

COMMITTEE ON THE RIGHTS OF THE CHILD

Fifty-fourth Session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

Concluding Observations of the Committee on the Rights of the Child

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Committee on the Rights of the Child Concluding Observations for Argentina 3rd and 4th Periodic Report, June 2010. For entire 2010 4th Periodic Report, visit CRIN, <http://www.crin.org/resources/infoDetail.asp?ID=22725&flag=legal>. Below please find alternative care related excerpts for the 4th Periodic Report.

22. The Committee recommends that the State party, in light of articles 3 and 4, of the Convention, take all appropriate measures, to the maximum extent of available resources, to ensure that sufficient budgetary allocation is provided to services for children and that particular attention is paid to the protection of the rights of children belonging to disadvantaged provinces and groups, including indigenous children and children living in poverty. In particular and in line with the Committee's recommendations resulting from its Day of general discussion on resources for the rights of the child-responsibility of States, it encourages the State party to:

(c) Ensure the expansion of and equitable allocation to disadvantaged provinces and groups in order to address disparities and, in particular, consider migrant children and **children in alternative care** (both in foster care and in other alternative care) as recipients of the universal subsidy per children;

24. The Committee urges the State party to take the necessary steps to ensure that plans for an "Integrated System of Information on Policies for Children and Adolescents" are implemented and coordinated with the National Institute of Statistics and Census (INDEC), covering all aspects of the Convention. The State party should ensure that information collected through this Integral System contains transparent, reliable and comparable data on all rights, disaggregated by provincial and municipal location, gender, age and income in order to enable policy and programme decision-making and to ensure public knowledge of progress made and gaps in its implementation. Furthermore, attention should be paid to generating and monitoring data and information on children in need of special protection: children with disabilities, children in the juvenile justice system, children of single-parent families, sexually abused children, **children in alternative care, or children without parental care**, and others as relevant. The Committee also recommends that the State party seek technical assistance from, inter alia, UNICEF.

Corporal punishment

45. While noting the general principle in Law No. 26.061 for children not to be subjected to violent, discriminatory, humiliating or intimidating treatment, the Committee expresses concern at the inclusion in article 278 of the Civil Code of a right of parents to proper correction, which may lead to abuse and corporal punishment. It is further concerned that corporal punishment is not explicitly prohibited outside the home, including schools, centres of detention and **alternative care settings**.

46. The Committee recommends that the State party explicitly prohibit by law in all provinces corporal punishment and all forms of violence against children in all settings, including in the family, schools, **alternative childcare** and places of detention for juvenile offenders, and implement those laws effectively. It also recommends that the State party intensify its awareness-raising campaigns with a view to changing perceptions regarding eradicating corporal punishment and in order to promote the use of alternative and non-violent forms of discipline in a manner consistent with the child's human dignity and in accordance with the Convention, especially article 28, paragraph 2. In this regard, the Committee encourages the State party to take into account the Committee's General comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (CRC/C/GC/8, 2006).

4. Family environment and alternative care (arts. 5, 18 (paras.1-2), 9-11, 19-21, 25, 27 (para.4) and 39 of the Convention)

Family environment

50. The Committee encourages the State party to continue its efforts to support families to effectively fight against poverty, as well as to ensure that families are prepared in their parenting roles, in particular families with one parent and those that may have more difficulties to access the State party's services, such as families from remote areas, indigenous families, migrants and families with children with disabilities. The Committee further encourages the State party to ensure that psychological, social and legal services offered at the local and community levels are accessible to all families and assist them to strengthen family relations, allow children to access day care and other measures to effectively prevent placement of children in institutions.

