

Concept Note

UN Committee on the Rights of the Child

2021 Day of General Discussion

Children's Rights and Alternative Care

I. Introduction

1. In accordance with rule 79 of its rules of procedures, the Committee has devoted one day of its regular sessions to a general discussion on a specific article of the UN Convention on the Rights of the Child (CRC) or related subject. Since 2012, the DGD has been held every two years.
2. The purpose of the DGD is to foster a deeper understanding of the contents and implications of the CRC as they relate to specific topics. The discussions are public. Representatives of Governments, United Nations human rights mechanisms, United Nations bodies and specialized agencies, national human rights institutions, civil society, the business sector and individual experts and children and youth are invited to take part.
3. The UN Committee on the Rights of the Child (Committee) decided to devote its 2021 Day of General Discussion (DGD) to the theme of "Children's Rights and Alternative care". The discussion will take place over two half days on Thursday, 16 September 2021 and Friday, 17 September 2021, during the 86th session of the Committee at Palais des Nations, in Geneva.
4. Following the onset of the COVID-19 pandemic in late 2019 and the adoption globally of public health measures necessary to contain transmission of the virus, the Committee has decided to postpone the DGD to its September session in 2021 to ensure effective and meaningful participation and contribution to the DGD by all actors, including children and young people.
5. The COVID-19 pandemic is having a direct impact on children and families on a global scale. It can be expected that the number of children at risk of separation and in need of alternative care will increase – both during the crisis, where containment measures may lead to separation of children from families, and as a result of the long-term socioeconomic impact of the COVID-19 crisis on families' capacity to care. The pandemic is also disrupting child care and protection systems and services with far ranging implications for their provision as well as ongoing efforts to strengthen and reform them. Understanding the impact of the COVID-19 pandemic on children's rights and alternative care, and lessons learnt in terms of preparedness and response will be a key element of the DGD discussions.

6. The Committee, with the support of the partner organisations organising the 2021 DGD, seeks to actively engage with children across the world to get their views about the issues to be discussed at the DGD and how best children might play a prominent role in the discussion. At its seventy-eighth session (14 May–1 June 2018), the Committee adopted [Working methods for the participation of children in the days of general discussion of the Committee on the Rights of the Child](#) to facilitate and promote the meaningful participation of all children, including those in disadvantaged or vulnerable situations, in days of general discussion. Making use of these working methods as well as general principles for best practice in child participation, the partners organising the 2021 DGD will work to ensure that children and young people, in particular those with experience of alternative care and the child protection system, have a core role throughout the planning of the DGD, in the day itself and in the follow-up.
7. It is also important to encourage inputs to, and engagement with, the DGD at local, national and regional levels. As such, partner organisations will seek to organise, and encourage others to organise, local, national and regional discussions, which could be adult-led or child-led, in the run-up to DGD (“DGD Hubs”).
8. As part of a public consultation to help feed into and guide the discussions, all interested stakeholders, whether adults or children, are encouraged to send written submissions to the Committee, which will be posted on the 2021 DGD webpage. Children may also send other forms of submissions, such as video and audio recordings. As the participation of children is at the core of the DGD, a specific report summarising the inputs from the children engaging in global consultations will be produced in addition to a summary of submissions. Both publications will be made available a few weeks before the DGD. For more information, please see the Guidelines for Submissions on the 2021 DGD Webpage.
9. A detailed programme of the 2021 DGD will be published at the end of the Committee’s 87th session (17 May 2021–4 June 2021). The Committee will develop the programme in consultation with a cross-regional Children’s Advisory Group. Specific information on how to register to attend the 2021 DGD in Geneva will be included in the programme

II. Context of the 2021 DGD

10. Children are placed in alternative care in a plurality of social contexts and for multiple reasons. The care settings these children live in vary greatly in the content, quality and duration of care. Importantly, children in alternative care are not a homogenous group but are children with manifold and complex circumstances and needs as well as resilience and strengths, which call for correspondingly different strategies in preventing family separation, developing appropriate care solutions and actions aimed at de-institutionalization.

