



ASSESSMENT OF
THE ALTERNATIVE CARE SYSTEM
IN THE SYRIAN ARAB REPUBLIC 2011



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Introduction

This independent assessment was commissioned by UNICEF Damascus at the request of the Ministry of Social Affairs and Labour of Syria (MoSAL), and carried out by the undersigned on behalf of International Social Service as executing agency.

Against the background of the CRC and other international instruments, notably the Guidelines for the Alternative Care of Children, the main aims of the exercise are, in summary, to:

- review and analyse the key forms and role of current alternative child care options within the overall child protection system in Syria;
- identify “positive models” and lessons learned from existing care practices
- assess needs for capacity-building, monitoring and quality control
- suggest those areas and issues that the competent authorities and other actors in Syria, together with UNICEF, should examine particularly closely in developing policy, strategies and initiatives to enhance the quality and efficiency of alternative care for children in the country.

To this end, in addition to reviewing pertinent documentation, including legislative texts, we had discussions with relevant governmental and non-governmental actors, and visited a number of child care facilities, in Damascus from 8 to 14 December 2011 (see Annex 1 for a complete listing). We also took part in a workshop on the final day of the mission, during which they presented some preliminary observations and received very useful feedback from participants.

Unfortunately, because of prevailing meteorological conditions, we were unable to travel as originally planned for similar meetings and visits in Hama, Homs and Aleppo, as well as to a Juvenile Delinquents Institute (JDI) outside Damascus. As a result, we are invariably obliged to base our assessment on observations in the capital city while recognising that, as in many countries, the situation in other regions can differ considerably in terms of economic resources, access to basic services and other factors specific to each region.

It is also particularly regrettable that efforts to secure a meeting with the Syrian Commission for Family Affairs (SCFA) were unsuccessful. While the activities and mandate of the SCFA were referred to by many interlocutors – and indeed, because of this – we would have felt all the more confident in reporting faithfully on this exercise had we had the opportunity for direct contact with its representatives.

We wish to emphasise that this report in no way pretends to be a definitive assessment or to set out final policy and programming recommendations. It is submitted as a contribution to the further discussions that are to take place as Syria looks at how it will seek to improve its child protection system.

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Consultants to International Social Service
Geneva, 14 February 2011

SCOPE OF “CHILDREN IN ALTERNATIVE CARE” IN THIS REPORT

Paragraph 30 of the Guidelines for the Alternative Care of Children defines children without parental care as “all children not in the overnight care of at least one of their parents for whatever reason or under whatever circumstances”, with the notable exceptions of children in conflict with the law and those voluntarily staying with relatives or friends for reasons other than their parents’ general inability or unwillingness to care for them.

In line with this, the general rule followed in this report is to exclude consideration of arrangements made for children who are “alleged as, accused of or recognised as having infringed the penal law” (CRC Art 40.3) and whose situation falls under juvenile justice instruments. In addition, an initial review of the juvenile system in Syria was recently undertaken and submitted to MoSAL, which in principle precludes the need to delve into this issue in the context of the present document.

That said, there are many instances where the separation between children in conflict with law and those in need of protection and alternative care is less than clear in practice. Thus, as regards Syria, many experts have pointed out to us that a substantial proportion of children in need of care and protection are identified and dealt with on the basis of laws relating to vagrancy and begging. As a result, they may be held in residential facilities with juvenile offenders and essentially treated in the same way. Consequently, we have taken a pragmatic approach to this question in our report in order to cover these children.

¹ Guidelines, para 30a. The instruments in question are the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice and the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty..

² Carolyn Hamilton and Rebecca Wright, draft of “The Juvenile Justice System in Syria: Analysis of Law and Practice”, Children’s Legal Centre, 1 November 2010, in the context of the “Support to Juvenile Justice in Syria” project of the Syrian Government and UNDP.

Acronyms

| | |
|--------|---|
| CRC | United Nations Convention on the Rights of the Child |
| ESTA | Syrian Society for Social Development |
| JDIs | Juvenile Delinquents Institutes |
| MoE | Ministry of Education |
| MoJ | Ministry of Justice |
| MoRA | Ministry of Religious Affairs |
| MoSAL | Ministry of Social Affairs and Labour of the Syrian Arab Republic |
| NGO | Non-governmental organisations |
| SCFA | Syrian Commission for Family Affairs |
| UN | United Nations |
| UNDP | United Nations Development Programme |
| UNICEF | United Nations Children's Fund |

Acknowledgements

We would like to express sincere thanks to the many people, in the public and non-governmental sectors alike, who devoted considerable time to our discussions in Damascus and whose inputs to this assessment were of course invaluable. We were struck by the commitment, professionalism and cooperation that they all displayed.

Our appreciation for their contribution and assistance to the mission goes to Ministry of Social Affairs and Labour (MoSAL) staff, especially to the team of the department of Social Services

We would also like to thank warmly UNICEF colleagues, particularly Sherazade Boualia, Naira Avetisyan and Bisan Al-Bunni, who greatly facilitated the accomplishment of our mission, as well as our interpreter, Mr Amer Al-Seifi, for his outstanding services.

Executive Summary

Building on the relevant provisions of the UN Convention on the Rights of the Child, the Guidelines for the Alternative Care of Children, approved by the UN General Assembly in 2009, set out a comprehensive series of policy orientations and actions designed notably to assist States in meeting their obligations under that Convention. The Guidelines place considerable emphasis on family support to prevent the need for alternative care, and they cover care provision for children not living with their parents in all settings, whether informal or formal and family-based or residential (in facilities). This assessment first reviews these standards and then attempts to examine each aspect of them in turn in terms of the current system of alternative care in Syria.

Two major considerations underscore the approach taken to formulating observations and suggestions in the context of this report.

The first is the fact that the Syrian Authorities have, since 2005 in particular, chosen to transform the role of the State from one of direct service provider in many social protection spheres, including substitute care, into one of “managing” civil society organisations that have been invited to carry out direct service provision in its place. This decision has a number of implications for the State if the latter is to be in a position to ensure compliance with its international obligations in this sphere, and this report pinpoints areas where those conditions are not always in place. The report identifies the main needs to be met by the State in this respect as:

- A coherent national vision for child protection, specifying responsibilities and cooperation requirements, that covers the preventive, pro-active and reactive goals and actions within the framework of which policy implementation is to be taken forward.
- Centralised comprehensive and disaggregated data collection and analysis that enable policy and resources to be determined appropriately and then adjusted in response to changing requirements.
- Agreed standards, drawn up on the basis of broad consultation, to be met by all involved in the provision of care.
- Effective evaluation and monitoring roles, to ensure that these standards are respected, including through robust inspection and review procedures, as well as participatory methodologies guaranteeing that children’s views are heard.

The second consideration is the fact that formal alternative care in Syria is predominately ensured by residential facilities. On the face of it, this does not sit well with the main thrust of international standards, which stress the desirability of making available and supporting family-based care, with minimum use of residential settings.

That said, the assessment found that, overall, residential care as provided meets a number of basic international requirements, being organised so as to promote attachment with specific caregivers and to prepare children for living independently in the community on reaching adulthood. The report also recognises that certain limitations and obstacles would have to be taken into account in maximising the potential for developing family-based care arrangements, notably because of the way in which Syrian society perceives the family. Bearing in mind all the above, the report suggests that:

- More efforts could and should be made to avoid the need for alternative care, notably through enhanced community-based family support services and the establishment of an effective “gate-keeping” system.
- Consultations should be held to examine how el haq could be facilitated, how the concept of kafala might be extended, and what supplementary care settings could be envisaged, all with a view to increasing the family-based options available to children without parental care, whether on a temporary or a long-term basis.

On the basis of its overall findings, the report concludes by proposing six key pointers for consideration in the context of further consultations on the question of alternative care reform:

- Knowledge base for an informed national care strategy
- Prevention strategies and gate-keeping in alternative care
- Inclusion of abused, exploited and neglected children into the child care system
- Diversified responses to the diverse needs and potentialities of children deprived of parental care
- Quality control and protection of children in alternative care
- Cooperation and consultation for effective policy development and implementation

PART I: OVERVIEW OF INTERNATIONAL STANDARDS ON ALTERNATIVE CARE FOR CHILDREN

The two main international instruments covering responses to children who are, or who are at risk of being, without parental care are the Convention on the Rights of the Child, to which Syria is a State Party since 1993, and the Guidelines for the Alternative Care of Children (hereafter “the Guidelines”), which the United Nations General Assembly approved unanimously on 20 November 2009.

These two instruments constitute the backcloth to this report, and it is therefore important here to recall and review the main thrusts of each that are relevant as reference points for our consideration of the alternative care system in Syria.

I.A. The Convention on the Rights of the Child (CRC)

The CRC places major importance on the prevention of family breakdown and break-up, in other words to preventing situations where children need alternative care. Thus, there is a coherent thrust throughout the treaty in favour of enabling families to remain together or to be reunited if separation has taken place.

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

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

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

The basic provision of the CRC covering alternative care specifically is of course Article 20, coupled with Article 25 that deals with the requirement to review regularly all child care placements in terms of their continuing necessity and appropriateness.

ARTICLE 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafala of Islamic law, adoption or, if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.

In the context of the present assessment, it is worthwhile highlighting in particular two rather different aspects of this provision.

First, the level of the State’s obligations in this sphere under the CRC is very high: the State must “provide” special protection and assistance and “ensure” alternative care for the child. In other words, at the very least the State must guarantee – even if it delegates certain responsibilities to non-State entities – that each child has access to the protection, assistance and alternative care arrangements that he or she may require. Thus, it is not sufficient for the State in some way to presume that other providers are able to make these services effectively available in cases where it cannot or does not do so itself. This implies that, even if its direct service provision role is limited, the State is duty bound to have the knowledge and powers, and to avail itself of resources, enabling it constantly to monitor needs and responses and to take any remedial action that may be required.

Second, clear preference is given to alternative care arrangements that are family-based. The reference to placements in suitable institutions only “if necessary” echoes the wide agreement that alternative care systems should be embarking on deinstitutionalisation processes, given the generally negative long-term effects of institutional care that have been documented, especially for small children. This approach is systematically recalled by the Committee on the Rights of the Child in its Concluding Observations on State Party reports.

It should be emphasised that the listing of types of care settings in Article 20 is by no means intended to be either prescriptive or exhaustive, as evidenced by use of the term “could include, inter alia”. Thus a wide range of possible settings may be foreseen in compliance with the CRC. It must also be pointed out in this respect that reference to “kafala” in Article 20 and elsewhere in the CRC does not correspond to the way that this measure is understood and practised in Syria and certain other countries in the region. In the context of the CRC, kafala involves providing direct care for a child in a substitute family – as is the case of countries in the Maghreb, for example – meaning that it is very much more akin to el haq in Syria (or el dham in Iraq) than to the form of sponsorship that the term kafala implies in Syria.

The importance of Article 25 is often overlooked. It requires that any placement ordered for “the purposes of care, protection or treatment of [...] physical or mental health” be subject to “periodic review” to ensure that the placement is still relevant and appropriate. The review is to take account both of the ways in which the child’s needs may have evolved and of any changes in the circumstances of his or her parents or family that would enable return to be envisaged.

