

# **MEMORANDUM TO THE ALBANIAN GOVERNMENT**

ORPHANS AND OTHER  
CHILDREN DEPRIVED OF  
PARENTAL CARE

**AMNESTY  
INTERNATIONAL**



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# INTRODUCTION

In November 2009 Amnesty International wrote to the government of Albania outlining in a Memorandum the organization's concerns related to orphans and other children deprived of parental care. The Memorandum, which follows, made specific and practical recommendations to the Albanian authorities in order to ensure the implementation of Albania's obligations under both domestic and international law.

The Memorandum drew attention to draft Guidelines for the Alternative Care of Children (Guidelines) which were subsequently adopted by the United Nations (UN) General Assembly on 18 December 2010.<sup>1</sup> These Guidelines are "*intended to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so.*" (Guideline 1) Their purpose is also to "*Assist and encourage governments to better implement their responsibilities and obligations in these respects, bearing in mind the economic, social and cultural conditions prevailing in each State*" (Guideline 2c).

The Memorandum included a number of recommendations, based on international treaties ratified by Albania, including the Convention on the Rights of the Child, as well as on the Guidelines. They reflect Amnesty International's research and experience in Albania over the past three years, acquired in the course of discussions with central and local authorities, staff working in state and non-state residential institutions for children in alternative care and children and young people who have been placed in care. The recommendations also owe much to the work of Albanian governmental and non-governmental experts in the field of alternative care for children, and of recent studies, carried out by Albanian and foreign experts.

Amnesty International acknowledges and welcomes the progress which Albania has made with regard to the legislative protection of the rights of the child, starting with the ratification in 1992 of the Convention on the Rights of the Child, followed by the ratification of the Optional Protocols on the involvement of children in armed conflict, and on the sale of children, child prostitution and child pornography, in 2007. The National Strategy for Children (2005 to 2010), as set out in the Decision of the Council of Ministers (DCM) no.368 of 31 May 2005, and its accompanying Action Plan, in many respects take into account the Convention on the Rights of the Child and are broadly in harmony with the Guidelines. In particular, the National Strategy for Children and Action Plan prioritize the right of children to be brought up by their biological families, and when this is not possible, gives priority to alternative care by relatives, foster care and adoption, with placements in residential institutions only when other alternatives are not appropriate, and then for as short a time as possible.

Other achievements in the area of legislation include DCM no.659 of 17 October 2005 "On the standards of social care services for children in residential institutions" and Law no.9695 of 19 March 2007, "On Adoption Procedures and the Albanian Adoption Committee". Amnesty International further notes additional legislation that has been, or is in the process

of being, drafted, including: a law “On the Protection of Children’s Rights”; legislation covering foster care; and amendments to Law no.9355 of 10 March 2005 “On Assistance and Social Services”. The latter are reportedly intended to encourage relatives to assume the care of orphans, and to assist widows with children, as well as children deprived of parental care who are themselves heads of households.

Amnesty International also welcomes the establishment in 2007 of an Inter-Ministerial Committee for Child Rights, to monitor the implementation of the National Strategy for Children, and the creation of a Technical Secretariat for Children, within the Ministry of Labour, Social Affairs and Equal Opportunities, charged with identifying problems and institutional shortcomings that hinder enforcement of the law, and with proposing policies. At regional level, Child Right’s Units, and at municipal level, a number of Child Protection Units have been established. In addition, foster care projects are under way in Tirana and Shkodër.

However, Amnesty International remains concerned that the practical impact of legislative reform and official policy has been limited, and that key objectives set by the National Strategy remain to be achieved. The number of children in residential care has not changed very markedly in recent years, generally standing at about 600. Although the number of children reintegrated with their families has reportedly slightly increased in 2009, there was also an increase in 2008 in the number of children being placed in care. The organization also wishes to highlight the fact that poverty continues to be cited as one of the main causes for children being placed in residential care. The National Strategy (2005-2010) refers to the need for a review of legislation concerning orphans, and there is reference to setting up an information system related to orphans, one-parent children, and children with social problems, which would link government at all levels and assist planning at local level and policy-making at central level. The Action Plan specifically foresees the improvement of legislation relating to the protection of children between 14 and 18 years of age and the creation of programmes to prepare children in alternative care for independent life when they leave institutions. These are all goals which have not yet been implemented. Amnesty International looks forward to their realization and considers that when the Government reviews policy and plans for the coming period, the Guidelines, and the standards they set, are of particular relevance.

# MEMORANDUM

I am the pillar of the family and I must return to Shkodër [when I finish school] and look after my mother and brothers. My mother tries to bring us all together three times a year and to create the sense of a family. She gets herself into debt only to give us a little joy. She didn't want to send us to the orphanage. (A 16-year-old boy currently studying at a vocational boarding school: after his father left the family, his mother was unable to support the children, who were placed in Children's Homes)

"I don't know what will happen to me in September. I'm waiting to hear where the state will send me. They told me they would move me, but I don't know where ... I want to leave the konvikt, we all do, but I don't know where to go. The best would be to rent an apartment together with several others, but it's difficult ... My job is not secure; if I lose it, how will I pay the rent?" (A 24-year-old young man)

In 2007 Amnesty International published a report, *Albania: 'No place to call home' – adult orphans and the right to housing* (Index: EUR 11/005/2007) which documented the path to social exclusion, culminating in the violation of their right to adequate housing, of many adult orphans in Albania. It is a matter of great and continuing concern to the organization that over 200 of these vulnerable people continue to live in often degrading conditions and that no effective action has yet been taken to implement their right, under Albanian law, to priority with housing and employment. Amnesty International is also concerned that despite government measures to ensure greater protection of children's rights, and contrary to stated policy, as set out in the National Strategy for Children (2005-2010), young people leaving care continue to be at risk of following earlier generations of orphans into poverty and marginalization. There is an urgent need to break this cycle of deprivation as early as possible. Under international and national law children permanently or temporarily deprived of parental care have the right to special protection and assistance provided by the state. Not only are they citizens of the state (in this case, Albania), they are also in a very real sense, "children of the state", towards whom the state has a particular duty of care.

The following memorandum takes its inspiration from the draft UN Guidelines on Alternative Care for Children (Guidelines) which are due to be adopted on 20 November, the 20<sup>th</sup> anniversary of the Convention on the Rights of the Child.<sup>2</sup> The memorandum looks at certain aspects of Albanian legislation and practice which Amnesty International believes are at variance with the standards set out in the Guidelines, and lead to human rights violations, above all, violations of the rights of children. The memorandum is not intended to be an exhaustive survey of issues related to children in, or at risk of, alternative care, but rather focuses on three areas of concern.

Amnesty International is concerned at the government's failure to ensure that children are removed from their families only in last resort and when this is in their best interests. Of particular concern is the fact that children continue to be placed in alternative care because of family poverty. The main causes are inadequate financial and social support for families at risk of relinquishing their children, and rules governing admission to residential institutions. The Guidelines emphasize: "*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.”*

Secondly, the level of individual care, supervision and follow-up for children leaving state Children’s Homes is inadequate; this is most strikingly the case for children sent to vocational boarding schools, who are not receiving appropriate state protection and assistance up to the age of majority (18 years) as is their due, under international and national law.

Lastly, there is a lack of comprehensive leaving care legislation and a failure to implement existing legislation (in particular, the rights of recognized orphans to priority with housing and employment). This is compounded by a lack of community-based services providing legal, social and other services for young people as they leave care and during aftercare.

These and certain other concerns are addressed in the memorandum in a series of recommendations deriving from the Guidelines and the standards they set. The recommendations take into account positive aspects of government policy and are intended to encourage implementation of these, as well as to inform further policy-making and practical measures which will result in the implementation of the rights of a vulnerable group of young Albanians.



# 1. THE RIGHT TO FAMILY LIFE – MEASURES TO PROTECT THE FAMILY AND TO PREVENT THE PLACEMENT OF CHILDREN IN ALTERNATIVE CARE

The Convention on the Rights of the Child (CRC), basing itself on Article 16 of the Universal Declaration of Human Rights, setting out the right to family life, asserts as a guiding principle that the family is *“the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children”*. The draft UN Guidelines for the Alternative Care of Children (Guidelines), reasserting this principle, require that *“efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members. The State should ensure that families have access to forms of support in the care-giving role”* (Guideline 3).