Children's rights and Alternative Care

Conventions

Convention on the Rights of the Child (CRC) (1989)

11. All rights are indivisible, and therefore all articles of the CRC are relevant to children in, or at risk of being placed in, alternative care. However, there are certain rights which are more likely to be under scrutiny or to be violated for children at risk of family separation or living in alternative care.

In the context of the DGD on Alternative Care, it is therefore worth calling attention to a number of specific rights and principles with links to this theme:

- The Preamble of the CRC, which notes that:
 - the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community;
 - the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding;
- Article 2, which calls for the protection of children from discrimination;
- Article 3, which sets out the right of the child to have his or her best interests taken as a primary consideration in all actions concern him or her;
- Article 5, which states that States must respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, with due consideration also given to children's evolving capacities;
- Article 7, which states that, as far as possible, children have a right to be cared for by their parents;
- Article 9, which states that children should not be separated from their parents against their will unless their duly determined best interests so require, decided by the competent authority and subject to judicial review;
- Article 10, which calls for humane approaches to family reunification procedures where children live in a different state from their parents;
- Article 12, which states that children have the right to express their opinions in all matters that affect them, including judicial and administrative proceedings and that their opinions should be given due weight;
- Article 18, which states that parents have the primary responsibility for the upbringing of the child. The preamble and Article 18.2 of the Convention on the Rights of the Child (CRC) make clear that all children should grow up in a family environment and that priority should be given to support the child's parents and

extended family to enable them to care adequately and to prevent unnecessary separation.¹;

- Article 19, which states that children must be protected from all forms of violence, abuse and neglect in all settings, including in the family and in alternative care;
- Article 20, enshrines that children who are temporarily or permanently deprived of their family environment or in whose own best interests cannot be allowed to remain in that environment, come under the direct responsibility of the State which must provide them with special protection and assistance, including by ensuring that appropriate alternative care is provided;
- Article 21, which states that the system of adoption shall ensure the best interests of the child are paramount;
- Article 22, which states that unaccompanied migrant and refugee children shall be afforded the same protection from the state as any other child who is deprived of their family environment;
- Article 23, which outlines the rights of children with disabilities to live a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation;
- Article 24 which state the right of all children to enjoy the highest attainable standard of health;
- Article 25 which requires the periodic review of the treatment and circumstances of children who have been placed by the competent authorities for the purposes of care, protection or treatment of their health;
- Article 28, which states that every child has a right to accessible education;
- Article 35, which states that states must protect children from trafficking;
- Article 37, which states that no child should be deprived of their liberty unlawfully or arbitrarily;
- Article 40, which outlines the rights of children who are in conflict with the law.

Convention on the Rights of Persons with Disabilities (CRPD) (2006)

12. As above, *all* articles of the CRPD are relevant to *all* children with disabilities in alternative care or at risk of family separation – however, some provisions related to the right to family life, inclusion in the community and the right to equal treatment are of particular pertinence to this theme:

- The Preamble to the CRPD recognises, in paragraph 18, that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalls the obligations to that end undertaken by States Parties to the Convention on the Rights of the Child;
- Article 3 underlines general principles of the CRPD, including, non-discrimination, full and effective participation and inclusion in society, and respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

¹ See also CRC Committee General Comment No. 9 (2006) on the rights of children with disabilities, para. 41.

- Article 7 recalls the obligation to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with others; that the best interests of the child should be a primary consideration; and that children with disabilities have the right to express their views freely, on all matters affecting them;
- Article 18 (2) addresses the right of persons with disabilities to be registered after birth, to a name, and to know and be cared for by their parents;
- Article 19 outlines the equal right of all persons with disabilities to live in the community with choices equal to others, and their right to independent living, underlining States' responsibility to ensure that persons with disabilities have access to a range of in-home, residential and other community support services necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;
- Article 23 states that children with disabilities have equal rights with respect to family life, that they should not be separated from their parents against their best interests, and never on grounds of disability; and, if alternative care is necessary, every effort should be made to provide it within the wider family, or within the community in a family setting.

