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ASSESSMENT OF THE CHILD PROTECTION AND ALTERNATIVE CARE SYSTEM IN UKRAINE

FINAL REPORT – 13 JULY 2020



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CONTENTS

| | |
|--|-----------|
| TERMINOLOGY | 8 |
| Acronyms | 8 |
| Glossary of terms | 9 |
| ACKNOWLEDGEMENTS | 11 |
| PART 1: EXECUTIVE SUMMARY | 13 |
| 1.1 Introduction | 13 |
| 1.2 Report Content | 13 |
| 1.3 Executive Summary of Conclusions and recommendations | 14 |
| PART 2: BACKGROUND, OBJECTIVES AND METHODOLOGY | 17 |
| 2.1 Background and purpose | 17 |
| 2.2 Objectives of the assessment: | 18 |
| 2.3 Outcomes of the assessment: | 18 |
| 2.4 Research Methodology | 18 |
| 2.4.1 Desk Review: | 18 |
| 2.4.2 Development of research tools | 18 |
| 2.4.3 Field work | 18 |
| 2.4.4 Data Analysis and preparation of findings: | 19 |
| 2.4.5 Limitations | 19 |
| 2.3 International treaties and guidance underpinning the ISS mission | 19 |
| PART 3: SUMMARY OF FINDINGS AS A RESULT OF A DESK REVIEW AND DATA COLLECITON THROUGH A FIELD MISSION IN UKRAINE | 21 |
| 3.1 The Child Protection and Alternative Care System in Ukraine | 21 |
| 3.2 Legal and Policy Framework | 22 |
| 3.3 Coordination and Oversight | 24 |

| | | | |
|---|-----------|---|-----------|
| 3.4 Structures for the management and delivery of the child protection and alternative care system in Ukraine | 25 | 5.3.3 Assessment and selection of foster carers | 57 |
| 3.5 Human Resources – social workers and the alternative care work force | 26 | 5.3.4 Training of foster carers | 58 |
| 3.6 Financial Resources | 27 | 5.3.5 Matching of a child with a foster carer | 58 |
| 3.7 Data collection & management information systems | 29 | 5.3.6 Financial support | 59 |
| RECOMMENDATIONS – components of a national child protection and alternative care system | 31 | 5.3.7 Monitoring of and, support to, foster carers and foster children | 60 |
| PART 4: IMPLEMENTING THE ‘NECESSITY’ PRINCIPLE | 33 | 5.4 Specificities of Patronage care | 61 |
| 4.1 The ‘necessity’ principle | 33 | 5.5 Specificities of Family Type Children’s Houses (a foster family caring up to 10 children) | 64 |
| 4.2 Gatekeeping | 34 | 5.6 Guardianship | 65 |
| 4.3 Gatekeeping, prevention of family separation, and family reunification in Ukraine | 35 | 5.6.1 Guardians- Assessment and recruitment of guardians | 65 |
| 4.4 Pathways into the child protection and alternative care system in Ukraine | 37 | 5.6.2 Training of guardians | 65 |
| 4.4.1 Identification and referral of children in need of protection | 37 | 5.6.3 Ongoing support and monitoring of guardians | 66 |
| 4.4.2 Identification and referral of children into alternative care who are abandoned and relinquished | 37 | 5.7 Adoption | 66 |
| 4.4.3 Assessments of children and families | 39 | RECOMMENDATIONS– suitable forms of alternative care | 68 |
| 4.4.4 Participation in assessments and decision making | 40 | PART 6: CHILDREN IN INSTITUTIONS | 71 |
| 4.4.5 Decision making: Referral to family support and services to prevent separation | 41 | 6.1 International standards relating to institutions | 71 |
| 4.4.6 Decision making: Placing children in alternative care | 43 | 6.2 Children in institutions in Ukraine | 72 |
| 4.4.7 The Guardianship and Custody Body | 45 | 6.2.1 Pathways into residential care | 74 |
| 4.4.8 The role of the court and judicial proceedings | 45 | 6.2.2 Violence in residential care | 74 |
| 4.4.9 Placement without a formal decision making procedure | 46 | 6.3 Children in institutions managed by the Ministry of Health | 74 |
| 4.4.10 Children’s care plans | 47 | 6.4 Children in institutions managed by the Ministry of Social Policy | 76 |
| 4.5 Family reunification | 47 | 6.5 Children in institutions managed by the Ministry of Education and Science | 76 |
| 4.6 Ageing out of Care | 48 | 6.6 Closure of institutions | 77 |
| 4.7 Complaint mechanisms | 49 | RECOMMENDATIONS – residential institutions | 80 |
| RECOMMENDATIONS – implementing the ‘necessity’ principle | 50 | PART 7: SMALL GROUP HOMES | 83 |
| PART 5: IMPLEMENTING THE ‘SUITABILITY PRINCIPLE’: A RANGE OF SUITABLE FORMAL ALTERNATIVE CARE OPTIONS | 53 | RECOMMENDATIONS – small group homes | 85 |
| 5.1 Suitability principle | 53 | PART 8: DECENTRALISATION | 87 |
| 5.2 Family-based care in Ukraine | 54 | RECOMMENDATIONS – DEVELOPMENT OF SOCIAL SERVICES AT HROMADA LEVEL | 90 |
| 5.3 Foster care in Ukraine | 56 | SUMMARY AND RECCOMENDATIONS | 91 |
| 5.3.1 Legislation and statutory regulations and guidance | 56 | BIBLIOGRAPHY | 92 |
| 5.3.2 Recruitment of foster carers | 57 | | |

TERMINOLOGY

ACRONYMS

| | |
|----------------------|---|
| CSSFCY | Centres of Social Services for Family, Children and Youth |
| CRC | Committee for the Rights of the Child |
| ICA | Intercountry Adoption |
| ISS | International Social Service |
| MOH | Ministry of Health |
| MOJ | Ministry of Justice |
| MSP | Ministry of Social Policy |
| SFC | Service for Children's Affairs |
| UNICEF | United Nations Children's Fund |
| UN Guidelines | UN Guidelines for the Alternative Care of Children (2009) |
| UN CRC | United Nations Convention on the Rights of the Child (1989) |

GLOSSARY OF TERMS

Although there is no internationally agreed/common definition regarding some of the following terms, they are informed by practice and need to be distinguished as they require different responses/processes.

Abandonment: concerns a process and a situation in which children are anonymously left in a 'public' place by persons unknown.

Alternative care: This includes formal and informal care of 'children without parental care'¹. Alternative care includes kinship care, foster-care, other forms of family-based or family-like care placements, supervised independent living arrangements for children and residential care facilities.

Children: Defined as girls and boys under the age of 18 years²

Children without parental care: 'All children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.'³

Formal care: All care provided in a family environment that has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not the result of administrative or judicial measures⁴

Foster-care: 'Situations whereby children are placed by a competent authority for the purposes of alternative care in the domestic environment of a family, other than children's own family, that has been selected, qualified, approved and supervised for providing such care.'⁵

Informal care: Any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends ('informal kinship care') or by others in their individual capacity. The arrangement is at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body.⁶

Institutional care: 'Large residential care facilities,'⁷ where children are looked after in any public or private facility, staffed by salaried carers or volunteers working predetermined hours/shifts, and based on collective living arrangements, with a large capacity.⁸

Kinship care: 'Family-based care within the child's extended family or with close friends of the family known to the child, whether formal or informal in nature.'⁹ Informal kinship care is: 'any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends ... at the initiative of the child, his/her parents or other person without this arrange-

¹ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

² based on Article 1 of the UN Convention on the Rights of the Child (CRC) (UN, 1989).

³ *Ibid.* Article III, 29a.

⁴ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

⁵ *Ibid.* Article III, 29c.ii.

⁶ *Ibid.* Children Article 29b.i.

⁷ *Ibid.*

⁸ NGO Working Group on Children Without Parental Care (2013) *Identifying Basic Characteristics of Formal Alternative Care Settings For Children: A Discussion Paper*

⁹ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

ment having been ordered by an administrative or judicial authority or a duly accredited body.¹⁰ Formal care in the child's own immediate or extended family may also be used in the form of foster care or legal guardianship which has been ordered by an administrative or judicial authority or duly accredited body.¹¹

Relinquishment: refers to a process where a mother and/or father or others with or without parental authority decide not to raise their child and hand over the child to another 'carer'.

Residential care: 'Care provided in any non-family based group setting.'¹²

Small group homes: Where children are cared for in smaller groups, with usually with one or two consistent carers responsible for their care. This care is different from foster care in that it takes place outside of the natural 'domestic environment' of the family, usually in facilities that have been especially designed

and/or designated for the care of groups of children.¹³ Although there is no internationally agreed definition of the size of a small group home, the European Union for example, have issued reports suggesting there should be no more than 8-10 children in any one care setting.

In addition, translation of documents from Ukrainian to English contain the term 'social orphans'. This is not a term generally used in international literature. To this end, upon advice from colleagues in Ukraine, where this term is used in this report it will refer to children without parental care for whom their parents still hold parental rights and the majority of cases placed their children to residential care institutions. We understand that in Ukraine this also refers to children '**without status**'. Children with '**status**' are those whose parents have had their parental rights removed through a judicial process.

ACKNOWLEDGEMENTS

In carrying out this study the ISS team depended largely for its success on the cooperation and support of the many people they met in Ukraine. The ISS team wish to thank very warmly all those supported the International Social Service (ISS) mission in February 2020 and all those who gave up precious time to speak with us in Kyiv city and from different agencies in the oblasts of Kyiv, Lvivska, Odessa, Cherkaska and Zaporizska.

It has been a pleasure working throughout this project with UNICEF colleagues, Naira Avetisyan and Oleksandra Churkina for whom we would like to thank for their guidance and support. We would also like to offer our thanks to Igor Nosach and our wonderful translators.

Our hope is that the fruits of this assessment exercise do justice to the combined efforts of all those we had the privilege to meet and work with in Ukraine.

¹⁰ *ibid.* 29b.i.

¹¹ *ibid.* Article 29b.i.

¹² *ibid.* Article III, 29c.iv.

¹³ NGO Working Group on Children Without Parental Care (2013) *Identifying Basic Characteristics of Formal Alternative Care Settings For Children: A Discussion Paper*

PART 1: EXECUTIVE SUMMARY

1.1 INTRODUCTION

This ISS study of the child protection system as it particularly relates to alternative care was commissioned by UNICEF Ukraine. This report contains an overview of the child protection and alternative care system in Ukraine based on the process of a desk review and a 10 day fact finding mission in Ukraine in February 2020 undertaken by a team of experts from International Social Service (ISS).

This review was undertaken in response to a need identified by UNICEF, for a comprehensive understanding of the child protection and alternative care structures, initiatives and practices in Ukraine. It is hoped the findings in this report will contribute to the promotion of improved 'gatekeeping' measures that prevent unnecessary family separation and increase family reunification, as well as informing the development of suitable alternative care options.

1.2 REPORT CONTENT

This report commences with a short summary of the international treaties and guidance that have informed the ISS assessment process of research, analysis and recommendations within this study. The report also includes the results of an assessment of the different components of the child protection system commencing with an overview of the normative framework and structures for the delivery of alternative care in Ukraine. The report goes on to provide a summary of the findings gathered during a desk review and a series of semi-structured interviews conducted in five regions of Ukraine with a range of stakeholders drawn from governmental and non-governmental bodies and carers. One participatory exercise was also undertaken with children in residential care setting managed by a non-governmental organisation.

The report is divided into the following sections:

- International treaties that informed the ISS mission in Ukraine
- The child protection and alternative care system in Ukraine
- Implementing the 'necessity principle' including consideration of 'gatekeeping' mechanisms, prevention of family separation and family reunification
- Implementing the 'suitability principle' including consideration of family-based alternative care in Ukraine
- The use of children's residential institutions in Ukraine and deinstitutionalisation

1.3 EXECUTIVE SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

This ISS team has noted the considerable investment made by the Government of Ukraine over the past 25 years with the principle objective of realising the rights of children and the ambition to end the use of institutional care. The ISS team have also noted examples of promising practice across the country including projects in support of families at risk of losing parental rights and development of family-based alternative care, as for example patronage care. Furthermore, the ISS team met many dedicated professionals with a will to further reform the child protection and care system.

However, the overall conclusions drawn from the evidence gathered by the ISS team, identifies a need for ongoing improvements in the national child protection and care system comprised of:

- The legal and policy framework
- Coordination and oversight of all agencies with responsibility for protection, care and child wellbeing
- Structures for the management and delivery of all aspects of the national child protection and care system
- Gatekeeping mechanisms including all aspects of case management
- A skilled workforce
- A continuum of suitable alternative care options
- A comprehensive qualitative and quantitative data management system
- A programme of advocacy and awareness raising with the primary aim of building a protective environment for children in which all their rights are realised

Reform of a national child protection and care system cannot occur, nor be successful and in line with international treaties and national laws that safeguard children's rights, without attention given to all the elements of that system consecutively¹⁴. Evidence suggests this has not been systematically achieved in Ukraine. Instead, a fragmented approach to reforms has resulted in failure to achieve the objectives of numerous strategic plans aimed at improving 'gatekeeping', the development of suitable alternative care options, and deinstitutionalisation.

The plethora of different statutory requirements for development and delivery of systems and services does highlight an ongoing commitment of successive political administrations to improve child protection and alternative care. Of concern however, is the quantity of different laws, policies and strategic plans that have been issued which contain contradictions and duplication in terms of roles and responsibilities as well as a deficit of detailed strategic guidance accompanied by gatekeeping tools and mechanisms, that would promote effective implementation. Furthermore, implementation of this legislation and statutory guidance has not yet resulted in the attainment of proposed targets for closure of institutions or, significant increase in the development of suitable alternative care settings. Indeed, legislation continues to permit the use of institutional care.

This complexity in the normative framework may also be a contributing factor regarding a repetitive division of roles and responsibilities across the different services responsible for child welfare, child protection and alternative care, as well as the creation of different pathways into care as a result of different mandates that allow decisions about children and families to be taken by an array of different stakeholders.

The quality of the care and child protection is reliant on adequate numbers of highly skilled staff, effective case management, and multi-sectoral planning and service provision. Although there is mandated use of inter-disciplinary methodology for child protection assessments, there is a noted lack of professional skills and poor inter-sectoral cooperation when gathering information on the situation of children and their families as well as lack of understanding of 'risk thresholds'. A multi-sectoral approach is key in delivery of sustainable services including those to support prevention of separation, provision of suitable care and effective reintegration processes. This indicates the need to improve skills in inter-sectoral working and cooperation across and between a range of sectors, including those from education, health, law enforcement, employment, housing, judiciary, and other professions, that impact on the lives of children at risk of separation and those taken in care. In order to fulfil the mandate of an effective national child protection and alternative care system in Ukraine, and, to bring about the necessary reforms, the Government must urgently acquire an in-depth understanding of both the current effectiveness of the workforce as well as future needs in terms of skills, numbers and training required.

Improved care options for children and families and deinstitutionalisation programmes are not possible without the allocation of adequate finances. It has been noted that substantial financial resources are being made available for the continued provision of institutional care with little evidence that adequate resources are available for prevention of family separation, family reunification, and the provision of suitable alternative care placements. In terms of current financial allocation, although there is a general perception that there is lack of money being made available for child protection and alternative care, some funds allocated for such services are being annually returned to central government. This suggests that it is not only the allocation of finances that is a challenge, but the lack of ability of local authorities to implement the reform programmes necessary to achieve deinstitutionalisation and provide more suitable alternative care options even with the monies allocated.

The lack of a national data system containing disaggregated qualitative and quantitative data that will provide evidence, including the exact reasons children are being referred to social services, results in an inability of those working within the national child protection and alternative care system to verify the incidence and prevalence of children requiring protection in Ukraine. This lack of data impacts on the ability of policy makers and service providers to accurately plan and budget for the development and implementation of child protection and care services including actions that contribute to preventing unnecessary family separation.

In terms of implementing the 'necessity principle', although there are examples of promising practice as well as copious laws, regulations and strategic plans mandating for improved gatekeeping practices, this has not prevented the unnecessary separation of children from parental care. There is a need to provide adequate support services that mitigate the reasons children are removed from parental care in the first instance. Furthermore, gatekeeping mechanisms, including, case management tools are not being systematically and rigorously applied. This includes poor implementation of assessments that allow for well-informed and participatory decision making and lack of ongoing review to assess any changes in the situation of children and their families once a child is in care. Institutions continue to accept children without any due process as laid out in Ukrainian legislation and guidance, and systematic efforts to reunite children with their families are not being undertaken.

With regards the implementation of the 'suitability principle', the provision of good quality family-based care in Ukraine is essential in providing a suitable alternative care provision for children for whom this is a necessity. It is also essential for preventing the perpetual and significant use of placing high numbers of children in institutions for those children who do need protection. There are examples of promising practice most especially in terms of the standards being developed for patronage care. However, evidence suggests there is a need to strengthen professional capacity that will guarantee high standards related to assessment, recruitment, training and support foster carers, guardians, and children. In line with interna-

¹⁴ Gale, C. & Csaky, S. (2015) Making Decision for the Better Care of Children. Better Care Network & UNICEF. Available at: <http://codeofgoodpractice.com/wp-content/uploads/2019/05/BCN-Making-Decisions-for-the-Better-Care-of-Children-The-Role-of-Gatekeeping.pdf>

tional treaties and guidance, foster care should only be temporary. There are concerns regarding the poor matching process and, how some forms of foster care have become long term settings with poor monitoring and no efforts to reunify a child with their own family. As a result, there may be hundreds of children in foster care – also known informally as ‘paid adoption’ - who remain in foster care indefinitely. In addition, there are concerns that many may be experiencing violence and abuse without detection or recourse to protection and support from the relevant authorities.

Evidence also suggests that, despite years of investment in the development of appropriate legislation and strategic planning, training, development of family-based care and other actions, Ukraine has not been successful in fulfilling reforms that would eliminate the use of institutions. Although there has been ongoing political will to make changes, there is poor implementation of legislation and gatekeeping mechanisms by relevant ministries, including the Ministries of Social Policy, Education and Science, and Health. Furthermore, the Government of Ukraine continues to allow children to remain in institutions in which their rights are being denied. Not least because children are being systematically abused in these facilities. In addition, although legislation calls for children to have Care Plans and for regular monitoring of children in institutional care, it is evident these laws are not being systematically

or rigorously applied. As a result generations of children are denied their rights and continue to spend their childhood in institutions. As such, Ukraine continues to have one of the highest numbers of children separated from their families in Central and Eastern Europe. UNICEF Ukraine provided the ISS team with information sourced from the Ministry of Social Policy in 2018, indicating a total of 105,783 children (1.4% of the total child population of Ukraine) living in 751 residential institutions in that year. Of these children, it was estimated that 91.7% had at least one living parent.

In terms of new opportunities, the formation of the new unitary administration level of Hromada offers Ukraine a great opportunity for development and delivery of localized services that accurately address the protection of children and provide, when necessary, the most suitable forms of alternative care.

A number of recommendations have been made within the body of this document in order to support UNICEF in its work with the Government of Ukraine in ongoing efforts to reform the child protection and alternative care system. The ISS team hope that these recommendations will be of use in highlighting the need for improvements in the application of gatekeeping mechanisms, tools and processes, significant investment in good quality family-based care and, the closure of institutions.

PART 2: BACKGROUND, OBJECTIVES AND METHODOLOGY

2.1 BACKGROUND AND PURPOSE

The terms of reference that guided this study can be found in Annex 1. In February 2020, a team of four experts from International Social Service (ISS) were tasked by UNICEF Ukraine to conduct an assessment of strengths and weaknesses in the national child protection and alternative care system. A primary aim of the assessment was to provide evidence-based recommendations for the expansion of family and community-based models of care and strengthening of ‘gatekeeping measures’, including those that prevent unnecessary separation of children from parental care. A further aim was to support the Government of Ukraine in attaining conformity of the Ukrainian child protection system with international standards, especially those set out in the Convention on the Rights of the Child and the UN Guidelines for the Alternative Care of Children (UN Guidelines)¹⁵.

This report aims to provide a ‘snapshot’ of current practices in terms of the child protection and alternative care system in Ukraine. It will summarise the findings and recommendations drawn from a desk review and data gathered during a visit to Ukraine undertaken by the ISS team between February 3rd and 12th 2020.

This report covers the situation of children in formal care as well as those at risk of separation from parental care. In the UN Guidelines formal care is defined as,

ALL CARE IN A FAMILY ENVIRONMENT WHICH HAS BEEN ORDERED BY A COMPETENT ADMINISTRATIVE BODY OR JUDICIAL AUTHORITY, AND ALL CARE PROVIDED IN A RESIDENTIAL ENVIRONMENT, INCLUDING IN PRIVATE FACILITIES, WHETHER OR NOT AS A RESULT OF ADMINISTRATIVE OR JUDICIAL MEASURES.

The study has not considered informal care in Ukraine. This report does not cover issues related to children deprived of liberty as a result of juvenile justice. Adoption is not addressed within this study as excluded from scope of UN Guidelines¹⁶ and should be further examined at a later stage.

It is to be noted, that in Ukraine, children whose parents have had parental rights legally removed are known as children with ‘status’. Children whose parents have not had their parental rights legally removed are known as children ‘without status’. This report will use the term ‘children without parental care’ to indicate all children who are not in the care or their parents regardless of whether parental rights have been legally removed or not.

¹⁵ United Nations General Assembly. (2009). Guidelines for the Alternative Care of Children. Resolution A/RES/64/142.

¹⁶ ibid

2.2 OBJECTIVES OF THE ASSESSMENT:

- Provide evidence of the current child care policies and strategies and recommendations to better address child protection issues in line with the CRC and UN Guidelines for the Alternative Care for Children;
- Provide evidence to support changes in the promotion and development of family and community-based alternative solutions for children deprived of parental care;
- Provide information that can be further used by UNICEF and partners on introducing new models and improving the quality of services provided to children in alternative child care based on international standards in selected municipalities.

2.3 OUTCOMES OF THE ASSESSMENT:

Knowledge is generated on the situation of children in alternative child care in Ukraine and opportunities for its improvement in line with international standards.

2.4 RESEARCH METHODOLOGY

The assessment methodology was guided by the Norms and Standards of the United Nations Evaluation Group (UNEG), as well as UNICEF Research, Study and Evaluation Policy. The ISS team employed the following research methods:

2.4.1 Desk Review:

A desk review of all documents regarding the national child protection and alternative care system in Ukraine was completed. The desk review considered secondary information from Ukraine from government and non-government sources as well as other relevant documents such as UN treaties and guidance. In this manner, the desk review assisted in better understanding the context in which alternative care and the child protection system is being undertaken including concepts and concerns, policies, responsibilities, structures and interventions. The information provided a basis on which to design appropriate data gathering instruments during the field visit.

