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CELCIS Centre for excellence for looked after children in Scotland

MOVING FORWARD:
Implementing the 'Guidelines for the Alternative Care of Children'



In association with

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SYMBOLS & ACRONYMS

§ – refers to a paragraph within a document

AIDS – Acquired Immunodeficiency Syndrome

ATD (Fourth World) – *'Aide à Toute Détresse'*

BCN – Better Care Network

Beijing Rules – Standard Minimum Rules for the Administration of Juvenile Justice

BID – Best Interests Determination

CAT – Convention against Torture

CEDAW – Convention on the Elimination of Discrimination against Women

CELCIS – Centre for Excellence for Looked After Children in Scotland

CESCR – Covenant on Economics, Social and Cultural Rights

CoE – Council of Europe

CRC – Convention on the Rights of the Child

CRC Committee – Committee on the Rights of the Child

CRPD – Convention on the Rights of People with Disabilities

HIV – Human Immunodeficiency Virus

HRC – Human Rights Council

ISS – International Social Service

NGO – Non-Governmental Organisation

OHCHR – Office of the High Commissioner for Human Rights

OVC – Orphans and Vulnerable Children

Paris Principles – Principles relating to the status of national human rights institutions

RELAF – Latin American Foster Care Network

The *Guidelines* – *Guidelines for the Alternative Care of Children*

The handbook – Moving Forward: Implementing the *'Guidelines for the Alternative Care of Children'*

UN – United Nations

UNGA – United Nations General Assembly

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations Children's Fund

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FOREWORD

The situation of children deprived of parental care has been the subject of constant and serious concern expressed by the Committee on the Rights of the Child over its two decades of work to monitor and promote the implementation of the Convention on the Rights of the Child. This concern is not only evident from the Committee's findings when reviewing individual States' compliance with the treaty's provisions, but was also manifested clearly and in global terms when it decided to devote its annual Day of General Discussion to that issue in 2005.

The Committee's preoccupations are based on a variety of factors. These include:

- the large number of children coming into alternative care in many countries, too often essentially due to their family's material poverty,
- the conditions under which that care is provided, and
- the low priority that may be afforded to responding appropriately to these children who, lacking the primary protection normally assured by parents, are particularly vulnerable.

The reasons for which children find themselves in alternative care are wide-ranging, and addressing these diverse situations – preventively or reactively – similarly requires a panoply of measures to be in place. While the Convention sets out basic State obligations in that regard, it does not provide significant guidance on meeting them.

This is why, from the very outset of the initiative in 2004, the Committee gave whole-hearted support to the idea of developing the *Guidelines for the Alternative Care of Children* that would gain the approval of the international community at the highest level.

The acceptance of the *Guidelines* by the UN General Assembly in 2009 signalled all governments' general agreement that the 'orientations for policy and practice' they set out are both well-founded and desirable. Since that time, the Committee has been making full use of the principles and objectives established in the *Guidelines* when examining the reports of States Parties to the Convention and in formulating its observations and recommendations to them.

As with all internationally agreed standards and principles, however, the real test lies in determining how they can be made a reality throughout the world for those that they target – in this case, children who are without, or are at risk of losing, parental care. Identifying those measures means, first of all, understanding the implications of the 'policy orientations' proposed in the *Guidelines*, and then devising the most effective and 'do-able' ways of meeting their requirements. Importantly, moreover, the *Guidelines* are by no means addressed to States alone: they are to be taken into account by everyone, at every level, who is involved in some manner with issues and programmes concerning alternative care provision for children.

This is where the *Moving Forward* handbook steps in. As its title suggests, it seeks precisely to assist all concerned to advance along the road to implementation, by explaining the key thrusts of the *Guidelines*, outlining the kind of policy responses required, and describing 'promising' examples of efforts already made to apply them in diverse communities, countries, regions and cultures.

I congratulate all the organisations and individuals that have contributed to bringing the *Moving Forward* project to fruition. This handbook is clearly an important tool for informing and inspiring practitioners, organisations and governments across the globe who are seeking to provide the best possible rights-based solutions and care for their children.

Jean Zermatten
Chairperson UN Committee on the Rights of the Child
31 October 2012

CHAPTERS

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THE MOVING FORWARD PROJECT: PUTTING THE *GUIDELINES* INTO PRACTICE

In this chapter you will find:

The last decade has seen big steps taken toward the goal of placing children's rights at the heart of alternative care.

From the initial concept, to the development and approval of the *Guidelines for the Alternative Care of Children* (the *Guidelines*) by the United Nations General Assembly in its resolution A/RES/64/142, we now have a more coherent policy framework. Today, the *Guidelines* shape how policy-makers, decision-makers and professionals approach both the prevention and the provision of alternative care for children.

This handbook, *Moving Forward*, has been created to take us even further along the road to embedding children's rights in alternative care provision. It aims to support implementation of the *Guidelines* by making strong connections between national policy, direct practice and the *Guidelines* themselves.

Moving Forward reflects the core message in the *Guidelines* – that children must never be placed in alternative care unnecessarily, and where out-of-home care must be provided it should be appropriate to each child's specific needs, circumstances and best interests.

This chapter explains why and how this handbook

1a. Need for the handbook

It is not always easy to interpret the intended meaning of international instruments, and understand the thinking behind their provisions, on the basis of the texts alone. Consequently, the real implications of putting them into effect are often difficult to determine. That is why additional documents are prepared to clarify the origins, development and intended purpose of each instrument.

These documents can take different forms. For binding international treaties, such as the Convention on the Rights of the Child (CRC), the background to the drafting is often recorded in '*travaux préparatoires*' (records of the debates). In some instances, such as the **1993 Hague Convention on Intercountry Adoption**, an Explanatory Report is drawn up after the event. Whatever their form, such documents help those responsible for implementing and monitoring the treaties to understand why certain provisions were included (or, in some cases, excluded), why they are phrased in particular way, and what basic intentions lie behind their inclusion. They contribute to interpreting obligations under the treaties and can, therefore, usefully guide their practical enforcement.

In the case of non-binding instruments such as declarations, rules and guidelines, an Explanatory Report may also be prepared – examples include a number of Council of Europe texts, such as the Recommendation on the Rights of Children in Residential Institutions and the Guidelines for Child-Friendly Justice. In rare instances (the UN's 1985 Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) being a good example) an explanatory commentary is incorporated in the official text after each provision.

None of these potential sources of guidance and inspiration existed for the *Guidelines for the Alternative Care of Children*. This handbook, therefore, sets out the reasoning behind the main orientations of the *Guidelines* and indicates legislative, policy and programming initiatives that should enable the provisions to be put into practice effectively.

1b. Use of the handbook

The handbook is designed as a resource tool for legislators, policy-makers and decision-makers in the field of child protection and alternative care for children. Like the *Guidelines* themselves, however, it should also be of interest to all professionals and care providers. In other words, it is intended for the broadest range of entities and individuals, in the governmental, private and civil society sectors.

