

Child Rights, the Role of Families and Alternative Care Policies Developments, Trends and Challenges in Europe

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DEVELOPMENT OF INTERNATIONAL STANDARDS FOR THE PROTECTION OF CHILDREN DEPRIVED OF PARENTAL CARE

by the NGO Working Group on Children without Parental Care¹

Background

Millions of children throughout the world are currently in, or in need of, out-of-home care because their parents are unavailable or unable to care for them. They live with relatives, in foster care, in residential facilities, in child-headed households or in the street. They reside in their own country or are displaced internationally (children placed abroad, separated child asylum seekers or undocumented migrants ...). Sometimes, care is provided under conditions that violate their rights: abuse, lack of efforts towards family reunification and/or permanency planning, deprivation of liberty, etc.

UNICEF and ISS launched a research and advocacy program in early 2004 calling for the development of specific international standards for improving the protection of such children. As a result, the following progress has been achieved:

1. A set of joint UNICEF/ISS background papers on the need for Guidelines has been published and disseminated widely, including in international and regional fora.
2. An NGO Working Group on Children without Parental Care has been formed under the leadership of ISS focusing on this issue.
3. Most recently, the Committee on the Rights of the Child (CRC) has published its recommendations from the 16 September 2005 Discussion Day, reflecting the unequivocal support expressed during the debates for the development of such guidelines. The recommendations call on the UN and others “*to prepare a set of international standards for*

¹ The NGO Working Group was set up under the aegis of the NGO Group for the Convention on the Rights of the Child. It is open-ended but currently includes Defence for Children International, ECPAT, EveryChild, First Nation Child and Family Services, Friends World Committee for Consultation (Quakers), International Catholic Child Bureau (BICE), International Council of Women, International Federation of Social Workers, International Federation “Terre des Hommes”, International Social Service (convenor), RAPCAN, Save the Children UK, SOS-Kinderdorf International, World Vision International. **Observers:** International Foster Care Organisation, UNICEF.

the protection and alternative care of children without parental care for the UN General Assembly to consider and adopt in 2006.” The recommendations also call upon the international community to organise an ‘*intergovernmental expert meeting*’ to contribute to the draft.

3. Following this Recommendation, ISS elaborated a Draft of the Guidelines, in collaboration with the other members of the NGO Working Group. Inputs were also provided by a group of young adults having experience of alternative care, UNICEF, and various international experts, including members of the UN CRC.

On the basis of the results of these consultations, as well as taking into account existing international documents, a final draft of the Guidelines was elaborated and was submitted to the UN CRC on 20 January. This document was reviewed by the Committee in private session on 26 January; the results of their discussion will contribute to determining exactly how this initiative might go forward. The Committee’s comments have yet to be communicated.

Purpose

Against the background of these texts, the Guidelines are:

1. directed towards supporting efforts to preserve or re-establish the family unit and, where this is not possible or in the best interests of the child, to identify and provide the most suitable forms of alternative child care, under conditions that promote the child’s full and harmonious development,
2. designed to assist and encourage governments to assume their responsibilities and obligations in these respects,
3. equally designed to be made known to all concerned with child care, in both the public and private sectors and at all levels, and to be taken fully into account by them in their policies, decisions and activities.

Scope

These Guidelines apply to the use and conditions of alternative care for all persons under the age of 18 years, regardless of the care setting and of its formal or informal nature, with due regard to both the important role played by the extended family and 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. Principles in these guidelines may also be applicable to young persons already in alternative care and who need continuing care or support after reaching the age of 18.

The scope of alternative care as foreseen in these Guidelines does **not** extend, however, to:

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

2. Care by adoptive parents from the moment that the child concerned is in their custody, as of which moment, for the purposes of these Guidelines, the child is considered to be in parental care.
3. Informal arrangements whereby a child voluntarily stays with relatives or friends for a limited period for recreational purposes and for reasons not connected with the parents' inability generally to provide adequate care.

Fundamental Principles

The foundations on which the Guidelines are built are principles already internationally accepted as, notably, provisions of the Convention on the Rights of the Child (CRC). These include the four general principles identified by the Committee on the Rights of the Child as non-discrimination, best interests of the child, right to survival and development, and child participation, the latter in particular being linked to the child's evolving capacities.

The approach of the Guidelines also gives special prominence to four CRC-based thrusts:

1. primacy of efforts to maintaining the child with his or her parents by providing necessary support to the latter in their care-giving role, i.e. preventing unwarranted or arbitrary separation,
2. ensuring the planned provision of a range of alternative care options, with priority to family- and community-based solutions,
3. securing permanency for the child without undue delay through, wherever possible, reunification with the family or in an alternative stable family setting,
4. protection from abuse, neglect and exploitation in all care settings.

Main orientations

Within this framework, the draft Guidelines develop an integrated approach of child care, which includes:

1. The promotion of family preservation, including measures to prevent family separation and to support family reintegration.
2. Assessment, planning and review procedures to ensure the most appropriate form of care. Such procedures should be carried out on a case-by-case basis, by suitably qualified persons, preferably in a multidisciplinary team. 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.
3. Appropriate conditions of care, including in foster care, residential care and informal care. Where large child care facilities (institutions) remain, it is provided that alternatives should be actively developed in the context of an overall de-institutionalisation strategy that will enable them to be phased out.
4. Inspection and monitoring procedures.
5. Clear policies and agreed procedures to ensure appropriate preparation of and follow-up after-care. These policies and procedures should aim at preparing the child to assume self-reliance and to integrate fully in the community, notably through the acquisition of social and life skills
6. Complementary measures for care provision for children outside their country of habitual residence, as well as care in emergency situations.

Evaluation and follow-up

The drafting process of the International Guidelines has raised a broad interest from a large variety of interested actors. Inputs have covered both the structure of the Guidelines and the contents of each specific chapter. In many regards, they were innovative and allowed for new developments to be envisaged within international instruments relevant to children without parental care, including on family preservation and informal care. Therefore, it can be considered that the first stages of this consultation process have been a success and that the current draft should be used for further discussion at governmental level.

The resulting text, on the basis of such wide inputs, does not necessarily respect all the wishes of each contributor, and undoubtedly the consultation process should continue.

One issue which may well need further discussion is whether or not to try to differentiate between “residential care” and “institutional placement” or whether to treat placements in institutions as one (generally unacceptable) form of residential care. To date the draft reflects the latter option, since it is not easy to find acceptable definitions that distinguish them appropriately.

ISS and other contributors also feel that it may be necessary to give more place to the role of “legal guardianship”.

Now, the next steps of this process must take place at governmental and intergovernmental level. The draft Guidelines must be debated at a political level. In this regard, as recommended by the UN CRC following its discussion day in September 2005, States should organise an ‘*intergovernmental expert meeting*’ to finalise the Guidelines. This text is intended then to be submitted at the next General Assembly of the United Nations for its final adoption in December 2006. It is of utmost importance that the Guidelines be widely supported by the international community, if we want them to make a real and positive difference in practice.

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