2.4.2 Development of research tools

The development of research tools included the formation of a research guide encompassing primary research questions and sub-questions

used during semi-structured interviews with key informants. The questions were formatted with a view to guaranteeing the gathering of comprehensive data on all aspects of the national child protection and alternative care system. An example of the research guide can be found in Annex 2. In addition, participant information sheets and consent forms were developed and translated and provided to key informants. All participants were fully informed regarding the purpose and scope of the assessment.

2.4.3 Field work

Based upon a respondent profile, a purposive sampling methodology was used to identify the most appropriate key informants able to provide detailed and rich insights into the child protection and alternative care context in Ukraine. Between the 3rd and 11th February 2020, four members of the ISS team conducted meetings with individuals and groups of key informants in Kyiv city and from different agencies in

the oblasts of Kyiv, Lvivska, Odessa, Cherkaska and Luganska. Interviews were conducted with representatives of key Ministries, directors of institutions and staff of local administrations, NGO representatives, foster and patronage families, children in alternative care, and other relevant stakeholders. This provided the team with a range of information and the opportunity to draw together differing perspectives and experiences.

The application of the research guide, allowed for consistency in the process of seeking information in each of the five regions during a series of semi-structured interviews, whilst permitting for flexibility in the sequencing of questions and additional probing in accordance with the expertise and knowledge of individual interviewees.

2.4.4 Data Analysis and preparation of findings:

Based on the desk review and data collated through field work, the ISS team has undertaken a process of data analysis and prepared this report containing initial findings with draft recommendations as detailed below.

2.4.5 Limitations

The team encountered a willingness of all interviewees to exchange of information in an

open and helpful manner. In particular, the team encountered staff of national and local authorities as well as civil society organisations, open to discussion regarding the challenges they face and to providing recommendations for improving the support they offer to children and families. However, the team are also aware that government and administration officials may have a concern that the purpose of the mission was to 'examine' and expose weaknesses. The team maintained a consideration throughout the mission therefore, that this could have led to presentation of information in a manner illustrating engagement in child protection and deinstitutionalisation reforms that highlighted best practice only. Regardless, the team felt there was sharing of information in a helpful manner and the undertaking of a considerable number of interviews allowed for rigour in cross checking of information.

It should also be noted that the study was undertaken at a time of government reforms including those within the systems of health and justice. In particular, the ongoing decentralisation reform has created a time of opportunity but also uncertainty and it was not possible to fully assess the future impact of decentralisation on reforms to the child protection and alternative care system and services particularly at local level.

2.3 INTERNATIONAL TREATIES AND GUIDANCE UNDERPINNING THE ISS MISSION

The work of ISS for this mission has been informed by international conventions and guidance. In particular, this includes the UN Convention on the Rights of the Child (CRC), the UN Guidelines for the Alternative Care of Children (UN Guidelines), and the accompanying Handbook 'Moving Forward'¹⁷. This latter docu-

ment identifies two basic principles that are described as the 'pillars' of the UN Guidelines: 'necessity' and 'suitability'. It has also been informed by the recent United National General Assembly Resolution on the Rights of the Child¹⁸ adopted on 18th December 2019 which strengthens the commitment of States to chil-

¹⁷ Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012). *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*. UK: Centre for Excellence for Looked After Children in Scotland. Available at: www.alternativecareguidelines.org

¹⁸ United Nations General Assembly (2019) 'Promotion and protection of the rights of children' adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395

dren without parental care and those at risk of being so.

The UN Guidelines clearly state that the family is the ‘fundamental group of society and the natural environment for the growth, well-being and protection of children’ and that ‘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.’ This **‘necessity’ principle** therefore, safeguards children from being removed from parental care and placed in alternative care unnecessarily.

Meeting the ‘necessity principle’ as laid out in the UN Guidelines as well as obligations in the CRC and the 2019 UNGA Resolution on the Promotion and protection of the rights of children, requires States to ensure the rigorous and systematic process of accurate decision making by way of multi-sectoral assessments of each child’s individual needs, circumstances and wishes: part of a ‘gatekeeping’ process. This means assessing whether there is truly a need for a formal care placement. It is at this stage that solutions should be sought that are in the child’s best interest and, wherever possible, avoidance of unwarranted placements in care and keeping the child with their own family.

The ‘necessity’ principle requires efforts to combat the wide array of factors that can lead to loss of parental care. This requires addressing issues of material poverty and lack of access to basic services, including social security, health and education, housing and employment. It also means combatting the dis-

crimination and marginalisation that families face on the basis of ethnicity, gender, disability and birth status. This approach is grounded not only in the fundamental spirit of the UN CRC but also in many specific CRC provisions, such as a right to health (Article 24), education (Article 28), support for the role of parents (Article 18), conditions for separating a child from parents (Article 9), right to social security (Article 25) and protection from discrimination (Article 2).

The **‘suitability’** principle as also laid out in the UN Guidelines, requires a range of good quality alternative care settings be made available so that if care is deemed as necessary, each child’s individual needs, circumstances and wishes can be met. It also requires ending the use of unsuitable placements such as the use of institutions and detention centres. The UN Guidelines require the most suitable forms of alternative care be provided under conditions that ‘promote the child’s full and harmonious development’. All efforts should also be made to return children to the care of their family as soon as possible or, if finally deemed not possible, to find other suitable long-term solutions. The suitability principle as it is being applied to the child protection and care system in Ukraine will be most specifically explored further in Section Six of this report.

Further information regarding the ‘necessity’ and ‘suitability’ principles and an understanding of the ‘best interest of the child’ can also be found in the Handbook to Accompany the UN Guidelines, [Moving Forward: Implementing the ‘Guidelines for the Alternative Care of Children’](#).

PART 3: SUMMARY OF FINDINGS AS A RESULT OF A DESK REVIEW AND DATA COLLECITON THROUGH A FIELD MISSION IN UKRAINE

3.1 THE CHILD PROTECTION AND ALTERNATIVE CARE SYSTEM IN UKRAINE

Alternative care is an integral component of a national child protection system. A child protection system is comprised of differing components:

- The legal and policy framework
- Coordination and oversight of all agencies with responsibility for protection, care and child wellbeing
- Structures for the management and delivery of all aspects of the national child protection and care system
- Gatekeeping mechanisms including all aspects of case management
- A skilled workforce
- A continuum of suitable alternative care options
- A comprehensive qualitative and quantitative data management system
- A programme of advocacy and awareness raising with the primary aim of building a protective **environment for children in which all their rights are realised**

(For further details please see Annex 3)

Successful reform of a national child protection and care system, including a process of deinstitutionalisation, cannot occur however, nor be in line with international treaties and national laws that safeguard children’s rights, if it does not focus on all the elements of that system consecutively.

The Government of Ukraine continues to recognize the need to strengthen the national child protection and child care system. This includes improvements to gatekeeping mechanisms and processes (see section 4.2).

In part, such aims are reflected in the steps taken by the Government of Ukraine in 2017, to change the situation for children by adopting the National Strategy on Reform of Institutional Care System for 2017-2026 and subsequent Action Plans.

However, a review of progress in Ukraine suggests a fragmented approach has resulted in failure to achieve the objectives of numerous strategic plans aimed at improving ‘gatekeeping’, the development of suitable alternative care options, and deinstitutionalisation.

3.2 LEGAL AND POLICY FRAMEWORK

The UN Guidelines¹⁹ urge States to ‘take all necessary measures to ensure that the legislative, policy and financial conditions exist to provide for adequate alternative care options, with priority to family – and community-based solutions.’

Ukraine ratified the UNCRC in 1991. It has offered Ukraine a solid foundation upon which to legislate for, and realise the rights of, children. Since the ratification of the UNCRC, successive governments have undertaken many changes and enhancements to the normative legal and policy framework governing child protection and alternative care. Some examples of the many laws and statutory guidance concerning the protection of children and provision of alternative care are included in Annex 4.

As emphasized by the Government of Ukraine in the 2018 5th and 6th Joint Periodic Reports to the Committee on the Rights of the Child²⁰, efforts to promote child care reforms include ‘the development of national legislation on the prevention of social orphanhood’²¹ including social support for economically vulnerable families with children and ensuring the rights of children without parental care to an upbringing in a family environment. Also included in legislation are specific objectives to bring about welcome reforms to the national child protection and alternative care system through provision of support to families in difficulty with the aim of preventing family separation as well as development of suitable forms of family-based care. The law does however, permit the provision of institutional care for children.

The Family Code of Ukraine (2002) includes provision for the delivery of child protection and care and incorporates specific articles relating to the protection of children from abuse and neglect and prioritisation of raising a child in a family environment. It provides for State protection for children without parental care and stipulates conditions under which competent authorities

must extend support to families at risk of separation. Within the Code, courts are held responsible for determining termination of parental rights and custody of a child. All decisions must reflect the child’s views and should be in their best interest. Articles also provide regulations for foster care and adoption procedures and allow for legal custody to be awarded to heads of institutions in which a child will reside (see section 4). **It is also noted how** Ukrainian legislation allows to place a child in residential care in case if the child has disability and family cannot ensure the necessary services.

The 2001 Law on Protection of Childhood (and subsequent amendments) also contains specific provision for children without parental care as well as the Poverty Reduction Strategy, CMU resolution #161-p, dated 16.03.2016. The Law also calls upon the State to act in loco parentis when parents are unable to provide care for their children, or have been deprived of parental rights. Local authorities are to provide child welfare programmes to assist children through guardianship, residential and, family-based care. Articles also cover State assistance including financial support to families or others acting in loco parentis. This Law also relates to decision making on limitation, deprivation and, reinstatement of parental rights in a court of law.

However, as noted above, is the concern, that laws provide for institutionalisation of children including special institutions for children with disabilities. Of further concern is that the Family Code allows for a child to be placed in residential care solely on the basis of his or her disability, if the family cannot ensure the necessary services. This possibility is problematic as it unnecessarily facilitates the entry of children into institutional care. This is in contradiction to the 2005 Law on Ensuring Organizational and Legal Conditions for Protection of Children without Parental Care, and amendments in 2016, giving the right of a child to live in a family set-

ting including when necessary, placement in alternative family-type care and adoption. The State Programme to Combat Children’s Homelessness and Neglect for 2006-2010, provided for actions to prevent family separation, and the return of children from institutions to biological families or, if not possible, placement in alternative family-based care.

The ‘2011-2015 State Targeted Social Poverty Reduction and Prevention Program’²², provided for social support for families, children and young people. Aims that, claimed the Government of Ukraine, would further be attained through the 2012 National Strategy for Prevention of Social Orphanhood²³ and the Poverty Reduction Strategy²⁴, approved in 2016. The National Strategy for Human Rights (2015)²⁵ provided plans to prevent separation of children from parental care and the institutionalisation of children by means of promoting alternative care in family-based care, reform of institutions, and their gradual elimination. The National Action Plan for the Implementation of the UN Convention on the Rights of the Child for 2017-2021²⁶ and the Law of Ukraine No. 936-VIII On Introducing Changes to Some law acts of Ukraine on Enhancing Protection of Children and Supporting Families with Children (January 26, 2016) also proffered aims, objectives and details of government programmes to support and strengthen families. The Rulebook on Foster Care (2002), provides a mandate for mechanisms of foster care placement.

Over the years there have been different strategic plans with specific consideration of deinstitutionalisation including the State Programme on Overcoming Children’s Homelessness and Neglect 2006-2010, and the State Social Programme on Reforming System of Residential Care for Children without Parental Care (2007-2017). A current strategic plan, the National Strategy on Reform of Institutional Care System for 2017-2026 and accompanying Action Plans contain specific aims contributing to reform of the national child care system. This includes

programmes to help prevent children losing parental care, development of family-based care, and deinstitutionalisation. The MOSP leads coordination of the reform.

The ISS team has chosen to provide the above examples of the normative framework to illustrate the plethora of different statutory requirements impacting on child protection and alternative care. This highlights an ongoing commitment of successive political administrations to improve child protection, apply the ‘necessity’ and ‘suitability principles, introduce effective gatekeeping mechanisms and achieve full deinstitutionalisation. Of concern however, is feedback from interviewees whom, although welcoming the foundation for their work that legislation can offer, also expressed concern regarding the large number of different laws, policies and strategic plans, as well as several amendments to those laws that have been issued. Such changes were proposed by different governments with different views. They stressed how within the legislation and strategic plans, there are contradictions, lack of clarity, duplication in terms of roles and responsibilities as well as a deficit of detailed guidance, tools and mechanisms, that would assist with effective implementation.

Furthermore, implementation of multiple pieces of legislation and statutory guidance with accompanying mandated financing has not yet resulted in the attainment of proposed targets for closure of institutions or, significant increase in recent years, in the development of suitable alternative care settings. Indeed, it is noted how legislation continues to permit the use of institutional care, and in some cases state budget is allocated for institutional care under the Ministry of Education. This situation appears to create contradictions whereby legislative efforts exist to reduce the number of children sent to institutions and yet there are number of legislative changes in the field of education that open up access for children to boarding schools.

¹⁹ UN General Assembly, Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, available at: <https://www.refworld.org/docid/4c3acd162.html>

²⁰ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, spec §5, p.4. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fUKR%2f5-6&Lang=fr

²¹ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, spec §12,p.5 Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fUKR%2f5-6&Lang=fr

²² Resolution No. 1057 of the Cabinet of Ministers of Ukraine On Approval of the State Target Social Program for Overcoming and Preventing Poverty for the Period until 2015, dated August 31, 2011

²³ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, spec §89,

²⁴ Ordinance No. 161-r of the Cabinet of Ministers of Ukraine On Approval of Poverty Reduction Strategy dated March 16, 2016.

²⁵ Decree No. 501 of the President of Ukraine On Approval of the National Strategy for Human Rights dated 25.08.2015

²⁶ Resolution No. 453 of the Cabinet of Ministers of Ukraine On Approval of the State Social Program National Action Plan for the Implementation of the UN Convention on the Rights of the Child for the period up to 2021 dated May 30, 2018.

3.3 COORDINATION AND OVERSIGHT

The UN Guidelines²⁷ urge that,

ALL STATE ENTITIES INVOLVED IN THE REFERRAL OF, AND ASSISTANCE TO, CHILDREN WITHOUT PARENTAL CARE, IN COOPERATION WITH CIVIL SOCIETY, SHOULD ADOPT POLICIES AND PROCEDURES WHICH FAVOUR INFORMATION-SHARING AND NETWORKING BETWEEN AGENCIES AND INDIVIDUALS IN ORDER TO ENSURE EFFECTIVE CARE, AFTERCARE AND PROTECTION FOR THESE CHILDREN...

To ensure the monitoring of children's rights the institution of the Presidential Commissioner of Ukraine on the Rights of the Child²⁸ was introduced in 2011, which is part of the national Human Rights Institution being the Office of Ombudsman.²⁹ In its activity, the Commissioner for the Rights of the Child act independently of the Government of Ukraine.

In 2000 the Inter-ministerial Commission on Child Rights Protection was established with a remit to coordinate actions to solve issues of children's welfare and development as well as participate in the social, cultural and spiritual formation of society. The Interdepartmental Commission for the Protection of Childhood Representatives is comprised of over 50, civil society organizations and international organizations, line ministries, scientific institutes as a consultative and advisory body under Cabinet of Ministry of Ukraine.

The **Ministry of Social Policy** is responsible for instituting labor relations, support of family and children, immigration and trafficking, women's rights, children's rights, and humanitarian aid. The Law n°3381-VI from 19 May 2011 amending the Ukrainian Family Code (2002), regarding adoption of certain

categories of children, attributed the role of ensuring the rights of the child to the Ministry for Social Policy. The Ministry of Social Policy holds primary responsibility for the child care system and in this respect, coordination of central and local executive bodies, local self-governments, institutions and organizations. The Ministry of Social Policy administers:

- The **Department on Adoption and Protection of the Rights of the Child** responsible for adoption, foster care and family type home.
- The **Department on State Social Services for Family, Children and Youth** responsible for support and preventive services, shelters for children and rehabilitation and social adaptation institutions for temporary accommodation.
- The **Directorate of Social Services** responsible for strategic planning and policy making in child protection and social services fields.

The **Ministry of Education and Science** and the **Ministry of Health** are also primary providers not only for the delivery of health and education service, most essential in prevention of family separation, but also the vast majority of children's residential institutions.

Stakeholders from these three different ministries, in addition to the work of other Ministries, child protection bodies, and guardianship authorities, intervene therefore at national, regional (*oblast* municipal (*rada*) and local (*raion*) level. Due to the current national process of decentralisation, the country will now establish new unitary geographical configurations at local level (please see Part 8 of this report).

Emphasised in a 2018 report produced by Opening Doors for Europe's Children³⁰, is the poor inter-sectoral coordination which also

contributes to 'chaotic and ineffective implementation of child protection policies'. For example whilst there is promotion of deinstitutionalisation and development of family based care within the Government of Ukraine, the Ministry of Social Policy, the Ministry of Education and Science and the Ministry of Health, each body continue to provide institutional care for children with concerns that the numbers in these facilities will increase. There is evidence of coordination between civil society

organisations at national and local level in different forums where effort are being made to share information, support reforms in a coordinated manner and work together to advocate with one voice when possible. Interviewees for this study, whilst acknowledging the national and local bodies that are responsible for instigating and overseeing sector coordination, also expressed concern at the lack of willingness of some government agencies and NGOs to work together.

3.4 STRUCTURES FOR THE MANAGEMENT AND DELIVERY OF THE CHILD PROTECTION AND ALTERNATIVE CARE SYSTEM IN UKRAINE

Departments within the Ministries of Social Policy, Health and Education and Science hold a remit for the provision of alternative care as illustrated in the diagram below. This includes management of different children's residential institutions, involvement in child protection concerns in public administration at national, regional (*oblast*) and local *raion* and village (*rada*) level though departmental offices and participation in the local Council of Guardianship responsible for the protection of children's rights.

The two principle government bodies responsible for delivery of child protection and alternative care provision are:

- The **Service for Children's Affairs** (SFC) administered by the Department for State Social Services
- The **Centres of Social Services for Family, Children and Youth** (CSSFCY).

SFC hold responsibility for prevention of family separation and identification of cases of abuse as well as support and supervision of children in all types of alternative care. SFC is responsible for the removal child from the family if needed and placing them into shelters or centers of social and psychological rehabilitation.

The remit of CSSFCY includes utilization of a case management approach to child protection and prevention of separation within a family setting and, in maternity and baby homes. In addition, they have a duty to undertake social work with children in all forms of alternative care. It has been noted that in some locations these two bodies continue to operate as one agency.

According to data presented by the Government of Ukraine³¹ in 2017, there were 633 CSSFCY. As of September 1st 2015, Hope and Homes for Children reported³² a total of 5,477 employees in these Centres of which, 1,855 were managers and technical support staff, and 3,622 were specialists. This was noted to be a decrease of 64% of the Centres workforce since 2013.

As of September 1st 2015, there were 3,126 workers in the SFC including 1,388 managers and administrators and 1,738 specialists. Likewise, the number of staff working in the Service had also decreased – by 19% – between 2013 and 2015 Whilst it is recognised that there are many daily challenges faced by the CSSFCY and the SFC nevertheless, in 2019, UNICEF³³ had noted specific shortfalls in the services these agencies offer.

The Juvenile Police Division play an important

²⁷ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

²⁸ Decree of the President of Ukraine No. 811 «Mandate of the Presidential Commissioner of Ukraine on the Rights of the Child" dated August 11, 2011

²⁹ In 2013, Ukraine's Office of the Ombudsman joined the European Network of Ombudspersons for Children's Rights (ENOC).

³⁰ Opening Doors for Europe's Children (2018) Ukraine 2018 Country Fact Sheet. Available at: <https://www.openingdoors.eu/wp-content/uploads/2019/03/country-fiche-Ukraine-2018.pdf>

³¹ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, spec §188, p27

³² Hope and Homes for Children (2015) *The Illusion of Protection, An Analytical Report Based on the Findings of a Comprehensive Study of the Child Protection System in Ukraine*. Hope and Homes Children.p.71

³³ UNICEF (2019) Monitoring of the Rights of the Child in the Alternative Care System, An Analytical Report, UNICEF, p.22

role in child protection, especially in cases where there is identified or suspected abuse. Interviewees spoke of developments within this Division that has resulted in both a heightened awareness and professionalism amongst those officers assigned to child protection, as well as improved coordination with other agencies in the response to children at risk. The ISS team did not have the opportunity to interview anyone from the Juvenile Police Division.

Courts of law also play an important role in relation to decisions regarding custody, family separation, deprivation of parental rights, and placement in care. There are however, no specialised family courts and judiciary and other court officials are often untrained in the principles of child rights and child protection. Their role will be discussed in further detail below. Workers within the school system and those working in hospitals, health clinics, maternity

services etc. also have an important role to play most especially in the identification and referral of suspected abuse and children at risk living in difficult circumstances. Unfortunately there was not time in the first mission to interview representatives from these different professions.

A conclusion drawn from the research contributing to this report is the complex division of responsibility for child welfare, child protection and alternative care along with sometimes weak coordination at different levels. This is contributing to inefficient delivery of policy and implementation of protection and care services for children. This has also contributed to the creation of different pathways into care as a result of different mandates that allow decisions about children and families to be taken by an array of different stakeholders.

3.5 HUMAN RESOURCES – SOCIAL WORKERS AND THE ALTERNATIVE CARE WORK FORCE

It is recognised that there must be sufficient numbers of well qualified social workers, and other professionals, to bring about successful child care reforms and deinstitutionalisation. Most especially social workers, and their equivalent, play a vital role in preventing family separation, deciding on necessity of placement and, working with families to accompany safe and successful reintegration of children returning from care.

In 2012, a total of 12,000 social workers had been employed across Ukraine with central government funding. However, in early 2014, a UNICEF statement³⁴ warned that government funding of these posts was threatened and later this funding was indeed withdrawn. Only a small number of social workers were retained under local budgets.

Apart from a literature review of social work in Europe and Central Asia region on behalf of

UNICEF in 2018,³⁵ ISS have not been able to source recent studies that would provide rigorous information regarding number, skills, qualifications and efficacy of social workers, and their equivalent, in Ukraine. However, interviewees spoke of challenges in recruiting and retaining a professional and effective workforce. These challenges included concerns about low salaries, low esteem afforded social work and care provision, as well as very the stress of managing very high case loads. Furthermore, it is believed the support and careful supervision social workers should receive, is not always made available to them.

Standards of social work training, particularly in higher education institutions, are considered to need improvement. Most especially, there was an identified need for specialist modules on child rights, child and family welfare and child protection in social work degree courses. Train-

ing is also needed in the use of gatekeeping mechanisms, including the implementation of rigorous multi-disciplinary assessments, development of systematically reviewed Care Plans, and family reunification procedures. Likewise, it is understood that skills and means to support families in difficulty and preparing young people to leave care are also weak.

Although there is mandated use of inter-disciplinary methodology for child protection assessments, interviewees implied a general lack of skills and poor inter-sectoral cooperation when gathering information on the situation of children and their families. There is therefore, a need to improve the skills in inter-sectoral working and cooperation across and between a range of sectors with a lack of national guidance, including those from education, health, law enforcement, employment, housing, judiciary, and other professions, that impact on the lives of children at risk of separation and those taken in care.

