Position Statement

ESTABLISHING ALTERNATIVE CARE PRINCIPLES IN NIGERIA’S CHILD RIGHTS ACT

January 2023

This position statement is in response to a time-sensitive issue which is important to Nigerian children. It presents the key asks that are necessary to ensure that the rights and needs of children without or at risk of losing parental care are prioritized, as the National Assembly embarks on an amendment process for the Child Rights Act, 2003.

Giving the multidimensional conditions that cause vulnerability for children, we recommend for the establishment of key principles of Guidelines for the Alternative Care of Children (GACC) in Nigeria’s Child Rights Law.

Bearing in mind the critical significance of GACC in improving the welfare need of children, especially children who have lost parental care, or at risk of losing parental care, the ongoing amendment process by the National Assembly offers a great opportunity to strengthen the child rights law to holistically address challenges which vulnerable children in Nigeria are confronted with.
Introduction

Greater need for the actualization of Child Welfare and Rights in Nigeria have necessitated the ongoing process at the National Assembly to amend the Child Rights Act, 2003. While we agree that the Child Rights Act, a 20-year-old law which is derived from the United Nations Convention on the Rights of the Child (UNCRC), requires some key revisions, we submit that this amendment should also incorporate core principles of Guidelines for Alternative Care of Children, as this would help in widening the range of protection for orphaned and vulnerable children in Nigeria.

Being Nigeria’s National legal framework for the welfare and protection of children, we believe that this CRA review process being initiated by the Federal House of Representative is timely, and presents an opportunity to provide effectual update for the law in line with progressive global trends.

While we have no objection to the ongoing process to introduce a new section 14 subsection 3 to provide punishment for abandoning children after birth, we propose special part and section(s) be created to entrench principles of the guidelines for alternative care of children. This will place the country in line with global trends in child protection, and at par with other countries such as Ghana¹, South Africa², and Egypt³, among others.

What is Guidelines for Alternative Care of Children (GACC)?

Background

The Guidelines for the Alternative Care of Children were borne from a recognition of significant gaps in the implementation of the UNCRC for millions of children worldwide either without, or at risk of losing, parental care. The international community has therefore come together and developed these Guidelines for the Alternative Care of Children. They are the result of five years of discussions and negotiation between the UN Committee on the Rights of the Child, governments led by Brazil, UNICEF, experts and academics, representatives of non-governmental organisations and, last but not least, young people with care experience.⁴

³ See chapter 2, article 46 of Egypt’s “National Child Care and Protection Policy”; https://learningpartnership.org/sites/default/files/resources/pdfs/Egypt-Law%20No%2012%20of%201996%20Child%20Law%20Amended%20by%20Law%20No%20126%20of%202008_complete-English.pdf
Key Principles of the Guidelines for Alternative Care of Children

The Guidelines for the Alternative Care of Children outline the need for relevant policy and practice with respect to two basic principles: necessity and appropriateness. At the heart of necessity, we find the desire to support children to remain with, and be cared for by, their family. Removing any child from his/her family should be a measure of last resort, and before any such decision is taken, a rigorous participatory assessment is required. Concerning appropriateness, the Guidelines for the Alternative Care of Children define a range of suitable alternative care options. Each child in need of alternative care has specific requirements with respect to, for example, short or long-term care or keeping siblings together. The care option chosen has to be tailored to the individual needs of the child. The suitability of the placement should be regularly reviewed to assess the continued necessity of providing alternative care, and the viability of potential reunification with the family.  

The child and the family

- The family being the fundamental group of society and the natural environment for the growth, well-being and protection of children, efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members. The State should ensure that families have access to forms of support in the caregiving role.
- Every child and young person should live in a supportive, protective and caring environment that promotes his/her full potential. Children with inadequate or no parental care are at special risk of being denied such a nurturing environment.
- Where the child’s own family is unable, even with appropriate support, to provide adequate care for the child, or abandons or relinquishes the child, the State is responsible for protecting the rights of the child and ensuring appropriate alternative care, with or through competent local authorities and duly authorized civil society organizations. It is the role of the State, through its competent authorities, to ensure the supervision of the safety, wellbeing and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided.
- All decisions, initiatives and approaches falling within the scope of the present Guidelines should be made on a case-by-case basis, with a view, notably, to ensuring the child’s safety and security, and must be grounded in the best interests and rights of the child concerned, in conformity with the principle of non-discrimination and taking due account of the gender perspective. They should respect fully the child’s right to be consulted and to have his/her views duly taken.

5 ibid
into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information. Every effort should be made to enable such consultation and information provision to be carried out in the child’s preferred language.

