

Regional Guidelines for Nurses & Midwives when sharing information with the Children's Court Guardian Agency for Northern Ireland

June 2023

Version 6.0

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1.0 Introduction

- 1.1 Effective safeguarding children practice depends upon information sharing, collaboration and understanding between families, agencies and professionals. Nurses and Midwives¹ are required to work in partnership with other disciplines and agencies to safeguard and promote the health and wellbeing of children and young people. This includes working in partnership with the Children's Court Guardian (Guardian) appointed by the court when making decisions regarding the best interests of a child or young person.
- 1.2 This guidance reflects the need for Nurses/Midwives to adhere to their professional code, legislation and regional safeguarding policy and procedures when working with a Guardian. It describes the process agreed with the Children's Court Guardian Agency for requesting and sharing of information. Record keeping, confidentiality, consent and disclosure are addressed.
- 1.3 The revised guidance replaces previous regional guidance developed by a regional working group with representation from each of the 5 Health and Social Care Trust's safeguarding nursing teams and the Children's Court Guardian Agency.² Regional implementation by the five Health and Social Care Trusts and Children's Court Guardian Agency will ensure that information held by Nurses/Midwives is shared with the Guardian in a consistent, timely and appropriate manner, so that informed decisions can be made in the best interests of children and young people.

¹ For the purpose of this document, the term 'Nurse' is used to refer to all Nurses, Midwives and Specialist Community Public Health Nurses. Safeguarding children Nurse Specialists will be referred to as "SCNS" within the document.

² Regional Guidelines for Nurses and Midwives when sharing information with the Children's Court Guardian Agency (previously known as NI Guardian Ad Litem Agency (2016)

2.0 Key Legislation

- 2.1 The legislative framework for protecting and safeguarding children is found within the Children (NI) Order (1995) and Human Rights Act (1998). This incorporates certain rights and freedoms within United Kingdom law, as set out in the United Nations Convention on the Rights of the Child (1989) and the European Convention on Human Rights (1950).
- 2.2 The Children (NI) Order (1995) brings most of the public and private law relating to the care, upbringing and protection of children together in a single coherent statutory framework. The Order aims to strike a balance between the rights of children to express their views on decisions made about their lives; the rights of parents to exercise their responsibilities towards the child and the duty of the State to intervene where the child's welfare requires it.
- 2.3 The Human Rights Act (1998) (Article 8) deals with respect for privacy within family life. Under the Children (NI) Order (1995) where conflict exists regarding the sharing of information, the child's welfare is always paramount and overrides all other considerations including the right to privacy and confidentiality.
- 2.4 For children who cannot live with their birth parents (whether temporarily or permanently) the key objective is to provide permanence throughout childhood and beyond. Under the Adoption (NI) Order 1987 and the Human Fertilisation and Embryology Act (2008) the welfare of the child must be the first or paramount consideration.
- 2.5 The Children's Services Co-operation Act (NI) 2015³ places a requirement on individuals and organisations providing children's services to children to co-operate with each other to devise and implement cross cutting strategies. The Act is key to ensuring improved outcomes for children by supporting, enhancing and encouraging co-operation so that services are integrated from the point of view of the child or young person.

3.0 The Role of the Children's Court Guardian in Public Law Proceedings

- 3.1 The Children's Court Guardian Agency for Northern Ireland was previously known as the Guardian Ad Litem Agency that was established with the implementation of the Children (NI) Order 1995. The agency changed its name in March 2023. The role of the Guardian is to provide an independent and objective recommendation to court as to what is the best option for the child whose future the court has to decide. The mandate of the Guardian is enshrined in the Children's Court Agency's mission statement:

³ The Children's Services Co-operation Act (NI) 2015

'To advise the courts of children's wishes and feelings and independently represent and safeguard the interests of children in specified public law and adoption proceedings in Northern Ireland' (COAC, 2010)⁴

