

A SNAPSHOT OF ALTERNATIVE CARE ARRANGEMENTS IN PERU



SOS CHILDREN'S
VILLAGES
INTERNATIONAL

*Based on SOS Children's Village's assessment
of a state's implementation of the UN Guidelines
for the Alternative Care of Children.*



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In 2011, SOS Children's Villages International, along with child rights experts Nigel Cantwell and Prof. June Thoburn, developed an assessment toolⁱ to measure a state's implementation of the UN Guidelines for the Alternative Care of Children. This tool is meant to be used as research foundation for countries participating in the SOS Children's Villages global advocacy campaign: Care for ME! *Quality Care for Every Child*.

The assessment tool is a long and complex diagnostic instrument. Undoubtedly, many states will not have sufficient data available to answer all the questions contained in the assessment and no single state will have implemented all the provisions for family support and alternative care as laid out in the UN Guidelines for the Alternative Care of Children. Nevertheless, SOS Children's Villages national associations were asked to complete as much of the tool as possible, given the available data in their country. The three main steps for completing the assessment are:

1. Desk research of existing secondary and meta data, from state, non-state and international sources;
2. Interviews with key service providers, service users and management; and
3. Compilation of the final report, including this summary.

A full version of the original data can be made available upon request. Requests can take up to 90 days to complete the request. Please contact Emmanuel.sherwin@sos-kd.org for further assistance and questions.

The target groups of this study are: can be defined as:

Children in alternative care: Those children and young people who, for any number of reasons, live outside their biological family and are placed in formal or informal care arrangements such as residential care, SOS families, foster care or kinship care.

Children at risk of losing parental care: children whose families are in difficult circumstances and are at risk of breaking down. They may be experiencing any number of challenges including, but not exclusively: material poverty, substance abuse, poor parenting skills, disability and behavioural issues.

A full version of the original data can be made available upon request. Please contact Emmanuel.Sherwin@sos-kd.org for further assistance and questions.

Next Steps

SOS Children's Villages calls on all states, civil society partners, inter-governmental agencies, human rights institutions and individuals, to use the data contained in this report to defend the rights of children and families. To work together or individually to bring about a lasting change in a child's right to quality care. If possible, in each of the countries where the assessment was carried out, SOS Children's Villages, in cooperation with key partners, will initiate an advocacy campaign on one or more of the recommendations contained within the report. Please contact the SOS Children's Villages national office if you wish to know more, support or become involved in the campaign.

Disclaimer:

While all reasonable efforts have been made to ensure the accuracy and legitimacy of the data in this report, SOS Children's Villages cannot be held liable for any inaccuracies, genuine or perceived, of the information retrieved and presented in this document. The purpose of this report is to offer an insight into the state's attitude and recourse to alternative care and any human rights violations therein. SOS Children's Villages will not assume responsibility for the consequences of the use of any information contained in the report, nor for any infringement of third party intellectual property rights which may result from its use. In no event shall SOS Children's Villages be liable for any direct, indirect, special or incidental damage resulting from, arising out of or in connection with the use of the information.

Executive summary

Peru ratified the *UN Convention on the Rights of the Child* in 2004. It was adopted into law in the form of the *Child and Adolescent Code*, which establishes the child's right to live and grow within a family environment, ensuring that children have the necessary care for their development. The *Code* is supplemented by the *General Law of Residential Care Centre for Children and Adolescents* (2007)ⁱⁱ and its regulations (2009), the *Intervention Manual of Residential Care Centre for Children and Adolescents without Parental Care* (2012) and the *Accreditation and Supervision Manual of Programmes for Children and Adolescents without Parental Care in Peru* (2012). The *National Plan of Support to the Family 2004–2011* provides for children who do not live with their families and ensures that the state promotes family reintegration, either with the family of origin, including the extended family, or in family-based care placements or adoption. Its aim is to avoid the placement in institutional or residential care wherever possible.