Guidelines and resolutions

Guidelines for the Alternative Care of Children (2009)

13. The Guidelines for the Alternative Care of Children set out desirable orientations for policy and practice, to enhance the implementation of the CRC regarding the well-being and protection of children deprived of parental care or at risk of being so. They were welcomed by the UN General Assembly and are grounded in children's rights as well as in best practice in child protection and alternative care.
14. The Guidelines are based around two core principles: necessity (which is about assessing whether alternative care is genuinely needed) and suitability (which is about ensuring that alternative care, when necessary, is appropriate for each individual child, that it responds to the specific reasons why the child came into care, and to their individual needs, wishes, and circumstances).
15. The UNGA Resolution on the Rights of the Child 2019 redoubles Member States' commitment to advance the implementation of the Guidelines, the CRC and the CRPD.²

2030 Agenda and the Sustainable Development Goals (2015)

16. Implementation of the 2030 Agenda for Sustainable development is important in ensuring the full enjoyment by all children of their rights, and their well-being. The SDGs' commitment to 'leave no one behind' is a cornerstone principle of the 2030 agenda for

² See General Assembly resolution 74/395 (2019), op. cit. Preamble and paragraphs 34 and 35

sustainable development. Children deprived of parental care are some of the world's most left behind groups, often denied access to basic services and opportunities for their development. Many of the individual SDGs are of particular relevance to this theme, including but not limited to SDG 1 on ending poverty, SDG 3 on healthy lives and well-being, SDG 4 on inclusive and high-quality education, SDG 5 on gender equality, SDG 8 on decent work for all, SDG 10 on reducing inequalities, and SDG 16 on peaceful and inclusive societies. It will not be possible to achieve these goals, without reaching children in alternative care or at risk of losing parental care.

Relevance of the 2021 DGD

17. The timing of this DGD on the topic of Alternative Care is opportune to build on and move forward in implementing a number of international and national agreements and actions to progress the field of child protection and alternative care as well as the last two decades of progress in the field of care reform, children without parental care and alternative care for children.
18. The [Committee's Day of General Discussion in 2005](#) considered the topic *Children without parental care*. A key recommendation resulting from that DGD was the need to prepare “a set of international standards for the protection and alternative care of children.”³ As a result, following five years of consultation, the [Guidelines for the Alternative Care of Children](#) (Guidelines) were developed with civil society and international experts and welcomed by the United Nations General Assembly (UNGA) in its sixty-fourth session.⁴
19. In advance of the 2019 UNGA Resolution on the Rights of the Child, with a specific focus on children without parental care, a global coalition of 256 organisations, networks, and agencies working at national, regional and international levels on children's care worked together to propose to Member States a set of [Key Recommendations](#) to be included, addressing key challenges and opportunities in implementing the rights of children without parental care. The Key Recommendations underlined commitments made by UN Member States and suggested measures and actions needed to move their implementation forward. It was in the context of developing these messages, and by a group of the organisations involved, that the proposal to focus on Alternative Care for the next DGD was submitted.⁵

³ Committee on the Rights of the Child, *Report on Children Without Parental Care*. Fortieth Session, General day of discussion/ CRC/C/153, 17 March 2006.

⁴ United Nations (2009) *Guidelines for the Alternative Care of Children* (2009) A/RES/64/142. <https://digitallibrary.un.org/record/673583?ln=en> [accessed 03 Jan 2020]

⁵ To follow up on the Guidelines and support their implementation, a number of tools and initiatives have been developed since 2009: [Moving Forward](#): Implementing the ‘Guidelines for the Alternative Care of Children’, was developed as a Handbook to assist legislators, policy makers, practitioners in understanding and implementing the Guidelines; ‘[Alternative Care in Emergencies \(ACE\) Toolkit](#)’, a toolkit for practitioners on implementing alternative care programming in humanitarian settings; ‘[Getting Care Right for All Children](#)’, a Massive Open Online Course (MOOC) to help increase awareness, understanding and use of the Guidelines for the Alternative Care of Children, and the [Tracking Progress Initiative](#), an online Tool that can be used to measure a country's progress in the implementation of the Guidelines.