- 3.2 The role and functions of the Guardian is determined by relevant legislation and therefore is a statutory function. In public law proceedings, the child is a party to those proceedings and it is the role of the Guardian to ensure the child is legally represented. The statutory duty of welfare is dictated by the principle enshrined in the Children (NI) Order 1995, which is that the welfare of the child is the *paramount consideration*.
- 3.3 In order to effectively perform a duty of welfare, the Guardian shall make such investigations as may be necessary for him/her to carry out requisite enquiries. In accordance with such duties the Children (NI) Order 1995 states that the Guardian has a right (Article 61) to examine and take copies of records which are compiled for the purpose of '*relevant functions*' which are defined as '*personal social services functions*'. Article 61 does not apply to records which are held by health professionals, except where they form part of a social services file.
- 3.4 The DHSSPS introduced guidance in 2009⁵ to promote collaborative working between parties in the best interests of the child. The purpose of this guidance is to make public law proceedings more efficient by reducing delay and thereby improving outcomes for children. The principle of 'working together' permeates much of the new thinking in working collaboratively with partner organisations and agencies. Sharing of information with a Guardian is determined by a public interest requirement.

4.0 The Role of the Children's Court Guardian in Non-Public Law Proceedings

4.1 Adoption (NI) Order 1987

Under the provisions of the Children (NI) Order 1995 and the Adoption (NI) Order 1987 a Children's Court Guardian is appointed by the Court. The powers and duties of the Guardian in adoption proceedings should not be confused with the role of the Guardian in specified public law proceedings. The principal duty of the Guardian under the Adoption (NI) Order 1987 and the Children (NI) Order 1995 is to represent the child in order to safeguard their interests before the Court.

⁴ Children Order Advisory Committee (2010) Best practice and Guidance 2nd Edition

⁵ Children Order Advisory Committee (2009a) Guide to Case management in Public Law

4.2 **Human Fertilisation Act (2008)**

Under the provisions of this legislation applicants apply to Court for a Parental Order in accordance with Section 54 of the Human Fertilisation and Embryology Act (2008) and additional Remedial Order (2018)⁶ It is the role of the Guardian is to consider the welfare test as the welfare of the child is the paramount consideration. In considering what is in the child's '*best interests*' the Guardian must advise the Court on the granting of the parental order and whether this would be in the child's best interests in the context of the child's current care arrangements.

4.3 **Children's Court Guardian Enquiries**

When a Court appoints a Children's Court Guardian under the Adoption (NI) Order 1987 or the Human Fertilisation and Embryology Act (2008) the nature of the Guardian's enquires may be viewed as distinct from those undertaken under the Children (NI) Order 1987. Where adoption is the preferred option, the Guardian's enquires will consider the child's permanence needs and to what extent an adoptive placement will meet those needs. Where the application is for a Parental Order in accordance with Section 54 of the Human Fertilisation and Embryology Act (2008) the Guardian must be satisfied that the child is achieving his/her developmental milestones that immunisations are up to date and the child has made steady developmental progress.

4.4 Where the Guardian requests information from Nurses, Midwives, or Specialist Community Public Health Nurses under the auspices of the Adoption (NI) Order 1987 or the Human Fertilisation and Embryology Act (2008) the focus will be on how current care arrangements are meeting a child's 'permanence needs' with whom a child is expected to live for the duration of his/her childhood and beyond.

5.0 **The Role and Responsibilities of Nurses/Midwives when Sharing Information with the Children's Court Guardian Agency**

5.1 The Nursing and Midwifery Council (NMC)⁷ is the regulatory body responsible for standards of practice within nursing and midwifery. The NMC recognises the complexity of providing health care through multi-professional and multi-agency activities and endorses the concepts of support, co-operation, good working relationships and mutual respect.

⁶ The Human Fertilization and Embryology Act 2008 (Remedial) Order 2018
<https://www.legislation.gov.uk/ukdsi/2018/9780111171660/contents>
The Human Fertilization and Embryology (Parental Orders) Regulations 2018
<http://www.legislation.gov.uk/ukdsi/2018/9780111174715/contents>

⁷ NMC Code (2018)

5.2 The following principles apply:

- A proper balance must be struck between protecting children and respecting the rights and needs of parents, families and any individual who may pose a risk to children.
- Where there is conflict, the child's welfare must come first.
- There must be effective communication and partnerships between agencies to manage the risk of harm to children.
- The Guardian, as an independent officer of the court who is appointed to safeguard and promote the welfare of the child, requires relevant information in order to effectively fulfil this responsibility.