This framework also offers support and programmes for families at risk of losing parental care (family strengthening services). In many cases these programmes are not implemented adequately and do not have the desired outcomes. The law is ambiguous in its definition of 'abandonment' and so there is a considerable amount of discretion in the hands of decision-makers, leading to a high percentage of children being placed in residential care. During the placement process, despite regulations that favour family and community bonds, children are often placed in care without consideration of their siblings or the option of placing them within their extended family. As a result, rather than being temporarily placed with foster families or in kinship care, in emergency cases children are initially placed with the Peruvian Police Preventative Centre or in hospitals depending on their physical or mental health.

The law mandates the participation of children and adolescents in decision-making processes, but the Ombudsman Office found that few cases take into account their statements, and public ministry representatives or counsellors rarely participate to ensure these rights are upheld. In a similar vein, the procedures for complaints do not uphold children's rights and the Ombudsman found that children were punished in public residential care homes sometimes in abusive ways.

These violations are contrary to the *UN Convention on the Rights of the Child* and the *UN Guidelines for the Alternative Care of Children*. As a result, protection measures are needed to ensure that alternative care is primarily used as a temporary measure, that only professionally trained staff are mandated to work with children and make decisions, and that families are not separated unnecessarily. There is also a need to improve the regulation of the protection system by a nationally competent body and the definition of abandonment should be clarified to ensure that the fundamental right of the child to live with his or her family is upheld wherever possible.