It can be used in a variety of ways:

- To enhance understanding of the various provisions in the *Guidelines*: why they were included and what their ramifications might be for policy and practice
- As an advocacy tool
- As a basis and/or instigator of debates, with a view to adjusting alternative care systems
- As a reference base or benchmark for assessing and monitoring current alternative care systems, and for reporting to national and international bodies

1c. Overview of the handbook

The handbook provides key information on the approach taken and the main issues raised by the *Guidelines*. It links to policy and 'promising practice' examples, and provides signposts to useful additional resources. To this end, the of provisions that follow, as far as possible, the structure of the *Guidelines*, and are considered from the standpoints of **Context**, **Implications** and **Examples**.

i. Context: Understanding the *Guidelines*

In the sections entitled '**Understanding the *Guidelines***', our aim is to highlight the main innovative points and indicate the thinking behind the inclusion or wording of certain provisions. Given the length and detail of the *Guidelines*, it would be impossible for this handbook to summarise or comment on every aspect of the text. It follows that the handbook cannot *replace* the *Guidelines*, and should therefore be consulted in *conjunction* with them.

ii. Implications for policy-making

We recognise that each State develops policy according to its own social, political, cultural and economic context. Nevertheless, the **Implications for Policy-Making** sections of the handbook are important in highlighting areas where national governments should provide leadership and oversight for a range of policy activities (legislation, policy frameworks, guidance and programmes). Policy implications are offered in eleven stand-alone sections entitled 'Implications for Policy-Making', where they correspond to the *Guidelines* provisions being considered. 'Implications for Policy-Making' sections are also located within groupings of relevant 'Focus boxes' and 'promising practice' examples. These eleven sections outline policy-making implications relating to:

- Demonstrating a commitment to children's rights
- Supporting the rights and needs of children with disabilities and other special needs
- Providing the policy framework for alternative care
- Providing a range of care options to meet children's needs
- Implementing rigorous processes for assessment, planning and review
- Supporting an evidence-based approach to policy-making
- Ensuring complaints mechanisms are in place
- Use of discipline, punishment and restraints
- Setting standards for staffing formal care services

- Providing residential care option
- Providing care for children outside their country of habitual residence

iii. 'Focus' boxes

Within each cluster of provisions, certain topics are examined in more depth, and are analysed in **'Focus' boxes**. The topics were selected not because they are necessarily more important than other issues, but because it was felt that they needed more explanation and illustrative examples of how they can be put into practice. Fifteen topics are examined:

1. Participation of children and young people in care decisions and care settings
2. Placement of children aged 0-3 in family-based settings
3. Strategies for de-institutionalising the care system
4. Protection and support for child-headed households
5. Supporting families to prevent abandonment and relinquishment
6. The care of children whose primary caregiver is in custody
7. Promoting sustainable reintegration of children into their family from an alternative care setting
8. Gatekeeping: The development of procedures to screen referrals, assess need and authorise placement
9. State involvement in informal care arrangements
10. Supporting appropriate traditional care responses
11. Developing family-based alternative care settings
12. Preparation for leaving care and aftercare support
13. Financing care to avoid unwarranted placements
14. Developing reliable and accountable licensing and inspection systems
15. Providing alternative care in emergency situations

iv. 'Promising practice' examples

For each topic, an explanation of the issues at stake is followed by at least two **'promising practice' examples** drawn from countries in all regions of the world. These examples have been submitted by experts and NGOs or identified by our own research. They are deliberately called examples of 'promising' rather than 'best' practices, and their inclusion does not represent an endorsement from the handbook authors as to their on-going quality. Nevertheless, we believe that there is sufficient evidence for them to be described as the kind of 'promising' development that the *Guidelines* are intended to encourage. Importantly, they link the *Guidelines* and the handbook to work that is already happening 'on the ground'. Where possible, we provide a publicly available account of the project and, in some cases, we are able to provide a link to an evaluation.

v. Further resources

An appendix is provided that includes further resources and the full text of the *Guidelines*. The Further Resources section includes: International instruments and guidelines, Commentaries on international instruments and guidelines, a selection of key Literature on alternative care and websites of major Children's rights organisations and networks.

Key resources used in developing the handbook are listed here, along with all the instruments and guidelines referred to in the text – many with web-links provided. All the resources listed are provided in their English-language version and, in the case of United Nations instruments, the web-links give access to other UN language versions. The Alternative Care section of resources is an indicative, but in no way exhaustive, list of references that signposts readers to valuable sources of information for further learning. Only documents that have relevance across a variety of contexts or regions of the world have been included.

1d. Methodology

Policy implications, 'promising practices' and resources were identified during an extensive consultation process. The handbook steering group contacted a wide range of experts and, using existing international professional networks, identified key contacts in regions. The handbook was field tested in Argentina (through RELAF) and Malawi (through BCN-Malawi), and went through a robust grey and academic literature review.

Researchers from the handbook team have drawn from a range of resources including reports and studies on alternative care in a global context, international documents, and responses to the consultation process.

A particular search strategy was used for selecting the 'promising practice' examples. They were retrieved using various combinations of search terms based on the selected topics, well-specified geographical gaps, and terms relating to inspiring practice. The search used various general terms relating to each of the topics (e.g. 'aftercare', 'informal care', 'kinship care', etc). Articles were retrieved based on database findings, and specific journals suggested by the steering group were then targeted. After academic databases were reviewed, a hand-search was conducted of report documents suggested by consultation respondents, steering group members and the project team. The steering group was also asked to circulate requests for practice examples to its members, which helped to identify further examples. Finally, the project team reviewed all the examples against the topic descriptor and agreed on which to include.

The range of practice studies aims to reflect the richness and diversity of 'promising practice' internationally, therefore no more than one practice example per country was included in the handbook for all but one of the topics in the text. Due to the limited number of countries that have needed to develop emergency responses, and the resulting limited examples of accessible good practice within this context, countries were referred to again in the chapter on 'Providing alternative care in emergency situations'.

Overall, there is a very good regional spread of practice examples. While it was not possible to provide a regional spread for every topic, selecting no more than one example per country was balanced with other considerations. There was a desire to have strong evidence for every example of 'promising practice' and to represent the work of diverse sectors (e.g. governmental, NGOs, civil society) as well as a wide range of different agencies. Ensuring this was the case limited opportunities to achieve better regional balance for some topics.

DEVELOPMENT AND KEY FOUNDATIONS OF THE *GUIDELINES*

In this chapter you will find:

Chapter 2

2a. Background to the *Guidelines*

i. Why and how the *Guidelines* were developed and approved

The Convention on the Rights of the Child (CRC) seeks to protect children who are unable to live with their parents or remain in a stable family setting (notably, though not only, in Article 20). However, the CRC does not describe in any depth what measures should be taken. The same applies to many other topics covered by the CRC. As a result, more detailed, internationally recognised guidance is necessary. For example, the CRC is already supplemented by a substantial set of standards relating to juvenile justice, a major treaty devoted to intercountry adoption, and a guide to best interests determination for refugee and unaccompanied children.

CRC Article 20

1. *A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State*
2. *States Parties shall in accordance with their national laws ensure alternative care for such a child.*
3. *Such care could include, inter alia, foster placement, kafala of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

The desirability of having specific 'Guidelines on the Use and Conditions of Alternative Care for Children' was first broached by the Child Protection Section at UNICEF Headquarters. In 2004, they commissioned International Social Service (ISS) to draw up a series of working papers on children who lack adequate family care. ISS were also tasked with developing a 'call for action' on the subject.

of bodies, including the Committee on the Rights of the Child (CRC Committee).

The CRC Committee agreed with the need for the *Guidelines* and transmitted its 'decision' to the (then) Commission on Human Rights in late 2004. The CRC Committee went on to devote its Day of General Discussion in September 2005 to the question of children without parental care.

One of the main recommendations to emerge from that discussion was for the international community to formulate draft guidelines to improve the implementation of the CRC for children deprived of their family. UNICEF and international NGOs joined forces in a working group of the NGO Group for the CRC, as well as with a number of individual experts and young people with experience of alternative care to complete the text by early 2006.

In August 2006, the Brazilian authorities hosted an inter-governmental meeting of experts to review that draft *Guidelines* text. Some 40 governments attended, along with UNICEF, concerned international NGOs and three members of the CRC Committee. A revised draft that took into account views and suggestions aired at the meeting was then circulated for comment in the first half of 2007.

A 'group of friends' of the *Guidelines* also emerged from that 2006 meeting. Coordinated by Brazil, it initially comprised government representatives from Argentina, Chile, Egypt, Georgia, Ghana, India, Mexico, Morocco, Philippines, Portugal, Sudan, Sweden, Ukraine and Uruguay, and several others – including Austria, Finland, Italy, Netherlands and Switzerland – became associated with its work. The group continued to have an important role during subsequent negotiations on the text. Delegates from many other countries worldwide were also deeply involved and played a very significant and constructive part in the drafting process.

