

Annex 3: Legal and normative framework for gatekeeping in Moldova, Brazil, Bulgaria, Rwanda and Indonesia

1. MOLDOVA

National Laws, Policies and Regulations with relevance to Gatekeeping in Moldova

Family Code (2000) and amendments (2008) emphasize separation from parental care and institutionalization only as a last resort and include detail on both rights and obligations of parents to care and safeguard a child's right to live in a family. Procedures for termination and restriction of parental rights are provided. Details include means of protection and care for children without parental care, and referral and assessment procedures. Regulations for placement of children outside of parental care include provision of guardianship, family-type residential care and residential institutions. Outlines the role and functions of the Guardianship Authority in case management and care provision.

Regulations of the Foster Care Service, approved through Government Decision no.1177 (2007) details the organization, management and functions of foster care service supervision by local authorities, including foster carer recruitment and training. Foster placement process includes planning, follow-up, review and termination. Regulations call for data management.

National Strategy and Action Plan for Reform of the Residential Institution System (2007–2012) with focus on ensuring a child's right to grow up in a family. Objectives include reduction of number of children living outside a family by 50 per cent. Details provide for reorganization of residential institutions to community-based support for children in families. Mandates central and local government and NGOs to work together on goals that include development of local community-based support services. Duty to improve staff skills is also included.

Law on Social Benefits (2008) allows for local and central government to contract out social services to non-state actors. Details regulations governing social cash benefits for families most in need and families with children in institutions due to economic factors.

National Programme on the Development of an Integrated System of Social Services (2008–2012) aims to provide long- and short-term support to address social needs and reduce social exclusion of individuals and families in an inter-sectoral, integrated manner.

Minimum Standards of Quality for the Functioning of Foster Care Service (2008) includes principles of foster care service delivery, service implementation procedures including assessment, care planning and placement, and monitoring and support. Standards are given for matching a child with foster carer(s) and procedures for reintegration of a child with their biological family. Also provides details for staffing standards, including training and supervision.

Case Management – Social Assistants' Guide (2008) includes forms for complex assessment and case closure. Shows details to be included in individual care plan, reevaluation and revision of initial care plan. Outlines role of community social assistant and process of identification and referral of child of concern, followed by assessment, analysis, intervention planning, monitoring, plan revision and case closure.

Case Referral Mechanism (Guide) (2009) for use in applying case management procedures by social services staff. Includes referral procedures of cases from community to district level and process of identification of child of concern, assessment, analysis, decision-making, care planning, case management, care placement, monitoring and follow-up.

Practical Guide of the Professional Supervision Mechanism in Social Assistance (2009) including guidance on supervision and support of community social assistants by their supervisors.

Practical Guide for the System for Prevention of Child Separation from the Family (2009) focuses on provision of multidisciplinary community-based family support services. Includes details of roles and responsibilities of Social Assistance and Family Protection Departments and community social assistants. Includes procedures for case management. Mandates for the establishment of Gatekeeping Commissions as independent bodies and roles and responsibilities, a primary function being assessment of local authority recommendations for placement of children in alternative care, with a view to only issuing approval if satisfied all efforts have been made to prevent separation. Information management system is also included.

Practical Guide for Community Mobilisation (2009) including methods for the community social assistant to mobilize community

decision-making and community support to families in difficulty.

Framework Regulations on the Community-Based Social Assistance Service (2009) including goals, objectives and principles of organization and delivery of community-based social assistance services to children and families at risk, children deprived of parental care, abused and neglected children, orphans and children with disabilities. Details process and procedures for case management, roles and responsibility of social service providers and available service provision, including community-based services and care placements.

National Strategy on Integrated System of Social Services (2009) defines gatekeeping as being “a set of actions taken by competent bodies aimed at preventing child separation from the family and community by all means.” Outlines objectives of gatekeeping, which include guaranteeing and promoting decision-making that is in the best interest of the child, and their development and well-being, and place emphasis on prevention and early intervention services.

