



## Developing systems for effective monitoring of childcare facilities and strengthening alternative family-based care for children

Jean-Claude Legrand  
UNICEF CIS/CEE

The move towards transforming alternative care for children from institutional placements to family-based settings or small group facilities has been under way in many European countries since the Sixties, but only more recently in other member states of the Council of Europe. And it is also only in recent years that codified standards have been developed in this sphere at European and international levels.

A **1986 UN Declaration** already set out some very basic principles specifically regarding foster-care and adoption, and the **1989 Convention on the Rights of the Child** stipulates certain measures that States must take to "ensure alternative care" for children deprived of their family environment. Importantly, both of these instruments highlighted the absolute priority to be given to efforts that would enable the child to remain in the care of his or her family. Both also implicitly signal that possibilities for family-based care should be examined before consideration is given to placement in an "appropriate" or "suitable" institution. But neither sets out concrete guidance for good practice in this sphere.

Since the turn of the century, however, we have two significant and more detailed instruments on which to develop policy and action. The first, at the regional level, concerns residential care: the Council of Europe's **Recommendation on the rights of children living in residential institutions**, adopted in 2005. The second is the wider-ranging **Guidelines for the Alternative Care of Children** which the UN General Assembly approved in 2009, covering all kinds of care settings, including informal arrangements, family-based care and residential care. Also well worthy of mention are the **Quality4Children Standards for Out-of-Home Child Care in Europe** which provides accessible and practical guidance developed through a participatory consultation process.

### Key principles of international standards

These instruments reflect two main principles that I would like to mention here since they are essential background to our discussions today. They are elaborated on, moreover, in a **handbook** produced last year designed to facilitate and encourage implementation of the Guidelines.

First, these instruments require that the **necessity** of a formal alternative care placement be established. This sets the provision of alternative care firmly within an overall protection framework offering preventive and reactive services to families whose immediate, short-term or longer term difficulties may otherwise result in resorting to out-of-home care. It is only if

possibilities for such support and supervision cannot be identified, or if an informal kinship arrangement cannot be foreseen, that recourse to formal alternative care can be deemed necessary.

Second, these instruments require that, once placement is shown to be necessary, the care setting chosen is **suitable** for the individual child concerned. It is therefore crucial to have a range of options in place, among which a given type of setting can be selected as being best placed to cater to the specific characteristics, needs and situation of the child. As the Council of Europe Recommendation and the UN Guidelines recognise, residential facilities that comply with overall standards have a role to play for some children in certain circumstances. The crucial factor is that a residential placement should be decided only when the care it offers is felt to correspond best to the child's needs, and not simply because of a lack of other options. In that regard, the Guidelines state that, with limited exceptions, residential care cannot be considered as "suitable" for children less than 3 years of age.

It is also pertinent to highlight the key role that **gatekeeping** plays in determining both the necessity and suitability of placements in alternative care. An effective gatekeeping mechanism is required to verify the justification for out-of-home care, to refer families to responsive support services whenever required, as well as to orient each child towards the most suitable care setting. Vital too is a participatory **periodic review** of every placement, as required under Article 25 of the CRC, to determine whether or not out-of-home care is still necessary and, if so, if the current placement still constitutes the most suitable setting for the child.

Both of these functions – gatekeeping and review – are key when it comes to effective monitoring, and I would like now to concentrate precisely on this question of monitoring.

### **How can monitoring residential care be improved?**

We need to be very clear about the role and objectives of monitoring. It is about ensuring that those responsible for alternative care provision are carrying out their duties effectively, conscientiously and in accordance with required standards. From the child's point of view, it is designed as the safety net for ensuring that, among many other things, gatekeeping and periodic review mechanisms are operating as they should. There are also other pre-conditions for having in place an effective monitoring mechanism, and they are broadly reflected in the Guidelines and elsewhere.

The most basic, of course, is that all residential care facilities are actually known to the authorities – and, in particular, that every facility run by a non-State body such as an NGO or religious group is registered and licensed to operate as a care provider, with decisions on licensing made on the basis of fixed and wide-ranging criteria.

Stemming from this, it is vital that all residential care providers have formally accepted in writing to abide by national standards that are themselves compliant with European and international texts, so that there is a clear and agreed basis on which to assess performance. Do such detailed national standards exist everywhere? Is there a procedure obliging care providers to commit to applying them?

One of the many factors that distinguish "suitable residential facilities" from "institutions" is their openness to the outside world. Children's access to their family, to the community and to potential assistance from civil society organisations not only plays a preventive role regarding

conditions and treatment in residential care, but it can also be key to enabling “informal monitoring” to be carried out. Such informal monitoring is often no less important and effective than any formal mechanisms in place, provided there are channels for communicating any concerns.

Formal monitoring, including regular inspections and unannounced visits, must be carried out by an officially-designated body with an appropriate mandate and status. And accepting such visits must be a component of the formal agreement signed by those responsible for every residential facility. As well as looking at the more obvious aspects of conditions in the facility, monitors should pay special attention to a range of issues that often tend to be overlooked during such exercises but are important determinants of quality of care. These range from, for example, staff turnover rates and how the front-line staff feel about their roles and conditions of work, through to records of placement reviews and family visits, as well as other contacts with the outside world. It is clearly of fundamental importance that monitors are also able to talk freely with the children without staff presence, and that they receive training for sensitive interaction with children.

In addition to monitoring at facility level, there has to be a “macro-monitoring” system in place at country level – a national human rights institution or similar, with explicit responsibility for children’s issues and providing an accessible last-resort channel for unresolved concerns and complaints to be dealt with effectively. With that ultimate back-up, there is a far greater chance that targeted monitoring will be both undertaken and responded to in an appropriate way.

Finally in this regard, let me bring to your attention the fact that a consortium of NGOs is right now launching a project to draw up a “**monitoring and tracking tool**” on the implementation of the 2009 Guidelines. UNICEF is a member of the Steering Committee for the project, believing this tool will constitute an excellent resource, both in itself and as inspiration for monitoring out-of-home care in all its forms and at all levels.

#### **What could the Council of Europe do to support and complement monitoring activities?**

The Council of Europe already has in place a variety of regional-level structures with a monitoring role, including of course its Commissioner on Human Rights. In extreme – and therefore hopefully very rare – cases of alleged violations of the rights of children in alternative care, requests might be made for the intervention of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) whose mandate includes situations in “social care homes”. In the region where I work, we know the role it has played in accelerating changes in Bulgaria (Mogilino) and Montenegro (Komanstki Most).

In the context of its child-focused campaigns and programmes, the Council has published various information resources for professionals and children concerned by alternative care measures. These could be further promoted given specifically their potential use for facilitating monitoring activities, since they pinpoint issues that need to be examined and they contribute to empowering both professionals and children to contribute actively to the exercise.

Equally, the Council of Europe has to date demonstrated commendable initiative in relation to enhancing child participation. Perhaps we might discuss how best to build on and pursue this advocacy, with emphasis on children’s contact with the outside world when in alternative care, and particularly their access to monitoring, inspection and complaints bodies so they can effectively be a part of moves to improve the way in which their alternative care is managed.