I.B. The Guidelines for the Alternative Care of Children

These Guidelines seek to build on the CRC since – as can be seen from the above – the latter deals rather summarily with the alternative care question and is somewhat vague as to the practical ramifications of compliance with its provisions in this sphere. Thus, the Guidelines are designed to “assist and encourage governments to better implement their responsibilities and obligations” concerning the provision of alternative care for children.

The Guidelines first emphasise the need for instituting policies and measures to prevent children having to be placed in alternative care. These measures concern all three levels of prevention:

- primary prevention to address the root causes of abandonment, relinquishment and parent-child separation.

This includes ensuring that everyone has access to adequate housing and basic services, particularly health, education, and social services, as well as combating poverty and all forms of discrimination, marginalisation and stigmatisation. It also requires family-oriented policies that enable parents to care for their children.

- secondary prevention is the “safety net” that comes into play for those families and communities that are identified as vulnerable and at-risk. This involves in particular providing social and material support in a targeted manner, as necessary and appropriate.
- tertiary prevention, which applies to children no longer in parental care (and their families), is designed to ensure that wherever possible children can return to the care of their parents or their wider family under appropriate conditions.

Primary prevention is of course of fundamental importance but, in general, its scope is such that it cannot be considered in any depth within the limits of this report. We therefore focus more especially on measures targeting at-risk children and their families, and on how alternative care itself is broached.

It is important to note that the Guidelines cover all alternative care settings, including reference to the State’s role vis-à-vis informal arrangements.

The Guidelines propose two key thrusts in terms of the provision of alternative care:

- establishing the necessity of alternative care,
- ensuring the suitability of alternative care

Making certain that alternative care is used only when appropriate (the “necessity” principle) involves, in particular:

- Consulting with family and child
- Upgrading family support, enabling family reintegration
- Preventing abandonment and avoidable relinquishment
- Stopping unwarranted removal from parental care
- Addressing negative societal factors, such as discrimination against ethnic minorities or single mothers
- Ensuring effective gate-keeping
- Prohibiting ‘recruitment’ of children by facilities/individuals
- Eliminating forms of financing that encourage the child’s unnecessary placement or retention in

care Ensuring that, when alternative care is indeed deemed necessary, it takes place under appropriate conditions (the “suitability” principle) is a two-fold exercise.

On the one hand, each possible care option must meet certain general standards, such as ensuring:

- Adequate human resources, in terms of both quantity and quality
- Access to basic services
- Appropriate contact with parents/family
- Protection from violence and exploitation
- No attempt, as a primary aim of placement, to further political, religious or economic goals.

On the other hand, there must be assurance that the chosen care option is designed to meet the specific needs of the child concerned, in other words:

- That it can best cater to his/her characteristics and situation (which, for example, may involve forms of residential rather than family-based care for a particular child at a given moment in his/her life)
- That it enables an appropriate long-term stable solution for the child to be identified. Thus, the Guidelines promote individualised responses that are decided on for positive, constructive reasons and wherever possible in consultation with the child and his/her parents.

It is encouraging to note that, even in their draft form, the Guidelines already inspired change in approach to, and standards for, alternative care. Thus, for example, the Government of Namibia explicitly refers to them as having been key to preparing its new Minimum Standards for Residential Child Care Facilities in the country, published in March 2009.

Of special note is that the Committee on the Rights of the Child has systematically been referring to these Guidelines, from the moment they were adopted, as setting the basic standards and orientations on which it bases its review of the relevant parts of States Parties’ reports.

PART II: PREVENTING THE NEED FOR ALTERNATIVE CARE IN SYRIA

The Syrian Constitution stipulates that “the family is the basic unit of society and is protected by the State”, and also that “the State protects mothers and infants and extends care to adolescents and youths and provides them with the suitable circumstances to develop their faculties”.³

In recent years, the State in Syria has nonetheless come to play a relatively restricted and low-key direct role in the area of social protection, including child protection, and thus in several spheres relevant to preventing the need for alternative care, particularly at the secondary and tertiary levels of prevention. MoSAL receives a relatively small (though apparently growing) proportion of the State budget, NGOs receive a considerable and yet growing proportion of aids and services including financial assistance. As a result, interlocutors reported that coverage is very uneven and not guaranteed by the State, and that a comprehensive and coherent social development policy has so far been lacking. Basic social services in the country are limited in number, and there is no statutory child protection system as such.

The role of the Syrian Commission on Family Affairs (SCFA)

The SCFA was set up in late 2003 as an inter-sectoral policy-making body under the Prime Ministry “responsible for following-up child cases on the local level”. Recent SCFA activities include following-up the draft Child Rights Law which is expected to be a comprehensive legislation covering all child rights related issues but this requires further study⁴. Clearly, the SCFA is therefore a potentially key actor but, as mentioned in the Introduction to the present report, we were not able to have direct contact with the body and its real impact unfortunately remains unclear to us at this stage.

We gather that one of its first initiatives was the drafting of a Child Rights Law, but that this project is now singularly behind schedule⁵ and there is a lack of purposeful resolve to ensure that this vital legislative text is completed, considered and enacted.

Similarly, SCFA sought to promote the establishment of Family Protection/Planning Units that could serve as local inter-sectoral platforms to support families and better identify needs. SCFA has a role to play in policy formulation on measures for the care and protection of children, which is clearly perceived as an inter-sectoral issue where responsibilities also lie variously with MoSAL, MoJ, MoRA and to some extent with the MoI and MoE. We have been unable to determine the extent and effectiveness of this particular role in practice, however.

³ Constitution of the SAR, Article 44.

⁴ SAR periodical report (3&4) to the Child Rights Committee, 42009/3/

⁵ *ibid.* It was due to be finalised in the first quarter of 2009.

II.A. Poverty alleviation and access to services

Key issues

- Expected impact of poverty alleviation policies
- Data and needs assessments required to inform family separation prevention strategies
- Scope and coordination of community-based interventions and services

As noted under I.B. above, the Guidelines are clear as to the need for robust measures to tackle the basic reasons for which children can no longer live with their family. A full section (IV) of the document is devoted to preventing the need for alternative care” and the first of its 20 paragraphs states that:

“[State] policies should address the root causes of child abandonment, relinquishment and separation of the child from his/her family by ensuring, inter alia, [...] access to adequate housing and to basic health, education and social welfare services, as well as by promoting measures to combat poverty...” [Para. 32]

It is our understanding that, in this regard, the 11th National Five-Year Development Plan (2011-2015-), and its associated budget, is generally seen as a move in the right direction. Under the Plan, social protection has been given greater prominence and, as a result, the mandate and budget of MoSAL are expanded. A survey of the poor households in the country should see some half a million families benefiting from cash transfers designed to facilitate access to basic education and health services. Poverty alleviation is also the goal of other projects, such as those in peri-urban Damascus and Aleppo. A number of NGOs have made some initiatives in this regard such as the Syrian Society for Social Development (ESTA) which, for example, provides micro-credits and addresses active access to education and aims to ensure counselling for at-risk children.

We were also told that currently-planned family empowerment programmes should have an impact on child care, and that the National Development Plan paves the way for enhanced cooperation and technical assistance.

A fundamental problem in assessing needs in the social protection field, however, is the lack of comprehensive, disaggregated data regularly compiled and analysed so that trends can be identified and responses foreseen. Attempts to remedy this lacuna at the micro-level, such as Participatory Rapid Appraisals⁶ gathering views

⁶ This methodology is being used by ESTA, with the approval of MoSAL and sourcing technical support from a UK/Jordan NGO partner and funding from Syrian diasporas in the US.

on priorities and needs in several vulnerable communities, would seem to constitute good practice in this respect, but the inadequacies of data at national level remain intact.

Importantly, our interlocutors constantly made calls for much-enhanced community-based services to prevent and address negative social trends and the root causes of child neglect and other protection issues.

What appears evident from the above is that, however positive these individual initiatives to combat poverty and to provide accessible and relevant basic services may be, they are so far being carried out too often on a somewhat ad hoc basis rather than part of a concerted effort within a clear overall vision necessarily to be set out, promoted and monitored by the State. The present report gives examples at various points of how goals and responsibilities need to be clarified, and cooperation enhanced, in the child protection sphere.

Given the inadequacies to date in the social development framework combined with certain restrictions on the funding and operation of non-governmental bodies currently in place in Syria, we have to consider it still to be “challenging” for the private sector to attempt to respond to unmet needs in terms of prevention and, thereby, to contribute substantially to Syria’s international obligations in terms of the rights of children who are at risk of being without parental care.⁷

II.B. Maintaining children in their family

Key issues

- External kafala as valuable home-based support to biological families
- Potentialities for expansion and monitoring of kafala
- Required knowledge on profile and numbers of beneficiaries of kafala

The first “general principle” of the Guidelines (para 3) states that “efforts should be primarily directed to enabling the child to remain in, or return to, the care of his/her parents, or when appropriate, other close family members. The State should ensure that families have access to forms of support in the care giving

⁷ Notably, CRC Art. 18(2) requires that “States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities”, and Art 27(3) stipulates that “States Parties, in accordance with their means, shall take appropriate measures to assist parents [...] to implement [the child’s right to an adequate standard of living and shall in case of need provide material assistance and support programmes...”

role.” Many of this instrument’s other provisions develop this approach, setting out the kinds of material assistance and service provision that may need to be envisaged to this end.⁸

In Syria, external kafala appears to be by far a common way of enabling a child to remain with his/her parent(s) instead of being placed in a residential facility.⁹ It involves a private person (kafil) providing the parent(s) regular financial support for the child’s upkeep and education.

No overall figures are available as to the number of children supported in this way, and it was not clear to us, even in general terms, how widespread external kafala is and in particular to what extent its current coverage corresponds to the actual needs for this kind of support. Nonetheless, three rather different examples described to us are indicative of how it is organised.

Thus, one orphanage noted that, by facilitating external kafala, it alone is ensuring financial support for 2,000 children living with their families to meet expenses for food and clothes as well as education and health costs. The established rate for external kafala there is SYP 2,000 per month. In contrast, St. Gregarious Orphanage for Orthodox we visited, which is currently sponsoring just seven orphans living with their widowed mother, set the monthly amount needed per child at well over SYP 20,000 if private education was included, and almost as much as the quoted cost of caring for the child in the facility itself (see also Part IV.D.).

Hufez Al Nemah NGO is working on “Kafala Excellence Project” which is designed to ensure external kafala for children who are looked after within their vulnerable extended families and focuses on broad care needs: physical, educational, health and psychological. Currently some 3,100 children benefit from the scheme, for which the monthly sponsorship is set at SYP 3,000 (including SYP 500 set aside for emergencies). Various supplementary forms of in-kind support and access to specific services are foreseen according to requirements.

Although widows are said generally to prefer home-based support, if they re-marry the link with their children may be broken since the new husband frequently refuses to take them in. Widowers, it is noted, are far more likely to re-marry and again may then well resort to placing children of their first marriage in residential care. In this regard, it would be interesting to know whether the proportion of orphans and of children from dysfunctional families supported through external kafala is similar to that among the child population in orphanages (which is reportedly about, respectively, two-thirds to one-third)

⁸ For example, in Guidelines paras 3238-.

