

COMMITTEE ON THE RIGHTS OF THE CHILD
Fortieth session
Geneva, 12 - 30 September 2005

DAY OF GENERAL DISCUSSION
CHILDREN WITHOUT PARENTAL CARE¹

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636. In accordance with rule 75 of its provisional rules of procedure, the Committee held a day of general discussion on 16 September on “Children without parental care”.

637. The participants were divided in two working groups to discuss the following:

Working Group 1: States’ role in preventing and regulating separation

(a) Practical measures which are or could be used by States to support parents in their parenting role and to prevent the institutionalization of children, including discouraging unnecessary separation of children from their parents.

(b) Efficacy of different measures in preventing separation and measures which may be inappropriate; that is, not in a child’s best interests nor in line with the provisions of the Convention.

(c) Legal and other mechanisms facilitating family reunification, both in situations of migration as well as when separation has occurred due to armed conflict or refugee situations.

(d) Most appropriate criteria and processes to be used in making decisions about removal, including temporary and permanent removal, and children’s own participation or contribution to these decisions.

Chairperson/Facilitator: Mr. Hatem KOTRANE
Member of the Committee on the Rights of
the Child

Rapporteur: Ms. Ghalia Mohd Bin Hamad AL-THANI
Member of the Committee on the Rights of
the Child

¹ Excerpted from the report of the fortieth session of the Committee on the Rights of the Child, CRC/C/153, paragraphs 636-689.

Working Group 2: Meeting the challenges of out-of-home care provision

(a) Conditions/safeguards to ensure that an institutional placement decision complies with the rights of the child, including a child's right to grow up in a safe, stable and trustworthy relationship versus the issue of institutionalization as a measure of last resort, indicators to assess the conditions of institutions and the impact of institutionalization on children.

(b) Systems, monitoring mechanisms, including child-sensitive complaint procedures, and minimum standards to ensure that residential care, when used appropriately, will be a positive/constructive experience for the children involved.

(c) Institutionalisation/de-institutionalization of children at a policy level, a role of the State in regulating the provision of care in such situations, and identification of good practices, including those designed with children, to be applied to children living in institutions.

(d) Most appropriate ways to support informal foster care, including kinship care, and monitoring of the well-being and safety of children in these forms of care.

Chairperson/Facilitator: Ms. Joyce ALLUOCH
Vice-chairperson of the Committee on the Rights of the Child

Rapporteur: Mr. Jean ZERMATTEN
Member of the Committee on the Rights of the Child

638. Following the discussions and based on the written and oral contributions made to the day of discussion on children without parental care, the Committee adopted the following report and recommendations at its 1080th meeting on 30 September:

Report and recommendationsⁱ

Background

639. In accordance with rule 75 of its provisional rules of procedures, the Committee on the Rights of the Child has decided to devote periodically one day of general discussion to a specific article of the Convention or to a child rights theme.

640. At its 37th session (13 September-1 October 2004), the Committee decided to devote its next day of general discussion on "children without parental care". The discussion took place on Friday, 16 September 2005, during the 40th session of the Committee at the United Nations Office in Geneva.

641. In an outline prepared to guide the general discussion (for the full text of the outline, see CRC/C/146, Annex II), the Committee pointed out that the aim of the day of general discussion would be to improve implementation of the Convention on this topic and identify practical solutions and steps for ensuring that the rights of children living without parental care are respected.

642. The Committee identified three main areas to be considered during the day of general discussion:

- What types of legal frameworks are most likely to ensure that the rights of the child are safeguarded before, during and after separation from parents?
- What family support and alternative care policies can be recommended to help prevent and reduce separation and ensure the most appropriate use of alternative substitute care?
- What opportunities exist for increasing the participation of children in measures to keep them in safety with their family, and in other decisions about their care, including those pertaining to removal, alternative care placements, and reunification?

643. As the theme of the 2005 day of general discussion had a wide scope, participants to this meeting were divided into two working groups based on the two following areas in order to focus discussions:

- Working Group 1: States' Role in Preventing and Regulating Separation;
- Working Group 2: Meeting the Challenges of Out-of-Home Care Provision.