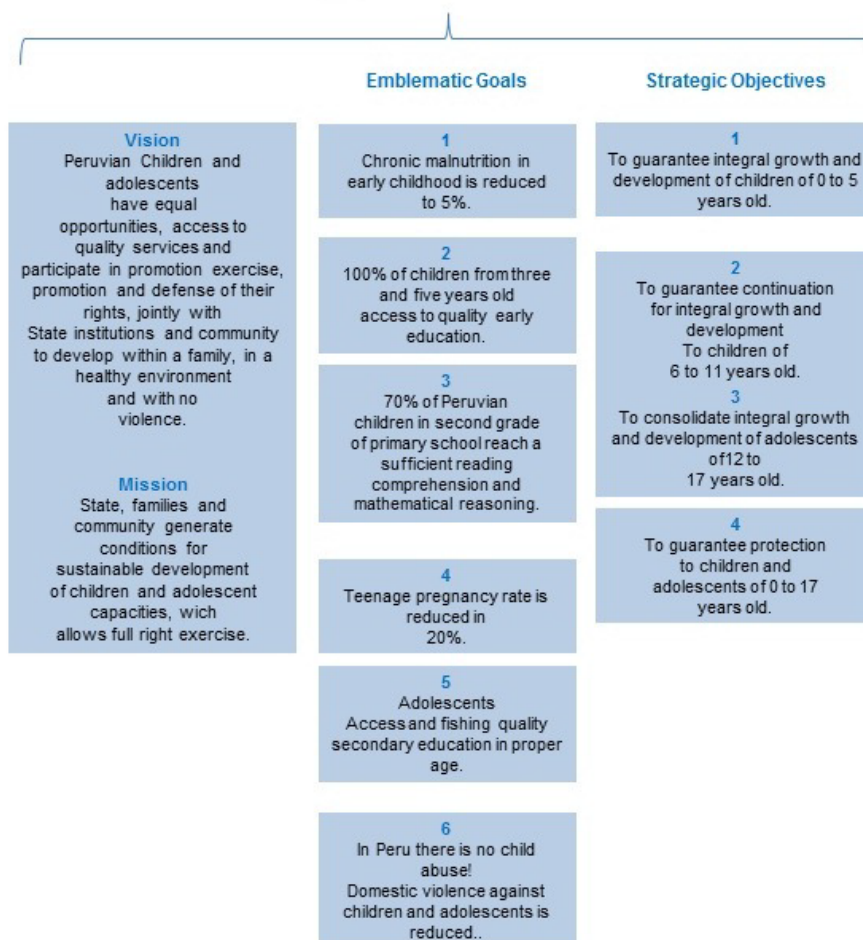
Results

Peruvian Child Protection System

Peruvian law on child protection has changed over the past five years, with progress observed in the system through reorganisation, including removing the Ministry for Women and Vulnerable Populations (MIMP) as the supervisory body. There are significant limitations in implementation, however, mainly in relation to guardianship investigations, where in regions outside Lima staff training has been limited. As a result children tend to enter the protection system through two channels: the Guardianship Investigation Unit (under the MIMP) and the courts (general and family courts). Lack of information and inconsistencies in investigations limits decision-makers' ability to assess cases appropriately and, as a result, prevention measures are limited.

Families are primarily responsible for the care and protection of their children, but the state has a responsibility to intervene when they are not capable or when family crises represent a risk for children. The *Child and Adolescent Code* emphasises the importance of maintaining family bonds,ⁱⁱⁱ but this does not always match with court decisions and rather than support for families through family strengthening strategies, alternative care is often the option chosen by courts.

