

# Alternative care:

## UN guidelines and global need

According to the preamble to the UN Convention on the Rights of the Child, children should grow up in a family environment, in an atmosphere of happiness, love and understanding. In addition, Article 20 UNCRC provides that state parties 'shall provide special protection and assistance to children who no longer have a family or who are temporarily deprived of their family'. These children have the right to alternative care, provided by the state. Article 20 lists four possible types of alternative care: foster care, *kafalah* (a form of open adoption recognised in Islamic law), adoption or, should other options not be available, placement in a suitable institution for the care of children.

Despite the clarity of the CRC regarding the responsibilities of States towards children who live without their parents, many children – having lost one or both parents as a result of the HIV/AIDS pandemic, armed conflict and genocide – find themselves without any protection or assistance whatsoever. While the UNCRC provides a framework for a child protection system, it does not provide States with comprehensive and detailed guidelines. This lack, and the rapidly increasing number of children living without their parents, has given rise to a call for an internationally-accepted instrument.

### HISTORY & DEVELOPMENT

In 2004 the International Social Service and UNICEF briefed the Committee on the Rights of the Child on the feasibility of drafting global standards for the protection and well-being of children in need of alternative care<sup>1</sup>. In the same year, the Committee called for guidelines to be developed to ensure the protection of children who do not or who cannot live with their families.

The UN Committee's Discussion Day in September 2005 resulted in a recommendation that an expert's meeting should prepare a set of international standards for the protection and alternative care of children without parental care<sup>2</sup>. An NGO Working Group was set up to develop the first draft of the UN Guidelines for the Protection and Alternative Care of Children without Parental Care (the Guidelines), which was submitted to the Committee in May 2006 and has been reviewed on a number of occasions since then<sup>3</sup>.

In August 2006, a worldwide inter-governmental meeting of experts took place, to comment on and revise the Guidelines. A 15-country "Group of Friends" was set up to facilitate further revisions. The last draft was presented to the Committee in May 2007, and, after a few more minor revisions, the endorsement date is expected to be decided on in the very near future. The draft Guidelines were renamed UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children.

### CURRENT VERSION

The current version of the Guidelines contains 171 paragraphs, divided into nine different sections<sup>4</sup>. The first three parts concern the purpose, principles and scope of the Guidelines. Part 4 deals with prevention of the need for alternative care. In part 5, the framework of care provision is set out, followed by the determination of the most appropriate form of care in part 6. Part 7 sets out ground rules for the provision of alternative care, whilst part 8 covers the care provision for children who find themselves outside their country of habitual residence. The concluding part of the Guidelines is aimed at care in emergency situations.

### PURPOSE, PRINCIPLES AND SCOPE

The Guidelines are meant to enhance the current (inter)national legislation relating to the protection and well-being of children without parental care. States are called upon to ensure the full implementation of the Guidelines and, where necessary, adopt legislation to do so.

The ultimate goal of the Guidelines is for children to stay with, or return to their parents, or to other close family members, and the state is obliged to provide families with the necessary means of support to this end. Alternatively, other appropriate and permanent solutions, including adoption, should be found when circumstances do not allow this. The Guidelines recognise that alternative care can be

#### FOOTNOTES:

1 Improving protection for children without parental care, A call for international standards, August 2004, International Social Service & UNICEF.

2 Children without Parental Care, Day of General Discussion, Committee on the Rights of the Child, September 2005, CRC/C/153. [Children without parental care is the generic term used to cover all cases of children who do not live with at least one of their parents for whatever reason and under whatever circumstances].

3 Draft UN Guidelines for the Protection and Alternative Care of Children without Parental Care, May 2006, International Social Service & UNICEF.

4 Draft UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children, 18 June 2007.

informal, and may be based on a private arrangement, or formal as when ordered or authorised by a judicial authority or an administrative body.

Alternative care may be kinship care, foster care or residential placement. The Guidelines explicitly rule out institutions where children are remanded or sentenced following conviction as a form of alternative care.

The Guidelines:

- encourage governments and all parties involved to ensure that decisions made are case-specific, always in the best interest of the child and respect the right of children to be consulted and have their views taken into account.
- specifically mention the provision of support measures for vulnerable children, including those living with or affected by HIV/AIDS, those living in regions of armed conflict, those affected by drug and alcohol use and addiction, street children, victims of abuse and exploitation, abandoned children as well as the children of migrant workers and asylum seekers.
- state that where a child is placed in alternative care, the child should be placed as close as possible to their habitual place of residence and that siblings should not be separated, unless this is in their best interests. Young children, especially those under the age of three years, should wherever possible be placed in family-based settings. When children are looked after informally by relatives or by others, States should provide appropriate measures to ensure their well-being.

Children living in institutions must be protected from institutionalisation- States should design standards to prevent this. Every child should grow up with the support and protection of a legal guardian; no child should be deprived of his/her rights, including access to education and healthcare, the right to identity, protection of property and inheritance rights.

