The challenges of out-of-home care

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There is no longer any debate, one might think, over the most critical issues that have surrounded the provision of alternative care for young children who, for whatever reason, do not or cannot live with their parents.

It is widely agreed that three principles should guide decisions regarding long-term substitute care for children, once the need for such care has been demonstrated:

- family-based solutions are generally preferable to institutional placements;
- national (domestic) solutions are generally preferable to those involving another country;
- permanent solutions are generally preferable to inherently temporary ones.

Research is virtually unanimous in pointing out the high risk of institutional placements causing serious long-term damage to children under 3 or even under 5 years of age. In the face of the evidence, few would now disagree that institutional settings (in contrast to certain other kinds of 'residential care') cannot give young children the kind of environment they need to develop fully and harmoniously, regardless of the overall quality of care provided. Over the past thirty or so years, 'de-institutionalisation' has therefore gradually become the watchword in an increasing number of countries, with concomitant efforts to promote 'family-based' care or 'family-type' residential units.

Similarly, the aim must surely now be to avoid as far as possible uprooting children from their communities and cultures when an alternative care solution has to be envisaged, whether temporarily or permanently.

In addition, the need to foresee how return to the family or, if necessary, identifying another suitable and stable family-based solution (often adoption) can be ensured as soon as a child comes into care – 'permanency planning' or developing an 'alternative permanent life project' on the basis of a full assessment – is increasingly recognised as one of the main pillars of good practice.

The 'emergency test'

A good litmus test for measuring how accepted these principles have become is to look at reactions to child victims of large-scale disasters, both natural and man-made. Emergency situations invariably constitute concentrated microcosms of problems to be resolved in meeting the needs, safeguarding the best interests, and protecting the rights of children without parental care. In particular, they give rise to an array of proposed responses from a range of sources that reflect the real state of contemporary policy and practice, and that therefore underscore overall attitudes towards, and efforts on behalf of, such children.

Indeed, from the Vietnam "Operation Baby-lift" of the mid-1970s to the Rwandan genocide and the conflict in ex-Yugoslavia, from Hurricane Mitch to the Gujarat and Bam earthquakes, responses have betrayed persistent and serious misunderstanding of, or disregard for, children's rights and needs. They included the widespread establishment of 'orphanages' and, often, the mass displacement of children to another country for temporary or permanent care.

Not unexpectedly, several similar initiatives were mooted in the wake of the tsunami disaster – by officials and private bodies alike. Thus, for example:

- a US evangelical organisation publicised plans to airlift 300 'orphans' from Banda Aceh to Jakarta with a view to placing them in "a Christian orphanage";
- the Indonesian authorities themselves reportedly announced the construction of a "large orphan house" in Banda Aceh and another in Medan if necessary;
- a European Commissioner suggested that families in EU countries would be ready to offer temporary refuge to thousands of children from the affected region.

The big difference this time was that they did not happen:

- the Indonesian Government refused permission for the airlift;
- the Authorities also let it be understood in the end that there would be no new 'orphan house' and that priority would be given to supporting families that had taken in children, making institutional care a last resort (however, direct State provision of residential facilities is very much the exception in Indonesia, and reportedly several private orphanages have been set up post-tsunami, with hundreds of children affected by the disaster being accommodated in those and previously existing institutions);
- the EU proposal was almost immediately withdrawn in the face of strong criticism from organisations such as UNICEF and Save the Children.

Furthermore, within days of the tsunami disaster – just three in the case of the US – governments of many industrialised countries made official announcements barring their citizens from adopting children from the affected countries, Sri Lanka itself froze intercountry adoptions from the affected region, and the Indonesian Authorities banned children under 16 from leaving the country unless accompanied by a parent.[1]

The homogeneity and rapidity of these reactions were probably unprecedented. Ostensibly they sufficed to prevent cross-border evacuations. But, in the relative confusion exacerbated by the arrival of scores of private 'agencies' with their own agendas and own funding, they failed to stop one-off, uncoordinated initiatives to establish the now almost inevitable 'orphanages'... In the last resort, then, the 'de-institutionalisation' approach clearly still has a long way to go in practice.

Behind child protection

A partial explanation of why this is so undoubtedly lies in two components of the context in which 'child protection' is carried out.