6.0 Records and Record Keeping

6.1 Effective record keeping is an integral part of nursing practice and is essential to the provision of safe and effective care. Effective record keeping:

- Improves accountability;
- Demonstrates how decisions are made;
- Supports effective clinical judgements and decisions;
- Facilitates effective multi-professional and multi-agency communication.

6.2 The Data Protection Act (1998) has been updated to take account of the General Data Protection Regulations (GDPR) in May 2018. The Data Protection Act describes a health record as:

'... consisting of information about the physical or mental health or condition of an identifiable individual made by or on behalf of a health professional in connection with the care of that individual'.

All personal data should be kept in accordance with the principles of the Data Protection Act and the seven GDPR principles (see Appendix 2).

7.0 Confidentiality

7.1 Practitioners who create, access and use records have a duty to protect the confidentiality of the client's record. Nurses/Midwives must respect people's right to privacy if they are to maintain public confidence in their profession. People have a right to expect that information given to a Nurse/Midwife is only used for the purpose for which it was given and will not be disclosed without permission. This includes information that is disclosed to the Nurse/Midwife by others. Patients and clients have a right to know about the standards of confidentiality maintained by those providing their care. These standards should be made explicit by the health professional at the first point of contact.

7.2 The issue of confidentiality is addressed by the NMC in its additional guidance and advice. Nurses/Midwives are personally accountable for actions and omissions in their practice and must always be able to justify their decisions. The NMC requires Nurses/Midwives to:

- Respect people's right to confidentiality
- Ensure that people are informed about how and why information is shared by those providing their care
- Disclose information if they believe that someone may be at risk of harm, in line with the law of the country.

7.3 Maintaining confidentiality is not an absolute duty.

'Disclosure in a service user's best interests would usually be justified where without disclosure you would not be acting in the overall best interests of a child, who does not have the understanding to make the decision, and where it is impracticable or inappropriate to obtain consent from the person with parental responsibility' (DHSSPS 2012).⁹

7.4 Information can be shared if any of the following apply:

- Informed consent has been given to share the information.
- There is an overriding public interest to disclose information.
- A court order requires information to be shared.

7.5 The Nurse/Midwife will be accountable for all information released and he or she should discuss the matter fully with his or her professional line manager or Safeguarding Children Nurse Specialist prior to any disclosure. All information shared should be proportionate to the context and in line with the best interests of the child.

7.6 Article 61 of the Children (NI) Order (1995) states that where a person has been appointed as a Guardian, they shall have the right at all reasonable times to examine and take copies of 'any records' held by an authority compiled in connection with 'relevant functions'. Relevant functions refers to personal social services functions. Records held by social services in connection with a named child or family may include nursing information and reports. The Guardian will have access to this information.

7.7 The Guardian does not have automatic right of access to health records held by a health professional. The Guardian may apply to the court for direct access to health records. This should only be necessary in exceptional circumstances and where perceived conflict exists. Under such circumstances the court will be asked to determine whether the Guardian should have access to health records for the purpose of examining them and if copies of such records can be taken.

8.0 Consent

- 8.1 Whilst consent is not essential when sharing information in the public interest, Nurses/Midwives must make all reasonable efforts to inform the client of the Guardian's request and the need to share information. Nurses/Midwives should seek consent from the client to disclose information contained within health records that has been provided by their own discipline and other disciplines if this is to be disclosed, as the holder of the information is ethically and legally responsible for its confidentiality. This includes information provided by Doctors, Allied Health Professionals and other disciplines or agencies. The Nurse/Midwife should explain:
- Why information needs to be shared;
 - What information is to be shared;
 - Who the information will be shared with;and
 - The implications of information being shared or not shared.
- 8.2 If a client cannot be contacted prior to disclosure, the reason for and nature of disclosure should be explained as soon as possible thereafter.
- 8.3 The Nurse/Midwife should seek advice from the SCNS or line manager regarding the need to disclose so that the welfare of the child remains paramount if consent to share information is refused by a client. The decision to share information in these circumstances is based on the principle of public interest which can legally justify breaching confidentiality. Refused consent and any subsequent disclosure must be documented within the client's file.

