

Submission for hearing on "Abusive practices on depriving children from their family environment" to held by Committee on Social Affairs, Health and Sustainable Development within PACE, Council of Europe - Paris 19/09/2023ⁱ

Building on the 2018 report "[Striking a balance between the best interest of the child and the need to keep families together](#)" this intervention seeks to provide promising examples on how to prevent abusive practices that may result in unnecessary separation and provides promising practices on how the State should respond when these abusive practices nevertheless occur, starting with a definition.

1. DEFINITION OF "UNJUSTIFIED" STATE INTERVENTIONS WHICH ARE POTENTIALLY "ABUSIVE"

Given that the State's power to remove a child from their family and place them in an alternative care setting is one of the most intrusive in the private lives of children and families, it is critical that it is not improperly used (Burns, Pösö and Skivenes, 2017). International standards note that coercive decisions comprise any decision to remove a child from parental care that is made against the will of the parent(s) or primary caregivers (1989 CRC, Art. 9). "Against the will" encompasses :

- 1. where the parent(s) and/or child have maintained their refusal;
- 2. Unwillingly acquiesced in response to pressure or threats;
- 3. when no viable alternative options are offered.

Broadly perceived as negative, such coercive decisions may nevertheless be justified in specific contexts, so long as it respects international standards (e.g. "abuse or neglect of the child by the parents"). These standards seek to balance the State's protective powers and responsibilities with the right to privacy and family life, ensuring that States do not have unfettered powers.

For the purpose of this intervention, "unjustified" coercive decisions are State interventions that are not aligned with international standards. Such decisions can lead to "abusive" practices. The degree of lack of alignment is arguably the deciding factor of whether the practice is "abusive" or not.

2. PREVENTING UNNECESSARY SEPARATION AS AN ABUSIVE PRACTICE

2.1 Overarching recommendations for any child protection system

- Political will to ensure alignment with international and regional standards such as:
 - 1989 Convention on the Rights of the Child,
 - 2009 UN Guidelines for the Alternative Care of Children,
 - 2019 UNGA resolution,
 - 2022 Human Rights Council Resolution on realising the rights of the child and family reunification (e.g.: In Spain, a general law including all children's rights embedded in the 1989 CRC has been adopted at federal level in 1996 and applies to the different autonomous communities "Ley Orgánica 1/1996, de 15 de enero, de Protección Jurídica del Menor, de modificación parcial del Código Civil y de la Ley de Enjuiciamiento Civil" <https://www.boe.es/buscar/act.php?id=BOE-A-1996-1069>),
 - European Convention on Human Rights (e.g.: Art. 8),
 - Rec CM/Rec(2011)12 on children's rights and social services friendly to children and families.
- Special protections for unaccompanied and separated children such as:
 - UN CRC/CMW Committee Joint General Comments on migrants,
 - 2022 Council of Europe resolution on Protection and alternative care for unaccompanied and separated migrant and refugee children,
 - Council of Europe's Strategy for the Rights of the Child 2022-2027, which identifies children's rights in crisis and emergency situations as one of its priority areas,

- Council of Europe's Action Plan on protecting vulnerable persons in the context of migration and asylum in Europe 2021-2025 provides valuable guidance.
- Adequate investment into financial and human resources.
- Robust and binding framework for national child protection system (e.g. Federal child protection law, civil code of procedure that includes child participation, person of trust, complaints mechanism, etc). For example, the 2021 [UNHCR Best interest assessment/determination tool](#) encourages that the *"identity of the child, including sex, sexual orientation, national origin, religion and beliefs, cultural identity and personality, as a key element in non-discriminatory legislation, public policies and practices."*

2.2 Support to families in their caregiving role

- National and sub-national frameworks should include the necessity to support families prior to any removal and placement decisions (e.g. in Spain, [Arts. 26-28 of Law 8/2021 on the comprehensive protection of children and adolescents against violence](#) focus exclusively on principles and measures aimed at 'prevention within the family environment', including necessary support to prevent risk factors and need to strengthen protective factors etc).
- Improve access to existing basic and targeted services (e.g. remove potential barriers such as costs for the families including cultural, geographic; availability of parents in terms of time etc.)
- Training of all professionals in contact with children (e.g. teachers, paediatricians, nursery, psychologists, police) to detect and offer early prevention measures for families at risk
- Public awareness raising of the importance of prevention measures and supporting families
- Strengthening re-integration practices beyond maintaining contact with the family of origin by addressing the initial reasons for separation. Introduction of a "professional" who is responsible for working with families of origin, to enable a "re-start" and ensure collaboration with all relevant sectors, whenever in the best interests of the child
- Introduce a wide range of respite care options for families of origin, foster families and children to improve the sustainability of care of the child

Promising practices

Estonia: The [Republic of Estonia Child Protection Act](#) includes culture as part of children's right to identity: '(1) (...) Every child has the right from birth to a name, nationality, general education in his or her national culture, and to know and be cared for by his or her parents' (Art. 9). Furthermore, the Act states that 'The child has an **equal right to receive assistance and care and to develop, regardless of his or her sex or ethnic origin, regardless of whether the child lives in a two parent family or single parent family**, whether the child is adopted or under custody, whether the child is born in wedlock or out of wedlock, or whether the child is healthy, ill or disabled' (art. 10).