The first expression of support for the *Guidelines* from the UN Human Rights Council (HRC) was contained in a wide ranging resolution on the rights of the child adopted in March 2008 (A/HRC/RES/7/29, § 20), which 'encourage[d] the advancement' of the draft. Progress was reported to the HRC's 9th session six months later, when a specific resolution (A/HRC/RES/9/13) invited States 'to dedicate all their efforts, in a transparent process, with a view to taking

In response, Brazil officially circulated a draft of the *Guidelines* through the Office of the High Commissioner for Human Rights (OHCHR) and called for formal comments by the end of January 2009. Brazil then organised a series of open inter-governmental consultations from March to June 2009 in Geneva, where all comments were reviewed in a transparent participatory forum. A revised draft was prepared as a result.

On 17 June 2009, the 11th session of the HRC adopted by consensus a procedural resolution (A/HRC/RES/11/7) and submitted the new draft of the '*Guidelines for the Alternative Care of Children*' to the United Nations General Assembly (UNGA) in New York for consideration and possible adoption on 20 November, the 20th anniversary of the CRC.

At its meeting on 20 November 2009, the Third Committee of the UNGA indeed recommended approval. Then, on 18 December 2009, through its Resolution A/RES/64/142, the UNGA itself duly 'welcomed' the *Guidelines* by consensus – signalling that no country in the world had objections to their content.

ii. Purpose of the *Guidelines*

The *Guidelines* are a non-binding international instrument. So, while their general merit for informing the approach to alternative care for children is clearly recognised, they comprise no obligations on the part of States or any other concerned parties. As a result, provisions of the *Guidelines* are formulated using the term 'should' rather than 'shall' or 'must', except when existing fully-fledged rights (notably those in the CRC) are being referred to.

The *Guidelines*, being grounded in the CRC (see Guidelines § 1), are designed to 'assist and encourage' governments to optimise the implementation of the treaty (§ 2.c), and to 'guide policies, decisions and activities' at all levels and in both the public and private sectors' (§ 2.d). This statement of purpose also reflects the considerable emphasis that the drafters placed not only on the need for the *Guidelines* to be viewed as 'desirable orientations for policy and practice' (§ 2) rather than required standards, but also on the fact that they are addressed to 'all sectors directly or indirectly concerned', and by no means just to governments.

While they are not binding, the *Guidelines* can have

sphere. Their status as a UN-approved set of principles is important in itself and enables them to serve, among other things, as a basic reference for the CRC Committee in its Concluding Observations on States' compliance with relevant provisions of the treaty. They can also similarly be taken into account by the bodies monitoring several other treaties, such as the Convention Against Torture and the Convention on the Rights of Disabled Persons.

It is also important to acknowledge, however, that (as is the case for virtually all similar international instruments) the 'orientations' of the *Guidelines* do not take account of the availability of resources in any given country for full implementation. While the *Guidelines* encourage the allocation of resources (§ 24-25), their primary role is to set out a path that should be followed. This handbook reflects that stance

IMPLICATIONS FOR POLICY-MAKING

Demonstrating a commitment to children's rights

Guidelines: § 1, 6, 7, 72, 73

States should lead on implementing children's rights in all aspects of legislation, policy and practice. This commitment to children's rights should be demonstrated in support and services to all children who require alternative care.

National policy should:

- Ensure that national legislation, policy and practice fully supports the implementation of the CRC and other human rights instruments such as the Convention on the Rights of Persons with Disabilities (CRPD) and the Convention Against Torture.
- Establish independent bodies such as children's ombudsmen or children's commissioners in line with the 'Paris Principles' in order to monitor children's rights
- Require that children's rights are capable of being taken into account in law and that children have access to remedies, including judicial remedies
- Allocate appropriate levels of resources to services for children and their families so that children's rights can be supported
- Ensure that the rights of all children are upheld regardless of status or circumstances and without discrimination including poverty, ethnicity, religion, sex, mental and physical disability, HIV/AIDS or other serious illnesses whether physical or mental, birth outside of marriage and socioeconomic stigma
- Promote awareness of children's rights, including the right to participate, to: children and their families; policymakers and those caring for children and families; and wider society using public campaigns and the media
- Ensure that a commitment to children's rights is reflected in all legislation, policy and practice relating to children in alternative care
- Ensure that children and their rights in alternative care are protected while also recognising the importance of children being able to take informed decisions which may involve some acceptable risk and is in line with those of children who live with their families (§ 94)

2b. Pillars of the *Guidelines*

The *Guidelines* have been created to ensure respect for two basic principles of alternative care for children, namely:

- that such care is genuinely needed (the 'necessity principle'), and
- that, when this is so, care is provided in an appropriate manner (the 'suitability principle').

Each of these principles comprises two main sub-sets.

i. Respecting the 'necessity principle'

Acting on the 'necessity principle' first involves **preventing situations and conditions** that can lead to alternative care being foreseen or required. The range of issues to be tackled is considerable: from material poverty, stigmatisation and discrimination to reproductive health awareness, parent education and other family support measures such as provision of day-care facilities. It is worth noting that, as the *Guidelines* drafting process progressed, government delegates expressed an increasing interest in ensuring that preventive responses were given the most comprehensive coverage possible.

The second action point for the 'necessity principle' concerns the establishment of a robust '**gatekeeping**' mechanism capable of ensuring that children are admitted to the alternative care system only if all possible means of keeping them with their parents or wider (extended) family have been examined. The implications here are two-fold, requiring adequate services or community structures to which referrals can be made, and a gatekeeping system that can operate effectively regardless of whether the potential formal care provider is public or private.

Furthermore, the necessity of a placement must be regularly reviewed. These are clearly significant challenges for many countries but experience shows that they need to be confronted if unwarranted placements are to be avoided.

ii. Respecting the 'suitability principle'

If it is determined that a child does indeed require alternative care, it must be provided in an appropriate way. This means that **all care settings must meet general minimum standards** in terms of, for example, conditions and staffing, regime, financing, protection and access to basic services (notably education and health). To ensure this, a mechanism and process must be put in place for authorising care providers on the basis of established criteria, and for carrying out subsequent inspections over time to monitor compliance.

The second aspect of 'suitability' concerns **matching the care setting with the individual child concerned**. This means selecting the one that will, in principle, best meet the child's needs at the time. It also implies that a range of family-based and other care settings are in place, so that a real choice exists, and that there is a recognised and systematic procedure for determining which is most appropriate ('gatekeeping').

In developing this **range of options**, priority should clearly be given to 'family and community-based solutions' (§ 53). At the same time, the *Guidelines* recognise family based settings and residential facilities as complementary responses (§ 23), provided that the latter conform to certain specifications (§ 123, 126) and are used only for 'positive' reasons (i.e. when they constitute the most appropriate response to the situation and the needs of the child concerned (§ 21)).

For example, a child who is taken into care as a result of a negative family experience may be unable to cope with an immediate placement in another 'family-based' setting and may, therefore, first need a less intimate or emotionally-demanding environment. Equally, if foster care is envisaged as the most favourable solution, the foster-family will need to be selected according to its potential willingness and ability to respond positively to the characteristics of the child in question. Again, the suitability of a placement must be subject to regular review – when and how often being dependent on the purpose, duration and nature of the placement – and should take account of all pertinent developments that may have occurred since the original decision was made.

iii. Applying the principles of necessity and suitability

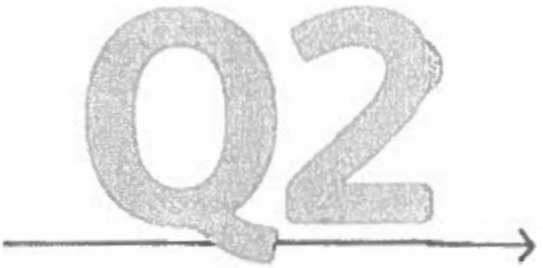
The following are among the key elements to take into account to ensure that alternative care is used only when necessary and is appropriate for the child concerned.

