

**DRAFT UN GUIDELINES**

**FOR THE PROTECTION AND ALTERNATIVE CARE OF  
CHILDREN WITHOUT PARENTAL CARE**

*Submitted by  
International Social Service  
and  
UNICEF*

*in collaboration with  
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# **DRAFT UN GUIDELINES**

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## **PART 1: PURPOSE**

1. The present Guidelines are founded on, and seek to enhance the practical effects of, the provisions of international human rights law, including in particular those of the Convention on the Rights of the Child, as well as of the developing body of knowledge and experience in this sphere as reflected in other instruments and norms relating to the rights, interests, well-being and protection of children.
2. Against the background of these texts, the Guidelines are:
  - a. directed towards supporting efforts to keep children within, or return them to, their family of origin 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, as part of an integrated national child protection policy;
  - b. designed to assist and encourage governments to assume their responsibilities and obligations in these respects;
  - c. equally designed to be made known to all concerned with child care, in both the public and private sectors, including civil society, and at all levels, and to be taken fully into account by them in their policies, decisions and activities.

## **PART 2: FUNDAMENTAL PRINCIPLES**

3. Every individual child and young person should be given the opportunity to develop into a self-reliant, responsible and participating member of society, through living in a supportive, protective and caring environment that promotes his/her full potential. Children with inadequate or no parental care are at special risk of being denied such a nurturing environment.
4. Children must be treated with dignity and respect at all times and must benefit from effective protection from abuse, neglect and all forms of exploitation, whether on the part of care providers, peers, or third parties, in whatever care setting they may find themselves.
5. All initiatives and approaches falling within the scope of the present Guidelines must respect the principle of non-discrimination and should take due account of the gender perspective.
6. States should pay particular attention to groups of children in need of special support measures, including children with disabilities, children associated with drug abuse, children living on the street, indigenous children and those from a minority background, unaccompanied and separated children, children of migrant workers and children infected with or affected by HIV/AIDS.
7. States should pay special attention to ensuring that indigenous children and those from a minority background, as well as their families, are provided with culturally-based support and care services, and that social workers have adequate training to work effectively with them.

8. The family being the fundamental group of society and the natural environment for the growth, well-being and protection of children, efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members. Ensuring that families have access to necessary forms of support in their care-giving role is the responsibility of the State.
9. Where the child's own family is unable or unwilling, even with support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for ensuring appropriate alternative care, with or through competent local authorities and community organisations. It is the role of the State to ensure the supervision of the safety, well-being and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided.
10. States should develop and implement comprehensive child welfare and protection policies, with attention to the improvement of existing alternative care provision, reflecting *inter alia* the principles contained in these Guidelines and instituted at every level of government.
11. All decisions related to alternative care for a child or sibling group, including those regarding family preservation and reintegration initiatives, the forms and contexts of alternative care, and after-care support, should be made on a case-by-case basis. They should be grounded in the best interests and rights of the child concerned and should respect fully his/her right to be consulted and to have his/her views fully taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information.
12. The provision of alternative care should never be undertaken with the primary purpose of furthering the political, religious or economic goals of the providers.
13. Decisions regarding children in alternative care, including those in informal care, should have due regard for the importance of ensuring children a stable home and consistent caregiver, with permanency generally being a key goal.
14. Financial and material poverty alone, or conditions directly and uniquely imputable to such poverty, should never be a justification either for the removal of a child from parental care or for receiving a child into alternative care, but should be seen as a signal for the need to provide appropriate support to the family.
15. Attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including but not limited to access to education, health and other basic services, the right to identity, language and protection of property and inheritance rights.
16. Recognising that most children without parental care are looked after informally by relatives or others, States should devise appropriate means, consistent with these Guidelines, to ensure their welfare and protection while in such informal care arrangements.

17. No child should be without the support and protection of a legal guardian or other recognised responsible adult at any time.
18. Use of residential care should be limited to cases where this setting is specifically appropriate, necessary and constructive for the individual child concerned.
19. In accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of 3 years, should be provided only in family-based settings. Where the placement is of an emergency nature, or is for a pre-determined and very limited duration with planned family reintegration or other long-term care solution as its outcome, exceptions to this principle may be warranted.
20. Where large child care facilities (institutions) remain, alternatives should be actively developed in the context of an overall de-institutionalisation strategy that will enable them to be phased out. No new facilities of this nature should be established under any circumstances.
21. States should make all possible efforts to allocate sufficient human and financial resources to ensure the optimal and progressive implementation of these Guidelines. When necessary, international assistance should be sought in this regard; the enhanced implementation of these Guidelines should figure in development co-operation programmes.
22. While the degree to which these Guidelines can be fully and immediately implemented may depend on the economic, social and cultural conditions prevailing in the country or society concerned, the fundamental principles and overall orientations they contain should be respected in all cases.
23. States should ensure that an independent body has the authority under national law for overseeing implementation of these Guidelines.
24. Nothing in the present Guidelines should be interpreted as encouraging or condoning lower standards than those that may exist in given States; similarly, competent authorities, professional organisations and others are encouraged to develop national or professionally-specific guidelines that build upon the letter and spirit of the present Guidelines.