9.0 Information supplied by a third party

- 9.1 Nursing records may contain information and reports received from other professionals. In these circumstances the Nurse/Midwife who holds the file is the custodian of that information. It is appropriate to verbally share some third party information held within health files, for example, information from General Practitioners or Speech and Language Therapists that has influenced nursing practice and service delivery.
- 9.2 Details of third party authors may be provided to the Guardian if more detailed third party information is required, for example, a copy of a report. The Guardian should request this more detailed information directly from the author or service provider.
- 9.3 In exceptional circumstances and following a discussion with the SCNS or line manager, the Nurse/Midwife may provide the Guardian with detailed third party information. This action must be justifiable to safeguard the welfare of a child and ~~information shared~~ must be relevant. All reasonable efforts to seek consent from the author must have been made.

10.0 Request for meeting with a Guardian

- 10.1 The Guardian should make direct contact with the Nurse/Midwife to request a meeting as soon as possible to allow the Nurse/Midwife adequate time for preparation. This request will be made no later than 10 working days prior to the date that information is required. The Guardian should state which legislation is relevant to the request.
- 10.2 In some cases a face to face meeting may not always be required. For example non safeguarding issues where parental consent has been given may allow for the requirement of face to face first meetings to be unnecessary. Alternative technological options can be considered for example videoconference or teleconference (once the Guardian identification has been confirmed) or Skype. It is the responsibility of the Guardian to set up and arrange the video conference. The Nurse/Midwife should ensure appropriate methods of checking identity of Guardian are applied. The Nurse/Midwife must seek advice from the SCNS if unsure whether information can be shared outside of a formal meeting. The use of teleconference would **not** be appropriate if it requires a discussion about personal sensitive information.

11.0 Guidance for Nurses/Midwives on Request for Information from a Guardian

- 11.1 It is important that Nurses/Midwives meet with the Guardian when necessary to provide a verbal explanation of nursing involvement with the family and to share relevant nursing information contained within health records or reports. This will avoid misunderstanding or misinterpretation.
- 11.2 **Timescale for the meeting:**
Nurses/Midwives should make all reasonable efforts to ensure that meetings with the Guardian take place as soon as possible and no later than 10 working days after the initial request, unless mutually agreed. In exceptional circumstances, a meeting or report may be required within a shorter period of time, for example, due to urgent court proceedings. In these circumstances the Nurse/Midwife should make every effort to accommodate the Guardian.

12.0 Informing others of the Guardian's request for information

- 12.1 Nurses/Midwives must inform the SCNS and line manager of the Guardian's request for information as soon as the request is received.

12.2 All reasonable efforts must be made to inform parents, and the child or young person if this is in keeping with the child or young person's level of understanding and competence, of the Guardian's request for information and this must be recorded in health records.

13.0 **Advice and Support from the SCNS / Line Manager**

13.1 The SCNS and the line manager will provide support and advice as required.

13.2 The line manager will ensure that the Nurse/Midwife has access to this regional guidance document.

13.3 The SCNS will ensure that the Nurse/Midwife understands the legal principles underpinning the sharing of information with the Guardian.

13.4 The Nurse/Midwife will consider and decide about the level of information to be shared and ensure that information to be provided is accurate. Nurses/Midwives should always seek advice from the SCNS or manager if uncertain regarding the relevance of some information to the Guardian's assessment

13.5 If the Nurse/Midwife intends to share detailed third party information or reports and has been unable to acquire the consent of the author or service, he or she must:

- Seek the advice of the SCNS or line manager
- Justify this action as being necessary to safeguard the welfare of the child or young person.

13.6 The SCNS and line manager will record all discussions and agreed actions on the safeguarding children supervision contact sheet. This will be filed in the child's or young person's health records and a copy retained by the author.

13.7 The Nurse/Midwife may be accompanied by the SCNS or line manager during meetings with the Guardian. This will depend on Trust policy, the experience of the Nurse or Midwife in safeguarding children court processes, and The complexities of the child's situation. The SCNS or line manager will always be present if the Nurse/Midwife requests that this support is available.

14.0 **Meeting the Guardian**

14.1 The Nurse/Midwife responsible for the child or young person's current or most recent nursing or health plan is usually the best person to meet with the Guardian.

If this is not reasonably possible, then the line manager, in consultation with the SCNS, will attend or delegate this to the most appropriate person.

