-term care and development, and should cover the child's personal and developmental characteristics, ethnic, cultural, linguistic and religious background, family and social environment, medical history and any special needs.

59 The resulting initial and review reports should be used as essential tools for planning decisions from the time of their acceptance by the competent authorities onwards, with a view to, inter alia, avoiding undue disruption and contradictory decisions.

60 Frequent changes in care setting are detrimental to the child's development and ability to form attachments, and should be avoided. Short-term placements should aim at enabling an appropriate permanent solution to be arranged. Permanency for the child should be secured without undue delay through reintegration in his/her nuclear or extended family or, if this is not possible, in an alternative stable family setting or, where paragraph 21 above applies, in stable and appropriate residential care.

61 Planning for care provision and permanency should be carried out from the earliest possible time, ideally before the child enters care, taking into account the immediate and longer-term advantages and disadvantages of each option considered, and should comprise short- and long-term propositions.

62 Planning for care provision and permanency should be based on, notably, the nature and quality of the child's attachment to his/her family, the family's capacity to safeguard the child's well-being and harmonious development, the child's need or desire to feel part of a family, the desirability of the child remaining within his/her community and country, the child's cultural, linguistic and religious background, and the child's relationships with siblings, with a view to avoiding their separation.

63 The plan should clearly state, inter alia, the goals of the placement and the measures to achieve them.

64 The child and his/her parents or legal guardians should be fully informed about the alternative care options available, the implications of each option and their rights and obligations in the matter.

65 The preparation, enforcement and evaluation of a protective measure for a child should be carried out, to the greatest extent possible, with the participation of his/her parents or legal guardians and potential foster carers and caregivers, with respect to his/her particular needs, convictions and special wishes. At the request of the child, parents or legal guardians, other important persons in the child's life may also be consulted in any decision-making process, at the discretion of the competent authority.

66 States should ensure that any child who has been placed in alternative care by a properly constituted court, tribunal or administrative or other competent body, as well as his/her parents or others with parental responsibility, are given the opportunity to make representations on the placement decision before a court, are informed of their rights to make such representations and are assisted in doing so.

67 States should ensure the right of any child who has been placed in temporary care to regular and thorough

review – preferably at least every three months – of the appropriateness of his/her care and treatment, taking into account, notably, his/her personal development and any changing needs, developments in his/her family environment, and the adequacy and necessity of the current placement in these circumstances. The review should be carried out by duly qualified and authorized persons, and should fully involve the child and all relevant persons in the child's life.

68 The child should be prepared for all changes of care settings resulting from the planning and review processes.

VII. PROVISION OF ALTERNATIVE CARE

A. POLICIES

69 It is a responsibility of the State or appropriate level of government to ensure the development and implementation of coordinated policies regarding formal and informal care for all children who are without parental care. Such policies should be based on sound information and statistical data. They should define a process for determining who has responsibility for a child, taking into account the role of the child's parents or principal caregivers in his/her protection, care and development. Presumptive responsibility, unless shown to be otherwise, is with the child's parents or principal caregivers.

70 All State entities involved in the referral of, and assistance to, children without parental care, in cooperation with civil society, should adopt policies and procedures which favour information-sharing and networking between agencies and individuals in order to ensure effective care, aftercare and protection for these children. The location and/or design of the agency responsible for the oversight of alternative care should be established so as to maximize its accessibility to those who require the services provided.

71 Special attention should be paid to the quality of alternative care provision, both in residential and in family-based care, in particular with regard to the professional skills, selection, training and supervision of carers. Their role and functions should be clearly defined and clarified with respect to those of the child's parents or legal guardians.

72 In each country, the competent authorities should draw up a document setting out the rights of children in alternative care in keeping with the present Guidelines. Children in alternative care should be enabled to understand fully the rules, regulations and objectives of the care setting and their rights and obligations therein.

73 All alternative care provision should be based on a written statement of the provider's aims and objectives in providing the service and the nature of the provider's responsibilities to the child that reflects the standards set by the Convention on the Rights of the Child, the present Guidelines and applicable law. All providers should be appropriately qualified or approved in accordance with legal requirements to provide alternative care services.