The first is the on-going legacy of the charity approach to child protection, based on the recognised emotional appeal that children have. Possibly no other human group – with, let us remember, human rights – is still so affected by charity-based responses to its problems. This can have grave ramifications for work to promote and protect children's rights. But by no means all children 'appeal' in this way: 2-year-old 'orphans' generally do, but what about violent gangs of former child soldiers? Indeed, the less child-oriented programmes are based on a rights approach, the more they are likely to focus on the youngest children and babies, who are seen and portrayed as the most defenceless and vulnerable, so 'emotional appeal' dictates that they be the ones targeted. Yet the local community itself is far more likely to give priority to caring for its youngest members: in emergency situations, spontaneous informal fostering is common in regard to young children, for example, but even those above the age of 7 will often begin to find it harder to benefit from such arrangements.

But to maintain on-going public support, the type and content of programmes has to appeal to emotions: direct and immediate material aid does – hence, *inter alia*, the 'orphanages' for young children – whereas the costs involved in designing a family-support system or reviewing legislative texts with

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government counterparts generally do not. Thus, with public donations, agencies continue to 'export' or finance institutional responses even though, in their base country, such solutions have long been discredited and are no longer used. As a result, we face situations world-wide that are exemplified by concerns expressed in countries such as India and Namibia, where no one knows how many children are in residential facilities because large numbers of institutions are not even registered, let alone monitored and supervised.

The countries of Central and Eastern Europe and Central Asia provide a special scenario. Here the legacy is not charity but an institution-based 'tradition' that will inevitably take many years to erode. Efforts are under way in many, but so far with little real impact in most cases – so little that in Ukraine, for example, less than 200 foster parents have so far been recruited throughout the country whereas new 'baby homes' for the 0-3 age group, each accommodating about 100 children, have continued to be built in recent years. And in other countries, the process has yet to begin...

Why children are in care

Responding to the situation of young children without parental care is as complex as the reasons for their situation are varied, and their needs and wishes are diverse.

The circumstances in which young children may need, or find themselves in, an alternative care situation, include:

- the death of one or both parents;
- abandonment (usually at, or shortly following, birth);
- relinquishment to an agency or institution;
- unintentional separation from parents who cannot be immediately traced, usually in the wake of an armed conflict or natural disaster;
- temporary or permanent incapacity of the parents (e.g., due to imprisonment or illness);
- voluntary placement by parents (including respite care);
- medical treatment and other specialised care (e.g., disability, recovery);
- removal to a place of safety;
- placement pursuant to a status offence (e.g., vagrancy);
- illegal entry into another country, whether accompanied or not;
- the child's own initiative to leave home.

The range of scenarios that need to be confronted is therefore vast. In the most obvious of these, the child quite simply no longer has, or has knowledge of, parents. In many instances, children and parents have lost contact and may be looking for each other. In some cases, the parents decide more or less of their own free will to place the child outside their home temporarily, in response to a variety of circumstances, while in others they fiercely resist moves to separate their children from them. According to the situation, it may or may not be possible to foresee the child's return to parental care if appropriate support is given. And certainly in many cases it would have been possible to prevent family breakdown.

Identifying the 'right' solution – and then providing or supporting it – for each child is consequently a major challenge.

Kinship care: lost without it

Too often, provision of substitute care is viewed essentially as a choice between foster care and that all-encompassing term 'residential placement', and as catering to children who are orphaned, abandoned or removed from the parental home on the grounds of maltreatment. The reality is somewhat different.

Temporary or long-term care provided by a family member or close family friend (including *kafala*) – particularly informal in nature but, in many countries, increasingly also in the context of formal proceedings – is by far the most prevalent type of alternative care. This holds true as much for children affected by HIV/AIDS in Africa, Asia and Latin America (at least 90% of whom are taken in informally by their kin or community) as for children from families in difficulty in the USA (there are about 600,000 in the foster-care system nation-wide[2], whereas 2.1 million children are being raised solely by grandparents, over 90% of them on an informal basis[3]).

In many industrialised countries, such as Australia and the UK, the authorities are making greater use of placements in kinship care, which is seen as far less disruptive for the child but also responds to the difficulty of recruiting foster parents. While the potential advantages of kinship care are clear – known caretakers, usually living near to the family home, for example – it has been pointed out that little research has been undertaken to determine the 'success rates' of this solution as opposed to non-family foster-care. Indeed, a number of risks specifically associated with kinship care have been documented, depending on the circumstances in which the placement is effected, including:

- intra-familial friction because relatives insist on caring for the child, or because division of responsibilities and decision-making powers between relatives and parents are unclear or contested;
- unauthorised contact being allowed between the child and the parents or, conversely, authorised contact being refused;
- abusive or neglectful behaviour because the carers come from the same 'troubled' family;
- financial disincentives to return the child to the parents: relatives may receive higher allowances than those available to parents;
- negative portrayal by relatives, or the child's own negative perception, of birth parents, which may reduce the likelihood of the child's reintegration with the latter;
- in developmental terms, the risk that children may have difficulty in situating themselves on a generational or genealogical level when, for example, they are brought up by grandparents almost like the brother or sister of one of their parents.