States' role in preventing and regulating separation

Importance of the family environment

644. The Committee emphasizes that the family, as the fundamental group of society, is the natural environment for the survival, protection and development of the child and it acknowledges that there are several ethical and cultural values linked to the family. When considering the family environment, the Convention reflects different family structures arising from various cultural patterns and emerging familial relationships. In this regard, the Convention refers to various forms of families, such as the extended family, and is applicable in a variety of families such as the nuclear family, re-constructed family, joint family, single-parent family, common-law family and adoptive family. Socialization and acquisition of values are developed within the family and human relations within the family context are the most important links for the child's life in future.

645. Acting on the basic premises that children do not develop properly outside of a nurturing "family" environment and that parents need a decent chance to raise their children, the Committee recommends that States parties develop, adopt and implement, in collaboration with the civil society, i.e. with non-governmental organizations, communities, families and children, a comprehensive national policy on families and children which supports and strengthens families. The national policy should not only focus on the State subsidies and material assistance to families in need but to provide families with support in the form of so-called service plans, including access to social and health services, child-sensitive family counselling services, education and adequate housing. The Committee recommends that the families and the family associations are integrated into the development of the national family policies and service plans.

646. The Committee recalls the principles and provisions of the Convention which require States parties to render appropriate assistance to parents, legal guardians and extended families in the performance of their child-rearing responsibilities, inter alia, by providing parenting education. It emphasizes the importance to allocate resources for parenting skills rather than resort to separation. The Committee also reminds families and family associations of their very important educative role for other families. It is often easier to address the question of parenting at the peer-to-peer level within communities. The Committee encourages all stakeholders to seek innovative ways and methods to improve parenting skills, including introducing parenting skills training into the school curricula.

647. The Committee recommends that the States parties take all necessary measures to ensure that parents, both mothers and fathers equally, are able to meet their parental responsibilities. The Committee underlines the importance of identifying different kinds of needs within families. For example, the needs of the migrant families might differ considerably from the needs of the local families. All families face challenges and it is important to be conscious that foster families face similar problems as the biological families, including marital problems, domestic violence, negligence, sexual abuse, substance abuse, etc.

648. As regards different family structures, the Committee wishes to pay attention to the concept of the extended family and, particularly, to the possible role of the grandparents in the child-rearing responsibilities which is very rarely acknowledged in domestic laws and practices. The Committee encourages the States parties to take a more active approach to this issue by adopting appropriate measures to support the role of the grandparents in child-rearing.

Prevention

649. In the light of the discussions, the Committee wants to emphasize that all necessary measures should be taken to prevent the separation of the child from her/his family of origin. In that regard the Committee refers to the previous paragraphs on the importance of the family environment and the need to provide the parents with the support they need in the performance of their parental responsibilities.

650. The Committee recommends that States parties develop and implement a comprehensive policy for the prevention of the placement in alternative care which is based on a multidisciplinary approach, includes appropriate legislation and a complimentary service system. The Committee further recommends that all prevention policies should be based on the principle of the best interests of the child. It also highlights the need for an in-depth review of the professional attitudes involved and the rights-based training of professionals. The Committee encourages the States parties and local authorities to take practical steps with a view to preventing separation, for example, by introducing methods of mediating family problems, such as family group conferencing. Such methods may involve the extended family and community. It further recommends that a set of international standards on the protection and alternative care of children without parental care take into account the need for early identification of children at risk and that the standards redefine also other services related to prevention.

Legislation and policies

651. The Committee highlights States parties' responsibility to protect the child and her/his parents and to provide the parents with appropriate assistance. In order to put this responsibility into practice, States parties must enact domestic laws and adopt policies in this regard involving both public and private sectors in child protection. Institutionalization of children should never take place due to the lack of State laws or policies. The Committee notes with great appreciation that an increasing number of States parties are reviewing their policies of institutionalization of children and introduced various alternative care measures and programmes in order to offer improved protection of the rights of children without parental care and it encourages other States parties to undertake similar reviews.