74 A regulatory framework should be established to ensure a standard process for the referral or admission of a child to an alternative care setting.

75 Cultural and religious practices regarding the provision of alternative care, including those related to gender perspectives, should be respected and promoted to the extent that they can be shown to be consistent with the rights and best interests of the children. The process of considering whether such practices should be promoted should be carried out in a broadly participatory way, involving the cultural and religious leaders concerned, professionals and those caring for children without parental care, parents and other relevant stakeholders, as well as the children themselves.

1 Informal care

76 With a view to ensuring that appropriate conditions of care are met in informal care provided by individuals or families, States should recognize the role played by this type of care and take adequate measures to support its optimal provision on the basis of an assessment of which particular settings may require special assistance or oversight.

77 Competent authorities should, where appropriate, encourage informal carers to notify the care arrangement and should seek to ensure their access to all available services and benefits likely to assist them in discharging their duty to care for and protect the child.

78 The State should recognize the de facto responsibility of informal carers for the child.

79 States should devise special and appropriate measures designed to protect children in informal care from abuse, neglect, child labour and all other forms of exploitation, with particular attention to informal care provided by non-relatives, or by relatives previously unknown to the children or living far from the children's habitual place of residence.

2. General conditions applying to all forms of formal alternative care arrangements

80 The transfer of a child into alternative care should be carried out with the utmost sensitivity and in a child-friendly manner, in particular involving specially trained and, in principle, non-uniformed personnel.

81 When a child is placed in alternative care, contact with his/her family, as well as with other persons close to him or her, such as friends, neighbours and previous carers, should be encouraged and facilitated, in keeping with the child's protection and best interests. The child should have access to information on the situation of his/her family members in the absence of contact with them.

82 States should pay special attention to ensuring that children in alternative care because of parental imprisonment or prolonged hospitalization have the opportunity to maintain contact with their parents and receive any necessary counselling and support in that regard.

83 Carers should ensure that children receive adequate amounts of wholesome and nutritious food in accordance with local dietary habits and relevant dietary standards, as well as with the children's religious beliefs. Appropriate nutritional supplementation should also be provided when necessary.

GENERAL CONDITIONS (I)

The Guidelines treat formal and informal care quite distinctively setting very different thresholds of obligation. Informal carers are encouraged to make themselves known with a view to ensuring access to available social supports, while formal care should meet certain general conditions.

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DOES NATIONAL POLICY..

..set and monitor appropriate standards for facilities to ensure that the physical environment is suitably fit for purpose with respect to health and safety regulations, providing adequate sanitary and hygiene conditions that respect the child's right to privacy?

..oblige formal care providers to ensure carers are professionally qualified and appropriately trained, for example, on children's rights and child development issues?

..guarantee practices that ensure regular contact between the child placed in alternative care, his/her parents, other family members, friends, and their community?

..foresee the need to challenge social attitudes and the stigmatisation of children with alternative care backgrounds and specifically prohibit discrimination, for example, on access to education, health care, and employment?

..ensure that care providers and facilities set an appropriate balance between the need for care and protection and the autonomous development of the evolving capacities of the child?

84 Carers should promote the health of the children for whom they are responsible and make arrangements to ensure that medical care, counselling and support are made available as required.

85 Children should have access to formal, non-formal and vocational education in accordance with their rights, to the maximum extent possible in educational facilities in the local community.

86 Carers should ensure that the right of every child, including children with disabilities, living with or affected by HIV/AIDS or having any other special needs, to develop through play and leisure activities is respected and that opportunities for such activities are created within and outside the care setting. Contact with the children and others in the local community should be encouraged and facilitated.

87 The specific safety, health, nutritional, developmental and other needs of babies and young children, including those with special needs, should be catered for in all care settings, including ensuring their ongoing attachment to a specific carer.

88 Children should be allowed to satisfy the needs of their religious and spiritual life, including by receiving visits from a qualified representative of their religion, and to freely decide whether or not to participate in religious services, religious education or counselling. The child's own religious background should be respected, and no child should be encouraged or persuaded to change his/her religion or belief during a care placement.