⁹ In contrast, internal kafala involves support for the child being given to a third party such as the residential facility where he/she is placed.

II.C. Reunification with the family

Key issues

- Challenges and capacities in supporting reunification of children with their family
- Case assessment objectives, duration and methodologies

As noted in the previous section, the first “general principle” of the Guidelines sets a policy goal of returning the child to the care of his or her family under appropriate conditions if separation has taken place, Guidelines paras 4952- in particular provide more detail on the actions to be foreseen in that respect.

We observed that there is general agreement among Syrian actors regarding the desirability of ensuring that children who come into contact with care and protection bodies can be, as a priority, returned to the care of their family.

Practical examples of this approach are the successful experience that the Centre for Homeless Children had, as a first step, with tracing the families of children who are referred to it, and completing a basic social enquiry form, on the basis of which the judge will issue her/his decision, which usually results in the child’s return. The Centre also has a mandate to undertake follow-up home visits.

However, promoting biological links to avoid institutionalisation is said to remain a challenge and it appears that in practice reunification may be effected without due regard to ensuring that appropriate conditions exist.

Thus, we were informed by one interlocutor that judges often make decisions on returning the child to parental care without a hearing, without taking into account the views of the child, and in most cases without considering the availability of any further support or follow-up measures.

According to another interlocutor, decisions to return a vagrant child to his/her family may be based more on the lack of non-custodial alternatives – which are foreseen by law but are not in place – than on the capacity and willingness of the parents to provide care. Indeed, we were told that, given the absence of community-based services, it would undoubtedly be preferable that judges order more rehabilitation placements, since

many children are simply picked up again from the street only a few hours or days after returning home. At present, however, like community-based services, appropriate rehabilitation programmes are almost non-existent.

We were also told that in some cases where parents actually refuse to take their child who is in conflict with the law back, they are obliged to do so by judicial order. While this measure may be accompanied by some form of mediation and support from a “behaviour observer”, the latter are insufficient in number (one per court) to be able to devote the required amount of time to each case, and the problems that caused the child’s initial vagrancy are therefore not resolved.

We were somewhat taken aback by one respondent, however, who felt it would be “inconceivable” to consult and work with parents of a vagrant (homeless) child with a view to the latter’s return, since those same parents are to be considered responsible for having brought about their child’s situation. While it is undeniable that, in some cases, it proves impossible to connect with parents in a positive and effective manner, a wide range of factors can result in a child’s vagrancy, and not just parental disinterest or fundamental incapacity. Hence, every attempt must first be made to identify the key problems and to involve and support parents with a view to the child’s return before resorting to other solutions.

¹⁰ We note that this is considerably more than the average salary in Syria.

PART III. FAMILY-BASED ALTERNATIVE CARE IN SYRIA

In most countries in all parts of the world, the great majority of children without parental care are looked after on an informal basis, whether by grandparents or other members of the extended family (kinship care) or by persons or families in the wider community. This reality is noted in the Guidelines,¹¹ and this recognition explains why the instrument sets out specific actions that should be taken by the State to support informal care settings where necessary and to ensure the child's welfare in such settings.¹²

Increasingly, because of concerns about the long-term negative effects of placement in large residential facilities, children who are found to be in need of alternative care by the competent authorities are placed, wherever possible and appropriate, with substitute families (foster-care) or in settings that resemble as far as possible that of a normal household (family-type homes). Thus the Guidelines also reflect the overall aim of developing family-based or family-type care options, with least possible recourse to residential facilities, and the development of a strategy to bring about the progressive deinstitutionalisation of the care system.¹³

As far as we can determine, Syria is among the countries that view alternative care somewhat differently, and under present conditions, the role of and the potential for developing family-based care appears to be rather limited in the country.

We recognise that the way the family in Syria is perceived may well imply a number of restrictions on the role it can play in alternative care, particularly with regard to fostering unrelated children. One respondent indeed opined that such family substitute care is in principle against Islamic traditions and values.

At the same time, we note that the Syrian Authorities have to some extent accepted that, under certain conditions, foster care can be envisaged in the country – although this may be intended to refer in present practice more specifically to *el haq* (for foundlings only), which would in fact be a form of “foster care” to be seen as closer to adoption in terms of the permanency and emotional ties that it implies.

“The laws in effect in the Syrian Arab Republic do not recognize the system of adoption, although they do require that protection and assistance should be provided to those for whatever reason permanently or temporarily deprived of their family environment and that alternative care should be assured them through foster placement and *kafalah*, in care centres and special institutions and, without assimilation to their blood lineage (*nasab*), by foster families, in accordance with the legislation in force based on the principles of the Islamic Shariah.”

The lack of temporary or long-term family-based solutions in Syria for those who cannot live in their family and are not eligible for *el haq* is nonetheless striking. We believe there is room for considering certain additional options that could be culturally acceptable and compliant with Islamic Shariah. It is our understanding that forms of foster care also exist in certain other countries with Islamic Law or traditions and are proving successful overall. Might it be feasible, as just one example, to envisage the extension of *kafala* to include a system on the lines of Russia's *patronat*, whereby children in residential care are placed with surrogate

¹¹ Guidelines para 18.

¹² Guidelines paras 76 -79.

¹³ Guidelines paras 21- 23.

Communication from the Government of the Syrian Arab Republic to the UN Secretary-General, received 6 May 1996, with regard to the objection by the Government of Germany to its reservations.

parents by, and under the continuing responsibility of, the care facility concerned? In our view, it would be highly desirable to examine the possibilities that could exist, and we would encourage any interest in examining to what extent and under what conditions fostering might be compatible with Islamic values on the basis of experience elsewhere.

At the same time, certain interlocutors questioned the extent to which foster-care in Western countries produces positive outcomes for the children. Indeed, we agree that the emphasis on family-based alternative care in Western countries has in some cases resulted in an over-reliance on such placements, to the detriment of measures to prevent family breakdown and even when they do not meet the individual child's needs, circumstances and desires. Inappropriate use of foster-care can lead to serial placements of children who cannot adjust to such settings, which is clearly not in their best interests. Overall, foster care by correctly prepared and supported families has nonetheless been found to meet the needs of many children, particularly younger children temporarily without parental care, in Western societies. Once again, however, it must be part of a wide range of alternative care options that can be envisaged for a child, with the choice based on his/her individual needs and situation.

While bearing in mind the above, on the basis of the information made available to us we will limit ourselves in this report essentially to examining the options of kinship care and *el haq*.

III.A. Kinship care

Key issues

- Care by extended families as a valuable family-based substitute care option
- Potentialities for expansion, monitoring and financial support to kinship care
- Required qualitative and quantitative information on current practice

Although it is recognised that in Syria “a large number of orphans live with their relatives”,¹⁵ the real scope of such informal kinship care seems to be unknown.¹⁶ As a result, the various protective and supportive initiatives that could be taken in respect of these children and their carers – in line with the Guidelines (see above) – cannot be effectively envisaged and implemented.

[to CRC Articles 20 and 21] made upon ratification. Available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en#51

Despite this reference to “a large number”, and while it was stated by one respondent that more support was needed for encouraging the involvement of extended families, our interlocutors were generally sceptical about the significance of kinship care and the potential for increasing reliance on it.

Thus, according to one, extended families generally become interested in a related male orphan only once he is of an age to become a productive member of the family. Orphaned girls, on the other hand, are often seen as a burden, with marriage being the main option for them. Another noted that extended families would rarely accept to take care of a child who had been in conflict with the law, even for a petty offence, because of societal reprobation.

To our consternation, the director of one orphanage even doubted that relatives, let alone strangers, could give a child the required degree of love and guidance, especially when they have children of their own – our experience, especially with informal care by grandparents, would not bear this out. That said, one remark tended to leave a window of opportunity slightly ajar: he opined that the main reason for which extended families may be reluctant to take care of an orphan is poverty. If research were to verify this view, it may enable examination of possibilities for providing necessary support to the extended family as carers in a wider range of situations.

Among the questions that consequently remain for us at this time are:

- Do children other than “orphans” also live with relatives for various reasons, and if so, what are those reasons and how many children are involved?
- Do conditions in informal kinship care meet the needs of the children concerned, or is there justification for envisaging targeted support and/or monitoring?
- To what extent are non-relatives involved in informal care arrangements?

We also wonder if offering “family allowances” or other financial aid to kinship carers might prove to be an effective way of promoting this practice, identifying these situations and, of course, providing necessary support.

¹⁵ Second Periodic Report of the SAR to the CRC, 15 August 2000 (UN Doc. CRC/C/93/Add.2)

¹⁶ This is a widely-encountered problem. Thus, in its considerations resulting from the Day of General Discussion on “Children without parental care” (2005), the Committee on the Rights of the Child “note[d] with concern the lack of data and statistics on the number of children without parental care. In particular it notes that there is a lack of data regarding children who are in informal care, e.g. cared for by relatives, or who are entirely without care, such as children living on the street.” (UN Doc. CRC/C/153, para 681)

III.B. El haq

Key issues

- El haq as a valuable permanent family-based substitute care option
- Required application, matching, preparation and follow-up criteria
- Required inter-sectoral and independent decision-making process and mechanism
- Potentialities of kafala as a foster care alternative for children and adults not fulfilling el haq criteria yet willing to live as a family.

The form of alternative family-based care known as el haq constitutes “attachment contracts” with applicant couples, but it is applicable only to foundling children who are abandoned, not to those who are relinquished by identified parents, orphans and other children deprived of parental care (unaccompanied or separated children, children whose parents are unable to care for them or are deprived of parental rights, etc.). It is generally assumed that the majority of foundlings are children born out of wedlock, but no reliable data exist on the causes of abandonment.

Potential carers under el haq must fulfil the criteria foreseen in the “Foundling Care Legislative Decree No. 107 of 1970”, which regulates the status of abandoned children and their potential placement. The Law is complemented by Decision 819 (1981), 1043 and 1014 and 1046 and some guidelines drawn up by MoSAL, but is also interrelated with broader pieces of legislation such as the Personal Status Law.

Applicants must submit all necessary information to the Zaid Bin Haretha House for Foundlings in Damascus or Kafalat Al Tufula Association for Foundlings in Aleppo. A specialised committee at the institution prepares a detailed case study of the family requesting el haq and grants its initial approval. Afterwards, the application is referred to MoSAL for the signature of the el haq contracts. In some cases, MoSAL may conduct a second interview with the family to guarantee the child’s best interest. MoSAL staff meet with the applicants before allowing the process to proceed, but we gather that there is no special preparation of the prospective carers for their future parenting tasks. To avoid any risks of conflict of interest, whether for MoSAL or the Foundling Institute, we feel that it would be wise to foresee a transparent inter-sectoral procedure that would better guarantee the independence and appropriateness of the decision-making and review process. In this respect, one interlocutor contended that judicial supervision needs to be introduced in regard to alternative care placements, especially el haq, so that a competent judge decides on the placement, or is at least involved in inter-sectoral follow-up commissions.