652. The Committee recommends that domestic family and child protection legislation and policies should be developed and adopted in close consultation with those groups whom it affects the most, i.e. with children and their parents. However, if domestic laws are solely based on protection, it is only a partial solution.

653. Finally, the Committee emphasizes the principle of social responsibility. It is not only the responsibility of the State to protect children but it is every adult's responsibility.

Challenges of the out of home care and the State responsibility

Separation and alternative care

654. The Committee notes that in many States parties the number of children separated from their parents and placed in alternative care is increasing and at a high level. It is concerned that these placements are not always a measure of last resort and therefore not in the best interests of the child. The Committee recommends that the States parties ensure that the placement of children in alternative care (foster care, residential care, other forms of alternative care) is based on a carefully conducted assessment of the needs and best interest of the child by a competent and multidisciplinary group of experts and that a short- and long-term plan, including the goals of the placement and the measures to achieve these, is available at the time of the placement and is regularly adapted to the development of the child.

655. The Committee emphasizes and recommends that the States parties ensure that the decision to place the child in alternative care is taken by a competent authority and that it is based on the law and subject to judicial review to avoid arbitrary and discretionary placements. The States parties should also ensure that the placement is regularly reviewed in accordance with article 25 of the Convention.

656. In addition, the Committee encourages the development of adoption, *kafalah* and traditional foster care systems, such as family-based alternative care (e.g. extended family, grandparents) community-based care, paying particular attention to the rights recognized in the Convention, including the principle of the best interests of the child.

657. Last but not least, the Committee encourages States parties and other stakeholders to take appropriate measures to ensure that children in alternative care, particularly placed in residential care, are not stigmatized during or after this child protection measure.

Poverty

658. The Committee is deeply concerned about the fact that children living in poverty are over-represented among the children separated from their parents both in the developed and developing countries. It acknowledges that separation from parents is in many cases involuntary due to social and economic strains. It also notes with concern that tough social and economic conditions may lead to the abandonment of the child and a high number of street children. Poverty can create a vicious circle. Parents living in poverty do not necessarily dare to approach authorities and ask for help because they are afraid of losing their children. Without external assistance and support the situation may end up separating children from their parents. In addition the Committee notes that the socially and/or economically disadvantaged families are rarely involved in the policy-making processes and lack opportunities to affect the policy-makers.

659. In accordance with article 27 of the Convention, the Committee urges States parties to ensure that poverty as such should not lead to the separation decision and to the out-of-home placement. It recommends that States parties take all necessary measures to raise the standard of living among families living in poverty, inter alia, through implementing poverty reduction strategies and community development, including the participation of children. The Committee requests States parties to increase efforts to provide material assistance and support to economically and/or socially disadvantaged children and their families. Moreover, States parties should ensure that children living in poverty are provided with access to social and health services, education and adequate housing.

A new paradigm

660. Based on the written contributions submitted to the Committee and the discussions during the day of general discussion on children without parental care, the Committee notes that an institution in the traditional sense has a relatively negative connotation. This raises a question whether a new paradigm is needed. Has the traditional institution lived out its useful life? In addition, the question was raised whether the dogmatic implementation of the principle that placement in an institution must be the last resort may result in stigmatization of children in, or about to be placed in, such institutions. Such practice may harm the development of the child in need of alternative care and leave the institution in which the child is ultimately placed with an impossible mission. A careful and multidisciplinary assessment of the needs of the child in need of care and protection must inform the decision on whether out-of-home care is in the best interests of the child and on which form it should take. The Committee recommends that special attention is given to this question in the development of the standards suggested in part IV of this document.

661. The Committee acknowledges that it is challenging to change the deep-rooted ideology behind the institution model but it encourages States parties to take realistic steps with a view to changing traditional institutions, for instance, by establishing smaller specialized units within the institutions, increasing the number of professionals working with and for children and providing these professionals with systematic training.

Best interests of the child

662. As regards the drafting of international standards on the protection and alternative care of children without parental care, the Committee emphasizes the principle of the best interests of the child. It is of the view that the standards to be drafted should be based on this leading

basic principle and that the standards should aim at better ensuring the best interests of the child. These standards must not be a checklist or a mechanical function, but a practical tool which requires interaction with all parties involved. Last but not least, the standards should not exclude “humane aspects” which can serve as innovative and inspirational tools.