These are clearly risks that need to be recognised, assessed and, if present, confronted: they are in no way reasons for questioning the overall role that kinship care can play when parents are unable to look after their children for a greater or lesser period of time. But in the same way as 'intra-familial adoptions' (adoption by an aunt, grandparents, a stepparent) are generally to be favoured over adoptions by strangers, there may be no less need in such cases to vet the potential carers and to examine the overall circumstances and likely consequences of such a move.

This poses problems, especially when kinship care is requested (by the birth parents) and provided (by relatives) in good part to avoid outside 'interference'. Should some kind of assessment by the statutory services take place in each case, or not at all, or only if, for example, the placement is to last more than three or six months? If there is minimal or no contact with the social services, how can kinship carers access the support – financial, counselling – that can be vital to the success of the placement?

In most developing countries, kinship care is less an option, more a norm. Alternatives other than institutions are rare, moreover, and extended families and their communities are now stretched to their limits with the need to take responsibility for children affected by the HIV/AIDS pandemic.

Clearly, the provision of financial and material support for relatives caring informally for children is the priority if this system is to stand any chance of continuing to carry out its vital role. But as is the case in industrialised countries, kinship care elsewhere can also bring with it a number of risks for child protection that need to be recognised and addressed. Among those that have been documented in certain African countries, for example, are:

- relatives fighting amongst themselves for the care of orphans, in some cases separating siblings in order to benefit from the social welfare intended for the children;
- looked-after children receiving food and resources only after the needs of the host family's children have been satisfied;
- looked-after children serving as the host family's unpaid domestic worker.

These are not easy issues to broach in a context where relatives are invariably making extraordinary efforts to cope, and where human and other resources in the social services are scarce. The need, from children's rights standpoint, to find ways of tackling them without undermining the very positive aspects of informal kinship care – more by way of support, perhaps, than through surveillance – should nonetheless be recognised, however much it poses a real challenge under current circumstances.

Child-headed households

In Africa at least, kinship care for children, sometimes as young as 3 years, increasingly takes the form of a 'child-headed household' under the

Children cleaning windscreens on Avenido Paseo de la Reforma, Mexico City. Maltreatment and material poverty are two of the most common reasons why children grow up without parental care.

responsibility of an older sibling – one estimate for Rwanda suggests that no less than 13% of *all* households in the country fall into this category.[4] Yet they have not usually been looked on from the 'kinship care' standpoint, being seen more often as a separate phenomenon of special concern because of their vulnerability.

Nonetheless, there is increasing recognition of the positive characteristics of child-headed households – especially, of course, that they often correspond best to the wishes of the children concerned and, notably, allow siblings to remain together. Instead, therefore, of attempts to bring these children into conventional, structured care environments, more emphasis has gradually been placed in some countries on seeking ways to secure the conditions for their adequate protection in the community. Thus, for example, the South African Law Reform Commission has proposed, on the one hand, their legal recognition "as a placement option for orphaned children in need of care"[5] and, on the other, that provision be made to ensure adequate supervision and support by persons or entities selected or approved by an official body and directly or indirectly accountable to that body.

This approach is still considered controversial in some quarters, and certainly it is not without its dangers. Realism may dictate, however, that the alternatives to taking up the challenge in this way quite simply do not exist.

Foster care in the context of de-institutionalisation

It is interesting that, at the very moment that the "natural" limits of foster parent recruitment seem to be reached in many industrialised countries, efforts are under way elsewhere – including in many countries of Central and Eastern Europe – to develop what in many instances is the previously unknown practice of formal foster care.

Foster care can and does play many roles, including: emergency care for abandoned babies; short-term care for children who, very temporarily, cannot be looked after by their parents; medium-term care for those whose family situations are more difficult to resolve; and, more exceptionally, long-term care for children who cannot return home but are unlikely to be adopted.

The current trend towards increased reliance on foster care has been spurred, of course, by initiatives to move the de-institutionalisation process forward. In the industrialised countries, however, 'reliance' has often become 'over-reliance'. Societal realities there underwent profound changes in the second half of the 20th century, with a growing number of households where both partners need to be in paid employment and the development of the 'consumer society' with emphasis on monetary reward. The ceiling on the number of potential foster carers – in the traditional sense of those willing and able to play this role for little more reward than an allowance designed to cover extra costs – has not been raised in anything like the proportions that would correspond to demand, with recruiting campaigns in the UK and USA often having failed miserably.