Right Guarantee

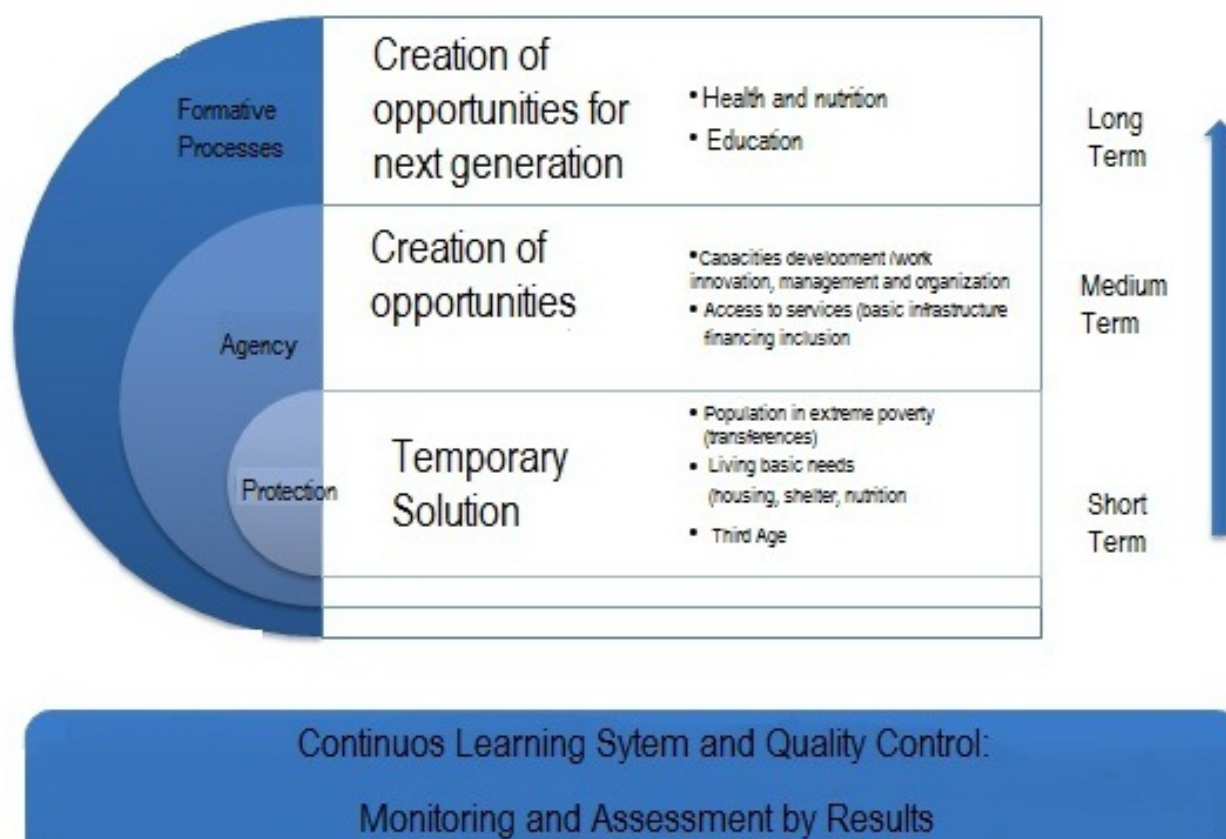


Strategic Objectives	Expected Result
<p>1. To guarantee integral growth and development of children of 0 to 5 years old.</p>	<ol style="list-style-type: none"> 1. Children and pregnant mothers can access healthy and safe care during pregnancy, labor and neo natal period, according to her culture, specially in rural areas and native communitives. 2. Children younger than 5 years old should reach a proper nutrition and health. 3. Children of 0 to 2 years old receive care, integral attention and timely learning. 4. Children of 3 to 5 years old access to timely nursery school with intercultural inclusion environment cultural, and free of violence education.
<p>2. To guarantee integral growth and development continuation of children of 6 to 11 years old.</p>	<ol style="list-style-type: none"> 5. Children of 6 to 11 years old access and finish timely quality primary school with intercultural, inclusion, environment cultural, and free of violence education. 6. Children and adolescents are protected of child labour.
<p>3. To consolidate integral growth and development of adolescents of 12 to 17 years old.</p>	<ol style="list-style-type: none"> 7. Adolescents access and finish timely secondary school with intercultural, inclusion, environment cultural, and free of violence education. 8. Adolescents are protected of dangerous works. 9. Adolescents postpone fatherhood until majority of age. 10. Adolescents reduce legal and illegal drug use. 11. Adolescents involved in legal conflicts are few. 12. HIV and AIDS infection in adolescents is reduced. 13. Adolescents access to quality health care according to their culture. 14. Adolescents are not subject of sexual exploitation.
<p>4. To guarantee protection of children and adolescent of 0 to 17 years old.</p>	<ol style="list-style-type: none"> 15. Children and adolescents have right to a name and identity in universal and timely form. 16. Children and adolescents with special needs access an educational and health specialized services. 17. Children and adolescents are integrally protected in trafficking situations (sexual, labor, mendicancy). 18. Children and adolescents participating in public policy cycle if it is of their interest or concern. 19. Children and adolescents are less vulnerable in situations of emergency and disaster. 20. Number of children and adolescents suffering from school and domestic violence is reduced 21. Number of children and adolescents child abuse victims is reduced. 22. Children and adolescents without parental care are integrated in a family. 23. Children and adolescents not participating in internal conflicts. 24. Children or adolescent deceased for tuberculosis in Peru. 25. Children and adolescents with social insurance.

There is support available to provide financial subsidies for families in extreme poverty, particularly for pregnant women and to pay for education. These services are available through the Ministry of Social Development and Inclusion (MIDIS), which aims to improve quality of life for vulnerable groups and to provide opportunities for capacity development. It has developed a Social Inclusion Proposal.

Informal care

At the national level 61.7% of children and adolescents live in nuclear households; 31.2% in extended households; 4.5% in nuclear or extended households not with relatives; and 2.6% are homeless. The number of children living in informal care (not within their parental household) is 23.8% of all children, of which 20.3% live with grandparents and 3.5% with other relatives.



However, there is very little systematic data on informal care and there are no regulations for supervising this form of care, raising concerns that children could be subject to abuse, neglect, and child labour.

Alternative care process

The *National Plan of Action* for childhood and adolescence 2012–2021 guarantees the protection of children by the state and has the objective to reintegrate a third of children without parental care into a family environment. However, according to the Ministry of Women and Social Development (MIMDES) more than 19,000 children are in institutional care.^{iv}

The *Child and Adolescent Code* states that it is up to the national child welfare agency, INABIF (El Programa Integral Nacional para el Bienestar Familiar), as governing body, to investigate child protection and decide on protection measures. To date, however, this only takes place in Lima and elsewhere, the courts remain decision-makers. According to the *Code*, protection measures and family and community strengthening should be prioritised,^v as well as the obligations of parents as care givers.^{vi} The Ombudsman's Office has found that there is a tendency to treat child protection cases without considering the child's relatives, siblings or other options for care, as a result the most common option is to place children in residential/ institutional care and few cases emphasise family reintegration.