In furtherance of these principles States *“should pursue policies that ensure support for families in meeting their responsibilities towards the child and promote the right of the child to have a relationship with both parents. These policies should address the root causes of child abandonment, relinquishment and separation of the child from his/her family by ensuring, inter alia, the right to birth registration, access to adequate housing and to basic health, education and social welfare services, as well as by promoting measures to combat poverty, discrimination, marginalization, stigmatization, violence, child maltreatment and sexual abuse, and substance abuse”* (Guideline 31).

The Guidelines further stipulate that: *“Removal of a child from the care of the family should be seen as a measure of last resort and should be, whenever possible, temporary and for the shortest possible duration”* (Guideline 13).

*The principle of the child’s best interests is at the centre of the Guidelines: “All decisions, initiatives and approaches falling within the scope of the present Guidelines should be made on a case-by-case basis, with a view notably to ensuring the child’s safety and security, and must be grounded in the best interests and rights of the child concerned, in conformity with the principle of non-discrimination and taking due account of the gender perspective. They should respect fully the child’s right to be consulted and to have his/her views duly taken into account in accordance with his/her evolving capacities, and on the basis of his/her access to all necessary information”* (Guideline 6).

The National Strategy for Children 2005-2010, adopted by the Albanian government in 2005, sets out policies that in many respects reflect these aims: support for families to enable them to bring up their children and prevent abandonment of children; the promotion of alternatives to residential care, including day care, foster care and adoption, with the

objective of securing a family or family-type environment for the child.<sup>3</sup> Point 6 of the associated Action Plan specifies measures to implement these policies.<sup>4</sup>

However, Amnesty International is concerned that existing legislative provisions and practices related to the admission of children to residential care and to adoption may stand in the way of these goals. Further, the resources allocated to the state social services at local level in terms of staff and funding to enable families to care for their children at home and to support family reintegration are very inadequate.

### 1.1. PREVENTING PLACEMENT IN ALTERNATIVE CARE

*“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.”* (Guideline 14)

In March 2005, the Committee on the Rights of the Child, the Committee of independent experts which monitors compliance with the Convention on the Rights of the Child, stated that it *“remain[ed] concerned that children may be ... placed in institutions by parents in difficult economic situations.”* The Committee called on Albania to *“take effective measures to strengthen support to families by developing a comprehensive child-centred family policy to enable families to care for their children at home”*.

Contrary to this recommendation, and to Guideline 14, in April 2006 the Albanian government in a Decision of the Council of Ministers (DCM) no. 209 of 12 April 2006 setting out the categories of children who may be admitted to social care institutions, included, *“children whose parents do not have sufficient financial resources to maintain the child”*.

Government statistics and the available literature in this field, as well as Amnesty International’s discussions with the directors of Children’s Homes in Tirana, Shkodër and Sarandë, all confirm that poverty, often due to family breakdown, remains one of the main reasons leading to the placement of children in residential care, and even when not the sole factor, is often a determining factor. In 2008 there was reportedly an increase in the number of children being placed in residential care, with 160 new placements; poverty was cited as one of the main reasons that parents had abandoned their children.<sup>5</sup>

The categories listed in DCM no.209 also include *“children whose families are living through a serious social crisis because the parents have either divorced or remarried”*. As has been noted elsewhere, this provision opens the way to the admission of children to residential care who might be cared for by one of the parents or by other family members, and hence risks incompatibility with the principle that residential care should be used only as a measure of last resort.<sup>6</sup>

Guideline 43 recommends instead that: *“When a public or private agency or facility is approached by a parent or legal guardian wishing to relinquish a child permanently, the State should ensure that the family receives counselling and social support to encourage and enable them to continue to care for the child. If this fails, a social work or other appropriate professional assessment should be undertaken to determine whether there are other family members who wish to take permanent responsibility for the child, and whether such*

*arrangements would be in the child's best interests. Where such arrangements are not possible or in the child's best interests, efforts should be made to find a permanent family placement within a reasonable period.*" A similar recommendation is made in Guideline 44 in cases when a parent or caregiver wishes to place a child in care for a short or indefinite period. This Guideline concludes: *"A child should be admitted to alternative care only when such efforts have been exhausted and acceptable and justified reasons for entry into care exist."*

The emotional and psychological cost to the child of being raised in residential care is incalculable. The financial cost to the state is also heavy: in 2005 the monthly expenditure on maintaining a child in a state residential institution reportedly varied between 17,355 and 41,500 leke (approx. 188 USD and 450 USD).<sup>7</sup> In June 2009 Amnesty International delegates were informed by staff at Children's Homes that this sum now amounted to up to 740 USD a month. It seems clear that such sums would, in many cases, be better spent on the provision, through appropriate state agencies, of adequate financial and other support to families to enable them to keep their children within the immediate or extended family, as required by the Guidelines.

In practice, the most widespread form of alternative care for children in Albania is informal care, by grandparents or other relatives. Their good will and efforts have ensured that even as divorce rates rise the number of children placed in formal alternative care remains low by regional standards.<sup>8</sup> However, in many cases, impoverished and elderly or infirm relatives struggle to provide even the most minimal living conditions in which to raise these children. The following Guideline is therefore of particular relevance: *"Competent authorities should, where appropriate, encourage informal carers to notify the care arrangement and should seek to ensure their access to all available services and benefits likely to assist them in discharging their duty to care for and protect the child"* (Guideline 76).

Amnesty International notes economic measures proposed by the government in draft amendments to Law no.9355 of 10 March 2005 "On Social Assistance and Services" which are reportedly intended to encourage relatives to assume the care of orphans, and to assist widows with children, as well as children deprived of parental care who are heads of households. While these measures are to be welcomed, the level of economic assistance envisaged (3,000 leke a month, approx. 33 USD) is low. It amounts to less than two USD per person per day, which is the benchmark for poverty recognized by the Albanian government. By contrast, Amnesty International is informed that a UNICEF-supported fostering programme due to start shortly will allocate 75 USD (approx. 7,000 leke) per month per child (the expenses to be borne for the first two years of the programme by UNICEF and subsequently by the government). This sum is intended to cover only the child's expenses (foster carers are not paid for their services).

Guideline 35 calls for special attention to be paid to the provision and promotion of support and care services for single and adolescent parents and their children, whether or not born out of wedlock, and for efforts to reduce the stigma attached to single and adolescent parenthood. The Action Plan (6.7), which refers to the creation of centres to offer counselling to unmarried mothers with the aim of reducing the abandonment of children, supports this aim. Amnesty International understands that Infants' Homes in Shkodër and Durrës have active programmes to reduce abandonment and promote family reintegration.

However, Amnesty International has been disturbed to note press reports in which young mothers who have abandoned their babies have faced criminal proceedings on a charge of “abandoning a minor”, before (it seems) receiving adequate counselling from social service providers. For example, on 5 October 2009 a newborn child was found abandoned in a church in Shkodër. The following day it was reported that the mother, aged 17 years, had been identified, and criminal proceedings started against her on a charge of “abandoning a minor”. The report continued that “after the necessary procedures had been carried out” the young mother reportedly signed her consent to the child being placed in an Infants’ Home in Shkodër.<sup>9</sup>

The mother in this case is herself a minor. In such cases counselling and support should be offered to the mother to encourage her to care for the child. If this fails, a professional assessment should be undertaken with the aim of finding an alternative family placement that is in the child’s best interest, in line with Guidelines 43 and 6 cited above. In Amnesty International’s view, in such cases the best interests of the child, and of the mother, are not served by the over-hasty initiation of criminal proceedings.

### RECOMMENDATIONS

- Amnesty International recommends that the Albanian government implement relevant provisions of the National Strategy for Children and Action Plan which support the family, including the extended family, in its crucial role as the child’s principal care-giver. Adequate social services support and funding should be secured so that, whenever competent experts assess that it is in the best interests of the child, the parents or extended family are enabled to care for the child at home. In particular, the organization recommends the development of community-based social services offering financial and legal assistance and counselling to support families who are at risk of abandoning or neglecting their children.
- It is clear that these objectives require further measures to supply the need for trained and expert social workers, support for non-governmental organizations (NGOs) working in this field, and greater coordination between all agencies working with families in need and children at risk of being placed in alternative care.
- Amnesty International recommends that in cases where economic assistance would enable the parents or extended family to care for the child at home, the level of this assistance be increased, as necessary, to align it more closely with the monthly allocations for children in foster care (see above).
- The organization further urges that DCM 209 no. 209 of 12 April 2006 be amended so as to ensure that the admission of children to residential care is truly a measure of last resort, and that children are never admitted solely because of the poverty of their parent or parents, or where there exists the possibility that they might, with appropriate support, and when this is in their best interests, be cared for by a parent or other relative. Such amendments, combined with adequate social and financial support for families in need, are likely to significantly reduce the demand for places in residential care, other than emergency and short-term placements. These measures, in turn, would make an important contribution to deinstitutionalization, a key objective of the National Strategy for Children.