20. On 18 December 2019, the [UN General Assembly](#) adopted a Resolution on the Rights of the Child with a specific focus on children living without parental care.⁶ The Resolution, which was adopted by consensus, emphasizes the importance of growing up in a family environment and calls on States to provide support to families and to prevent the unnecessary separation of children from their parents. Notably, for the first time, Member States collectively express their deep concern over the harm that institutionalization and institutional care can cause to children and call for institutions to be progressively phased out. The Resolution calls on States to implement the Guidelines for the Alternative Care of Children and urges States to strengthen child welfare and child protection systems and improve care reform efforts. Member States are also urged to improve data collection on children without parental care, and to tackle the drivers of the unnecessary separation of children, such as volunteering and financial support to orphanages.
21. The [United Nations Global Study on Children Deprived of Liberty](#) (Global Study) was also launched in November 2019. This study included a chapter on Institutions and has set out a range of recommendations for states parties. The chapter concludes that, in spite of international legal provisions, “at present, the majority of States are failing to provide preventive, protective and supportive mechanisms, strong gatekeeping, and large numbers of children are separated from their families [unnecessarily].” Institutional care was singled out as particularly harmful: the Study notes that, by their very nature, they “are unable to operate without depriving children of their liberty,”⁷ and that they are often characterized by living arrangements that are inherently harmful to children, such as separation and isolation from families and the wider community; forced co-habitation; depersonalization; lack of individual care and love; instability of caregiver relationships; and fixed routines not tailored to the child’s needs and preferences.⁸ However, “despite the harm caused to children in and by institutions, many States continue to allow or actively encourage the placement of children in institutions.” The study also collects some good practices by states, and records efforts by State Parties to undertake inquiries into children abused in care. The Study recommends that States actively target the causes of children being separated from their families and provide necessary measures to prevent this through support for families, strengthening child protection and social support systems. It also urges States to develop and implement a strategy for progressive deinstitutionalisation that includes significant investments in family and community-based support and services, and calls on States to avoid the creation of any new institutions and ensure that all alternative care options respect the rights of all children.
22. The adoption of the 2019 UNGA Resolution on the Rights of the Child and the launch of the Global Study coincided with both the 30th anniversary of the Convention on the Rights of the Child (CRC) and the 10th anniversary of the Guidelines.

⁶ General Assembly resolution 74/395, Rights of the child. A/RES/74/395 (18 December 2019)

⁷ Nowak, M; (2019) The United Nations Global Study on Children Deprived of Liberty, p.501

⁸ From the Report of the Independent Expert leading the United Nations global study on children deprived of liberty delivered to the UNGA. A/74/136 (11 July 2019). Paragraph 64.

23. In the process of discussing the 2019 UNGA Resolution on the Rights of the Child, and in the writing of the Global Study chapter on institutions, potential conflicts of substantive and strategic nature arose on the issue of children deprived of a family environment. A process supported by UNICEF led to the development of a discussion document and a one-day meeting between the CRC and the CRPD Committees, with some representation from civil society actors. The process, which is ongoing, seeks convergence on the part of the two treaty bodies, both at a conceptual level and at an operational level in providing guidance to States Parties on a range of issues, including alternative care.
24. The 2021 DGD provides an ideal opportunity to take stock of the progress made in the implementation of these international standards and identify good practices and address some of the challenges. The recent processes and documents that have been developed, enriched by the voices of children, care-leavers and professionals, can lead into the final recommendations of the DGD.

