

Rights of Children without Parental Care

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Abstract: *Every child has the right to grow up in a supportive, caring and nurturing family environment. Despite the growing body of evidence relating to the importance of being cared for in a family, millions of children worldwide continue to grow up deprived of parental care, separated from their families, or institutionalized. Children without parental care—in institutions, living with relatives or in foster families, find themselves at a higher risk of exploitation, abuse and neglect, and their well - being is often insufficiently monitored. 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.*

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1. Introduction

The family is a very important social structure. All types of families can raise a child, and there is no "one size fits all" definition. But sometimes - through war, persecution, health needs, violence in the home, or for other reasons - children are deprived of their family environment. In these situations, the State must protect the child and ensure appropriate alternative care. Every child has the right to grow up in a supportive, caring and nurturing family environment. Despite the growing body of evidence relating to the importance of being cared for in a family, millions of children worldwide continue to grow up deprived of parental care, separated from their families, or institutionalized. Children sometimes lose their first line of protection – their family. Reasons for separation can include displacement, inability of families to care for children due to poverty, disability, domestic violence, abuse or neglect, addiction or other forms of substance abuse, or death of parents. Children placed in long - term residential care are at risk of impaired cognitive, social and emotional development.

Millions of children around the world live in institutions, formal or informal foster care, or are otherwise separated from their parents. Many more are at risk of separation due to the impact of HIV/AIDS, armed conflict, disability, poverty and social breakdown. Children without parental care – in institutions, living with relatives or in foster families, find themselves at a higher risk of exploitation, abuse and neglect, and their well - being is often insufficiently monitored. Children may be placed in institutions unnecessarily and for too long. An inadequate care environment can impair a child's emotional and social development, and leave children extremely vulnerable to abuse and exploitation, including sexual abuse and physical violence. These risks are even higher when children find themselves without any form of care or separated from their families in situations of emergency or armed conflict.

To meet this challenge, UNICEF emphasizes the importance of building a protective environment for children who are separated or at risk of separation from their parents by ensuring government commitment, facilitating legislation and enforcement, changing attitudes and practices, generating open discussion, ensuring children's

participation, building the capacity of families and communities, and facilitating effective monitoring and reporting.

Children's Right to a Family Environment

The family plays the role of the primary caregiver for all children. It provides the immediate environment conducive to the growth and development of the child. Ideally, it provides maximum opportunities for the fulfilment of the emotional, physical and developmental needs of the child. 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.

The biological family is ideally the best place for a child. But there are circumstances that deprive children of the possibility of growing up within their own families. United Nations convention includes various "alternative care arrangements", notably foster care, adoption and institutional or residential care. These can be options whenever an existing family is unable to provide an appropriate environment for a child, for example in case of the death of one or both parents, if a child is being exposed to abuse and violence within the family or if the biological parents, for various health or economic reasons, are not in a position to live up to their responsibilities. For such cases, the UNCRC considers that separation from its parents may be necessary in the best interests of the child.

The United Nations convention recognises that children are entitled to grow up in a family environment and should therefore be placed in institutions only as a last resort. The United Nations Guidelines for the Alternative Care of Children, as adopted by the United Nations General Assembly in November 2009, are more precise, stating that "decisions regarding children in alternative care should have due regard for the importance of ensuring children a stable home and of meeting their basic need for safe and continuous attachment to their caregivers, with permanency generally being a key goal". It further says that the "use of

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residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned, and in his/her best interests” and that “alternative care for young children, especially those under the age of 3 years, should be provided in family - based settings”.

The world community has agreed in a number of declarations that the family is the fundamental group unit in society. The United Nations convention and the European Convention on Human Rights emphasise the importance of protecting the family circle as the social unit that nurtures most children to adulthood. It protects the rights of children as family members: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development”.

Situation of Children Without Parental Care and Risks They Encounter

Children may be without parental care for a variety of reasons and not just as a result of their parents’ death. The main root causes leading to children being deprived of family care are poverty, discrimination, HIV/Aids, violence and wars or emergency situations. To identify the causes leading to the specific situation of children, they must be considered in their broader context, as a range of socio - political, cultural and economic factors impacting on children and their families’ lives. The main groups of children without parental care are presented here.

Orphans and abandoned children

Orphans are, by definition, the first group of children exposed to the risk of finding themselves without parental care. In the common use, an orphan does not have any surviving parent to care for him or her. However, the United Nations Children’s Fund (UNICEF), the Joint United Nations Programme on HIV and AIDS (UNAIDS), and other organisations label any child that has lost one parent as an orphan. Using this definition, a maternal orphan is a child whose mother has died, a paternal orphan is a child whose father has died, and a double orphan has lost both parents. Abandoned children are those who are abandoned by their parents as they are unable to face their responsibilities for various reasons.

Street children

According to Recommendation 253 (2008) of the Congress of Local and Regional Authorities of the Council of Europe, the term “street children” refers to any children who live and/or work on the street. This group includes homeless children and unaccompanied foreign minors. It also includes those who, while normally living with their parents or in a social welfare institution, are nevertheless in a situation where they are not directly protected or supervised by responsible adults. Some street children live or work on the streets and still maintain certain ties with their families, others do not have such contacts. There is almost no reliable data regarding the number of street children.