The applicants' wishes in terms of gender and age are taken into account, and we were told that three children corresponding to their request are generally presented to them. They can then select the one with whom they feel the most spontaneous bonding, meaning that there is no professional "matching" between the capacities of the applicants and the particular needs of the child, which is to be regretted. On the other hand, we were informed that the institution ensures follow-up contacts for two to three years, notably through requiring quarterly visits by the family to the institution during that period.

On average, some five children – generally newborns – are placed in this way every month. Placement of older children is said to be rare, with some preferring to remain in the Orphanage as they consider it to be their home. There is currently a waiting list for boys. We were told that, in recent years, there has been only one case of a child being returned to the orphanage: a boy of 12 whose carers had surrendered him after many years when they had a biological child.

There seems to be general agreement that, in spite that about 60 such placements took place each year in average, el haq is not sufficiently developed as an alternative family-based care solution. Indeed, UNDP had an initiative to assess the needs and possibilities for making el haq contracts easier. In principle, however, potential amendments would still only apply to abandoned children, and would thus not involve looking to widen the scope of the law to other children in need of alternative care. This contrasts with kafala as practised in many other Islamic countries, where the kafil is both the guardian and the direct caregiver, and which "has been sanctioned by Islamic injunctions for the care of children who were either orphans, destitute, or abandoned [and] can also be available for children who are taken up by childless couples from orphanages or even biological children of other family members or friends."¹⁷

Again, all moves to expand possibilities for family-based alternative care are clearly to be encouraged. Thus, if the review of legislation regarding el haq can lead to such expansion, this will be a positive step. However, it remains vital in our view to examine how kafala or similar practices can also be adjusted to enable more children to be cared for in a family setting when parental care is unavailable.

III.C. Note on adoption

In Syria as in most other countries of Islamic Law, full adoption (in the sense of CRC Articles 20 and 21) is prohibited, and Syria notified a reservation to these two articles upon ratification¹⁸ to clarify that it did not "recognise and/or permit the system of adoption", a stance that is in any case explicitly allowed for under CRC Article 21. In its latest report to the CRC Committee, Syria confirms that the above-mentioned reservation has been withdrawn, and we understand that this decision was made in 2007.

¹⁷ Shabnam Ishaque, "Islamic Principles On Adoption: Examining The Impact Of Illegitimacy And Inheritance Related Concerns In Context Of A Child's Right To An Identity", *Int. Jnl. of Law, Policy and the Family* Vol. 22 (3) pp. 393420-.

¹⁸ "The Syrian Arab Republic has reservations on the Convention's provisions which are not in conformity with the Syrian Arab legislations [sic] and with the Islamic Shariah's principles, in particular the content of [...] articles 20 and 21 concerning the adoption." In a later communication (referenced under footnote 9), the Authorities specified that "[t]he reservations of the Syrian Arab Republic to articles 20 and 21 mean that approval of the Convention should not in any way be "interpreted as recognizing or permitting the system of adoption to which reference is made in these two articles and are subject to these limitations only."

The Roman Catholic community was the first and only one to broach the question of adoption in its Law No. 31 in 2006. During our mission, we were informed that about six adoption cases had been approved since that time, but that the practice has now to all intents and purposes been ended. Syria's report to the CRC Committee, submitted in 2009, indeed states that adoption is permitted in Christian communities in accordance with their laws of personal status.

To the extent that the Christian minority might wish to make use of adoption, where appropriate and in conformity with international standards, we urge the review, in consultation with that community, of any generalised prohibition or obstacle to their doing so.

¹⁹ SAR Periodic Report (3 & 4) to the Committee on the Rights of the Child, 4 March 2009, para 171.

²⁰ We can find no record of the withdrawal of this reservation in the relevant section of the website of the Office of the High Commissioner for Human Rights, however, and therefore wonder if it has been officially notified.

PART IV: RESIDENTIAL ALTERNATIVE CARE IN SYRIA

IV.A. Purpose of alternative residential care

Key issues

- The twofold purpose of residential care
- Protection needs and objectives
- Protection while in residential care

Paragraph 1 of the Guidelines highlights the twofold objective of any form of alternative care: “the protection and well-being of children who are deprived of parental care”. As far as residential care in Syria is concerned, this norm presents several challenges.

Child care professionals met during the assessment mission and the residential settings visited strongly reflected a common concern for the well-being of children. Even in facilities where material conditions could hardly guarantee the attainment of a high level of physical well-being or recreational opportunities which could have contributed to such well-being, professionals were caring and children considered as deserving such care. The assessment is less positive in terms of the other core objective of protection.

The purpose of ensuring the protection of children deprived of parental care placed in residential care is not clearly defined or supported in Syria. While some children are clearly placed in residential care for their immediate protection (e.g. abandoned babies brought to the Foundlings’ Institute, child victims of exploitation, homelessness or begging placed in temporary custody), the great majority of children in residential care live in orphanages because their remaining parent or their extended family cannot or does not want to bear the financial burden of taking care of them. Placement in residential care responds mainly to material deprivation and/or rejection of children from their biological family, especially after remarriage of a widow or widower. Hence, it appears to be offered as a charitable service to families in delicate situations, rather than as a response to the child’s needs, best interests and protection per se.

Also and increasingly, orphanages receive children from what is being referred to as “dysfunctional families”, where for example one or both parents are sick, substance abusers, etc. On the one hand, the level of danger that children would face if they remained in their family is not evaluated in a systematic manner, or even used as a core criteria for placement in residential care. The support measures that would be required to prevent such risks and enable the child’s return after temporary or emergency placement, for example, are

not elaborated on. On the other hand, due to the absence of a fully-fledged child protection system in Syria - and possibly to a culture of non-intervention by the State in family life, counterbalanced by religious and community support - other children who are at risk in their homes are reportedly neither identified nor placed in residential care.

Secondly, protection of children while in residential care is not highly reflected in the regulation and practice of residential institutions. Once again, good common sense and a sincere wish to ensure children's well-being appear to govern most care facilities, but there are no common standards in place to prevent, report, address and redress potential abuse or neglect that may take place. Several institutions have placed security cameras in their buildings and sanctions such as dismissal of staff are foreseen in case of any misconduct. But such measures are essentially ad hoc and taken at the initiative of each institution's management.

The assessment was too limited to provide an actual mapping of the protection context (levels of risks, incidence, and existing protective measures). Yet, an in-depth survey in all residential institutions, the establishment of confidential consultation and reporting mechanisms, independent and individual counselling or monitoring tools, participatory processes counterbalancing hierarchical structures could all be used to expand opportunities for children and staff to prevent, express or address concerns of violence, abuse or neglect, both between children and adults, and among peers. The fact that residents of most orphanages attend local schools, have external social activities and the possibility to receive visits from family or friends, can act as a very positive and strong protection mechanism in itself. However, some orphanages also operate as boarding schools and may therefore not be as open to external contacts and observers. This enhances the deficit of protection in this type of collective setting, which has been recognised internationally as being particularly prone to systematic child abuses and risks .

Finally, several interviewees from orphanages shared the sincere belief that children were "better off living in the orphanage than in their own family". Such statements exemplified their central concern for children's well-being and the quality of care in their institution, but reflects a misinterpretation of Paragraph 2(a) of the Guidelines, which specifies that various sectors should seek in particular to "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". While orphanages in Syria do serve the purpose of offering a permanent solution to children deprived of parental care, they may not receive sufficient encouragement and support in trying to return them to the care of their family. This may indicate a need to consider establishing an external or independent "gate-keeping" role to ensure that this is done.

¹⁹ At least, the two orphanages supervised by the Ministry of Religious Affairs (see section below).

²⁰ UN Secretary General's Study on Violence Against Children – Chapter 5: Violence against children in care and justice institutions, pp. 175220-, Geneva 2006.

IV.B. General Principles applied in residential care

Key issues

- Scope, location, duration and type of residential care
- Causes and standards of placement in residential care
- Children under the age of three in residential care

While it is extremely difficult to evaluate the number of children in substitute family-based care - from informal kinship care to different forms and degrees of foster placement - the number of children in residential care should in principle be easily known and monitored by the State. In the Middle East and North Africa, the tradition of institutionalisation remains limited, so these numbers are generally relatively low.

Source: Progress for children N°8, A Report Card on Child Protection, UNICEF, 2009, p. 19.

In Syria, official figures of children in residential care are available, but some imprecision remains that should be clarified:

| Temporary custody of child vagrants and beggars | Type of care/ Year | 2010 | ... | 2002 | 2001 | 2000 |
|---|---|---|-----|------|------|------|
| | N° of children | 250 (May-Sept) +16 (Dec.) +... (no details for other months of the year 2010) | ... | 92 | 76 | 47 |
| Sources and comments | <p>Source for 2000-2002- is the response from Syria to the CRC Committee's list of questions (2003). This is certainly end of year "stock" data, which:</p> <ol style="list-style-type: none"> 1) can be misleading as the number of children in such care varies a lot according to the time of year (i.e. much higher in summer) 2) "flow" data from this type of care would also be necessary to reflect these variations. <p>In addition, other groups of children who require care but are also held under the JDI system, such as exploited and abused girls, should be accounted for.</p> <p>The figures presented here for 2010 were shared by the Centre for child vagrant and beggars during the assessment. They illustrate annual variations and include both boys and girls in need of care.</p> | | | | | |

| | | | | | | | | |
|---------------------------------|----------------------|---|------|------|-----|------|-----|------|
| Residential care for foundlings | Type of care/ Year | 2000 | 2001 | 2002 | ... | 2007 | ... | 2010 |
| | N° of children | 128 | 209 | 148 | ... | 130 | ... | 176 |
| | Sources and comments | <p>Source for 20002002- is the response from Syria to the CRC Committee's list of questions (2003) and for 2007 it is the 2009 Periodic Report of Syria to the CRC (yet to be examined). Both sources mention foundlings' institutions in both Damascus and Aleppo. Source for 2010 is the Damascus Foundlings Institute, as the assessment team was informed that this is now the only residential facility authorised to register foundlings for el haq (see below at IV.C).</p> <p>The systematic collection and publication of both stock and flow data would also be needed for this type of care to reflect the dynamics of entry and exit of children, notably babies placed through el haq.</p> | | | | | | |

| | | | | | | |
|-----------------------------------|----------------------|--|------|------|-----|------|
| Children aged 6- 18 in orphanages | Type of care/ Year | 2000 | 2001 | 2002 | ... | 2009 |
| | N° of children | 2725 | 2502 | 3217 | ... | 3122 |
| | Sources and comments | <p>Source for 20002002- is the responses from Syria to the CRC Committee's list of questions (2003) and for 2009 (although it may refer to an earlier period) it is the 2009 Periodic Report of Syria to the CRC (yet to be examined). This latter figure includes 2430 children in orphanages supervised by MoSAL, 320 in two others, and 372 in three orphanages for Palestinian children.</p> <p>These figures may include a few exceptions of children who are actually below 6 or above 18.</p> | | | | |

The potentially harmful impact of residential care on children has been largely documented throughout the world . This is one of the reasons why the international community has agreed that the objective of residential care “should generally be to provide temporary care and to contribute actively to the child’s family reintegration or, if this is not possible, to secure his/her stable care in an alternative family setting” (Para. 123 of the Guidelines).

