

**INTERNATIONAL SOCIAL SERVICE
&
UNICEF**

**IMPROVING PROTECTION FOR
CHILDREN WITHOUT PARENTAL CARE**

Kinship care : an issue for international standards

This paper is one of a series that deal in greater depth with selected complex issues broached in the Working Paper prepared by International Social Service and UNICEF on "Improving Protection for Children in Out-of-Home Care: a Call for International Standards". It focuses on problems that would need to be taken into account when devising international standards regarding the kinship care of children.

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Of the millions of children throughout the world who are in out-of-home care, most are being looked after by grandparents or other members of their family. This form of care – known as kinship care – is indeed the most significant “alternative care” solution in a wide variety of countries. For example:

- in the USA, an estimated 1.3 million children in the Black community alone are in the care of relatives,¹ as opposed to 300,000 in group care facilities and 290,000 in non-kinship foster care.²
- An estimated 90 per cent of the 9.5 million children orphaned by AIDS in Sub-Saharan Africa, Asia and Latin America are cared for by members of the extended family.³

While there is a considerable *a priori* advantage for a child to be looked after by family members or others familiar to him or her, often in the original community, kinship in itself is no guarantee of welfare, protection and ability to cope. Yet kinship care is often subjected to far less supervision than its non-kinship counterpart, and in most cases to no supervision at all. It is not referred to in any internationally-recognised standards or guidelines.

1. Definitions

The Child Welfare League of America (CWLA) defines **kinship care** as “the full time care, nurturing and protection of children by relatives, members of their tribes or clans, godparents, stepparents, or any adult who has a kinship bond with a child.”⁴ Some other definitions are even a little wider, and include in particular neighbours who are well-known to the child.⁵

Like other forms of care, kinship care may be foreseen as a solution to a short-term problem or a response to a long-term need, depending the situation of the child and his or her parents.

Invariably, the extended family has traditionally taken over child-care when parents are unable to fulfil their role for a period of time – including, for example, young single mothers – or when they are permanently incapacitated or have died. This is known as “**informal**” or “**private kinship care**”. It is the basic form of out-of-home care in the developing countries of Africa and Asia, and a significant form elsewhere.

In many industrialised countries in particular, the development of social services and child protection agencies resulted in this role being increasingly taken over by foster parents, with whom the child is placed by the competent authority. Foster care has also been the preferred option for children removed from parental care because of abuse or neglect. In recent decades, however, increased out-of-home placements have overwhelmed the foster care systems in many countries and a rapidly growing number of such placements have in fact been made with family members (or neighbours), a practice referred to as “**formal kinship care**”.

¹ Rankin, Sonia Gipson, Why they won't take the money: Black grandparents and the success of informal kinship care. 10 Elder L.J. 153-185 (2002).

² US Census, 2000.

³ Children on the Brink, USAID, UNICEF, UNAIDS, 2002.

⁴ CWLA at www.cwla.org/programs/kinship/faq.htm. As CWLA notes, “this definition is designed to be inclusive and respectful of cultural values and ties of affection.”

⁵ Children out of Home, Analysis of Substitute Care Data, 1991/92 to 1995/96, Department of Community Services, New South Wales, Australia.

2. Advantages and limitations of kinship care

A number of features are common to both formal and informal kinship care. The identified advantages, in principle, of kinship care, include:

- Preservation of family, community and cultural ties;
- Avoidance of trauma resulting from moving in with strangers;
- Less likelihood of multiple placements (although in some circumstances children may find themselves being “passed round” the members of the extended family).

There are also, however, a number of risk factors and problems associated with this form of care that can have negative repercussions for the children concerned.⁶ Thus, for example:

- Some relatives may cause intra-familial friction by insisting on caring for the child, or may allow unauthorised contact between the child and the parents;
- Some relatives may be abusive or neglectful because they come from the same “troubled” family;
- Kinship care may create financial disincentives to returning the child to the parents if relatives receive higher allowances (which can even happen in informal placements) than those available to parents, which is one reason why children may remain longer in kinship care than in non-kin foster care;
- Children may be less likely to receive services than they would in non-kin foster care;
- Relatives too may need more services and support than “specialised” non-kin foster carers;
- Division of responsibilities and decision-making powers between relatives and parents regarding the child may be unclear or contested, which may lead to intra-familial friction;
- Children may be the victims of conflict between their foster relatives and the birth parents, who may be portrayed and/or perceived negatively, sometimes resulting in little effort being made to reintegrate the child with the birth parents ;
- There is a risk of children having difficulty in situating themselves on a generational or geneological level when, for example, they are brought up by grandparents almost like the brother or sister of one of their parents.