The ISS team visited a small number of care settings during their mission. Interviewees raised their concerns as to the lack of training

and knowledge in such topics as child development, attachment theory and child rights as well as a true understanding of the importance of deinstitutionalisation in those working in institutions. It seems that there may be some resistance from staff and local authorities to deinstitutionalisation reforms especially when the institution is a primary source of income in the locality. Reports were also received of abuse and maltreatment towards children in these facilities which would also imply such deficits in aptitude, training, knowledge and skills.

The skills and aptitude of other professionals such as police and judiciary for example, are also discussed in other sections of this report.

In order to fulfil the mandate of an effective national child protection and alternative care system in Ukraine, and, to bring about the necessary reforms, the Government must acquire an in-depth understanding of both the current effectiveness of the workforce as well as future needs in terms of skills, numbers and training required.

3.6 FINANCIAL RESOURCES

Provision of financing for different forms of alternative care is provided for in the legal normative framework of Ukraine. This includes articles in the 87 and 90 Budget Code of Ukraine that provides funding of:

- allowances for orphans and children deprived of parental care
- payments and allowances for Guardians and foster carers providing foster care and Family Type Houses for Children
- payments and allowances patronage caregivers

Recent legislation also provides for the development of small group homes.

However, improved care options for children and families and deinstitutionalisation pro-

grammes are not possible without the allocation and good management of adequate finances. This includes the necessary redistribution of financial resources from institutional settings to community-based services that prevent family separation, support family reunification and, provide more suitable alternative care options. Whilst joint efforts by the MoSP and UNICEF to redistribute resources started in 2019, further political will is needed to raise effectiveness.

Furthermore, it is believed a challenge to closure of institutions is due to a system of funding for these facilities on a per capita basis. This, highlighted interviewees, means there is a very real incentive for directors of institutions, and others, to keep as many children in the institutions as possible. In addition, it has been noted how in response to legislation and strategic plans for deinstitutionalisation, government departments that manage institu-

³⁴ UNICEF (2014) Ukraine Humanitarian Situation Report No.5., 28th March 2014.

Available at: http://www.unicef.org/appeals/files/UNICEF_Ukraine_SitRep5_28March2014.pdf

³⁵ Oxford Policy Management (2018) Literature Review on the development of the social work and social service workforce in the Europe and Central Asia Region: Technical support to UNICEF Europe and Central Asia Regional Office (ECARO) for a Regional Conference on Social work/Social Service Workforce Strengthening. OPM

tions are adopting coping mechanism as for instance, renaming of institutions and changing legal status of children in care, in order to fit laws and funding patterns. These findings indicate very concerning influences that lead to institutions continuing to be the primary means of alternative care provision in Ukraine.

As previously discussed in this report (see section 3.5), is the need for additional investment in improving quality of social work training in higher education establishments as well as an increase in the salaries of social workers. Furthermore, investment in social welfare assistance, both in terms of cash payments and increased access to a range of community-based services as for instance, rehabilitation centres and special education for children with disabilities, is also highlighted in different sections of this document. This includes provision of universal welfare benefits as well as

targeted assistance for families in difficulty, in particular benefits that will contribute to reductions in institutionalisation.

Of particular interest is the manner in which many interviewees expressed the need for additional funds for alternative care, and most especially the development of family-based care. However, a 2019 'Report on the review of expenditures of the state budget in the field of social policy in the area of social protection of children' issue by the Ministry of Social Policy³⁶, highlighted consistent under expenditure of local government and unspent monies that had to be returned to central government. For example, as can be seen in Table 1. below, between 2016 and 2019, payment of state social assistance for orphans and children deprived of parental care, financial support to care givers-including foster and patronage carers – and for small group homes, remained underspent.

TABLE 1. Allocation of funding for alternative care and underspend 2016-2019

| UAH million | | | | |
|-------------|-----------------|--------------------|------------|------|
| year | approved budget | actual expenditure | difference | |
| | | | | % |
| 2016 | 769.4 | 597.4 | 172.0 | 22.4 |
| 2017 | 850.9 | 704.6 | 146.3 | 17.2 |
| 2018 | 925.7 | 783.5 | 142.2 | 15.4 |
| 2019 | 997.2 | 909.6 | 88.0 | 8.8 |

This suggests that it is not only the allocation of finances that is a challenge, but the lack of ability and political will of local authorities to implement the reform programmes necessary to achieve deinstitutionalisation and provide more suitable alternative care options. The 2019 Report³⁷ indeed concludes that there is:

- weaknesses in planning for expenditure due to lack of accurate data concerning children within the national child protection and care system
- inaccuracy in financial reporting and an irresponsible attitude toward accurate planning and reporting

³⁶ Hope and Homes for Children (2015) *The Illusion of Protection, An Analytical Report Based on the Findings of a Comprehensive Study of the Child Protection System in Ukraine*. Hope and Homes Children.p.71

³⁷ Ministry of Social Policy (2019) Report on the review of expenditures of the state budget in the field of social policy in the area of social protection of children.

- the need for a data management system
- the need to train people to rigorously collate and enter data
- a need for a common approach to budgeting and improvement of planning for expenditure
- a need for improvements in the financial status through increased allowances for orphans and children deprived of parental care
- a need to focus on increased provision and expenditure of family-based care and subsequent closure of institutions that will lead to significant budget savings

Interviewees have noted how current reforms of decentralisation and the passing of budgetary responsibility to local level administrations,

now offers an opportunity for redistribution of finances to more accurately meet the needs of children and families through provision of locally available social and other services.

The 2019'Report³⁸ also outlines how a purpose of a 2019 State Budget Expenditure Review was to increase the effectiveness of the implementation of state policy in the field of social policy of social protection of children on the principle of 'money follows the child'" and the efficiency of expenditures and savings of budgetary funds. However, it is illustrated how financing allocated to local authorities under the concept of 'money follows' the child' between 2016 and 2019 has not being fully utilised. This is of particular concern because it indicates that local child protection and care services have been provided the financial resources to further develop foster care – and other family-based care alternatives – but have not the capacity to do so.

3.7 DATA COLLECTION & MANAGEMENT INFORMATION SYSTEMS

The UN Guidelines³⁹ advise that,

IT IS A RESPONSIBILITY OF THE STATE OR APPROPRIATE LEVEL OF GOVERNMENT TO ENSURE THE DEVELOPMENT AND IMPLEMENTATION OF COORDINATED POLICIES REGARDING FORMAL AND INFORMAL CARE FOR ALL CHILDREN WHO ARE WITHOUT PARENTAL CARE. SUCH POLICIES SHOULD BE BASED ON SOUND INFORMATION AND STATISTICAL DATA...

According to a 2015 report⁴⁰ published by Hopes and Homes for Children

QUANTITATIVE AND QUALITATIVE INFORMATION ON CHILDREN AND YOUNG PEOPLE RESIDENT IN INSTITUTION, THE CAUSES OF THEIR PLACEMENT IN INSTITUTIONS AS WELL AS OPPORTUNITIES FOR RETURN TO FAMILIES REMAINS UNEXPLORED BECAUSE OF THE CLOSED NATURE OF THE INSTITUTIONAL SYSTEM AND WEAKNESSES IN STATE STATISTICS. THE DATA COLLECTED BY THE GOVERNMENT AND SECTORAL DATA COLLECTED BY MINISTRIES, VARY SIGNIFICANTLY. USUALLY THE INFORMATION ON RESIDENTIAL FACILITIES IS SIMPLY INACCESSIBLE NO RELEVANT DATA IS AVAILABLE ON WEBSITES OR IN REPORTS OF GOVERNMENT BODIES ADMINISTERING EACH TYPE OF INSTITUTION.

³⁸ Ministry of Social Policy (2019) Report on the review of expenditures of the state budget in the field of social policy in the area of social protection of children.

³⁹ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

⁴⁰ Monitoring of the rights of the child in alternative care system, analytical report, UNICEF 2019, p.6

In 2018 the Government of Ukraine reported⁴¹ that, the Ministry of Social Policy had developed criteria to monitor the state of social and legal protection of orphans and children deprived of parental care, of economically disadvantaged children, as well as other categories of children in institutions for orphans and children deprived of parental care. The Government also reported⁴² that a Law on the National Bank of Data on Children and Families with Children was being drafted.

However, in 2019 it was noted by a research team⁴³ how statistical data 'on institutions, where orphans and children deprived of parental care may stay, live and study, is largely scattered and difficult to summarise...'. We also encountered a number of inconsistencies when processing the data provided by the regions.' The ISS team have also been provided different data sets illustrating numbers of children in residential and other forms of care. These different data sets containing differing information utilising different sets of indicators and definitions, indicate an overall lack of systematic and rigorous collation of data at all administrative levels.

The country therefore lacks sufficient systematically and rigorously collated quantitative and

qualitative data on children without parental care and those at risk of losing parental care. There is also the concern regarding lack of longitudinal data by which to make comparative analysis regarding changes in circumstances for these children. The lack of such data sets means law and policy makers do not have regular and accurate information including details and characteristics of children within the care system, why children are coming into care, how children are entering care (pathways into care), length of stay in care, legal status, whether or not care and protection plans were being regularly monitored.

In summary, the lack of a national data system containing disaggregated qualitative data that provides evidence regarding the exact reasons children are being referred to social services, results in an inability of those working within the national child protection and alternative care system to verify the incidence and prevalence of children requiring protection in Ukraine. This lack of data impacts on the ability of policy makers and service providers to accurately plan for the development and implementation of child protection and care services including actions that contribute to preventing unnecessary family separation.

RECOMMENDATIONS – components of a national child protection and alternative care system

Drawing on conclusions as a result of the information collected by the ISS team, the following recommendations are offered in terms of:

- Undertaking of a comprehensive review of all legislation and regulations with a view to consolidating and streamlining the normative framework governing child protection and alternative care mechanisms and provision. To include consideration of all relevant articles being consolidated into one primary law on child protection and alternative care.
- Undertaking of a comprehensive review of the different policies and strategic plans that mandate for the roles and responsibilities of delivering the national child protection and alternative care system in all government bodies, at all levels. This should be undertaken with a view to clearer differentiation and definition of purpose and, removal of duplication and/or contradictory roles and responsibilities amongst different agencies. This should include for example, the prevention of multiple pathways into institutional and other care settings through rigorously applied gatekeeping including the use of case management mechanisms.
- Revisions to legislation so as to prohibit the voluntary relinquishment of children by family members into institutional and other care forms without the application of mandated case management processes undertaken by fully qualified staff of departments within the Ministry of Social Policy at local level.
- Revision of legislation that bans the provision of residential settings housing more than ten children and mandates for the closure or transformation of institutions within a set period and the legally mandated for redistribution of finances currently available for institutions to be made available for community-based support services and family-based care.
- Revising legislation so as to provide for the prosecution of individuals that do not apply the laws in this respect.
- Developing a comprehensive, rigorous and systematic data management system for the collection and analysis of quantitative and qualitative information regarding all aspects of children and their families of concern including those in alternative care and children at risk of separation from parental care. Such data should be collected and collated on a regular basis at local level ensuring that all those tasked with data entry are utilising the same definitions and quantitative and qualitative indicators. Furthermore, the data must be used to inform all development of legislation, policy, strategic planning, resources allocation and service provision with a specific view to prevention of family separation, the closure of institutions and provision of suitable alternative care options.

⁴¹ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, spec §124, p20

⁴² Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, spec §18 p6

⁴³ Klochko, S.(2019) Monitoring the Rights of Children in the Alternative Care System: Analytical Report, Kiev 2019. UNICEF Ukraine

- Revising funding mechanisms that stops finances being allocated to institutions on a per capita basis and a firmer legal mandate requiring redistribution of monies away from institutions toward services to prevent family separation, family reunification, suitable forms of alternative care.
- Ensuring the implementation of the current National Strategy on Reform of Institutional Care System for 2017-2026 is undertaken in an accurately costed manner within a detailed timeframe.
- Provision of improved and continuous training for all staff of relevant providers to heighten knowledge and an understanding as to the practical application of legislation, regulations, statutory guidance and strategic plans.
- Improving coordination mechanisms at all levels of public administration that fully incorporate all relevant sectors including social services, health, education, social protection, housing, employment, police, judiciary and legal professions, and any other service providers with a mandate for the wellbeing and protection of children and their families.
- Reviewing the number of professional staff, skills, aptitude, and qualifications with responsibility for child protection and alternative care, and identification of training needs. Matching this with a reviewing of staffing requirements in terms of number of staff and skills to fulfil mandated responsibilities for child protection and alternative care at all levels of government.
- Improving the quality of higher education courses(offline and online) for social workers, and others with responsibility for child protection, alternative care and the well-being of children. This should include modules dedicated to the specialism of child rights(including the best interest principle), child development, attachment theory, and child protection and case management, child abuse and neglect, etc.. in all social work curricula.
- Facilitation of training of judiciary, police, prosecutors and lawyers in child rights, child protection and principals of 'necessity', 'suitability, and the best interests of the child.

PART 4: IMPLEMENTING THE 'NECESSITY' PRINCIPLE

4.1 THE 'NECESSITY' PRINCIPLE

The 'necessity' principle as outlined in *Moving Forward*⁴⁴, the handbook written to accompany the UN Guidelines for the Alternative Care of Children, recognises the primacy of preventing separation of children from parental care unless this is carefully assessed as a necessary safeguarding measure. Furthermore, any decisions and consequential actions must always be in a child's best interests⁴⁵

In relation to a child's well-being and best interests, the preamble of the UNCRC states that, a 'child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding'⁴⁶ It is therefore, the responsibility of the State to ensure the preservation of families and avoid unnecessary separation unless the best interests of the child require otherwise. Further, it is incumbent upon the State to provide appropriate assistance to parents in the exercise of their parental responsibilities⁴⁷, and provide 'the necessary protection and assistance so that it can fully assume their responsibilities.'⁴⁸

In order to implement the necessity principle, a child protection and alternative care reform process must give priority to prevention strategies and family reunification programmes in cases where children are being unnecessarily removed from parental care. The UN Guidelines for the Alternative Care of Children highlight placement in alternative care should be for the shortest time possible. It also emphasises family reunification when possible, and when in the child's best interests, as a further primary function of a child protection and care system. This necessitates the development and use of robust reintegration policies and services.

It is well recognised that violence in childhood can have negative lasting impacts on health and wellbeing. Therefore, a national child protection systems should, 'prevent, respond to, and resolve the abuse, neglect, exploitation and violence experienced by children'⁴⁹. To do this, such systems should provide violence prevention and mitigation programmes which can avert separation of

⁴⁴ Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012). *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*. UK: Centre for Excellence for Looked After Children in Scotland. Available at: www.alternativecareguidelines.org

⁴⁵ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142.

⁴⁶ UN Convention on the Rights of the Child: Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁴⁷ *ibid*

⁴⁸ *ibid*. AND United Nations General Assembly (2019) 'Promotion and protection of the rights of children' adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395

⁴⁹ United Nations General Assembly (2019) 'Promotion and protection of the rights of children' adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395

children from parental care. In this respect, differing international conventions and treaties, including the newly adopted 2019 UNGA Resolution on the Promotion and protection

of the rights of children⁵⁰, are very clear that all forms of violence against children in all settings are condemned and must be addressed.

4.2 GATEKEEPING

In line with the UN Guidelines for the Alternative Care of Children⁵¹, no protection and care reform can be successful if insufficient attention is given to the prevention of family separation and family reunification. This includes clear and robust gatekeeping mechanisms. Gatekeeping is an essential component of a national child protection and alternative care system. It involves a systematic process and use of tools and procedures that enables all those involved in the protection and care of children to make choices that are in the best interests of each child and meets their individual needs, circumstances and wishes.

Shared gatekeeping tools and processes enable multi-sectoral teams working together on case management should ensure:

- careful and timely identification and referral of children and families at risk
- comprehensive and rigorous multi-sectoral assessments of circumstances and needs and wishes
- decision making procedures taken in consideration of the best interests of each child with full and meaningful participation of children, families and involvement of other relevant stakeholders
- development of child and/or family Support Plans that identify the community based support services to be provided in a timely manner. If alternative care is necessary, each child should have an individual Care Plan.

- oversight and delivery of support services and/or alternative care.
- ongoing case monitoring and review of Support Plans/Care Plans and the changing situation of the child and their family
- procedures that facilitate and support family reunification or other permanent solutions for a child including adoption

It is important that all the above procedures respect a child's right to participate (see UNCRC Article 12) in decisions that affect their lives. This is a central premise to making effective and appropriate decisions about their protection and well-being. Developing clear and accessible tools to inform children and young people of their rights in the context of decisions and response should be a priority, together with mechanisms for their full and meaningful participation throughout the process, from assessment to review and determination of response options and decisions. Members of the child's family should also be included in assessment and decision making but with care taken not to create further risk to the child and to jeopardise a child's best interests.

In addition, importance should be placed on the development of multi-sectoral assessments and other shared gatekeeping tools and mechanisms accompanied by joint training on these tools so that policy, practice and responsibility is owned by all relevant stakeholders and agencies (social welfare, education, health, judiciary, housing, employment etc.). This also helps create an holistic child-centred approach to child protection and alternative care.

Related to the rigour of assessments is the determining of 'thresholds' that indicate whether, and how, a child and their family are at risk and the support they might require. This necessitates the development of statutory guidance and the setting of standards that guide competent staff

in decision making and determining the point at which children are assessed as being 'children in need' of additional support at home or, 'at risk of harm'. It is recognised that in particular, thresholds pertaining to levels of neglect can be a challenging and highly debated subject.

4.3 GATEKEEPING, PREVENTION OF FAMILY SEPARATION, AND FAMILY REUNIFICATION IN UKRAINE

In terms of the protection of children Article 10 of the Ukrainian 2001 Law on the Protection of the Childhood, upholds the right to protection of children from all forms of violence and specifically mandates the State to protect children from all forms of physical or mental violence, injury, neglect and sexual abuse. The Law goes on to require State provision of Service for Children's Affairs and Centres of Social Services for Family, Children and Youth which should offer assistance in detection and prevention of cases of child maltreatment, transferring of information of these cases for review to those authorities authorised by law to investigate, and to promote measures to stop the violence.

The 2019 UNGA Resolution on the Promotion and protection of the rights of children⁵² clearly states that,

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 THE CARE OF HIS OR HER PARENTS OR PRIMARY CAREGIVERS AND LEGAL GUARDIANS, FOR RECEIVING A CHILD INTO ALTERNATIVE CARE OR FOR PREVENTING HIS OR HER

REINTEGRATION, BUT SHOULD BE SEEN AS A SIGNAL FOR THE NEED TO PROVIDE APPROPRIATE SUPPORT TO THEIR FAMILY, BENEFITING THE CHILD DIRECTLY.

In Ukraine, children are without parental care, or at risk of being so, for differing reasons including those of protection concerns as well as causes directly and indirectly related to poverty and social exclusion. Despite international standards⁵³, below is a list of factors related to adversities and vulnerabilities leading to separation of children from parental care as identified in the desk review and interviews undertaken in Ukraine by the ISS team (please note, these factors have not been listed in any specific order):

- > Death of one or both parents
- > Abuse- all forms of physical, sexual and emotional harm and neglect
- > Children and/or parents with disabilities and/or other health concerns including HIV/AIDS and cancer
- > Lack of access to inclusive education and other support Service for Children's Affairs (and parents) with disabilities
- > Alcohol/substance abuse (usually due to the addiction of parents but also cases of children)

⁵⁰ The Resolution notes the need to strengthen efforts to prevent and protect children from all such violence through a comprehensive, gender-responsive and age-appropriate approach and to develop an inclusive multifaceted and systematic framework, which is integrated into national planning processes, to respond effectively to violence against children and to provide for safe and child-sensitive counselling, complaint and reporting mechanisms and safeguards for the rights of affected children.

⁵¹ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

⁵² United Nations General Assembly (2019) 'Promotion and protection of the rights of children' adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395

⁵³ United Nations General Assembly (2019) 'Promotion and protection of the rights of children' adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395 states that "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 the care of his or her parents or primary caregivers and legal guardians, for receiving a child into alternative care or for preventing his or her reintegration, but should be seen as a signal for the need to provide appropriate support to their family, benefiting the child directly."

- > Imprisonment of parent/s
- > Domestic violence
- > Family breakdown/poor or weak family relationships/ remarriage/ divorce/widowhood/
- > Born out of wedlock/unexpected and/or unwanted pregnancy/teenage pregnancy
- > Large family
- > Armed conflict
- > Children left behind as parents migrate for work
- > Children with behavioral challenges
- > Economic shocks (such as job loss)
- > Lack of /poor housing
- > Lack of Employment /access to livelihoods
- > Food insecurity (we were told some parents are struggling to pay for food for their children)
- > Adoption/foster care breakdown
- > Children of persons who experienced alternative care
- > Family do not know where/how to access services/support
- > Parenting that requires support and guidance
- > Lack of access to justice
- > Vested interest in children's residential institutions
- > Inappropriate structural and normative frameworks that allow for easy institutionalisation of children

> Encouragement by managers of institutions, health care workers in maternity hospitals and others, to place their children care

What is also noted, is the manner in which children and families often face multiple adversities. Interviewees acknowledged that parents are struggling not only because of financial difficulties, but because poverty and social exclusion manifests as stress, feelings of inadequacy, worthlessness, hopelessness and an inability to cope as situations spiral into a crises. Crises that can lead to solace through the use of drugs and alcohol for example. Some interviewees also acknowledged that rich families also abuse their children but most probably do not come to the attention of social services in the same manner, or with the same frequency, as poor families.

A further significant reason for placement in alternative care is related to children with disabilities and children with serious health concerns. The ISS team were also told that they believe parents of children with disabilities are actively encouraged to relinquish their children with disabilities to the local institution as the Director and staff of these facilities have a vested interest in keeping them full due to the per capita payment.

It is to be noted how similar findings regarding circumstances leading to separation from parental care were reflected in a 2015 report by Hope and Homes for Children⁵⁴.

"As many as 90% of children find themselves in institutions due to poverty and incompetence of parents; 5% are placed in residential facilities due to learning difficulties, 5% because of a health condition."
Interview with the head of the department of education and science

(Source: Hope and Homes for Children 2015)

⁵⁴ Hope and Homes for Children (2015) *The Illusion of Protection, An Analytical Report Based on the Findings of a Comprehensive Study of the Child Protection System in Ukraine*. Hope and Homes Children. Based on interviews conducted by Hope and Homes with heads of raions, city departments and residential institutions, it was concluded that primary reasons children were placed in institutional care was 'poverty, incapacity, antisocial behavior and unemployment of parents'. The report also indicated challenges supporting children with disabilities to be the second most significant reason followed by issues related to children with chronic or serious health challenges. According to interviews with parents, the predominant reason children reside in institutions is due to poverty and insufficient community based social services. Parents also reported being persuaded and convinced by different professionals and local decision makers to place their child in an institution.