Reduce the perceived need for formal alternative care

- Implement poverty alleviation programmes
- Address societal factors that can provoke family breakdown (e.g. discrimination, stigmatisation, marginalisation…)
- Improve family support and strengthening services
- Provide day-care and respite care opportunities
- Promote informal/ customary coping strategies
- Consult with the child, parents and wider family to identify options
- Tackle avoidable relinquishment in a pro-active manner
- Stop unwarranted decisions to remove a child from parental care

Discourage recourse to alternative care

- Ensure a robust gate-keeping system with decision-making authority
- Make available a range of effective advisory and practical resources to which parents in difficulty can be referred
- Prohibit the 'recruitment' of children for placement in care
- Eliminate systems for funding care settings that encourage unnecessary placements and/or retention of children in alternative care
- Regularly review whether or not each placement is still appropriate and needed



Ensure formal alternative care settings meet minimum standards

- Commit to compliance with human rights obligations
- Provide full access to basic services, especially health-care and education
- Ensure adequate human resources (assessment, qualifications and motivation of carers)
- Promote and facilitate appropriate contact with parents/other family members
- Protect children from violence and exploitation
- Set in place mandatory registration and authorisation of all care providers, based on strict criteria to be fulfilled
- Prohibit care providers with primary goals of a political, religious or economic nature
- Establish an independent inspection mechanism carrying out regular and unannounced visits

Ensure that the care setting meets the needs of the child

- Foresee a full range of care options
- Assign gatekeeping tasks to qualified professionals who systematically assess which care setting is likely to cater best to a child's characteristics and situation
- Make certain that residential care is used only when it will provide the most constructive response
- Require the care provider's cooperation in finding an appropriate long term solution for each child

THE SUITABILITY PRINCIPLE

iv. Taking account of the 'best interests of the child'

There are frequent references in the *Guidelines* to the 'best interests of the child'. However, much confusion surrounds the meaning and implications of this concept in the context of promoting and protecting children's rights. **Misinterpreting the aims and scope of the 'best interests principle' can lead in practice to highly inappropriate and harmful responses** to children who are, or are at risk of being, without parental care.

The child has the right to have his/her 'best interests' taken into account as 'a primary consideration' when decisions affecting the child are made by 'public or private social welfare institutions, courts of law, administrative authorities or legislative bodies' (CRC Article 3.1.). These decisions can have far-reaching consequences. So, it is all the more important to be clear about the way 'best interests' are to be approached when implementing the *Guidelines*.

Essentially, three interdependent requirements emerge from CRC Article 3.1:

1. **Whenever the entities mentioned above are involved, they must determine the best interests of the child.** This means making a decision on the basis of all information requested and/or made available. This responsibility for determining best interests is particularly important where there is a conflict of opinion or where there is no primary caregiver.

2. In coming to a decision that affects the child, these entities should also take account of **the rights and legitimate interests of any other party** (e.g. parents, other individuals, bodies or the State itself) as well as other pertinent factors. Thus, although priority to the child's best interests is seen as the guiding rule in practice, decision-makers are not actually bound to follow this in every instance. Requirement 2 should be balanced with requirements 1 and 3 and should not be interpreted outside the context of these three CRC requirements.

3. When **a 'best interests' decision has to be made between various appropriate and viable options for a child,** it should in principle favour the solution considered to be the most positive for the child – immediately and in the longer term. At the same time, any final decision should be thoroughly compliant with all the other rights

Importantly, from a rights perspective, 'best interests' do not transcend or justify ignoring or violating one or more other right – if that were so, the concept could never have figured in the CRC. The 'right' in the CRC simply seeks to ensure that the child has his or her best interests duly considered when decisions are made about the most effective way to safeguard overall rights. The responsibility for that decision-making clearly lies with the bodies specified; it cannot be taken over arbitrarily by others

In a field such as alternative care – both in practice and from a policy perspective – it is reasonable to expect that **in the vast majority of situations, the child's duly determined best interests should be followed.** If and when this is not the case, it has to be demonstrated that doing so would seriously compromise the rights and interests of others. One example of this, provided in the UNHCR Guidelines (see below), would be a decision not to place a child with an infectious disease in a foster family before treatment, even if family-based care has been determined as being in his/her best interests. Similarly, it is not unknown for the physical security of foster carers looking after a particular child to be threatened by third parties, resulting in the need to relocate that child to a group setting where staff protection can be better assured. It follows that situations where the child's initially determined best interests cannot be prioritised are truly exceptional.

Furthermore, the **'best interests of the child' are the determining factor in two situations** that are directly relevant to alternative care: examining the need to separate a child from his/her parents (CRC Articles. 9.1 & 20.1); and exploring adoption as an option for a child who has been taken into alternative care (CRC Article 21). In these cases, the child's best interests should clearly take automatic precedence but it is still vital to remember that **the two other core elements of CRC Article 3.1 (decision-making responsibility and the rights-compliant nature of the chosen solution) remain intact.**

While the responsibility for deciding on best interests is thus established by the CRC, it leaves a vital question unanswered: what information, factors and criteria should constitute the basis for that decision? In other words, how are best interests to be determined?

To date, the most comprehensive attempt to respond to that question at international level is undoubtedly the 'Guidelines on Determining the Best Interests of the Child' drown up by the UNHCR (2008). Although the **Best Interests Determination (BID)** model it proposes was largely designed with unaccompanied and separated refugee children in mind, it is a prime source of inspiration when any significant decisions are to be made about a child and his/her future.

With children for whom alternative care is, or may be, a reality, BID should be grounded in **an assessment undertaken by qualified professionals, and should cover at least the following issues**:

1. The child's own freely expressed opinions and wishes (on the basis of the fullest possible information), taking into account the child's maturity and ability to evaluate the possible consequences of each option presented.

2. The situation, attitudes, capacities, opinions and wishes of the child's family members (parents, siblings, adult relatives, close 'others'), and the nature of their emotional relationship with the child.

3. The level of stability and security provided by the child's day-to-day living environment (whether with parents, in kinship or other informal care, or in a formal care setting):

    a) Currently (immediate risk assessment)
    b) Previously in that same environment (overall risk assessment)
    c) Potentially in that same environment (e.g. with any necessary support and/or supervision)
    d) Potentially in any of the other care settings that could be considered.

4. Where relevant, the likely effects of separation and the potential for family reintegration.

5. The child's special developmental needs:

    a) Related to a physical or mental disability
    b) Related to other particular characteristics or circumstances.

6. Other issues as appropriate. For example:

    a) The child's ethnic, religious, cultural and/or linguistic background, so that efforts can be made, as far as possible, to ensure continuity in upbringing and, in principle, maintenance of links with the child's community
    b) Preparation for transition to independent living

7. A review of the suitability of each possible care option for meeting the child's needs, in light of all the above considerations.

The results of such an assessment should form the basis of BID by the competent bodies, who will also consider all other factors (including the availability of options in practice, and the interests and rights of others) before coming to a decision. The reason for their decision should be explained to the child, especially if it does not correspond to the opinion s/he expressed. A BID assessment should also be carried out each time a placement comes up for review (see CRC Article 25, *Guidelines* § 67).

In certain egregious situations, the danger facing a child will require **immediate protective action**. Here, it is vital to ensure that the full BID process is launched as soon as practicable after the initial emergency response – ideally with an agreed protocol for doing so. In particular, no definitive and durable solution must ever be arranged before the assessment process has been completed, and its findings have been taken into account by a competent authority.