89 All adults responsible for children should respect and promote the right to privacy, including appropriate facilities for hygiene and sanitary needs, respecting gender differences and interaction, and adequate, secure and accessible storage space for personal possessions.

90 Carers should understand the importance of their role in developing positive, safe and nurturing relationships with children, and should be able to do so.

91 Accommodation in all alternative care settings should meet the requirements of health and safety.

92 States must ensure through their competent authorities that accommodation provided to children in alternative care, and their supervision in such placements,

enable them to be effectively protected against abuse. Particular attention needs to be paid to the age, maturity and degree of vulnerability of each child in determining his/her living arrangements. Measures aimed at protecting children in care should be in conformity with the law and should not involve unreasonable constraints on their liberty and conduct in comparison with children of similar age in their community.

93 All alternative care settings should provide adequate protection to children from abduction, trafficking, sale and all other forms of exploitation. Any consequent constraints on their liberty and conduct should be no more than are strictly necessary to ensure their effective protection from such acts.

94 All carers should promote and encourage children and young people to develop and exercise informed choices, taking account of acceptable risks and the child's age, and according to his/her evolving capacities.

95 States, agencies and facilities, schools and other community services should take appropriate measures to ensure that children in alternative care are not stigmatized during or after their placement. This should include efforts to minimize the identification of children as being looked after in an alternative care setting.

96 All disciplinary measures and behaviour management constituting torture, cruel, inhuman or degrading treatment, including closed or solitary confinement or any other forms of physical or psychological violence that are likely to compromise the physical or mental health of the child, must be strictly prohibited in conformity with international human rights law. States must take all necessary measures to prevent such practices and ensure that they are punishable by law. Restriction of contact with members of the child's family and other persons of special importance to the child should never be used as a sanction.

97 Use of force and restraints of whatever nature should not be authorized unless strictly necessary for safeguarding the child's or others' physical or psychological integrity, in conformity with the law and in a reasonable and proportionate manner and with respect for the fundamental rights of the child. Restraint by means of drugs

GENERAL CONDITIONS (II)

DOES NATIONAL POLICY..

..prohibit and sanction all forms of violence against children in alternative care, and oblige care providers to ensure relevant training and awareness-raising for carers?

..oblige care providers to ensure that procedures are in place to record and respond to incidents of violence against children in alternative care, and ensure accountability?

..require care providers to ensure that carers are trained in non-violent de-escalation techniques and the appropriate use of physical restraint when it is necessary?

..emphasise obligations to record incidents of physical restraint and the need for care providers to respond appropriately and monitor such incidences?

..establish a regulatory framework ensuring open and impartial complaints procedures and the independent oversight of such a system?

..ensure that care providers facilitate any child pursuing a complaint, for example, with the support of a "person of trust" throughout the whole process?

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and medication should be based on therapeutic needs and should never be employed without evaluation and prescription by a specialist.

98 Children in care should be offered access to a person of trust in whom they may confide in total confidentiality. This person should be designated by the competent authority with the agreement of the child concerned. The child should be informed that legal or ethical standards may require breaching confidentiality under certain circumstances.

99 Children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement. Such mechanisms should include initial consultation, feedback, implementation and further consultation. Young people with previous care experience should be involved in this process, due weight being given to their opinions. This process should be conducted by competent persons trained to work with children and young people.

100 To promote the child's sense of self-identity, a life story book comprising appropriate information, pictures, personal objects and mementoes regarding each step of the child's life should be maintained with the child's participation and made available to the child throughout his/her life.

B. LEGAL RESPONSIBILITY FOR THE CHILD

101 In situations where the child's parents are absent or are incapable of making day-to-day decisions in the best interests of the child, and the child's placement in alternative care has been ordered or authorized by a competent administrative body or judicial authority, a designated individual or competent entity should be vested with the legal right and responsibility to make such decisions in the place of parents, in full consultation with the child. States should ensure that a mechanism is in place for designating such an individual or entity.

102 Such legal responsibility should be attributed by the competent authorities and be supervised directly by them or through formally accredited entities, including non-governmental organizations. Accountability for the actions of the individual or entity concerned should lie with the designating body.