4.4 PATHWAYS INTO THE CHILD PROTECTION AND ALTERNATIVE CARE SYSTEM IN UKRAINE

In order to effectively apply gatekeeping principles and monitor all children coming into the national child protection and alternative care system, there should be one single pathway into and out of the care system. In Ukraine, however, there are numerous pathways by which a child might enter the protection and alternative care system. These are discussed in further detail in the sections below.

4.4.1 Identification and referral of children in need of protection

In Ukraine, referral of children for whom there is a protection concern is mandated for Ukraine, referral of children for consideration of placement in alternative care is mandated in the Law On Bodies and services, Law on Local self-government, CMU Decree #866 .

During the field research conducted for this study, interviewees spoke about referrals of children of concern being initiated by a range of stakeholders including family members, neighbours, teachers and police. One interviewee provided the example of how a teacher with concerns for a child might either speak directly to the local Children's Services or, refer them to the school psychologist. Health staff ,police and other professionals in contact with children are also in a position to identify and refer children of concern. However, a number of interviewees expressed concerned regarding the lack of training in this procedure and/or an unwillingness of some professionals in schools, hospitals and other settings, to become involved in the process. One interviewee also spoke about children who themselves, also self-refer and come forward to seek help from local services. This she said, mostly concerns older children.

Many interviewees also indicated that identification and referral of children of concern are not coming to the attention of the authorities in a timely manner. In response to this

situation there is a call for earlier identification mechanisms and earlier intervention with families. This is particularly important for the early identification of children with disabilities and provision of more information to women about children and disability during pregnancy.

4.4.2 Identification and referral of children into alternative care who are abandoned and relinquished

In this report, abandonment will refer to a situation in which a child is left in a 'public' place by persons unknown. Relinquishment will refer to a situation where identified parent/s, or legal guardian, voluntarily transfer the full-time care of a child to another 'carer' but does not automatically include legal removal of parental rights. In Ukraine, the removal of parental rights and the conferring of 'status' of a child with parental rights must be undertaken by a judge.

There was some noted confusion by interviewees regarding the difference between, abandonment and relinquishment. Of note, this lack of differentiation is also reflected in the Ukraine Joint 5th and 6th Periodic Report to the Committee on the Rights of the Child⁵⁵ in which only abandonment of children in care is referred to, even when reporting on children who have also been relinquished into care.

Interviewees indicated that abandonment accounts for a very small number of children without parental care. One scheme that now exists allowing for the legal abandonment of infants to be left anonymously, is the use of baby boxes at hospitals. This programme was developed with the aim of preventing babies and infants being abandoned in a place they might nor be found and/or might die. The project is called 'window of life'. In these cases of abandonment, no investigation to find the child's family is undertaken. Moreover, in respect of abandonment, there appears to be

⁵⁵ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, spec §5, Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fUKR%2f5-6&Lang=fr

contradictions in the law. Under article 155 of the Family Code (2002), abandonment is 'unlawful' whilst abandonment through the baby box scheme is lawful.

As previously mentioned, of great concern is the manner in which many interviewees confirmed how a significant proportion of children are relinquished by families directly into residential institutions managed by the Ministry of Education, the Ministry of Health and the Ministry of Social Policy. This happens without any administrative body involvement in a formal referral and assessment process that should be undertaken by social workers and other professionals. No Government data has been seen by the ISS team that can provide an accurate figure of the number of children who, on an annual basis, are relinquished by their family. However, in 2015, information contained in a report by Hope and Homes for Children⁵⁶ indicated that in the year of the study, 38,168 (38.2%) of the 99,915 children placed in residential institutions were there as a result of a direct application by parents or guardians. This situation further raises concern that many of these children may have been placed in care unnecessarily and the possibility that timely assistance to the families might have prevented such actions.

Babies are being relinquished into the care of the Ministry of Health authorities predominantly in health facilities. The Family Code (2002) allows parents to abandon/relinquish their child at the maternity home or any other health institution if the child suffers from serious physical and/or mental disability as well as under other essential circumstances. It is understood however, that there is no explanation in the Family Code as to what 'other essential circumstances' means, thus leaving this to interpretation by individuals accepting the child into care.

One interviewee described the process they understand should be followed when children are relinquished at local medical facilities. They

explained that medical staff are mandated to report such cases to Service for Children's Affairs. A case is then investigated by the Centre for Families, Children and Youth and contact is sought with the child's family. The interviewee explained how an investigation should be conducted so as to ascertain the reason for relinquishment following which, relevant support should be offered in an effort to reunite the child with their parents or extended family. The interviewee also said they felt it was important the process be conducted in a sensitive manner as the mother – and/or father – may be facing a range of personal difficulties.

In cases where children are abandoned as a result of parent/s providing false information about their identity and therefore unidentifiable, under regulations in the Family Code (2002), the Centre for Families, Children and Youth should try and trace the parents. If these investigations are unsuccessful, it is the responsibility of SFC to prepare all documents for register the birth of the child. According to the Family Code a child, that has been 'abandoned' in the maternity home or other health institution may be adopted after he/she has attained the age of 2 months.

An example of efforts to prevent relinquishment were noted in the Ukraine Joint 5th and 6th Periodic Report to the Committee on the Rights of the Child⁵⁷. The Report provided information about programmes to counsel expectant women and mothers in prenatal clinics and maternity hospitals if there is concern regarding possible relinquishment. Information contained in the Report also noted a decrease in the number of new-born babies left in maternity hospitals or other health care institutions from 599 children abandoned in 2011 (1.21 per 1,000 live births).⁵⁸ to 342 children in 2017 (0.99 per 1000 live births). The report went on to explain how, in 2017, 557 new-born children that had been considered at risk of relinquishment, remained with their mothers.⁵⁹ It has not been possible to verify the efficacy of this programme as laid out in the Periodic Report.

FOCUS ON CHILDREN WITH DISABILITIES

The Law of Ukraine Fundamental Principles of Health Legislation of Ukraine (19.11.1992 No.28010-XI) stipulates that parents who have children with physical or mental disabilities who need health and social support and special care, can place them in baby homes, children's homes and other specialised childcare facilities financed by the state. As reported by Home and Homes in 2015, the CRC Committee has shown in its 2011 concluding observation (§34) a particular concern that, 'the Family Code (2002, Article 143, §3) condones the abandonment of children born with serious physical or mental disabilities and under other circumstance of importance.'⁶⁰

4.4.3 Assessments of children and families

The UN Guidelines for the Alternative Care of Children⁶¹ clearly state that 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.'

In Ukraine there is a mandated process of assessment for children of concern as laid out by the Ministry of Social Policy. Centres for Families, Children and Youth are tasked with undertaking assessments of child and their family circumstances within 7 days of referral. Interviewees spoke of a standardised form to be used by assessors. Under regulations published by the Ministry of Social Policy, if a case is considered to be an emergency, the police

and Service for Children's Affairs should undertake an emergency assessment within the first 24 hours of referral. If not an emergency, a child and family needs assessment should be undertaken should be undertaken by a Social Work Specialist within 7 days of referral. The assessment process was changed in 2019 to combine what has previously been an initial rapid followed by a full assessment. By law, they do not have to involve other professions. Decisions based upon the assessment should be concluded within one month.

All interviewees asked about assessments of children and families, were fully aware of the mandated assessment process and forms to be used. However, overwhelmingly interviewees indicated that assessments are not always undertaken in a satisfactory manner and can lack rigour and accuracy. Furthermore, some interviewees are concerned about the assessment process only taking into account practical aspects of a family's situation such as condition of housing, employment status, health, social behavior. A perceived deficit is lack of consideration regarding how much a child is loved and emotionally attached to their parents/family as well as an understanding of how to uphold the best interests of a child principle. In this respect, it is thought that knowledge of attachment theory is not generally well known and/or understood by social workers and other profes-

⁵⁶ Hope and Homes for Children (2015) *The Illusion of Protection, An Analytical Report Based on the Findings of a Comprehensive Study of the Child Protection System in Ukraine*. Hope and Homes Children. p.43.

⁵⁷ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, §91 and 27,

⁵⁸ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, §91 and 93,

⁵⁹ *ibid.* § 91 and 27

⁶⁰ Hope and Homes for Children (2015) *The illusion of protection, An analytical report based on the findings of a comprehensive study of the child protection system in Ukraine*. Hope and Homes for Children

⁶¹ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

sionals. Some also take a stance ‘blaming’ parents, and believe parents should be punished, whilst their children are quickly referred with a view to removal. In recognition of this concern, some interviewees spoke about the need for awareness raising and training that would help change social, and other, workers’ preconceived negative perception of parents. It should also be acknowledged that there are some child protection workers who do exhibit significant empathy with families in difficulty and decisions are being made to prevent unnecessary referral of children to Service for Children’s Affairs and finding ways to support these families.

In terms of assessment concerning children with disabilities, interviewees spoke of this being very much based on a medical model which does not take into account the overall social, emotional, educational and other development outcomes for a child.

Other concerns regarding assessment of children and families, was highlighted by an interviewee who noted that during social assessments of families, in their city, only four children had been identified as victims of abuse, and only forty cases of child abuse had been reported in the previous year according to official police statistics. They believe this signifies a vast gap in the knowledge, training and ability of professionals including, social workers, medical staff and teachers to make a ‘competent’ identification. It also infers there are probably many children who require protection that are not being identified and referred to the relevant protection services. Although it cannot be verified how representative this figure is, one interviewee went on to say they estimated that 70% of children in need of protection are not coming to the attention of the relevant services. Furthermore, interviewees indicated that abuse, and most especially sexual abuse, remains a subject that is often hidden.

Interviewees also indicated that some professionals are afraid to become involved in and to report a suspected case of child abuse although the reasons for this fear was not elaborated on. Interviewees also spoke of concerns related to cases where wrong decisions about children at risk of serious harm meant they remained in parental care and as a result, are subject to ongoing abuse.

Although some interviewees, spoke about the undertaking of assessments being a multi-sectoral activity, others suggested this is not uniformly carried out and the need to improve inter-sectoral coordination and cooperation at all levels. It was not possible during the first mission of the ISS team to interview professionals within the health and education services to verify their level of knowledge and skills in identifying and responding to children when cases of abuse are suspected. However, the ISS team were provided with information concerning examples of promising practice. For example, in one city the ISS team visited, a local Service for Children’s Affairs that holds regular workshops for staff on how to identify families in crisis. They also have an emergency mobile unit that operates and responds to cases on a 24/7 basis comprised of a social worker, a psychologist, a representative of the city Children’s Services and the juvenile police division.

Relating to the complexity of different laws and regulations in terms of assessments and gate-keeping, one interviewee described a recent exercise undertaken by their organisation to map out the different regulations for, and processes of referral and assessments, that are relevant to pathways into care. The conclusion was, there are so many complex and contradictory procedures, and differing roles and responsibilities, it was not possible to complete the exercise satisfactorily.

4.4.4 Participation in assessments and decision making

An important principle outlined in the UN Convention on the Right of the Child, is the right to be heard and there should be full respect given to, ‘the child’s right to be consulted and to have his/her views duly taken 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’. Full implementation of Article 12 of the UNCRC is applicable to all children including young children and children with disabilities. This requires a careful process of facilitation to ensure participation.

The Ukrainian 2002 Law on the Protection of Childhood, Article 9, recognises the right of children to freedom of expression and information. In general, interviewees were aware that the assessment and decision making process should take into account the views of children, parents and other family members as well as other professionals who have knowledge of the child. Some interviewees also knew that the principle of best interests of the child should be taken into account. However, although the right of children to participation in processes and decisions that impact their life is mandated for in national legislation, overwhelmingly interviewees indicated this is not happening. When children are involved, it is thought to be a tokenistic gesture in many instances.

4.4.5 Decision making: Referral to family support and services to prevent separation

The 2019 UNGA Resolution on the Promotion and protection of the rights of children⁶² requires States to develop and strengthen inclusive and responsive family-oriented policies and strengthen parents’ ability to care for their children. The UNGA Resolution also calls on States ‘to confront family poverty and social exclusion’ by ‘recognizing the multidimensional aspects of poverty, focusing on inclusive and quality education and lifelong learning for all, including initiatives to promote involved and positive parenting, health and well-being for all at all ages, equal access to economic resources, full and productive employment, decent work, social security, livelihoods and social cohesion and promoting and protecting the human rights of all family members.’

The Ukraine Family Code (2002), Article 155, calls for all decisions to be made in a manner that respects the rights of children and their human dignity. In addition, parental rights must not be exercised contrary to the best interests of the child.

When an assessment undertaken by a member of staff from a Centre of Social Services for Families, Children and Youth results in a

decision to offer a family support in order to prevent separation, this decision must be authorized by the local Guardianship and Custody Body after receiving the argumentation from both sides SFC and CSSFCY. In addition, this decision must be followed by the development of a Support Plan defining the services the family will receive. The plan must be agreed upon in cooperation with the family. Interviewees indicated how initial decisions determining the need and provision of family support is based on a number of factors. Once again, as previously highlighted, decisions are being influenced positively or negatively by the rigour and accuracy of the gathered assessment information as well as any capacity, bias and prejudice of those taking the decisions.

A number of interviewees shared their belief that in general, decisions are being undertaken correctly. In one location, the ISS team heard about a multi-sectoral team in a Service for Children’s Affairs comprising professionals from different local authority departments to jointly undertake assessments. The team have created a ‘social passport assessment’ process in order to monitor access by families to ‘social justice’ and identify and refer families to the support they need. The team leader said a ‘large’ numbers of families that have now been referred to different forms of support. This included for example, families who were not receiving state benefits due to their lack of understanding about entitlements and how to claim them.

Further examples of promising practice include collaboration between NGOs and local authorities, as for example, the ISS team visited an NGO working in partnership and being financially supported by a city Service for Children’s Affairs. This NGO runs a rehabilitation centre to which children with disabilities can be referred. The centre is open every day of the week and offers support to children and their parents. Staff provide a range of rehabilitation services with one of their aims being children eventually entering local schools. They also empower parents of children with disabilities to advocate for the rights of their children or make official requests and complaints, when need to. Promising practice was also found in a programme

⁶² United Nations General Assembly. Promotion and protection of the rights of children. December 18 2019. A/74/395 Seventy-fourth session..

involving partnerships between a civil society organisation and the local authority to identify children in institutions who should be able to return home when, and if, local support services are made available. A second NGO in the same locality is working to develop day care centres to which families with children with disabilities can receive support.

A member of the ISS team also visited a city centre private day care centre for children with disabilities established by parents of children with severe disabilities themselves due to the lack of state run support services. This small facility cares for seven children with severe disabilities and offers rehabilitation through a multidisciplinary team of professionals. Apart from subsidies rent, no other financing is received from any State authorities and is therefore funded by private donors and parents which means the sustainability of funding is a challenge. This form of day care service is rare even though there is considerable demand with waiting lists for these services.

In contrast to the examples of good practice provided, interviewees in different parts of the country spoke of concerns regarding the manner in which some professionals, and in particular, social workers, are making decisions that do not consider the best interests of the child and do not include offers of support to families in difficulty. Once again, interviewees spoke of decision making that is biased against families who are not in their opinion 'good parents' and do not 'deserve' to receive support. Furthermore, it is understood that some social workers are taking what is considered to be 'easier' decisions to remove the child and place them in alternative care rather than provide intensive support to families in difficulty. This is emphasised in the case of vulnerable families of children with disabilities where family preservation is not seen as a priority. There is also a general assumption of many, parents included, that children with disabilities will be better care for in residential care due to the lack of relevant specialists, services and inclusive education in their communities. Interviewees expressed a concern therefore, in the lack of statutory guidance regarding thresholds that would help professionals when determining protection risk and/or wellbeing concerns for a child, and deciding when appro-

priate for a child to remain in, or be removed from, parental care.

Decisions being made to place children in alternative care, is in part, being driven by the lack of community-based support services and social protection resources to which social workers can refer families. This includes access to both universal and specialist support as for example:

- **access to social protection payments** including unemployment and sickness benefit, increased child support payments and other sources of financial support
- psychosocial support and counselling
- training and employment opportunities
- access to adequate housing
- drug and alcohol rehabilitation
- respite care
- crèche facilities and other day care services
- after school clubs
- parenting classes

It was noted how important it is to offer access to health, rehabilitation and inclusive education services that would enable children with disabilities to remain in the care of their families. For example, there is a significant lack of access to inclusive education so that children with disabilities do not need to be institutionalised in order to receive education. Lack of transportation that would help families access local services for children with disabilities was also an identified obstacle.

In summary, although there are examples of promising practice, it is suggested that not all decisions about children and families are being based on the accurate needs and best interests of children. Furthermore it is understood that children are being removed from parental and family care unnecessarily- especially in cases where additional provision and access to local support services would have allowed a children to remain at home.

FOCUS ON CHILDREN WITH DISABILITIES

Registering the child as a child with disabilities

"It is very difficult to register a child's disability. Doctors look at how much money you bring to the hospital. Disability status is granted to virtually healthy children, while really sick children cannot get it. It costs 200 dollars." **Mother of a child with a disability participating in a focus group**

"I spent a lot of time and effort to register my child's disability. She has intellectual disability and in the hospital they recommended that I apply for disability status. They sent us to the oblast hospital on two occasions and each time we underwent examinations. Then the doctor asked me where we lived and what our income was and then did not write anything. When I returned to our rayon hospital our doctor asked if we received the status. I said, "No, they wanted money". He just shrugged and told me to return "whenever you are ready". **Mother of a child with a disability**

Rehabilitation services and day care centers

"There is absolutely nothing in our village or in the rayon centre – no specialists, no special classes or groups. It is virtually impossible to find a speech therapist or neurologist. You have to travel to the oblast centre but this is quite expensive. Mothers have to lift children and they grow heavier. We need just minimum services – at least some small support centre in the rayon." **Mother of a child with a disability**

Many parents particularly want respite care, allowing them a rest from the daily care for a child with disability. With huge demand for day care centers for children with disabilities, there are practically no such services available in communities, with no Centers for Social Support for Children and Families in difficult life circumstances.

4.4.6 Decision making: Placing children in alternative care

In terms of other pathways that lead to children to be placed in alternative care, decisions are being made by different stakeholders who are following different procedures working

within different government bodies and services. Table 2. below, provides an overview this situation. If a decision is made by a social worker or other professional that a child should be removed from parental care, this decision must be authorized by the local Guardianship and Custody Body.

TABLE 2.
Decision making leading to placement of children in alternative care in Ukraine

| Pathway into Alternative Care | Formal Decision Makers |
|--|---|
| Children under three years through maternity hospital to baby home | Administrative placement order issued directly by the Ministry of Health or the Ministry of Internal Affairs. No court involvement. Written statement from mother is required witnessed by maternity home |
| Children under 3 years placed temporarily in infant and baby homes by routes other than maternity hospital on application of parent (which may be the result of advice of professional staff). | Heads of infant and baby homes Written application is required from one/both parents. This placement may lead to deprivation of parental care through a court order and permanent placement if mother/father does not have regular contact with child. The child would then be eligible for adoption. |
| Placement in 'internats' of children over 3 years directly by parents. | Decision to accept the child by Ministry of Education and Ministry of Social Policy. Written application is required from one/both parents. |
| Placement into alternative care as a result of deprivation of parental rights as recommended by Service for Children's Affairs and passed for court decision. In such cases a child will have the status of child orphaned or child 'deprived of parental care'. This provides the child with a 'status' that then allows them to be placed in alternative care and also become available for adoption | Service for Children's Affairs recommendation with Court decision issued through Court Order |
| Department of Service for Children's Affairs request status of child as orphaned, or child deprived of parental care | Order issued by Head of Rayon administration (or City Mayor). |
| Placement in oblast level institutions both temporarily or permanently on request of an Oblast level authority | Letter requested from local authorities and authorization Oblast department of Education or Labour |
| School age children placed in internat boarding schools as a result of poverty and other social reasons | Head of Rayon administration (or City Mayor) provides recommendation for placement children in special boarding school according to their educational needs . Decision of a Commission on the Protection of the Rights of the Child administered by the department of Service for Children's Affairs |
| Children with disabilities placed in special institutions | Referrals through staff of ante-natal clinics, maternity hospitals and pre-schools to Psycho Medico Pedagogical Commissions |

4.4.7 The Guardianship and Custody Body

If a child has been referred to, and assessed by, the authorities due to a concerns for the child's protection or wellbeing, their case is referred by Service for Children's Affairs to the local **Guardianship and Custody Body** for a decision that would confer status of a child as an orphan or a children deprived of parental care. This Body sits at city and local level, and rayon level, and is tasked with making a decision on all cases involving children to be placed in alternative care. The Body is chaired by the Mayor and comprises the heads of different departments including health, social policy and education. The Chair of the Body is responsible for signing the final documentation containing the Body's decision. However, although interviewees recognise the work of those deeply involved and conscientious Body members in different localities, concerns were also raised regarding the lack of uniformity across the country in terms of informed decision making that is in the best interests of the child. Interviewees also suggested that some Body Chairs do not query any of the recommendations made Service for Children's Affairs but blanket sign necessary documentation without due diligence.

Issues can occur when a decision is not made regarding the 'status' of a child in a timely and justified manner and whether or not to remove parental rights. On one hand, this allows an opportunity for family reunification. This is especially important in light of findings that children are being unnecessarily removed from families or relinquished without any formal assessment to ascertain the child's situation at home. However, it is understood this also means children are remaining in care indefinitely – indeed in some cases their entire childhood – as efforts are not being made to reunify them with parents, nor do they have a legal status that would allow for another permanent family-based

4.4.8 The role of the court and judicial proceedings

If a recommendation is made by Service for Children's Affairs for removal of parental rights, the case must be referred to the court for the

final legal decision of a judge. If the judge removes parental rights, the child received a 'status' that leads to placement in alternative care from where they can be placed for adoption. As mentioned above, if a child is without the legally defined 'status', local authorities are unable to place the child for adoption and thereby find a durable solution for a child.

However, there are no Family Courts in Ukraine that provide the services of specialist judges tasked with protecting the rights of children at risk of losing, or without, parental care when necessary. Interviewees overwhelmingly spoke of grave concerns regarding the delays in judiciary procedures. It was suggested it can often take months, with some mentioning periods of two years, before a child's case comes before a judge. This poor practice is attributed to a combination of factors. Firstly, there are ongoing judicial reforms that has led to a serious shortage of judges and many vacancies remaining unfilled. As a consequence, there is a large backlog of cases for court consideration and therefore, priority being given to criminal cases. Therefore, decisions regarding removal of parental rights and conferring of 'status' for a child in alternative care is taking far too long. In the meanwhile, children remain in institutions.