- Amnesty International calls for the establishment of an information system at local and central government level related to orphan children, children with one parent and with social problems, and their needs, to facilitate planning services at local level and policy-making at central level, as proposed in the National Strategy for Children.

## 2. FORMAL ALTERNATIVE CARE AND DEINSTITUTIONALIZATION

The Action Plan (6.4) envisages the replacement of state residential care institutions by alternative services such as support for the family, foster-care, adoption and “Casa Famiglia” (group homes approximating to a greater or lesser extent to a family-type setting).

These objectives largely conform to the Guidelines, which state that *“while recognizing that residential care facilities and family-based care complement each other in meeting the needs of children, where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy, with precise goals and objectives, which will allow for their progressive elimination”* (Guideline 22).

In practice the transformation of state residential care centres into alternative services (or their replacement by such services) has made limited progress since 2005. Since then two state Infants’ Homes (in Tirana and Shkodër) have reportedly been turned into “Casa Famiglia”. The three state Children’s Homes (for children aged six to 15 years) which Amnesty International visited in June 2009 remain non-family type residential institutions, although a “Casa Famiglia” for six boys has been established, with foreign assistance, within the premises of Shkodër Children’s Home. Despite the best efforts of a number of dedicated staff, and improved material conditions, the environment which these Children’s Homes offer differs greatly from the “setting as close as possible to a family or small group situation” recommended in Guideline 122. Other “Casa Famiglia” are non-state institutions<sup>10</sup>.

With regard to foster care, Amnesty International is informed that in July 2008 the government approved a foster care strategy, that standards for foster care have been drafted, that relevant amendments are to be made to the Family Code, and that with the support of UNICEF and a group of NGOs, a foster care programme is to start shortly in Tirana and Shkodër.<sup>11</sup> Amnesty International welcomes these developments. However, since formal foster care, apart from a two-year pilot project, represents an innovation in Albania in terms of alternative child care, the programme will require consistent monitoring and assessment, as well as continued support and training for foster carers.

### 2.1. ADOPTION

The Guidelines, while giving primacy to efforts to keep children in, or return them to, the care of their family, recommend, where this solution is not possible, efforts to find *“another appropriate and permanent solution, including adoption and kafala of Islamic law”* (Guideline 2a).

Amnesty International welcomes the introduction of Law no. 9695, of 19 March 2007, “On Adoption Procedures and the Albanian Adoption Committee”, which clarifies adoption procedures and strengthens safeguards. However, the organization notes recurring criticisms by experts in the field of alternative childcare of the provisions of Article 250 of the Family

Code of 2003, dealing with “[judicial] declaration of abandonment”.<sup>12</sup> Article 250 states that a court may declare a child placed in an institution or with a carer as abandoned (and therefore available for adoption) if the parent or parents have shown no manifest interest in the child for a year, or - if the child was placed in an institution at birth - for three months. Staff at a Children’s Home and at a “Casa Famiglia” independently told Amnesty International that some parents effectively prevented their child from being adopted, by maintaining a nominal yearly contact. It has also sometimes been maintained that some Children’s Homes have interpreted such nominal contact as “manifest interest”. As one study observed: *“Clearly, decisions about a child’s future care should not be made on the basis of whether a visit has been made by a parent, but should be based on an assessment of the child’s needs and best interests. Abandonment should not be the criteria for whether a child should be placed for adoption. Rather, where it is not possible for a child to be re-integrated with the birth parents, or the extended family, a decision should be made on the most appropriate placement for a child, placement in a residential institution being regarded as only appropriate where alternative family care through either fostering or adoption is either not in the child’s best interests or simply not possible.”*<sup>13</sup>

#### RECOMMENDATION

- Amnesty International recommends the amendment of the Family Code and of related provisions in the law “On Adoption Procedures and the Albanian Adoption Committee”, so that decisions on the future care of a child are determined purely on the basis of the assessed needs and best interests of the child, in accordance with international standards.

## 2.2. RESIDENTIAL CARE - STATE RESIDENTIAL INSTITUTIONS

*“Facilities providing residential care should be small and organized around the rights and needs of the child, in a setting as close as possible to a family or small group situation. Their objective 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, including through adoption or kafala of Islamic law, where appropriate.”* (Guideline 122)

The Guidelines further emphasise the importance of *“ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a key goal”* (Guideline 11) and warn that: *“Frequent changes in care setting are detrimental to the child’s development and ability to form attachments, and should be avoided”* (Guideline 59).

Additionally, the Guidelines state: *“Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests”* (Guideline 16).

It is the government’s stated objective for children to be placed in residential institutions as a last resort, and only temporarily. In practice, the total number of children placed in residential care (state and non-state) in Albania does not appear to have significantly decreased since 2007, generally standing at between 600 and 650, and many of these

placements cannot be regarded as temporary. The number of children in state residential institutions, though it appears to have decreased from about 400 in May 2007 to between 294 and 350 (according to varying press reports) in 2009, remains a matter of concern. Apart from the two Infants' Homes which have reportedly been converted into "Casa Famiglia", the seven other state residential institutions for children continue to be organized on the same lines as orphanages in the past. As is generally recognized, these institutions do not provide "a setting as close as possible to a family or small group situation", and they hinder the intellectual and psychological development of the child. In particular, the separation of children in Children's Homes according to their age group (0-3, 3-6, 6-15), requires some children to transfer to up to three different institutions by the age of 15 years. Such an arrangement is incompatible with the principle of ensuring a "stable home" and "meeting their basic need for safe and continuous attachment to their carers"; it also can result in the separation of siblings.

#### RECOMMENDATIONS

- Amnesty International recommends that further steps be taken to implement the policy of deinstitutionalization of child care. During this process, public money currently used for residential care institutions should be transferred to community-based social care services. As one aspect of deinstitutionalization, "Casa Famiglia", offering alternative care to those children whose best interests are not served by reintegration with their families, adoption or fostering, have their place. Existing non-state "Casa Famiglia", such as SOS Villages, and Home of Hope in Elbasan, offer useful models.



## 3. LEAVING CARE AND AFTER CARE – PREPARATION AND FOLLOW-UP

*“Agencies and facilities should have a clear policy and carry out agreed procedures relating to the planned and unplanned conclusion of their work with children to ensure appropriate aftercare and/or follow-up.” (Guideline 130)*

The Guidelines (130 to 135) related to leaving care and aftercare are based on the premise that leaving care and gaining independence is a process of transition, during which the child should continue to receive individual preparation, counselling and support, as well as ongoing services during aftercare and follow-up.

In Albania, most children in alternative care, whether state or non-state, move to another form of care on completing compulsory education (9-year school), generally at about the age of 15 years. Most children in state Children’s Homes, who have not earlier been adopted or reintegrated with their families, leave at about this age. All are supposed to have left by the age of 17 years (in practice a very few stay beyond this age). Some return to their families; others transfer to a non-state “Casa Famiglia”: the Madonnina del Grappa foundation in Shkodër or the TAG centre in Tirana. In June 2009 the former cared for six girls aged 11 to 18 years, while the latter cared for 10 boys and girls, mostly selected on the basis of their school grades. A third group transfer to vocational boarding schools.

### 3.1. PREPARATION FOR LEAVING CARE

The Action Plan foresees the introduction of special programmes to prepare children for independent life when they leave institutions (6.8). This is a key task that still awaits completion.