### **PART 3: SCOPE OF THE GUIDELINES**

25. 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.
26. Principles in these guidelines are also applicable to young persons already in alternative care and who need continuing care or support after reaching the age of 18.

27. For the purposes of these Guidelines, and subject to the exceptions listed in para. 28 below, alternative care signifies a formal or informal arrangement whereby a child is looked after at least overnight outside the parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his/her parent(s) or primary caregivers, or spontaneously by a care provider in the absence of parents. This includes informal fostering by family or non-relatives, formal foster care placements, other forms of family-based or family-like care placements, places of safety for emergency child care, transit centres in emergency situations, other short and long-term residential care facilities including group homes, and supervised independent living arrangements for children.
28. For the purposes of these Guidelines, and subject notably to the exceptions listed in para. 28 above, the following definitions shall also apply:
- a. Children without parental care: All children not living with at least one of their parents, for whatever reason and in whatever circumstances. Children without parental care who are outside their country of habitual residence or victims of emergency situations may be designated as:
    - “unaccompanied” if they are not cared for by another relative or an adult who by law or custom is responsible for doing so; or
    - “separated” if they are separated from a previous legal or customary primary caregiver, but not necessarily from another relative
  - b. Informal care: Any private arrangement whereby the child is looked after at least overnight by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body.
  - c. Formal care: All residential care, including where the placement arrangements were made privately, as well as all other care arrangements ordered or authorised by an administrative or judicial authority or a duly accredited body.
  - d. Kinship care: Family-based care within the child’s extended family or with close friends of the family known to the child, whether formal or informal in nature.
  - e. Foster care: Situations where children are placed for the purpose of alternative care with a family in its private home.
  - f. Residential care: Care provided in any non-family-based group setting.
29. The scope of alternative care as foreseen in these Guidelines does not extend, however, to:
- a. 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*;
  - b. 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. These Guidelines are however applicable to pre-adoption placement with the prospective adoptive parents, as far as they

are compatible with requirements governing such placements as stipulated in other relevant international instruments;

- c. 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.
30. States and others concerned are also invited to make use of these guidelines, as applicable, to boarding schools, hospitals, camps, the workplace and other places which may be responsible for the care of children at least overnight.

## **PART 4: FAMILY PRESERVATION**

### **Promoting family preservation**

31. Governments should ensure that their general policies promote family preservation. These policies should address *inter alia* poverty, inadequate housing, lack of access to basic health, education and social welfare services, discrimination, marginalisation and stigmatisation, as well as violence and substance abuse, which are the root causes of child abandonment, relinquishment and separation of the child from his/her family.
32. Special efforts should be made to tackle discrimination on the basis of any status of the child or parents, including ethnicity, religion, gender, sexual orientation, disability, HIV/AIDS status, birth out of wedlock, and socio-economic stigma, all of which can give rise to relinquishment, abandonment and/or removal of a child.
33. Governments should develop and implement policies designed to support family preservation by: a) preventing the need for alternative child care and b) ensuring that, wherever possible, children in alternative care placements may be reintegrated with their family under appropriate conditions.
34. Governments should ensure that these policies and those pertaining to alternative care are consistent and mutually reinforcing. They should provide for active co-operation between all relevant authorities, the allocation of appropriate budgets, and the mainstreaming of child and family welfare issues within all ministries directly or indirectly concerned.
35. Family preservation efforts should aim to empower families with attitudes, skills, capacities and tools to enable them to provide adequately for the protection, care and development of their children. Such efforts should draw on the complementary capacities of the State and civil society, including religious leaders and the media. They should include :
  - a. A family strengthening approach that may include parenting courses, the promotion of positive parent-child relationships, conflict resolution skills, and opportunities for income generating activities.
  - b. Support services, including financial assistance and care facilities for parents and children together when necessary, designed to enable particularly disadvantaged and vulnerable families to fulfil their responsibilities to their

children. Such services should be directly accessible at community level and actively involve the participation of families as partners.