Respect for the views of the child

663. The Committee is concerned at the fact that children are not often heard in the separation and placement processes. It is also concerned that decision-making processes do not attach enough weight to children as partners even though these decisions have a far-reaching impact on the child’s life and future. It also emphasizes the need to take into account the views of biological parents.

664. In the light of article 12 of the Convention, the Committee recommends that all stakeholders continue and strengthen their efforts to take into consideration the views of the child and facilitate their participation in all matters affecting them within the evaluation, separation and placement process, in the out-of-home care and during the transition process. It recommends that children should be heard throughout the protection measure process, before making the decision, while it is implemented and also after its implementation. For this purpose, the Committee recommends an establishment of a special mechanism which values children as partners. The family group conferencing is one model to ensure that the child’s view is considered. It also recommends that States parties undertake a regular review of the extent to which children’s views are taken into consideration and of their impact on policy-making and court decisions and on programme implementation.

Priority to a family-type alternative care

665. The Committee is concerned that the institutionalization of children is used systematically. The Committee acknowledges that there has been a general agreement that the family environment provides the best possibilities for the harmonious development of the child, but between the family of origin and the placement in institution, options have to be found. These options could include the traditional placement in the family or in the extended family, open centres, the placement for day or night, emergency placement, temporary stay solutions, etc. Many of these options already exist. The Committee wishes to refer to many countries where the cultural values cherish the solidarity within the family or in the community and it encourages States parties to examine these inspiring examples and possibilities with a view to providing children with the individual care solutions.

666. The Committee recalls its recommendation made following its day of general discussion on State violence against children in 2000, that States parties develop the use of alternative measures in order to avoid long-term placement of children in institutions that do not provide the type of setting children need, not only for survival, but also for development, including psychological, mental, spiritual, moral, and social development, in a manner compatible with human dignity and to prepare the child for individual life in a free society, in accordance with article 6.2 of the Convention.

Focus on the individual child

667. In the context of children separated from their parents, the Committee wishes to emphasize the principle of individualization. Every child is unique and the separation from parents and the placement into out-of-home care should always be looked at case by case.

There is no one solution which fits all situations. The individualization of solutions means more tailored solutions based on the actual situation of the child, including her/his personal, family and social situation. This provides better opportunities for the assessment of the child's long-term development and it respects the principle of the best interests of the child, e.g. what are the actual needs of the child, how to keep a close relationship with the biological family.

668. However, there are few obstacles standing in the way of this ideal path towards individualization of solutions, such as the lack of time, including no time to carry out assessment of the actual situation, the lack of personnel, places in families, temporary and emergency measures and reception homes. Time should always be a key consideration in the decision-making process for a child. The extent of the problem and the high number of children in need of out-of-home care and the need for an early intervention seem to be a challenging equation to be solved. In addition, there are several new challenges, such as the HIV/AIDS pandemic and severe natural disasters like tsunami in South and South-East Asia in 2004. Response to these kinds of challenges requires more financial, human, material and technical resources. However, the Committee notes with concern that one important obstacle is often our pattern of thought, among other things, the lack of creativity, the lack of will to change old habits and customs and gaps in the training or in the knowledge of existing resources.

669. The Committee recommends that all decisions regarding the separation from parents and the placement into out-of-home care as well as the periodic review of the placement should always be based on the principle of individualization of solutions. Furthermore, the Committee recommends that a set of international standards on the protection and alternative care of children without parental care should emphasize this principle and take into account the obstacles and challenges which impede the provision of out-of-home care to children.

Especially vulnerable children

670. The Committee wishes to draw attention to several groups of children in need of special support measures, such as children with disabilities, children associated with drug abuse, street children, refugee children or asylum-seeking children and children infected with or affected by HIV/AIDS. These children are often placed in big institutions due to their social and health status without evaluating the actual situation case by case. Certain categories of children often fall outside the attention of the State, such as children of migrant workers.