At present, the only legislation relating to this matter is DCM no.659 of 17 October 2005. This decision requires residential care institutions to draw up individualised leaving care plans for children moving to another institution, reintegrating with their families, moving to foster care or adoption, or starting on independent or semi-independent life. Preparation is to consist of discussions with the child, and parents or relatives where these exist, based on a realistic assessment of the available options. These should take place when the child is 14 years old, or earlier as necessary. Preparation also includes counselling about the risks of exploitation, sexual health, alcohol and drug abuse, as well as practical instruction in purchasing daily necessities, managing a budget, cleaning and cooking, “etc”.<sup>14</sup> Amnesty International delegates were told by the staff of Children’s Homes that the above standards were observed.

One of the tasks of the Action Plan (6.6) is to *“establish procedures for informing children about decisions taken on their behalf and to guarantee their participation in decisions about their future. This is to be carried out also in cases when they leave an institution or when a decision is to be taken about their education.”* However, young people interviewed by

Amnesty International who have left Children's Homes in the past few years, tended to feel that decisions about their future had been taken for them, rather than with their participation. One said: *"When I finished 8-year-school, my mother came and she and the director together decided where I should study"*. Another stated: *"I wasn't given any preparation for leaving the orphanage. One day when I came back from school, they told me I had to leave. They didn't ask me whether I wanted to go to forestry school, they just brought me there. It was the orphanage secretary who told me where I was going."* In general, their comments indicated that they felt that they were not well informed about the options open to them and their views and wishes were not always taken into account. Further, it appeared that the decisions with regard to their secondary education might be based less on their abilities and inclinations than on the need to secure them accommodation in a boarding school, or on the school's proximity to parents or other relatives.

To the extent that the above comments reflect reality, they point to a violation of the Convention on the Rights of the Child which requires states parties to: "Make educational and vocational information and guidance available and accessible to all children" and stipulates the right of children to express their views freely in all matters affecting them, and to have due weight given to those views.<sup>15</sup>

### 3. 2. AFTERCARE AND FOLLOW-UP

In terms of aftercare, the only standard contained in DCM no.609 of 17 October 2005 is a general requirement that the child should continue to be monitored and supported after leaving care, and the only criteria given for whether this requirement has been fulfilled is that the institution has information about the child's [subsequent] life. However, there is no indication of how this monitoring and support is to be implemented, or by whom. Further, this decision contains no requirement that the child leaving care be advised about services providing support or assistance, should the need later arise. Nor is there a requirement that the institution make the necessary arrangements to settle legal issues, such as guardianship of the child, or orphan status for those eligible, prior to the child's departure.

When queried about follow-up for children after they leave care, the director of a Children's Home explicitly informed Amnesty International: *"The responsibility of the director ends when the child leaves"*. In practice, staff maintain informal, irregular contacts with some of their former wards.<sup>16</sup>

Non-state institutions, such as SOS Villages (Tirana) or Tjeter Vizion and Home of Hope in Elbasan, generally have internal policies and practices which incorporate many of the standards set in the Guidelines. Children are prepared for a change which usually takes place about the time that they complete compulsory education. At this stage, they move to accommodation for 15 to 19 year-olds (Youth Communities, Protected Apartments), where they continue to live in small groups and to be individually supervised and supported while they attend high school or other courses. Particular emphasis is placed on devising with the child programmes and plans designed to actively prepare him/her for independent life. Further support is available as the young person gradually makes the transition to maturity and independence.

## RECOMMENDATIONS

- Amnesty International recommends the drafting and enactment of comprehensive leaving care legislation, as well as the introduction of programmes for leaving care and aftercare, as set out below (page 21). These should reflect the standards and principles set out in the Convention on the Rights of the Child and the Guidelines, and draw on the best practices of organizations in the non-state sector.
- Legislation and programmes should distinguish between children leaving residential institutions on completion of compulsory education and young people making the transition to independent living. In the case of children leaving residential institutions, there should be appropriate provision which takes into account their particular requirements, which will differ according to whether their departure is for adoption, foster care, reintegration with the family, transfer to another institution, transfer to a vocational boarding school or to a “Casa Famiglia”.
- There should be a requirement that steps be taken, prior to the child’s departure, to finalize formal transfer of guardianship and to ensure that children eligible for orphan status receive it or are supplied with the necessary documentation to enable them to obtain it later.
- Legislation and programmes should additionally ensure that children without parental care who have not attained majority continue to enjoy the state’s special protection and assistance. They should also include the requirement that the child or young person be informed both orally and in written form as to where and how to seek legal, social or psychological support should the need later arise.
- There should be detailed provision for monitoring, support and follow-up, taking into account the different situations to which children move on leaving residential care.

### 3.3. FAMILY REINTEGRATION AFTER LEAVING CARE

The Guidelines recommend that: *“Regular and appropriate contact between the child and his/her family [should be developed, supported and monitored] specifically for the purpose of reintegration ...”* (Guideline 50). They also rightly recognize that reintegration should be a *“gradual and supervised process”*. Guidelines 48 to 51 refer to the need for prior expert assessment as to whether reintegration is in the child’s best interest, so as to prepare and support the child and family for a possible return to the family. Very importantly, Guideline 51 calls for reintegration to be *“accompanied by follow-up and support measures that take account of the child’s age, needs and evolving capacities, as well as the cause of the separation”*.

The directors of state and non-state institutions of residential care with whom Amnesty International has spoken have all confirmed that it is government and institutional policy to promote contact between children and their families and to encourage reintegration where possible. According to data from the State Social Services covering the years 2001 to 2004, about one fifth of children in residential care returned to their families annually.<sup>17</sup> In October 2009, the Director of State Social Services reported that 39 children this year had returned to their families and that the number of children integrating with their families was on the increase.<sup>18</sup>

It is nonetheless Amnesty International's impression that the most active work in this field is being carried out by non-governmental organizations. For example, SOS Villages has a "family strengthening program" which seeks to assist families which are at risk of relinquishing their children to alternative care, and offers services, based on an assessment of the family's situation and needs, to enable children in care to return to their families. As one worker told Amnesty International: *"We try to fill the gaps with our resources. We make the family more self-reliant. We see that most children [in alternative care] are social orphans and if we want to integrate them with their family then the family needs some support which is not provided by the state."*

Expert opinion is unanimous that the chances of successful reintegration are greater the shorter the period the child remains in institutional care.<sup>19</sup> In the case of older children, who have spent many years in care, reintegration is often fraught with difficulties. Amnesty International is concerned that in some cases the decision to return children to their families when they complete compulsory education and leave the Children's Home may be primarily motivated by the need to find a solution to their accommodation. While this is a pressing practical need, there is a risk that the principle of the child's best interests may be neglected, and the right of children to have due weight given to their views on matters affecting them may be ignored. Despite efforts by Children's Homes to encourage and maintain contacts between children and their families, relations may be tenuous or have broken down, particularly if the child was taken into institutional care at a young age.

As an example, Amnesty International delegates in June 2009 met a boy who, on leaving Shkodër Children's Home, had been sent to study in Durrës and live with his family there. However, he had recently returned to Shkodër after being severely beaten and injured, he alleged, by his violent father. He had nowhere to live in Shkodër but was resolved not to return to his family. According to his account:

*"My family ill-treats me... They told me and my brother that we were born by mistake. My parents called me home. We were seated at the table and my father grabbed me by the head and smashed it against the plate. My father drinks. I can't enrol in school here [Shkodër] because I haven't got my documents with me and my parents won't give them to me. I worked in Velipoje and my mother told me "Earn some money, and we'll give you the documents." I gave her the money I earned, but she didn't give them to me. All I want is to continue high school and not be left on the street..."*

For some children who have been raised in institutions, their strongest emotional attachments are not with their parents or siblings, but with their institutional peers. Another boy who had also run away from family in Durrës to return to Shkodër, told Amnesty International: "I don't want to go back to Durrës... We five boys here [in a vocational boarding school dormitory], we're family. We grew up together in the Children's Home and never separated."

Reintegration with the family, even when harmonious, may affect the child's continued education. The director of a Children's Home told Amnesty International in June 2009 that girls who return to their families often do not continue with their education. Amnesty International delegates were also informed: *"It has often happened that when the children finish primary school their parents take them home and put them into employment and*

*exploit them.*” Statistical data to support these observations is not available. Nonetheless, they suggest that follow-up by social services should also take into account the child’s right to education (Article 28.1 CRC) and the need to support the family, if necessary financially, so that those children with the ability and inclination to continue their education are able to do so.