It was during this same period that the existence of what was initially termed the "battered baby syndrome" (a term coined by Prof. C. Henry Kempe in 1962) began to be increasingly recognised. The realisation of the real incidence of child abuse and neglect in the 1960s and 1970s led to child protection services placing major emphasis on responding to the phenomenon. As a result, removal of children from parental homes to 'places of safety' because of actual or potential maltreatment has created unparalleled pressure on alternative care solutions. This is exacerbated by social workers' fears of condemnation if their decision to maintain a child in the family home proves to have harmful, or even fatal, consequences. Nonetheless, such is the 'foster-care crisis' in countries such as the UK that social workers there have complained of having to leave children in 'at risk' situations because no alternative exists.

Unfortunately, government preferences for foster care are generated not only on child-friendly policy grounds – because of its family-based nature – but also because it is invariably viewed as a conveniently cheap childcare option. This argument may be losing its weight, however. In practice, 'cheap' has frequently translated into the sanctioned or de facto relaxation of standards for recruitment, derisory remuneration, inadequate provision for support and supervision once recruitment has taken place and/or over-burdening individual carers.

Fostering is a highly skilled service: many children in foster care will have suffered traumatic experiences, for example, and foster parents may have to take on the delicate operation of maintaining relations with the biological parents. Simply to enable, let alone motivate, foster carers to devote themselves to these specialised tasks under present-day conditions has meant substantially improving their financial conditions. The importance of appropriate training and effective support services has had to be recognised. And we are coming to terms with the fact that the cost of quality foster care provision, at least for children with the most demanding backgrounds, may in fact need to be equivalent to that of a typical institutional placement.

Launching the idea of foster care from scratch, in the many communities and societies who have organised alternative care for their children without resorting to such formalised solutions, therefore means more than securing acceptance of the practice and persuading potentially interested families to apply. It also implies a fully fledged selection and training programme, a placement system and a support service. Worryingly, not all efforts in this sphere are taking these requirements into account.

Above all, foster care must not be viewed as a panacea. First, while it seems to work well for most children, it cannot work for all. Second, it rarely provides the guarantee of stability that 'permanency planning' requires. Third, even if it could be developed sufficiently to replace 'institutions' entirely as a care setting – a perspective well beyond the realms of reality in almost all countries – it would only be responding to the fact that too many children are unnecessarily deprived of the care of their parents.

The CRC approach

How does the Convention on the Rights of the Child (CRC) approach the issue of out-of-home care, and thus help in policy definition? To some extent, many would complain, it does so in a confusingly inconclusive manner, and on the face of it they might seem justified. But, as noted above, this is a highly complex issue, and one of the factors making it so is the requirement that responses be tailored to the needs an characteristics of each individual child. Examining the contribution of the CRC, then, means not only looking at how it broaches the provision of 'quality care' but also, at least as importantly, how it might ensure that the right decisions are made for each child in relation to his or her specific situation. It is worth reviewing some of the main issues involved here.

Too many children are unnecessarily deprived of parental care, whether actively and deliberately or because the parent(s) are in a social and/or financial situation where they feel they have no choice but to surrender their child. The first fundamental question to be posed, therefore, concerns the importance given in the CRC to the prevention of family breakdown and break-up. Undeniably, there is a massive and coherent thrust throughout the treaty in favour of family preservation. The Preamble sets the scene, with its reference to the family as

"the natural environment for the growth and well-being of all its members and particularly children" which therefore "should be afforded the necessary protection and assistance so that it can fully assume its responsibilities...". In its operative part, the CRC builds on this stand in a variety of ways, through provisions such as:

- the right, as far as possible, to know and be cared for by his or her parents (art 7);
- the prohibition of a child's separation from his or her parents against their will, save where this is determined – subject to judicial review – to be in the child's best interests (art 9);
- the obligation of the State to render "appropriate assistance to parents [...] in the performance of their child-rearing responsibilities" (art 18);
- in relation to child abuse and neglect, explicit mention of preventive efforts and protective programmes "to provide necessary support for the child and for those who have the care of the child" (art 19);
- the State obligation to assist parents to provide the child an adequate standard of living and, in case of need, to provide "material assistance and support programmes, particularly with regard to nutrition, clothing and housing" (art 27).

From the standpoint of international law, consequently, major emphasis is to be placed on preventing two of the most common reasons, in 'normal' circumstances at least, why children find themselves in out-of-home care: maltreatment and material poverty.