It has been noted how there is an overall lack of knowledge, skills and training of those judges who are making decisions about children and families. This includes poor awareness and understanding of child rights and little understanding about the damage to a child's wellbeing that can occur as a result of institutionalisation. It is also understood that Judges are also unaware of the principle of 'best interests' of a child and how to ensure it is upheld. Furthermore, a high frequency of cases in which judges make a decision that systematically favour parental rights and not those of children has been noted. For example, interviewees spoke about cases where even when there is an assessed risk to a child, upon the plea of parents, they are being returned to them by the courts. Likewise judges are not respecting the situations where it is in the best interests of a child is to refuse deprivation of parental rights, or when applicable, order the reunification of a child and their family.

4.4.9 Placement without a formal decision making procedure

Evidence suggests there are too many children being accepted into alternative care without the application of a formal gatekeeping processes. For example, in Table 3. below, the data reproduced from a report ⁶³, provides an overview of those responsible for decisions to place children in institutions and how in 2015, a significant percentage children were relinquished directly into care by par-

ents and accepted by institutions without any due process.

The data shows how 43.5% of children were placed at the request of a parent coupled with recommendations from the previous psychological, medical and pedagogical commission and 38.2% were placed at the request of parents alone. In the year of reporting, only 5.1% of children had been placed in institutions solely through decisions made by a relevant child welfare authority.

TABLE 3.
Data concerning decision to place of children in residential institutions (2015)

| Decision making process | Number of children (2015) | % |
|---|---------------------------|------------|
| Application of parents and the conclusion of the psychological, medical and pedagogical commission | 43,464 | 43.5 |
| Application of parents or guardians | 38,168 | 38.2 |
| Decision of relevant child welfare authority and the conclusion of the psychological, medical and pedagogical commission | 4,195 | 4.2 |
| Decision of relevant child welfare authority | 5,096 | 5.1 |
| Transferred from other institutions | 7,993 | 8.0 |
| Application of parents displaced from temporarily occupied territories of Ukraine, areas of anti-terrorist operation and settlements located along the front line | 999 | 1.0 |
| TOTAL | 99,915 | 100 |

⁶³ Hope and Homes for Children (2015) *The Illusion of Protection, An Analytical Report Based on the Findings of a Comprehensive Study of the Child Protection System in Ukraine*. Hope and Homes Children.

4.4.10 Children’s care plans

The 2019 UNGA Resolution on the Promotion and protection of the rights of children⁶⁴

ENSURING THAT REMOVAL OF CHILDREN FROM THE CARE OF THEIR FAMILY SHOULD BE SEEN AS A MEASURE OF LAST RESORT AND SHOULD, WHENEVER POSSIBLE, BE TEMPORARY AND REMOVAL DECISIONS SHOULD BE REGULARLY REVIEWED AND THE CHILD’S RETURN TO PARENTAL CARE, ONCE THE CAUSES OF REMOVAL HAVE BEEN RESOLVED OR HAVE DISAPPEARED, SHOULD HAVE THE BEST INTERESTS OF THE CHILD AS A PRIMARY CONSIDERATION AND BE BASED ON COMPREHENSIVE ASSESSMENT

Interviewees provided different answers concerning the development and application of children’s Case Plans. If a child’s case concerns protection, it is obligatory for an ‘Individual Protection Plan’ to be developed. However, whilst a number of interviewees indicated this was undertaken systematically, others said plans were not always developed and/ or not done well. Furthermore, there is evidence that even when such Case Plans are developed, they are not regularly reviewed thus the situation of a child and their family is not systematically or regularly monitored in terms of change in circumstances that could for example, lead to family reunification. Thus a further contributing factor to children remaining in care unnecessarily and for excessive periods of time. The development of plans should be for every child in every type of care setting regardless of ‘status’.

4.5 FAMILY REUNIFICATION

The UN Guidelines for the Alternative Care of Children note that placement in alternative care should be for the shortest time possible. The UN Guidelines⁶⁵ therefore call on States to ensure regular and timely assessment of a child and their family is undertaken by a ‘duly designated individual or team with access to multidisciplinary advice in consultation with different actors involved (the child, the family, the alternative care giver), so as to decide whether the reintegration of the child in the family is possible and in the best interests of the child’.

The 2019 UNGA Resolution on the Promotion and protection of the rights of children, also recognizes ‘that many children living without parental care have families, including at least one parent alive and/or relatives, and in this regard encourages actions to achieve family reunification unless it is not in the best interests of the child’. The UNGA Resolution also re-

minds States parties that poverty alone should never be a reason not to reunify a child with their family.

The UN Guidelines⁶⁶ also remind States that the 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.

⁶⁴ United Nations General Assembly (2019) ‘Promotion and protection of the rights of children’ adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395

⁶⁵ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

⁶⁶ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

Despite existing prevention efforts, it is recognised that some children will need to be separated from parental care for protection reasons however, as soon as a child has been placed in alternative care, rigorous efforts should be made to facilitate return of a child to parental care as soon as it is safely possible to do so. According to the 2015 report of *Hopes and Homes for Children*, 'the institutional care system in Ukraine does not view a child's return to a family environment as one of its priorities. Therefore staff members do not work with parents to return children to their biological families or place them in family-based forms of care.'⁶⁷

Overwhelmingly, interviewees agreed that the importance of programmes to ensure facilitation of family reunification were not being fully recognised, prioritized or resourced. In addition, the complexities often associated with family reunification is resulting in lack of motivation of staff who neither possess the skills, training or time to dedicate to such actions. These findings are in contradiction to the Government of Ukraine reports⁶⁸ that work is methodically undertaken to prepare a child

to return to their parents from institutions. Data suggests that indeed, very few children are returning to parental care once placed in institutions. For example data, in the Government's 5th and 6th report to the Committee on the Rights of the Child, illustrated how in 2017, only 1,767 children returned to parental care that year.

Furthermore, concerning reports were also received from interviewees regarding the manner in which some children repeatedly enter and leave alternative care and questioning the quality of family reunification programmes. This indicates a possible lack of monitoring and follow up support to children and families upon their return as well as poor family reunification procedures.

In conclusion, although there are examples of promising practice, there is a general concern regarding gaps and weaknesses in the competence, willingness and ability of different professions to identify, refer, assess, and support children who are experiencing, or at risk of experiencing, serious harm or facing other difficulties requiring the support of state bodies.

and vocational training opportunities. These principles are furthered in the 2019 UNGA Resolution.⁷⁰

Article 25 of the Law of the Ukrainian Social Protection of Orphans and Children Deprived of Parental Care contains provision for children who have been orphaned and those with the status of being deprived of parental care, to be provided with a lump sum of money after they reach the age of 18 years old. The amount and manner is to be determined by the Cabinet of Ministers of Ukraine. There is no other provision in the law that provides other specific forms of support for children and young people ageing out of care.

Interviewees were concerned at the lack of support being made available to young people who leave care. A lack of planning for young people when leaving care and support during transition to semi-independent or independent living leaves young care leavers feeling alone, abandoned and desperate. Because everything has been done for them whilst in institutions – and especially because many have spent their entire childhood there – they do not know how to cook, shop, use money, use public transport, open a bank account, clean, wash clothes or most importantly, how to interact socially with other members of the public. One interviewee who had been brought up in an institution said care leavers 'cannot do anything. The day they leave the

internat is the day they are born again.' They are happy to leave but also left destitute often having to resort to living on the streets if they are not assisted by an NGO or are able to go on and study and live in education dormitories. An example was given of a care leaver who did not understand the value of money and so, within two days of leaving an institution, they had spent their entire allowance.

Most concerning is how is the testimony of a care leaver who told the ISS team, 'If you go into care into a baby home you do not know what love is. We all need love and respect but there is no love in the institutions. Furthermore, care leavers are aware they lack experience of family life and the opportunity to observe and 'learn' how to be good parents themselves. This is resulting in the children of care leavers also being relinquished into institutions or, being removed from them.

The ISS team were also informed that children with disabilities ageing out of children's residential institutions are usually transferred to institutions for adults with disabilities. This suggests there is little or no efforts being made to support those with disabilities moving to semi-independent or independent living.

4.6 AGEING OUT OF CARE

The UN Guidelines for the Alternative Care of Children⁶⁹ call on:

AGENCIES AND FACILITIES SHOULD HAVE A CLEAR POLICY AND SHOULD CARRY OUT AGREED PROCEDURES RELATING TO THE PLANNED AND UNPLANNED CONCLUSION OF THEIR WORK WITH CHILDREN TO ENSURE APPROPRIATE AFTERCARE AND/OR FOLLOW-UP THROUGHOUT THE PERIOD OF CARE, THEY SHOULD SYSTEMATICALLY AIM AT PREPARING CHILDREN TO ASSUME SELF-RELIANCE AND TO INTEGRATE FULLY IN THE COMMUNITY, NOTABLY THROUGH THE ACQUISITION OF SOCIAL AND LIFE SKILLS, WHICH ARE FOSTERED BY PARTICIPATION IN THE LIFE OF THE LOCAL COMMUNITY.

The UN Guidelines for the Alternative Care of Children also urge that all efforts should be made to ensure a participatory process in planning the pathway and transition from care to independent living should begin well before a young person is leaving care. In par-

ticular the UN Guidelines call attention to provision of a 'specialized person' who can be there to support young ageing out of care as well as a focus on additional support for those with special needs including a disability. There should also be access to ongoing education

4.7 COMPLAINT MECHANISMS

To ensure that children are fully protected in the care environment that has been chosen for them it is essential that a complaint mechanism is available.⁷¹ The country should have an effective system of complaints and sanctions mechanisms in place that concerned children could access before, dur-

ing and after a placement. This mechanism for complaints and sanctions should be an integral part of the child protection system. It does not appear that the National legislation makes clear provision for either the complaint mechanism, neither for leaving care.

⁶⁷ Hope and Homes for Children (2015) *The illusion of protection, An analytical report based on the findings of a comprehensive study of the child protection system in Ukraine*. Hope and Homes for Children. p.50

⁶⁸ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018, spec, § 116, p.19 :

⁶⁹ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

⁷⁰ United Nations General Assembly (2019) 'Promotion and protection of the rights of children' adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395. States should ensure that adolescents and young people leaving alternative care receive appropriate support in preparing for the transition to independent living, including support in gaining access to employment, education, training, housing and psychological support, participating in rehabilitation with their families where that is in their best interest, and gaining access to after-care services consistent with the Guidelines for the Alternative Care of Children.

⁷¹ §§ 98-99 of the Alternative Care Guidelines.

RECOMMENDATIONS – implementing the ‘necessity’ principle

In conclusion, although there are examples of promising practice as well as copious laws, regulations and strategic plans mandating for improved gatekeeping practices, this is not prevented the unnecessary separation of children from parental care. There is still a need to provide adequate support services that mitigate the reasons children are removed from their care in the first instance. Furthermore, gatekeeping mechanisms, including, case management tools are not being systematically and rigorously applied. This includes cases of poor implementation of assessments that allow for well-informed and participatory decision making as well as ongoing review of the changing situation of children once in care. Institutions continue to accept children without any due process as laid out in Ukrainian legislation and guidance, and systematic efforts to reunite children with their families are not being undertaken.

Drawing on these conclusions, the following recommendations are offered in terms of:

- Amending legislation so that the protection and care needs of all child of concern must be subject of a full and rigorous assessment to be carried out with 14 days of a child being brought to the attention of any government authority including institutions of the Ministry of Social Policy, Health and Education. This legislation to include refusal of admission into an institution and immediate referral to the relevant social services unless there are well-founded grounds to suspect immediate threat to a child.
- **Improving access in terms of quality and quantity of a range of family support services that provide a focus and priority on prevention of family separation including:**
 - individual/family counselling and parenting support that should be conducted in a supportive, un-biased and sensitive manner
 - increased access to drug and alcohol rehabilitation programmes
 - increased access training and employment schemes,
 - access to all that are in need of social protection payments and signposting to a range of other necessary services including housing, employment, training, social benefits etc.

- improved range of support services for families with children with disabilities including access to inclusive education in all localities, employment of special classroom assistants, improved health care services and pre-natal care, early intervention services, day care facilities providing specialised services if possible, and transportation so that services can be accessed
- Increasing information made available to children and families regarding rights and entitlements.
- Providing statutory guidance on inter-sectoral coordination and working practices. This should include regulations that mandate inter-disciplinary cooperation in all aspects of case management and shared gatekeeping tools and mechanisms with a clear delineation of powers and areas of responsibility. Specialised inter-sectoral training would also be useful.
- **Ensuring a unified approach to the development, training on, and use of all case management tools and mechanisms for those working in social services, health care, education, law enforcement and other relevant bodies. This includes:**
 - statutory guidance on identification and referral that is mandatory and holds personnel to account if not undertaken
 - shared rigorous multi-sectoral assessments that take into all aspects of a child’s wellbeing including emotional and social development
 - decision making that places a child’s best interests at the centre of all decisions in an un-biased manner
 - development of well informed family support plans and/or children’s care plans.
 - timely and regular review and re-assessment of the situation of a child and their family circumstances with a view to family reunification if, and as soon as, possible.
- Revising legislation, regulations and statutory guidance so as to provide clarity of definitions of violence and neglect and to provide ‘thresholds’ for decision making in determination or risk, best interests of a child, and whether or not to remove from parental care in the first instance.
- Clarification in legislation on lawfulness of abandonment.
- Development of all necessary steps to prepare for and support young people ageing out of care including a participatory process closely involving young people in preparation of a Pathway Plan that maps out the care, preparation and support they will receive from multiple services before, during and after leaving care. Each individual pathway plan should consider provision of housing, access to education, training and employment, social benefits, social inclusion, recreation, practical skills such as cooking, shopping, and money management.

PART 5: IMPLEMENTING THE 'SUITABILITY PRINCIPLE': A RANGE OF SUITABLE FORMAL ALTERNATIVE CARE OPTIONS

5.1 SUITABILITY PRINCIPLE

The authors of 'Moving Forward'⁷², the handbook written to accompany the UN Guidelines for the Alternative Care of Children, refer to the 'suitability' principle in terms of meeting a child's individual best wishes when it has been deemed absolutely necessary to provide them alternative care.

The 2019 UNGA Resolution on the Promotion and protection of the rights of children⁷³, calls on States parties to make act, 'in accordance with their national laws and their obligations under the relevant international instruments in this field, [and] ensure safe and appropriate quality alternative care' for each child.

Furthermore, the 2019 UNGA Resolution requires States parties to prioritise,

QUALITY ALTERNATIVE CARE OPTIONS OVER INSTITUTIONALIZATION WITH THE BEST INTERESTS OF THE CHILD AS THE PRIMARY CONSIDERATION, AND, WHERE RELEVANT, ADOPTING POLICIES, STRATEGIES AND COMPREHENSIVE PLANS OF

ACTION IN THAT RESPECT, INCLUDING BY IMPLEMENTING RELEVANT REFORMS, DEVELOPING OR REFORMING LEGISLATION, BUDGET ALLOCATION, AWARENESS-RAISING CAMPAIGNS, TRAINING, AND INCREASING THE CAPACITY OF ALL RELEVANT ACTORS.

When rigorous assessment and participatory decision making processes deem separation from parental care as necessary and in the best interest of the child, a continuum of suitable care options must be available in line with the **'suitability principle'** as enshrined in the UN Guidelines. In this manner, a range of quality care options should be in place to respond to the differing needs, circumstances and wishes of children and young people.

It is widely recognised that priority should be given to alternative care being within a family-based setting when most suitable for a child: whether in the care of extended family when possible, or in the care of another family.

⁷² Cantwell, N., Davidson, J., Elsley, S., Milligan, I. & Quinn, N. (2012) Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'. UK: Centre for Excellence for Looked After Children in Scotland. Centre for Excellence for Looked After Children in Scotland, University of Strathclyde, Glasgow: Scotland

⁷³ United Nations General Assembly (2019) 'Promotion and protection of the rights of children' adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395

It is acknowledged however, that there may be instances when this setting may not be most appropriate again referring to the individual circumstances of a child.⁷⁴

In terms of residential care, the UN Guidelines call for the ‘elimination’⁷⁵ of all large residential care settings, recognised in the UN Guidelines as ‘institutions’. As such child protection and care reforms should include a robust policy that moves away from large residential settings and a roadmap for effective timely and cost-effective implementation.

Importantly a robust deinstitutionalisation process requires not only all efforts to be focused primarily on prevention of separating a child from parental care whenever possible, but also the provision of a range of alternative family and community based care options suitable to the country context.

Small residential care as a form of community-based care may not only be the preference of some children and young people, but may also be assessed as providing the most suitable care option for them⁷⁶. All care options should be contextually applied, of the highest quality possible, and assiduously monitored. Finally, any care reform must also take into account specific elements relating to current institutional settings such as to funding models and potential retraining of staff employed.

Despite prevention and efforts to support families through effective gatekeeping mechanisms (please see Section 4), when children are in need alternative care, international and national standards should be applied (please see Section 3). This requires that a continuum of quality care options be made available so as to meet the individual needs, circumstances and wishes of each child.

5.2 FAMILY-BASED CARE IN UKRAINE

Although this report remains focussed on findings specifically related to the formal alternative care system in Ukraine, the ISS team recognise there are probably many thousands of children in informal kinship care in the country.

The UN Guidelines emphasise how, ‘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.’ In terms of appropriate forms of care that include family-based settings, the UN Guidelines further urge State parties to ensure,

PREPARATION, ENFORCEMENT AND EVALUATION OF A PROTECTIVE MEASURE FOR A CHILD SHOULD BE CARRIED OUT, TO THE GREATEST EXTENT POSSIBLE, WITH THE

PARTICIPATION OF HIS/HER PARENTS OR LEGAL GUARDIANS AND POTENTIAL FOSTER CARERS AND CAREGIVERS, WITH RESPECT TO HIS/HER PARTICULAR NEEDS, CONVICTIONS AND SPECIAL WISHES.

Family-based care in Ukraine is provided in several different forms of alternative care settings as considered during the ISS mission. These include:

- Foster care- a non-relative carer can care for up to four children
- Patronage care’ introduced in 2017 as short term foster care for a legal maximum period of 6 months

- ‘Family Type Children’s Houses’ – a family-like arrangement allowing for care of up to 10 children in a carers’ own home ,or a house that has in part, been built with some financial assistance. The carer might or might not also have children of their own in the household.
- Guardianship (care offered by a member of a child’s extended family or, with a non-related carer)

As of 31st December 2019 there were:

- 6,184 children in foster care⁷⁷
- 510 children in Patronage care
- 7,869 children in Family Type Children’s Houses⁷⁸
- 49,714 children in guardianship

Table 5.below, reproduced from the Ministry of Social Policy Report (2019)⁷⁹ on the review of expenditures of the state budget in Ukraine, illustrates how the number of children being placed on annual basis into family-based care is declining.

TABLE 5.
Expenditure on alternative care as reported in 2019

| Year | Overall the number of orphans and children deprived of parental care (with status) | Total number of orphaned children and children deprived of parental care in foster care | The number of children arranged in Foster care and small family-type children’s houses during the year | Number of children placed in family education (Foster care, small family-type children’s houses, guardianship, care) during the year |
|------|--|---|--|--|
| 2013 | 90 772 | 13 469 (14.8 %) | 2 488 | 77 156 (85 %) |
| 2014 | 83 716 | 13 530 (16.2 %) | 1 744 | 73 255 (87.5 %) |
| 2015 | 73 182 | 13 356 (18.3 %) | 1 516 | 66 294 (90.5 %) |
| 2016 | 71 185 | 13 404 (18.8 %) | 1 422 | 65 151 (91.5 %) |
| 2017 | 71 566 | 13 689 (19.1 %) | 1 652 | 65 393 (91.3 %) |
| 2018 | 70 711 | 13 941 (19.7 %) | 1 719 | 64 861 (91.7 %) |

⁷⁴ Gale, C. (2019) Children without Parental Care and Alternative Care: Findings from Research. CELCIS, University of Strathclyde

⁷⁵ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

⁷⁶ Gale, C. (2019) Children without Parental Care and Alternative Care: Findings from Research. CELCIS, University of Strathclyde

⁷⁷ Figures received from UNICEF Ukraine in March 2020

⁷⁸ ibid.

⁷⁹ Ministry of Social Policy (2019) Report on the review of state budget expenditures in the field of social policy in terms of the social protection of children. Ukraine Ministry of Social Policy

5.3 FOSTER CARE IN UKRAINE

Foster care as a form of family-based care, is described in the UN Guidelines⁸⁰ as, ‘situations where children are placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the children’s own family that has been selected, qualified, approved and supervised for providing such care’. In line with international guidance, **foster care should, as with other forms of alternative care, only be a temporary placement**⁸¹. As previously mentioned, this study will focus on formal foster care settings as aligned with the UN Guidelines.

In Ukraine, foster care, patronage care and care offered in Family Type Children’s Houses are all recognised as forms of ‘foster care’.

In Ukraine, in line with international guidance on alternative care, including foster care, only patronage care is truly considered as temporary care. It is of concern therefore, there is a general expectation that children in foster care and Family Type Children’s Houses will remain in these settings indefinitely.

As illustrated in Table 6. below, of 31st December 2019, there were 6,187 children in the care of 3,347 foster families. This is a decrease from the numbers reported in December 2018 when 6,571 children were in the care of 3,512 foster families.⁸² What is of note is the comparative high number of children that remained in institutions in 2019 totalling 102,570⁸³.

TABLE 6.
Information on Foster Families
(based on Oblasts’ Children Affairs Services data)⁸⁴

| | as of 31.12.2018 | | as of 31.12.2019 | |
|--------------|------------------|-----------------------------|------------------|-----------------------------|
| | Foster families | Children in foster families | Foster families | Children in foster families |
| Total | 3,512 | 6,571 | 3,347 | 6,187 |

The following section of this report will refer to procedures and services that correspond to all three ‘foster’ care settings.

This will be followed by section of information with specific content related to the individual aspects of each care form.

5.3.1 Legislation and statutory regulations and guidance

The concept of foster care in Ukraine is introduced in the Family Code (2002). Since additional legislation has been developed with a view to promoting foster care in the country.

For example, in 2016 legislation⁸⁵ allowed for the:

- increase of governmental aid⁸⁶ for foster families and institutions caring for children deprived of parental care

5.3.2 Recruitment of foster carers

Efforts are being made to recruit foster carers in different regions of Ukraine. This is primarily the responsibility of an Oblast Centre of Social Services for Family, Children and Youth. The ISS team learnt of a number of different recruitment initiatives during their mission. One local authority for example, has been trying to raise awareness and recruit carers through a publicity campaign that includes information being placed in local busses. In another locality, promotional material produced by the Service for Children’s Affairs includes encouraging testimonies based on actual foster care experiences.

A further observation by the ISS team was a general reliance on the use of leaflets but very little utilisation of other multi-media awareness raising opportunities. It was noted that distributing such recruitment information in unemployment offices may attract carers whose motivation is income generation rather than a genuine wish to care for a child. Whichever way recruitment is undertaken, it is essential that social workers rigorously seek an understanding of the motivations and capacities of any prospective carer.