A number of general principles of alternative care enumerated in the Guidelines were found to be applied in Syria either spontaneously, or through established processes and practice, in residential settings. For example, the practice of keeping siblings together to avoid separation by placement (Para. 17) appears to be established. The principle of “maintenance of the child as close as possible to his/her habitual place of residence” (Para. 11) is generally followed for children placed in orphanages, as the country hosts 30 orphanages under the administrative supervision of MoSAL and two under the responsibility of MoRA, disseminated throughout the territory. Needs for this type of residential care appear to be well covered by existing facilities managed by the different communities and civil organizations, although there are certainly disparities in quality and organization of care, and some differences in admission criteria. The orphanage where abandoned babies are received and registered is an exception as this is the only institution with such a mandate in the entire country.

Another challenging aspect of the implementation of this principle concerns homeless and begging children. Only one centre, located in rural Damascus, specialises in the reception and temporary custody of such children. A majority of its residents who have been picked from the street by the police actually come from provincial areas, and are therefore placed far away from their habitual place of residence until their family can be located. In contrast, begging and homeless children found in the provinces cannot benefit from the specialised intervention of this centre, and are instead placed in local “observation centres” together with young offenders in what is basically pre-trial custody. In this specific case, the principle of maintenance of children as close as possible to their place of residence is clashing with their best interests. Rather than suggesting their transfer to the centre in Damascus, this situation calls for the development of other types of community-based support or temporary residential placement in the provinces for such children (see section V below). In its periodic report to the UN Committee on the Rights of the Child, the government is announcing the creation of two additional such centres .

The other important principle of “safe and continuous attachment to their caregivers, with permanency generally being a key goal” (Para. 12) appears to be well followed in orphanages, including in the Foundlings’ institute. The methodology of appointing a full-time surrogate mother and part-time surrogate aunt to a small group of child residents is common practice and promoted as a fundamental factor of attachment. It

²³ See, for instance: Keeping Children Out of Harmful Institutions, why we should be investing in family-based care, Save the Children, 2009.

²⁴ The governmental report to the UN Committee on the Rights of the Child published in March 2009 (C/CRC/SYR 34-, para.168) mentions 35 orphanages, but the MoSAL list available in December 2010 only contained 30. Some may have closed down or merged since 2009, or be listed separately, and the original figure of 35 may include the two orphanages managed by the Ministry of Religious Affairs.

would be valuable, however, to obtain quantitative data from all institutions in the country on the average length of employment and staff turn-over to confirm the general impression of strong stability conveyed during the assessment.

However, the permanency element could be said to be excessive in orphanages, in light of the prime objectives of temporary care, family reintegration or transfer to family-based substitute care quoted above. Except for foundlings who may be adopted through *el haq*, essentially during the first months of their lives, the overwhelming majority of children who enter residential care do not exit before they turn 18 years of age. This is due to the limited possibilities of transfer to family-based alternatives in the Syrian context (See Part II), but may also be due to the reluctance of residential facilities to develop and support such options, once the children have been taken into residential care. Children who enter an orphanage are perceived as integrating a big “new family” to which they then belong permanently until they enter adulthood and beyond.

Despite the family-like organisation of daily life, these institutions host several dozen to several hundred children and are therefore intrinsically different from family-based options in terms of individualised care and identity. Paragraph 23 of the Guidelines suggests that deinstitutionalisation efforts should be made with a view to enabling only the most adequate forms of residential care to remain. It states:

“...where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalisation strategy, with precise goals and objectives, which will allow their progressive elimination. To this end, States should establish care standards to ensure the quality and conditions that are conducive to the child’s development, such as individualised and small group care, and should evaluate existing facilities against these standards. Decisions regarding the establishment of, or permission to establish, new residential care facilities, whether public or private, should take full account of this deinstitutionalisation objective and strategy”.

Syria does not currently have a deinstitutionalisation strategy and this preliminary assessment may contribute to further reflections as to whether it would be needed at all. Still, already now, the above principle could be taken into account to address on-going developments. Two of the few residential facilities that it was possible to visit during the assessment mission have plans to relocate and/or expand. In one case, these plans indeed respond to the need to operate in smaller units and to allow better integration into the local community (e.g. by opening recreational and kindergarten facilities to external users). In another case, the plans seem to constitute a mere expansion of the physical capacity of the facility to potentially host more children, in disconnect from broader strategic planning of residential care needs.

²⁵ See C/CRC/SYR 34- para 267 i .

Paragraph 15 of the Guidelines stipulates 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 parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family”. One statement from a staff member of an orphanage exemplifies the fact discussed above that in Syria the purpose of placement may often be material deprivation: “Reunification with the family is an “ideal”, but we only had two cases in the past five years, due to a sudden improvement of the family’s financial situation.” This is a serious concern and calls for a systematic review of placement of children in residential care to evaluate whether in some cases family-based support could not be given instead of long-term residential care, taking into account the success and further potentialities of external kafala (see Part II.B). If an agreement on necessary conditions and standards for placement of children in residential care could be established at the national level, the creation of local control or advisory mechanisms would ensure the adequate implementation of such standards.

Finally, “in accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of three years, should be provided in family-based settings” (Para. 22). This is a challenge for the Syrian residential care system. The possibility of avoiding the placement of abandoned children under three at the Foundlings institute by, for example, having them cared for by surrogate mothers at their homes was mentioned but did not appear to be applicable because it is believed that it would discourage el haq. Care by the surrogate mother would be interpreted by potential adoptive parents as a pre-existing bond. It would also challenge current modes of supervision of the quality of care. In addition, the current number of children under the age of three in other orphanages is thought to be low, although no central database exists. Still, any further strategic reflections and debate with key players on alternative care for children in Syria should first focus on this age group to explore possibilities of reducing residential care that would be culturally acceptable and rapidly applicable, so as to protect these children from the negative impact of early institutionalisation in collective settings and to limit any unnecessary inflow of children into the overall residential care system.

IV.C. Residential care for abandoned children (“foundlings”)

Key issues

- Naming and status of foundlings
- Regulation of roles in registration, tracing and placement of foundlings
- Periodic review of and financial support to foundlings in residential care

Legislative decree No. 107 governing foundlings care stipulates the following:

- a. If a foundling is found, the person who found him shall inform the police or area chief immediately in order to compose the necessary report sheet. The foundling shall be handed over to one of the institutions or persons authorized by the Ministry of Social Affairs and Labour, which shall compose a birth certificate and then be registered in the Civil register. The foundling shall be given a name, father’s name, mother’s name and grandfather’s name as a family name, or otherwise suggested by care homes in terms of the foundling’s name without noting the word foundling in the documents granted to him.
- b. The foundling shall be considered a Muslim Syrian Arab born in Syria in the place where he is found, unless proven otherwise.
- c. Practically, a foundling is:
 1. The child whose parentage is unknown and who is not supported by any legitimate person
 2. The child who is lost and unable to indicate who his parents are because of being very young or being mentally ill or deaf and mute and his family is not trying to get him back

In practice, there are just two institutions in Syria (in Aleppo and Damascus) with responsibility for caring for foundlings; both register them for el haq. Since 2003, this institution – the Zaid Bin Haretha Orphanage for foundlings (hereafter Foundling Institute) – is jointly managed by governmental staff and Rainbow NGO and since 2009 with association Alrajaa Fund. It receives any child without identified family and its legal responsibility extends till they turn 18, and practically, even beyond such age. Yet, most entries are new born infants brought by the police or from maternity hospitals.

The assessment team noted that the Foundling Institute currently plays an important role in several aspects of foundlings’ status, registration and potential placement, beyond its role as care provider.

Firstly, children reportedly used to receive the name of the institution, which clearly labelled them. The Foundling Institute's new management's policy is to give them "normal" names to avoid stigma. Hence, a practice directly related to the fundamental principle of non-discrimination and to the right to a name has positively evolved thanks to the institution. Yet, according to the CRC, such practice should be regulated and guaranteed by the State and, according to a representative of MoRA, the issue is however not properly solved, as giving a fake father's name is also harmful and against Islamic law, which may lead to further problems for the child. This issue should be addressed through an open consultation process, as part of the potential amendment of the law. Whatever the final decision will be and as a safety net, "article 12 (respect for the child's opinion) and article 19 (protection from harm) should also be considered in relation to naming. The right to a name from birth is unavoidably a matter for adult caregivers or the State; babies can play no part in choosing their name. However, provision should be made so that children can apply to appropriate authorities to change their names at a later date" .

Secondly, the Foundling Institute appears to play a crucial role in tracing. The Institute's own staff undertakes tracing efforts, if there is any indication or hope of finding the family. Again, while this is certainly a good practice – more hands-on and less offensive than police procedures – it does not appear to be clearly regulated, in terms of responsibility, respective roles and necessary steps to be taken by the Institute's staff. Tracing is usually very challenging, if not counterproductive. One example was given to the assessment team where the origins of a 23- year old boy who could give the name of his home town were traced. He was found to be born out of wedlock, which exposed the mother to the extreme risk of honour killing. Since the majority of foundlings are generally believed to be born out of wedlock, the tracing policy and process should be carefully planned. It should also include the obligation for some degree of periodic review . Indeed, with the introduction of the new management in 2010, 14 children were reportedly identified as actually having a family to which they could be reunited with some support from the institute. While such a step is most welcome, it should be ensured that it does not remain a one-off initiative, but that instead the situation of each child is regularly reviewed.

Finally, as explained in Part III, the Institute plays an important role in el haq, both in responding to the applicants and in monitoring placement.

The Institute cares for children living by age groups in rooms of 6 to 8 with surrogate mothers employed and present 5 days a week and surrogate aunts present on the two remaining days of the week. Children go on holiday outings with their surrogate mothers. Surrogate mothers receive some training and security cameras have been installed in all the rooms. There is one resident doctor, but children are taken to town for any additional health care. They go to public schools in the neighbourhood, except those for whom kafils

²⁶ Art. 2.1 of the UN Convention on the Rights of the Child: "State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child or his or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national ethnic or social origin, property, birth or other status".

²⁷ Art. 7.1. of the UN Convention on the Rights of the Child: "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents".

pay for private education (currently 17 go to private schools). At the age of 18, boys have to do their military service and the institution then helps them find a job.

At the beginning of 2010, the institution hosted 176 children. Since then, two of them married each other and 14 were reunited with their family, as mentioned above. In December 2010, during the assessment visit, there were 10 infants (03- months), 7 toddlers (4 months – 1 year), 90 children of up to end of compulsory school age (111- years) and 46 teenagers (1218- years, 16 girls and 30 boys, including 9 with special needs).

Staff members explained that material conditions recently improved. The building and the rooms were quite lively and each section has its own kitchen, study room, recreation room. The management promotes the construction project of a new modern complex with small independent units, more integrated in the local community, to which they hope to move in the coming years. While the living conditions are decent, it is indeed striking that the Foundling Institute is less furnished and more crowded than the two privately run institutions for orphans visited in Damascus. This possibly reflects the lower social status that foundlings traditionally have, as compared to orphans, and the resulting direct responsibility for this institution by the State, rather than by a charity organisation. Efforts made by MoSAL and the managing association contribute to fight such de facto discrimination. However, a system of financial redistribution or regulation between all residential care institutions across the country could be a way of making such efforts more sustainable.

