



**Convention on the
Rights of the Child**

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COMMITTEE ON THE RIGHTS OF THE CHILD

Fortieth session

SUMMARY RECORD (PARTIAL)* OF THE 1060th MEETING

Held at the Palais Wilson, Geneva,
on Friday, 16 September 2005, at 10 a.m.

Chairperson: Mr. DOEK

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

DAY OF GENERAL DISCUSSION (agenda item 7)

Children without parental care

1. The CHAIRPERSON said that the large number of participants in the day of general discussion demonstrated that the topic of children without parental care merited greater attention. Four experts would introduce the topic, after which participants would meet in working groups to engage in more in-depth discussion.

2. Ms. ORTIZ said that the Convention on the Rights of the Child recognized that children could not be considered independently of their family environment; families should therefore receive adequate protection and assistance. The Convention also recognized the responsibility of States parties to provide alternative forms of care for children deprived of a family environment. Despite those provisions, States parties often did not have specific guidelines to implement measures to guarantee the right of children without parental care to a family-type environment.

3. The Committee was concerned at the growing number of children without parental care and in 2004 it had requested the United Nations to formulate a set of guidelines for the protection of children without parental care. The current meeting had been organized to gather contributions for the formulation of those guidelines.

4. Although most countries had made great strides in their efforts to implement the Convention, those achievements would be difficult to sustain if they were not accompanied by guarantees that only a comprehensive system of protection could provide. In many cases, national plans were often not complemented by the policies, programmes, budgets and human resources needed to make them viable.

5. A new trend, based on prevention, had emerged in measures to assist children without parental care. It required professionals to change their critical attitude towards families that did not conform to the traditional nuclear model, and to appreciate the strengths and qualities of families, regardless of their structure. The current role of professionals was not merely to give advice and point out errors but to work closely with families to help them to realize their potential and resolve their difficulties. States should strengthen the capacity of both the family and the community through policies and programmes that provided psychosocial and/or economic support. In order to be effective, protection measures required close cooperation between parents, professionals, foster families and the community, and between the State and civil society.

6. There were often serious shortcomings in responses to the problem of children without parental care. Such shortcomings included a lack of coordination between legal and administrative measures; lack of independent monitoring bodies; negligence and ill-treatment of children in institutions; lack of adequate regulation, follow-up and support for children, their foster families and their biological families; and failure to prepare children and their foster or adoptive families at the time of placement in alternative care. Moreover, children were often not given an opportunity to exercise their right to be heard and have their opinions taken into account in decisions concerning alternative care, and to report problems in care arrangements.

7. Various recommendations had been submitted to the Committee in connection with the day of general discussion. They included measures for preventing the separation of children from their families; development of clear and practical policies that recognized a hierarchy of options for children without parental care; formulation of a life plan for each child; respect for children's opinion in all cases, including those in which children did not want to return home or to be adopted; provision of adequate human and financial resources at all levels; and regulation and monitoring of all forms of care.

8. Mr. SHERWIN (International Foster Care Organization) said that, having experienced foster care first-hand, he was part of a growing movement of young persons who were dedicated to changing alternative care systems around the world. States parties to the Convention on the Rights of the Child often failed children without parental care through the application of outdated laws. The media failed them by stereotyping children without parental care as delinquents responsible for their own ill-fate. Because children without parental care were in the minority, society typically neglected to ensure the proper implementation of legislation to protect them and failed to secure international support for their cause.

9. Internationally recognized best standards for children without parental care were needed to raise current standards of care. Children without parental care should be informed of decisions regarding their placement and given an opportunity to choose what arrangements would best meet their needs. Family-based care should be the only option for babies and young children without parental care, and siblings should never be separated. Children placed in residential care should not be required to live in institutions with more than five or six children. In order to prevent the unnecessary separation of children from their families, States parties needed to provide more services to families of disabled children and to those of children from ethnic minorities, since such children were over-represented in institutions. National laws concerning children in institutional care should be more responsive to the cultural and social aspects of institutionalization. After reaching the age of majority, young persons who left institutional care needed links to resources, training and support in order to begin independent living.

10. Only through dialogue with the children, their caregivers, biological parents and extended families could proper standards be developed and subsequently implemented around the world. Since the United Nations was the most effective agency for ensuring respect for those standards, he urged it to adopt the best set of standards for children without parental care.

11. Ms. CERRI (Council of Europe) said that the Council of Europe, which had been founded in 1949 to defend human rights, parliamentary democracy and the rule of law, was the oldest political intergovernmental organization in Europe. It grouped together 46 member States, representing some 155 million children. Three major legal instruments were particularly relevant to the work of the Council in terms of children's rights: the Convention on the Rights of the Child; the Convention for the Protection of Human Rights and Fundamental Freedoms, which guaranteed civil and political rights; and the European Social Charter, which guaranteed economic and social rights. The collective complaints procedure of the European Social Charter was used by non-governmental organizations (NGOs) to advance children's rights.