Further challenges related to recruitment of fosters include lack of awareness and understanding amongst the general public regarding the concept of foster care, and opportunities to become a foster carer. For example some of the training is only offered at the Oblast level, which creates challenges to physical attendance. In addition, a number of foster carers interviewed during the ISS mission indicated that a major deterrent is the allowance they receive which interviewees do not feel sufficient to cover all of a child’s costs. This is compound-

ed by the regulation that a foster carer is not allowed to seek other employment in the same way other parents also go out to work whilst caring for their children. They also noted the lack of understanding among the general public regarding the harm of institutionalisation, the stigma against children in care, and the importance of providing family-based care. It was also suggested that although some carers have ‘big hearts’, they do not have the space in their house to accommodate more children and this should be reviewed. One foster carer suggested a review should also be undertaken with a view to widening the categories of people who are allowed to foster.

A major challenge is finding foster carers willing to offer care to a child with disabilities. Interviewees claimed this occurs for a number of reasons but primarily due to the lack of support services available to children with disabilities in the community. It is also very difficult said interviewees, to find foster care placements for older children.

There are currently not enough foster carers in Ukraine leading to a vast differential in the numbers of available family-based placements in comparison to places in institutional settings. This means social and other workers, often have little option but to place a child in an institution. This situation perpetuates the use of institutions in Ukraine.

5.3.3 Assessment and selection of foster carers

The UN Guidelines⁸⁷ advise States parties that a ‘competent authority or agency should devise a system, and should train concerned staff accordingly, to assess and match the needs of the child with the abilities and resources of potential foster carers and to prepare all concerned for the placement.’

Assessment and selection of foster carers, is undertaken by the Centres of Social Services for Family, Children and Youth. Interviewees indicated that the assessment process includes

⁸⁰ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

⁸¹ *ibid.*

⁸² Information received from the UNICEF Ukraine Office, March 2010.

⁸³ Data sourced from: <https://www.msp.gov.ua/content/deinstitutionalizaciya.html> accessed 29th March 2020

⁸⁴ *ibid.*

⁸⁵ Law of Ukraine No. 936-VIII On Amendments to Certain Legislative Acts Concerning the Strengthening of Social Protection of Children and Support of Families with Children of January 26.01.2016

⁸⁶ In 2020 there was additional increases in state aid

⁸⁷ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

visits to the home of prospective foster families and interviews with household members. However concerns were also raised in terms of the process not being sufficiently rigorous and, primarily focussing on assessment of the capacity of potential foster carers to provide for the material needs of a child, such as accommodation and basic requirements, rather than the capacity to support psychosocial and emotional needs. Furthermore, interviewees indicated the lack of cooperation amongst other relevant services that they consider should be part of such an assessment. It is essential that all professionals are well trained in the undertaking of comprehensive and multi-sectoral assessments.

5.3.4 Training of foster carers

Training of foster carers is the responsibility of Oblast Centre of Social Services for Family, Children and Youth. In 2017, Standing Operating Procedures (SOPs)⁸⁸ and training for foster carers were developed and approved.⁸⁹

By law, foster carers must attend at least 4 days of training as per CMU 866 decree, whereby topics are approved by regions. General topics approved by the ministry. In 2019, there were 56 general topics. The training is also part of the ongoing assessment process and as such, not all participants are selected as foster carers by the end of the training. However, it is important to recognise that it is only the one 'selected' foster carer from within a family that attends the training – not the entire family. This places a lot of pressure on that one particular family member. Neither does it allow for an in-depth assessment of other 'carers' in the family.

Interviewees indicated the reluctance of some to attend the training due to the time they have to make available as well as lack of reimbursement for cost of transportation to the cities where training is held. It was also noted how some potential carers find the training too challenging and drop out.

⁸⁸ Resolution No. 148 of the Cabinet of Ministers of Ukraine On Some issues of the Implementation of Foster Care over a Child dated 16.03.2017

⁸⁹ Order No. 1349 of the Ministry of Social Policy On Approval of the Foster Care Training Program dated 19.08.2017.

⁹⁰ UN General Assembly, Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, available at: <https://www.refworld.org/docid/4c3acd162.html>

It is understood the training for patronage carers is more intensive and thorough than that of other foster carers (see section 5.4). During interviews with patronage carers they praised the training they had received but suggested that before it commences, participants should be better informed as to content and the commitment required. Interviewees noted how it is essential people understand what the reality of being a foster carer entails especially in terms of children who come from backgrounds that have witnessed or been victims of violence and severe neglect. They said if there was more pre-training information regarding the challenges, and also the rewards, of being a foster carer, this would create an initial self-assessment and could prove more cost effective and efficient than people getting half way through the training and dropping out. Self-help groups formed by foster carers have been an important support mechanism and that the authorities should consider the creation of more peer to peer support groups. This would be in line with international standards as laid out in paragraph 122 of the UN Guidelines⁹⁰ noting how 'encouragement should be given to the establishment of associations of foster carers that can provide important mutual support and contribute to practice and policy development.'

5.3.5 Matching of a child with a foster carer

Once approved by a City Centre for Social Service for Children's Affairs, Families and Youth, the files of a prospective foster carer is sent to the Rayon Service for Children under the responsibility of the Oblast Service for Children's Affairs. The files contain the 'approved characteristics' of the child/ren the prospective foster families have been assessed as being able to care for. These 'characteristics', including such determinants as age and gender however, are primarily based on the wishes of the prospective foster families. The Rayon Service for Children's Affairs is then responsible for identifying a child with these 'characteristics' firstly within

the alternative care structures within the Rayon and secondly, more broadly within the Oblast.

A concern in terms of the matching process, is how priority is given to the wishes and capacities of the prospective foster families as opposed to starting from those of a particular child in need of family-based care. Ideally effective matching should begin by identifying the individual needs, circumstances and wishes of the child followed by the selection of the most suitable carer or other care option that can meet the child's best interests. Ideally, there should be a pool of foster carers to select from a local and national data base.

Once a child and foster carer have been matched, a Guardianship and Custody Body meet to approve the match. Following a recommendation for foster care placement, the Mayor must formally sign off the decision. The ISS team received mixed information regarding the efficacy of this process being undertaken by different local administrations. Some interviewees demonstrated their belief that members of their local Body took their decision making responsibility and recommendations very seriously. As mentioned previously, there are concerns that some Guardianship and Customary Body sign authorisations without thoroughly examining and questioning the information of each child's case file and ensuring the correct decision has been made. As this is an important gatekeeping step, these checks and balances are important in decisions being made about the lives of children.

Once the foster placement is approved, it is anticipated that the child, and the foster carer and their carer's family, should be fully prepared for the time the child will go and live in their new placement. However, although the child should be fully involved in all steps of the matching process, the ISS team found little evidence of this actually happening with some accounts of children not meeting their new foster carers until the day they go to live with them. Not only

is the right of a child to participate in decisions that affect their lives but evidence clearly shows that if this key phase is not executed well, this can lead to future care placement breakdowns. Furthermore, it is important that the decision making process is executed well as not only might some children not wish to be placed with a foster family but, this decision may not be in their best interest and a small group setting might offer the most suitable placement in some instances (see section 7).

5.3.6 Financial support

Support in the form of financial payments are made to foster carers⁹¹ and Article 25 of the Law on the Protection of Children clearly identifies that the State shall guarantee financial assistance to children who are under the custody or care of children in family homes and foster care in accordance with the laws of Ukraine. In this respect, access to financial support for family-based care was substantially aided by Presidential Decree 1086 of July 2005, which outlined priority measures to improve child protection concerned the development of a 'mechanism to finance maintenance costs for orphans and children deprived of parental care' using alternative family-base care, referred to as 'money follows the child'⁹². This allowed for the reallocation of money that would have been spent on a child's placement in an institution, to be redistributed as a family based alternative care payment.⁹³ The use of this financing for foster care was piloted in a region of Kiev Oblast before being adopted nationally. In 2010, Bilson reported⁹⁴ on how the 'Money follows the child' initiative had 'initiated a significant increase in the availability of foster care in the first years of its inception with children in foster care rising from 1,313 in 2005 to 6,655 in 2008. Despite ongoing increases in allowances, some foster carers interviewed during the ISS mission highlighted the concern that these financial payments do not meet the real costs of providing for a child.

⁹¹ 2700 UAH per 1 child as per first quarter 2020. Difference in payments only for foster families for children with disability.

⁹² UNICEF (2010) Child Poverty and Disparities in Ukraine. UNICEF Ukraine

⁹³ UNICEF (2010) Child Poverty and Disparities in Ukraine. UNICEF Ukraine

⁹⁴ Bilson, A. (2010) The Development of Gate-Keeping functions in Central and Eastern Europe and the CIS Lessons from Bulgaria, Kazakhstan and Ukraine. University of Central Lancashire (UCLAN). Available at: https://bettercarenetwork.org/sites/default/files/2996_Bilson.pdf

FOCUS ON CHILDREN WITH DISABILITIES

Concerns as to the 'money follows the child' scheme have included the fact that foster families caring for children with disabilities were able to receive twice the financial allowance a child's biological parents might be awarded whilst financial rewards have encouraged long term care more akin to unauthorised adoption rather than temporary foster placements (Bilson & Carter 2008⁹⁵).

5.3.7 Monitoring of and, support to, foster carers and foster children

The UN Guidelines⁹⁶ note how,

IT IS THE ROLE OF THE STATE, THROUGH ITS COMPETENT AUTHORITIES, TO ENSURE THE SUPERVISION OF THE SAFETY, WELL-BEING AND DEVELOPMENT OF ANY CHILD PLACED IN ALTERNATIVE CARE AND THE REGULAR REVIEW OF THE APPROPRIATENESS OF THE CARE ARRANGEMENT PROVIDED.

With specific reference to foster care, the UN Guidelines go on to urge States parties to ensure that 'special preparation, support and counselling services for foster carers should be developed and made available to carers at

regular intervals, before, during and after the placement.'

Furthermore, the UN Guidelines⁹⁷ urge States to

ENSURE THE RIGHT OF ANY CHILD WHO HAS BEEN PLACED IN TEMPORARY CARE TO REGULAR AND THOROUGH REVIEW – PREFERABLY AT LEAST EVERY THREE MONTHS – OF THE APPROPRIATENESS OF HIS/HER CARE AND TREATMENT, TAKING INTO ACCOUNT, NOTABLY, HIS/HER PERSONAL DEVELOPMENT AND ANY CHANGING NEEDS, DEVELOPMENTS IN HIS/HER FAMILY ENVIRONMENT, AND THE ADEQUACY AND NECESSITY OF THE CURRENT PLACEMENT IN THESE CIRCUMSTANCES...

Once a child has been placed with a foster carer, there should be regular monitoring visits conducted by CSSFCY every 6 months.⁹⁸ The social worker allocated to monitor a foster care

placement monitors and represents both the foster carers and the child who is being fostered. It is suggested that this could cause a conflict of interest and the child and the carer

receive support and monitoring by separate social workers.

Consistent with the remit to provide access to services as necessary, and in line with any Care Plans for a child, CSSFCY are mandated to offer a range of other forms support apart from financial, to the carer and the children. It is understood that this access to, and provision of, support is neither sufficient nor, consistent, across the country. Furthermore, it is believed that greater weight is given to assessing the physical environment rather than the emotional care that is being offered and there are indications that social workers do not systematically ensure children are living in a setting that is safe from harm. Foster carers interviewed during the ISS mission, indicated,

they were generally content with the ongoing support they were receiving. However, ISS is aware that the foster carers asked to attend interviews had been chosen by the local authorities, and therefore, a possible bias in the selection of interviewees.

It was also indicated that most foster carers do not actively encourage foster children to maintain contact with their biological families. Without such work from either the authorities and/or foster families, the opportunities for successful reintegration when in the best interests of the child is significantly. In addition, interviewees highlighted factors that prohibited active contact being maintained between foster children and their biological families including lack of ability, willingness and time of workers.

5.4 SPECIFICITIES OF PATRONAGE CARE

In 2017 a new form of family-based care denoted as 'patronage care', was introduced. In the Ukraine Family Code (2002), patronage is described as a form of temporary care for a child in the family of a patronage caregiver during which time, the situation that led to the child's removal into care should be addressed. In many countries, patronage care would be the only form of care synonymous with 'foster care'.

The 2002 Ukraine Family Code establishes the maximum length of stay for a child in patronage care to be determined by the Guardianship and Custody Body but should not exceed three months unless circumstances justify the need to extend. The total length of stay however, cannot exceed six months. The 2002 Family Code requires that placement of the child in the family of the patronage caregiver must be with the consent of a child's parents or other legal representatives. The payment of allowances to patronage carers is also stipulated in legislation. During the piloting period, patronage care will be financed from the state budget, and eventually to be fully financed by the local budget.

Patronage care was developed in part due to a recognition that all other forms of alternative care do not meet international standards in terms of being temporary care 'for the shortest possible duration'⁹⁹. with a view to family reunification. Furthermore, it 'enables children's placement to a family-based care without having to wait for an official status of the orphan or a child deprived of parental care, which in some instances may take up to 6-12 months'¹⁰⁰ or longer. In addition, patronage care is used for emergency placements when a child must be immediately removed from their family. The Family Code (2002) requires patronage carers to provide children with basic support such as shelter, clothing food and access to education etc. as well as conditions that allows for their physical and emotional development.

Most importantly, the Family Code provides for the right of a child to maintain relationships and contact with their parents and other relatives. Furthermore, the patronage carer is obliged to cooperate with parents and/or other legal representatives of the child to actively promote contact between the child with parents and/

⁹⁵ Bilson, A. and Carter, R. (2008) Strategy development for the reform of the state care system for children deprived of parental care living in state care institutions. Kiev: UNICEF.

⁹⁶ United Nations General Assembly (2009) Guidelines for the Alternative Care of Children. Resolution A/RES/64/142

⁹⁷ *ibid*

⁹⁸ In accordance with the Law of Ukraine No. 936-VIII On Amendments to Certain Legislative Acts Concerning the Strengthening of Social Protection of Children and Support of Families with Children of January 26.01.2016. Foster care agreements in accordance with: Foster care agreement in accordance with: Resolution No. 148 of the Cabinet of Ministers of Ukraine On Some issues of the Implementation of Foster Care over a Child dated 16.03.2017. Foster care training in accordance with Order No. 1349 of the Ministry of Social Policy On Approval of the Foster Care Training Program dated 19.08.2017

⁹⁹ UN General Assembly, Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, available at: <https://www.refworld.org/docid/4c3acd162.html>

¹⁰⁰ Opening Doors for Europe's Children (2018) Ukraine 2018 Country Fact Sheet. Available at: <https://www.openingdoors.eu/wp-content/uploads/2019/03/country-fiche-Ukraine-2018.pdf>

or other legal representatives and relatives, unless the parents are deprived of parental rights or are judicially restricted in respect of communication with the child.

Table 7. provides data drawn from a 2019 'Report on the review of expenditures of the state budget in the field of social policy in the area of social protection of children'¹⁰¹ indicating that in 2018, there were only 204 children in patronage care across the whole country. In addition, as seen from the data in Table 7 below, this did

not match the planned number of patronage places in either 2017 or 2018 and further information in the report indicates how monies issued by the Government was not used by local authorities. This is of particular interest as the vast majority of interviewees cited lack of financial resources as a reason why this form of care was not being developed. This indicates a lack technical and other abilities to implement this form of alternative care for children rather than financial constraints as discussed further below.

time. In addition, interviewees acknowledged the attraction of other available forms of foster care as they are more like 'paid adoption'.

The important principle of patronage care is the temporary nature of the placement and how this should be an incentive to achieving speedier and more concerted efforts toward facilitating family reunification when possible. However, according to a number of patronage carers, although family reintegration is happening, they do not think it is not being fulfilled for the majority of children in this form of care who either return to, or move into, institutions. As stability and permanence is an important factor for a child, although patronage care can prevent the usual instant placement in an institution, consideration should be given to extending the periods for more than six months if this will facilitate early reunification with their birth family. It was also concerning therefore, to hear of the removal of a child from patronage care after three months because a psychologist felt the child was becoming too attached to the family.

Some patronage carers indicated they were satisfied with the help they received from Centres of Social Services for Family, Children and Youth. and had a good relationship with the assigned social worker. In contrast, others had not received such attention with one carer telling the ISS team, **"No one hears us on this subject. We feel left alone and have to solve problems by ourselves"**. Social workers do conduct home visit they said, but most contact is via phone calls. They also reported they felt the attitudes of some local authority staff, as well as from members of their local community, manifested itself as stigmatisation.

In terms of payments and allowances, the ISS team were told of dissatisfaction with the amounts being offered patronage carers. The support provided is deemed insufficient to encourage new families come forward, especially as there is no pension or tax incentives offered. Interviewees said payments were not even enough to cover such expenses as food and school activities. It was suggested that efforts could be made to refocusing of donor giving that traditionally goes to institutions toward patronage care. One of the patronage carers also suggested payments should be adapted in accordance with region of residence.

No-one spoke of specific training for patronage carers regarding care of children with disabilities, babies and teenagers. Based on the testimony of some interviewees, it will be difficult to place children with disabilities from patronage families without the necessary support services for these children being made readily accessible in the community. A further concern highlighted by patronage carers, is the lack of time some carers are actually given sometimes to meet and prepare for the arrival of a particular child. Also they feel they do not always receive enough information about a child before they arrive.

As with other forms of foster care, interviewees indicated a significant lack of investment in publicising and raising awareness about patronage care even though there is a need for many more people to come forward – and most especially to be available to take children in emergency situations.

Interviewees also highlighted the lack of respite care for families in difficulty and how the use of patronage care could contribute to the availability of such temporary care with also a view to preventing family separation. Investment in such forms of support to parents, including foster parents, facilitates the sustainability of placements. One foster family caring for eight children admitted that at times the household can become hectic so she needs to isolate herself in a room. She further stated "I would really love to have one weekend alone with my husband."

IN CONCLUSION, the ISS team understand the investment that is being placed to develop patronage care and the importance of this form of care. However, it is understood there is insufficient work being undertaken to support children in foster care, foster care families and the birth families of children. In addition, apart from patronage care, foster care has now become a permanent care setting rather than meeting international guidelines which require this to be temporary in nature. This report has also highlighted the lack of ongoing review process in order to monitor the implementation of care plans and any changes in the circumstances of a child's own parents and wider family that might result in reunification.

TABLE 7.
Number of available Patronage Care places and children in Patronage Care 2017-2018

| Year | Planned Patronage Family places | | Actually operational at year end | | Deviation from planned provision | |
|------|---------------------------------|----------------------------|----------------------------------|----------------------------|----------------------------------|----------------------------|
| | Patronage families | Children in patronage care | Patronage families | Children in patronage care | Patronage families | Children in patronage care |
| 2017 | 154 | 242 | 24 | 52 | 130 | 190 |
| 2018 | 197 | 340 | 71 | 204 | 126 | 136 |

Patronage care is the responsibility of staff of Centres of Social Services for Family, Children and Youth with a social worker being assigned to manage each child's case. It is the responsibility of the Centre to ensure prior to a child being placed with them, a patronage carer receives information on the child's needs and the situation of their family.

It is recognised that patronage care and relevant legislation was an initiative primarily advocated for and implemented by civil society stakeholders in partnership with a number of local authorities. Although numbers of patronage carers are still very small across the country, nevertheless, many interviewees expressed an interest in further developing this form of care. This indicates a clear politi-

cal will and appreciation that this temporary care measure can provide many benefits for children, including the care and protection in a family environment whilst efforts are made to reunify them with their own family.

Interviewees also spoke of challenges that it would be important to consider and evaluate when further developing patronage care. These challenges are similar to those seen with foster care. They include lack of dedicated professional staff and the need to raise awareness within the community about temporary foster care so as to increase recruitment of carers as well as lack of trainers available at the rayon or local level. An additional challenge is members of the public not wanting to become attached to a child that will leave within a short space of

¹⁰¹ Ministry of Social (2019) Report on the review of expenditures of the state budget in the field of social policy in the area of social protection of children.

5.5 SPECIFICITIES OF FAMILY TYPE CHILDREN'S HOUSES (A FOSTER FAMILY CARING UP TO 10 CHILDREN)

The Family Code (2002) allows for Family Type Children's Houses (i.e. state section of law). As illustrated in Table 8. below, of 31st December 2019, there were 7,869 children in the care of 1,153 Family Type Homes for Children

TABLE 8.
Information on Family Type Homes for Children
(based on Oblasts' Children Affairs Services data)¹⁰²

| | as of 31.12.2018 | | as of 31.12.2019 | |
|--------------|--------------------------------|--|-------------------------------|---|
| | Family Type Homes for Children | Children in Family Type Homes for Children | Family Type Children's Houses | Children in Family Type Children's Houses |
| Total | 1,103 | 7,372 | 1,153 | 7,869 |

It is important to note that internationally, some view care settings where there are more than eight to ten children, as being akin to institutional care as in principal these numbers in addition to regimes within the settings, do not replicate family-based or, family-like care. Especially as often this does not allow for the same individual attention that would occur within a family setting. Given such views, it was important during the mission to discern whether the Family Type Children's Houses were in fact a 'foster family' providing a family-based care setting according to international standards rather than a facility akin to small group homes. During the mission, the ISS team had an opportunity to visit a number of Family Type Children's Houses. The ISS team recognise the possibility that authorities may want to offer access to their most 'promising' examples of alternative care placements and therefore observations may be weighted in this respect. However, whilst recognising this possible bias, the ISS team believe it is also possible to evaluate the positive lessons that can be learned from such examples.

The ISS teams visited a total of four Family Type Children's Houses, caring for between 6 and 8 children. In two locations, the carers also had their own children residing with them. In all instances, the foster parents had created an environment of affection and warmth. The children appeared happy and content to live in this family unit – with different age ranges and sibling groups. Some children had separate bedrooms, and some were sharing with perhaps a foster sibling as opposed to dormitory style sleeping arrangements. In each case, the families were living in a house that had either been provided by the Oblast or partially built with local authority support. The families each living in large houses (over 200m²) and had been provided a vehicle. These support factors appeared important in helping to motivate and maintain the carers interest and ability to care for such a significant number of children. Based on these observations and other information, as an overall first impression, the ISS team assess these placements to be a form of family-based care.

¹⁰² Ministry of Social Policy (2019) Report on the review of expenditures of the state budget in the field of social policy in the area of social protection of children.

5.6 GUARDIANSHIP

In Ukraine, guardianship is a formalised process in that it is an arrangement that comes to the attention of an administrative body allowing caregivers to receive financial support. The vast majority of children in guardianship remain in the care of relatives (kin) however, it is also possible for non-related carers to offer guardianship to a child. The process of acquiring guardianship status is approved by the Service for Children's Affairs.

Guardianship status is conferred on one member of a household. Guardianship is legally provided for in the Family Code (2002). Article 243 of the Code allows for Guardianship to be placed on a child who is under fourteen years of age and Custody for a child between the ages of fourteen and eighteen. The law stipulates that Guardianship shall be established by the guardianship and custody body, as well as court in cases stipulated by the Civil Code of Ukraine. When appointing a guardian, the guardianship and custody body must take into account the personal qualities of the person, their ability to bring up a child, their attitude to it, and also the wishes of the child themselves.