- c. Youth policies aiming at empowering youth to positively face the challenges of everyday life and preparing future parents to make positive decisions with respect to their reproductive health and to fulfil their responsibilities in this respect.
36. Various complementary methods and techniques should be used for family preservation, varying throughout the process of support, such as home visits, group meetings with other families, case conferences, and securing commitments by the family concerned. They should be directed towards both facilitating intra-familial relationships and promoting the family's integration within its community.
  37. Special attention should be paid to the establishment and promotion of support and care services for single and adolescent parents and their children. States should ensure that adolescent parents retain all rights inherent to their status both as parents and as children, including access to all appropriate services for their own development, allowances to which parents are entitled, and their inheritance rights. Efforts should also be made to reduce stigma attached to single and adolescent parenthood.
  38. Support and services should be available to children who choose to remain together with their siblings in a child-headed household following the loss of their parents or caregivers. States should ensure that such households benefit from mandatory protection from all forms of exploitation and abuse, supervision and support on the part of the local community and its competent services, with particular concern for the children's health, housing, education and inheritance rights. Special attention should be given to ensuring the head of such a household retains all rights inherent to his/her child status, including access to education and leisure, in addition to his/her rights as a household "head".
  39. States should ensure opportunities for day care and respite care for children which would enable parents better to cope with their overall responsibilities towards the family, including additional responsibilities inherent in caring for children with severe disabilities
  40. Proper criteria should be developed for assessing the child's and family's situation, including the family's actual and potential capacity to care for the child.
  41. Decisions regarding removal or reintegration should be based on this assessment and made by suitably qualified and trained persons, on behalf of or authorised by a competent authority, in full consultation with all concerned and bearing in mind the need to plan for the child's future.

### **Specific measures to prevent family separation**

42. Services should be established, at maternity clinics and other appropriate places, to identify and counsel mothers who are at risk of relinquishing or abandoning their child and to refer them to further supportive services.



43. Safe havens should be established where a mother may abandon or relinquish an infant without risk to the child's safety, and without compromising the confidentiality of the parent, while bearing in mind the desirability of the child being able subsequently to access information on his/her origins where appropriate and possible under the law of the State.
44. Specific training should be provided to teachers and others working with children, in order to help them identify situations of abuse, neglect or risk of abandonment and refer such situations to competent bodies.
45. Any decision to remove a child against the will of his/her parents must be made by competent authorities, in accordance with applicable law and procedures and subject to judicial review.
46. When the child's sole or main carer may be the subject of deprivation of liberty as a result of remand or sentencing decisions, the best interests of the child should be a primary consideration. Non-custodial sentences and remand measures should be used wherever possible. States should take into account the best interests of the child when deciding whether to remove children born in prison and children living in prison with a parent. The removal of such children should be treated in the same way as other instances where such separation is considered. For younger children, especially those under the age of three years, such removal should in principle not take place against the will of the parent. Best efforts should be made to ensure that a child remaining in custody with his/her parent benefits from adequate care and protection.

#### **Specific measures for family reintegration**

47. In order to prepare and support the child and the family for his/her possible return to the family, his/her situation should be assessed with the different actors involved (the child, the family of origin, the alternative care giver), so as to decide whether the reintegration of the child in the family of origin is possible and in the best interests of the child, which steps this would involve and under whose supervision.
48. The aims of the reintegration and the family's and alternative care giver's principal tasks in this respect should be set out in writing and agreed by all concerned.
49. Regular and appropriate contact between the child and his/her family specifically for the purpose of reintegration should be developed, supported and monitored.
50. The reintegration of the child in his/her family should be designed as a gradual and supervised process, accompanied by follow-up and support measures taking account of the child's age and according to his/her evolving capacities, and the cause of the separation.

#### **PART 5: FRAMEWORK OF CARE PROVISION**

51. In order to meet the specific psycho-emotional, social and other needs of each child without parental care, States should ensure that the legislative, policy and financial conditions exist to provide for adequate alternative care options, with priority to family- and community-based solutions. These options should be adapted to the

respective social and cultural environment of the child and give special attention to the situation of girls.

52. These options should comprise suitable family-based and non-family-based responses for emergency, short-term and long-term care.
53. Sufficient financial and human resources should be allocated to enable welfare authorities, communities and service providers, to offer timely, appropriate and adequate alternative care options for children.
54. All entities and individuals engaged in the provision of alternative care for children must have received due authorisation to do so from a competent authority and be subject to the latter's regular monitoring and review in keeping with these Guidelines. To this end, these authorities should develop criteria for assessing the professional and ethical fitness of care providers and for their authorisation.
55. In regard to informal care arrangements for the child, whether within the extended family, with friends or with other parties, States should take all appropriate measures to ensure that such carers notify the competent authorities accordingly and receive any necessary financial and other support, and that the child's welfare be monitored, especially when the carer is not related or previously known to the child.