The above experiences are not cited to minimize the desirability of reintegration, but to underline the importance of early reintegration, wherever possible.

#### RECOMMENDATION

- Amnesty International stresses the need for careful expert assessment, based on the child’s best interests, as to the possibility of successful reintegration, as well as appropriate preparation, subsequent follow-up and support for both the child and family, as stipulated by the Guidelines. If reintegration with the family fails, alternative provision, which respects the best interests of the child and the child’s continuing right to special protection and assistance, should be available.

## 4. TRANSFER TO VOCATIONAL BOARDING SCHOOLS

*“For these children [from Children’s Homes] the konvikt [boarding school dormitory] is the worst option.”* (Observation by a member of staff of a konvikt)

*“States Parties shall ensure that institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”* (Article 3(3) of the Convention on the Rights of the Child.)

*“It is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided”* (from Guideline 5).

On completing compulsory education and leaving the Children’s Home children who cannot return to their families or transfer to “Casa Famiglia” are sent to vocational high schools with dormitories (konvikt). With few exceptions, they will not have achieved majority (18 years), and they should therefore continue to enjoy the right, guaranteed under international and domestic legislation, to special protection and assistance provided by the State.<sup>20</sup>

In practice, the state provides free education, accommodation in the konvikt, meals, 10,000 leke a year to cover clothing expenses, an inadequate monthly allowance (200 leke) for personal necessities, as well as an allowance to cover the summer vacation.<sup>21</sup> However, in other important respects they are denied the special protection and assistance which all adolescents, and perhaps particularly these often troubled young people, need. In brief, they are neglected. Their neglect is evident in the failure to ensure they have a clearly designated legal guardian, in inadequate personal and educational supervision and care, in a lack of measures to promote their social integration, and in the absence of policies and procedures to prepare them for, and facilitate their transition to, independent life. The outcome can be seen in their generally poor educational achievements, their lack of preparation for independence and their vulnerability to exploitation, as acknowledged by experts of the Social Services Department of the Ministry of Labour, Social Affairs and Equal Opportunities (hereafter Ministry of Labour) in 2005.<sup>22</sup> Unfortunately, their situation has changed little since then.

### 4.1. GUARDIANSHIP

*“No child should be without the support and protection of a legal guardian or other recognized responsible adult or competent public body at any time.”* (Guideline 18)

The role and responsibilities of such a person or body should include:

*“(a) Ensuring that the rights of the child are protected and that, in particular, the child has*

*appropriate care, accommodation, health-care provision, developmental opportunities, psychosocial support, education and language support;*

*(b) Ensuring that the child has access to legal and other representation where necessary, consulting with the child so that the child's views are taken into account by decision-making authorities, and advising and keeping the child informed of his/her rights" (from Guideline 103).*

Under Albanian law, when a child is placed in residential care, the director of the institution files a request for guardianship with a court, and once the court has granted the request, the director is required to delegate the right to exercise the functions of the guardian to a member of staff and inform the court accordingly within 10 days (Article 271 of the Family Code). Article 224 of the Family Code makes it clear that in such cases the institution exercises parental responsibilities, which are defined in Article 3: responsibility for "the upbringing, development, well-being, and education" of the child.

As noted above, one significant aspect of the neglect of children who move from state Children's Homes to vocational boarding schools concerns the question of guardianship.

In June 2009 Amnesty International delegates in the course of discussions with a number of state officials made repeated efforts to identify the person or institution who is the legal guardian of a child accommodated at a vocational boarding school. It became clear that although a number of different authorities are involved in the procedures for placing and/or financing children in these schools (Children's Homes, the Ministry of Education, the Ministry of Labour, State Social Services, local authorities), the children do not, in practice, have a clearly designated guardian. This is despite a directive issued in 2007 by the Ministry of Labour, which stipulates that when children in Children's Homes transfer to high school and are placed in a konvikt, the director of the Children's Home is required to initiate legal proceedings for the transfer of the guardianship of the child from the Home to the educational institution. The Directive does not clearly define whether the educational institution is the school or the konvikt.<sup>23</sup> However, according to a child protection specialist at the Ministry of Labour, the director of the konvikt is the legal guardian.

In practice this requirement and the responsibilities it carries seem to be little known. The director of a Children's Home described the transfer of guardianship as follows, making no reference to any legal procedure: *"In September, when schools open, we take the child to the konvikt. There we talk with the person in charge of the konvikt, who is given the child's dossier and in this way legal responsibility is transferred to the konvikt supervisor (kujdestar)." Similarly, the director of a konvikt interviewed by Amnesty International, appeared to be unaware that he had any special responsibilities towards these particular children. He emphasised, on the contrary, that there were no internal or other regulations assigning him specific duties of care to these students. He added that of his own initiative, he had directed the educational supervisors and a school psychologist to give them extra attention.*

The explanation for this situation provided by a senior official at the State Social Services was that the directive, issued by the Ministry of Labour, is not applied, because it is not binding for the Ministry of Education. This official concluded: *"There is no legal guardian."*

## RECOMMENDATION

- Amnesty International strongly recommends that children who move from residential care to vocational boarding schools are guaranteed special protection and assistance provided by the state throughout their childhood (that is, up to the age of 18 years). As part of this special protection they should at all times have a legally designated guardian, who should be given appropriate training and support. The guardian's responsibilities should include those specified in the Guidelines.
- Court proceedings for assigning guardianship are reportedly slow; the organization therefore urges a review of procedures related to guardianship, to ensure that the assignment or transfer of guardianship is accomplished in a timely manner.

## 4.2. A PERSON OF TRUST

*"Children in care should be offered access to a person of trust in whom they may confide in total confidentiality. This person should be designated by the competent authority with the agreement of the child concerned. The child should be informed that legal or ethical standards may require breaching confidentiality under certain circumstances ..."* (from Guideline 97).

Guidelines 18 and 103 cited above relate to guardianship and the legal responsibilities of the guardian. Guideline 97, however, also underlines the child's need for another kind of support, a relationship based on trust and confidentiality. There is no provision for designating such a person for children in care in Albania..

On a number of occasions young people have told Amnesty International of their sense of abandonment when brought to the konvikt. The director of a Children's Home also told Amnesty International delegates: *"The children are sometimes desperate when they see the konvikt and the new school, because it's not what they thought it would be ... In addition there is no care for them ... They simply don't feel at home in the konvikt."* A student was very clear about this need: *"[We orphans in konvikts] need advice, a kind word and more care."* Another Children's Home director explicitly pointed to the consequences of this neglect: *"It's true that some of these young people drop out of secondary school even when they themselves chose the school, for when they go to the konvikt they face life alone and without care and some prefer street life when they encounter difficulties. Our work is lost when these children leave the Children's Home."*

## RECOMMENDATION

- Amnesty International recommends the designation of a "person of trust" who should maintain contact with the child *throughout his/her moves through the care system*. When the child transfers to a vocational boarding school, this person might act as mentor and bridge to the wider community.

## 4.3. THE RIGHT TO EDUCATION

*"States Parties agree that the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential."* (Article 29.1 (a) CRC)



Amnesty International is concerned that some children are sent to vocational boarding schools primarily to secure their accommodation, rather than because this form of education is necessarily best suited to the individual child's abilities and inclinations. A member of staff of a Children's Home is reliably reported to have declared that the majority of children in the institution were scarcely able to finish compulsory school, "*but we frequently send them to high school in order to prolong their accommodation and meals.*"<sup>24</sup> This is understandable, since there is no formal provision for children who do not wish to attend, or are not suited to, secondary school. However, while this solution may meet the child's existential needs, it does not guarantee their right to an education which develops "the child's personality, talents and mental and physical abilities to their fullest potential".

Amnesty International is informed that high schools with competitive entry have in recent years been instructed to admit orphans even if their grades do not meet the required levels. This is in principle desirable, and takes into account their circumstances which may have delayed their educational progress. However, a child who has struggled to complete compulsory education is liable to face even greater difficulties at secondary level, without considerable educational supervision and support. The educational supervision that konvikts provide is insufficient for such children. For example, at the konvikt of the School of Hotelliery and Tourism there is one educator to each floor, supervising some 30 students. The result is a high drop-out rate for these children, which adversely affects their prospects of future employment and social inclusion.<sup>25</sup> The importance of such supervision is underlined in the Convention on the Rights of the Child which requires measures to be taken "... to encourage regular attendance at schools and the reduction of drop-out rates".<sup>26</sup>

On the other hand, there appears to be a common assumption that the sooner children from Children's Homes learn a practical skill and are able to earn a living, the better. This, coupled with the fact that the more demanding "general high schools" (gymnasium) do not have dormitories, risks deterring some children, who might have the ability, from opting for an education that in the longer term may ensure them a better future.