The guardian must provide the child with the conditions for comprehensive development, education, upbringing and respect for her human dignity. However, legislation does not require that a child under guardianship must live with their guardian in a family-based setting. For example, a child under guardianship can reside in a health care institution, educational or other residential setting. If the child permanently resides in a health care institution, school or other the institution, the temporary guardianship is assigned to the administration of these institutions.

5.6.1 Guardians - Assessment and recruitment of guardians

Interviewees suggested that during the assignment of guardianship, social workers focus on filling in templates as opposed to assessing the real quality of care that can be offered by a guardian. The lack of specific methodology to identify and assess risk of abuse or violence

in the families of prospective carers has once again been noted. Interviewees raised concerns regarding the burdens placed on elderly grandparents who became guardians.

As noted above, most guardians are family members who come forward to take care of a child without parental care however, guardians can also be non-relatives. Two such guardians were interviewed by the ISS team. The first guardian confirmed that during the initial assessment period the social worker took only details of her living conditions, employment status, criminal record etc. but did not explore her capacity to love and care for a child's well-being. She also told the ISS team that the social worker tried to persuade her to take young children but she was insistent she was able to take older children. A decision she does not regret.

In contrast, a second carer felt she had had a lot of support during the assessment and training process although she considered it took far too long. Once a child in an institution had been selected for her, she constantly visited the child to establish a bond with them. This was however, very much on her own initiative.

5.6.2 Training of guardians

Guardians are required to attend a short training as a condition of becoming a guardian. Only two interviewees spoke about this training. One guardian has become the carer for two siblings that are not related to her. She felt training for guardians was inadequate and did not prepare anyone to become an alternative carer for a child. Especially as children without parental care may have been victims of, or witnessed, abusive behaviour.

The interviewee also noted the lack of requirement for trainers of guardians to be certified trainers in respect of alternative care provision. Something she felt needed to be addressed. The second interviewee felt the training has been adequate.

5.6.3 Ongoing support and monitoring of guardians

In terms of financial allowances for guardians, the Government of Ukraine reported¹⁰³ how state social benefits to certain groups of families had been increasing. In 2011, 38,600 guardians caring for 48,400 children received an average of UAH 2,180.61 per month. By 2017, 35,200 recipients caring for 45,500 children received an average payment of UAH 4,314.42 per month. In this respect, the allowance payable for each child had almost doubled in this period whilst the number of children under guardianship has decreased slightly.

However, a 2019 UNICEF report¹⁰⁴ calls attention to the fact that families are still not receiving assistance that adequately meets financial and other needs of the children they are caring for under guardianship. The report indicates that, coupled with lack of follow-up by social workers, limited resources of Services for Children's Affairs and Centres of Social Services for Family, Children and Youth – including understaffing and poor knowledge and weak gate-keeping methodology - as well as lack of cooperation with other service providers, some

children under guardianship can be swiftly be relinquished and sent to institutions.

Interviewees highlighted the lack of monitoring of guardians. It is understood this is in part, due to the assumption that as these carers are predominantly relatives, the child is safe and therefore does not need particular attention from social services. A guardian interviewed by the ISS team who is not a relative of the children she is caring for, indicated she received little support from social workers and poor monitoring of the care she was offering the children once her training was completed. In contrast, a second guardian said she has had ongoing support and even now, eight years later, still receives visits from a social worker.

A further challenge that was raised by some interviewees concerns the lack of legal recognition of the guardian as the carer and decision maker for the child – this status remains with the State authorities or with the parents. This has in practice, led to situations where guardians, in terms of decision making related to the daily life of children, means for instance, they have not been able to make medical decisions and/or fully access all social benefits available.

their families, this is of particular concern, especially if children are often adopted (including inter-country adoption) from baby homes. Without ensuring that the principle of subsidiarity is respected in terms of support to the family of origin and exploring national options, there is a risk that intercountry adoption is unduly prioritized. The UN Guidelines note the objective of this principle of subsidiarity in that actors should:

(a) support efforts to keep children in, or return them to, the care of their family or, failing this, to find another

appropriate and permanent solution, including adoption and kafala of Islamic law (Paragraph 2a).

As such issue of adoption was beyond the scope of the current mandate and we would recommend further study of this child protection measure. As the Ukraine continues to be a significant country of origin, it would further be recommended that they ratify the 1993 Hague Convention should they wish to continue inter-country adoptions.

5.7 ADOPTION

Adoption is not regarded as alternative family-based care. The UN Guidelines for the Alternative Care of Children¹⁰⁵, note how adoption is a durable family-based solution for a child. It was therefore agreed that adoption would not be a topic reviewed by the ISS team requiring further study. However, as it is imperative to offer children in alternative care a durable solution if they cannot be reunified within their own families, the ISS team have provided a short summary on the topic.

For the period from 2011 to 2017, 16,131 orphans and children deprived of parental care were adopted in Ukraine, of which 12,061 were adopted by citizens of Ukraine. In 2017, over 17,000 children were registered as eligible to be adopted. This was a decrease of approximately 10,000 with status for adoption in 2011.¹⁰⁶

As there is a perceived lack of effort to promote the reunification of children back with

¹⁰³ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018,spec, § 107,p.17

¹⁰⁴ ibid

¹⁰⁵ United Nations General Assembly. (2009). Guidelines for the Alternative Care of Children. Resolution A/RES/64/142. Paragraph 30b) further explains how adoption is not covered per se by the UN Guidelines, as (b) Care by adoptive parents from the moment the child concerned is effectively placed in their custody pursuant to a final adoption order, as of which moment, for the purposes of the present Guidelines, the child is considered to be in parental care. The Guidelines are, however, applicable to pre-adoption or probationary placement of a child with the prospective adoptive parents, as far as they are compatible with requirements governing such placements as stipulated in other relevant international instruments;

¹⁰⁶ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018,spec, § 127,p.20

RECOMMENDATIONS – suitable forms of alternative care

The provision of good quality family-based care in Ukraine is essential in providing a suitable alternative care provision for children for whom this is a necessity. It is also essential for preventing the perpetual and significant use of placing high numbers of children in institutions when children need protection and care. There are examples of promising practice most especially in terms of the standards being developed for patronage care. However, evidence suggests there is a need to strengthen professional capacity that will guarantee high standards related to assessment, recruitment, training and support foster carers, guardians, and children. There are concerns regarding the poor matching process and, how some forms of foster care have become long term settings with poor monitoring and no efforts to reunify a child with their own family. As a result, there may be hundreds of children in foster care – also known informally as ‘paid adoption’ - who may be experiencing violence and abuse without detection or recourse to protection and support from the relevant authorities.

Drawing on these conclusions, the following recommendations are offered in terms of:

- Ending the systematic provision of long term foster care. Such placements should only be when absolutely necessary and in compliance with a child’s best interests. Foster care should only be used until family reunification is possible, or another durable solution such as adoption, can be provided.
- Giving primary consideration to extended family members as patronage carers.
- Founding of a specialised body responsible solely for the development and implementation of family-based care working in partnership with other government agencies . This could for example, be the role of an officially appointed and regulated non-governmental body.
- Enforcing strict standards governing assessment, recruitment, training and selection of family-based alternative carers. Also ensuring a process in which all aspects of care giving, including those of emotional wellbeing, will be offered a child.
- Keeping siblings together unless there is an assessed reason this is not in the best interests of a sibling.
- Improving the process of matching of children with carers including full and meaningful participation of a child and carefully supervised periods of contact before any final decision is made regarding the placement. The principles of matching must be based on the child’s best interests and not the ‘wish list’ of potential carers.

- Ensuring every child in family-based care has a Care Plan that is regularly reviewed at least every 3 months and establish a more rigorous system of ongoing monitoring and review of children in all forms of alternative care
- Whilst retaining the principle of foster care as a temporary placement, consideration of extending the time a child can remain in patronage care with provision for instances where an extension would allow for a child to be reunified with their family or another durable solution can be found. Attention should be paid to an array of published evidence regarding ‘permanency’.¹⁰⁷
- Investing in comprehensive recruitment campaigns that reach a wide audience and provide clearer information regarding expectations and requirements of foster carers.
- Providing improved and comprehensive information to foster carers about expectations and requirements of becoming a foster carer before they commit to a training and selection process. Most especially, information regarding the challenges they will face.
- Improving training for foster carers so as to include specialist training for carers who will provide care for children with disabilities, children with challenging behaviour, babies, children with severe traumatic experiences etc.
- Providing different forms of patronage care including carers specifically recruited and trained to accept children with disabilities, babies, older children, children with behavioral challenges etc.
- Ensuring Care Plans for children with disabilities in family-based care contain access to rehabilitation and inclusive education programmes.
- Increasing skills and abilities of child protection and welfare staff to systematically undertake and prioritise all processes that facilitate the earliest possible return of a child to their own family whenever it is safe to do so.
- Developing protocols that govern the full and meaningful participation of children in decision making and appropriate training for social and other relevant workers to facilitate such participation.
- Reviewing financial allowances made available to patronage carers and families in Family Type Children’s Homes.
- Facilitation of peer support mechanisms for foster carers.

¹⁰⁷ See for example: <https://www.celcis.org/our-work/key-areas/permanence/our-permanence-work/>



PART 6: CHILDREN IN INSTITUTIONS

6.1 INTERNATIONAL STANDARDS RELATING TO INSTITUTIONS

The UN Guidelines¹⁰⁸ calls on States to ‘eliminate’ the use of all large residential facilities – recognised in the UN Guidelines as ‘institutions’.

Although there is no definition within the Guidelines as to ‘large’, the European Commission has indicated that settings with more than 10 children may qualify as an institution. In addition, in a European Commission Guide on the Transition from Institutional to Community-based Care¹⁰⁹, the following indicators are included under key guidance as to ‘what is an institution’:

- residents are isolated from the broader community and/or compelled to live together
- residents do not have sufficient control over their lives and over decisions which affect them
- the requirements of the organisation itself tend to take precedence over the residents’ individual needs

Information in this Guide¹¹⁰ also acknowledges how Eurochild, based on the UN Guidelines and in the absence of a universally accepted definition, has suggested the defining institutions for children,

AS (OFTEN LARGE) RESIDENTIAL SETTINGS THAT ARE NOT BUILT AROUND THE NEEDS OF THE CHILD NOR CLOSE TO A FAMILY SITUATION, AND DISPLAY THE CHARACTERISTICS TYPICAL OF INSTITUTIONAL CULTURE (DEPERSONALISATION, RIGIDITY OF ROUTINE, BLOCK TREATMENT, SOCIAL DISTANCE, DEPENDENCE, LACK OF ACCOUNTABILITY, ETC.).

Indicators of unsuitable care in institutions can be found in a 2019 publication on the University of Strathclyde website¹¹¹. These indicators include reference to size, routines, lack of attachment opportunities, the impersonal nature of care settings, as well as children being cut off from their families and communities.

¹⁰⁸ UN General Assembly, Guidelines for the Alternative Care of Children : resolution / adopted by the General Assembly, 24 February 2010, A/RES/64/142, available at: <https://www.refworld.org/docid/4c3acd162.html>

¹⁰⁹ European Commission. Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care (2009). Brussels, EC Directorate-General for Employment, Social Affairs and Equal Opportunities. Available at: www.deinstitutionalisationguide.eu

¹¹⁰ *ibid.* p.36

¹¹¹ Gale, C. (2019) Children without Parental Care and Alternative Care: Findings from Research. CELCIS, University of Strathclyde

As a signatory to the 2019 UNGA Resolution on the Promotion and protection of the rights of children¹¹², the Government of Ukraine is now mandated to prioritise,

QUALITY ALTERNATIVE CARE OPTIONS OVER INSTITUTIONALIZATION WITH THE BEST INTERESTS OF THE CHILD AS THE PRIMARY CONSIDERATION, AND, WHERE RELEVANT, ADOPTING POLICIES, STRATEGIES AND COMPREHENSIVE PLANS OF ACTION IN THAT RESPECT, INCLUDING BY IMPLEMENTING RELEVANT REFORMS, DEVELOPING OR REFORMING LEGISLATION, BUDGET ALLOCATION, AWARENESS-RAISING CAMPAIGNS, TRAINING, AND INCREASING THE CAPACITY OF ALL RELEVANT ACTORS;

And to,

PROGRESSIVELY REPLACING INSTITUTIONALIZATION WITH QUALITY ALTERNATIVE CARE, INCLUDING, INTER ALIA, FAMILY AND COMMUNITY-BASED CARE AND, WHERE RELEVANT, REDIRECTING RESOURCES TO FAMILY AND COMMUNITY-BASED CARE SERVICES, WITH ADEQUATE TRAINING AND SUPPORT FOR CAREGIVERS AND ROBUST SCREENING AND OVERSIGHT MECHANISMS

The Convention on the Rights of Persons with Disabilities also sets specific obligations including the protection of rights to equality and non-discrimination (Art. 5); equal recognition before the law (Art.12); the right to liberty and security, freedom from torture or cruel, inhuman or degrad-

ing treatment or punishment (Art. 15); freedom from exploitation, violence and abuse (Art.16); respect for physical and mental integrity (Art. 17); the right to live independently and be included in the community (Art. 19) and; *respect for home and the family (Art. 23).*

6.2 CHILDREN IN INSTITUTIONS IN UKRAINE

Article 24 of the Ukraine Law on the Protection of the Child (2012) provides for the care of children without parental care stating there should be access to guardianship, adoption, foster care and a range of residential options including those that would be classified in the UN Guidelines as institutions. This law now stands in contradiction with international treaties that the Government of Ukraine is a signatory of the aforementioned UNGA Resolution.

The Ministries of Education, Health, and Social Policy each manage a range of different forms of institutions. Data published on the Government of Ukraine website¹¹³ accessed in March 2020, indicates there are 718 institutions in which 102,570 children reside.

This includes:

- **Ministry of Education:**
555 institutions housing 93,506 children
- **Ministry of Social Policy:**
125 institutions housing 6,230 children
- **Ministry of Health:**
38 baby homes housing 2,834 children under 4 years old

Of concern is how these figures indicate very little change in the number of children who continue to be placed in institutions. According to a publication by Opening Doors for the Children of Europe, as of September 2017, there were 104,000 children residing in 759 institutions.¹¹⁴

Some of which were accommodating 300-400 children per setting. A further conclusion regarding the ongoing use of institutions drawn in the 2015 report of Hope and Homes for Children, is 'evidence of the artificial 'filling' of residential institutions with children to preserve funding'.¹¹⁵

As can be seen in Table 9. below there are many different forms of institutions categorised by age and circumstances of a child including the provision of education and special centres for children with disabilities.

TABLE 9. Ministries responsible for residential institutions in Ukraine

| Institutions managed by the Ministry of Social Policy | Number of institutions |
|--|------------------------|
| Shelters for children (3-18 years) | 96 |
| Centres of social and psychological rehabilitation of homeless children and victims of abuse (3-18 years) | 30 |
| Centres of social and psychological help for families at risk (age) | 23 |
| Centres for HIV infected children (ages) | 7 |
| Social dormitories for orphans and children deprived of parental care (15-23 years) | 18 |
| Mother and child centres (pregnant women and mothers with children aged 0-18 months) | 16 |
| Institutions managed by the Ministry of Health | |
| Infant home/baby home (0-3 years) | 48 |
| Centres of medical and social rehabilitation (under 18 years) | 32 |
| Institutions managed by the Ministry of Social Policy | |
| Children's homes 'internats' (4-18 years) | 56 |
| Centres of social rehabilitation of disabled children (2-18 years) | 62 |
| Rehabilitation institution for adults and children with learning difficulties | 2 |
| Institutions managed by the Ministry of Education | |
| Children's homes 'internats' for orphans and children deprived of parental (6-17 years) | 115 |
| Internat boarding school for orphans and children deprived of parental care (6-17 years) | 54 |
| Boarding schools and professional-technical schools for social rehabilitation purposes (under 14 years) | 14 |
| Other institutions under MoES including boarding schools and special boarding schools for children with disabilities | 178 |

A further highly illustrative diagram of the different forms of institutions can be clearly seen in a report produced by Hope and Homes for Children in 2015.¹¹⁶

¹¹² United Nations General Assembly (2019) 'Promotion and protection of the rights of children' adopted by the General Assembly at its 74th session, 19 November 2019, A/74/395

¹¹³ Data sourced from: <https://www.msp.gov.ua/content/deinstitutualizaciya.html> accessed 29th March 2020

¹¹⁴ <https://www.openingdoors.eu/wp-content/uploads/2019/03/country-fiche-Ukraine-2018.pdf>

¹¹⁵ Hope and Homes for Children (2015) *The illusion of protection, An analytical report based on the findings of a comprehensive study of the child protection system in Ukraine.* Hope and Homes for Children.p.39

¹¹⁶ Hope and Homes for Children (2015) *The illusion of protection, An analytical report based on the findings of a comprehensive study of the child protection system in Ukraine.* Hope and Homes for Children. pp. 76-77

6.2.1 Pathways into residential care

Pathways into institutional care that perpetuate their use is a major concern as discussed above in this report. For example, it has been reported¹¹⁷ that it is being made possible for the majority of children (78.5%) to be directly placed in residential facilities by their biological families. A further concern is the number of children being transferred from family-based alternative care to an institution. As an example between 2012 and 2013, 117 children were moved from foster care to institutions. This figure rose to 223 children in 2013-2014.¹¹⁸

Furthermore, a large number of children have not yet received a legal 'status' that allows them to be placed in foster care and/or placed on the adoption register. As referred to above in this report, this process can take many years with instances where it is not pursued at all.

6.2.2 Violence in residential care

Although Ukrainian legislation provides children with the right to protection from all forms of violence, the safety of children and the quality of care in institutions in Ukraine has been assessed as poor. A contributing factor to such poor care may be in part, an outcome of large numbers of children being looked after by only a few staff. According to findings in the 2015 Hope and Homes for Children reported an average of 1 carer being responsible for 38 children.¹¹⁹ The ISS team also

observed a small ratio of staff to babies when visiting baby homes.

Interviews with care leavers and staff, not only confirmed the poor quality of care being provided children in institutions but also their regular exposure to violence. Interviews with young people that have left institutional care revealed how children are being routinely abused in institutions. ISS team members were informed that, if children tell visitors what is happening to them, they will be punished once the visitors had left. Children spend much or all of their childhood in institutions and do not necessarily understand that the violence being perpetrated against them is wrong and they have a right to stop it. **'They think being beaten is normal.'**

As an example of promising practice, proposals are being put forward by the National Council of Children as part of a campaign to change this situation. This movement is being taken forward by 50 young people from each Oblast including those who have left institutions.

A 2019 review of living conditions in institutions has also revealed the poor environment in which many children are residing.¹²⁰ Linked to questions regarding the quality of care provided in institutions is the fact that a robust accreditation and monitoring system is not being implemented. Whilst service providers must obtain permission from the relevant Ministries, there is no regularized procedure to assess the quality of care, or to call violators to account.

6.3 CHILDREN IN INSTITUTIONS MANAGED BY THE MINISTRY OF HEALTH

The Ministry of Health manage baby homes and Centres of Medical and Social Rehabilitation for children up to the age of 17 years old. Ministry of Health. According to Government of Ukraine data¹²¹, in 2019, a total of 38 baby

homes were providing residential settings for 2,834 children under the age of 4 years. While international standards call for the placement of young children in family-based care, and especially those under three years old¹²², in 2019,

2,834 children up to the age of 4 years old were in 38 baby homes around Ukraine.¹²³ During interviews, with representatives of the Ministry of Health, there was acknowledgement as to the dangers of large scale residential care, particularly for this young age group. However, not all interviewees provided clearly articulated details of strategy and plans that would lead to the phasing out such facilities.

During the mission, several baby homes were visited by the ISS team. Whilst these large scale facilities benefit from multi-disciplinary teams of professionals, as mainly with a medical and educational background, the primary focus of staff is to ensure that the child was **"living in a safe environment"** in the baby home confirmed one interview. In one baby home it was encouraging to see that each child had a Care Plan including provision of individual and group activities for each day including visits with psychologists, speech therapists and interaction and support from social workers. However whilst staff were caring towards children in meeting daily needs, it did not seem that they appreciated the dangers of institutional care, especially for such young children. In addition, the ratio of staff especially to small babies did not allow for babies to be provided individual attention.

Initiatives being undertaken to either improve the situation within the baby homes, or to move toward their closure or reform into another type of service, were also observed. One baby home had been the focus of a comprehensive review of the circumstances of each child in the facility and plans that will lead to the home becoming part of a network of day care centres in the city. These plans are complemented by work that is being led by a civil society organisation in the same city that is increasingly providing non-residential services for children with disabilities including programmes of early identification and rehabilitation. However, access to transportation for families to be able to attend such day centres is proving a challenge. A further example of promising practice being undertaken by one of the baby homes the ISS team visited, is a recent initiative to provide a 'social taxi' that facilitates the visits of single

mothers to see their children. There are also plans to transform baby homes into palliative care units. There is however, some concern that plans are not being accurately based on comprehensive assessments of actual needs of children so as to inform the number of children for whom services should be provided and where and how they should be made available.

Despite such promising initiatives, as with other alternative care service providers, there is still a concern that there is little or no support to biological families to retain the care or their children and/or maintain contact with their children once in the baby home. In general, reunification of children with their families does not appear to be a priority, or even part of the remit of the staff of baby homes. Parents are being allowed to relinquish their children with no follow up or offer of possible support. This lack of effort to promote reintegration is particularly worrying especially as it seems that children are placed for intercountry adoption from baby homes. Without ensuring that the principle of subsidiarity is respected in terms of support to the family of origin and exploring national options, there is a risk that intercountry adoption is unduly prioritized (see section 5.6).

There were therefore, mixed findings in terms of efforts to place children into foster care or find adoptive families when the legal 'status' of a child permits. No-one provided the ISS team with information about children who had moved out of baby homes into foster care. Some interviewees spoke with pride about the number of children who left them for national adoption, with some becoming adoptive parents themselves. Others however, did not illustrate a concern regarding providing children with an opportunity to live in a family – either their own or, that of another family.

There were several explanations as to why options to transfer children out of baby homes might be limited. Firstly, work is not being undertaken to reunify children with their families. Also many children have not yet received a legal 'status' that allows them to be placed in foster care and/or placed on the adoption register. It

¹¹⁷ ibid. p.38

¹¹⁸ ibid. p.38

¹¹⁹ Hope and Homes for Children (2015) *The illusion of protection, An analytical report based on the findings of a comprehensive study of the child protection system in Ukraine*. Hope and Homes for Children.p.26

¹²⁰ Klochko, S.(2019) *Monitoring the Rights of Children in the Alternative Care System: Analytical Report*, Kiev 2019. UNICEF Ukraine

¹²¹ Data sourced from: <https://www.msp.gov.ua/content/deinstitutionalizaciya.html> accessed 29th March 2020

¹²² UNICEF and OHCHR (2011) *Ending placing children under three in institutions: A call to action*. UNICEF CEECIS Child Protection Unit and OHCHR Europe Regional Office

¹²³ Opening Doors (2018) *Country Profile: Ukraine*. Available at: <https://www.openingdoors.eu/wp-content/uploads/2019/03/country-fiche-Ukraine-2018.pdf>

is noted previously in this report, how the judicial service is understaffed, has years of backlog cases to consider, and generally lack an understanding of child rights and imperative of family-based alternative care. Reforms in the health care system are resulting in baby homes having to find the money to pay for health checks demanded by foster carers and adoption families.