#### **PART 6: DETERMINATION OF THE MOST APPROPRIATE FORM OF CARE**

56. Decision-making in the best interests of the child should be based on rigorous assessment, planning and review, through established structures and mechanisms. It 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.
57. Assessment should be carried out rapidly, thoroughly, and carefully. It should take into account the child's immediate safety and well-being, as well as his/her longer term care and development, and should cover the child's personal and developmental characteristics, ethnic, cultural, linguistic and religious background, family and social environment, medical history, and any special needs.
58. The resulting report should be used as an essential tool for planning decisions from the time of its acceptance by the competent authorities onwards.
59. Permanency for the child should be secured without undue delay through, wherever possible, reintegration in his/her nuclear or extended family or in an alternative stable family setting, including *kafala* and adoption.
60. Permanency planning should be carried out from the earliest possible time, where possible before the child enters care, taking into account the immediate and longer term advantages and disadvantages of each option considered, and should comprise short- and long-term propositions.

61. Continual changes in care setting are detrimental to the child's development and ability to form attachments, and should be avoided. Short-term placements should aim at enabling an appropriate permanent solution to be arranged.
62. Planning should take account of, notably: the level of the child's attachment to the family of origin; the family of origin's capacity to protect the child; the child's need or desire to feel part of a family; the desirability of the child remaining within his/her community and country; his/her cultural, linguistic and religious background; and relationships with siblings, with a view to avoiding their separation.
63. The plan should clearly state *inter alia* the goals of the placement and the measures to achieve them.
64. To determine the most suitable form of alternative care, the child and his/her parents or legal guardians should be fully informed on the alternative care options available and their implications.
65. The preparation, enforcement and evaluation of a protective measure for a child should be carried out, to the greatest extent possible, with the participation of his/her parents or legal guardians and potential foster carers, with respect to his/her particular needs, convictions and special wishes. At the request of the child, parents or legal guardians, other important persons in the child's life may also be consulted in any decision process, at the discretion of the competent authority.
66. Any decision on the care of the child should take account of the desirability of continuity in his/her life course, avoiding disruption and contradictory decisions. The location of the care setting should avoid distancing the child from his/her habitual surroundings.
67. Siblings with existing bonds should not be separated by placements in alternative care, unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, siblings should be enabled to maintain contact with each other, unless this is against their wishes or interests.
68. States should ensure that any child who has been placed in alternative care, his/her parents, grandparents or other representative recognised by the court may challenge the placement decision before a court, and should inform all involved of this right and assist them in fulfilling it.
69. States should ensure the right of any child who has been placed in temporary care to regular and thorough review - preferably at least every six months - of the appropriateness of his/her care and treatment, taking into account notably his/her personal development and any changing needs, developments in his/her family environment, and the adequacy and necessity of the current placement in these lights. The review should be carried out by duly qualified and authorised persons, and fully involve the child and all relevant persons in the child's life.
70. The child should be prepared for all changes of care settings resulting from the planning and review processes.

## **PART 7: PROVISION OF ALTERNATIVE CARE**

### **Policies**

71. It is a responsibility of the State to develop and implement a co-ordinated policy at national, regional and local levels regarding all children who are without parental care. Such policy should be based on sound information and statistical data. It should define a process for determining who has responsibility for a child, taking into account the role of the child's parents or principal caregivers in his/her protection, care and development. Presumptive responsibility, unless shown to be otherwise, is with the child's parents or principal caregivers.
72. All State entities involved in the referral of, and assistance to, children without parental care, in co-operation with civil society, should adopt policies and procedures which favour information-sharing and networking between agencies and individuals in order to ensure an effective care and protection for these children. The location and/or design of the agency responsible for the oversight of child care should be established so as to maximise its accessibility to those who require the services which are provided.
73. In each country, the competent national authorities should draw up a charter setting out the rights of children in alternative care in keeping with the provisions of the UN Convention on the Rights of the Child and the present Guidelines. Children in alternative care should be enabled to understand fully the rules, regulations and objectives of the care setting and their rights and obligations therein.
74. All childcare provision should be based on a written statement defining the provider's aims and objectives and reflecting the standards set by the UN Convention on the Rights of the Child, the present Guidelines, and national law.
75. A regulatory framework should be established to ensure a standard process for the referral or admission of a child to a childcare setting.
76. Cultural and religious practices in alternative care should be respected and promoted to the extent that a full assessment has shown them to be consistent with children's rights and best interests, and should be modified, discouraged or banned when this is not the case. The process of identifying and assessing these practices and considering the applicability of other systems should be done in a broadly participatory way, involving relevant cultural and religious leaders as well as professionals and civil society actors working with children without parental care, as well as the children themselves.

### **General conditions of care**

77. The transfer of a child into care should be carried out with the utmost sensitivity and by specially trained non-uniformed personnel.
78. Wherever possible, the child in alternative care should be able to remain in his/her cultural environment, within his/her community or region of origin.