12. One of the major components of the Council of Europe, the Committee of Ministers, had recently adopted important instruments on the rights and protection of children, including Recommendation Rec(2005)5 on the rights of children living in residential institutions, and Resolution ResAP(2005)1 on safeguarding adults and children with disabilities against abuse. The Council's other major component, the Parliamentary Assembly, had influenced the work of the Committee of Ministers through a number of resolutions, recommendations and reports on the rights and protection of the child.

13. The Council's commitment to children had recently been renewed at the highest level. At the Third Summit of Heads of State and Government of the Council of Europe, held in May 2005, the participants had decided to launch a three-year programme of action to address the social, legal, health and educational dimensions of the various forms of violence against children. The aim of the programme was to support member States in implementing international and regional human rights standards and in developing effective legal protection. As part of its assistance programme, the Council had defined policies to support families in difficulty and to provide for the social reintegration of unsupervised children, street children and delinquent minors. A forthcoming regional conference in Spain would focus on unaccompanied minors and on the importance of effective programmes to promote their development through the formulation of life programmes. It was hoped that the conference would conclude with high-level political agreement on future cooperation.

14. Since the 1990s, the Council had carried out a number of projects aimed at deinstitutionalizing children who had been placed in large, inhumane residential institutions. Although considerable progress had been made all over Europe in that regard, it was still important to continue the process of closing down such institutions and preventing children, especially children with disabilities and those from ethnic minorities, from being placed in them. Such efforts would require the international community's support and financial backing.

15. Mr. GUÐBRANDSSON (Council of Europe) said that the Council of Europe's Recommendation Rec(2005)5 on the rights of children living in residential institutions had been the first international document to focus specifically on that group of children. The Recommendation outlined the principles of good practice in all out-of-home placement, identified particular rights that should be guaranteed for children in residential institutions, and laid out a legal and structural framework for quality standards and monitoring. It had already been implemented by the Council of Baltic Sea States, which had decided in May 2005 to establish a regional monitoring mechanism for children's residential institutions.

16. While he welcomed the Committee's initiative in calling for United Nations guidelines on the rights of children without parental care, a more efficient tool was required. Despite widespread awareness of the harmful effects of institutionalization on children, millions of children worldwide were in residential care, and their number was growing rapidly. It was difficult to understand why there was no international mechanism to protect such children. He urged those present to develop an optional protocol on the rights of children in out-of-home placement in general, and on children placed in institutions in particular.

17. Ms. YUSTER (United Nations Children's Fund) said that the number of children who did not live with their families would increase as a result of the HIV/AIDS pandemic, armed conflict, natural disasters, disability, poverty and violence. Such children were often at risk of abuse, violence and exploitation, since families provided the first line of defence against such dangers. It was impossible to count the number of children currently living outside all forms of care, on the street, in exploitative labour, or associated with armed forces. They were at a high risk of abuse and exploitation, and children who grew up in residential care or in poorly monitored and badly supported foster care were at risk of joining that group.

18. Some children who were cared for by relatives or unrelated foster families faced discrimination, inadequate care, abuse and exploitation. Children in the formal care system had often ended up there or remained there unnecessarily, which contributed to their poor emotional development and put them at risk of abuse. Such children could have difficulty adjusting to adult life and were likely to come into conflict with the law, harm themselves or become victims of trafficking.

19. In order to improve residential care systems for children, the United Nations Children's Fund (UNICEF) had identified a number of key issues. Recourse to out-of-home care was often unwarranted and could be avoided by ensuring that parents received the support they required to care for their children. Overreliance on foster care could be at the expense of other services that might provide better solutions for the children concerned. Informal care sometimes led to a lack of protection, since kinship or friendship did not guarantee welfare, protection or an ability to cope. The lack of regulation of cross-border informal care was of particular concern.

20. Many countries relied too heavily on residential care because other options had not been developed. Residential care was costly and conditions often fell far short of the required standards in terms of physical conditions, nutrition, hygiene, health care and staffing. Children in residential care were sometimes abused, discipline was harsh, placements were often not reviewed, children had little or no contact with their families or others, and received no preparation for life outside the residential home. Moreover, residential care services were often not regulated by Governments, or were operated without the authorities' knowledge.

21. There were few mechanisms to enable children and families to participate systematically and effectively in decision-making about appropriate care options and the longer-term goal of a placement. Child-headed households were particularly vulnerable to marginalization, insecurity and exploitation. Since they had the advantage of keeping siblings together and allowed for continued ties with the community, child-headed households should be legally recognized as a placement option for orphaned children in need of care. That would ensure that such children received adequate supervision and support. Lastly, increasing numbers of children without parents were moving across international borders as asylum-seekers, migrants and victims of trafficking. Their treatment and care in the country of destination, and their country of origin in the case of repatriation, was an increasing cause for concern.

22. UNICEF welcomed the Committee's recommendation that the United Nations should develop guidelines for the protection of children without parental care, and supported the call for the General Assembly to adopt such guidelines.

The discussion covered in the summary record ended at 11.20 a.m.