Focus 1: Participation of children and young people in care decisions and care settings

OVERVIEW

Too often, children are placed in alternative care without fully understanding why, or without being given a chance to express their opinions. This clearly contravenes CRC Article 12, which gives children the 'right to be heard' in all judicial or administrative procedures affecting their lives. In many cases, children who are arbitrarily or inappropriately placed in care subsequently make their views known in various 'non verbal' ways, such as withdrawal, refusal to cooperate, absconding or otherwise disrupting the placement. This means that their overall experience of alternative care will be resolutely negative and may have serious repercussions for their present and for their future.

The drafters of the *Guidelines* therefore paid special attention to the need to consult with every child for whom an alternative care placement might be envisaged. They stated that consultation should cover all decision-making related to the care setting, throughout the placement and prior to leaving the care system. The drafters not only included this in the General Principles of the *Guidelines* (§ 6-7) but also recalled it at many specific points in the text (see § 40, 57, 65, 67 for example). This is a key component of the individualised, case-by-case theme promoted in the *Guidelines* regarding alternative care decision-making.

There is clearly an intimate connection between such 'child participation' and consideration of the best interests of the child, and this is reflected in § 7. Any determination of best interests must be based in part on the preferences and concerns of the child in question, while taking account of a wide variety of other opinions and factors. These include the foreseeable short-term and longer-term consequences of a given solution for the effective protection of all other rights, and are also determined by the availability of suitable options provided or promoted by the State.

Equally, as reflected in § 6 (and again in § 64 for example), children must have access to all the information they need to allow them to reach well-founded conclusions about the options open to them.

'Child participation' is inexorably linked to consultation with the child's family, appointed representative and/or other persons they see as important and trusted. This point is emphasised frequently in the *Guidelines*. Seeking the views and, ideally, the approval of those on whom the child has come to rely helps ensure that decisions about an alternative care placement correspond as far as possible to the child's own expectations. This clearly enhances the likelihood that an alternative care placement will have a positive outcome.

IMPLICATIONS FOR POLICY-MAKING

Guidelines: § 6, 7, 40, 49, 57, 64, 65, 67, 94, 98, 99, 104, 132

The *Guidelines* are underpinned by a commitment to children's right to be heard in matters that affect them, in line with Article 12 of the CRC. This is a General Principle of the *Guidelines* which should be reflected in all policy and practice related to alternative care.

National policy should:

Embed children's rights to participate in legislation and policy

- Ensure that a commitment to children's views being heard is embedded in all legislation and policy relating to children and their families in line with Article 12 of the CRC

Chapter 2

Focus 1: Participation of children and young people in care decisions and care settings (cont.)

IMPLICATIONS FOR POLICY-MAKING (cont.)

- Establish independent human rights institutions such as children's ombudsmen or children's commissioners to uphold children's right to be heard
- Take into account the UN General Comment No. 12 *The right of the child to be heard* to inform children's participation in processes and administrative proceedings
- Promote awareness of children's rights, including the right to participate, to: children and their families; policymakers and those caring for children and families; and wider society using public campaigns and the media
- Ensure that all children have the right to participate regardless of status or circumstances and without discrimination
- Ensure that there is no lower age limit to children's participation and provide support for children in their communication needs, including support for non-verbal forms of communication
- Encourage organisations or groups, which are peer-led or which significantly support children's participation, to contribute to the development and implementation of policy and practice on alternative care

Support the participation of children in alternative care procedures and processes

- Ensure legislation and national policies on child protection and alternative care include a commitment to children's participation and are underpinned by a child rights approach
- Require children's views to be sought for decisions regarding their placement, the development of care assessments, plans and reviews. This should include seeking children's views on services which can support children and their families and carers
- Provide children with information so that they can make informed choices and can fully participate in decision-making processes. This should include access to child friendly versions of their rights and free legal representation of lawyers trained in care matters where appropriate
- Preserve information on children's background and origins so that children, or others with children's permission, can research their origins
- Ensure that the child's family, or other significant people that a child trusts, are also consulted on decisions
- Require that children have access to a trusted adult where they want support and to talk to someone confidentially
- Make provision so that a child can be heard directly through a representative or body where a child is very young or is unable to express an opinion verbally or through other means of communication
- Ensure that children's views are taken into account in decisions on contact with, and during visits to, their families

Support children to raise concerns and complaints (§ 98-99)

- Require mechanisms to be in place so that children can raise informal concerns
- Put in place clear mechanisms for formal complaints so that children in alternative care can safely report infringements of their rights including abuse and exploitation
- Ensure that children are informed of their right to make complaints. They should have access to an independent trusted adult to support them take forward a complaint where required

Focus 1: Participation of children and young people in care decisions and care settings (cont.)

IMPLICATIONS FOR POLICY-MAKING (cont.)

- Ensure that children have access to legal remedy and judicial review. They should have access to legal representatives and support from independent trusted adults as required
- Ensure that children are aware of the extent and limits of confidentiality when making complaints and that making complaints is without retribution. Children should receive systematic feedback on how their concerns and complaints have been dealt with and what the outcomes are
- Require that complaints are recorded and are regularly reviewed. Establish an identifiable, impartial and independent body which can monitor complaints
- Seek the views and ongoing participation of children in how to improve complaints mechanisms

PROMISING PRACTICE 1.1

Mkombozi, Tanzania

Mkombozi works with children at risk of migrating to the streets in the Arusha and Kilimanjaro regions of northern Tanzania. It supports moving away from residential care of street-involved children towards care within families and communities. As a result, it has transformed its original residential facility into a 'transition home'. Mkombozi appreciates the value and impact of meaningful child participation and enabling opportunities for former and current street-involved children and young people to raise their voices and to be heard. Young people participated in the *Baraza la Watoto* (Children's Council) in Arusha Municipality, which has led to the municipal authority recognising issues facing children and young people and finding ways to assist them.

Throughout 2010, children also contributed much to Mkombozi's strategic planning processes through meetings, discussions and reflections.

Some of the older children acted as ambassadors and shared their own life experiences whilst discussing the negative consequences of longer term institutional care. In 2010 the annual child satisfaction survey was conducted with children and older youth staying at the transition home. The survey highlighted communication between social workers and children as an area for development. The results of the satisfaction survey were presented to staff and provided an opportunity for staff to reflect on progress from the perspective of young people.

For more information see: The Mkombozi Annual Report (2010) www.mkombozi.org

Focus 1: Participation of children and young people in care decisions and care settings (cont.)

PROMISING PRACTICE 1.2

Collective participation in child protection services, Norway

'User participation and professional practice in child protection services' is an action research project run in cooperation with two child protection services in Norway looking at how to strengthen the participation of young people in decisions about their care. It uses a dialogue-based participation group for young people in child protection and a group for parents who have lost custody of their children. The initiative for young people resulted in changes in the practice of the child protection centre so that young people were now fully involved in meetings that would make decisions about their future care. The parents group provided the parents with the opportunity to influence child protection services by enabling parents to develop greater consciousness concerning possibilities for taking effective action in relation to care decisions affecting their own children. The experience from this project suggests that there is a need to support the development of models of collective user participation in order to provide service users with the power to influence service delivery.

For more information see: Seim, S. and Slettebo, T. (2011) Collective participation in child protection services partnership or tokenism? *European Journal of Social Work* 14(4), 497-512. DOI: 10.1080/13691457.2010.500477

PROMISING PRACTICE 1.3

Who Cares? Scotland training initiative, Scotland, United Kingdom

In 2010 Who Cares? Scotland received three years of funding to design, develop and deliver a national training initiative aimed at raising awareness and developing the capacity of locally elected representatives and key agencies with decision-making responsibilities for children's services. Children and young people in formal alternative care and care leavers have been involved throughout the development and delivery of the national training programme. 127 young people were involved in this process via making local training films for the training sessions and involved in the delivery of the training sessions to these senior people. Positive evaluations showed young people's involvement in the training sessions made the training particularly effective. Young people have gone on to be employed as trainers on the programme and have represented the organisation internationally. The programme has resulted in changes to local policy and practice in a number of ways including improvements in local housing policy for young people leaving care, enhanced opportunities for training and employment, better access to sport and leisure facilities and improved participation in decision-making.