- 14.2 The Nurse/Midwife should check the identity of the Guardian at the beginning of the meeting. As the custodian of the nursing record and information, the Nurse/Midwife must remain with the file throughout the meeting.
- 14.3 The Nurse/Midwife should share relevant information with the Guardian, taking time to provide explanations and clarity where this is required, for example:
- The reason for a targeted service;
 - The level of service required over and above the core child health surveillance programme;
 - Concerns regarding engagement with the service;
 - Outcomes of the service provided;
 - Role in the multi-agency care plan;
 - Challenges or barriers to improvement; professional views regarding the impact of abuse and neglect on the child's health.

15.0 Copies of health records

- 15.1 Should the occasion arise that the Guardian needs a copy of an extract of the health file; the Guardian must request this in writing using the Guardian Request for Photocopy/Copies of Files form (see Appendix). This must be completed for each child. Copies of relevant extracts can be made available upon receipt of this form without direction from the court but only after the initial meeting. The Guardian Ad Litem Request for Photocopy/Copies of Files form must be filed in the child's or young person's health records. All original documents must remain in the health file. The SCNS and line manager must be informed and the Nurse/Midwife should document this within the health record.
- 15.2 The Guardian must accept the transfer of the copied extracts in person from the Nurse/Midwife. A copy of the signed and dated information provided should be retained by the health professional and filed in health records.

16.0 Contact with the Guardian following the meeting

- 16.1 One face to face meeting between the Guardian and the Nurse/Midwife is usually sufficient. A further meeting may be arranged if required.
- 16.2 Confidential personal information regarding the child's or family health should not be discussed with the Guardian via telephone. However, it may be appropriate to provide brief clarity on a specific point already discussed during the meeting. Trust

policy regarding telephone calls must be adhered to including checking the identity of telephone callers who request information and making arrangements to return the call to a recognisable office.

17.0 Additional Information Request Template (Appendix 3)

17.1 The use of this template is to assist information sharing between Guardians ad Litem and Nurses/Midwives. The template's sole purpose is to ensure effective communication and information sharing and does not affect existing statutory functions or supersede any existing policies, guidance or standards. It should only be used to exchange additional and/or brief information as requested and agreed between the Guardian and Nurse/Midwife and does not exclude the need for an initial face to face meeting that involves a review of records and explanation of the role of the Nurse/Midwife.

18.0 Conclusion

18.1 Decisions affecting children who are subject to court processes are complex. The Guardian is appointed by the court and has an important role in ensuring that the wishes and feelings of the child is heard and that all relevant information is available to the court so that decisions are made in the child's best interests.

18.2 Nurses and Midwives, due to the nature of their work with families, hold information that may inform court decisions. It is important that Nurses/Midwives work in partnership with the Children's Court Guardian Agency to ensure that relevant information is shared in a professional manner and in keeping with the nursing and midwifery professional code.

18.3 This guidance has been developed to support effective partnership arrangements between Nurses/Midwives and Guardians and should be implemented in all cases where a Guardian has been appointed by the court.

Appendix 1

Data Protection Principles/GDPR Principles

Personal data must be:

- Processed fairly and lawfully.
- Processed only for one or more specified and lawful purpose.
- Adequate, relevant and not excessive for those purposes.
- Accurate and kept up to date - data subjects have the right to have inaccurate personal data corrected or destroyed if the personal information is inaccurate to any matter of fact.
- Kept for no longer than is necessary for the purposes it is being processed.
- Processed in line with the rights of individuals - this includes the right to be informed of all the information held about them, to prevent processing of their personal information for marketing purposes, and to compensation if they can prove they have been damaged by a data controller's non-compliance with the Act.
- Secured against accidental loss, destruction or damage and against unauthorised or unlawful processing - this applies to you even if your business uses a third party to process personal information on your behalf.
- Not transferred to countries outside the European Economic Area - the EU plus Norway, Iceland and Liechtenstein - that do not have adequate protection for individuals' personal information, unless a condition from Schedule four of the Act can be met.

The GDPR sets out seven key principles that should lie at the heart of your approach to processing personal data:

1. Lawfulness, fairness and transparency
2. Purpose limitation
3. Data minimisation
4. Accuracy
5. Storage limitation
6. Integrity and confidentiality (security)
7. Accountability

Appendix 2

Children's Court Guardian Request to Copy Nursing Records

Guardian Details

Name of Guardian _____

Office Location _____

Contact Number _____

Email _____

Legal Proceedings

Nature of Current proceedings _____

Court Directions Relevant to Request? _____

Relevant Legislation _____

Nurse/Midwife Details

Name of Nurse/Midwife responsible for the file _____

Designation of Nurse/Midwife responsible for the file _____

Family Details

Name of Family/File _____

Current Address _____

Name of Child/Children	DOB	Address

Why does this information need to be copied?