79. When a child is placed in alternative care, contact with his/her family of origin, as well as with other persons close to him or her, such as friends or neighbours, should be encouraged and facilitated, in keeping with the child's protection and best interests. States should pay special attention to ensuring that children in alternative care because of parental imprisonment have the opportunity to maintain contact with their parents.
80. Children should also be allowed, encouraged and assisted to maintain ties with previous foster families or other carers and peers they have known, if all concerned so wish.
81. Carers should ensure that children receive adequate amounts of wholesome and nutritious food in accordance with local dietary habits and relevant dietary standards, as well as with the child's religious beliefs. Appropriate nutritional supplementation should also be provided when necessary.
82. Carers should promote the health of the children for whom they are responsible and make arrangements to ensure that preventive and remedial medical, dental and optical treatment is made available as required.
83. Children should have access to formal, non-formal and vocational education in accordance with their rights, to the maximum extent possible in educational facilities in the local community.
84. Carers should ensure that the right of the child to develop through play and leisure activities is recognised and that opportunities for such activities are created within and outside the care setting. Contacts with the children and others in the local community should be encouraged and facilitated.
85. The specific safety, health, nutritional and developmental needs of babies and young children should be catered for in all care settings, including ensuring their ongoing attachment to a specific carer.
86. Children should be allowed to satisfy the needs of their religious and spiritual life. They should have the right to receive visits from a qualified representative of any religion of their choice, as well as the right not to participate in religious services and freely to decline religious education or counselling. Children's own religious background should be respected, and no child should be encouraged or persuaded to change his/her religious orientation during a care placement.
87. All adults responsible for children should promote the right to privacy, including appropriate facilities for hygiene and sanitary needs, especially for girls, and adequate, secure and accessible storage space for personal possessions.
88. Carers should understand the importance of their role in developing positive, safe and nurturing relationships with children, and be able to do so.
89. Governments must ensure that accommodation provided to children in alternative care, and their supervision in such placements, enable them to be effectively protected against abuse. Particular attention should be paid to the age and degree of vulnerability

of each child in determining his/her living and sleeping arrangements. Measures aimed at protecting children in care should not involve unreasonable constraints on their liberty and conduct in comparison with children of similar age in their community.

90. All alternative care settings should provide adequate protection to children from abduction and all forms of exploitation by third parties. Any consequent constraints on their liberty and conduct should be no more than strictly necessary to ensure their effective protection from such acts.
91. All carers should promote and encourage children and young people to develop and exercise informed choices, taking account of acceptable risks and the child's age and according to his/her evolving capacities.
92. Governments, agencies and facilities should take appropriate measures to ensure that children in alternative care are not stigmatised during or after their placement. This should include efforts to minimise the identification of the child as being looked after in an alternative care setting.
93. All disciplinary measures and behaviour management constituting cruel, inhuman or degrading treatment, including corporal punishment, closed or solitary confinement or any other sanction that may compromise the physical or mental health of the child, must be strictly prohibited and punishable by law. Restriction of contact with members of the child's family and other persons of special importance to the child should never be used as a sanction.
94. Use of force and restraints, including chemical restraint, should be prohibited unless duly and explicitly authorised on the basis of law and regulation and necessary in the best interests of the child or to protect others.
95. Children in care should have access to a person of trust in whom they may confide in total confidentiality. This person should be designated by the competent authority in agreement with the child concerned. The child should be informed that legal or ethical standards may require breaching confidentiality under certain circumstances.
96. Children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement. Such mechanisms should include: initial consultation, feedback, implementation and further consultation. Young people with previous care experience should be involved in this process, due weight being given to their opinions. This process should be conducted by competent persons trained to work with children and young people.
97. To promote the child's sense of self-identity, a life story book comprising information, pictures, personal objects and mementoes, regarding each step of the child's life should be maintained with the child's participation and made available to the child throughout his/her life.

## **Informal care**

98. With a view to ensuring that the above general conditions of care are met in informal care settings, governments should recognise the role played by informal care, and take adequate measures to support and supervise such settings, on the basis of an assessment of which particular settings may require special assistance or oversight.
99. Governments should encourage all informal carers to register and should make available to them counselling, support, including financial assistance where required, and other services equivalent to those provided to families of origin or under formal foster care arrangements.
100. State should recognise the *de facto* responsibility of informal carers for the child.
101. When a child is in the informal care of grandparents, the latter should in principle be automatically recognised as legal guardians.
102. Governments should devise special and appropriate measures to ensure that children in informal care are effectively protected against abuse, neglect and all forms of exploitation, with particular attention to informal care provided by non-relatives, by relatives previously unknown to the child, or far from the child's habitual place of residence.