Against that background, consideration of the kind of alternative care to be provided brings to light some interesting features that do not always correspond to what has now become 'conventional wisdom' in many circles, sometimes on the basis of more or less deliberate misinterpretation or oft-repeated simplistic dogma.

Again, the Preamble – in keeping with its main role – sets out the overall approach: "the child, for the full and harmonious development of his or her personality, should grow up in a family environment". At this point, it is vital for our review to point out that this statement is not equivalent to, as is so often loudly and misleadingly proclaimed, "the child's right to a family". First, it is in the declaratory, not the operative, part of the CRC. Consequently, in itself it creates no obligations on the part of States Parties – a necessary characteristic of a 'right'. It can certainly be considered to set an overall and ostensibly very desirable objective, as part of the interpretative basis for implementing the CRC's operative provisions. But it does not mean that there is automatic violation of a child's rights if he or she is not in the care of a family. Indeed, no State, however materially or otherwise well-endowed, could commit itself to guaranteeing that every child in its jurisdiction is placed with a family, and this is the main reason that no "right to a family" figures in the operative text. It would, furthermore, be in clear contradiction to the fact that non-family-based care options are also to be provided.

That said, it is clear from the text – and logically – that alternative solutions based on a family- or family-type environment are in principle to be preferred.

In addition, the CRC comes down firmly in favour of providing alternative care without removing the child from the environment with which he or she is familiar: solutions proposed must take account of "the desirability of continuity in a child's upbringing" and "the child's ethnic, religious, cultural and linguistic background" (art 20.3).

The CRC and "the last resort"

There has been much discussion – not to say acrimonious disagreement – in child welfare circles over the position of lengthy institutional placements and intercountry adoption in the 'hierarchy' of care options: in other words, which one should be considered "the last resort". It is worth looking closer at what we can glean from the CRC in this respect, not only to clarify this particular discussion but also because it can help to put in perspective some wider childcare questions dealt with in the treaty.

For young children, this issue is seen to be of special significance in that the vast majority of children adopted abroad are under the age of 8 at the time of their placement, and most are aged 5 years or less, precisely the age-range for whom institutional placement is considered the most detrimental. But perhaps the arguments put forward, on each side, are often trying to respond to the wrong question.

The message that comes through from the CRC is two-fold:

- States should ensure that children deprived of their family environment are cared for in a substitute family setting (it explicitly gives the examples of foster care, *kafala*, adoption) or, "if necessary" in "suitable institutions" (art 20.3).
- Intercountry adoption may be considered if the child cannot be cared for "in any suitable manner" in the child's country of origin (art 21.b).

Logically, therefore, a so-called 'suitable institution' constitutes one 'suitable manner' of caring for the child in his or her own country – and consequently an 'unsuitable' facility would not.

The 1993 Hague Convention on Intercountry Adoption is often cited to throw the application of this logic into disarray, however. The 'subsidiarity rule' that it establishes, it is argued, applies only the preference to be given to domestic adoption over adoption abroad.

The Preamble of this treaty indeed notes that "intercountry adoption may offer the advantage of a permanent family to a child for whom a *suitable family* [our emphasis] cannot be found in his or her State of origin" and, consequently, appears to eliminate non-family-based options as valid alternatives to adoption abroad. Looked at more carefully, this is not quite the case.

First of all, the Hague Convention is a private law treaty – and an extremely valuable one, at that – and not a standard-setting human rights instrument. It sets out to builds on, and not to trump, the CRC. Second, its Preamble states that intercountry adoption may be a solution – meaning that other solutions can be considered – if no family is found nationally. This last phrase implies two things: that efforts have been made to find a family (and not just an adoptive family) at national level, and that permanent, alternative family-based care has been identified as the best option for a particular child in view of his or her circumstances at a given moment. In other words, despite appearances, the wording of the Hague Convention is rather akin to that of the CRC, even though it approaches the issue from a slightly different standpoint.

The three key problems posed when considering the two provisions of the CRC cited above are: what is meant by the term 'institution', how are we to determine if it is 'suitable', and how should we interpret 'if necessary'.

What is an institution?

In response to the first, the CRC itself not surprisingly gives no explicit indication, but the contextual implication is that 'institution', by default, would cover any type of non-family setting (potentially ranging from 'family-type' or group homes through to 'old-style' residential complexes for several hundred children). This would explain why, despite the generally well-earned negative connotation of the word, some 'institutions' could be clearly be qualified as 'suitable'.

