**Day of General Discussion of the UNCRC**

**16-17 September 2021**

**Contribution from the Ministry of Labour, Solidarity and Social Security Concerning Children Rights and Alternative care**

Existing international human rights obligations concerning alternative care are sufficiently developed. However, their translation into national legislation and policies and the implementation of those obligations nationally still lag behind, as demonstrated for instance by the different cases before the European Court of Human Rights (ECtHR) and the Council of Europe European Social Rights Committee.

The differing definitions regarding types of care placement make comparisons difficult between countries and sometimes even at the national level. The United Nations Guidelines for the Alternative Care of Children contribute to better defining the terms related to alternative care.

Therefore, for the purpose of this contribution, we are considering the definition of UNICEF Europe and Central Asia[[1]](#footnote-1) following two forms of formal alternative care arrangements: 1) **Family-based care** includes kinship care, foster care, and other forms of family-based care, such as guardianship care; 2) **Residential Care** that is provided in a non-family-based group setting with paid and/or unpaid staff where some children live and receive care and are placed by order of a competent authority. Parental rights are transferred to the State in the case of these children.

It is noteworthy to highlight that, in Portugal, Decree-Law no. 164/2019, of October 25, established the implementation of the regime of residential care and Decree-Law no. 139/2019, of September 16, established the implementation of the regime of foster care, both of which are measures to promote the rights and protection of children and youth in danger. Additionally, Ministerial Order no.278-A/2020, of December 4, defines the terms, conditions and procedures of the application, selection, training and evaluation process of foster families, as well as their respective recognition.

Portugal reiterates the right of all children to live with their families and in a community. For this purpose, important measures are being taken to develop integrated child protection systems that seek to prevent family separation, shift to “community-based” and “family-based” care, and provide support for children out of care. Our approach seeks above all to promote individualized responses, tailored to the situation and needs of each child who has been or risks being placed in out-of-home care, and that are in line with the child human rights.

We believe that the overall approach should underline that the decisions must be based on the best interests of the child and the child’s rights and dignity should be protected and safeguarded. To this end, we believe that the topics for discussion should focus on further developing the United Nations Guidelines for the Alternative Care of Children in what concerns the **quality of care** and **preventive measures.**  The latter requires preventive efforts at all levels - primary, secondary and tertiary: tackling general conditions that enhance the risk of family breakdown, working with individual families to avoid that outcome, and securing a child’s return to parental care under appropriate conditions wherever possible.

In respect to the **quality of care,** we can identify two fundamental principles 1) the “necessity principle”, to ensure that placement in an alternative care setting is limited to cases where it is genuinely warranted, and 2) the “suitability principle” whereby, if such alternative care is indeed deemed to be necessary, the solution is constructive and appropriate for each child concerned.

1. **Determining the need for alternative care**

It is important to discuss a wide range of measures - from the global to the individual - that should be brought into play when seeking to apply the “necessity principle” by discouraging recourse to alternative care options, including:

* addressing negative societal factors (discrimination, marginalization, stigmatization of certain groups etc.).
* improving family support and the reintegration system to ensure that families are empowered and motivated to take care of their children on their own.
* consultation and counselling services with the child and his/her parents, the wider family and every person that the child feels important for his/her life. The need for consultation with the child in particular and making sure that his/her views are taken into consideration should constantly be highlighted, as should the active involvement of the parents and others concerned.
* ensuring that parents facing difficulties are offered options that will preclude the need they may feel to relinquish their child, so that such cases are reduced to a minimum.
* end unwarranted removal and arbitrary decisions that separate the child from his/her family. A very important policy principle should be taken into consideration: if material circumstances - including situations of poverty - are at the heart of a family’s problems, neither that situation nor its direct or indirect consequences can serve alone to justify the removal of a child from parental care.
* having in place an effective gate-keeping mechanism to assess each child’s needs and situation, with an adequate range of options available to guarantee that children who could be cared for in other ways do not come into the formal care system.
* prohibiting the ‘recruitment’ or retention of children in residential care facilities as a means of maximizing funding when the latter is based on the number of children in their care and discarding forms of financing that encourage unnecessary placements. This still happens in some parts of Europe.

In parallel with these actions to implement the “necessity principle” by preventing the unwarranted placement of children in alternative care are those to ensure adherence to the equally vital “suitability principle”.

2. **Determining the suitability of an alternative care option**

There are two facets of the suitability principle. The first is to ensure that every alternative care setting, in all its aspects, conforms to a set of minimum standards and respects the rights of the child. The second is that that setting in which a child is cared for must match the individual needs of each child.

As a result, it is important to emphasize the need for a wide range of care settings to be available, so that the setting that is likely to respond best to an individual child’s specific needs and circumstances at a given time can be selected. Appropriate residential care settings (so not “institutions”) figure within this range, since they are an important resource to make available for some children at certain times. However, these settings must be used only for positive and constructive reasons for a particular child and not because nothing else is available. The care options must be placed in the context of a full care plan aimed at ensuring stability for the child in the longer term, including reintegration in his/her family when possible.

**3.** **The preventive approach**

The necessity principle is implemented through prevention at three levels. Ensuring a fully-fledged programme designed to prevent recourse to alternative care is a complex exercise.

The primary level is grounded in laws, policies and initiatives that promote social justice, access to services, non-discrimination and the elimination of poverty, etc. These are generalized prevention measures targeting society as a whole and tackle a wide range of issues, from non-attendance at school and poor health indicators to juvenile offending.

Secondary-level prevention consists essentially of a safety net for whom primary prevention has failed, in particular affordable and effective individualized support to children and families who are either identified or have self-declared as being in difficulty and at risk. At this stage, parents also need to be informed about the alternatives available to them that will avoid placement of the child in formal alternative care.

The tertiary level comes into play when both, primary and secondary prevention, have failed, and the child has been relinquished by or removed from the family. It aims to secure sustainable family reintegration, and thus to prevent both long-term alternative care and a return to care following unsuccessful family reunion. Again, individualized responses are required, consulting with the child and, notably, setting in place a multi-dimensional programme to prepare the family (including siblings) for the child’s return and to support all those involved once it takes place.

Family strengthening is the core thrust of all levels of prevention - thus, even when the child’s separation from the family has become inevitable.

1. https://www.unicef.org/eca/definitions [↑](#footnote-ref-1)