Law no.123 on Social Services (2010) endorses role of social services as provider of activities to meet social needs of individual or family to overcome situation of difficulty or social marginalization. Includes details of case management, including use of initial assessment, complex assessment and individualized assistance plan. Outlines local authority bodies holding responsibility for social services, roles and responsibilities, and procedures and allows for contracting out of social services to non-governmental bodies.

Law no.140 on The Special Protection of Children at Risk and of Children Separated from their Parents (approved in June 2013 and entering into effect 1 January 2014) endorses role of key stakeholders including Ministry of Labour, Social Protection and Family, the local Guardianship Authority within the remit of the village and city mayors and local guardianship duties undertaken by Social Assistance and Family Protection Departments. Outlines roles and responsibilities of local authorities in relation to acceptance of referrals, assessment and analysis (including timeframes). Mandates for inter-sectoral collaboration, prevention of separation, emergency removals, placement, planning, access to services, court decisions and record keeping. Provides for the role of the Specialist in Child Rights or Community Social Assistant within the Social Assistance and Family Protection Department. States that a child can only be placed outside of parental care if an assessment denotes such care is not in the best interest of the child. Kinship care to be considered as first choice and placement in family-type care as next priority.

Mechanism for inter-sectoral cooperation, identification, assessment, referral, assistance and monitoring of child victims and potential victims of violence, neglect, exploitation and trafficking (*pending ratification*).

2. BRAZIL

National Laws, Policies and Regulations with relevance to Gatekeeping in Brazil

Federal Constitution (1988, Art. 227) ensures the rights and well-being of children as an absolute priority.

Statute of the Child and Adolescents (1990, Law 8069/90) and amendments contained in 2009 (Law 12010/09). These include roles and responsibilities of parents and the state to ensure children’s rights. Prioritising family support and deinstitutionalization, reintegration and emphasis on family as the most suitable environment for the development and care of the child. Focus on interdisciplinary assessments and response; placements in formal care only on the authority of the judiciary; and details of use of alternative care, including foster care.

National Policy for Social Assistance (2004) and Unified Social Assistance System (2005), including details of support programmes, projects, services and benefits for families in socially vulnerable situations. Regulations for assessments are described. Special social protection is to be provided for abused children and/or separated children through Specialized Social Assistance Reference Centres. Provision of alternative care and reintegration into families and adoption arrangements are detailed.

National Plan for the Promotion, Protection and Defence of the Right of Children and Adolescents to Family and Community-Based Care (2006) contains objectives and guidelines aiming to prevent institutionalization of children. Focus is given to strengthening and preserving family care. Use of community-based support services, separation from family as a last resort, and professionalization of foster care are promoted. Foster care placement is required to be based on the decision of legal proceedings.

3. RWANDA

National Laws, Policies and Regulations with relevance to Gatekeeping in Rwanda

The National Constitution of Rwanda provides that every child has the right to special protection of his family, the society and the state. The family is the natural foundation of Rwandan society, with both parents possessing the right and duty to bring up their children.

Law On Matrimony, Gifts And Succession (1999) includes parental rights, roles and responsibilities, and situations in which parents' rights to bring up children will be denied.

Strategic Plan for Orphans and other Vulnerable Children (OVC) (2007–2011), with specific objectives to ensure OVCs outside of family care are placed in a family situation and fostered or adopted. OVCs and their families to be provided with ongoing support through development of community-based services, and minimum package of care, protection, support and economic strengthening. Aims include enhanced protective policy and legislation. Emphasis is placed on development of inter-sectoral linkages.

Law No 22/2011 established the National Commission for Children (NCC) with a mandate for child-care reform and the implementation of the National Child Care Reform strategy.