Concerns over the suitability of kinship carers and the absolute or relative lack of supervision to which they are subjected lead some writers – particularly from industrialised countries – to question the overall desirability of kinship care and to promote formal foster care and adoption solutions instead. This approach may overlook the clear potential advantages of kinship care for many children if the risks and problems it may imply are recognised and addressed – as they could be – effectively. At the same time, there is surely a lack of scientific research to determine the strengths and weaknesses of kinship care in various situations and cultures, as well as the criteria for assessing when kinship care is or is not considered as being in the best interests of the child.

3. Informal kinship care

Informal arrangements are by far the most prevalent form of kinship care. Of the estimated 2.1 million children in the USA being raised solely by grandparents, for example, over 90 per cent are being cared for on an informal basis.⁷ The literature shows that, while older siblings (including in child-headed households) and uncles and aunts provide informal care, most carers are grandparents or grandmothers. Grandparents are reported as being often “desperate to keep their grandchildren out of foster care”⁸, in part because the family would then lose custody to the official services and parental responsibility may be restricted or withdrawn.

⁶ Many of these are discussed in “Tools for Permanency, Tool #4: Kinship Care”, National Resource Center for Foster Care and Permanency Planning, at www.hunter.cuny.edu/socwork/nrcfcpp/downloads/tools/kinship-tool.pdf .

⁷ US Department of Health and Human Services, AFCARS, October 2000 estimates.

⁸ E. Fuller-Thompson, University of Toronto, quoted in The Toronto Star, 1 March 2004.

Under most systems, informal kinship care does not bring with it any monetary allowances, however. The financial burden on relatives caring for one or more children, as well as problems linked with size of accommodation, therefore often constitutes a major constraint and can jeopardise the quality of alternative care provided. This has led to a proposal, for example, that “kinship care placements not requiring court intervention should be facilitated through a non-means-tested child grant or other grant, supplemented by a needs-based grant if the child has special needs with cost implications.”⁹

While the parental role of caring for orphans in Africa has traditionally automatically fallen on surviving relatives, the strain now placed on kinship care due to the HIV/AIDS pandemic seems to be taking its toll on the attitudes of some caretakers towards their task.

A report concerning Botswana, for example, notes that some of the complex problems in responding to orphans are now brought about by the relatives themselves, creating a need for a full-scale policy review. “Sometimes relatives fight amongst themselves for the care of the orphans, in some cases separating siblings so as to benefit from the social welfare intended for the children”, and there are scores of cases reported each year of “property grabs” by relatives from children when their parents die.¹⁰

The Durban Children’s Society (South Africa) has pointed out that “there are cases where orphaned children in the care of relatives are subjected to the ‘Cinderella syndrome’, i.e. they receive food and resources only after the needs of the biological children have been satisfied and are expected to do most, if not all, the household chores.”¹¹ In a survey of children in kinship care in Malawi, and despite being unanimously in favour of being looked after by relatives rather than in an “orphanage”, the children themselves reported a variety of abusive behaviours by their carers. These included being treated as the nuclear family’s unpaid domestic worker, being the only one in the household who does not attend school, being denied assistance and, for girls, being told to “go and find some soap” (a euphemism for becoming a prostitute) so that she “can earn her keep” or sent out to find a husband so that “someone else will be responsible” for her care.¹²

Some types of informal kinship care arrangements are notoriously likely to result in situations of child exploitation. As a result, they are more usually looked on and dealt with as issues of exploitative child labour, but it is equally important to look on these practices from the standpoint of protection in out-of-home care as well. Thus, in Bénin, children known as *vidomégon* – 20% of whom are under 10 years of age – are placed with another member of the family or an outsider to help with household and/or trading activities and constitute the most common and exploited category of child workers in urban areas.¹³ Reports regarding Cameroon, Ghana, Morocco and Togo also refer to young children, usually girls, from poor – often rural – homes being placed with relatives or others to undertake domestic chores.¹⁴

The difficult issue to be broached, then, is the extent to which the State might become involved – in areas such as decision-making, support and child protection – without undermining the positive and often fiercely defended aspects of “informal” placements with relatives. In other words, when parents retain custody of and responsibility for the child, should the involvement of the State be any greater where relatives are the effective caretakers than it is when the primary caregivers are the parents themselves? And when the parents have died or are permanently unable to care for their children, is the relationship of the child to the caregivers to be formalised?

⁹ South African Law Reform Commission, Discussion paper 103, 2002.