103 Persons exercising such legal responsibility should be reputable individuals with relevant knowledge of children's issues, an ability to work directly with children and an understanding of any special and cultural needs of the children to be entrusted to them. They should receive appropriate training and professional support in this regard. They should be in a position to make independent and impartial decisions that are in the best interests of the children concerned and that promote and safeguard each child's welfare.

104 The role and specific responsibilities of the designated person or entity should include:

(a) Ensuring that the rights of the child are protected and, in particular, that the child has appropriate care, accommodation, health-care provision, developmental opportunities, psychosocial support, education and language support;

(b) Ensuring that the child has access to legal and other representation where necessary, consulting with the child so that the child's views are taken into account by decision-making authorities, and advising and keeping the child informed of his/her rights;

(c) Contributing to the identification of a stable solution in the best interests of the child;

(d) Providing a link between the child and various organisations that may provide services to the child;

(e) Assisting the child in family tracing;

(f) Ensuring that, if repatriation or family reunification is carried out, it is done in the best interests of the child;

(g) Helping the child to keep in touch with his/her family, when appropriate.

1 Agencies and facilities responsible for formal care

105 Legislation should stipulate that all agencies and facilities must be registered and authorized to operate by social welfare services or another competent authority, and that failure to comply with such legislation constitutes an offence punishable by law. Authorization should

be granted and be regularly reviewed by the competent authorities on the basis of standard criteria covering, at a minimum, the agency's or facility's objectives, functioning, staff recruitment and qualifications, conditions of care and financial resources and management.

106 All agencies and facilities should have written policy and practice statements, consistent with the present Guidelines, setting out clearly their aims, policies, methods and the standards applied for the recruitment, monitoring, supervision and evaluation of qualified and suitable carers to ensure that those aims are met.

107 All agencies and facilities should develop a staff code of conduct, consistent with the present Guidelines, that defines the role of each professional and of the carers in particular and includes clear reporting procedures on allegations of misconduct by any team member.

108 The forms of financing care provision should never be such as to encourage a child's unnecessary placement or prolonged stay in care arrangements organized or provided by an agency or facility.

109 Comprehensive and up-to-date records should be maintained regarding the administration of alternative care services, including detailed files on all children in their care, staff employed and financial transactions.

110 The records on children in care should be complete, up to date, confidential and secure, and should include information on their admission and departure and the form, content and details of the care placement of each child, together with any appropriate identity documents and other personal information. Information on the child's family should be included in the child's file as well as in the reports based on regular evaluations. This record should follow the child throughout the alternative care period and be consulted by duly authorized professionals responsible for his/her current care.

111 The above-mentioned records could be made available to the child, as well as to the parents or guardians, within the limits of the child's right to privacy and confidentiality, as appropriate. Appropriate counselling should be provided before, during and after consultation of the record.

AGENCIES, FACILITIES & CARERS

The Guidelines outline a regulatory framework that emphasises State responsibility for the authorisation, monitoring and accountability of care providers, care facilities and individual carers.

DOES NATIONAL POLICY..

..ensure the authorisation of care providing agencies and facilities, including the requirement to present policies on staff recruitment, conduct and monitoring, the standards of care provided, and procedures to report misconduct?

..oblige care providers to ensure up-to-date records are kept, the confidentiality of those records, and also to facilitate access to those records by children, if required?

..set minimum employment standards to ensure suitable working conditions, adequate remuneration and thus the motivation and retention of carers and other staff?

..establish criteria to ensure that care providers maintain care standards through personal development of carers and training on relevant issues, for example, child protection legislation, children's rights, the appropriate use of restraint, child development issues and children with special needs?

RANGE OF CARE OPTIONS

Respecting the principles of necessity and appropriateness and the requirement for case-by-case decision-making leads to a discussion of the need for a range of alternative care options to provide the required flexibility to respond.

DOES NATIONAL POLICY..

..set a proactive agenda to develop, encourage and support the increased availability and use of foster care and other forms of family-based care?

..ensure that the development of the foster care system is adequate to the needs of communities and consequently also community-based?

..allow for relevant and genuine consultation with foster carers and foster care organisations in order to inform and influence relevant policy?

..ensure that residential care facilities provide suitably individualised care, in small group settings, with sufficient and qualified staff to deliver appropriate standards of care?