671. The Committee calls for all States parties and other stakeholders to seek individual solutions when considering and implementing alternative care measures for children and their families in need of special support. The Committee recommends that States parties take effective measures to prevent separation from parents by providing parents and parents-to-be with adequate support and counselling, e.g. by establishing maternity centres which provide mothers with better resources for the future and prevent the institutionalization of their children.

672. The Committee notes with concern that girls without parental care are more vulnerable to sexual exploitation, child marriage and lack of access to education. It also notes that there is often a gender imbalance in institutions. Both girls and boys need role models of both sexes. The Committee recommends that the States parties and other stakeholders ensure that a gender perspective is included in all approaches as girls without parental care are more vulnerable to violations of their rights.

Community-based approach

673. Children feel better in their own environment and this should be taken into consideration when they are placed into out-of-home care. The basic premise is that children should be kept in their own distinctive communities. For instance, indigenous communities often have a very close family system and the child protection system should take into consideration both indigenous culture, values and the child's right to indigenous identity. The importance of the local level and local authorities should not be neglected in providing basic protection for children. The Committee recommends that States parties encourage local authorities to organize themselves and to provide basic protection for the community members and to provide these local authorities with adequate human and financial resources. In order to keep children in their own communities, it is crucial to provide them with basic services, such as access to social and health services, education and those services which promote the right to survival and development.

674. The Committee encourages establishing so-called community protection networks which support families at an early stage. Local multidisciplinary teams working with the most vulnerable families are more likely to reach the family and to find individual solutions based on the actual situation of the family. The Committee encourages States parties to seek alternative measures within the community for the institutionalization of children. The Committee recommends that the family should be looked at as a whole and be considered as a group, including the extended family. In addition it recommends that the alternative care measures should pay more attention to the cultural values of communities.

Transition period

675. The Committee recommends that States parties and other stakeholders facilitate and enhance the child's transition from institutional care to independent living, e.g. by providing a child with an external contact person, promoting contacts with the biological parents, teaching children how to live on their own and manage their own households, providing overlapping halfway houses during a transition period, etc.

Training and awareness-raising

676. The Committee is concerned that the education and training of professionals working with and for children, including teachers, health personnel, social workers, personnel in the residential care settings, judges, magistrates, lawyers, law enforcement officials, civil servants, parliamentarians and local leaders, is often neglected. It notes with deep concern that in many cases the professionals are unable to identify the violations of the rights of the child within the family or in the institutions and to intervene in time due to the lack of or inadequate level of training.

677. The Committee recommends that States parties invest in systematic training, education and research in the field of the protection and alternative care of children without parental care from a rights-based and gender-sensitive perspective. States parties are encouraged to undertake systematic education and training of children and their parents, as well as all professionals working for and with children. The Committee further recommends that States parties conduct awareness-raising campaign on the rights of the child and parental responsibilities for the public at large. It encourages States parties and other stakeholders to seek and develop creative and child-friendly methods to promote the principles and provisions of the Convention.

678. Furthermore, the Committee recommends that the States parties provide professionals working with and for children with adequate support services, including psychological support. Professionals witness difficult family situations and severe violations of the rights of the child, including violence, abuse, ill-treatment and negligence, in their daily work. They can be heavily stressed when facing children who are to be separated from their parents. The Committee reminds States parties that it is also important to recognize the needs of the professionals. The Committee recommends that the States parties take effective measures to support professionals and para-professionals working with and for children.

Investigation and documentation

679. As regards children separated from their parents and placed in out-of-home care, the Committee notes with concern that many children lack adequate documentation and background information. Sometimes it is impossible to trace the child's past and the actual behind the separation decision. The lack of investigation and sufficient documentation impedes the continuous planning and the regular review of the placement.

680. Therefore, the Committee recommends that all children residing in out-of-home care, including the foster families, public and private residential institutions and care providers, religious care institutions, etc., and the children to be placed in such care are provided with adequate social background investigation and written detailed documentation which follows the child through the out-of-home care period. These multidisciplinary files need to be regularly updated and complemented during the child's development.

