

Committee on the Rights of the Child

**Day of General Discussion
Children without parental care**

OUTLINE

1. 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.
2. At its 37th session (13 September – 1 October 2004), the Committee decided to devote its next discussion day on “Children without parental care”. The discussion will take place on Friday 16 September 2005 during the 40th session of the Committee at the United Nations Office at Geneva.
3. The purpose of the Day of General Discussion is to foster a deeper understanding of the contents and implications of the Convention as they relate to specific topics. The discussions are public. Government representatives, United Nations human rights mechanisms, as well as United Nations bodies and specialized agencies, non-governmental organizations and individual experts are invited to take part.

The Context: Children without parental care in the Convention on the Rights of the Child

4. The importance of family in children’s lives is emphasized throughout the Convention. It is raised in the preamble, 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...” and also that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment, an atmosphere of happiness, love and understanding.”
5. The Convention on the Rights of the Child (the Convention, hereafter) includes a number of articles which serve to make clear States’ obligations to support families in this role, and to remove children from parental care only if certain conditions are met. Article 5 calls for States parties to respect the responsibilities, rights and duties of parents or other legal guardians. Article 10 encourages measures to promote family reunification as well as regular contact between the child and both parents in the event of separation. The responsibility of both parents for the care of their children is outlined in article 18, which also enjoins States Parties to support parents in their child-rearing responsibilities. Parents’ primary financial responsibilities towards their

children are stated in article 27, along with the obligation of States to provide material assistance and support programmes in case of need. Finally, article 9 identifies States' responsibilities to prevent separation of children from their parents against their will, except when necessary for their best interests, such as in situations of abuse or neglect, and sets requirements for judicial review in such cases. The same provision also calls for the possibility for all parties, including children, to participate and make their views known in all proceedings covering separation issues.

6. The Convention also requires States Parties to ensure appropriate substitute care for all children who are without parental care for whatever reason. Article 20 is devoted entirely to this topic, covering the responsibility of the State to provide alternative care in such cases. States are expected to set standards for all institutions and services with a child care role, including those run by private profit or non profit service providers (article 3). Children who have been placed in out-of-home care settings are also entitled to a regular review of their placement, as established by article 25.
7. Despite the thorough attention to this topic within the Convention, and the existence of certain supplementary instruments which provide further guidance on some of the areas covered¹, the Committee on the Rights of the Child has called during 2004 for the development of United Nations Guidelines for the Protection of Children without Parental Care². The Committee's recognition of the need for these standards is based on:
 - a. the significant number of children currently orphaned or otherwise separated from their parents due to a large variety of reasons, including armed conflict, violence, poverty, disability, AIDS and family and social breakdown, and the projections for this number to grow;
 - b. the frequency with which the Committee, in reviewing periodically States Parties reports, observes serious difficulties regarding care provision for children in informal or formal fostering, including kinship care and adoption, or residential facilities, and often recommends the strengthening and regular monitoring of alternative care measures;
 - c. the realization that precise guidance available to States working to meet their obligations with respect to suitable alternative care remains partial and limited.

Approach and Objectives for the Day of General Discussion

8. The decision to have a Day of General Discussion on "Children without parental care" arises from these same concerns, and has as its aim to contribute to the same

¹ The 1986 Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally, the 1993 Hague Convention on Inter-country Adoption, the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty, the 1985 UN Rules on the Administration of Juvenile Justice and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

² See the Decision adopted by the Committee on the Rights of the Child during its 37th session of, CRC/C/143.

overarching objective as the proposed Guidelines: to improve implementation of the Convention on this topic. This discussion should thus focus on those aspects of the issue which have proved most problematic for States Parties to address, and which would therefore benefit from the views and experiences of the wide range of partners the discussion day is able to bring together. Given the concerns raised and experiences gathered to date in the Committee's efforts to address this issue, it is proposed that participants to this meeting be divided in two working groups in order to focus discussions.

9. The Day of General Discussion will focus on identifying practical solutions and steps for ensuring the rights of children are respected³. In particular, for each of the issues being discussed, participants will be expected to consider:
 - 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?

Working Group 1: States' Role in Preventing and Regulating Separation

10. Discussion of children without parental care tends to take as its starting point children who are already separated. Yet the Convention makes clear both the responsibility of parents to care for their children, and the States obligation to support them legally and otherwise in carrying out this role. This working group would address the practical measures which are or could be used by States in support of this function, and also help further clarify the conditions for removal of a child from his or her parent's care.
11. There are a number of measures which States Parties can take to support parents in their parenting role. These may include family assistance grants, child care facilities, parenting education, community based assistance programmes including support for families raising children with disabilities, among others.
 - In general, what kinds of measures are needed, including state support for families, to prevent the institutionalisation of children? What evidence exists of the efficacy of these different measures in preventing separation? What lessons may be learned where, despite such services, rates of children who are separated from their parents remains high?