List Documents Requested to be Copied	Document copied Yes / No

Signature of Nurse/Midwife providing copies to Guardian

Print Name _____ **Date & Time** _____

Signature of Guardian receiving copies of nursing records

Print Name _____ **Date & Time** _____

Original copy to be held in nursing / midwifery record Copy to be retained by Guardian

Appendix 3

ADDITIONAL INFORMATION REQUEST TEMPLATE

Child's Name:		Parent or intended Parent's Name: (delete as appropriate)
Child's DOB:		Contact Number: _____
Has consent been obtained by Guardian to request information		Yes / No
If not, reason why:		
Reason for Information Request :		
(To be completed by Guardian)		
Name of Guardian		
Telephone Details		
Date of Request		
Has consent been obtained by Nurse/Midwife to share information		Yes / No
If not, reason why:		
Nursing Information		

Name of Nurse/Midwife	
Telephone Details	
Date of Request	

NB: If being sent electronically secure HSCNI email must be used and document must be password protected.

Appendix 4

Frequently Asked Questions

What is this guidance?	This is a revised version of the 2020 regional guidelines for Nurse/Midwives/Midwives, midwives and specialist community public health Nurses/Midwives when sharing information with the Guardian Ad litem Agency. The agency has changed name from 2023 to the Children's Court Guardian Agency
Why is it needed?	To support Nurses/Midwives and Health Visitors who are requested to share information with the Children's Court Guardian Agency to do so in a consistent, timely, secure and appropriate manner.
What or who is a Children's Court Guardian?	A Children's Court Guardian is a Court appointed officer (usually from the social work profession) whose role is to independently share the child's wishes and feelings and represent and safeguard his/her interests in Court proceedings.
What if a Children's Court Guardian requests copies of health records?	The Guardian has a right to access records held by social services but does not have automatic right to access health records and must make a request in writing to access each child health record. Copies of relevant extracts can be made available without direction from the Court but only after the initial meeting with the health record's author (Nurse/Midwife/health visitor/doctor). A copy of the information provided to the Guardian must be signed by the Nurse/Midwife sharing the information and retained in health record. For all requests seek advice from your SCNS.
What is the Nurse/Midwife's role when sharing information?	As per the NMC Code, GDPR and data Protection Principles, the Nurse/Midwife's duty is to protect the confidentiality of individual patients/clients and their health records. This guidance will support Nurses/Midwives in making decisions as to what, how and when to share health information with the Guardian.
Do I need consent of the child /parent to share health information?	Yes, where possible Nurses/Midwives should seek consent from the child or parent before disclosing information contained within the health record. However, where gaining consent is not possible, and it is in the public interest, information can be shared without consent.
What if consent is refused?	Discuss with line manager and/or SCNS and document refusal in the patient's/client's file.
Can I share third party information?	Yes, you can verbally share <i>some</i> third party information held within files, e.g., GP, Speech and Language Therapy reports that may have influenced nursing or health visiting practice. Seek advice on this from your SCNS.

Can I provide a copy of information or reports by 3 rd party?	Yes, but only in exceptional circumstances and with the consent of the author. Seek advice on this from your SCNS.
Can I discuss information with Guardian via videoconference /teleconference or Skype?	Yes in some cases this may be appropriate but seek advice from SCNS if unsure. If there is significant confidential personal information to be discussed this should only take place during a formal meeting. The use of the teleconference would not be appropriate if it requires a discussion about personal sensitive information
Do I need to be accompanied by someone when meeting the Children's Court Guardian?	The Nurse/Midwife may be accompanied by the SCNS or line manager during meetings with the Guardian. This will depend on Trust policy, the experience of the Nurse/Midwife in safeguarding children court processes, and, the complexities of the child's situation. A SCNS or line manager will always be present if the Nurse/Midwife requests that this support is available.

For further advice please contact you Safeguarding Nurse Specialist (SCNS).

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**www.nigala.hscni.net (being
updated)**