Abandonment is the main criteria by which children can be taken into alternative care, but its definition is ambiguous, although there are some criteria for assessing it.^{vii} The *Code* explicitly states that 'lack of economic resources does not give rise to the declaration of abandonment'. Although this legislation may appear to reduce the margins of discretion for judges, its interpretation has been very lenient, so that children are often removed from their families on questionable grounds.

According to a study of files from Lima, Cusco and Loreto; 45.7% of children in Lima, 80% in Cusco and 90.5% in Loreto, had living family members.^{viii} The report proposed that a distinction should be made between 'abandonment' and 'risk', as 'risk is the situation proceeding abandonment', so that different measures can be used for children at 'risk' to avoid institutionalisation.

Children also have the right to participate in the planning, revision and decision-making processes related to their placement. However, according to Ombudsman Office few cases take into account children's statements, and public ministry representatives, assigned counsellors, rarely participate although they should act as guarantors of children's rights.

Preparation and support for alternative care changing and leaving care

When the form of care for a child is changed, or when they are leaving care, it is important that they are involved in the decisions affecting their lives. In terms of reintegrating children into a family environment, it is the responsibility of the residential care centre to work with the nuclear and extended family to promote reintegration and to ensure monitoring after reintegration for between six and 12 months.

Where children have no families to be reintegrated into or when reintegration is impossible due to the child being 'abandoned', the development of an adoption plan should be pursued in coordination with the National Secretariat of Adoptions.

In cases where adolescents have no relatives, they leave care at 18 years old and the care centre must plan strategies with them to ensure their successful social integration so that they can live independently; this should include therapies, as well as education and training. A study of leaving care in 2011, found that this system was weakly implemented and that children were not well prepared, leading to limited work opportunities and high education drop-out rates.^{ix} It is important to highlight that there is not an integrated system generating real-time or updated information. The "transparency section of the ministry (MIMPV)" website, does not contain monthly report updates.

Reasons for leaving residential care centres - 2011

	Lima	Provinces	Total
Adoptions	9	3	12
Family Placement	146	119	265
Decease	13	0	13
Non-authorised leaving	77	234	311
Social Reintegration	62	93	155
Family Reintegration	283	689	972
Military Service	0	0	0
Transferal to other institution	81	161	242
Transferal to other INABIF residential care centre	141	27	168
Others	68	0	68
TOTAL	880	1326	2206

Source: Statistical Year-Book 2011. Statistical Information Systems. Ministry of Women and Vulnerable Populations.

Authorisation/ Inspection

The Ministry of Women and Vulnerable Population (MIMP), regulates, monitors and supervises public and private care institutions, including residential care centres. The 2012 Accreditation and Supervision Manual 2012, establishes renewable accreditation proceedings (every two years) to certify that residential care centres offer quality and suitable care for children and young people, including standards for management, infrastructure, human resources and methodologies.

The law states that all centres providing alternative care to children should be accredited, but in practice many operate without accreditation. Alternative care is mostly funded and managed by private entities that are not registered or accredited by the MIMP Institution Registry Centre. As a result there are several residential care centres that operate with the consent of a judicial or administrative authority, but are not subject to regular state monitoring and oversight. To date, there are 373 certified public and private residential care centres. Supervision should also be provided by local and regional governments to ensure that children in alternative care are treated properly. Residential care centres should be supervised at least once a year, but in practice, only 25% were supervised regularly. This is a result of lack of staffing for the technical team. Where failings are found, centres can be permanently or temporarily closed and an application for penalties is made to the courts, the Public Ministry and the regional and local authorities before actions are carried out.

