

**THE DRAFT UNITED NATIONS GUIDELINES ON THE ALTERNATIVE CARE OF CHILDREN:
AN ETHICAL FRAMEWORK ON THE PATH TO ADOPTION AS A PERMANENT PROTECTION MEASURE**

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Ladies and Gentlemen,

It is a great pleasure to be here with you today and to be provided with the opportunity to address with you, over the next couple of days, issues of common interest, and to explore together the successes and challenges of intercountry adoption today, in India and elsewhere. My presentation, I believe, comes at a right timing in the comprehensive programme of this conference, given that I will strongly focus on the pre-adoption period, therefore addressing the very early stages of any adoption and other child protection and alternative care measures.

I believe this to be an important opportunity to address issues relating to the situation of children in alternative care and potentially adoptable domestically and internationally. Prior to initiating an adoption process, a comprehensive assessment of the child is necessary to ensure that adoption truly responds to the needs, best interests and rights of the child. In this context, these guidelines should offer a framework for this assessment, as well as ethical principles on the conditions in which other alternative forms of care should be provided.

I. The history of the draft UN Guidelines on the Alternative Care of Children

The draft UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children are reaching the final stages of their drafting and adoption process. This process was initiated two years ago, in 2005, as the United Nations Committee on the Rights of the Child – which is responsible for examining the States Parties' implementation of the UN Convention on the Rights of the Child – held a discussion day on children without parental care. Amongst the many recommendations set out in its final report, the Committee recommended the establishment of an expert meeting to prepare a set of international standards for the protection and alternative care of children without parental care for the UN General Assembly. The Committee already outlined in its recommendations the scope and objectives of these guidelines and standards.

Following this discussion day and its final recommendations, and following up on a previous joint UNICEF-ISS project also calling for such guidelines, both organizations initiated a process of drafting and consultation. Indeed, a NGO working group, convened by ISS, began to meet in order to draft an initial version of these guidelines. This comprehensive initial version was then submitted to the Committee on the Rights of the Child, who reviewed the document, and provided additional comments and recommendations. The final consultation stage, designed to ensure the involvement of States and Governments, took place in Brasilia, Brazil, over a year ago, in August 2006. An important number of these showed great interest in the guidelines, and provided additional inputs. As a result of this intergovernmental meeting, a 'Group of Friends' – which is led by the Government of Brazil, and brings together 15 other very interested States, representing most regions of the world – was established to finalise the draft, which should finally be submitted to the United Nations General Assembly.

Unfortunately, the last stage of the adoption process of these Guidelines has suffered some delays, given that the draft Guidelines will now not be submitted to the General Assembly of the United Nations until next year. However, a strong advocacy process is currently taking place, reflected a couple of weeks ago, when UNICEF as well as the Government of Brazil both issued statement in the session of the Human Rights Council, supporting the development of the Guidelines and encouraging other States to actively

engage in this process. Thus, there is a strong interest and willingness amongst States and organisations to take this process forward and to subsequently engage in the implementation of these guidelines.

II. The aim and objectives of the draft UN Guidelines: The protection of children in alternative care

The Guidelines are intended to enhance the implementation of the Convention of the Rights of the Child, and of other relevant provisions of international and regional human rights law, in matters of protection and well-being of children who are in need of alternative care, or who are at risk of so being. It therefore focuses on two main aspects: (1) to ensure that children do not find themselves placed in alternative care unnecessarily; and (2) that, where out-of-home care is provided, it is provided in appropriate conditions and of a type that responds to the child's rights, needs and best interests.

The Guidelines reflect, to a large extent, the principles and perspectives widely recognised in matters of child protection. Indeed, they reiterate that efforts should primarily be directed at enabling children to remain in, or return to the care of their parents, or where necessary, of other close family members – i.e. the removal of a child from his family should be considered an option of last resort and for the shortest possible duration. Only where the family is unable, even with appropriate support, to provide adequate care for the child, the State should intervene, and is responsible, for ensuring appropriate alternative care. Any alternative care placement should therefore be decided and provided on a case-by-case basis, and should respond to the needs, rights and best interests of the child concerned.

Any decision on the child's alternative care ought to take account of the following factors: the desirability of maintaining the child as close as possible to his usual place of residence in order to facilitate contact and possible reintegration into his family, and to minimise disruption in his educational, cultural and social life – i.e. community and domestic solutions, rather than international options; the stability of the home and other attachments to caregivers – i.e. permanency as a key objective, rather than a temporary measure; and the need for care to be provided in family-type settings, rather than in residential institutions, except where this is specifically appropriate, necessary and constructive for the individual child – i.e. the institutionalisation of children should be a option of last resort.

These provisions should guide the decisions of social services in deciding the alternative care of individual children, but should also provide the ethical basis and the fundamental principles for the development of governmental policies and strategies designed to provide children with appropriate alternative care.

III. The content of the draft UN guidelines: A thorough process of alternative care provision

The Guidelines intend to set out the fundamental ethical and procedural principles which should govern the provision of alternative care to children. In addition to the recently-mentioned general principles and perspectives governing this process and the implementation of this instrument, the Guidelines also address the following issues. These are only briefly summarised, with the aim of presenting you some of the most basic principles and ethics:

- ◇ Measures of implementation: This includes the allocation of sufficient human and financial resources to ensure the optimal and progressive implementation of these Guidelines and to ensure coordination among all relevant authorities, on the basis of transparent monitoring and accountability.
- ◇ Prevention of alternative care: This chapter entails a focus on three aspects: the promotion of parental care, the prevention of family separation, and family reintegration. Indeed, based on the adequate assessment of the child and family situation, the family may need to be provided with support in meeting its responsibilities (measures of prevention of child abandonment, family strengthening services, supportive social services, youth empowerment, etc). When these are not sufficient, and a child's well-being and safety may be at risk, the State may need to intervene in order to protect the child and remove him from the family (counselling and support to the child and the family, decision-making by competent authorities, determination of the child's best interests, etc). Finally, measures for possible family reintegration should be established and promoted (support to the child and the family, regular and appropriate contact between them, gradual and supervised process, etc.). These core objectives should all be addressed before a child may be considered adoptable.