III. Purpose, scope and key objectives

25. The overall purpose of the day of general discussion is to examine broadly the current situation regarding alternative care in its complexity, identify and discuss particular areas of concern with regard to the unnecessary separation of children from their families and appropriate ways to respond to family and child separation in cases where it is unavoidable.
26. The consultation will provide a basis for launching a process to develop guidance on what constitutes quality alternative care for children and support for caregivers, including the basis for meaningful participation of children, young people and adults who are care experienced as well as best practice from diverse country contexts.
27. In addition, the input of children and care leavers will take centre stage of this DGD and will play a core role in informing the conclusions and recommendations resulting from it.
28. *Key objectives*
 1. Create meaningful engagement for children and young people who have experience of the child protection system and/or of living in alternative care of any type so they can voice their opinions on what constitutes quality care and advocate for legislative and systemic changes;
 2. Learn from adults who have been placed in alternative care about their experiences both within and upon leaving care, to build understanding of good and bad practices, and draw from their recommendations for reforming and strengthening child care and protection systems, including how these can inform comprehensive deinstitutionalisation processes.
 3. Follow up on the 2019 UNGA Resolution on the Rights of the Child which focused on children without parental care, building on and consolidating the global perspectives of civil society on this issue as expressed in the Key Recommendations;
 4. Build on the recommendations on institutions arising from the Global Study on Children Deprived of Liberty;

5. Acknowledge the harms of care and the abuse of children in care, and explore the measures that can be taken to ensure prevention, intervention and access to justice, accountability and suitable reparation;
6. Draw lessons from the impact of the COVID-19 pandemic on children's care and alternative care, including on efforts to strengthen and reform alternative care systems, and make recommendations for the response and preparedness for future public health as well as social and environmental global crises.
7. In order to prevent family separation, expand opportunities for learning from international, regional and national success in reducing the number of children admitted to formal alternative care, through enhanced prevention, effective intervention and gatekeeping initiatives. This can include learning from evidence about services and support aiming to address the root causes of family separation, and the provision of family support and strengthening programmes;
8. Expand opportunities to learn from evidence about targeted support that can enable families to remain together, or be reunited if separation has already taken place. They include families facing social exclusion, stigma or other forms of discrimination, such as those caring for children with disabilities (or where the parents are persons with a disability), children of indigenous or minority communities, families fleeing armed conflict or other dangers, and children moving across borders;
9. Expand opportunities to learn from evidence about alternative care options and evidence about what constitutes quality alternative care, with a view to establishing a meaningful process for developing guidance on this;
10. Explore efforts towards the development or strengthening of fully integrated child protection systems, grounded in a coordinated approach among services responsible for working with the family to address its needs, tackling the perceived need for separation, and foreseeing appropriate alternative care when necessary;
11. Encourage rigorous research to identify the outcomes and impacts of alternative care provision in different settings, and follow-up mechanisms for children leaving the care system;
12. Explore innovative approaches to alternative care for children in particularly vulnerable situations, such as humanitarian contexts and migration, and learning from existing good practices, including appropriate efforts to provide community-based support to families and analysing the need for specialized training for professionals working with and for children at risk and children that haven't been placed in alternative care;

29. Scope

The DGD will consider evidence-based inputs on areas of interest including the following:

- *Strengthening families and preventing separation of children from families;*
- *Innovative models that avoid separation and resort to alternative care and include processes for family reintegration wherever possible;*
- *Protection of children without parental care, including from all forms of violence, abuse, neglect and exploitation;*
- *Measures to address the historical and continuing discrepancy of responses and interventions within the alternative care system towards indigenous children, families and communities, and ensuring culturally sensitive approaches to care;*