Ireland: Work with Roma to ensure that they are considered "habitually resident" in the country to be eligible for the carer allowance. This is important given that many Roma "live as part of large extended families within the same area and often move from family to family, which is in keeping with their cultural norms and traditions." <https://nascireland.org/sites/default/files/NASC-ROMA-REPORT.pdf>

Moldova: The Roma Community Mediators Institution has been established for promoting Roma inclusion and supporting their integration into society by being "a "bridge" between the disadvantaged communities and the local authorities". HRW notes further work to prevent segregation of Romani refugees fleeing the war in Ukraine may be required. <https://unsdg.un.org/latest/stories/kindness-and-honesty-local-community-mediators-promote-roma-inclusion-moldova>; <https://reliefweb.int/report/moldova/moldova-romani-refugees-ukraine-face-segregation>

Norway: the Norwegian Child Welfare Services (barnevernet) offers comprehensive services and programmes to support parents in different situations where their caring role is at risk. https://www.bufdir.no/en/English_start_page/The_Norwegian_Child_Welfare_Services/

2.3 Gatekeeping (coercive decision to remove the child)

- Improve the implementation of the laws that facilitate the child's participation and his or her family (e.g. information tools about their rights and responsibilities, system, role of actors)
- Ensure that the child is able to choose their person of trust within their existing entourage
- Ensure the inter-disciplinarity and professionalism of decision-making authorities (e.g. minimum qualifications, specialised expertise on child protection, continuous learning)
- Guarantee that the child's representative has the specific child protection expertise and in practice, easily accessible through a process known to the child
- Strengthen accreditation and supervision of private actors
- Ensure that whenever in the child's best interests, siblings should not be separated and if placement is necessary, they should be placed together as part of Federal legislative framework.

Promising practices related to child participation / awareness raising

Child friendly tools that explain children's rights as a general tool to explain the 1989 CRC and general children's rights, UNICEF has produced the following

<https://www.unicef.org/sop/convention-rights-child-child-friendly-version>.

SOS Children's villages with the Council of Europe published a child friendly guide "Children and young people in care - Discover your rights!" <https://www.sos-childrensvillages.org/getmedia/65242186-a6d2-4056-b6fe-9b18cc639d41/111202-English-brochure-DYR.pdf>

Missing Children in Europe have developed an application "Miniila" that provides "up to date and accessible information on their rights, procedures and the available support wherever they are" in Europe. <https://www.miniila.com/>

Promising practices related to ensuring professional decision-making

Accreditation of service providers: The Child Safe Standards for Permanent Care in New South Wales, a state in Australia, form the basis for how agencies become accredited to provide statutory out-of-home care and adoption services. The Children's Guardian, they assess the agency and its operations to make sure it meets the requirements of the regulations. <https://ocg.nsw.gov.au/statutory-out-home-care-and-adoption/about-statutory-out-home-care-and-adoption/accreditation>

Australia and UK: There exists specialist child's rights lawyers with accreditation by the Law Society trained on child law <https://www.lawsociety.org.uk/career-advice/individual-accreditations/children-law-accreditation/> and <https://www.lawsociety.com.au/for-the-public/going-court-and-working-with-lawyers/specialist-accreditation-scheme>

Promising practices related to preserving family identity and keeping siblings together

European countries with legislative framework covering siblings: Several countries across Europe have adopted laws giving sibling the right not to be separated in alternative care (e.g. Belgium, France, Netherlands, Norway and Scotland). <https://www.sos-childrensvillages.org/news/laws-to-keep-siblings-together-debated-across-eu>

- Belgium's Civil Code in 2019 *Art. 387septiesdecies. Les frères et soeurs mineurs ont le droit de ne pas être séparés. Ce droit doit être apprécié dans l'intérêt de chaque enfant. Si l'intérêt d'un enfant exige que ce droit ne soit pas exercé, les parents, les parents d'accueil, le tribunal et l'autorité compétente à cet effet s'efforceront de maintenir les contacts personnels entre cet enfant*
- Switzerland : a Federal law does not yet exist but the Canton du Vaud has a provision. « *Art 23(2) Les fratries placées ne doivent pas être séparées sauf cas exceptionnel et dûment justifié* » *Règlement d'application de la loi du 4 mai 2004 sur la protection des mineurs du 5 avril 2017 (RLpromin).*