¹⁰ News from Africa, July 2003.

¹¹ South African Law Reform Commission, *supra* footnote 9.

¹² Mann, Gillian. Family Matters: the Care and Protection of Children Affected by HIV/AIDS in Malawi. 2004. Save the Children Sweden.

¹³ UNICEF, The Issue of Child Domestic Labour and Trafficking in West and Central Africa, July 1998.

¹⁴ US Department of State, Human Rights Report, 1999.

4. Formal kinship care

Keeping children within their own kinship, community, and cultural networks – the concept of continuity – has found international favour in contemporary child welfare practice,¹⁵ much bolstered by being a recognised right of the child.¹⁶ Coupled with the growing, and sometimes already critical, pressure on formal foster care systems in the industrialised nations, it is therefore not surprising that kinship placements within the formal context have grown apace in those countries. In New South Wales, Australia, for example, kinship placements accounted for 14% of the total in 1991/1992 but were already up to 24% by 1995/1996, second only to non-kinship foster care as a placement option.¹⁷ The international trend toward formal use of kinship care for children who have suffered abuse or neglect is thought likely to continue as foster care resources shrink.¹⁸

Within a kinship grouping, there may be reluctance to have a foster relationship defined by the court as opposed to being informal. However, one major advantage from the foster parents' standpoint may often be easier access to grants or allowances. Children who require formal protective services and are placed in the care of relatives by court order should qualify for a grant like a normal foster care grant, with an additional allowance if the child has special needs, according to the South African Law Reform Commission.

A factor that can dissuade relatives from taking on a formal fostering role is the statutory supervision of their fitness and performance. In an attempt to respond to certain aspects of this problem, that same Commission proposed that "supervision services should not be required for a child in kinship care – unless there is a need for such services – if the child's parents are deceased or cannot be traced and/or there appears to be no possibility of family reunification", and that in those circumstances the court could determine the degree of supervision deemed necessary.

Among other problems in the sphere of formal kinship care is the finding that "[a]gencies tend to devote fewer resources to reunification of children in kinship foster care with their parents [...] Children placed with relatives [in kinship foster care] were less likely to receive health-related services than children in traditional foster care". Also, children placed with relatives remain in state custody longer, and kinship care sometimes disrupts family relationships when incorporated in the public child welfare system.¹⁹

5. Child-headed households

The setting-up of a household composed uniquely or essentially of minor siblings and cousins in the absence of available adult caregivers is a specific and, of necessity, growing facet of care, particularly in Africa and Asia (see Working Paper). By assimilating it with informal kinship care rather than looking at it as an "extraordinary" phenomenon by virtue of the fact that a child is responsible for the group, there may be better prospects for ensuring the kind and level of support that these households require. This is the approach tentatively adopted by the South African Law Reform Commission in setting standards for assistance to child-headed households, and it could be usefully reflected in international standards: the Commission proposed their legal recognition "as a placement option for orphaned children in need of care"²⁰ and consequently for provision to be made to ensure adequate supervision and support by persons or entities selected or approved by an official body and directly or indirectly accountable to that body.

¹⁵ Worrall J, Kinship care of the abused child: the New Zealand experience, *Child Welfare*. 2001 Sep- Oct;80(5):497-511.

¹⁶ CRC article 20: "When considering [placement] solutions, due regard shall be paid to the desirability of continuity in the child's upbringing..."

¹⁷ Children out of home, analysis of substitute care data, 1991/2 to 1995/6, Department of Community Services, NSW, Australia, 2000.

¹⁸ Worrall, J. *supra* footnote 15.

¹⁹ Roberts, Dorothy E., Kinship Care and the Price of State Support for Children, *Chicago-Kent L.R.* 76:1619 (2001).

²⁰ South African Law Reform Commission, *supra* footnote 9.

6. Cross-border manifestations of kinship care

The main form of cross-border kinship care is an informal arrangement. It involves more especially, though not solely, sending a child from a developing or a transition country to stay with relatives residing in an industrialised country.

Clearly, it holds less of the advantages normally associated with kinship care:

- the child does not remain in his or her community;
- direct links with parents will likely be at least temporarily severed;
- the relatives may be unfamiliar to the child if they have been abroad for some time.

Equally, the risks associated with kinship care will be enhanced by the very fact that the child is outside the country of origin, which invariably increases vulnerability. Among other things, the child will likely have no one else to turn to in case of difficulties, may not speak the language in the country of destination, may be confused by traditional and cultural differences and, according to his or her legal status and/or that of the caregivers in that country, may not be known to the child protection services and not have access to health and education services.