Law N°54/2000 of 14/12/2011 Relating to the Rights and Protection of the Child (adopted June 2012) promotes importance of a child being protected from violence and mistreatment, and places emphasis on a child being cared for in a family environment. Details procedures for case management with time limitations. Includes process for placement in alternative care and separation decisions to be made by judiciary.

National Integrated Child Rights Policy and Strategic Plan for the Integrated Child Rights Policy (2011) including adherence to principle of child's best interests and children's participation in decision-making. A child has a right to a family. Use of community support mechanisms, social protection and alternative care detailed. Coordination of all government agencies called for in implementing the policy.

National Social Protection Strategy (2011) and Implementation Plan (2011–2016). While there is no specific reference to prevention of separation, this strategy aims to assist vulnerable households via a system of regular cash transfers to provide income support to those living in/vulnerable to poverty, and ensuring access to public services.

Strategy for National Child Care Reform (2012–2013) has the primary aim of transforming the current child-care system into a family-based, family-strengthening system. Includes targeted closure of 34 institutions, with careful placement of 3,153 children and young people from institutions into family-based care. Includes support to vulnerable families in order to prevent separation and transformation of orphanages into child-centred, community-based services. Endorses systematic use of assessments for each child, decision-making based on findings, and intensive planning and support for safe family reintegration as a priority. Care planning should be undertaken in partnership with community providers. Placement of child in extended family or alternative family setting is prioritized when alternative care is necessary. Use of database and data management to support planning. Provision for the building of human skills and technical capacity of structures at the national and district levels, with responsibility for childcare and protection.

Tubararere Mu Muryangyo ('Let's Raise Our Children in Families') provides further details in undertaking the Strategy for National Child Care Reform, including information on realization of the legal and policy framework and a national framework for alternative care.

Organic Law No 01/2012/OL criminalizes child abandonment, in order to prevent and remedy child abuse and neglect.

Guidelines on foster care, national adoption, inter-country adoption, residential care (pending)
Guidelines for Districts and Sectors on child protection and family-based care (pending)

4. BULGARIA

National Laws, Policies and Regulations with relevance to Gatekeeping in Bulgaria

The Family Code (2009) includes details of a child's right to a family and parental status, rights and obligations. Also details conditions under which parental rights can be removed and use of courts in care decision-making. Places emphasis on determination of the best interest of the child. Family contact during separation and return of custody and guardianship are also promoted.

Child Protection Act (2000) and subsequent amendments include mandate for prevention of separation of child from parental care. Details role and responsibilities of Social Assistance Directorate to undertake assessments, prepare reports and plan responses. Includes provision of family support, placement in extended family and foster care. Provides for placements in residential institutions. Removal or limitation of parental rights is through court proceedings, including a child's right to participate. Grounds for placement of a child out of the family are listed, as are details of approval and training of foster carers and adoptive families.

Regulations for Child Protection Act (2003) provide for priority to support child and family to prevent separation. Includes details of role of child protection authorities in accepting referrals, assessment, support and care planning, monitoring and reporting, with participation of family, and all deadlines to be met. Children may be placed into care if at risk of harm, and placement with extended family should be the first option considered. Details for foster care and adoption and special placement of children with disabilities are given. Also included are regulations for licensing social service providers.

Social Assistance Act (2002) provides details of social work to be undertaken through individual case management approach. Includes criteria for social assistance, including vulnerable families and services to be provided in a family environment or in an environment approximating the family environment. Identifies role and responsibilities of Social Assistance Agency. Services of specialized institutions are only to be used if possibilities for community-based services have been exhausted.

Regulations for Implementation of the Social Assistance Act (2003), including placing responsibility on hospital managers or authorized persons, with information that a child is in imminent risk of abandonment/placement in an institution, to notify the Social Assistance Directorate (SAD) within 24 hours. SAD social worker must respond, assess the situation, provide initial support to mother and develop action plan to be reviewed no less than every three months. Quality standards for social service provision, including residential care, are detailed.

