

**Fact Sheet
N° 10**

**A global policy for Children and the Family
ENSURING CARE PROCEEDINGS: THE LEGAL PROCESS**

Care proceedings (legal protection) are necessary whenever we come face to face with a severe incapacity of parents or persons responsible for the care of a child. The care proceedings should be activated immediately there is proof that a child is in a state of dereliction. In developing it the causes that have motivated this state of affairs can be identified so that as many legal measures as necessary can be adopted to contribute to overcoming the causes and to construct a permanent family life plan for the child. The most frequent behaviours that make such protective measures necessary are abandonment, mistreatment, sexual abuse, and the neglect of the custody of a child.

The situation

When a child receives inadequate support from his/her parents (or the persons replacing them) for his/her care and upbringing; making their overall development difficult and bringing about their dereliction, the laws and the authorities have a duty to ensure adequate protective measures to safeguard the child's right to this care and assistance, even by strengthening the workings of the family by means of psycho-social and economic support programmes and, if this is not effective, through measures that imply for the child an alternative permanent family that guarantees him/her the full exercise of all their rights and potentials, just as the international conventions recognize them.

The objective

The objective of all care proceedings should be to safeguard the possibility of the child to fully exercise his/her rights, to give satisfaction to his/her needs, to be able to enjoy adequate personal development.

The search for stable solutions

Once separation has been carried out, time continues to play a fundamental role in the welfare of the child. The effects of separation, always painful for the child who undergoes it, have certain immediate signs from the moment they occur, and continue to worsen with time. If the separation is consolidated and manages to become permanent or long-lasting, not only does it make the initial effects worse but may also cause new ones to appear.

Expediting the search for stable **solutions for his/her care and attention thus becomes a priority.** Only the reintegration in the family of origin or the reconstruction of stable family life in an alternative family will enable the child to establish his/her emotional balance and pave the way for his/her process of personal growth.

Personalization of the measures

Care proceedings must begin with an ample knowledge of the child's real

circumstances and set the aim of legally formalizing a permanent life plan in accordance with his/her best interests. With this in view, the legal practitioners responsible for developing the care proceedings will have to gather as much social, medical, psychological and educative information that can provide items of interest. They will have to investigate the family environment of the child, beginning with his/her parents, the extended family, and relatives, neighbours etc. who could pave the way for relevant data. It is worth repeating the importance of the psycho, medico social study, to which Fact sheet no 3. was devoted. It is important that the legal decisions that can be taken be as relevant as possible to the specific case of each child.

Guarantees

The care proceedings must be carried out by public authorities, whether administrative or judicial, in accordance with the legislation of each country, therefore, in its development decisions should be taken that have a bearing on the legal situations of the people involved that do not coincide on most occasions with their wishes. For this purpose, these proceedings must be endowed with adequate procedural guarantees **for the people** concerned and very especially for

the child who must be heard and his /her opinions taken into account whenever possible. In particularly difficult situations the child may need individual assistance (social worker, lawyer, government ministry) during the proceedings.

Care decisions

The decisions will have to be taken preferably by collegiate bodies in which their different members have diverse and complementary professions and experience at their disposal. In any case they must base themselves on technical reports prepared by appropriate specialists.

The expected result of the care proceedings as a whole incorporates various decisions:

1. To separate the child from his family or to ratify the separation that has already been authorised as a matter of urgency or abandonment
2. To assign a temporary protective measure
3. To take adequate legal measures to make possible for the child a permanent family life.

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For more information:

- CHARLTON Lyn *Still screaming: birth parents compulsorily separated from their children*; published by: After adoption, 12-14 Chapel street, Manchester; 1998, 139pp

We are interested in your opinion! To tell us your experiences, ask us your questions about the themes addressed in this file, or to send us your suggestions for changes, don't hesitate to write to us at irc-cir@iss-ssi.org. We also invite you to share this file with other interested persons in your country. Thanks in advance!

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