#### RECOMMENDATION

- In view of the generally poor educational achievements of children in residential care Amnesty International recommends additional educational support during the years of compulsory education. This should aim to enable them to continue their education at secondary level with confidence, whether at vocational schools, at general high schools or other courses.
- Amnesty International further recommends that measures be taken to ensure that children deprived of parental care are given educational choices and opportunities which will develop their potential to the full. In so far as the konvikt environment does not offer the individual educational and personal supervision which such children require, the organization recommends that alternative provision, such as foster care or "Casa Famiglia", be made for their care and accommodation while at high school.
- There should also be similar provision for the care and training of children who are not suited to secondary education.

- In all cases, children should receive individual supervision and support to enable them to complete their studies or training satisfactorily, promote their social integration, and genuinely prepare them for future independence.

#### 4.4. STIGMATIZATION

*“States, agencies and facilities, schools and other community services should take appropriate measures to ensure that children in alternative care are not stigmatized during or after their placement. This should include efforts to minimize the identification of the child as being looked after in an alternative care setting.”* (Guideline 94)

*“Children must be treated with dignity and respect at all times and must benefit from effective protection from abuse, neglect and all forms of exploitation, whether on the part of care providers, peers or third parties, in whatever care setting they may find themselves.”* (Guideline 12)

Young people raised in Children’s Homes frequently refer to the “stigma” of being an orphan (biological or social). This stigma persists even after leaving the Children’s Homes where their place of residence makes them readily identifiable. The director of a Children’s Home remarked: *“The children nowadays take part in many courses and are not separated from the life of the town and the beach. If you see them at school you can’t distinguish them from other children. But it is hard when they become adults, especially for the girls. They are very exposed in town; everyone knows where the Children’s Home is. The stigma is present, especially for girls.”*

While it might be thought that life in a boarding school would encourage the formation of friendships and relationships outside the orphan community, and promote social integration, it seems that in practice this is often not the case. Girls, in particular, emphasise their experience of “difference” and stigma. One girl told Amnesty International: *“The stigma attached to us is very heavy, but we ... act as though we don’t hear anything. Many boys come to us for various favours because we are konvikt orphans. We have a bad name even when we don’t do anything.”* Another commented: *“[Orphans] don’t trust their classmates, their only true friends are their [orphan] konvikt friends.”*

A factor which clearly exacerbates their sense of stigma is their relative poverty compared to many of their fellow students. The state grant which is supposed to cover their clothing expenses and personal necessities is quite inadequate and sets them apart from their more fortunate classmates.<sup>27</sup> A youth told Amnesty International: *“We’re even given our pens by our classmates.”* As a result, they turn to charity (for clothes and food parcels), and casual labour. Their poverty and need for affection make them vulnerable to exploitation by people who lure them into crime or prostitution.

Stigmatization is liable to continue after they leave the *konvikt* and to affect employment opportunities. A young man told AI delegates: *“I had the chance to work in a hotel in Tirana, and to sleep and take my meals there, but when I said I was an orphan the owner changed his mind; he probably was worried that I had nowhere to go and it would be difficult to get rid of me....”*

Amnesty International was also disturbed to hear *konvikt* staff and other officials on a number of occasions describe students from a residential care background as “problematic”. It was mentioned that some “come under the police radar”. However, there appeared to be little recognition of the degree to which these young people are in other respects “outside the radar” of the state which, in its failure to guarantee them the special protection and assistance which is their due, is itself in violation of the law, both domestic and international.

#### RECOMMENDATION

- Amnesty International recommends that active measures be taken, both while the children are in residential care, and subsequently, to encourage them to develop social networks outside care settings, by promoting relations with a particular family or families, as well as by inclusion in courses, sports and other activities. A “person of trust”, or long-term mentor, can also promote their inclusion in the wider social community.
- To ensure that these young people are not marked out from their fellow students by extreme poverty and reliance on charitable aid, Amnesty International also recommends that their allowance for personal expenses be increased to cover all their basic needs, and that those over 16 years be guaranteed access to limited hours of supervised part-time employment, which would assist them in meeting these needs and provide potentially useful work experience.
- Lastly, the organization calls on the competent authorities to take the lead in combating the stigmatization and discrimination which these young people experience, by addressing the root causes of the disadvantages they suffer.

#### 4.5. RECORDS AND CONFIDENTIALITY

*“Comprehensive and up-to-date records should be maintained regarding the administration of alternative care services, including detailed files on all children in their care, staff employed and financial transactions.”* (Guideline 108)

*“The records on children in care should be complete, up to date, confidential and secure...”* (Guideline 109)

*“All alternative care services should have a clear policy on maintaining the confidentiality of information pertaining to each child, which all carers are aware of and adhere to.”* (Guideline 111)

Amnesty International is concerned that record-keeping in state Children's Homes may not always be adequate and that staff may not be given sufficient guidance on maintaining the confidentiality of information relating to children in their care.

A *konvikt* director, referring to the dossiers that accompany children from Children's Homes when they transfer to the *konvikt*, noted that they *“are often very incomplete and not all the dossiers are brought from the orphanage to the konvikt. I interview the children individually, and in that way obtain the necessary information.”*

Further, on several occasions in the course of interviews, the staff of Children's Homes or

*konvikt* staff mentioned, in passing, information of a confidential nature to Amnesty International delegates about individual children or young people in their care. While this was undoubtedly an expression of their confidence in Amnesty International's discretion, which we appreciate, it suggests that there is a need to clarify the requirements of confidentiality.

#### RECOMMENDATION

- Amnesty International recommends that the staff of all care services working with children deprived of parental care be reminded of their duty both to maintain comprehensive and up-to-date records and to ensure the confidentiality of information relating to children or young people in their care.

## 5. LEAVING CARE AND AFTERCARE

Section E of the Guidelines (Guidelines 130 to 135), entitled: “Support for Aftercare” establishes standards designed to ensure appropriate support for children and young people on their journey from alternative care to independence.

*“Agencies and facilities should have a clear policy and carry out agreed procedures relating to the planned and unplanned conclusion of their work with children to ensure appropriate aftercare and/or follow-up. Throughout the period of care, they should systematically aim at preparing the child to assume self-reliance and to integrate fully in the community, notably through the acquisition of social and life skills, which are fostered by participation in the life of the local community.”* (Guideline 130)

By the time young Albanians complete high school, they have reached 18 years or more and are legally adults. Most, however, will continue to enjoy the practical and emotional support of their families well beyond this age; the majority will continue to live with their parents for some years. Experience has shown that young people who have been raised in residential care also have a clear need for support and shelter well after 18 years, and NGOs working in Albania in this field expect to continue to support young people beyond this age.<sup>28</sup>

Guidelines 130 to 135 recognize the need for preparation for the child’s independence as well as for aftercare and follow-up both for children and for “young people”, who have reached the age of majority. This is made explicit in Guideline 27 which stipulates that *“Principles in the present Guidelines are also applicable, as appropriate, to young persons already in alternative care and who need continuing care or support for a transitional period after reaching the age of majority under applicable law.”*

### 5.1. PROVISION FOR LEAVING CARE AND AFTERCARE

The main legislative provisions for care leavers are found in the law “On Orphan Status”, which sets out the criteria and procedures for recognition of this status and the rights that derive from it.<sup>29</sup> Under Article 1, orphan status is granted to “persons up to the age of 25 years, whether or not they have been raised in state or private residential care, who: a) are born out of wedlock; b) have no living parent; c) whose parents (or parent, if one has died) have been deprived by a final court decision of their parental rights; or d) have been abandoned by their parents whose identities are not known.” This law gives recognized orphans the right to priority with housing and to benefit from long-term state loans for the purchase of housing.<sup>30</sup> Further, local employment offices are required to give priority to the employment of recognized orphans, who are also to be accorded priority in state emigration programmes. Other rights include free public transport and health care.