Article 125 of Health Act (2009) obliges all doctors to report a newborn child to the Social Assistance Directorate if there is a risk of abandonment.

Methodological Guidance on the Prevention of Child Abandonment in Maternity Hospitals (2003) includes aim to reduce number of children in institutions and children to be raised within a family environment. Roles, responsibilities and measures for prevention of child abandonment in maternity hospitals are laid out, with mandates for coordination and cooperation between social services, maternity hospitals and other key agencies.

National Strategy for Children 2008–2018 includes prioritizing of care of a child within the family and prevention of separation. Details roles, responsibilities and procedures for stakeholders in prioritizing family support; and measures and procedures to provide support to parents including social, financial and psychological assistance. Outlines development and use of alternative care. Emphasis placed on deinstitutionalization and use of institutions only as a last resort. Includes investment in human resource development.

Vision for the Deinstitutionalization of the Children in the Republic of Bulgaria (2010) and Action Plan for the Strategy Implementation 2010–2025. Promotes the use of family community-based services and alternative family-type care. It mandates the closure of 130 institutions, including 24 for children with disabilities, 32 providing socio-medical facilities and 74 homes for children without parental care by 2025.

5. INDONESIA

National Laws, Policies and Regulations with relevance to Gatekeeping in Indonesia

Law 4 of the year 1979 on Child Welfare includes details of obligations of parents, and if a child is outside of parental care, guardians should be appointed whenever possible from the child's extended family.

Law 23 of the year 2002 on Child Protection, including details of:

- Definition of 'Protection of Children' and categories of children who are to be afforded protection;
- Principles including best interest of the child and their right to be raised by parents;
- Rights, roles and duties of parental care and situations that warrant removal of those rights;
- Obligations and responsibilities of the state to protect and care for children;
- Decision to place child under guardianship to be made by the court;
- Responsibilities of alternative carers of a child;
- Grounds upon which a child may be adopted; and
- Role of the Commission for the Protection of Children.

Law 23 of the year 2004 on the Elimination of Domestic Violence, including details of sanctions to be applied when abuse, defined as neglect and physical, emotional or sexual violence, is perpetrated by any immediate or extended family member against another family member. Stipulates the process for reporting abuse.

The Guidelines for the Care of Children in Need of Special Protection (2004) places emphasis on prevention of family separation, including details of responsibility of state agencies and the community, who must work together; and state responsibility to provide an adequate institutional and legislative framework and protection to children, and support to children in need of protection and care.

Law 11 of the year 2009 on Social Welfare, including details of obligation of the state to care for neglected children and licensing and regulation of social service providers.

National Standard of Care for Child Welfare Institutions (2011) contains details of norms, principles, standards, procedures and criteria in the implementation of care of children to be used by child welfare services. Emphasis is placed on enabling children to be cared for in their own family. Objectives include fulfilling of a child's right to receive care in their families, with provision of direct support to families facing care challenges. Provides for family-based alternatives including foster care and guardianship. Describes role of authorities in developing management systems for, and monitoring of, child welfare services. Regulatory components cover children's rights, supporting family-based care and family-based alternative care. Details are given of the process and standards for referral, assessment, support or care planning and implementation, and termination of care placement. Also included are evaluation of service provision, role of care staff in institutions, role of social affairs authorities and management of services. Standards are laid out for placement in alternative care and residential care. Role of social workers is detailed, as are organizational standards for licensing and monitoring service providers.

Regulation on alternative care has just been finally approved, the final draft (2012) having been held up due to lengthy discussions as to whether it should be adopted as a government regulation or go straight to draft law. Regulation has been adopted, but with the proposal for a draft law still ongoing. Regulation provides an overall framework for children's care, including articulating further what primacy of family care means under the child protection law (prevention of separation, family support) and the role of different types of alternative care including guardianship, adoption and foster care. Awaiting reference and final agreed text.

(Guardianship and Adoption Regulations)