For more information visit:
www.corporateparenting.co.uk

CHILD WELFARE

LIFE AFTER CARE

Kids who grow up in the system are not expected to do well. That's a big part of why they don't.

BY SARAH THELEAVEN · Jane Kovarikova spent 10 years in foster care in Ontario, shuffling between a number of homes beginning at age six. At 16, when she dropped out of high school and successfully applied to leave foster care, her social worker didn't discuss options for post-secondary education. "There wasn't a lot of thought about future planning," says Kovarikova. "And after 21, no one has any responsibility for you."

Despite feeling that others had extremely low expectations of her, Kovarikova "had a little fire to fight for more," she says. She stretched her $663 monthly allowance and her paycheques and bought her first house at 19. Kovarikova went on to graduate from high school and then university, to earn a master's degree at the London School of Economics and to enter a PhD program in political science at Western University, which she is presently completing.

Now 36, Kovarikova has emerged as a singular activist for kids in care. In 2017, she started Child Welfare Political Action Committee Canada (Child Welfare PAC), a cross-country advocacy and research network comprised largely of adults who have spent time in the foster care system. Kovarikova's primary concern is the lack of federal and provincial data about foster kids, and she's pushing for a longitudinal study of youth outcomes—everything from social contacts to death rates—after they age out of care. No official government body tracks these kids once they become adults, but academic research has overwhelmingly shown that they have significantly compromised life outcomes compared to peers who were not involved in care.

Advocate Kovarikova wants to change the perception of foster kids as damaged goods

Kovarikova estimates there are approximately 78,000 kids in care across the country, and about half will become Crown or permanent wards—meaning the province is the primary legal guardian. In most jurisdictions, a child can be a ward up to age 18, when they "age out" of the system. At that point, many provinces offer certain provisions to former wards—a topped-up welfare cheque, ongoing meetings with a worker, support for post-secondary education or therapy. But at a certain point, often age 21, that disappears and former wards are on their own.

For Kovarikova, the bottom line is this: the state needs to care more about what happens to the children it raises. And one way to do that is by changing its perception of foster kids as damaged goods, unlikely to thrive regardless of intervention. When she was 21 and on the verge of losing her monthly allowance from the Children's Aid Society, Kovarikova's social worker suggested transitioning her on to welfare. "It was done out of love because they were worried I was going to lose this money," she says. "But what parent ever suggests that to their kid as a first resort?"

More recently, when she was asked to review the programs offered to kids who age out, Kovarikova found plenty of information on exercising your rights when you're evicted or arrested. "Can you imagine giving your kids that kind of material before they leave your home?" she says. "It focuses on survival, not success."

EVEN SURVIVAL CAN be tenuous. As Kovarikova wrote in her 2017 report for Ontario's Office of the Provincial Advocate for Children and Youth (which was closed by the Ford government in 2019): "Typical outcomes for youth who age out of care include: low academic achievement; unemployment or underemployment; homelessness and housing insecurity; criminal justice system involvement; early parenthood; poor physical and mental health; and loneliness."

She cites a litany of disheartening statistics: approximately 44 per cent of Ontario wards complete high school—compared to an overall average of 81 per cent—and only a very small percentage go on to receive a bachelor's degree. As many as 90 per cent of youth in care may be on welfare within six months of aging out.

Varda Mann-Feder, a professor of applied human sciences at Concordia University who researches youth aging out of care, says that both funds and concern are disproportionately allocated to finding placements for young children. "People look at 18-year-olds as if their time is up," says Mann-Feder. When a teenager moves out of foster care, "they create a space for someone else."

'YOU'RE ALWAYS ON EGGSHELLS BECAUSE YOU KNOW AT ANY MINUTE THEY COULD RETURN YOU'

And funding creates other problems. Despite a lot of good intentions on the part of both foster parents and social workers, Kovarikova says that as soon as you offer service and pay, you've commodified a child—and it can compound the emotional complexity of living in foster care. "When academics look at youth in care, what stands out is the homelessness and jail rates, those hard numbers," she says. "[But] when you ask youth about their experience in care, what often stands out is the loneliness. You always have to ask: Would they still be doing this if the pay dried up?"

Amelia Merhar spent her early years in Toronto with a mother who struggled with mental health issues. She was apprehended by the Children's Aid Society at 11, and then bounced around between multiple foster homes and extended family members for several years. She moved out on her own at 16 and stopped receiving services. By the time she graduated from high school, she had attended 13 different schools.

Merhar worked with youth in care in Toronto and the Yukon for her master's degree in human geography, and is now a first year PhD student at the University of Waterloo. She studies how systemic displacement and forced movement can have a negative impact on health, well-being and the ability to maintain relationships as an adult.

There are children in Canada's child welfare system who can't count the number of homes they have been in, says Merhar. "Kids always hear the phrase, 'the placement didn't work out,'" she says. "You're already often coming from a family on social assistance or with addiction or abuse issues. Then you're just bounced around and never really told why and it perpetuates feelings of shame and worthlessness."

Kovarikova's Child Welfare PAC would like to see a more interventionist and optimistic approach to these problems. They have four core policy goals: evidence-based policy-making to ensure that programming is based on research, not wishful thinking; trauma-informed support to address high rates of PTSD; the sealing of child welfare files to protect privacy; and improving the rates of post-secondary education completion.

Education, commonly touted as the great equalizer for all disadvantaged populations, has become a core focus for child welfare advocates. It is "the only evidence-based pathway that helps kids achieve brighter futures," says Kovarikova. According to the Canadian Observatory on Homelessness, studies have found that up to 90 per cent of homeless youth have not completed high school.

There has been some movement recently to try to improve outcomes for former kids in care. A growing number of universities and colleges are offering tuition waivers for students who have been in care. British Columbia offers an age-restricted province-wide program, and, earlier this year, Laurentian University started offering tuition waivers for students of any age who were raised in the Ontario foster care system. Ontario recently introduced dedicated youth-in-transition personnel: social workers who help with the aging-out process, including helping kids find a place to live and set personal goals.

Former foster kids are also banding together. Youth in Care, a national, charitable organization, was founded in 1985 by youth and alumni from child welfare authorities across Canada. It functions as a public advocacy group that lobbies government, conducts research and serves as a national think tank.

Natasha Reimer, a board member for Youth in Care, started Foster Up, a peer-support group for individuals raised in foster care in Manitoba. She is Indigenous and Caribbean, and interested in the correlation between Indigenous children in care and missing and murdered women, girls and two-spirit people. According to the 2016 Census, 52.2 per cent of children in foster care aged 0-14 are Indigenous, despite accounting for 7.7 per cent of all Canadian children in this age group.

Reimer, now 25, was apprehended from her mother shortly after she was born; she was adopted at age four, but returned to care at 14. She aged out of a group home at 18 and found the transition extremely jarring. "Up to that point you have very limited say and then suddenly you have to figure everything off on your own," she says.

With Foster Up, which meets twice monthly at the University of Winnipeg, Reimer hopes to engender a sense of group support while also offering practical information about available resources. "I was on my own, trying to go to university and deal with the world on my shoulders, and I wasn't sure what resources were out there for me," says Reimer. "To meet other kids who have been in care, who want to thrive, is really empowering."

BUT THE OPPORTUNITY to thrive often isn't straightforward. Many foster kids describe the experience as living someone else's life—being in and around a family, while never quite part of it. "You're always on eggshells because you know at any minute you could step out of line and they could return you," says Kovarikova.