Alternative care financing and staff capacity

The financing of alternative care is primarily through private entities, although subsidies from the state and Buckner Foundation are possible.^x There are regulations stipulating the necessary budget per child and staffing requirements for residential care centres. Staff must be in multidisciplinary technical teams, supporting care and household strategies. Within residential care centres, there must be a psychologist, a social worker and a teacher for every 20 children, as well as permanent care staff. Staff must be certified professionals with knowledge and experience in childcare, and cannot have a criminal record or any physical or mental health problems. In addition, they should receive training at least twice a year.

Protection, violence and complaints

The state has a responsibility to protect all children from exploitation. Children in residential care should also be protected from all forms of abuse and the directors of childcare centres are obliged to report such cases. However, there is no statistical data on child abuse cases, despite regulations on complaints and grievance management and limitations on punishments for children. The Ombudsman found that there were various cases of children being abused as punishment, including: reducing free time, forbidding preferred activities, forcing domestic work, limiting food and time for studies or limiting or stopping family visits, and imposing humiliating physical punishments, such as 'leap frogging'.

Recommendations

1. Develop a public policy ensuring children and adolescents are treated in ways that enable them to fully exercise their rights to life, integrity, equity, participation, identity, health education, and to live within a family.
2. Develop public policy within the framework of the National System of Children and Adolescent Integral Care for establishing criteria regarding protection measures. Children should only enter the care system temporarily and in exceptional circumstances. There should be a diversity of care options and they should be cared for by professionals or wherever possible in their own families or communities.
3. Modify the norms ensuring that investigation proceedings are based on confirming whether children have been abandoned, and uphold as far as possible their right to live within a family environment. An implementation plan should ensure the competence of investigation proceedings throughout the country.
4. Ensure preventive services implement family strengthening strategies for developing family capacities towards a quality care and full inclusion in social and community life.
5. Develop special programmes for children and adolescents without parental care, in which social reintegration strategies promote the development of personal skills for independent life in society.
6. Strengthen the governing body's role to generate and strengthen information systems on children in risk and who have been abandoned, to participate in co-financing of private residential and public residential care.
7. Adapt mechanisms ensuring children's participation in decision-making relevant to their lives, in all phases of care and to implement efficient child protection to include prevention systems and proceedings reporting complaints or violence against children and adolescents.

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Glossary

Foster family or family placement: Child or adolescent is received by a person, family or institution responsible for him/ her temporarily. This measure can be provided by an administrative or judicial body and it can be paid or free. A relative bond affinity or affection with the family, person, or institution shall be considered.

Integral care in a special protection establishment – residential care centre: A residential care centre is managed by a public, private, mixed or communal institution where children and adolescents at risk of abandonment live. These include households, shelters, villages, supervision centres, etc.

Peruvian Police's Preventive Centre: Admission is temporary and in emergency cases only, until a place can be found in a residential care centre or a responsible adult is found to care for the child.^{xi}

ⁱ The original version of the tool can be found here: <http://www.sos-childrensvillages.org/What-we-do/Child-Care/Quality-in-Care/Advocating-Quality-Care/Pages/Quality-care-assessment.aspx>

ⁱⁱ Law 29174.

ⁱⁱⁱ Article 252^o: 'in application of indicated protection measures, family and community bonds are strengthened', and Article VI of Preliminary Title: 'it recognises that its duty to care for children and adolescents includes her/ his mother and family'.

^{iv} Quarterly Newsletter N°4, 'Let's make of a family the best place to grow'.

^v Article 252.

^{vi} Article VI of Preliminary Title.

^{vii} Article 248 Children and Adolescent Code.

^{viii} Ombudsman's Office.

^{ix} Amici dei Bambini Organization.

^x A private foundation in Latin America, <http://www.bucknerfamilia.org/faq.shtml>.

^{xi} Children and Adolescent's Code, Law 29174 General Law of Residential Care Centre for Children and Adolescents, Protocol of Intervention 'Legal, Psychological, and Health Instructive of Tutelary investigation Unit'.