..provide relevant safeguards to ensure that residential care is only used when appropriate, and that active solicitation of admissions by care providers, for example, in order to secure financing, is prohibited?

112 All alternative care services should have a clear policy on maintaining the confidentiality of information pertaining to each child, which all carers are aware of and adhere to.

113 As a matter of good practice, all agencies and facilities should systematically ensure that, prior to employment, carers and other staff in direct contact with children undergo an appropriate and comprehensive assessment of their suitability to work with children.

114 Conditions of work, including remuneration, for carers employed by agencies and facilities should be such as to maximize motivation, job satisfaction and continuity, and hence their disposition to fulfil their role in the most appropriate and effective manner.

115 Training should be provided to all carers on the rights of children without parental care and on the specific vulnerability of children, in particularly difficult situations, such as emergency placements or placements outside their area of habitual residence. Cultural, social, gender and religious sensitization should also be assured. States should also provide adequate resources and channels for the recognition of these professionals in order to favour the implementation of these provisions.

116 Training in dealing appropriately with challenging behaviour, including conflict resolution techniques and means to prevent acts of harm or self-harm, should be provided to all care staff employed by agencies and facilities.

117 Agencies and facilities should ensure that, wherever appropriate, carers are prepared to respond to children with special needs, notably those living with HIV/AIDS or other chronic physical or mental illnesses, and children with physical or mental disabilities.

2 Foster care

118 The competent authority or agency should devise a system, and should train concerned staff accordingly, to assess and match the needs of the child with the abilities and resources of potential foster carers and to prepare all concerned for the placement.

119 A pool of accredited foster carers should be identified in each locality who can provide children with care and protection while maintaining ties to family, community and cultural group.

120 Special preparation, support and counselling services for foster carers should be developed and made available to carers at regular intervals, before, during and after the placement.

121 Carers should have, within fostering agencies and other systems involved with children without parental care, the opportunity to make their voice heard and to influence policy.

122 Encouragement should be given to the establishment of associations of foster carers that can provide important mutual support and contribute to practice and policy development.

C. Residential care

123 Facilities providing residential care should be small and be organized around the rights and needs of the child, in a setting as close as possible to a family or small group situation. Their objective should generally be to provide temporary care and to contribute actively to the child's family reintegration or, if this is not possible, to secure his/her stable care in an alternative family setting, including through adoption or kafala of Islamic law, where appropriate.

124 Measures should be taken so that, where necessary and appropriate, a child solely in need of protection and alternative care may be accommodated separately from children who are subject to the criminal justice system.

125 The competent national or local authority should establish rigorous screening procedures to ensure that only appropriate admissions to such facilities are made.

126 States should ensure that there are sufficient carers in residential care settings to allow individualized attention and to give the child, where appropriate, the opportunity to bond with a specific carer. Carers should also be deployed within the care setting in such a way as to implement effectively its aims and objectives and ensure child protection.

127 Laws, policies and regulations should prohibit the recruitment and solicitation of children for placement in residential care by agencies, facilities or individuals.

D. Inspection and monitoring

128 Agencies, facilities and professionals involved in care provision should be accountable to a specific public authority, which should ensure, inter alia, frequent inspections comprising both scheduled and unannounced visits, involving discussion with and observation of the staff and the children.

129 To the extent possible and appropriate, inspection functions should include a component of training and capacity-building for care providers.

130 States should be encouraged to ensure that an independent monitoring mechanism is in place, with due consideration for the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The monitoring mechanism should be easily accessible to children, parents and those responsible for children without parental care. The functions of the monitoring mechanism should include:

(a) Consulting in conditions of privacy with children in all forms of alternative care, visiting the care settings in which they live and undertaking investigations into any alleged situation of violation of children's rights in those settings, on complaint or on its own initiative;

(b) Recommending relevant policies to appropriate authorities with the aim of improving the treatment of children deprived of parental care and ensuring that it is in keeping with the preponderance of research findings on child protection, health, development and care;

(c) Submitting proposals and observations concerning draft legislation;

(d) Contributing independently to the reporting process under the Convention on the Rights of the Child, including to periodic State party reports to the Committee on the Rights of the Child with regard to the implementation of the present Guidelines.