- In applying the present Guidelines, determination of the best interests of the child shall be designed to identify courses of action for children deprived of parental care, or at risk of being so, that are best suited to satisfying their needs and rights, taking into account the full and personal development of their rights in their family, social and cultural environment and their status as subjects of rights, both at the time of the determination and in the longer term. The determination process should take account of, inter alia, the right of the child to be heard and to have his/her views taken into account in accordance with his/her age and maturity.

- States should develop and implement comprehensive child welfare and protection policies within the framework of their overall social and human development policy, with attention to the improvement of existing alternative care provision, reflecting the principles contained in the present Guidelines.

- As part of efforts to prevent the separation of children from their parents, States should seek to ensure appropriate and culturally sensitive measures:
  - To support family caregiving environments whose capacities are limited by factors such as disability, drug and alcohol misuse, discrimination against families with indigenous or minority backgrounds, and living in armed conflict regions or under foreign occupation;
  - To provide appropriate care and protection for vulnerable children, such as child victims of abuse and exploitation, abandoned children, children living on the street, children born out of wedlock, unaccompanied and separated children, internally displaced and refugee children, children of migrant workers, children of asylum-seekers, or children living with or affected by HIV/AIDS and other serious illnesses.

**Alternative care**

- All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life.

- Decisions regarding children in alternative care, including those in informal care, should have due regard for the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a key goal.
Children must be treated with dignity and respect at all times and must benefit from effective protection from abuse, neglect and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves.

Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration. Removal decisions should be regularly reviewed and the child’s return to parental care, once the original causes of removal have been resolved or have disappeared, should be in the best interests of the child.

Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family.

Attention must be paid to promoting and safeguarding all other rights of special pertinence to the situation of children without parental care, including, but not limited to, access to education, health and other basic services, the right to identity, freedom of religion or belief, language and protection of property and inheritance rights.

Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests.

Recognizing that, in most countries, the majority of children without parental care are looked after informally by relatives or others, States should seek to devise appropriate means, consistent with the present Guidelines, to ensure their welfare and protection while in such informal care arrangements, with due respect for cultural, economic, gender and religious differences and practices that do not conflict with the rights and best interests of the child.

No child should be without the support and protection of a legal guardian or other recognized responsible adult or competent public body at any time.

The provision of alternative care should never be undertaken with a prime purpose of furthering the political, religious or economic goals of the providers.

The use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests.

In accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings. Exceptions to this principle may be warranted in order to prevent the separation of siblings and in cases where the placement is of an emergency
nature or is for a predetermined and very limited duration, with planned family reintegraction or other appropriate long-term care solution as its outcome.

- While recognizing that residential care facilities and family-based care complement each other in meeting the needs of children, where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy, with precise goals and objectives, which will allow for their progressive elimination. To this end, States should establish care standards to ensure the quality and conditions that are conducive to the child’s development, such as individualized and small-group care, and should evaluate existing facilities against these standards. Decisions regarding the establishment of, or permission to establish, new residential care facilities, whether public or private, should take full account of this deinstitutionalization objective and strategy.

**Measures to promote the application of GACC**

- The federal government should, to the maximum extent of their available resources and, where appropriate, within the framework of development cooperation, allocate human and financial resources to ensure the optimal and progressive implementation of GACC in a timely manner.

- States are responsible for determining any need for, and requesting, international cooperation in implementing the present Guidelines. Such requests should be given due consideration and should receive a favourable response wherever possible and appropriate. The enhanced implementation of the present Guidelines should figure in development cooperation programmes. When providing assistance to a State, foreign entities should abstain from any initiative inconsistent with the Guidelines.

- Nothing in the present Guidelines should be interpreted as encouraging or condoning lower standards than those that may exist in given States, including in their legislation. Similarly, competent authorities, professional organizations and others are encouraged to develop national or professionally specific guidelines that build upon the letter and spirit of the present Guidelines.  

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6 ibid
Conclusion

We applaud the ongoing move by the National Assembly to review the Child’s Right Act, 2003. While we do not object to the amendment in section 14, which seeks to criminalize child abandonment, we believe that if the general interest of children must be taken into full consideration, it is essential to incorporate principles that supports family strengthening as a means of preventing all means of child vulnerability from taking place. Also, as captured above, removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary and for the shortest possible duration.

Bearing in mind the critical significance of GACC in improving the welfare need of children, especially children who have lost parental care, or at risk of losing parental care, this amendment process offers a great opportunity to strengthen the child rights law to holistically address challenges which vulnerable children in Nigeria are confronted with.

We therefore recommend for wider collaboration and support amongst critical stakeholders towards updating the child right’s law to effectively cater for the most vulnerable of children in Nigeria.
A LOVING HOME
FOR EVERY CHILD