3. PREVENTING ABUSIVE PRACTICES IN ALTERNATIVE CARE

- At a national level, the relevant State actors should prioritise the CRC Committee recommendations
- Despite all efforts to support the family, it may nevertheless become necessary for the child to be separated from his or her parents. In order to respect the child's right to identity (1989 CRC, Arts. 7-8, 20), when it is in his or her best interests :
 - Ongoing contact with "family relations" should be maintained and re-integration efforts pursued
 - *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* (Art 20(3) CRC)
 - Information of how and where they can access comprehensive information about their dossier should be provided. Such information should be centralised and kept in perpetuity.
- Ensure a robust accreditation and monitoring system of private bodies to have minimum qualifications, continued training and periodic audit of services
- To facilitate placements, policies should ensure that adequate resources are available to prioritise family-based options (e.g. subsidies are available for kinship carers, suitable support is provided to foster families for this specific type of placement).
- Guarantee holistic support (initial, continuing and post) is available to all foster families, including children (e.g.: training, punctual services to address specific issues, associations of foster families that provide peer support and represent their needs in ongoing reforms)
- Introduce a national legal provision that encompasses leaving care support so that it is equally available to all children. Adequate resources should be invested to ensure transition into full independence (e.g. facilitate access to all education and professional training, support person, suitable accommodation)

Promising practices preserving child's identity while in alternative care

Belgium – requirement in law. Art. 25(2) of the law covering alternative care states that :

The minor has the right to respect for his privacy, including:

1° the protection of his personal data, without prejudice to the provisions of Section 7;

2° respect for one's political, philosophical, ideological or religious beliefs and sexual orientation;

<https://codex.vlaanderen.be/Portals/Codex/documenten/1013455.html#H1027493>

England - Fostering Services National Minimum Standards 2011, Standard 2 focuses on promoting a positive identity, potential and valuing diversity through individualised care. https://www.minimumstandards.org/fost_two.html. In practice, for example, the **Norfolk County Council** reminds carers about the need to respect and value a child's cultural heritage. Every effort should be made to preserve a child's linguistic and communication skills, otherwise they may lose a large part of their culture. <https://www.norfolk.gov.uk/children-and-families/adoption-and-fostering/fostering/fostering-handbook/caring-for-a-looked-after-child/identity>.

Germany: Art. 9 of the Eighth Book of the Social Code (SGB VIII), which governs children and youth services states that when designing the services and fulfilling the tasks, authorities should consider issues such as social and cultural needs and characteristics of young people and their families. A recent report by the German Institute for Human Rights suggests that 'some approaches have demonstrated ways to avoid the use coercive measures through, e.g., settings with a social space orientation that can provide individualised needs-based support involving a combination of interlinked supportive measures. For example, Hamburg's Koordinierungsstelle Individuelle Hilfen, a coordination office supports "complex and problematic" support-service processes by working with the competent authorities focussing on the individual situation of the young persons and their families'.

Italy : The [Law 47/2017](#) provides equal treatment to Italian children and foreign unaccompanied and separated migrant children, and the latter have a right to access education, health and social services, in addition to care and protection services. The law also indicates family-based care as the most appropriate and preferred option and provides for the creation of a list of accredited volunteer guardians, who are trained by the State.

Netherlands – Nidos recruits its own (ethnic) foster families, which is a system a part from the general Dutch foster care system. As such, the Netherlands does not face a lack of “suitable families” who are willing to take care of unaccompanied minors. It has been noted that “because of the different backgrounds of these youngsters, Nidos favours reception in families connected with or close to their own ethnic background. These family connections provide the minors with a secure basis from which they can return to their country of origin or integrate in Dutch society, while preserving their own cultural identity. In many cases, the minors are familiar with the idea of living with next of kin because, in most of the countries of origin, it is customary for family members to receive and educate children whose parents are absent.” <https://www.egnetwork.eu/wp-content/uploads/2015/01/RLF-rapport-def..pdf>

Wales: Life journey books promoted by Social Care Wales should include: *where the child was born, time of birth and weight, developmental milestones, likes and dislikes, favourite memories, details of parents, siblings and extended family members, copies of birth certificates; these will provide concrete evidence of belonging, a family tree to help the child to see where they belong in their family a life graph, which is a diagram to help the child understand home moves, maybe drawn by them photos and their own pictures. You can also help the child to make a memory box to safely store important possessions chosen by the child. This can be used as a resource for maintaining a sense of identity.* Photographs, tickets to events, maps, brochures, achievements and awards are all part of the child’s life journey and can be included in life journey work. *You should also include cultural information in the life journey book, to help your young person develop a sense of identity.* We’ve seen how children need to develop an understanding of their religious, ethnic and cultural background and how you have a duty to ensure these needs are met, as outlined in *The Children Act 1989*. <https://socialcare.wales/resources-guidance/improving-care-and-support/children-who-are-looked-after/childrens-identity>