In Syria, kafala enables volunteer financial and material support to residents of orphanages (internal kafala, as opposed to external kafala to orphans of families in need). Most orphanages refer to civil organizations and receive higher donations as compared to foundlings' institutes. In accordance with Islamic traditions, people may send money, food, clothes or presents. The new management of the Zaid Bin Haretha institute has limited the number of kafil (sponsor) to one per child to enhance their responsibility and regularity. They ensure that all children receive presents during kafils' monthly visits and do not allow children to know their kafil or whether they have one, to avoid any injustice. These changes have been implemented through an awareness-raising campaign among kafils and volunteers attached to the institution. Once again, this practice is an initiative of the new management. kafala is implemented differently in other orphanages. Kafils may or may not select and know their sponsored child. If so, they may meet him/her occasionally at the orphanage in the presence of the team. Such differences may constitute inequalities of treatment or unequal levels of protection for children in residential care. This could be addressed through the development of common standards and best practices for the implementation of kafala by all concerned institutions.

²⁶ Implementation Handbook for the Convention on the Rights of the Child, UNICEF, 2007, pp.102 - 103

²⁷ Art. 25 of the UN Convention on the Rights of the Child: "State parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement".

IV.D. Residential care for orphans and “social orphans”

Key issues:

- Children’s contacts with their family, information, choice and identity
- Financial sustainability and cost-effectiveness of residential care vs. home-based support to families at risk
- Potentialities of residential care institutions to act as resource centres for early intervention, continuous support and social change.

Despite initial plans to visit several residential care institutions in the province, weather conditions only enabled the assessment team to visit two traditional orphanages in Damascus: the St. Gregarious Orthodox Orphanage, Rahma Orphanage for Girls of the Muslim Foundation Al Ansar. The former has capacity for 35 children (with plans to expand to 60) but currently hosts 20 boys, including three who are now above the age of 18. The latter hosts 185 girls from 3 to 18 years old. Residents from both orphanages are single orphans or “social orphans” of dysfunctional families.

Both institutions are warm settings with decorations and small sized home-like spaces (kitchens, dining rooms and bathrooms) as well as some common activity rooms and bedrooms. Teenagers in St. Gregarious Orthodox Orphanage sleep in a 6-bed room, while younger ones sleep in a dormitory with a capacity of 24 beds, in which a staff member also sleeps. Girls in the Rahma Orphanage live in 12 family-like apartments of about 15 girls of different ages each, together with a surrogate mother. Both have an element of “inclusion”: The Orthodox institution is also a home for the elderly, while the Muslim orphanage hosts a kindergarten open to local children. The residents are very socially active, with the support of various local organizations and community groups. We were informed that extended families may visit or take their child home on week-ends and, in the Muslim orphanage, some weekly meetings are organized for mothers and some home visits are undertaken by the team. We do not know, however, to what extent these opportunities are taken up and how many children benefit from them and how regularly.

Most general conditions applying to all forms of formal alternative care arrangements listed in the Guidelines for the Alternative Care of Children, from Paragraph 80 to 100, appear to be generally respected by the management and staff of both institutions and to be taken for granted in Syria when it comes to orphans. In

³⁰ Orphanage for Girls of the Muslim Foundation Alanzar

particular, health, nutrition, education and religious life are given high priority. But a few specific Paragraphs would merit additional attention. Paragraph 81 states that “the child should have access to information on the situation of his/her family members in the absence of contact with them” and Paragraph 82 specifies that those with parents in detention or in hospital should have the opportunity to maintain contact with them. It is unclear to what extent this is implemented at all, and if so whether it would be considered as an obligation by staff or as a mere option.

Paragraph 94 stipulates that “all carers should promote and encourage children and young people to develop and exercise informed choices, taking account of acceptable risks and the child’s age, and according to his/her capacities”. We do not know to what extent children in residential care exercise or feel they exercise informed choices. There are no indications or standards, beyond staff’s or institutions’ individual practice of whether children of evolving ages and capacities are given various degrees of choice and freedom, or whether boys and girls have equal rights and opportunities in residential care. Another concrete practice that was not heard of during the assessment but which could inspire professionals in residential care is put forward in Paragraph 100: “To promote the child’s sense of identity, a life story book comprising appropriate information, pictures, personal objects and mementoes regarding each step of the child’s life should be maintained with the child’s participation and made available to the child throughout his/her life”.

In line with international human rights law, Paragraph 96 prohibits “all disciplinary measures constituting (...) any forms of physical or psychological violence (...) [including] restriction of contact with members of the child’s family and other persons of special importance to the child”. There again, the assessment did not allow to gain any insight into the issue of discipline, or institutional violence. Paragraph 99 suggests one way of actually collecting information and enabling intervention and improvements on the above questions, if needed: “Children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement. Such mechanisms should include initial consultation, feedback, implementation and further consultation. Young people with previous care experience should be involved in this process, due weight being given to their opinions. This process should be conducted by competent persons trained to work with children and young people.”

The budget of these orphanages, and reportedly of most of them across the country, is essentially covered by regular private charity donations. The management is autonomous. Only routine information is communicated to MoSAL. In one, the cost of care is on average SYP 27,000 per month. In the other, the cost of care was not specified, but the established rate of internal kafala is SYP 7,500 per month . These figures highlight the substantial cost of residential care for society. Even though the various religious communities spontaneously contribute to these costs, one may wonder what the situation of children placed in residential

care would be if religious donation traditions were to be gradually abandoned by the new generations. Would children be sent back to their families and, if so, could they not have remained with them in the first place? Or would orphanages continue to exist with minimal budgets, putting at risk quality standards of care? Also, the fact that external kafala facilitated by the Muslim orphanage enables material support to some 2,000 children living with their families (see Part II on prevention) makes one wonder whether far more children could be supported in their families if less budget was invested in residential care. These questions call for a needs assessment and cost-effectiveness study to be undertaken with the participation of all residential care institutions in the country, to map out resources, services and costs of support to children deprived of parental care or at risk of being deprived of parental care across the country.

The team also visited the Special Education Institute for the Rehabilitation of the Blind. While children hosted in the boarding section of this institute are not deprived of parental care, the visit greatly informed the assessment on the situation of children with disabilities and good practice in related policies, which may be replicated in the field of children at risk of being deprived of parental care. In particular, the central and ultimate goal of the institute is rehabilitation and community integration, rather than care and education only. Work with parents to restore their self-esteem and their faith in their child's ability, and to avoid their potential social exclusion is key. The institute organizes monthly parents' meetings, media involvement, public social and cultural events with parents and children, as well as courses for parents to support their child and address their vulnerabilities. Early intervention is also developed through communication with identified new parents and referral to a nearby specialized kindergarten.

In the past 5 years, there is said to have been a remarkable qualitative leap in the acceptance and support to the disabled, thanks to initiatives from the State to support the positive evolution of the notion of disability first among mothers, and then fathers, and society at large. Ignorance about the availability of services was also an issue. Yet, since 2005, MoSAL has established inter-sectoral teams at local governorates level composed of health, education, social affairs representatives jointly in charge of automatic referral to services at birth or upon diagnostic/identification of a disability. They also keep a database of concerned families and ensure outreach work to inform them of options. This initiative is grounded in Law No. 24 of 2004 and the National Plan on Disability of 2008. Although impact will be measurable in the longer term, there is already noticeable change in attitudes and disability is generally no longer a cause of abandonment or relinquishment. Similar initiatives could be taken in the field of social exclusion to support the parents or relatives of orphans, children born out of wedlock and children from dysfunctional families, so that religious, economic and social barriers to their full integration could be gradually addressed.

IV.E. Temporary custody for homeless, begging, exploited and abused children and those in conflict with the law

Key issues

- o Mandate and legal framework of residential centre for at risk children
- o Modalities and options of placement
- o Capacities for and regulation of residential care for at risk children

MoSAL acknowledges that while orphanages are the main residential institutions for children deprived of parental care, the three types of institutions for juvenile delinquents (observation centres, centres for convicted juveniles and reception centres for homeless, begging, exploited and abused children, also under MoSAL responsibility) tend to hold in custody children with mixed profiles.

A visit to the Centre for Homeless Children Ibn Rashid Juvenile Institute for Boys in Rural Damascus allowed the assessment team to comprehend the approach taken by such a residential institution and to have a first estimate of the extent to which its mandate falls within the scope of alternative care, although formally being part of the juvenile justice system.

The Institute, in existence since 1976, generally hosts children who are considered homeless or lost, mostly found by the police begging or wandering on the street without parental supervision. They are referred to the institute by order of a magistrate, for an initial duration of 15 to 20 days, for family tracing, psychosocial support, health care, and social inquiry (a half-page social inquiry form) on the basis of which the judge will order a “care measure” under the Juvenile Law. The institute also has a mandate to undertake follow-up home visits after release, when feasible.

An analysis of the profile of the 250 children having passed through this institute, as well as of the near-by unit for abused and exploited girls, between May and September 2010 demonstrated that 83% are illiterate, 81,2% have been forced to work (or beg) by their families, 7.2% are orphans (of one or both parents), 3.2% are from “dysfunctional” families (divorce, neglect, etc.) and 9.2% suffer from “other” special conditions. Some cases of trafficking and many instances of substance addiction (glue sniffing) have been identified.

In addition to the perceived direct role of parents in putting their children on the street, this confirms the status of these children as victims, in need of protection, and at risk of becoming deprived of parental care. According to the staff, the majority of children are from the provinces, although they were found in Damascus mainly in summer, as a result of seasonal migration for work or begging in the capital city. At the moment of the visit in December, despite a capacity of 25, there were only 10 boys in the institute and 6 girls in the nearby unit for homeless women, the low numbers reportedly due to there being less police raids in winter.

Each child has a file composed of the order for temporary placement in the institute, a photo, the social inquiry form and, ultimately, the release order of the judge. In principle, the institute only hosts children over the age of 10 under measures foreseen in the Juvenile Law (since the minimum age for prosecution as a juvenile was raised from 7 to 10 in 2004). However, when the police find younger children they may be brought directly to the institute without judicial order but with immediate information to the attorney general. This nonetheless reportedly remains a rare occurrence.

As opposed to privately run orphanages, Juvenile Delinquents Institutes (JDIs) have the advantage of being clearly regulated. Section Seven of the Bylaw of Juvenile Delinquents Institutes specifies the status and function of Observation Centers:

Article 79: A special ward can be established in the JDI for the juveniles whom the judge decides to detain under trial according to Article 2 of Law 60 on Juveniles Rehabilitation Institutes.

Article 80: An Observation Center (JOC) shall:

1. Collect information on the juvenile's history, «inherited record, personal record and social record».
2. Study the juvenile's properties, especially these related to his/her health and mental status, study and vocational abilities.
3. Investigate the factors leading him/her to delinquency.
4. Propose suitable measures to rehabilitate him/her.