Alternative care

51. The Committee welcomes that Law No. 26.061 introduced institutional changes with regard to assistance and protection of children, as well as the guidelines issued by the Federal Council for Children, Adolescents and Family on children deprived of their family environment, in particular the recommendation to avoid placement at institutions, as well as the study undertaken by the National Secretariat for Children, Adolescence and the Family. The Committee notes with concern:

- a) The inadequate data and information provided on children in residential care, especially the lack of a clear differentiation between correction institutions for offending children and residential homes for children who were placed out of their families for protection;
- b) The increase of children in institutions, including for reasons of poverty or on the pretext of "protection", despite the State party's efforts to place children deprived of their family environment into foster care;
- c) The absence of a harmonized methodology of data collection on institutions and foster care and the absence of monitoring and evaluation mechanisms;

- d) The absence of dedicated budgetary allocations to strengthen family links and promote alternatives to institutional care;
- e) The absence of supervision and preparation of caregivers and that the State party does not have uniform regulations on foster care and extended family care.

52. The Committee recommends that the State party:

- (a) Ensures that uniform regulations on foster care and extended family care be adopted and used in the entirety of its territory and that it further harmonizes the methodology of data collection in all provinces;
- (b) Conducts a study on the conditions of foster care in order to take corrective actions and monitor conditions by regular visitation;
- (c) Finalize its study to assess the situation of children placed in institutions and includes in its objective the assessment of their living conditions, the services provided and the duration of their stay as well as the actions taken to find an appropriate family environment, duly resourced and monitored, as well as take appropriate measures to implement the findings;
- (d) Take all necessary measures, including at the provincial level, for children placed in institutions to return to their families whenever possible, or to be placed in family-type care and consider the placement of children in institutions as a measure of last resort and for the shortest period possible;
- (e) Ensure that dedicated budget allocations are identified for strengthening of family links and promoting alternatives to institutional care, including the assistance of children and their psychological and social support;
- (f) Set clear standards for alternative care, support for existing institutions to meet the standards, ensure a comprehensive mechanism of complaints for children placed in institutions and periodic review of measures for children placed in institutions, in light of article 25 of the Convention and the **Guidelines for the Alternative Care of Children** contained in General Assembly resolution 64/142, adopted on 20 November 2009;
- (g) Ensure that the right of the child to be heard is fully respected.

**Family environment and alternative care
(arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)**

Family environment

44. While the Committee acknowledges that social services for families and children are widely available, it notes that many children requiring urgent assistance are put on long waiting lists to obtain appropriate social services. The Committee expresses concern that existing offer of childcare services is far from meeting the needs, only 27,2% of them being met in the French community due mainly to the insufficient funding devoted to childcare. The Committee expresses concern that the shortage particularly affects children from the most disadvantaged families and children with disabilities. It is also concerned that in Flanders, less than 80% of the staff has followed training for childcare.
45. The Committee recommends that the State party conduct comprehensive research on the reasons behind the long waiting lists to obtain appropriate social services. The Committee also calls upon the State party to promptly establish more childcare services and to ensure accessibility to all children regardless of their special educational needs or the socio economic status of their families. The Committee calls upon the State party to provide children with disabilities in childcare structures with the special assistance they need, and to ensure that childcare services are provided by trained staff and promote early childhood development, in light of principles and provisions of CRC.

Children deprived of a family environment

46. The Committee is concerned that child care is still primarily focused on placing children in residential institutions and that the French Community has the highest rate of institutionalized children below 3 years in Europe. The Committee is further concerned about the long waiting lists for placement and the frequent changes of placement.
47. The Committee recommends that the State party review its legal framework to prevent the placement of children in institutions and to this aim, provide families with social and economical assistance for parenting and legal aid, if necessary. The Committee also recommends that the State party prioritize family-type care settings over institutionalized placements and periodically review placements as required under article 25 of the Convention. The Committee further draws attention to the **Guidelines for the Alternative Care of Children** contained in General Assembly resolution 64/142 adopted on 20 November 2009.