In this respect, it is also well worth remembering that we are now nearly twenty years down the road from the moment that the drafting of the CRC was finalised. The term 'suitable institutions' was endorsed when the first draft of this provision was drawn up in 1982, and was maintained throughout the drafting and review process which was completed in early 1989. While the idea of 'de-institutionalisation' was certainly gaining ground during the 1980s, it was still very much a new idea for many. This was notably the case for government delegations from the then-USSR and other Socialist countries that were very active in drafting. Institutional placements were (and too often regrettably still are in practice) the foundation of alternative care policy in those countries, of course, and this would only begin to be questioned once 'transition' had begun in the 1990s. It is therefore perhaps not surprising that the CRC might reflect the realities of those times. This, it can be noted in passing, is just one illustration of why the CRC is a landmark document but not necessarily the 'ultimate' enumeration of children's rights.

Confusion over terminology was hardly helped, moreover, by the recent Recommendation to Member States on Children's Rights in Residential Institutions, adopted by the Committee of Ministers of the Council of Europe.[6] Despite "institutions" in its title, its own second guideline in fact specifies that placement should be in "a small family-style living unit", a kind of facility that, in the minds of most, would not

readily be associated with an institutional setting as such, but which could be eminently 'suitable'.

Suitable or not?
Assessing 'suitability' itself is much more complicated. The first condition is that the facility meets certain basic criteria: as the CRC puts it, in a minimalist manner: "institutions, services and facilities for the care or protection of children shall conform with the standards established by competent authorities, particularly in the area of safety, health, in the number and suitability of their staff, as well as competent supervision" (art 3.3). That is not particularly helpful, and indeed harks back, some might well say, to the kind of medicalised and administrative approach characterising the worst kinds of 'institution'. There is no indication in the CRC of requirements regarding, for example, size, location, organisation, régime or ultimate goal. We need to look at subsequent texts, such as the above-mentioned Council of Europe Recommendation[7], for inspiration in that regard – and this is a further demonstration of the need for international guidelines to facilitate implementation of the CRC in this sphere, moreover (see box on "Reaching consensus on international guidelines").

The other side of the "suitability" coin is of course that the facility meets, in a positive manner, the needs of the individual child concerned at a given moment in time, with that child's future in mind. This aspect of suitability thus depends not only on the validity of the decision-making process regarding the placement of a given child and the availability of options in practice, but is also inextricably linked to the obligation to ensure 'periodic review' of any placement for the purpose of care and protection (art 25). Equally it calls into play the proper application of the child's right to have his or her best interests underlie all decisions and to have his or her views thereon taken into account (and as has been pointed out in ECM103, even very young children are capable of 'having their say').

It follows that one criterion for determining a facility's 'suitability' is the extent to which it works, within the childcare system, to ensure that a child remains there only as long as is necessary. This means that it should both initiate and cooperate with efforts to secure the child's return to the family or move to a 'permanent' family-based setting wherever possible. A major problem associated with "institutional placements" is that in practice they too often become long-term or permanent precisely because effective responsibilities are not assigned for identifying appropriate alternatives for each child.

Reaching consensus on international guidelines

In recent years there has been an unprecedented level of awareness about the urgent need to join forces in improving substantially the quality of out-of-home care. A number of factors have undoubtedly spurred this development: first among them, of course, the situation of children orphaned by HIV/AIDS, but also, for example, the 'outing' of conditions in institutions in many CEE/CIS countries, in-depth investigations of abuse in care facilities in Western Europe, and inappropriate responses – in particular by foreign private agencies – to children in emergency situations.

One result was the creation of **the Better Care Network**, initially an informal and rapidly growing group of individuals seeking to share concerns and experience in order to promote best practice in the sphere, but recently evolving into a more structured network, with a fulltime co-ordinator hosted at UNICEF headquarters in New York.

Another was the joint initiative taken by **International Social Service**, a Geneva-based NGO, and **UNICEF** in 2004 to document the main issues as a basis for calling for the development of international standards on out-of-home care. This call was taken up by the UN Committee on the Rights of the Child which, in a Decision from its 37th Session in September 2004, recommended the preparation of "draft UN Guidelines for the protection and alternative care of children without parental care".

Within a few weeks, a **Working Group** was established within the NGO Group for the Convention on the Rights of the Child, bringing together a wide range of international expertise and experience, whose first task was to produce a document setting out the potential scope and approach of such Guidelines. This was one of the papers submitted to the **Day of Discussion** (16 September 2005) that the UN Committee on the Rights of the Child organises every year, this time focused on "children without parental care", and which attracted well over 200 participants, a record number for this annual event demonstrating the extent of concern.