Article 97: Detained juveniles may join the convicted ones in all instructional, social and entertainment activities and programs according to a program prepared by the manager.

After the observation period, non-custodial options at the disposal of the judge include referral back to the parents, placement with extended family members, or referral to a licensed organization for rehabilitation. The decision is taken without a hearing, without directly hearing the views of the child, or any legal representation. Judges appointed to juvenile cases are generally women, considered to be more sympathetic to children's situations than men. Most of the time, their decision is to refer the child back to

his/her family without any further support or follow-up measure. There is also a possibility, under art. 604 of the Criminal code, to prosecute parents who force their children to beg, with penalties of up to two years of imprisonment. There have reportedly been few instances, without specification of how the child was then taken care of. As for decisions to place the child in the extended family, this would only apply to the father's side of the family and cases are also rare.

In practice, children who cannot be sent to their family, because of their situation or because the family has not been identified during the legal observation period, stay at the centre. Similarly, there are apparently no community-based licensed organisations which could implement non-custodial measures. So, the stay of children in the institute is often simply extended, or children are repeatedly referred back for observation to the institute. The team mentioned as an example the case of a child who ended up staying in the institute for about a year. And about 50% of the children hosted in the institute have resided there before. Hence, in practice, this institute acts both as an Observation Centre and as a longer-term residential Rehabilitation Institute. As such, it may be considered as implementing care measures foreseen in Section Three of the Juvenile Law No 18 of 1974 (amended by law 51 of 1979 and legislative decree N°52 of 2003)

Care Measures

Article 26:

- A. Care shall be commissioned to rehabilitation institutes acknowledged by the government.
- B. The institute should provide the juvenile who is under the care measure with care, education, vocational training, suitable work, advice and guidance to resume his/her life and earn his/her living in a decent way.
- C. The institute should report every three months to the court on the status of the sentenced juvenile under care; in the report, it may recommend releasing the juvenile. Only the court may decide to release the juvenile.

Article 27:

The court may impose the care measure on every juvenile who:

- A. Is homeless or beggar without a supporter and does not have a source of living.
- B. Works in places or perform jobs in contradiction with public ethics and decencies. The court may, in all cases, impose this measure on every juvenile whose case requires that.

Article 28:

If it is proved to be impossible to place the juvenile who is under the care measure at a care institution, the juvenile court may provide him/her with a job in an industrial, commercial or agricultural vocation where s/

he is observed by the social worker (“behaviour observer”) under the court supervision and take the suitable rehabilitation measures stipulated in this Law.

However, the institute, managed jointly by the government and an NGO, has a total staff of 15 persons, only a third of which have a formal psychosocial or educational role. The annual budget is 1 million Syrian pounds, covered roughly 50% by the state and 50% by the NGO (in kind or cash). Basic needs are covered (food, hygiene, clothing, etc.) but the staff argue there is a lack of educational staff, IT, health and recreational equipment to fulfil such a task. Although the facility is spacious, clean and includes a large courtyard, it is bare and does not have the family-like atmosphere required for alternative care. It is located in rural Damascus, off a main road, in the middle of isolated olive tree fields and secured by entrance gates. Although they appreciated activities such as football and English teaching, and seemed at ease with the staff, children met at the centre considered themselves in custody.

Article 14 of Bylaw of Juvenile Delinquents Institutes specifies that social workers have a duty to, notably: (14.6) build a good relation between juveniles and society through giving the juveniles the chance to take part in social events outside the JDI (14.10) cooperate with the Care Committee to find jobs for the juveniles when they leave the JDI. However, in practice, residents cannot leave the centre. For children to be taken out of the institute, an authorization by the attorney general is required. Only one request was reportedly made for a day outing in the recent past, which was only approved on the condition that the staff would take responsibility upon themselves for any consequences. As for job placement, there is no Care Committee attached to the centre.

Although children have no criminal record and there is no system of information between courts to ensure continuity in care and justice measures, staff members of the institute try to compensate this case-management deficit by the long-term bonding and trust that they build with the children.

The institute’s team has developed the concept of “vortex of homelessness” (rebellion against family – escape – imaginary feeling of independence – homelessness). On this basis, the staff wishes it had more capacity and equipment, as well as an adequate status, to undertake in-depth assistance, education and rehabilitation work. For instance, a positive remedial education programme to fight illiteracy has been introduced in some JDIs by the Ministry of Culture. It is planned for 4 months for each child. Yet, this is not applicable to children temporarily held in custody in the centre for the homeless because the detention period is short. A shorter adapted version of the programme is thus used but this remains unsatisfactory.

The staff also wishes more work could be done in the community to address negative social trends leading to children’s neglect and homelessness. For instance, the recent increase of the minimum age for the end

of compulsory education was not accompanied by community-based support measures. This produced a de facto increase in the school drop out rate and could lead further to the criminalisation of children who already worked under that age, or of their employers (if the minimum legal age for employment is, as it theoretically should be, aligned with that of compulsory education).

Professionals from different backgrounds believe that inter-sectoral cooperation between MoJ, Police and MoSAL could be strengthened, for instance to reinforce community-based and prevention activities of civil society for homeless, begging and exploited children, which would avoid further intervention by the judiciary and custody.

If they are found to be violent, children from the homeless centre may be transferred to another juvenile institution for offenders. This amounts to using penal sanctions as disciplinary measures, which is not foreseen by the regulations of JDIs and de facto modifies the child's status. Article 61 lists the penalties to which juveniles violating the JDI regulations shall be subjected to. These include I) Prevention from visits and J) Isolation. Articles 65 to 68 further specify the conditions of implementation of isolation, which amount to solitary confinement. Such disciplinary practices are in violation of international human rights law and should be repelled, however often they are used in this and other JDI centres.

IV.F. Residential care for children outside their country of habitual residence

Key issues

- Family-support services for refugees as a development model for orphanages
- Potential custody or residential care of unaccompanied or separated children

The assessment exercise did not focus on children deprived of parental care outside of their country of habitual residence in particular. All testimonials received concur in indicating that refugees are adequately received and supported in Syria. The General Authority for Palestinian Refugee Affairs – MoSAL oversee a number of social institutions, three of which are privately run orphanages for Palestinian orphans, apparently

on the similar operational principles as any other orphanage in the country. The governmental report to the Committee on the Rights of the Child specifies that 372 children in total resided in these institutions in 2009. In addition, other orphanages may host foreign children. In St. Gregarious Orthodox Orphanage, one resident was a double orphan from Iraq. This exemplifies the inclusive practice of residential care services.

Rather than being discriminated against and as part of the humanitarian aid that they receive in Syria, refugees from Iraq are said to benefit from progressive family-support services developed by partners with the assistance of UNICEF, which may be considered in some cases as contributing to the prevention of placement in residential care. Such community-based and family-focused psychosocial services could be used as models for the rest of Syria, for example if part of the residential care facilities are ultimately transformed into family support centres.

Finally, no information was received on the potential residential care or custody of unaccompanied or separated children arrested, for example, at the frontier. Other governmental entities than MoSAL may play roles in that respect that the assessment did not cover.

IV.G. Inspection and monitoring

Key issues

- Lack of system and implementation for inspection
- Duties and effective use of monitoring functions limited to JDIs
- Absence of child-friendly consultation, reporting and complaint mechanisms

MoSAL has inspection responsibilities over all residential facilities for children deprived of parental care and JDIs, except the two orphanages under the supervision of the Ministry of Religious Affairs.

However, those managed by private charity organisations (i.e. the great majority of orphanages), only reported having routine administrative relationships with the ministry. The present assessment exercise thus appeared to be welcomed as a step in the direction of an increased interest and involvement of the State in their work. This may indicate that the creation of a multidisciplinary and bipartite (governmental/NGO)

³¹ United Nations Rules for the Protection of Juveniles Deprived of their Liberty Adopted by General Assembly resolution 45113/ of 14 December 1990, Art. 67. "All disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned. The reduction of diet and the restriction or denial of contact with family members should be prohibited for any purpose. (...)"

³² C/CRC/SRY 34-, para 168, *ibid.*

body of inspection could be a realistic measure, building upon the positive experience of joint management observed in State residential institutions (Foundling Institute, Institute for the Blind, JDIs).

Judges have the formal obligation to visit and monitor the implementation of the measure they order under Article 38 of the Juvenile Law:

The judge sitting in juvenile court shall, within his/her jurisdiction, observe the enforcement of the decisions and sentences made against juveniles; s/he shall visit the rehabilitation institutes, observation centers and the institutions and entities cooperating with the juvenile court once every three months, and report on that to the MoJ and MoSAL.

Since the Centre for the homeless reportedly never receives such visits, it may be assumed that they are concentrated on other JDIs. It must be noted that the social services of the court could potentially also contribute to this monitoring role under art. 56.B.4 of the Juvenile Law. However, as only one “behaviour observer” is appointed to each court, this service is believed to be already insufficient to support the magistrates’ procedural work.

In addition, the JDI Bylaws stipulate that the institute should have an independent Committee reviewing the institution’s activities but it isn’t activated, at least at the centre for the homeless. A few local organizations sometimes make visits which, if systematised, could contribute to the function of monitoring.

In term of complaint mechanisms, as mentioned before, orphanages have no common system, nor were any specific examples of practice given to us, despite the fact that article 112 of the Bylaw of Juvenile Delinquents Institutes does foresee a standards tool and procedure:

A. A complaint box shall be set in the JDI courtyard, where the juveniles are allowed to place confidential written complaints.

B. A non-staff member of the administrative committee shall keep the box key and open it at the committee’s meetings to consider the complaints placed in it.

As indicated above, most children held in custody at the Centre for the Homeless, but certainly in other JDIs too, are illiterate. Therefore, a complaint box is not an appropriate mechanism for them. And even if all children could write, a complaint box is probably the most risky and least user-friendly mechanism to use in a custodial setting. As suggested earlier in this chapter, monitoring through confidential individual and collective consultation processes facilitated by independent bodies, as well as child participation in the management of residential institutions, would better secure the right of children to complain and their capacity to act as agents of their own destinies.

IV.H. Aftercare

Key issues

- o Non-standardised aftercare in care institutions
- o Very limited aftercare in JDIs
- o Undocumented recent initiatives

As explained above, in the case of foundlings or orphans placed in residential care, children live in the institution until they reach the age of 18 and/or until they are married, placed on the job market or in the army. In the Foundlings Institute, the recent marriage of one boy and one girl from the institute was financially and spiritually supported “as it would have been in a normal family”, to ensure that the young couple is well established, housed and furnished and becomes autonomous in life. If none of the above options is secured, it appears that privately run orphanages have much flexibility. In St Gregory’s Orthodox orphanage, for instance, 3 of the 20 residents were actually above the age of 18 and still hosted and supported during their higher education careers. Beyond these apparently positive outcomes, no examples of challenges or failures in aftercare were given so that it is hard to assess whether aftercare is secured for all children and to the maximum extent when they leave the institution. Yet, in the spirit of care and permanency expressed in the orphanages visited, it seems that residents are usually not left unsupported.