Other provisions relevant to care leavers who have obtained orphan status are found in the law “On Social Programmes for the Housing of Inhabitants of Urban Zones”<sup>31</sup>, which includes orphans in the categories of the vulnerable who are to be given priority with housing. In addition, the law “On Social Assistance and Services” currently provides for economic assistance to unemployed orphans over 25 years who are not in institutions or care.<sup>32</sup> Under the same law young people up to the age of 25 years are eligible to benefit by social services.

In practice, these provisions, in so far as they concern the crucial areas of employment, housing and assisted emigration, are not applied.<sup>33</sup> Moreover, the criteria set for orphan status exclude many care leavers, who are “social orphans”. These “social orphans” may have a living parent or parents, but parental illness, disability, emigration or family breakdown may leave them as deprived of family support as recognised orphans. In Amnesty International’s view, the law “On Orphan Status” broadly matched the realities of the past, when most children in alternative care were biological orphans or had been abandoned at birth. However, the law is ill-adapted to the present, when the great majority of children in care are “social orphans”. The National Strategy for Children 2005 – 2010 recognizes the need to improve this law, although the Action Plan makes no provision for amendment.

In the case of young care leavers embarking on independent life from the vocational boarding school, the “systematic” preparation for independent life and the “clear policy and agreed procedures” to ensure “appropriate aftercare and follow-up”, recommended in Guideline 130, cited above, are conspicuously lacking.

The Guidelines, taking into account the difficulties of the transition to independence, recommend: *“Special efforts should be made to allocate to each child, whenever possible, a specialized person who can facilitate his/her independence when leaving care”* (Guideline 132).

As already noted, these young people have no legal guardian, much less a “specialised person” allocated to them individually who can assist them on the path to independence. A *konvikt* director told Amnesty International: *“For work, training and housing they should go to the municipal authorities, and not to the educational supervisor. They’ve finished school. We don’t have any more duties towards them. Social Services should deal with these matters. They are adults now, we have to tell them to go and look for work.”*

However, State Social Services generally offer little practical support, other than the distribution of (inadequate) economic assistance (between 2,600 and 3,000 leke). In the face of the challenges of adulthood, these young people have consequently few resources to turn to other than the limited support of Orphans’ Associations, their orphan peers, the experience of older generations of orphans, and the assistance of some international governmental organizations (IGOs) and NGOs, which offer some vocational training, medication, food or clothing.

It is not surprising, therefore, that they are ill-prepared for independent life and dread the approach of the time when they are supposed to leave the *konvikt* and when their right to student meals and grant is withdrawn. One student is reported to have explained: *“During high school I failed exams on purpose for one year so that I could extend my stay in the konvikt as well as the grant for the following year. I didn’t have anywhere to go or any means to live on. I didn’t solve anything major but I prolonged for another year the hope that I could find a job.”*<sup>34</sup>

By contrast, on completing secondary or higher education, children in non-state care are generally supported and assisted in establishing an independent life. Social workers and other staff help them to find an apartment, and look for work. Initially, they are assisted with rent payments until they are fully independent. Other social assistance and support continue

to be available to them as necessary. Yet even so the transition is not easy. A study of young people in the care of the SOS Village, Tirana comments: *"The crucial moment for them in the transition to independence is leaving the Youth Community and finding accommodation. For some, this is a positive experience; for others it brings fear, uncertainty, anxiety about coping with life alone, meeting all expenses, finding employment"*.<sup>35</sup>

The difficulties encountered by young people leaving care in Albania arise in many other countries. Although circumstances and conditions inevitably differ, other practices can sometimes offer useful insights. A survey which may be of particular relevance in this respect is an SOS Villages three-year project (from 2009 to 2011), focusing on leaving care and encompassing 15 countries (Albania, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Estonia, France, Georgia, Germany, Kyrgyzstan, Poland, Russia and Uzbekistan). The project aims to share knowledge on leaving care, youth empowerment and the improvement of legislation and practice.<sup>36</sup>

## 5.2. PREPARATION FOR AFTERCARE

*"Aftercare should be prepared as early as possible in the placement and, in any case, well before the child leaves the care setting."* (Guideline 133)

In June 2009 Amnesty International interviewed care leavers who had completed (or terminated early) their secondary education in Tirana. They were still living in the *konvikt* of the Hotelliery and Tourism vocational school, but had been told they should leave by September, when their student grant and right to canteen meals would be withdrawn. Two of them made the statements cited below. Both had obtained orphan status, and should have benefited by their rights to priority with housing and employment. However, as can be seen, neither they nor the competent authorities had made any definite provision for the future:

*"When I finished school last year no one came to explain to me where I was to go or what was going to happen. No one came"*.

*"The problem is that up to 15 September we can eat in the student canteen, but what then?"*

The *konvikt* director told Amnesty International in June 2009 that he had requested the Ministry of Labour, the State Social Services and the Director General of *Konvikts* to find an alternative solution to these young people's accommodation, but had as yet received no answer. At the end of October 2009 they were still living in the *konvikt* and no alternative appeared to be in sight.

Very few of these young people leaving the *konvikt* have the skills and work experience to guarantee them a sufficient income to pay for accommodation on the open market. They also lack the family network that often assists other young people in finding employment. The apprehension with which they regard the future is further exacerbated by years spent in institutions. One young man, who completed vocational high-school in 2009, forcefully expressed his sense of abandonment and fear: *"I don't know where my parents are. I prefer to believe they died. I have a married sister whom I met a year ago... My health is bad and I often have black-outs. If I get ill, I have no relative to look after me... I am completely alone. I don't know what the future holds for me."*

In practice, the only solution the state has so far offered is to tolerate their continued stay in the *konvikt*, or in abandoned and semi-derelict sections of *konvikts*. Here these young people, whose lives have been marked by state neglect and the denial of their rights, will join older generations of orphans living in poverty and social exclusion, who are said to number over 220.<sup>37</sup>

### 5.3. ACCESS TO SERVICES FOR CARE LEAVERS

*“Social, legal and health services, together with appropriate financial support, should also be provided to young people leaving care and during aftercare.”* (Guideline 135)

Amnesty International is concerned that social, legal and health services, and appropriate financial support, are severely inadequate, or in some cases lacking, for young care leavers. Their only guaranteed support is the economic assistance granted to those who are unemployed, 3,000 leke a month. However, this is insufficient to cover even basic daily necessities, and cannot be considered “appropriate financial support” for young people who are not able to rely on the safety-net of the family home.

The Action Plan foresees “the coordination of national policies for children and young people and their integration in development programmes at all levels of central and local government” (1.11), and “the creation and reinforcement of capacity at contact points dealing with the problems of children and young people in every municipality and region” (1.12). With specific reference to children in care, the Action Plan, as already mentioned, has provision for “special programmes to prepare children for independent living, when they leave institutions” (6.8).

Much of this remains to be implemented, in part because of limited local budgets and staffing capacity. Central government needs to allocate greater resources (both funding and training) to strengthen local social services and enable them to carry out effectively the increased responsibilities they have assumed following decentralisation. There is also need for better coordination of local government services and NGOs working with children and young people.

In 2008 Amnesty International employed for six months a social worker to assist adult orphans who wished to apply for social housing. In the course of her work, she encountered a number of young people who were eligible for orphan status but had not yet obtained it, for lack of advice and assistance. They and other care leavers faced other problems, such as health care, and re-registration of their place of residence which affect their rights linked to the municipality or commune of residence. Her work and discussions with young people leaving care pointed to their acute need for a dedicated social worker who can give relevant support across all issues affecting their leaving care and aftercare. Orphans’ Associations founded to protect orphans’ rights, despite a number of valuable initiatives, do not, and probably cannot, adequately meet this need.

In the meantime, care leavers look in vain for effective services which will help them to access the foundations for a life of independence and human dignity: secure employment (and its corollary, social insurance, giving access to free public health care), and adequate housing.