41. The Committee recommends that the State party: (a) undertake a review of current legislation with a view to identifying protection gaps and ending the use of corporal punishment in all areas, including in schools, in the home, in the penal system, and in **alternative care settings**;

**4. Family environment and alternative care
(arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)**

Family environment

43. The Committee is concerned that through an amendment of the law on the family in 2004, the social work centres have been granted the power to limit and suspend parental rights due to non-payment of maintenance obligations. The Committee is concerned that this measure unnecessarily severs the connection between parent and child and may result in a violation of the child's right to maintain personal relations and direct contact with both parents (Article 9(3)).

44. The Committee recommends that the State party:

- (a) Remove the competence of the social work centres to limit and suspend parental rights and ensure that the suspension of parental rights is only done by a competent judge and only when required for the immediate protection of the child and for the protection of his or her best interests;
- (b) Take all appropriate measures and programmes to render assistance to parents in the performance of their child-rearing responsibilities, including through developing programmes aimed at improving parental skills (and competences).

Maintenance Recovery

45. The Committee is concerned at the lack of efficient measures aimed to secure the recovery of maintenance of the child.

46. The Committee recommends that the State party:

- (a) Identify alternative measures for the recovery of maintenance from solvent parents who refuse to pay and consider establishing a national fund to ensure the payment of overdue child maintenance obligations while enforcement measures are enacted; and
- (b) Consider ratifying Hague Conventions No. 23 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, No. 24 on the Law Applicable to Maintenance Obligations, and No. 34 on Jurisdiction, Applicable Law, Recognition,

Enforcement and Cooperation in Respect to Parental Responsibility and Measures for the Protection of Children.

Children deprived of a family environment

47. The Committee, while welcoming positive steps in the context of deinstitutionalisation and the development of the foster care system, is concerned about the fragmented approach to child protection in both policy and implementation, that a large number of children remain in institutions, including children under the age of 3 years, about the absence of periodic review and monitoring of placements, and about reported abuse in alternative care institutions.

48. The Committee recommends that the State party:

- (a) Ensure consistency in both policy and implementation in child protection
- (b) Ensure adequate periodic review and monitoring of placements in all alternative care settings to guarantee the application of standards and to prevent abuse;
- (c) Continue and complete the process of deinstitutionalisation and ensure as a matter of priority that children under the age of 3 years are not placed in institutions; and
- (d) Take into account the **Guidelines for the Alternative Care of Children** contained in United Nations General Assembly Resolution A/RES/64/142 adopted on 20 November 2009 in all measures concerning children without a family environment.

Adoption

49. The Committee notes information provided during the dialogue and recommends that the State party develop appropriate safeguards to ensure respect for the "subsidiarity principle" so that intercountry adoption of a child is only considered after all possibilities for domestic adoption have been exhausted.

**4. Family environment and alternative care
(arts. 5, 18(paras.1-2), 9-11, 19-21, 25, 27 (para.4) and 39 of the Convention)**

Family environment

35. The Committee welcomes the existence of programmes providing training for young adolescent mothers and young parents. The Committee notes with interest that the Ministry of Social Development implements a national parenting programme. The Committee further notes that the Status of Children Bill makes provisions for maintenance of children of common law marriages and visiting families and for the presumption of paternity, granting both parents joint custody of the child. The Committee also notes that over 70% of children in the State party are born to unmarried mothers and, while it acknowledges the State party's efforts to strengthen the role of fathers, it expresses concern that many fathers still do not take on their parental responsibilities.

36. The Committee recommends that the State party continue and strengthen its parental education efforts, including by holding on a regular basis family education and awareness programmes covering a wide range of issues pertinent to parenting. The Committee further recommends that the State party have a particular focus on education and awareness programmes promoting the role and responsibilities of fathers.

Children deprived of a family environment

37. The Committee welcomes the development of a Code of Standards for the operation of childcare homes and the training programmes available for social and welfare workers. The Committee also notes with interest that in the next few months the State party will be taking over the foster care programme, which up to now has been supported by foreign aid, and will, inter alia, launch a drive to recruit more foster carers. Nevertheless, the Committee is concerned that the limited availability of childcare homes places a strain on the system with regard to the number of children that can be provided with care. The Committee also notes with regret that there is no independent complaints mechanism for children in alternative care.