Children separated from biological parents following abuse and neglect

Regarding children separated from their biological parents for reasons of abuse and neglect, decisions to separate a

child from his or her parents are only possible if there is no other possibility to protect them from danger.

Trafficked children

Different legal approaches are adopted when addressing the issue of child trafficking.

Children left behind in their country of origin

The situation of children who are left behind on their own in the country of origin when parents emigrate to other countries in search of a job is an issue of great concern. Although there are comprehensive policies for improving the living conditions and education of children who have migrated with their parents, less attention has so far been paid to the children who are left behind. The migration of parents abroad for work is a social phenomenon with a complex impact on the dynamics and functionality of the family, as well as on society as a whole. Children in such situations certainly belong to the most vulnerable groups.

Unaccompanied migrant minors

Some unaccompanied children seek asylum or protection for fear of persecution or because of human rights violations, armed conflicts or disturbances in their own country. Other unaccompanied children become victims of trafficking for sexual or other types of exploitation. Yet others travel to the more affluent countries to escape serious deprivation or to look for better living conditions. In some cases, unaccompanied children seek reunification with family members already present in a given country.

Children placed in correctional or penal facilities as a result of an administrative or judicial decision

There is increasing concern about the practice of depriving children of their liberty in order to provide them with protection, care or treatment in a secure setting. The use of so - called “protective custody”, which can play a positive role in certain circumstances, can also mask inadequately developed systems of social welfare and care provision.

Children placed in institutions are deprived of social, emotional and intellectual stimulation, which can hamper the healthy development of a child’s brain. Shut away from mainstream society, these children are also particularly vulnerable to violence, neglect and abuse. Discrimination based on disability and other factors, including nationality, ethnicity, gender, sexual orientation or immigration status, are only some of the reasons for children to be deprived of parental/family care.

Article 20 provides protection for children, who, for whatever reasons, are deprived of a family environment. It applies to both temporary and permanent needs for alternative care, to situations where no extended family care is available, and to all possible reasons as to the causes for separation. While other articles, including Articles 7, 8, 18, and 27, obligate States Parties to provide the necessary support to families to enable them to care for their children. Article 20 requires that if, despite those measures, children are unable to be cared for by their own families, and they are entitled to special protection and assistance from the state.

Articles linked to OR Related to Article 20

Combined reading of Articles 7, 8, 9, 18, 26, and 27 require States Parties to provide guarantees and measures for children to facilitate staying with their families and placement as a matter of last resort only.

Article 21 provides for nature and conditions of adoption as an issue of the right of the child.

Article 16 provide protection from arbitrary interference with privacy, family, and home for children deprived of family environment.

Combined reading of Articles 22, 23, 30, 34, 35, 36, and 37 (c) provide for protection against discrimination in relation to deprivation of family environment.

Article 25 requires States Parties to set up legal and other measures to guarantee periodic review of placement of each and every child to avoid unnecessary placement and, potentially, facilitate speedy return to family environment.

International law has long recognised the importance of the family for children's healthy development and well - being. As stated in Article 16 (3) of the Universal Declaration of Human Rights, 'the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.' Article 23 of International Covenant on Civil and Political Rights and Article 10 of International Covenant on Economic, Social and Cultural Rights similarly underline the importance given to the family. The 1924 and 1959 Declarations on the Rights of the Child acknowledged the need for protection of children without parents or whose parents were unable to care for them. The preamble of the Convention on the Rights of the Child also states that the child 'should grow up in a family environment, in an atmosphere of happiness, love and understanding.'

There is a considerable body of jurisprudence in international law, including both the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, regarding children deprived of a family environment. The Committee has afforded significant attention to Article 20 through both its General Comments and Concluding Observations. In addition, the United Nations Guidelines for the Alternative Care of Children provide detailed interpretation and guidance for States Parties on the implementation of Article 20 (UN General Assembly, 2010).

Among the recommendations made to States with regard to the protection of children without parental care were:

- To avoid family break up
- To develop clear and practical policies recognising the hierarchy of existing mechanisms for children measures should be examined on a case - by - case basis and a life plan developed for a permanent solution for the child
- Secure professional help
- Obtain the agreement of the child
- Regulate and monitor all different forms of foster care
- Minimise and eliminate institutional care

- Invest in an integral protection system with ongoing training of professional and support staff and to act to see that international cooperation and credit and national and local funding be available to make these changes possible.

A safe and supportive family provided children with the best start in life for their healthy growth and development. The reality for many children, however, was that this first line of defence was missing: millions of children around the world lived in formal or informal foster care, in institutions, or were otherwise separated from their parents; many more were at risk of separation. Children who were within the formal care system suffered a risk of poor emotional development, and the risk of abuse was well known.

2. Conclusion

Millions of children deprived of parental care, or who are at risk of being so, are among the world's most vulnerable and "left behind" groups of children. According to UNICEF, there are approximately 140 million children classified as orphans, 15.1 million of which have lost both parents. Another source estimates that 1 in 10 children are growing up without appropriate parental care. This figure includes those children who have lost, or are at risk of losing parental care, and live in extremely vulnerable circumstances where they are lacking adequate care and protection.

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