PREPARATION & SUPPORT FOR LIFE AFTER CARE

Recognising many of the challenges faced by young adults leaving care, the Guidelines offer a supportive framework for preparation for leaving care with continued support for the time after care.

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DOES NATIONAL POLICY..

..foresee the need for well-timed planning for leaving care, developed in consultation with the child?

..oblige care providers to ensure that children preparing to leave care have access to relevant formal and vocational education, life skills training, and other opportunities in line with their aspirations for an independent future?

..ensure the allocation of specific resources, for example, a dedicated support person to guide and advise children through the preparation for, and the time after, leaving care?

..support the need for alternative care settings to operate an "open door" policy with regards to care leavers, i.e. can they return to visit and maintain contact with their former carers as a source of further support?

E. Support for aftercare

131 Agencies and facilities should have a clear policy and should carry out agreed procedures relating to the planned and unplanned conclusion of their work with children to ensure appropriate aftercare and/or follow-up. Throughout the period of care, they should systematically aim at preparing children to assume self-reliance and to integrate fully in the community, notably through the acquisition of social and life skills, which are fostered by participation in the life of the local community.

132 The process of transition from care to aftercare should take into consideration children's gender, age, maturity and particular circumstances and include counselling and support, notably to avoid exploitation. Children leaving care should be encouraged to take part in the planning of aftercare life. Children with special needs, such as disabilities, should benefit from an appropriate support system, ensuring, inter alia, avoidance of unnecessary institutionalization. Both the public and the private sectors should be encouraged, including through incentives, to employ children from different care services, particularly children with special needs.

133 Special efforts should be made to allocate to each child, whenever possible, a specialized person who can facilitate his/her independence when leaving care.

134 Aftercare should be prepared as early as possible in the placement and, in any case, well before the child leaves the care setting.

135 Ongoing educational and vocational training opportunities should be imparted as part of life skills education to young people leaving care in order to help them to become financially independent and generate their own income.

136 Access to social, legal and health services, together with appropriate financial support, should also be provided to young people leaving care and during aftercare.

VIII. CARE PROVISION FOR CHILDREN OUTSIDE THEIR COUNTRY OF HABITUAL RESIDENCE

A. PLACEMENT OF A CHILD FOR CARE ABROAD

137 The present Guidelines should apply to all public and private entities and all persons involved in arrangements for a child to be sent for care to a country other than his/her country of habitual residence, whether for medical treatment, temporary hosting, respite care or any other reason.

138 States concerned should ensure that a designated body has responsibility for determining specific standards to be met regarding, in particular, the criteria for selecting carers in the host country and the quality of care and follow-up, as well as for supervising and monitoring the operation of such schemes.

139 To ensure appropriate international cooperation and child protection in such situations, States are encouraged to ratify or accede to the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, of 19 October 1996.

B. PROVISION OF CARE FOR A CHILD ALREADY ABROAD

140 The present Guidelines, as well as other relevant international provisions, should apply to all public and private entities and all persons involved in arrangements for a child needing care while in a country other than his/her country of habitual residence, for whatever reason.

141 Unaccompanied or separated children already abroad should, in principle, enjoy the same level of protection and care as national children in the country concerned.

CHILDREN ABROAD

The Guidelines emphasise that children outside their country of habitual residence should benefit from the same levels of care and protection as nationals of the recipient country.

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DOES NATIONAL POLICY..

..ensure that customs and immigration officials are adequately trained to respond to the requirements of children abroad with the necessary sensitivity?

..make provision for systematic referrals between the relevant and concerned agencies and departments, such as immigration, social work, and the police?

..provide for the appointment of a responsible adult or agency to represent and support a child through decision-making processes regarding care and/or immigration?

..seek to ensure that alternative care options for children abroad are appropriate to, and respectful of, the child's ethnic, cultural and religious background?

..ensure, through diplomatic or other investigative channels, that appropriate risk assessments are conducted prior to the return of any child to the country of origin, or reunification with the family?

..provide sufficient safeguards to ensure the exhaustion of efforts to reunify the child with parents, extended family or other habitual carers, prior to other permanent solutions, such as adoption, being applied?