38. The Committee encourages the State party to continue its efforts to improve and strengthen the foster care programme in order to ensure that children who must be taken out of their family environment can be placed in appropriate care situations. The Committee also recommends that the State party develop independent complaints mechanisms for children in alternative care and that placements in institutions be periodically reviewed, as required under article 25 of the Convention. The Committee urges the State party, in its effort, to take into account the **Guidelines for the Alternative Care of Children** contained in United Nations General Assembly Resolution A/RES/64/142 adopted on 20 November 2009.

35. In light of article 12 of the Convention, and drawing the State party's attention to general comment No. 12 (2009) on the right of the child to be heard, the Committee urges the State Party to:

(a) Strengthen the effective functioning of the Children's Parliaments, especially the implementation of its mandate to deliberate and contribute to draft child-oriented bills, and ensure that their composition is **representative of all segments of society, including orphans, children with disabilities, refugee children, and other children with special needs;**

(b) Take effective measures to ensure that the child's right to be heard is respected and implemented in all civil and penal judicial proceedings as well as in administrative proceedings, including those concerning **children in alternative care** (CRC/C/GC/12, para. 97);

**A. Family environment and alternative care
(arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)**

Family environment

48. While welcoming the proposed framework in the National Economic Empowerment and Development Strategy (NEEDS II) for providing support to vulnerable groups, including single parents and teenage mothers, the Committee regrets the lack of information in the State party's report on measures taken to support parents, guardians or members of the extended family in providing appropriate direction and guidance in the child's exercise of its rights and to support them in the performance of their child-rearing responsibilities. It furthermore regrets that no available disaggregated data exists concerning single-parent families and is concerned about the reported social stigmatization facing single mothers.

49. The Committee recommends that the State party provide further information about the implementation of articles 5 and 18 (2) of the Convention in its next periodic report. It recommends that the State party takes all necessary measures to ensure the allocation of appropriate financial and other support programmes that assist parents, especially single-mother and teenage households, or legal guardians, in the exercise of their responsibilities. The State party is furthermore strongly encouraged to adopt a comprehensive family law to guide appropriate policies in this respect.

Children deprived of a family environment

50. The Committee welcomes the adoption of the National Plan of Action on Orphans and Vulnerable Children (2006-2010) and the National Guidelines and Standards of Practice on Orphans and Vulnerable Children, based on a rights-based approach and guided by the principle of the best interests of the child. The Committee is nevertheless concerned about the adequacy of programmes and the capacity of institutions to effectively implement these

frameworks in view of the alarmingly high number of orphans and otherwise vulnerable children. It expresses particular concern about the situation of children orphaned by HIV/AIDS, children in street situations, including the *alamajiri*, and the placement of orphans in remand homes where, in some instances, they live together with adults and children in conflict with the law.

51. The Committee urges, as a matter of priority, the State party to allocate adequate financial, human and other resources to ensure the effective implementation of the aforementioned policies and guidelines for the protection and well-being of children deprived of their family environment. In particular, the State party is urged to:

- (a) Take all necessary measures to provide alternative child care options for children currently living in remand homes, with a view to abolishing the use of remand homes for the care of children without a family;
- (b) Provide alternative child care options, such as foster placement, kafala of Islamic law and adoption for children;
- (c) Establish institutions responsible for the monitoring and evaluation of child care institutions in all states to ensure that they operate in consistency with the rights and best interests of the child, taking into account the National Policy and Guidelines for the Establishment and Monitoring of Child Care Centres;
- (d) Adopt legislation regulating alternative care of children and accompanying regulatory framework outlining the rights of children under such care, in line with the **Guidelines for the Alternative Care of Children** contained in the General Assembly Resolution A/RES/64/142 of 20 December 2009.