This is because they do not want to take children with health concerns including what are thought to be 'inherited diseases' that would- it is wrongly believed- manifest as 'bad behavior', or, babies with potential disabilities. One baby home lamented how they were unable to meet the cost of these tests and this now put chances of adoption at risk.

6.4 CHILDREN IN INSTITUTIONS MANAGED BY THE MINISTRY OF SOCIAL POLICY

According to the Government of Ukraine data¹²⁴, in 2019, there were 6,230 children residing in 125 institutions managed by the Ministry of Social Policy.

During their mission to Ukraine, the ISS team visited children's homes also known as 'internats'. Children's homes provide accommodation for children aged between 4 and 17 years old. Despite the regulation¹²⁵ allowing for a maximum of 35 children – in contravention of international guidance- in practice it seems that greater numbers are admitted. This was noted for example in one of the Social and Psychological Support Centres that the ISS team visited where there was a total of 50 places available. As an example of funding mechanisms, this Centre is funded mostly from the local Rayon budget

(approximately 70%) with 30% of funds being received from Regional authorities. This funding budget covers general overhead costs such as food and utilities. Further support is received in an ad hoc manner from private giving by Ukrainian citizens which interviewees said is needed to cover clothing and other materials such as stationery for children. In the Centre visited by the ISS team, there is a multi-disciplinary team that includes the services of 3 psychologists, 9 educators and 1 sports trainer. However it is of concern that there was no staff dedicated or trained to work with biological families and explore the possibilities of reintegration. Once a child is placed in these Centres, the focus is on ensuring that their basic needs are met (as opposed to supporting the child to eventually be reunited with his or her family.

6.5 CHILDREN IN INSTITUTIONS MANAGED BY THE MINISTRY OF EDUCATION AND SCIENCE

As of 2019, there were 555 institutions housing 93,506 children being managed by the Ministry of Education and Science. During the ISS visit, documents were shared with team members indicating this was a slight decrease on the numbers published in a report issued by the Ombudsman indicated that in 2016, there were 97,923 children aged 4-17 years of age living in 580 institutions.

Interviewees representing the Ministry of Education note how a major challenge from the national perspective is the monitoring of these

institutions. As they are part of the Oblast community building, the MoE does not have the mandate, nor the capacity to monitor.

For the children in these institutions, interviewees noted a challenge to be the lack of a legally named person responsible for decision making on behalf of a child without 'status' should they require access medical treatment. One solution to this situation is to ensure that through the decentralization process, each institution has an arrangement with doctors in the local community to provide services for these children.

FOCUS ON CHILDREN WITH DISABILITIES

A 2015 report¹²⁶ issued by Hope and Homes for Children indicated that at time of reporting, of the 663 institutions in Ukraine 351 were built specifically for children with physical and mental disabilities. This included 218 special boarding schools, 57 education and rehabilitation centres, 26 specialised baby homes and 50 care homes. According to Hope and Homes for Children, 'the establishment of these institutions was justified by the assertion that these children could not receive qualified assistance in their communities due to the lack of relevant specialists, services and inclusive education. However, the staffing structure and the existing personnel in these residential facilities cast doubts upon their ability to meet the developmental needs of the children. For example, there are almost 100 children to each speech therapist, almost 30 children per special education teacher and 118 children to one psychologist.'

The findings of this study by Hope and Homes for Children also demonstrates that residential facilities have limited capacity and insufficient staff with appropriate qualifications to ensure the quality delivery of rehabilitation and educational services for children with mental and physical disabilities. As a result, even after an extended stay in such institutions, there are no obvious improvements in children's health and academic performance.

6.6 CLOSURE OF INSTITUTIONS

UNICEF has defined deinstitutionalisation on as 'the full process of planning transformation, downsizing and/or closure of residential institutions while establishing a diversity of other child care services regulated by rights-based and outcomes-oriented standards.'¹²⁷

Over the past 20 years in particular, there has been a plethora of legislation, regulations and statutory guidance on measures to reform the alternative care system in Ukraine that would enhance the provision of family and community based care and the closure of institutions. Much of this legislation is listed in Annex 4 of this report. This includes

measures to limit the acceptance of children in boarding schools, provide additional assistance to families in difficult circumstances, including those with children with disabilities. Legislation permits the funding and further development of family-based care options in the form of foster care, patronage care and Family Type Houses for Children. There have been interventions that permit expenditure of local authorities on a range of services to help prevent family separation and the construction of small group homes primarily for children with disabilities. In particular, in 2017 a National Strategy for the reform of institutional care and the upbringing of children for

¹²⁴ Data sourced from: <https://www.msp.gov.ua/content/deinstitutionalizaciya.html> accessed 29th March 2020

¹²⁵ MoSP Order on Social and Psychological Support Centres, #1291/9893 from 24.09.2004

¹²⁶ Hope and Homes for Children (2015) *The Illusion of Protection, An Analytical Report Based on the Findings of a Comprehensive Study of the Child Protection System in Ukraine*. Hope and Homes Children

¹²⁷ UNICEF (2010) *At Home or in a Home?: Formal Care and Adoption of Children in Eastern Europe and Central Asia*, p.52.

2017-2026 and the Plan of Measures for the implementation of Stage I of the strategy¹²⁸ was approved.

In addition, there is evidence of a growing understanding of the need to close institutions and steps now being taken by some local authorities to achieve this. This positive shift towards deinstitutionalisation may be the result of a clear mandate from the Government of Ukraine regarding eventual closure of institutions coupled with a growing understanding of the harm institutionalisation can cause. The ISS team conclude there are those in local government who truly believe in deinstitutionalisation of the child care system, and those who are reluctant but know they must follow the rules and/or, lack understanding how to achieve this.

Members of civil society organisations, many run by ad/or sponsored by international agencies, have overwhelmingly shown their willingness to support the important aim of closing institutions through the network they have formed so that a joint understanding and response can be achieved. This for example, has led to the formation of a consortium of 5 NGOs jointly implementing a UNICEF supported project on “gatekeeping” and development of community based integrated social services in 12 consolidated communities of Eastern Ukraine.

However, as the findings in this report indicate and, as confirmed in the results of the research published by Hope and Homes for Children in 2015, the process of closing institutions has not gained the momentum it should have bearing in mind the considerable investment in development of legislation, policy and strategic plans focused on bringing about this reform. Indeed, Hope and Homes for Children reported how the,

CURRENT PROCESS OF REFORMING INSTITUTION IS DECLARATIVE, IN REALITY, NOTHING CHANGES EITHER FOR THE CHILDREN OR THE SYSTEM IN GENERAL. IN FACT, IN MANY CASES, REFORM HAS SIMPLY MEANT RENAMING AN INSTITUTION WITHOUT CHANGING ITS FORMAT OR FUNCTION. AT THE SAME TIME THERE IS EVIDENCE OF THE ARTIFICIAL “FILING” OF RESIDENTIAL INSTITUTIONS WITH CHILDREN TO PRESERVE FUNDING’S.¹²⁹

Furthermore, it was reported that reforms are being undertaken in such a disjointed manner that this has led to ‘duplicate functions and “competitions” among providers of institutions.¹³⁰ It has also been noted how the number of children leaving institutions through placement in family based-care or adoption as being in decline while children being transferred from one institution to another is increasing.¹³¹

Engendering willingness and ability to fully achieve reforms to the care system that result in the closure of institutions will be a challenge in Ukraine for, as illustrated in the 2015¹³², the system of institutionalisation has been an accepted model of alternative care for many years and is now entrenched in the ideology of many providers. The Hope and Homes report of 2015¹³³, illustrates how in 2015, 425 of the 663 existing institutions were founded in Soviet times (before 1991) since which, claims Hope and Homes¹³⁴, there has been very little change in actual practice.

A principal obstacle to change lies in the systematic allocation of government funding for institutions. This contributes to the ease of maintaining institutional care for children rather than alternative family based protection. As the Government of Ukraine has itself reported, ‘most children who are enrolled in and staying in residential care institutions of all types are not orphans, have no serious illness or disease and are in an institution because their families are in difficult circumstances.’¹³⁵

In 2011-2017, the Government of Ukraine reported¹³⁶ the number of residential institutions under the auspices of the Ministry of Social Policy and the number of children in them decreased from 55 institutions and 6,888 orphans and children deprived of parental care in 2011, to 48 institutions and 5,692 children in 2017. In addition the data indicated the institutions under the management of the Ministry of Health of Ukraine and their children fell from 48 institutions with 3,507 children in 2011, to 40 institutions with 2,675 children in 2017.

¹²⁸ Ordinance No. 526-r of the Cabinet of Ministers of Ukraine of 09.08.2017 On the National Strategy for the Reform of the Institutional Care and Keeping of Children for 2017-2026 and the Action Plan for the Implementation of its Stage I

¹²⁹ Hope and Homes for Children (2015) *The Illusion of Protection, An Analytical Report Based on the Findings of a Comprehensive Study of the Child Protection System in Ukraine*. Hope and Homes Children

¹³⁰ *ibid.*

¹³¹ *ibid.*

¹³² *ibid.*

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018,spec, §118,p.19

¹³⁶ Ukraine joint 5th and 6th Periodic Report to the CRC (CRC/C/UKR/5-6), 23 November 2018,spec §117,p 19

RECOMMENDATIONS – residential institutions

In conclusion, data suggests that despite years of investment in the development of appropriate legislation and strategic planning, training, development of family-based care and other actions, Ukraine has not been successful in fulfilling reforms that would eliminate the use of institutions. Although there has been ongoing political will to make changes, there is no actual implementation of legislation and gatekeeping mechanisms by relevant ministries, including the Ministries of Social Policy, Education and Science, and Health. Despite the development of some of the family based alternative child care solutions, the number of children in residential care has been increasing in the past few years. It seems that there is limited gatekeeping and reunification efforts, resulting in an increased demand for alternative care.

Furthermore, the Government of Ukraine continues to allow children to remain in institutions in which their rights are being denied. Not least because children are systematically subject to abuse. In addition, although legislation calls for children to have Care Plans and for regular monitoring of children in institutional care, it is evident these laws are not being systematically or rigorously applied. As a result generations of children are denied their rights and continue to spend their childhood in institutions.

Drawing on these conclusions, the following recommendations are offered in terms of:

- Undertaking of a comprehensive assessment of every child in institutional care and a determination of which children can be safely reunified with parents or other family members. Following which, the undertaking of a campaign to focus resources on family reunification.
- Providing incentives that will motivate staff of Ministries of Social Policy, Education and Science, and Health, and others, to redirect and repurpose their current roles in provision of institutions toward a range of other protection and alternative care measures and services.
- Revising funding mechanisms that stops financing of institutions on a per capita basis and instigates laws to redistribute monies away from institutions toward services to prevent family separation, family reunification, suitable forms of alternative care.
- Involving staff of residential institutions in all aspects of strategic planning to achieve deinstitutionalisation. In addition, addressing concerns of unemployment and other issues that result in opposition to closure of institutions. Cooperation with local decision makers should be facilitated.
- Providing education for all staff working in institutions regarding children's rights, the principles of 'necessity, 'suitability', and best interests of a child, attachment theory and other topics that will raise awareness as to more suitable care of children.
- Raising awareness amongst the general public through a significant and concerted communication for development campaign on the harm of institutionalisation of children and the importance of prevention of separation and provision of suitable care options.
- Ensuring providers adhere to registration and accreditation with States undertaking responsibility to rigorously monitor all care provision.



PART 7: SMALL GROUP HOMES

Resolution of the Cabinet of Ministers of Ukraine of October 31, 2018 No. 926 on approved the Model Regulations for a small group house¹³⁷. This brings recommendations that local executive authorities and local self-government bodies who are in the process of deciding to eliminate or reorganize institutions should consider use of small group homes. Interviewees told the ISS team that to date, local authorities have submitted very little information on the formation of small group to the Ministry of Social Policy by the local authorities.

The Ombudsman for Children told ISS that in practice small group homes were introduced a few years ago as an alternative to large scale residential care. 25 small group homes were developed under the auspices of MSP. The Ukrainian government is said to have provided 25 million USD to facilitate such reforms. It would be helpful if some of these funds could be used to explore re-integration as an option for children who still have families.

Information provided to the ISS team indicates those local authorities who will proceed with small group homes, will be using government financing to build facilities that will specifically house children with disabilities. It is understood the development of such homes is still underway.

The ISS team visited a small group home for

children with disabilities run by a NGO. Created in November 2019, and caring for 6 children (4 boys and 2 girls) from 1 to 7 years. Their aim of the NGO is to help children recover from lack of stimulation and reach their full potential with adapted rehabilitation through access to a private rehabilitation center, inclusive educational (through the Inclusive Resource centre) and a family-like setting. The small group setting is situated in an apartment with all necessary equipment provided. From observation, the director has managed to create a nurturing environment very closed to a family setting. The caregivers working with children have experience caring for children with disabilities and the NGO has hired 1 pedagogue and 1 psychologist.

All children have the 'status' of children deprived of parental care and come from the same baby home that has almost 200 children. Without the possibility of this small group home, these six children would have been stayed in institutional care. All six children were assessed by a medical doctor as having suffered from lack of individual care and lack of stimulation before the arrived at the small group home. It is reported that within three months of their arrival, children have already made a lot of progress on social and motor skills. According to the staff **"children are less aggressive, they smile, laugh, play"**. One of the children, due to her disability, was lying in

¹³⁷ Ministry of Social Policy (2019) Report on the review of expenditures of the state budget in the field of social policy in the area of social protection of children.

her bed all day whilst in the baby home and could not sit up when she arrived at the small group home. Now she is able sit up and she is reportedly progressively being supported to reach her full developmental potential. The NGO has an agreement with Service for children of Kiev city. Legally, the guardian of the children is the NGO director, however she does not receive any guardians' subsidies. They only receive benefits of Disability status allowance. One of their challenges is to sustain the private

funding they receive. It is believed, that with State supports, this model could be replicated in Ukraine.

It is essential that small group homes are only provided to those children for whom this form of care has been assessed as the most suitable. Small group homes should be careful not to adopt the same poor indicators of care as institutions or, as in other countries, where they will be also recognised as 'small institutions'.

RECOMMENDATIONS – small group homes

As mentioned previously in this report, small group homes are a setting which may be highly applicable for certain children but should not however, be seen as the solution to deinstitutionalisation¹. The following recommendations are offered in terms of:

- Ensuring small group homes are a form of alternative care made available only to children for whom it has been carefully assessed as the most suitable option.
- Ensuring small group homes do not automatically become a substitute for institutions. In this manner decisions as to whether or not to place a child in a small group home must first involve consideration of possible support and access to resources that would allow a child to stay with their own family and secondly, care in family-based settings. Furthermore, resources must not be diverted from facilitating family reunification as a first option, or away from family-based alternative care when most suitable.
- Ensuring the quality of care in small group homes is of the highest standard possible.
- Developing standards and regulations that govern licensing and inspection of care in small group homes whether provided by governmental or non-governmental agencies. This must be accompanied by the necessary skilled and trained staff to undertake these actions and other required resources.

¹ Gale, C. (2019) Children without Parental Care and Alternative Care: Findings from Research. CELCIS, University of Strathclyde. Available at: https://www.celcis.org/files/9615/6768/8649/References_-_Children_Without_Parental_Care_and_Alternative_Care.pdf

PART 8: DECENTRALISATION

The Constitution of Ukraine, and other legislation, traditionally mandated for levels of unitary administration at City, Oblast and Rayon level. Steps have now been taken, including changes in legislation, allowing for the development of new unitary community administration at the level of 'Hromada'. Across the country, new geographical boundaries are being drawn as communities decide on the composition of villages that will comprise each new Hromada. This not only increases the 'political' and administrative power of these new local authorities, but also increases their level of local budgetary responsibility.

The adoption of the Law on Voluntary Association of Territorial Communities (N°157-VIII of 05.02.2015) and the Law on Cooperation of Territorial Communities (N°1508-VII from 06.17.2014) allows these new local unitary administrations to receive and use monies so as to provide for the welfare of those living within the Hromada. The law provides state incentives and support for community cooperation, including through subventions to local budgets. This law is extremely important from a practical point of view, as it enables communities to implement complex resource-consuming projects such as, for example, a range of social services.

In 2015, development of new regulations in the Budget Code of Ukraine allowed for changes in the gathering and use of local taxes supplemented by budgetary allocation from central government through a formula that offers a 'base' grant. The equation for calculating the

base grant includes the number of population in the Hromada, income tax in a part that includes into an appropriate budget (60% per amalgamated community budget), and index of taxability of local budget. This equalization system assumes that local budgets which has a level of revenue:

- lower than 0.9 of the average in Ukraine will receive base grant (80% of amount needed to meet the 0.9 index).
- from 0.9 to 1.1 (no equalization is performed)
- higher on 1.1 than average in Ukraine (part of local budget income transferred to the state budget "reverse grant" (50% of amount exceeded 1.1 than average in Ukraine).

Despite the clarity of funding in the decentralization law, it seems in practice that there may be some confusion as other laws such as that on local self-government are less clear.

In 2012, the process of social service reform received a new impetus with the enactment of the Strategy of Reforming the System of Social Services Provision (Decree of the Cabinet of Ministers of Ukraine # 556-p of 8 August 2012) and the passing of legislation defining a list of social services to be delivered (Order of the Ministry of Social Policy # 537 of 9 September 2012). This was complimented with the setting the procedure for the development of social services standards (Order of the Ministry of Social Policy # 282 of 9 September 2012), and

the development of respective social services standards (12 standards developed as of August 2015), as well as passing of the methodology and procedure of the assessment of community needs in social services (Orders of the Ministry of Social Policy #648 of 15 October 2012 and # 28 of 20 January 2014).

Included in this legislation is a list of basic social services that should be delivered at Hromada level:

- > Social care including home care and day care services
- > Supported accommodation
- > Social assistance
- > Social adaptation service
- > Social integration and reintegration service
- > Shelter
- > Crisis and emergency intervention
- > Alternative care provision
- > Consulting, information
- > Representation of interests
- > Mediation
- > Social prevention
- > Physical support services for persons with disabilities with visual impairments
- > Sign language translation service in-kind support
- > Assistance on inclusive education

It is now the responsibility of each Hromada to assess the needs of their local community and develop a 3 year plan for the delivery, monitoring and financing of these social services. This should be achieved through public-private partnerships, commissioning of services, public procurement methods and contracting with civil society organisations. Hromadas that have already been legally established, are in the process of creating and staffing the bodies that will develop and deliver the different services.

This is a new opportunity to ensure that the real needs of children and families are identified and met.

The ISS team took the opportunity to visit the offices of social services in a newly established Hromada which had been identified as an example of promising practice in respect of planning for delivery of social protection and alternative care children. The enthusiasm and commitment to ensuring children and families receive the local support they need was very evident and investment is already being made in employment of experienced staff as well as resourcing welcoming office premises and the development of a range of support services. The staff that were interviewed, believe the development of Hromada will create the opportunity to build strong relationships within the community that allows for accurate identification of needs and plans to respond accordingly. This will include services that quickly identify families in difficulty but also to be able to respond in a more effective, and cost efficient, manner through the development of the most needed and most appropriate support mechanisms.

During the mission to Ukraine, the ISS team also found a willingness of those working in child protection at the Oblast level to support the development of services in the new Hromada administration units. One example was an Oblast that has provided financial support and technical advice to a Hromada that enabled the repurposing of an internat into a community 'Centre for Support'. The Oblast said they provided a 'carrot' in the form of financial support for one year will pay for adaption of the building and salaries.

However, interviewees also highlighted a number of challenges. These included the lack of experience or knowledge of Heads of Hromada to oversee the process of assessment, planning for, and development of, the range and quality of social services necessary to meet the protection and alternative care needs of children. It is believed that in general, the Heads of Hromadas are prioritising health, education and business development but, due to a lack of understanding as to the importance of social capital, leaving the creation of social services for later.

A further concern is the manner in which the law does not insist on the delivery of all the social services listed above. The choice of services offered to the local community is at the discretion of the new Hromada administration. One interviewee is of the opinion that Hromadas will face a shortage of available specialists to build their child protection and other social services with. They said that to date, from a total of 41 Hromadas only 6 have developed the full range of social services. Many interviewees stressed the need for changes to legislation that does require a Hromada to provide for all the children's services identified in the community. It was also suggested that Heads and others working in the Hromadas should listen more carefully to their constituents including consultation with children and young people.

Interviewees hope Hromadas will take advantage of new legislation allowing them to contract services with civil society organisations who have innovative ideas as well as

experience in the delivery of child protection and alternative care services. Most especially, it is hoped they will develop these partnerships in order to provide increased access to local services that would prevent family separation, including those for children with disabilities, as well as supporting the process of deinstitutionalisation which will now be a remit of Hromada administrations. It was recognised that civil society organisations can work faster, are less bureaucratic and can be more dynamic and creative. However, care must be taken not to curtail this creativity when contractual arrangements are made between the local administration and civil society organisations.

Furthermore, although there has been a concerted effort to role out training that includes issues concerning child protection, interviewees indicated it is not always the most influential members of the Hromada administration i.e. the Head, that attends the training.

RECOMMENDATIONS – Development Of Social Services At Hromada Level

As identified above, the formation of the new unitary administration level of Hromada offers a great opportunity for accurate assessments of very localized needs of families and children that can inform well-evidenced plans to develop child protection and alternative care services. The following recommendations are offered in terms of:

- Continuing to provide training that Heads of Hromadas are mandated to attend along with and other staff, that inculcates the importance of social investment, child rights, child protection and support to families in difficulty. Training to also raise awareness as to impact on children and future generations of parents (and future costs to the Hromada) if investment is not made in gatekeeping including, prevention of family separation and all necessary steps of deinstitutionalisation.
- Revising of legislation that places mandated responsibility on Hromadas to concrete provide the necessary range of social services for children and families accompanied by clearer budgetary regulations in reference to spending on social services for families and children.
- Clarifying the role of the Hromada in deinstitutionalisation to develop with MoSP basic package of social services for children and families with children

SUMMARY AND RECCOMENDATIONS

An executive summary has been provided at the top of this report. A number of recommendations have been made within the body of this document in order to support UNICEF in its work with the Government of Ukraine in ongoing efforts to reform the child protection and alternative care system.

The ISS team hope that these recommendations will be of use in highlighting the need for improvements in the application of gatekeeping mechanisms, tools and processes, significant investment in good quality family-based care and, the closure of institutions

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