## **Legal guardianship**

103. States should seek to establish a mechanism for the appointment of a legal guardian vested with both the right and the responsibility to make day-to-day decisions in the best interests of the child where the child's parents are absent or are incapable of making such decisions.
104. The guardianship service should be established by social service authorities, or other appropriate institutions, and be implemented directly by them or through formally accredited organisation(s), including NGOs. The guardianship service should be held responsible for the acts of the appointed guardian. The State shall ensure that this service is fully independent, allowing it to take any action it considers to be in the best interests of the child.
105. Legal guardians should have relevant childcare expertise and an understanding of the special and cultural needs of the children to be entrusted to their care. Legal guardians should receive training and professional support, and undergo police reference checks. They should not have any duties or interests which could potentially be in conflict with their role of supporting the child's best interests.
106. The guardian's role and responsibilities are to ensure that the child is properly represented, that his or her views are made known, and that all decisions are made in the child's best interests; they should therefore include:
  - a. ensuring that the child has appropriate care, accommodation, health care provisions, psycho-social support, education and language support,
  - b. ensuring that the child has access to legal and other representation where necessary,

- c. consulting with the child so that the child's views are taken into account by decision-making authorities, and advising and keeping the child informed of his /her rights,
- d. contributing to the identification of a durable solution in the child's best interest,
- e. providing a link between the child and various organisations that may provide services to the child,
- f. assisting the child in family tracing,
- g. ensuring that if repatriation or family reunification is carried out, it is done in the best interest of the child, and
- h. helping the child to keep in touch with his/her family

### **Agencies and facilities organising or providing formal care**

107. National legislation should stipulate that all agencies and facilities organising or providing foster care services or residential care for children must be registered and authorised to operate, and that failure to do so constitutes a criminal offence. Authorisation should be granted and regularly reviewed by the competent authorities, on the basis of standard criteria covering, at a minimum, the agency's or facility's objectives, functioning, staff recruitment and qualifications, conditions of care and financial resources and management.
108. All agencies and facilities should have written policy and practice statements, consistent with the present Guidelines, setting out clearly their aims and the standards applied for the recruitment of qualified and suitable carers to ensure that those aims are met and that the children concerned are protected.
109. All agencies and facilities should develop a staff code of conduct, consistent with the present Guidelines, and which includes clear reporting procedures on allegations of misconduct by carers.
110. Comprehensive and up-to-date records should be maintained regarding the administration of alternative care services, including detailed files on all children in their care, staff employed and financial transactions.
111. The records on children in care should be complete, up-to-date and secure, and include information on their admission and departure, and the form, content and details of the care placement of each child, along with any appropriate identity documents and other personal information. This record should follow the child throughout the alternative care period and be consulted by duly authorised professionals responsible for his/her current care.
112. The above-mentioned records should be made available to the child, as well as to the parents or guardians, within the limits of the child's right to privacy and confidentiality. Appropriate counselling should be provided before, during and after consultation of the record.
113. All alternative care services should have a clear policy on maintaining the confidentiality of information pertaining to each child, which all carers are aware of and adhere to.



114. All agencies and facilities should ensure that, prior to employment, carers and other staff in direct contact with children are systematically subject to personal background checks, including wherever possible checks on their criminal record.
115. Conditions of work, including remuneration, for carers employed by agencies and facilities should be such as to maximise motivation, job satisfaction and continuity, and hence their disposition to fulfil their role in the most appropriate and effective manner.
116. Training should be provided to all carers on the rights and specific needs of children without parental care, with special attention to children in particularly difficult situations such as emergency placements or placements outside their area or country of habitual residence. Cultural, social, gender and religious sensitisation should also be assured.
117. Training in dealing appropriately with challenging behaviour, including conflict resolution techniques and means to prevent acts of harm or self-harm, should be provided to all care staff employed by agencies and facilities.
118. Agencies and facilities should ensure that, wherever appropriate, carers are prepared to respond to the specific needs, notably those living with HIV or other chronic illnesses, children with disabilities, unaccompanied or separated children and children from minorities. In order to create a positive self-image and attitude towards these children, the hiring of caregivers or other professionals with disabilities or from a minority background should be encouraged.

### **Foster care**

119. The competent authority or agency should devise a system to assess and match the needs of the child with the abilities and resources of potential foster carers and to prepare all concerned for the placement.
120. A pool of competent foster carers should be identified in each locality who can provide children with care and protection while maintaining ties to family, community and cultural group.
121. Special preparation, support and counselling services for foster carers should be developed and made available to carers at regular intervals.
122. Carers should have opportunities within fostering agencies and other systems involved with children without parental care to make their voice heard and to influence policy.
123. Encouragement should be given to the establishment of associations of foster carers, which can provide important mutual support and contribute to practice and policy development.

## **Residential care**

124. Facilities providing residential care should be small and organised around the rights and needs of the child, in a setting as close as possible to a family or small group situation. Their objective should generally be to provide temporary care, and to contribute actively to the child's family reintegration or, if this is not possible, to securing his/her stable care in an alternative family setting.
125. The competent national or local authority should establish rigorous screening procedures to ensure that only appropriate admissions to such facilities are carried out.
126. States should ensure that there are sufficient carers in residential care settings to allow individualised attention and to give the child, where appropriate, the opportunity to bond with one of their number. Carers should also be deployed within the care setting in such a way as to implement effectively its aims and objectives and ensure child protection.
127. Laws, policies and regulations should prohibit the recruitment and solicitation of children for placement in residential care by agencies, facilities or individuals.