Adoption

52. The Committee regrets the lack of information provided by the State party on the practice and extent of domestic and inter-country adoption of children. The Committee remains concerned about information received, and as contained in the second periodic report of the State party (CRC/C/70/Add.24, para. 97), that the lack of uniform adoption laws in the State party has created a system of abuse. While noting that while the State party does not allow for inter-country adoption, the Committee is concerned that the practice remains unregulated and is on the increase. The Committee also expresses grave concern about reports of “baby farms” where children are sold to prospective adoptive persons who in turn sell them for profit.

53. The Committee recommends that the State party provides further information about the implementation of article 21 of the Convention in its next periodic report. The State party is strongly encouraged to harmonize national laws on domestic adoption with the Child Rights Act and ensure their compliance with the Convention, including with kafala. While recalling that inter-country adoption is a measure of last resort for children without families, the State party is urged to:

- (a) Ratify the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption;

Committee on the Rights
of the Child Concluding
Observations for Tunisia
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June 2010. For entire

2010 3rd Periodic Report), Continue its efforts to eradicate the existence of “baby farms”, including by
visit CRIN, concluding its mapping exercise on “baby farms”, ensuring the release and rescue of children
victims of this practice and investigating and prosecuting those responsible.

<http://www.unhcr.org/refugees/infoDetail.asp?ID=22>

'30&flag=legal. Below



Corporal punishment

39. While welcoming that a draft law amending article 339 of the penal code is under consideration, the Committee is concerned that by virtue of this provision “castigation inflicted on a child by persons having authority over him or her shall not give rise to punishment”. The Committee is further concerned that corporal punishment remains lawful in the home and in **alternative care settings** and that in spite of internal regulations of the Ministry of Education prohibiting corporal punishment, it continues to be inflicted on children by teachers throughout the State party. Furthermore, the Committee expresses concern that the interpretation of the provision prohibiting “usual ill-treatment” of children is much narrower than the Committee’s interpretation of corporal punishment. It regrets the insufficient information about and awareness of domestic violence and its harmful impact on children.

4. Family environment and alternative care (arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

Family environment and parental support

42. The Committee welcomes the efforts made by the State party to facilitate the establishment of legal paternity for children born out of wedlock. It is concerned, however, at the high rate of children born out of wedlock placed in institutions resulting from the precarious situation, social discrimination and discrimination single mothers are facing. The Committee is deeply concerned that the Child Protection Code fails to provide appropriate mechanisms to secure adequate family and parental support to single mothers and maintenance recovery from fathers or other persons having financial responsibility for the child.

43. The Committee urges the State party to:

- i. Take necessary measures, including legislative ones, to ensure as much as possible maintenance of children born out of wedlock by parents, particularly their fathers, or other persons having financial responsibilities for the child, in compliance with article 27, para. 4 of the Convention;
- ii. Provide effective protection and social services for the most vulnerable families and ensure that social safety net schemes give priority to female-headed households; and
- iii. Undertake sensitization and awareness-raising measures to eliminate stigmatization and discrimination against single mothers.

Children deprived of a family environment

44. While noting the adoption of a policy of de-institutionalisation, the Committee remains concerned that the trend on the total number of children in residential care in the last ten years has not shown a substantive decrease. It expresses grave concern at the very high number of children born out of wedlock placed in institutions, which represented about 35% of the children deprived of parental care and placed in institutions in 2007.

45. The Committee recommends that the State party:

(a) Give priority to protecting the natural family environment and ensure that removal from the family and placement in foster care or institution is used only as a measure of last resort when in the best interests of child;

(b) Develop a National Plan of Action to implement the de-institutionalization policy in an efficient manner and within a clear time-frame and ensure the establishment of mechanisms for its effective implementation and monitoring;

(c) Develop the system of alternative care services with regulations, minimum standards and appropriate controls;

(d) Ensure the right of the child to be heard at all steps of the alternative care procedure;

(e) Take into consideration the recommendations adopted at the Committee's day of general discussion on children without parental care held on 16 September 2005 (see CRC/C/153);

(f) Consider ratifying the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in order to avoid the sale of children through illegal adoptions.