## RECOMMENDATIONS

- Amnesty International recommends a thorough review of existing policies, legislation and practice in relation to leaving care and aftercare, in close consultation with all stakeholders, and a careful survey of best practices.
- Amnesty International recommends that such a review inform the adoption of comprehensive legislation for care leavers, which should reflect the standards and principles set out in the Convention on the Rights of the Child and the Guidelines, including:
  - clear procedures for their systematic preparation for independent life, including the designation of a specialised person who will facilitate the young person's transition to independence and assist them, as necessary, in accessing social, legal and health services;
  - provision for continued care and support for young people who continue their studies to university;
  - provision for continued support, systematic monitoring and follow-up of young people as, and after, they leave care; this should allow for systematic data collection on outcomes, to inform policy-making;
  - provisions guaranteeing secure employment, and adequate housing, whether low-cost or social rental housing, with access, where necessary, to subsidized rents ("*bonus strehimi*");

Amnesty International further recommends:

- the implementation of special programmes, to be devised in consultation with care leavers, to prepare children and young people for independent life, in accordance with the Action Plan, including the further development of vocational guidance and courses which correspond to the young person's abilities and interests and to the demands of the labour market;
- The creation and reinforcement, by central funding and training, of community-based services for care leavers;
- the promotion of effective implementation of policy and legislation related to leaving care and aftercare, by ensuring coordination at central and local level, including mechanisms which also integrate NGO service care providers into a unified referral and care system.

## CONCLUSIONS

Amnesty International considers that while the overall direction of government policy in relation to children in, or at risk of, alternative care, generally conforms to the spirit of the Guidelines, the political will to implement these policies and take them forward, has been inadequate. There are children in residential care today whose best interests would be served by remaining in their families, and whose families would care for them if adequate economic assistance and other support were available. There are other older children who are being denied the special protection and assistance that is there due, and for lack of individual care, supervision and educational support are dropping out of secondary education and failing to develop their personality, talents and abilities to their fullest potential. As these young people leave care, the structures and services, including a designated mentor, are not in place to assist them in the transition to independence, or to support them, if necessary, during aftercare.

Amnesty International is aware of the practical constraints which place obstacles in the way of meeting these needs. They include problems related to the processes of decentralisation, the weakness and fragmentation of local social service providers and inadequate budgeting. There is a clear need for increased funding, training and coordination at all levels. At present some excellent work in the field of alternative child care is done by NGOs in Albania. At their best, their practices provide useful models. However, they should not be expected to substitute for functions which the state is obliged, under international conventions, to discharge, and rights that the state must guarantee. It remains the obligation of the state to allocate the necessary human and financial resources which will ensure that children's rights, and the rights of children without parental care – a particularly vulnerable group – are implemented. The Guidelines are clear on this:

*“States should, to the maximum extent of their available resources and, where appropriate, in the framework of development cooperation, allocate human and financial resources to ensure the optimal and progressive implementation of the present Guidelines throughout their respective territories in a timely manner. States should facilitate active cooperation among all relevant authorities and the mainstreaming of child and family welfare issues within all ministries directly or indirectly concerned.” (Guideline 23)*

# ENDNOTES

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<sup>1</sup> The *Guidelines for the Alternative Care of Children* were adopted on 18 December 2009 by the UN General Assembly: see Resolution A/RES/64/142.

<sup>2</sup> The Guidelines for the Alternative Care of Children were welcomed by the Third Committee of the UN General Assembly on 20 November 2009, and were adopted on 18 December 2009 by the UN General Assembly: see Resolution A/RES/64/142.

<sup>3</sup> Decision of the Council of Ministers (DCM) no.368 of 31 May 2005.

<sup>4</sup> DCM no.487 of 30 June 2005.

<sup>5</sup> *Metropol*, 28 January 2009.

<sup>6</sup> University of Essex, Children's Legal Centre, *Analysis of the Child Protection System in Albania* (Report sponsored by UNICEF, Albania), April 2007, p.104.

<sup>7</sup> NACSS & HDC, *Assessment of the Child Care Services and the Institutions for Children without Parental Care* (Research Report sponsored by UNICEF, Albania), October 2005.

<sup>8</sup> At the end of 2006, it was estimated that 58 per 100,100 children in Albania were in public residential care (comparative regional figures for 2005: Croatia: around 404 children and Macedonia: 176 children in public residential care per 100,000 children). UNICEF Transmonee Database 2006, cited in: University of Essex, Children's Legal Centre, *Analysis of the Child Protection System in Albania* (Report sponsored by UNICEF, Albania), April 2007.

<sup>9</sup> *Shekulli*, 5 and 6 October 2009.

<sup>10</sup> They include: SOS Villages, Madonnina del Grappa, TAG centre, Tjeter Vizion, Home of Hope.

<sup>11</sup> Information provided by the NGO Aleanca per Femije in September 2009.

<sup>12</sup> See for example, NACSS & HDC, *Assessment of the Child Care Services and the Institutions for Children without Parental Care* (Research Report sponsored by UNICEF, Albania), October 2005.

<sup>13</sup> University of Essex, Children's Legal Centre, *Analysis of the Child Protection System in Albania* (Report sponsored by UNICEF, Albania), April 2007, p.102.

<sup>14</sup> DCM no. 659 of 17 October 2005 "On the standards of social care services for children in residential institutions".

<sup>15</sup> Articles 28.1 (d) and 12.1 CRC.

<sup>16</sup> In certain cases, active support has been offered: Sarandë Children's Home has provided accommodation to a student or students who lacked appropriate alternative accommodation while at secondary or higher education.

<sup>17</sup> Cited in NACSS & HDC, *Assessment of the Child Care Services and the Institutions for Children without Parental Care* (Research Report sponsored by UNICEF, Albania), October 2005.

<sup>18</sup> *Koha Jonë*, 14 October 2009.

<sup>19</sup> University of Essex, Children's Legal Centre, *Analysis of the Child Protection System in Albania*

(Report sponsored by UNICEF, Albania), April 2007, notes that research evidence indicates that successful reintegration can be extremely difficult to achieve once the child has been away from home for six months or more.

<sup>20</sup> See Article 20, CRC and Articles 54 and 59.1 e of the Albanian Constitution.

<sup>21</sup> DCM no.1211 of 27 August 2008, covering the academic year 2008 to 2009)

<sup>22</sup> The Strategy of the Social Services 2005 to 2010, pp.21-22

<sup>23</sup> Article 8 of Directive 1934, dated 18 October 2007, issued by the Ministry of Labour, Social Affairs and Equal Opportunities, "Concerning procedures for placing people in public and private residential institutions of social care".

<sup>24</sup> SOS Villages Albania, *Country Rights Situation Analysis of Young People Ageing out of Care in Albania* (draft, Albania, January 2009, p. 16.

<sup>25</sup> Only three per cent of children from (state and non-state) residential institutions go to university, according to the study of the National Albanian Centre for Social Studies, *Assessment of the Child Care Services and the Institutions for Children without Parental Care* (Research Report sponsored by UNICEF, Albania) October 2005.

<sup>26</sup> Article 28.1 (e) CRC.

<sup>27</sup> 10,000 leke a year for clothes, and 200 leke a month for personal necessities (DCM no.1211 of 27 August 2008, covering the academic year 2008 to 2009).

<sup>28</sup> For example, SOS Children's Villages have support programmes (semi-independence) for young people up the age of 24 years.

<sup>29</sup> Law no. 8153 of 31 October 1996, amended by Law no.9233 of 13 May 2004

<sup>30</sup> See Articles 17, 12 & 14 of Law no. 8153.

<sup>31</sup> Law no.9232 of 13 May 2004.

<sup>32</sup> Law no.9355 of 10 March 2005.

<sup>33</sup> Twenty nine recognized orphans benefited by social housing (low-cost on a long-term credit base) between 1996 and 2005; since 2005 no orphan has benefited (statistics of the Directorate of Inspection of Social Services, the State Social Services, the Ministry of Labour). In Sarandë, however, Amnesty International informally learned that an orphan with a chronic illness had recently been allocated a studio apartment by the municipality.

<sup>34</sup> Girl from dormitory, Tirana, cited in SOS Children's Villages, Albania, *Country Rights Situation Analysis of Young People Ageing Out of Care in Albania* (draft), Albania, January 2009.

<sup>35</sup> Elsa Osmani, *Largimi i te rinjve nga kujdesi social dhe pavaresia*, Master's Diploma Thesis, Tirana, September 2008, p.41.

<sup>36</sup> <http://www.sos-childrensvillages.org/focus-areas/child-rights/advocacy-in-action/pages/leaving-care.aspx>

<sup>37</sup> *Gazeta Shqiptare*, 21 May 2009.

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