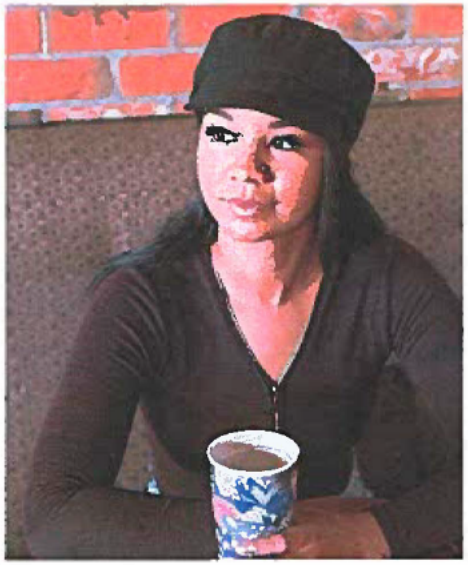
Kristy Denette, who works at Ontario's Ministry of Agriculture, Food and Rural Affairs, remembers that the foster home in Penticton, B.C., where she lived from the age of 12, had a backyard pool, cherry tree and trampoline. But she also remembers that she wasn't allowed to have a key to the house, and that she was sometimes ushered out of

photos. When her foster parents took their own kids on vacation, she and her younger sister would have to go to a group home. "They were really nice people who did the best they could," says Denette, 34. "[But] it was a little cold, upon reflection."

The emotional and tangible consequences of being an outsider can persist well into adulthood. "There's no one to help me buy a house," says Merhar. "There's no one to call for support. And that is the story for many people." One-third of Toronto's young adults still live with their parents—prompted largely by the rising costs of living. "Meanwhile, we're expecting young people to age out at 18, maybe 25 if they have a good placement," she says. "The child welfare system needs to understand that youth is being extended, but not for the children of the state. That's setting people up for failure."

That set-up for failure can dog even the most high-achieving. Arisha Khan, who bounced in and out of foster care as a child, was named a Rhodes Scholar but deferred her start at Oxford due to medical issues complicated by her lack of support. "I still don't have parents," says Khan, 23, who serves on the board of Youth in Care. "I've had to come to terms with the fact that I just need to do a lot of things for myself and that's not a good thing."

A new initiative aims to address this challenge. Never Too Late for Family, a program launched earlier this year by the Adoption Council of Ontario, unites kids who have aged out of care with, finally, a "forever family." "All a lot of these kids want is a human being who's not being paid to care for them," says Aviva Zukerman Schure, a coordinator for the program, who adopted a then-18-year-old seven years ago.



Reimer, 25, founder of peer-support group Foster Up

'IT'S SORT OF SURREAL TO KNOW YOU HAVE PEOPLE WHO ARE COMMITTED TO BEING THERE FOR YOU'

The early courtship period can be slightly awkward, but the appeal of this arrangement is clear. Chloe Hockley, 23, went into care at 15 in Ottawa and cycled through two foster homes and three group homes before she turned 18. She was recently matched with a family through the Never Too Late program, and they have been slowly getting to know one another.

"It's definitely a weird and interesting experience," says Hockley, who graduated with a degree in psychology from Queen's University in 2017. "We have family dinners and outings, and they check in on me and make sure I'm okay." Hockley recently had an incident where she hurt her foot, and her potential family picked her up at the hospital and took care of her. "It's sort of surreal to know you have people in your corner, who are committed to being there for you," she says.

FINANCIAL RESOURCES AND emotional support are crucial to improving outcomes for kids in care, as is meaningfully tracking those outcomes on provincial and federal levels. Former and present youth in care are raising their voices, but, as Kovarikova points out, there also needs to be a shift in how foster care—and foster children—are perceived. Though they are increasingly raising their own voices, they remain a largely invisible group in society.

Irwin Elman, formerly Ontario's child and youth advocate, calls this invisibility a form of benign neglect. "People expect that when children are in need of protection, our government steps in to make things better," he says. "When we speak about how difficult and unforgiving the system can be, people are shocked."

Former foster kids say we also need to grapple with the stigma attached to low expectations, the idea that children whose parents couldn't (or wouldn't) care for them are necessarily themselves less capable or even less deserving of a healthy, satisfying and productive life. Even now, Denette says that she still overcompensates in her professional life, trying to erase the stain of her years in care. "There's always this sense that you're not good enough and that it's your fault that you were put there," she says. She remembers the sting when her first boyfriend broke up with her after his father found out that she was a foster kid. "I still think about how he made me feel really small," she says.

In joining Kovarikova's Child Welfare PAC, Denette hopes she can provide other kids with the nudge they might need to advocate for themselves, to believe that they deserve better than the lousy outcomes they typically receive. She's grateful for the camaraderie offered by the organization. "I still don't really have a lot of support, and it's nice to surround yourself with other people who have made it out."

"Making it out" really just means having access to the opportunities to hit the milestones so many of us take for granted: receiving an education, getting a job, having a stable place to live and forming loving attachments. But it's also something more aspirational and less easily defined.

One of the first things Kovarikova did after leaving foster care at 16 was to save money from her job at Staples and buy herself an all-inclusive vacation in the Dominican Republic, hiring a limo to take her to the airport. "If I had shared this plan with my social worker, it would have been a hard no," she says, laughing. "But it opened my mind to the idea that I could work hard and buy myself a little piece of the good life."

Having one's eyes opened to a world of possibilities is essential. But the core question is this: If we're removing children from their parents to ostensibly improve their quality of life, what are we actually offering them?

"A lot of people say that we don't own bad outcomes for these kids who get off to a rough start, that they're just achieving what would have been," says Kovarikova. "We don't know that for sure. But you know what we do know for sure? That intervention in the foster care system fails to shift the trajectory upward."

PHOTOGRAPHED BY JESSICA LEE

INTERVENING WITH YOUTH IN THE TRANSITION FROM CARE TO INDEPENDENT LIVING

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Abstract: This article outlines recommendations for intervention with youth transitioning to independent living based on the results of the author's own program of qualitative research, literature on the theory of Emerging Adulthood, and recent findings in relation to the experiences of youth leaving home to live on their own. The emphasis is on designing services that can more closely approximate the normative transition to adulthood.

Keywords: Youth in Care, Independent Living, Home Leaving

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Youth leaving care for independent living face enormous challenges. They often experience a period of crisis that begins prior to discharge and may extend well beyond their departure from care (Mann-Feder & White, 2004), potentially threatening their post discharge adjustment for years to come. The child and youth care workers who intervene with young people in this complex and difficult transition have a particularly demanding mandate. This article overviews findings from the authors' own program of qualitative research and outlines implications for working with youth aging out of care. The earliest studies documented the experiences of youth leaving care for independent living (Mann-Feder & White, 2004) as well as the perceptions of staff in relation to organizational factors that facilitated youth transitions (Mann-Feder & Guerard, 2008).

The results of prior studies have been summarized elsewhere and are available on line at *http://www/childrenwebmag.com/c/articles/fice-helsinki-congress-2008*. The most recent study, funded by the Social Sciences and Humanities Research Council of Canada, is still in progress. It builds on first person accounts of the home leaving experiences of youth in the community to identify protective factors that can promote adjustment in the transition to adulthood (Mann-Feder, Eades, &Sobel, 2010).

A significant proportion of youth in care never return home and have no choice but to move out on their own when placement ends because of their age. Estimates from 2001 suggest that there are over 60,000 young people in care every year in Canada, 6,000 of whom leave to live on their own (Flynn, 2003). In the United States, out of the approximately 542,000 youth in care, 20,000 young adults will exit for independent living annually (Osgood, Foster, Flanagan, & Ruth, 2005). These youth, many

of whom were neglected or abused, separated from their families, and brought up in a system of care, are then expected to adjust to the withdrawal of services and the necessity of transitioning to adulthood with minimal supports. Findings of numerous outcome studies to date are remarkably consistent: Youth leaving care for independent living do not fare well as adults (Tweddle, 2007). They are overrepresented among the homeless, in prisons, and in adult psychiatric wards. Many do not finish high school and struggle chronically with unemployment and underemployment. Few can rely on either emotional or financial support from family (Stein, 2006).