## **Inspection and monitoring**

128. Agencies and facilities providing alternative care services should be held legally responsible for ensuring that the quality of care provided is in keeping with these Guidelines and with applicable national law and policy.
129. Agencies, facilities and professionals involved in care provision should be accountable to a specific public authority, which should ensure *inter alia* frequent inspections comprising both foreseen and unannounced visits, involving discussion with and observation of the staff and the children.
130. To the extent possible and appropriate, inspection functions should include a component of training and capacity building for care providers.
131. States should guarantee the functional independence of a national monitoring mechanism with due consideration to the *Principles relating to the status of national institutions for the promotion and protection of human rights* (Paris Principles). The national monitoring mechanism should be easily accessible to children, to parents and to those responsible for children without parental care. The functions of the national monitoring mechanism should include:
  - a. Consulting in conditions of privacy with children in all forms of alternative care, visiting the care settings in which they live, and undertaking investigations into any alleged situation of violation of children's rights in those settings, on complaint or on its own initiative;
  - b. recommending relevant policies to appropriate authorities with the aim of improving the treatment of children deprived of parental care and ensuring that it is in keeping with the preponderance of research findings on child protection, health, development and care;

- c. submitting proposals and observations concerning existing or draft legislation;
- d. contributing independently to the reporting process under the Convention on the Rights of the Child, including to periodic State Party reports to the Committee on the Rights of the Child, as concerns the implementation of the present Guidelines.

### **Support for after-care**

132. Agencies and facilities should have a clear policy and carry out agreed procedures relating to the planned and unplanned conclusion of their work with children to ensure appropriate after-care and/or follow-up. They 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.
133. The process of transition from care to after-care should take into consideration the child's gender, age, maturity and particular circumstances and include counselling and support, notably to avoid exploitation. Children leaving care should be encouraged to take part in the planning of after-care life. Children with special needs, such as disabilities, should benefit from an appropriate support system, ensuring *inter alia* avoidance of unnecessary institutionalisation.
134. Special efforts should be made to allocate to each child, whenever possible, a specialised person who can facilitate his/her independence when leaving care.
135. After-care should be prepared as early as possible in the placement and in any case well before the child leaves the care setting.
136. Ongoing educational and vocational training opportunities should be offered to young people leaving care in order to help them to become financially independent and generate their own income.
137. Access to social, legal and medical services, together with appropriate financial support, should also be provided to young people leaving care and during after-care.

## **PART 8: CARE PROVISION FOR CHILDREN OUTSIDE THEIR COUNTRY OF HABITUAL RESIDENCE**

### **Placement of a child for care abroad**

138. The present Guidelines should be respected fully by all public and private entities and all persons involved in arrangements for a child to be sent for care to a country other than his/her country of habitual residence, whether for medical treatment, vacation, respite care or any other reason.
139. States concerned should ensure that a designated body has responsibility for determining specific standards to be met regarding, in particular, the criteria for selecting carers in the host country and the quality of care and follow-up, as well as for supervising and monitoring the operation of such schemes.

140. To ensure appropriate international co-operation and child protection in such situations, States should ratify or accede to *the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for Protection of Children*.

### **Provision of care for a child already abroad**

141. The present Guidelines, as well as other relevant international instruments and norms, should be respected fully by all public and private entities and all persons involved in arrangements for a child needing care while in a country other than his/her country of habitual residence, for whatever reason.

142. Unaccompanied or separated children already abroad should enjoy the same level of protection and care as national children in the country concerned.

143. In determining appropriate care provision, the diversity and disparity of unaccompanied or separated children (ethnic and migratory backgrounds, cultural and religious diversity, etc.) should be taken into consideration on a case by case basis.

144. Unaccompanied or separated children, including those who arrive unlawfully in a country, should not be deprived of their liberty for having breached any law governing access to and stay within the territory.

145. Child victims of trafficking should neither be detained in police custody nor subjected to criminal procedures for offences related to their situation as trafficked persons.

146. In accordance with paras 103-105 above, as soon as an unaccompanied child is identified, a guardian should be appointed to accompany the child throughout the process until a durable solution in the best interests of the child has been identified and implemented.

147. As soon as an unaccompanied or separated child is taken into care, every effort should be made to trace his/her family and re-establish family ties, when this is in the best interests of the child and would not endanger those involved.

148. In order to assist in planning the future of an unaccompanied or separated child, relevant state and social service authorities should procure documentation and information in order to conduct an assessment of the child's risk and social and family conditions in his/her country of habitual residence.