³ In order to keep the work and discussions focused during the Day of General Discussion it was decided by the Committee not to address adoption related issues, though obviously adoption is a related field.

- What other steps can or are being taken by States with the potential to support families in their child-rearing role and discourage unnecessary separation of children from their parents? Are there also measures which may be inappropriate; that is, not in a child's best interests nor in line with the provisions of the Convention?
 - What legal and other mechanisms which are or can be employed by States to facilitate family reunification, both in situations of migration as well as when separation has occurred due to armed conflict or refugee situations?
12. The decision to remove a child from the care of his or her parents is among the most significant that a State may make from the child's point of view. It is a decision which should be taken with a great deal of care and consideration, and with a careful weighing of the child's best interests as the primary deciding factor. The range of State action in this area is, however, varied, with some States rarely if ever taking action, and others who extend the definition of justified removal beyond evidence of abuse and exploitation to include poverty.
- What criteria should be used in making decisions about removal?
 - What processes are most appropriate for making decisions about removal? How should children themselves participate in or contribute to this decision?
 - What considerations should be taken into account when deciding whether removal should be temporary or permanent?
 - How to address the need for a regular review of the placement contra permanency of child's living conditions in the light of the best interests of the child?

Working Group 2: Meeting the Challenges of Out-of-Home Care Provision

13. The challenges facing States Parties in providing appropriate care for children who do need it are many, and it would not be possible for the Day of Discussion to cover all of these. Setting in place appropriate systems and regulatory mechanisms that ensure only children truly in need of care enter the system, and providing foster care that truly meets children's need for a safe and nurturing family environment are just two examples of the major tasks that States must carry out in their efforts to fulfil article 20 of the Convention. Therefore, rather than try to cover this vast area, this working group would be expected to examine topics which have either been considered controversial – as is the case of provision of residential care – or those which seem most urgent and difficult, given the realities of countries coping with HIV/AIDS and or armed conflict.
14. Article 20 mentions institutional care last in a list of care options which should be available, and is often interpreted as meaning that this type of care should be a last resort. Indeed, there is both ample scientific evidence as well as general agreement that long-term institutional care is potentially damaging to children's development, especially for children who are placed when very young, or those who spend a

significant portion of their childhood in institutional care. However, it is also recognised that some children, particular those who are older when they enter care, do not actually want to be in a family setting, at certain points at least.

- What conditions/safeguards need to be in place to ensure that an institutional placement decision comply with the rights of the child?
- As regards child's right to grow up in safe, stable and trustworthy relationship, how to address the issue of institutionalisation as a measure of last resort?
- How to develop indicators to assess the conditions of institutions and the impact of institutionalisation on children?
- What systems, monitoring mechanisms, including child-sensitive complaint procedures, and minimum standards need to be in place to ensure that residential care, when used appropriately, will be a positive (or constructive?) experience for the children involved?
- What are the opportunities for enhanced child participation not only in the decision-making process, but also in his or her daily life as a resident in an institutional care setting?
- How to facilitate and enhance child's transition process from institutional care to an independent living?

15. The largest concentration of children in need of alternative substitute care are often those who are orphaned or otherwise separated from their parents due to both temporary emergencies such as armed conflict, natural disasters and longer term situations such as HIV/AIDS. Furthermore, a need for alternative care should be addressed in the context of children with disabilities, abandoned children and children living with their families without parental care, such as street children and working migrant children. Many such children live in countries where the State for various reasons may have less developed systems to cope with children's need for alternative care. This gap is however, frequently addressed both by the communities they come from, who may arrange informal foster care, as well as by external partners, including development agencies, NGOs and faith-based organisations who may support fostering and/or residential care arrangements.

- How to address institutionalisation/de-institutionalisation of children at a policy level? What is the role of the State in regulating the provision of care in such situations?
- In what ways can informal foster care, including kinship care, which constitute the main mechanism of care in such situations, be better supported, and the wellbeing and safety of children in these forms of care monitored?
- As regards rules and regulations applied to children living in institutions, how to identify good practices, including those designed with children?

Participation in the day of general discussion

16. The Day of General Discussion is a public meeting at which government representatives, United Nations bodies and specialized agencies, non-governmental organizations, including youth groups, and individual experts are welcome. The meeting will be held during the fortieth session of the Committee, at the Office of the UN High Commissioner for Human Rights (Palais Wilson, Geneva), on Friday, 16 September 2005.

17. The format of the discussion day is meant to allow participants to exchange views in a frank and open dialogue. The Committee therefore asks participants to avoid presenting formal statements during the discussion day. Written contributions are invited on the issues and topics mentioned, within the framework outlined above. In particular, the Committee is interested in receiving information about best practices and child participation within the four aforementioned sub-themes. Contributions should be sent before 30 June 2005 electronically to:

CRCgeneraldiscussion@ohchr.org

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CH-1211 Geneva 10
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18. For more information on submission and registrations, please see the guidelines posted on the Committee's webpage at

<http://www.ohchr.org/english/bodies/crc/discussion.htm>