Promising practices related to reintegration

Cambodia – with the support of UNICEF, the country drafted a Capacity Development Plan for family support, foster care and adoption in 2018. Another Action Plan for improving child care with the target of safely returning 30 per cent of children was developed from residential care institutions. As a result of these Action Plans, Prakas on Procedures to Implement Kinship Care and Foster Care were launched in 2021 including pro-actively addressing initial reasons for separation prior to separation. <https://www.unicef.org/cambodia/reports/capacity-development-plan-family-support-foster-care-and-adoption> ; <https://www.unicef.org/cambodia/reports/action-plan-improving-child-care-target-safely-returning-30-cent-children> and <https://bettercarenetwork.org/sites/default/files/2021-07/Final-Prakas-on-Kinship-and-Foster-Care-English-1-1.pdf>

Promising practices related to ensuring “quality” alternative care

Research networks – APFEL an international network of researchers and practitioners whose aim is to promote foster care in Europe. In addition, International Foster Care Research Network is another group that seeks to promote quality practices. <https://foster-care-research.net/>

Recruitment of foster care families – investment into a campaign for the wider public that explains the role, responsibilities and benefits such as 2022 John Lewis advertisement <https://www.youtube.com/watch?v=1z0jfp2gCl8>

National association of foster families – In the UK, the Fostering Network is the country’s leading fostering charity and membership organisation, bringing together everyone involved in the lives of fostered children to support those who foster, improve opportunities for fostered children and young people and provide expert guidance to all fostering services, including support fostering families and the services that work with them. <https://www.thefosteringnetwork.org.uk/get-involved/membership/foster-carer-membership>.

Leaving care in Scotland – law and regulations set up the duties of the State to provide after care support up to 26 (or beyond in some cases). This legal framework has been strengthened over time as well as guidance on support services developed. <https://www.gov.scot/policies/looked-after-children/children-leaving-care/>

4. RESPONDING TO ABUSIVE PRACTICES IN CHILD PROTECTION AND ALTERNATIVE CARE

When abusive practices occur, it is of vital importance that complaints and appeal mechanisms, as well as pathways for remedies exist.

- Regarding complaint mechanisms, States should ensure that it has a specialised national human rights institution focusing on children's rights where individual cases can be addressed (e.g. ENOC)
- Ensure that all children and families are aware of all available complaint mechanism for individual cases through different materials
- Building on the solid framework for remedies available for abuses, which should include procedures, support services and remedies.

Promising practices related to respn

Awareness raising of where to complain - Kescha, LAVI, Pro Juventute in Switzerland

European Network of Ombudsman – Ombudsman ENOC gathers 44 independent children's rights institutions in 34 countries within the Council of Europe member states. Inspiration can be gathered from the different models. <https://enoc.eu/>

Children's Rights Commissioner Scotland - a national, independent organisation with statutory powers and regulations which has a legal duty to promote and protect the rights of all children in England in accordance with the 1989 CRC. The Children's Commissioner takes on a crucial role, sitting at the heart of Government, delivering for children, and championing their voices and needs. <https://www.cypcs.org.uk/>

Children's rights defender in France – children may contact the defender whenever they are concerned about their rights. <https://www.service-public.fr/particuliers/vosdroits/F1628>

Germany - The Fund Heimerziehung West (Upbringing in Residential Children's Homes West) and the Fund Heimerziehung in der DDR (Upbringing in Residential Children's Home in the GDR) were set up to help people who had been exposed to abuse and ill-treatment while in residential care facilities during their childhood covering about 47.000 people. <https://www.bmfsfj.de/bmfsfj/meta/en/youth>

Switzerland - prior to 1981, extensive remedies available through Federal Act on Coercive Measures for The Purpose of Assistance and Extra-Familial Care Prior to 1981, of 30 September 2016 (PLAFA) in Switzerland, a mechanism should equally be developed for all cases post 1981 where potential abuses may have occurred.

ⁱ This document is based on conclusions and recommendations that were the result of research on Coercive decisions in Switzerland through the lens of international standards: foster care placements <https://www.nfp76.ch/en/zziwbYYTdZ6bsdPy/project/projekt-jaffe> initially drafted by Mia Dambach and Cécile Jeannin, which has specifically been adapted for this hearing by Mia and Christina Baglietto.