Most child welfare practice in North America focuses on family reinsertion as the best possible outcome when children are placed (Child Welfare Gateway, 2006). When resources allow, intensive intervention efforts are directed at improving family functioning so that young people can grow up at home. Those youth who do leave to live on their own usually do so as a default option, because efforts at family reunification have failed (Mann-Feder & Guerard, 2008). A plan for independent living develops as a response to a youth in care's advancing age and the inability of family and extended family to receive them. Thus, every such discharge plan is infused with loss and represents a failure for both a young person and their professional caregivers (Mann-Feder & White, 2004). Youth who age out of care and transition to independent living are also among the most compromised youth in the care system to begin with, because they have had the least family support throughout their stay in placement. Extended years in care may have magnified the deficits they entered with when first placed. These youth are forced to live independently at a much younger age than other young people, almost ten years earlier given current statistics on home leaving (Rutman, Barlow, Alusik, Hubberstay, & Brown, 2003). Despite their age, and irrespective of their level of readiness, they face the need to adapt to an adult lifestyle prematurely while adjusting to the termination of care.

Moving out on one's own for the first time and leaving care are experiences fraught with ambivalence (Mann-Feder & Garfat, 2006). Independent living, for every young person, demands the relinquishment of the dependencies of childhood, which are both an accomplishment and a loss. Leaving care restimulates unresolved issues related to the original placement, forcing the individual to relive early separations (Gordy-Levine, 1990). This can stimulate regression and increased acting out by a young person, precisely at a time when expectations for mature behavior may be greatest. Given the scope of these difficulties, there as been increased recognition in North America of the importance of specialized support for youth leaving care. However, there are huge variations in what is provided in different states and provinces because the nature of this transition is poorly understood.

Over the last decade, it has been observed that the normative transition to adulthood is longer than ever. The milestones that have traditionally signaled the attainment of adult status (leaving home, achieving financial independence, getting married, and becoming a parent) seem to be established relatively late in the industrialized world when compared with previous generations (Furstenberg, Rumbaut,

& Settersen, 2006). Individuals in their 20s commonly live with their parents, and those who leave often return more than once before permanently launching themselves in their late 20s or their early 30s (Mulder, 2009).

These developments have been observed so consistently that Jeffrey Jensen Arnett, an American developmental psychologist, proposed that a new life stage be added (Arnett, 1998). He coined the term "Emerging Adulthood" for this period, which lasts from the late teens until at least the mid-twenties (approximately 18 to 26). Arnett explained that there are concerns and experiences that are unique to the transition to adulthood and that Emerging Adults are engaged in processes that set them apart from adolescents and young adults. Also characteristic of Emerging Adulthood is residential instability, as these young people experiment with different living situations punctuated by periodic returns home (Arnett, 2007). While some aspects of this stage were previously subsumed in theories of adolescence, adolescent experimentation gives way to more focused exploration in Emerging Adulthood, which in turn results in the establishment of a stable, identity-based lifestyle (Arnett, 2007).

Arnett's research has indicated that most twenty-somethings in the community have mixed feelings about reaching adulthood. The achievement of adult responsibilities is a gradual process, which optimally involves protracted periods of practicing at independence with family standing by to provide a safety net. If all goes well, individuals can achieve an increasing sense of well-being through the emerging adult years, while launching themselves with confidence into adult life. At the same time, long term study suggests that emerging adults whose transition is compromised by a lack of internal and external resources exhibit persistant difficulties which in turn have a negative impact on adult adjustment (Osgood et al., 2005). Youth aging out of care constitute a significant proportion of these failed emerging adults, whose difficulties navigating this critical transition can have a lifelong impact.

Based on these shifts in thinking about transitions to adulthood, this author undertook to learn more about how home leaving in Emerging Adulthood could inform intervention with youth aging out of care (Mann Feder et al., 2010). The first phase of the research, in which 30 university students were interviewed about home leaving, resulted in the identification of important themes in the normative transition to independent living (Mann-Feder et al., 2010). It should be noted that all of the young people in this study attended a large urban university and none of them lived in residence. The following are findings from the first wave of data analysis, which used consensual qualitative research (Hill, Thompson, & Williams, 1995) methodology.

It appears that moving out is a disorganizing experience for all young people. One assumption driving the research was that when young people leave home because they wish to do so, the transition is less daunting than when youth are forced to move as they age out of care. Our home leavers described the transition to independent living as a crisis which could not be anticipated or prepared for. It catapaulted them into a period marked by fear and anxiety, despite the fact that they had chosen to move out in seach of privacy and independence. Partipants

reported that being on their own presented them with unexpected challenges and that worries about money and new responsibilities were compounded by loneliness, roomate problems, and feelings of being overwhelmed. Most stated that they learned the instrumental skills needed (cooking, cleaning, etc.) once they moved and that no amount of preparation would have helped them deal with the intial dramatic impact of leaving. Many reported an initial experience of "going crazy" or losing control (partying too much, staying out late, etc.) when they first moved out. The research team was surprised at the degree to which these reports of the normative transition to independent living resembled the experiences of youth leaving care documented in earlier research (Mann Feder & White, 2004).

At the same time, there were important stabilizers in the lives of youth leaving home that made a difference in the degree to which they experienced the intial difficulties in the transition and how well they adapted over time. Internal assets that made a difference were the ability to plan, feelings of excitement about being independent, and the confidence that came from overcoming challenges as they arose. Participants, who had been on their own for short periods prior to moving, even if it was only for a short trip, seemed to weather the initial crisis more easily. Important external assetts came in the form of parental support and encouragement. The awareness that family would step in if things really deteriorated was generally cited as the most significant stabilizer. This lends strong support to Arnett's concept of the parental safety net and its critical role in Emerging Adulthood (Arnett, 2007). Of note is that most participants stated clearly that they did not wish to resort to turning to their parents for back up. They relied instead on peers as mentors when they needed advice and emotional support. This is an important finding because it has been documented that youth leaving care are often isolated from their peers and do not enjoy the same supportive friendship networks as young people in the community (Mann Feder & White, 2004).

These preliminary results, considered in light of the theory of Emerging Adulthood, have important implications for intervening with youth in care in the transition to independent living.

1. Our programs must change to reflect the complexity, volatility, and protracted nature of transitions to adulthood, especially for this disadvantaged group. Many agencies currently focus on providing programs of preparation for independent living. It may be that using available resources to provide support during the transition might be more critical.
2. Prior research suggests that most substitute care resources are not currently designed to be flexible enough to allow for a gradual transition, which in turn exacerbates the challenges of transitioning to adulthood (Mann Feder & Guérard, 2008). We offer few opportunities for experimentation with autonomy, and even short leaves from care could allow a young person to experience being on their own as part of a transition to independent living.

3. We do little to assist young people in addressing the difficult emotions associated with the transition from care to adulthood. Youth leaving care can be volatile and acting out. We need to adopt a nonpunitive approach and normalize the expression of feelings.
4. Agency policies and procedures that would allow for brief returns to care after discharge would go a long way in providing the perception of a safety net. Even if respite stays in care are not feasible, building in opportunities for visits or meals in their old units would provide youth leaving care with an experience of continuity and back up.
5. An emphasis on building strong peer connections among cohorts of youth leaving care is essential. Not only can it compensate for the lack of family support, it utilizes a natural resource without necessitating additional funding or major changes in programs.
6. Expectations for youth leaving care must be reevaluated. Front line workers, managers, and the youth themselves need to understand that the transition to independent living is a normative crisis, which, like other developmental turning points, will disrupt the individual's current level of functioning (Goodman, Schlossberg, & Anderson, 2006). Adaptation to living on one's own takes time and support, but with support, the initial instability can evolve into a period of increased adaptation.

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