A major recommendation from this Day of Discussion was that international guidelines on the question be drawn up for adoption by the UN General Assembly, possibly as early as September 2006. The NGO Working Group, in consultation with the Better Care Network and others, including young people, has taken on the task of developing the first draft of this document, which is likely to be made public during the first quarter of 2006.

Necessity: the mother of invention?

The insertion of the words "if necessary" before the allusion to institutional care is instructive. It reflects both the 'de-institutionalisation' thrust that was beginning to gain a hold in the 1980s when the drafting of the CRC took place, and the fact that, invariably, 'institutions' were synonymous with long-term placement in large facilities. Certainly, and for many reasons, it is still the case that childcare policy and individual 'institutions' in most countries rarely seem to be significantly oriented towards providing short-term care with a view to enabling the child to return to parents or kin as quickly as possible. The unfortunate consequence is that the term "if necessary" is in practice invariably interpreted from the standpoint of the system ("nothing else is available") than from the standpoint of the child ("at this moment, this will best meet the child's needs"). In other words, "if necessary" is seen to qualify an intrinsically undesirable care option to be used only for want of better. And that, clearly, is no way to approach potential alternative care solutions for any child.

What is evident from the above considerations, taken together, is that an attempt simply to set 'institutional placements' against 'intercountry adoption' is not only futile but dangerously misleading in terms of evaluating the appropriateness of care responses. Obviously, 'institutional care' cannot be condoned if the various criteria for its suitability are not met, and this is undeniably the case at present for most such placements in most countries – including in particular those whose children are adopted abroad in significant numbers. But the reaction cannot then be, simplistically, to look upon adoption abroad as the patently better option. The real issue is to examine more closely the fundamental reasons for which children are in out-of-home care in the first place, why so many of them are in residential care, and especially why 'unsuitable institutions', and the various public and private systems that maintain them, still manage to flourish whereas family support initiatives find it hard to survive. Not least in this respect, it would be worth asking a very naive question: why are institutions so frequently referred to – or call themselves – by the highly emotive epithet 'orphanage' when only a very small minority (usually 5 to 10%) of children in their care are in fact orphans? For child welfare, the answer to that one question might well contribute a great deal more than arguing the relative merits of residential placements and intercountry adoption.

Regrettably, moreover, continuing recourse to intercountry adoption on a significant scale, justified by the acknowledged unsuitability of institutional placements, often has the secondary effect of disguising the need and reducing motivation for undertaking such assessments – not to mention diverting the resources required for doing so. In addition, and perhaps most perversely, initiatives from the same countries to which intercountry adoptions are effected are often financing and promoting 'orphanages' in the children's countries of origin.

An agenda for discussion

This article suggests that alternative forms of care constitute a range of options, not a top-down listing. Certainly, one would normally begin by looking at the various family-based care possibilities, and then move along the spectrum to residential care, when considering the placement of a child. But the choice would be a function

of that child's needs, characteristics, history and situation, and not based on the perception of the inherently and increasingly negative quality of the solution as one goes along that spectrum. This is not a new approach as such, of course, but it tends to receive far less attention than the demonisation of residential care and the call for 'de-institutionalisation at any cost'.

The question that should be asked, then, is not "what is the last resort solution?" but "what solution would and could correspond best to the circumstances, experiences, needs and wishes of this particular child?" This has led Save the Children UK, for example, to start tackling the question from the other end, looking at supporting children through positive care options – the 'first resort'. Only by approaching out-of-home care in this manner can we hope to spur the necessary changes and developments that could ensure 'suitable' care for all.

"There is no ideal solution to the loss of a parent, only better or worse alternatives."[8] In this overview of selected challenges for out-of-home care provision, the main aim has been to examine the basis on which 'better' and 'worse' might be validly assessed, and to do so in the light of approaches justified by the CRC.

Given the wide range of reasons why children are, or are rightly or wrongly deemed to be, in need of out-of-home care, the diverse country situations, and the special concerns stemming from the effect of emergencies and the HIV/AIDS pandemic, it is impossible to set out a single comprehensive agenda. But some general points for positive action can be emphasised:

- Inadequate family support feeds care systems that are more costly than the support would have been: family preservation should be the first requirement of a policy on alternative care.
- Care systems tend to retain the children entrusted to them: family reintegration should be the prime objective of alternative care.
- A full range of care options is required: the simplistic hierarchical consideration of these options – according to which 'family-based' is by definition 'good' and 'residential facilities' are at best 'the last resort', at worst 'bad' – is the wrong basis on which to approach the question of out-of-home care.
- The 'best' option is the one that responds in the most appropriate way to the situation and needs of a given child at a given moment: consequently the option chosen needs to be reviewed as his or her situation and needs evolve.
- Kinship care solutions, including child-headed households, need to be supported as valid care options, but with attention to risks.
- Foster care cannot be expected to bear the burden of de-institutionalisation policies: needless entry in to the care system – particularly where material poverty and marginalisation are the essential causes of relinquishment or removal – is the main problem to be tackled.
- Residential care is not 'institutionalisation' if it responds to the right child at the right time, is conceived as a family-type or small group home, and is directed towards preparing the child for return home or another stable 'non-residential' living environment.