149. Unaccompanied or separated children must not be returned to their country of habitual residence:

- a. if, following the risk and security assessment, there are reasons to believe that the child's safety or that of his/her family is in danger;
- b. unless, prior to the return, a suitable care-giver such as parent, other relative, other adult care-taker, a government agency, or accredited child-care agency in the country of origin has agreed, and is able to take responsibility for the child and provide him/her with appropriate care and protection;

- c. unless, prior to return, it has also been established that support in devising and implementing permanent life and integration plans will be available;
  - d. if, for other reasons, it is not in their best interests.
150. With these aims in mind, co-operation between states, regions, local authorities and civil society associations should be promoted, strengthened and enhanced.
151. When an unaccompanied or separated person claims status as a minor, the presumption of minority should apply. It entails acknowledging individuals as minors in cases of doubt and verifying age claims through various and complementary methods, respecting the dignity of the child.
152. The effective involvement of consular services or, failing that, legal representatives of the country of origin should be foreseen, when this is in the best interests of the child and would not endanger the child or his/her family.
153. Where appropriate those responsible for the welfare of an unaccompanied or separated child should facilitate regular communication between the child and his/her family.
154. Placement with a view to adoption should not be considered a suitable initial option for an unaccompanied or separated child. Before such a placement can be considered viable or desirable, a rigorous assessment, conducted by an authorised body, of the child's family circumstances in the country of origin should be carried out. Sufficient time should be allowed to trace the family of origin and determine the potential for reunification or other suitable placement. The period during which placement with a view to adoption should not be envisaged should be in keeping with the child's evolving capacities and developmental needs.

## **PART 9: CARE IN EMERGENCY SITUATIONS**

### **Application of the Guidelines**

155. All principles set out in the present Guidelines should continue to apply in situations of emergency arising from natural and man-made disasters. Individuals and organisations wishing to work on behalf of children without parental care in emergency situations are expected to endorse and operate in keeping with these Guidelines.
156. In such circumstances, the State or *de facto* authorities in the region concerned, the international community, as well as all local, national, foreign and international agencies providing or intending to provide child-focused services should pay special attention to:
- a. Ensuring that all entities and persons involved in responding to unaccompanied or separated children are sufficiently experienced, trained, resourced and equipped to do so in an appropriate manner;
  - b. Developing, as necessary, temporary and long-term family-based care;
  - c. Using residential care only as a temporary measure until family-based care can be developed;

- d. Prohibiting the establishment of new long-term residential facilities;
- e. Preventing the cross-border displacement of children, except under the circumstances foreseen in para. 161;
- f. Making co-operation with family tracing and reintegration efforts mandatory.

### **Preventing separation**

157. Organisations and authorities should make every effort to prevent the separation of children from their parents or primary caregivers, unless the best interests of the child so require, and ensure that their actions do not inadvertently encourage family separation by providing services and benefits to children alone rather than to families.
158. Deliberate separations should be prevented by:
- a. ensuring that all households have access to basic relief supplies and other services, including education;
  - b. limiting the development of residential care options, and restricting their use to those situations where it is absolutely necessary.

### **Care arrangements**

159. Communities should be supported to play an active role in monitoring and responding to care and protection issues facing children in their local context.
160. Care within a child's own community, including fostering, should be encouraged, as it provides continuity in socialisation and development.
161. As unaccompanied or separated children may be at heightened risk of abuse and exploitation, monitoring and specific support to carers should be foreseen to ensure their protection.
162. Children in emergency situations should not be removed to other countries for alternative care except temporarily for compelling health, medical or safety reasons. In that case, this should be as close as possible to their home, they should be accompanied by a parent or care-giver known to the child, and a clear return plan should be established.
163. Should family reintegration prove impossible within an appropriate period, or be deemed contrary to the child's best interests, other long-term options such as foster care, appropriate residential care or adoption should be envisaged.

### **Tracing and family reintegration**

164. Identifying, registering and documenting unaccompanied or separated children are priorities in any emergency and should be carried out as quickly as possible.
165. Registration activities should be conducted by or under the direct supervision of Government authorities and explicitly-mandated agencies with responsibility for and experience in this task.

166. The confidential nature of the information collected should be respected and systems put in place for safe forwarding and storage of information. Information should only be shared among duly mandated agencies, for the purpose of tracing, family reintegration and care.
167. All those engaged in tracing for family members or primary legal or customary caregivers should use the same approach, with standardised forms and mutually compatible systems. They should ensure that the child and others concerned would not be endangered by their actions.
168. The validity of relationships and the confirmation of the willingness of the child and family members to be reunited must be verified for every child. No action should be taken that may hinder eventual family reintegration such as adoption, change of name, or movement to places far from the family's likely location until all tracing efforts have been exhausted.
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