## **PREVENTING THE NEED FOR ALTERNATIVE CARE**

According to the Guidelines, States should promote parental care and support families in meeting their responsibilities towards their children as well as taking measures to prevent family separation. Parents who show an inability to provide their children with appropriate care, should receive counselling and social support encouraging and enabling them to continue to care for their offspring. The Guidelines

pay particular attention to single and adolescent parents and their children.

In cases of detention of the child's main carer, the Guidelines prescribe that the best interests of the child should prevail when deciding on whether the child should be accommodated with the imprisoned carer or be placed in care. Furthermore, the Guidelines recognise the upcoming phenomenon of the child-headed household. These are households led by a child under the age of eighteen, who has taken over responsibility for the household from the (deceased) parents. In many cases, the child-headed household consists not only of siblings, but also of (distantly related) cousins or even unrelated children. States should ensure full protection and support for such households. Special attention should be paid to the preservation of the rights of the child heading the household, fully taking into account his/her child status.

## **FRAMEWORK OF CARE PROVISION**

Community based alternative care should be given preference and the parties and individuals involved in alternative care for children should meet stringent criteria, ensuring their professional and ethical fitness. With regard to informal carers, States should ensure that such carers are known to the relevant authorities and that they receive all necessary support. States should in all cases continuously monitor the welfare of the child.

## **DETERMINATION OF THE MOST APPROPRIATE FORM OF CARE**

The Guidelines stipulate that judicial or administrative procedures should precede any decision-making on alternative care, which should be based on thorough assessment, planning and review of every individual case and be carried out by qualified professionals in a multidisciplinary team. Children should be consulted at all stages. Short-term placements should be avoided where possible, and children should preferably be placed in a permanent care setting, enabling them to form attachments. To establish the most appropriate form of care, children and/or their legal guardian(s) or parent(s) should be fully informed about all the available options, as well as their rights and obligations.

## **PROVISION OF ALTERNATIVE CARE**

The Guidelines urge States to develop and implement

policies which entail processes to determine who is responsible for a child, as well as procedures aimed at information-sharing and networking between entities and individuals, ensuring effective care and protection of the child. The policies should also cover the standards of skills, selection, training and supervision of carers, both in residential and in family-based settings.

The Guidelines lay down a number of general conditions which apply to all forms of alternative care. Firstly, transfer into alternative care should take place in a manner that is as child-friendly as possible, carried out by specially trained and non-uniformed staff. Contact between children in alternative care and their parent(s), family, previous carers or others close to them should be encouraged and facilitated where possible and be in the best interest of the child. Children should receive adequate and proper meals, based on relevant dietary standards and in accordance with their religious beliefs. Furthermore, the health of the child should be of paramount importance to the carer and medical care and psychological support should be sought where necessary. Carers should ensure that children receive the maximum level of education, in accordance with their rights. In addition the right of all children to develop through play and leisure activities should be recognised and stimulated. Children should be encouraged at all times to develop and exercise informed choices. They should also be allowed to have and to practise their religious beliefs and should never be talked into abandoning their religion while in care. States should ensure that accommodation in all alternative care settings is safe, providing protection against abuse, abduction, trafficking, sale and all other forms of exploitation. All disciplinary sanctions and behavioural measures should be in keeping with international human rights. Children should be assigned to a confidante whom they can approach about any given subject. An effective and impartial mechanism should also be in place, allowing children to file a complaint or raise concerns with regard to the care they receive. Finally, a life story book containing information about every phase of the life of the child should be maintained and be made available to that child.

According to the Guidelines, agencies and institutions should ensure appropriate after-care for children leaving their care setting, aimed at their self-reliance and full integration into society.

In addition to these conditions, carers providing children with informal care should be registered and receive support from the State where necessary. These carers should be recognised as the legal guardians of the child. All those involved in alternative care should be subject to inspection and monitoring, by independent bodies.

### **CARE PROVISION FOR CHILDREN OUTSIDE THEIR COUNTRY OF HABITUAL RESIDENCE**

All public and private bodies, as well as individuals involved in the provision of care for children outside their country of habitual residence, should respect the terms of the Guidelines. States should ratify the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for Protection of Children.

The Guidelines pay special attention to unaccompanied or separated children, including those who have arrived unlawfully in a country and victims of trafficking. These children are entitled to the same level of protection and care as any other child living in the country concerned and should not be detained in police custody. Unless extensive research and assessment has proven the situation safe, unaccompanied or separated children should not be returned to their country of habitual residence.

### **CONCLUSION**

The *UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children* form an extensive and detailed record, aimed at providing children without parents with an adequate and appropriate form of alternative care and offer guidance to all parties involved on how to achieve this level of care.

The Guidelines fill a void, apparent in many developing states and may yet present some challenges to western countries. Given the enormous rise in numbers of children around the world who – through the ravages of war, HIV/AIDS and the countless natural disasters which have taken place in recent years – now and in the future, will need assistance in reaching their potential, the Guidelines, if properly utilised and implemented, have the ability to provide these children with the care to which they have an inalienable right.