142 In determining appropriate care provision, the diversity and disparity of unaccompanied or separated children (such as ethnic and migratory background or cultural and religious diversity) should be taken into consideration on a case-by-case basis.

143 Unaccompanied or separated children, including those who arrive irregularly in a country, should not, in principle, be deprived of their liberty solely for having breached any law governing access to and stay within the territory.

144 Child victims of trafficking should neither be detained in police custody nor subjected to penalties for their involvement under compulsion in unlawful activities.

145 As soon as an unaccompanied child is identified, States are strongly encouraged to appoint a guardian or, where necessary, representation by an organization responsible for his/her care and well-being to accompany the child throughout the status determination and decision-making process.

146 As soon as an unaccompanied or separated child is taken into care, all reasonable efforts should be made to trace his/her family and re-establish family ties, when this is in the best interests of the child and would not endanger those involved.

147 In order to assist in planning the future of an unaccompanied or separated child in a manner that best protects his/her rights, relevant State and social service authorities should make all reasonable efforts to procure documentation and information in order to conduct an assessment of the child's risk and social and family conditions in his/her country of habitual residence.

148 Unaccompanied or separated children must not be returned to their country of habitual residence:

(a) If, following the risk and security assessment, there are reasons to believe that the child's safety and security are in danger;

(b) Unless, prior to the return, a suitable caregiver, such as a parent, other relative, other adult caretaker, a Government agency or an authorized agency or facility in the country of origin, has agreed and is able to take responsibility for the child and provide him or her with appropriate care and protection;

(c) If, for other reasons, it is not in the best interests of the child, according to the assessment of the competent authorities.

149 With the above aims in mind, cooperation among States, regions, local authorities and civil society associations should be promoted, strengthened and enhanced.

150 The effective involvement of consular services or, failing that, legal representatives of the country of origin should be foreseen, when this is in the best interests of the child and would not endanger the child or his/her family.

151 Those responsible for the welfare of an unaccompanied or separated child should facilitate regular communication between the child and his/her family, except where this is against the child's wishes or is demonstrably not in his/her best interests.

152 Placement with a view to adoption or kafala of Islamic law should not be considered a suitable initial option for an unaccompanied or separated child. States are encouraged to consider this option only after efforts to determine the location of his/her parents, extended family or habitual carers have been exhausted.

IX. CARE IN EMERGENCY SITUATIONS

A. APPLICATION OF THE GUIDELINES

153 The present Guidelines should continue to apply in situations of emergency arising from natural and man-made disasters, including international and non-international armed conflicts, as well as foreign occupation. Individuals and organizations wishing to work on behalf of children without parental care in emergency situations are strongly encouraged to operate in accordance with the Guidelines.

154 In such circumstances, the State or de facto authorities in the region concerned, the international community and all local, national, foreign and international agencies providing or intending to provide child-focused services should pay special attention:

(a) To ensure that all entities and persons involved in responding to unaccompanied or separated children are sufficiently experienced, trained, resourceful and equipped to do so in an appropriate manner;

(b) To develop, as necessary, temporary and long-term family-based care;

(c) To use residential care only as a temporary measure until family-based care can be developed;

(d) To prohibit the establishment of new residential facilities structured to provide simultaneous care to large groups of children on a permanent or long-term basis;

(e) To prevent the cross-border displacement of children, except under the circumstances described in paragraph 160 below;

(f) To make cooperation with family tracing and reintegration efforts mandatory.

Preventing separation

155 Organizations and authorities should make every effort to prevent the separation of children from their parents or primary caregivers, unless the best interests of the child so require, and ensure that their actions do not inadvertently encourage family separation by providing services and benefits to children alone rather than to families.

156 Separation initiated by the child's parents or other primary caregivers should be prevented by:

(a) Ensuring that all households have access to basic food and medical supplies and other services, including education;

(b) Limiting the development of residential care options and restricting their use to those situations where it is absolutely necessary.

B. CARE ARRANGEMENTS

157 Communities should be assisted in playing an active role in monitoring and responding to care and protection issues facing children in their local context.