Alongside such promotion of rights-based best practice, however, a clear battle still needs to be fought against the 'institutional' response. This will in some cases require directly influencing government policies, making best use of the arguments that the CRC and other documents enable us to muster. But even more important, perhaps, will be enabling the authorities to resist effectively the setting up of 'orphanages' by foreign private groups from countries whose very own experience has clearly shown that they simply do not work...

Notes

1 In the wake of the October 2005 earthquake, Pakistan similarly imposed a ban on intercountry adoption.
2 Child Welfare League of America
3 US Department of Health and Human Services, afcars, October 2000 estimates
4 *Research into the living conditions of children who are heads of household in Rwanda,* Agency for Cooperation and Research in Development (ACORD), London, March 2001
5 South African Law Reform Commission, *supra* footnote 9.
6 Rec (2005)5, adopted 16 March 2005.
7 *Op. Cit.*
8 John Williamson, in his Foreword to "A Family is for a Lifetime" (see "Further reading" in this ECM)

Young children in institutional care in Europe

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Research shows that young children are frequently placed in institutional care throughout America, Europe and Asia. This occurs despite wide acknowledgement that institutional care is associated with more negative consequences than family-based care. For example, children in institutional care are more likely to suffer from attachment disorder, developmental delay and deterioration in brain development (Johnson et al 2006).

In collaboration with the World Health Organization (WHO) Regional Office for Europe, the University of Birmingham carried out a survey of 33 European (excluding Russian-speaking) countries in 2002, as a part of the EU Daphne programme to combat violence to women and children. The study mapped the number and characteristics of children under the age of 3 in residential care (Browne et al 2004, 2005a) and found 23,099 children aged less than 3 years (out of an overall population of 20.6 million under 3) had spent more than three months in institutions, of ten children or more, without a parent. This represents 11 children in every 10,000 under 3 years in residential care institutions.

The figures varied greatly between the different countries. Four countries had none or less than 1 per 10,000 under-3's in institutions, 12 countries had institutionalised between 1 and 10 children per 10,000, seven countries had between 11 and 30 children per 10,000 and, alarmingly, eight countries had between 31 and 60 children per 10,000 in institutions. Switzerland and Luxembourg could provide no information. Only Iceland, Norway, Slovenia and the UK had a policy to provide foster care rather than institutional homes for all needy children under the age of 5. Of most concern were the 15 countries with over one baby in every thousand (10 per 10,000) living the first part of their lives in institutions without a parent. These countries were Belgium, Bulgaria, Czech Republic, Latvia, with over 50 per 10,000; Hungary, Lithuania, Romania, Slovak Republic with over 30 per 10,000; Finland, Malta, Estonia, Spain with over 20 per 10,000; and Netherlands, Portugal and France with over 10 per 10,000).

Another 2002 survey of Eastern Europe and Central Asia (UNICEF Innocenti 2004) showed most Russian-speaking countries to have at least 20 children in every 10,000 under 3 in 'infant homes'. Pearson product moment correlations performed on the 11 countries that appeared in both surveys revealed a significant level of correlation ($r = 0.633$, $p<0.04$). This suggests that, although information difficulties exist, reasonable estimates can be made and the data is reliable enough to inform policy and practice.

Browne et al (2006) averaged the data from both surveys. They calculated the number of under-3's in institutional care for 46 out of the 52 countries (88.5%) of the WHO region member states (FYR Macedonia, Israel, Luxembourg, Monaco, San Marino and Switzerland were not included). The resulting figure was 43,842. Since the estimated total population of children in that age group is 30.5 million, that gives a rate of institutionalisation of 14.4 per 10,000. The greatest numbers of under-3's in institutional care were found in Russia (10,411), Romania (4,564), Ukraine (3,210), France (2,980) and Spain (2,471).

However, Carter (2005) claims that the overuse of institutional care for children is far more widespread than official statistics suggest. He states that the NGO 'EveryChild' estimates the actual number of children in social care facilities in Central and Eastern Europe and the former Soviet Union to be approximately double that officially reported. Over the past 15 years, Carter (2005) observes a small decline (13%)