One of the most notorious cases of exploitation and abuse in informal kinship care abroad in recent years resulted in a high-profile public inquiry in the UK:

Victoria Climbié was born near Abidjan in Ivory Coast on 2 November 1991. She was the fifth of seven children. She progressed well. She was intelligent, articulate and enthusiastic. In October 1998 [Marie Thérèse Kouao] her great aunt came to Abidjan and offered to take Victoria to live with her in France where she promised to provide her with an education. Victoria's parents agreed and Victoria lived with Kouao in France until 24th April 1999 when the two of them travelled to England. Victoria travelled on Kouao's French passport, named as her daughter. Victoria lived in this country until her death on 25th February 2000.

[...] at the end Victoria spent the cold winter months, bound hand and foot, in an unheated bathroom, lying in the cold bath in a plastic bag in her own urine and faeces and having to eat what food she could get by pressing her face onto the plate of whatever was put in the bath beside her. Little wonder that at the time of her last admission to hospital her body temperature was so low it did not register on a standard thermometer and her legs could not be straightened. So in a few months this once lively, bright and energetic child had been reduced to a bruised, deformed and malnourished state in which her life ebbed away because of the total collapse of her body systems.²¹

Situations such as this indeed call into question in the strongest possible terms any *laissez-faire* approach to cross-border care, and thus militate forcefully for international standards in this sphere. While the 1996 Hague Convention²² provides an international co-operation mechanism among States Parties both for arranging foster care abroad (to the extent that the authorities are actually involved) and for assisting children in need of protection outside their country of habitual residence, it does not set standards as such. Furthermore, as a private international law treaty, it is unlikely to be ratified by most countries, in the foreseeable future at least.

Growing concern is also being expressed in some countries about the situation of children sent abroad to live with relatives under the *kafala* regime, for whom access to basic services and protection may be similarly limited or non-existent. Documented analysis of this problem is not yet available, however.

²¹ Lord Laming, Chairman of the Victoria Climbié Inquiry, speech on 25 January 2003, at www.victoria-climbié-inquiry.org.uk.

²² Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

7. Issues for international standard-setting

The CRC makes several direct or indirect references to the potential child-care role of persons other than the parents and to State obligations in their regard and with regard to the children concerned. It requires States Parties to “respect the responsibilities, rights and duties of parents or, where applicable, *the members of the extended family or community* as provided for by local custom” to provide children with appropriate direction and guidance in exercising their rights. States Parties are to take appropriate measures to protect the child from all forms of maltreatment or exploitation “while in the care of parent(s), legal guardian(s) or *any other person who has the care of the child*”. They are to provide *alternative care* paying due regard to the “desirability of *continuity in a child’s upbringing* and to the child’s ethnic, religious, cultural and linguistic background”. A *child placed by the competent authorities* for the purposes of care, protection or treatment has the right to a periodic review of all circumstances relevant to his or her placement. Every child has the right to benefit from social security, taking into account the resources and the circumstances of the child and *persons having responsibility for the maintenance of the child*. States Parties are to take appropriate measures to assist parents and *others responsible for the child* to secure the conditions of living necessary for the child’s development and to provide material assistance and support programmes where necessary.

At various points, the CRC thus mentions a wide range of carers other than parents: extended family, legal guardians, “others responsible for the child”, etc. The extent to which kin are or not covered in each case often remains somewhat open to interpretation. At no point, however, does the CRC indicate the status or role of kinship care as an out-of-home care alternative, or set out any specific obligations of the State towards kinship carers and the children in their care. Furthermore, no other internationally-recognised instrument, binding or non-binding, tackles these questions. Given the importance of kinship care and the growing reliance on in its formal manifestation, this lacuna clearly needs to be addressed.

A wide range of concerns have been highlighted in this paper. The basic questions that need to be broached in standard-setting on kinship care might nonetheless be summarised as follows:

- On what criteria should informal kinship care arrangement, kinship foster care or non-kin foster care be decided?
- What is the minimum or desirable level of involvement (e.g. registration, approval, inspection, supervision, permanency planning...) of the statutory services in the protection of children in informal kinship care?
- What levels of support – professional and financial – should be envisaged for relatives caring for children on an informal basis, and are they to differ from support made available either to parents or to foster carers?
- When kinship care is used as a formal measure, are protection and support (including permanency planning) standards to differ in any way from those applied to non-kin foster carers?
- Are child-headed households to be dealt with as a special type of kinship care?
- What regulations are required for cross-border kinship care placements?

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