The lack of data and statistics

681. The Committee notes with concern the lack of data and statistics on the number of children without parental care. In particular it notes that there is a lack of data regarding children who are in informal care, e.g. cared for by relatives, or who are entirely without care, such as children living on the street.

682. The Committee recommends that States parties strengthen their mechanisms for data collection and develop indicators consistent with the Convention in order to ensure that data is collected on all children in alternative care, including informal care. It further encourages the States parties to use these indicators and data to formulate policies and programmes regarding alternative care.

Evaluation and monitoring

683. The Committee recommends that States parties establish an effective evaluation mechanism for alternative care, including informal forms of alternative care. It is essential to develop, standardize and control the quality of alternative care and related programmes and services. The Committee recommends that evaluation should involve direct consultation with children. Control and evaluation should also be linked to the prevention of separation. One example of controlled preventive measures is the establishment of a national register on "safe houses" for parents and children seeking help and assistance.

684. In addition, the Committee recommends that the States parties establish an independent and effective monitoring mechanism for children without parental care. Such a body should have a mandate to receive, investigate and address complaints from children and do so in a child-sensitive and expeditious manner.

Implementation

685. Notwithstanding the apparent need for a set of international standards on the protection and alternative care of children without parental care, the Committee emphasizes the need to focus on existing international and regional instruments, such as conventions, protocols, declarations and guidelines, with a view to effectively implementing these provisions and to monitor the progress in the implementation.

Concluding recommendations

686. Based on the input and written contributions submitted to and discussions that took place during the day of general discussion on children without parental care on 16 September 2005, the Committee on the Rights of the Child adopts the following concluding recommendations.

687. While welcoming the efforts made by regional and inter-agency bodies to define principles and standards of care for children without parental care, notably the Recommendation of the Council of Europe's Committee of Ministers to Member States on Children's Rights in Residential Institutions, and the Inter-Agency Guiding Principles on Unaccompanied and Separated Children, the Committee notes with concern that a significant number of children are currently orphaned or otherwise separated from their parents due to a large variety of reasons, including conflict, violence, poverty, HIV/AIDS and social breakdown, and that it is certain that this number will grow. It recognizes that, notwithstanding the existence of the Convention on the Rights of the Child and certain other international instruments,ⁱⁱ precise guidance available to States working to meet their obligations with respect to suitable alternative care remains partial and limited. Notwithstanding the positive steps taken by many States parties in the field of domestic laws and policies, the Committee is concerned at the insufficient number of implementation measures, which tend to form a gap between laws, policies and practice.

688. The Committee on the Rights of the Child recommends that the international community, including States parties, United Nations agencies and bodies as well as relevant regional organizations, international and national non-governmental organizations, academic institutions and international professional organizations, organize an expert meeting to prepare a set of international standards for the protection and alternative care of children without parental care for the United Nations General Assembly to consider and adopt in 2006.

689. These standards and guidelines would be addressed not only to Governments but to civil society at large, professionals working with and for children, voluntary organizations, international bodies and organizations, and the private sector to the extent that they are directly or indirectly involved with organizing, providing or monitoring out-of-home care for children. The Committee recommends that these standards show flexibility for cultural aspects by responding to the challenges faced by both developed and less developed countries. As regards the effective implementation of these standards, the Committee emphasizes the practical nature and the need to have an effective monitoring mechanism. It further recommends that the standards should have a multi-track approach, i.e. to regulate the separation and placement into out-of-home care, to standardize the out-of-home care and the transition from the out-of-home care back to the family or into society and at the same time to seek measures how to prevent

placement and institutionalization. In this regard, the Committee underlines the need to hold consultations with children and their parents throughout the process.

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ⁱ These recommendations are based on the input to and discussions that took place during the day of general discussion on children without parental care on 16 September 2005 and do not pretend to be exhaustive.

ⁱⁱ Relevant instruments include the 1986 Declaration of Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally, and the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. In the context of children orphaned or otherwise separated from their parents due to situations of conflict, the 1949 Geneva Conventions and their 1977 Additional Protocols as well as institutions specialized in the tracing of persons are of particular significance.