For children placed in JDIs, aftercare is more of a problematic issue. Article 78 of JDI Bylaws specifies that:

A. A committee called the Care Committee shall be formed in the JDI; it shall:

- 1) Contribute to juveniles’ rehabilitation through giving advices to them and delivering lectures in the JDI.
- 2) Find jobs to juveniles in industrial, agricultural or commercial organisations after their graduation from the JDI.
- 3) Lodge temporary the released parentless juveniles.

Such regulation is most welcome, but is reportedly not fully applicable due to limited resources and capacities. Moreover, most children in the centre for the homeless would require aftercare measures that would be more adapted to their young age.

New partnerships with NGOs in the management of custodial facilities appear to be gradually addressing these gaps and measures such as those announced the governmental report to the UN Committee on the Rights of the child to create three centres for the follow-up of offenders and the reception of their complaints are positive step, but they should be documented and evaluated.

PART IV: KEY POINTERS TO ALTERNATIVE CARE REFORMS

The gap that exists in Syria between well-established traditions of quality alternative care and too few options and regulatory mechanisms implies that potential reforms be informed by in-depth knowledge, consensus and inclusion of all concerned, so as to upgrade the system, rather than deconstruct it. For that reason, the assessment team only wishes at this stage to make preliminary observations and suggestions of issues to be discussed for inclusion in a roadmap to be collectively elaborated, in six main directions.

1. Knowledge base for an informed national care strategy

It is essential that MoSAL rapidly develops a simple but comprehensive database of children receiving care in Syria. It should include basic stock and flow data collected annually from all residential care facilities operating in the country, as well as disaggregated information on motives for placement, family background and details of children, procedure and dates of entries into and exits from care. The database could also gather precious information on external kafala recipients, allocated amounts, related services, etc. Such a source of information would allow to better plan, support, monitor and potentially expand prevention and care measures. For the first round of data collection, a more detailed open survey or questionnaire could be undertaken with the 35 or so institutions concerned to ask them about their location, size, residents' profile, entry procedures, types of care and services, perceived needs and expectations from potential reforms and cost-effectiveness. This could be a first step in devising a future master plan of reforms, involving negotiated and progressive transformations of residential care into small size units and family support services in line with international standards.

Quantitative and qualitative information on vulnerable families could also potentially be collected as part of the social protection cash transfer scheme implemented by MoSAL at macro-level. At the same time, in-depth local surveys in selected communities, based for instance on the Participatory Rapid Appraisals methodology already used by the NGO ESTA, would enable people's own views on their priorities and needs in relation to alternative care to be taken into due consideration.

2. Prevention strategies and gate-keeping in alternative care

Based on the paramount principle that alternative care should be a measure of last resort, MoSAL needs to become more directly involved in supporting and regulating existing prevention and gate-keeping mechanisms, ensuring that only children who could not be adequately supported in their own family do end up in alternative care (necessity), and that the type of care provided responds to the child's needs and best interests (appropriateness).

The successful experience of MoSAL and its social partners in the care and integration of children with disabilities should be used as a model for children at risk of being deprived of parental care, notably to devise

a two-pronged strategy of: 1) awareness-raising and, 2) local multidisciplinary referral, individual assessment and care planning mechanisms.

For awareness-raising, campaigns on the theme “Every child needs a family” successfully designed by UNICEF in several countries could also be a source of inspiration. Such campaigns give positive visibility to supported children and parents or alternative care providers to restore their dignity and pride and encourage further services for such families and/or the development of family-based care (e.g. campaign to recruit foster parents) depending on the needs identified in the country.

Local commissions composed of representatives of various ministries, such as those created for disability issues, could meet once a month. The minimum aim would be to inform them of orphanages’ entry and exit case-management. At best, they would be directly involved in the assessment, referral and periodic review of all cases, in partnership with NGOs and religious authorities, ensuring that the voices of children and parents are heard in these processes, that various options are considered and that access to justice is guaranteed when needed. At the national level, simple tools such as a social enquiry toolkit (guidance, step-by-step procedure, user-friendly forms) could be designed and sent out to local commissions to facilitate these processes.

3. Inclusion of abused, exploited and neglected children into the child care system

There appears to be a consensus among professionals in Syria that vagrant and begging children, as well as abused and sexually exploited girls, are not offenders but rather children at risk and in need of care and protection. As such, they should not have the status of delinquents but should be fully included in the child care system, benefiting from tailored measures and being less stigmatized. Legislation should therefore be amended so as to decriminalize them and re-qualify the status of care centres for their observation and temporary residential care. The reformed status of these facilities should enable more flexible operational modalities, more openness to and interaction with external individuals and organizations, increased educational, recreational and health equipment and activities. This implies that increased budgets should and could be obtained for such facilities both from the State and from charity donations.

In cases of longer term residential care needs, other existing care facilities (i.e. orphanages) should be solicited to take in such children and enable them to benefit from the high quality education and family-like residential environment that they offer, as well as kafala support.

4. Diversified responses to the diverse needs and potentialities of children deprived of parental care

Currently, in the great majority of cases, the alternative care system in Syria is limited to one type of care for two broad “types” of children: long-term residential care for orphans and children from vulnerable families, and short-term custody for vagrant, begging and abused children.

Various measures and types of temporary care need to be developed, for instance by existing orphanages, to enable more flexibility and respond to the international obligation of favouring family reunification or transfer to family-based options for orphans and children from dysfunctional families.

As mentioned above, partnerships between reception centres for vagrant, begging or abused children and orphanages should also be developed to allow the transfer of such children to the care of orphanages, when needed.

As the only family-based substitute option, *el haq* legislation and *kafala* practice should be revisited to envisage better facilitation, regulation and, if possible, expansion to constitute a range of options from quasi-adoption to foster care. This would allow extending the availability of family-based care to children who are not foundlings, and by parents who already have children and/or who are only in a position to provide temporary care.

5. Quality control and protection of children in alternative care

Standards of, *inter alia*, case assessment, quality care, professional qualifications, induction and training, external *kafala* modalities, management of residential facilities, house rules and child participation should be elaborated at the national level and shared with all care facilities for adoption and adaptation to their specific practice and identity. A good way to engage in such a process would be to create a drafting commission of representatives from existing facilities and relevant State authorities. Current practice and existing standards should be taken into account and compared with principles set out in the UN Guidelines on the Alternative Care for Children, as well as to the feed-back received from children (see point 6).

Specific child protection policy and rules of procedure should be urgently elaborated so that all persons in the system know what is permitted, what should be reported and what interventions and sanctions are foreseen in case of violation of the established child protection rules.

Once these standards have been developed, an independent monitoring body should ensure periodic control of compliance by all concerned services and facilities, as well as an open system of reception of questions and complaints from children, families and staff of alternative care services. This could be a service or department of the office of the ombudsman for children, yet to be considered for creation in Syria.

6. Cooperation and consultation for effective policy development and implementation

As evidenced by the openness of different decision makers and services providers to this preliminary assessment exercise, as well as the way alternative care is currently being funded and provided, partnership between the State and civil society is a key strength that should be further built upon to address the needs of children deprived or at risk of being deprived of parental care in Syria. At the same time, care must be taken to ensure that the division of responsibilities is appropriate and better-balanced.

Among civil society, associations and religious charities already involved in providing care should of course be involved in the collection of data, the development of standards of care, and the monitoring, reporting and participatory evaluation of services against such standards. A system of pooling of resources could also be devised by all contributing organizations so as to co-finance new services or ensure a better distribution among regions or types of services.

Beyond this already established partnership between MoSAL and care providers, the involvement of NGOs and other State authorities involved in social development, family matters, women's rights and religious issues should be fostered to elaborate a broad-base prevention policy, addressing poverty alleviation, prevention of abandonment and support to families at risk through better support and integration of illegitimate children and orphans. SCFA is clearly active in these fields. A Memorandum of Understanding between MoSAL and this Commission may be needed to clarify respective areas of intervention, as well as consultative obligations.

MoRA also has a clear interest, for instance in promoting external kafala as a way of preserving biological family care for orphans in difficult circumstances. Its "Excellence for Orphans Kafala Project" might be a model for providing guidance to families, in addition to cash transfers from kafils. MoSAL could usefully make an in-depth evaluation of the initiative and its impact, as well as of other external kafala practices currently managed by orphanages, so as to take position on best practices to be extended to all kafala initiatives. Such an evaluation should be independent, child-rights based and outcome-oriented. MoRA should also be consulted in the development of strategies for combating stigma against illegitimate children, including through amendments to the personal status law and legislative decree No. 107 of 1970, anonymous hotlines for women at risk of abandoning their illegitimate child and confidential or peer counseling in maternity hospitals.

The role of the judiciary in relation to decisions on the alternative care of children should also be enhanced in terms of the formal approval, periodic review and potential appeal of placements (e.g. by another family member challenging the legal guardian's decision to place the child in an orphanage). This should be explored jointly by MoSAL and MoJ. As suggested above, case-management and gate-keeping functions could be fulfilled by local bodies, but independent review of decisions and access to justice must be guaranteed and

facilitated, when needed. Creating a “legal clinic” could allow parents to be also better informed of existing care options and of their rights in that respect.

Finally, consultation with children and adults with experience of alternative care should be the starting point of policy development. Such exercises, if adequately publicised, can strongly nurture awareness raising and contribute to the monitoring of current conditions. Several methodologies of consultation could be deployed, from anonymous surveys and individual interviews to collective events around thematic discussions for and by children with alternative care experience. Such initiatives need to be very carefully devised so as not to raise unduly high expectations and do no harm, but experience shows that they can be very powerful in accelerating positive change. Specialised youth-led organizations exist that could certainly support such processes and even facilitate contacts with children in alternative care from other countries, to share ideas on new approaches and improved standards.

ANNEX 1

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| Ministry of Social Affairs and Labour (MoSAL) | Dr. Issa Maldaon, Deputy Minister of Social Affairs and Labour Mr. Maher Rizk, Director of Social Services |
| Ministry of Justice | Ms. Ameera Abdel Aziz, Senior Judge |
| Ministry of Religious Affairs | Dr. Zakarya Al-Khawli, Director of Guidance |
| “Ibn Reshd” Center for Homeless | Mr. Ousama Al-Jawhari, Center Director Mr. Khaldoun Daood, representative of “Future Youth” NGO |
| “Zaid Bin Haretha” Home for Foundlings | Ms. Lama Al-Sawaf, “Sandouk Al-Rajaa” NGO Ms. Nada AL Ghabrah, “Sandouk Al-Rajaa” NGO |
| Vocational and Educational Centre for Blind Children | Mr. Ahmad Al-Kanj, Center Director |
| St. Gregarious Orphanage for males | Mr. Joseph Zaitoun, Director of the Orphanage |
| “Dar Al Rahmeh” Orphanage for Girls | Mr. Ayman Al-Mouyed, Director of Al-Ansar Charity Organization Ms. Baraa Al-Youbi, Al-Ansar Charity Organization Ms. Alyaa Maidani, Al-Ansar Charity Organization |
| Syrian Society for Social Development (NGO) | Mr. Roy Moussalli, Founder and Executive Director |
| United Nations Development Programme (UNDP) in Syria | Ms. Dima Shehadeh, Programme Consultant Ms. Leen Habash, Juvenile Justice National Project Director |