- *Measures to prevent and address abuse of children in care, and to provide access to justice, with appropriate accountability and reparations;*
- *Child protection and alternative care systems that are adequately resourced, including a well-trained multi-sectoral workforce;*
- *Strategies and measures to ensure the care sector workforce is adequately skilled, supported, and supervised to fulfil its critical roles and responsibilities effectively;*
- *Measures to address the historical and continuing discrepancy of responses and interventions towards children with disabilities and their families, ensuring disability-inclusive and disability-sensitive approaches to strengthening families, providing general and specialist services in the home, and preventing family separation and the need for alternative care;*
- *Provision of high-quality alternative care, in accordance with the relevant provisions of the CRC and the CRPD;*
- *Preventing and phasing out institutionalisation of all children;*
- *Harm of institutionalisation and issues such as orphan tourism, orphanage trafficking, unregulated institutions and the involvement of private funders, etc.;*
- *Children being placed in alternative care in neighbouring/other countries;*
- *Protection of the rights of children in alternative care including complaints, interdisciplinary and judicial oversight, monitoring, accountability and remedies;*
- *Strengthening cross border cooperation and coordination to facilitate improved protection and care of children;*
- *Suitable alternative care for unaccompanied and separated children, including refugee children, children in situations of migration or in emergencies;*
- *Evidence based intervention programs delivered in the context of the family and the community to address the needs of children in conflict with the law, children with behavioral problems and/or substance abuse, and with the aim to avoid out-of-home care;*
- *Support for care-leavers;*
- *Full and meaningful engagement and participation of children in decisions relating to alternative care, including decisions relating to their individual placement;*
- *Protection of the rights of the child to preserve his or her identity, including name and family relations, and implications for children in alternative care and children who have been adopted domestically and internationally, including in terms of access to information;*
- *Effective responses and adaptations in response to the COVID-19 pandemic to prevent separation of children from families, address the need for quality alternative care, and strengthen care systems both during and after the pandemic, including lessons learnt for preparedness to recurring public health as well social and environmental global crises.*

30. Desired outcomes and possible follow-up

1. Children and care leavers with experience of the child protection system and/or of living in alternative care of any type, including those with disabilities, meaningfully voice their opinions on the subject, input into the final conclusions and recommendations and are fully involved in plans for follow-up to the DGD;

2. Recommendations (proposed by the working groups) adopted, after consideration, by the Committee, to Member States and other relevant actors, building on existing international, regional and national initiatives;
3. Launch of a process to develop guidance on what constitutes quality alternative care for children, including the basis for meaningful participation of children and young people who are care experienced, as well as best practice from diverse country contexts;
4. A programme of action, through consultation with children and care leavers, for the CRC Committee, CRPD Committee, UN Agencies, NGOs and the private sector, including follow up on the 2019 UNGA Resolution on the Rights of the Child with its focus on children without parental care, and those at risk of losing parental care; and follow up the recommendations on institutions arising from the Global Study on Children Deprived of Liberty;
5. Identified opportunities for learning from success and providing technical assistance.

IV. Key participants

31. Care leavers and children and young people currently in the care system or with experience of the child protection or care system, care leavers, relevant UN agencies, programmes and funds, government representatives, regional organizations, NGOs/civil society, academia, social workers and other care professionals, representatives from faith-based organisations and representatives from relevant areas of the private sector.
32. In the planning process a steering group of children and young people with lived experience of the care system should be created. They should have the opportunity to influence the topics to be discussed, agenda, key messages and the choice of speakers. They should also play an important role during the DGD, taking the floor as speakers, moderators and workshop facilitators, and in the follow-up to the DGD.
33. A group of civil society partner organizations are supporting the planning and delivery of the DGD. In collaboration with children and young people as mentioned above, this group of partners will support the development of such materials as the agenda, documentation, guidelines for submissions and summary of submissions, as well as oversee the global consultation with children and support with logistical aspects of the day.
34. In the run-up to DGD, local, national and regional debates should take place through the form of “DGD Hubs”. All interested stakeholders can organise such discussions based on the Guidelines for DGD Hubs, which will be available on the Committee’s 2021 DGD Webpage.

V. Format

35. The day of general discussion is usually a one-day discussion. However, this DGD aims to build a longer and more inclusive process that culminates in a DGD. As it will be a hybrid event, it is planned to hold it over two half days, rather than the usual 1 calendar day. This

will facilitate participation across different time zones. The final agenda and format will be decided in consultation with the children on the steering group.

36. The day before the DGD days will be a preparation day for the children and young people taking part, and the day after the DGD a debrief session for the children and young people will take place.
37. The DGD is not a single event but part of an ongoing process aiming at enhanced collaboration within the alternative care / child protection sector. The recommendations resulting from the DGD will include suggestions for follow-up, in particular for how children and young people, care leavers and their associations can build on their collaboration for the DGD and continue to meaningfully engage with the key actors around the topic.