- ◇ Framework of care provision: A range of alternative care options should be available, in order to respond to the rights, needs and best interests of children for their short and long-term care. These should be provided upon the authorisation of the competent authorities, the periodic monitoring of the provision, and in accordance with strict quality criteria.
- ◇ Determination of the most appropriate form of alternative care: Any child protection measure should be decided and implemented upon a judicial or administrative procedure, with legal safeguards, based on an individual and professional assessment – as will be further detailed in a short while – in relation to the decision on the child’s adoptability. It is important that any decision and its implementation be planned, based on consultation with the child concerned and the parties affected, and adequately prepared.
- ◇ Provision of alternative care: This major part of the Guidelines provide not only the general conditions applicable to all forms of alternative care (contact, physical and psychological conditions of care, protection for abuse and other forms of ill-treatment, prevention of discrimination and stigmatisation, access to complaints mechanisms, etc), but also a detailed account of more complex issues in the provision of care, such as the particular characteristics and needs of informal care; the mechanism of legal responsibility *in loco parentis*; the registration, authorisation, inspection and monitoring of agencies and facilities responsible for formal care; the issues specifically relating to foster and residential care, and the provision of support for after care.
- ◇ The provision of care outside the country of origin and in emergencies: The Guidelines have not omitted to set out the principles applicable to the particular provision of care outside the child’s country of usual residence or in emergencies, which may be rare but call for the consideration of very specific and additional factors, and which often concern very vulnerable children.

IV. The scope of the draft UN Guidelines: Their relation to the adoption of children

It is essential to emphasise at this point that the scope of alternative care as foreseen in these Guidelines does not extend to care by adoptive parents from the moment the child is placed in their care, as of which moment the child is considered to be in parental care. However, these Guidelines are applicable to pre-adoption or probationary placements with prospective adoptive parents. Thus, any stage of the adoption process – declaration of adoptability, pre-adoption assessments and conditions of probationary placements – should comply with the principles enshrined in the Guidelines.

Adoption as a child protection measure

Adoption, as a child protection measure, responds to many of the previously mentioned principles, in that it may provide a permanent and family-based solution to the situation of many children, who remain without parental care. However, it is unfortunate that adoption is often decided upon far too promptly, without the sufficient efforts and prior provision of support to the family in order to enable the child to remain with his biological or extended family or to reintegrate his family as soon as possible. In addition, intercountry adoption is often decided upon too easily without considering the possibility for domestic adoption. Indeed, the latter additionally offers a response to the principle of continuity in the child’s community or national attachments (language, culture, religion, etc).

Decision on the child’s adoptability

Thus, in relation to adoption, the Guidelines offer a basis upon which to decide whether all other measures have been exhausted before declaring a child’s adoptability. Thus, the decision on the child’s adoptability and the adoption should reflect the general principles and guarantees applicable to the search for alternative care. These include: a rigorous case-by-case and comprehensive assessment of the child’s situation and needs by a multidisciplinary team of qualified professionals; a judicial or administrative procedure with legal safeguards, upon consultation of the child in accordance with his evolving capacities and of his parents or legal guardians; the intention to provide permanency and a family environment, in accordance with, and in response to, the child’s attachment capacity, wish to feel part of a family, and desirability to remain in his community and country, and his relationship to siblings. These factors should ensure the determination of the most appropriate form of care for a child, including domestic or intercountry adoption.

Subsidiarity of adoption

In addition, it is essential that the adoption of a child only takes place when all efforts to reintegrate him into his family of origin have been exhausted and have failed. Adoption is a permanent measure and should therefore only take place when it is absolutely certain that no other solution responds better to the best interests and specific needs of the child concerned. In this context, the Guidelines truly reflect the ethical principle of the subsidiarity of adoption, and equally enshrine the principle of subsidiarity of intercountry solutions, including intercountry adoption. In other words, the Guidelines set out the conditions in which a child's adoptability should be considered and established.

Probationary placements

In cases in which the child has already been matched with a specific and appropriate family, and may be in a probationary placement, the Guidelines provide a framework of principles and conditions applicable to such forms of alternative care. Indeed, these placements should be carefully monitored and reviewed, in order to ensure that the prospective adoption and the selected family truly and continuously respond to the needs and best interests of the child. The Guidelines are applicable to such placements, as far as they are compatible with requirements and provisions governing such placements in other relevant international instruments.

Concluding comments

I hope this short introduction to the draft UN Guidelines will have provided you with some insight into the objectives and the principles enshrined in this text. It is hoped that this document will provide a comprehensive and ethical framework, which will guide governments in their policy-making in this area, as well as child protection, social and legal professionals in their decision-making in matters of determination of the child's adoptability and the appropriateness of the prospective adoption for a particular child.

It is expected that the document, albeit a non-binding document, will prove to be a useful and strong tool in the process, and it is hoped that it will be widely disseminated amongst practitioners involved in all aspects of child protection. As a final conclusion, and opening to further informal discussion, I invite you to read the latest version of the draft UN Guidelines, which are available on the Child Rights Information Network and Better Care Network's websites (<http://www.crin.org/bcn>).

Dear colleagues, I would now only like to conclude by thanking you very much for your attention and interest.

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