

## **India Alliance for Child Rights**

Written submission to the UN Committee on the Rights of the Child for 16<sup>th</sup> September 2005 Day of General Discussion on the issue of:

### **Children Without Parental Care**

#### **Children out of Parental Care: Sites and Situations of Denial**

In the context of parenting, care implies holistic support for growth and upbringing of the child including physical emotional, psychological, social and economic. Any child who is deprived of this essential qualitative element in its upbringing, manages to live out only half a childhood, a childhood which focuses only on survival and not development.

We propose a distinction to be made between parental care and 'parenting' care, parental care being provided by actual parents (biological or adoptive) is different from parenting, which is the caring attention and support offered to a child by extended family members, foster care-givers or even others.

There is a need to understand what is meant by 'children without parental care'. This category of children cannot be restricted to children who have been removed from or deprived of their family environment (Art 20 CRC) and are removed from the custody of their biological parents. It is also not only orphans. The issue deserves to be examined in a variety of settings: such as the case of children who have been sold into prostitution/ bonded labour. Children who face abuse and exploitation within the family setting are also children who are deprived of this parental care. A disabled child who is fed, clothed and sheltered by the parents may not be providing adequate parental care if the child is denied the opportunity to special education and other special facilities, important for the child's growth or if there is no effort made by the parents to integrate the child into the family setting keeping in mind his/her special needs. We feel the issue of being without parental care therefore deserves a more open and inclusive analysis.

Specific to the Indian situation, are the cases of foeticide where the child is denied any parental care by the parents even before the child is born. It is a conscious decision on the part of the biological parents to cut off care and support to the child based on the sex of the child. The gender bias faced by the girl child in the family setting is another glaring example of denial of care. If the girl manages to survive the threat of foeticide, she grows up as an unwanted member of the family even though she might be living with her parents. The practice of early (child) marriage is also a way of discarding the responsibility of providing parental care. The child is denied a childhood and is forced into taking up a role he/she is not prepared for. This is done with the consent of the parents and is surely a denial of parental care.

We have a query on the apparent assumption that restoration/ reunification with parents is the best or most desirable solution to the problems of children without parental care. Often it might not be in the best interest of the child to reunify him/her with the parents on the pretext of ensuring parental care if the child chooses to flee from the home setting due to oppressive circumstances of abuse /violence/ neglect. It is important to respect the child's views in such a situation.

In India, genuine recognition of the child as a citizen is still to come and the operationalisation of systems and measures do not give adequate attention to listening to children. Children need to be given the opportunity to express a choice or even to choose what measures should be taken to ensure their safety within the home, if they should be removed from or placed in alternative care settings and if they should be reunified with the family.

The State needs to find effective ways of intervening in the family setting if the need arises.

In reporting on incidence of corporal punishment within the household [in its First Periodic Report on the CRC (2001)], Government of India reports it as "the private matter of the family". The child is left needing protection and care. In the case of India, the Juvenile Justice (Care and Protection of Children) Act, 2000 is not fully implemented across the country. Therefore there is need for better enforcement of existing laws and more comprehensive legal provisions to ensure the rights of the child without parental care.

Adoption and fostering are alternatives in India. Personal laws and attitudes affect children's rights and access to an adoptive home.

Review should examine the reasons why parental care or any adequate parenting support is absent from the child's situation. This affects the child's attitude to loss of such care. This problem has become evident in the wake of the tsunami, which hit parts of India.

In India, some alternative care facilities provided by NGOs have good and creative standards but they do not have adequate scope and coverage. The State itself has acknowledged its inadequacy in providing services for children facing these kinds of deprivations. The standard of foster care has not succeeded as a measure of alternative care in India.

New problems face children whose access to parental care is either below standard or at risk. For example children in HIV/AIDS- affected homes are often left to fend for themselves. Migration of nuclear families away from traditional extended family or native community setting deprives the child of broader family support options. The question of separation and restoration raises

particular problems in cases where the children are either married off or sold into either sex trade or labour. Rescued child workers including sex workers may not be retained in their native families in case they are restored. Child brides are consciously socialised not to return to their parental homes or to appeal for parental care once married. Early marriage condemns young girls to early child bearing and the numbers of child mothers in the maternal morbidity and mortality statistics are disturbing. We feel this is another instance of children denied the right kind of parental care. Children born to very young mothers (and possibly young fathers) are also at risk of inadequate parenting capability, let alone parental care. It is important for the State to review its policies and laws to be able to adequately meet the needs of the deprived child.

In its proposed Bill for a National Commission for Children (2005), the Government of India has said that the commission will look into matters relating to children in need of special care and protection including children in distress, marginalised and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures;(Ch-III, 13d). However the proposed powers of this Commission fall below the standards set by the Paris Principles.

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**An NGO process has been generated to promote country level and local examination of the 2005 Day of General Discussion issue. As a national coalition, we are therefore compiling a much fuller report which we will send to the Committee by the end of July**

**Meanwhile we request the Committee's examination of this note.**

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