CHILDREN IN EMERGENCIES

The Guidelines should be applied in all emergency situations and stress the primary goal of tracing children and reunifying them with their families to the maximum extent possible prior to any other permanent solution being pursued.

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DOES NATIONAL POLICY..

..require local and international agencies providing emergency relief to have clear policies with regards to providing holistic support to families and communities and the necessary care and protection of children?

..guarantee State supervision of the registration of separated children ensuring that the data collected is confidential, secure and aimed primarily at facilitating reunification?

..ensure the development of a suitable range of community-based care options which are able to meet, on a case-by-case basis, the differing requirements of children for whom reunification is not possible?

..provide sufficient safeguards to make certain that all efforts to reunify children with their family have been exhausted before other permanent solutions, such as adoption, are sought?

158 Care within a child's own community, including fostering, should be encouraged, as it provides continuity in socialization and development.

159 As unaccompanied or separated children may be at heightened risk of abuse and exploitation, monitoring and specific support to carers should be foreseen to ensure their protection.

160 Children in emergency situations should not be moved to a country other than that of their habitual residence for alternative care except temporarily for compelling health, medical or safety reasons. In that case, this should be as close as possible to their home, they should be accompanied by a parent or caregiver known to them, and a clear return plan should be established.

161 Should family reintegration prove impossible within an appropriate period or be deemed contrary to the best interests of the child, stable and definitive solutions, such as adoption or kafala of Islamic law, should be envisaged; failing this, other long-term options should be considered, such as foster care or appropriate residential care, including group homes and other supervised living arrangements.

C. TRACING AND FAMILY REINTEGRATION

162 Identifying, registering and documenting unaccompanied or separated children are priorities in any emergency and should be carried out as quickly as possible.

163 Registration activities should be conducted by or under the direct supervision of State authorities and explicitly mandated entities with responsibility for and experience in this task.

164 The confidential nature of the information collected should be respected and systems put in place for safe forwarding and storage of information. Information should only be shared among duly mandated agencies for the purpose of tracing, family reintegration and care.

165 All those engaged in tracing family members or primary legal or customary caregivers should operate within a coordinated system, using standardized forms and mutually compatible procedures, wherever possible. They should ensure that the child and others concerned would not be endangered by their actions.

166 The validity of relationships and the confirmation of the willingness of the child and family members to be reunited must be verified for every child. No action should be taken that may hinder eventual family reintegration, such as adoption, change of name or movement to places far from the family's likely location, until all tracing efforts have been exhausted.

167 Appropriate records of any placement of a child should be made and kept in a safe and secure manner so that reunification can be facilitated in the future.

USEFUL LINKS

United Nations Convention on the Rights of the Child (UNCRC):

- Full text of the convention: http://www2.ohchr.org/english/law/crc.htm
- Child friendly version: http://www.unicef.org/voy/media/rights_leaflet.pdf
- Check for the UNCRC in your language at http://www.unicef.org/voy/explore/rights/explore_2781.html

African Charter on the Rights and Welfare of the Child
http://www.africa-union.org/child/home.htm

Council of Europe Recommendation Rec(2005)5 on the rights of children living in residential institutions
http://www.coe.int/familypolicy (select 'children in residential institutions'; available in English, Russian, Greek, Polish, Estonian, Lithuanian, Icelandic, Czech and Serbian)

Quality4Children Standards (Q4C) - http://www.quality4children.info

Council of Europe & SOS Children's Villages International: "Children and young people in care – Discover your rights"- http://www.coe.int/t/transversalprojects/children/News/enfants%20institution/text%20flyer_en.asp

SOS Children's Villages International - http://www.sos-childrensvillages.org

International Social Service - http://www.iss-ssi.org/

NGO Group for the Convention on the Rights of the Child - http://www.childrightsnet.org/

Child's Rights Information Network (CRIN) - http://www.crin.org

Better Care Network - http://crin.org/bcn/

United Nations Children's Fund (UNICEF) - http://www.unicef.org

Better Care Network & UNICEF: Manual for the Measurement of Indicators for Children in Formal Care
http://www.crin.org/BCN/details.asp?id=19618&themeID=1001&topicID=1011

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