

**UNICEF Submission to the Committee on the Rights of the Child  
Day of General Discussion on “Children without Parental Care”  
Geneva, 16 September 2005**

**Introduction**

The fact that some children cannot be cared for by their parents, whether temporarily or permanently, is not new. However, concern for the care of these children has escalated in recent years, and since the adoption of the Convention on the Rights of the Child four situations in particular have focussed attention on the issue:

1. In many industrialised countries high-profile investigations have uncovered physical and sexual abuse in residential institutions;
2. In many of the countries transitioning to free-market economies, the institutionalisation of children has been resorted to unusually often, and many of the facilities in these countries provide poor care;
3. In many African countries high rates of HIV/AIDS have created an urgent crisis in caring for the large number of children orphaned or otherwise affected by the disease;
4. Large scale emergencies and natural disasters have resulted in children being separated from their families or orphaned, situations that require the provision of family reunification and alternative care services that are often weak or non-existent.

While the Convention on the Rights of the Child (CRC) provides an overall framework in which to raise the issues related to children without parental care, neither the CRC nor other internationally-agreed texts set out comprehensive and detailed guidelines and rules that could clarify good practices, prevent abuses, and establish responsibilities and accountability. The CRC Committee has recommended such UN guidelines for the protection of children without parental care and UNICEF appreciates the CRC Committee’s decision to devote this year’s ‘Day of General Discussion’ to children without parental care. It offers the opportunity to foster a deeper understanding of the contents and implications of the CRC as it relates to these children, which should assist in informing and structuring any future guidelines.

This submission aims to identify major gaps and concerns which States should address and which should be included in any proposed guidelines. It examines the issues surrounding the care of children without parental care from UNICEF’s experiences in Azerbaijan, Georgia, Albania, Romania, Nicaragua, Brazil, South Africa, Bangladesh, Timor Leste and Indonesia. UNICEF is also making additional submissions<sup>1</sup> that tackle a range of other technical issues related to children without parental care.

**I. Overview of the Situation of Children without Parental Care**

Statistics on the number of children without parental care are scarce. Few countries keep track of the numbers of children without parental care at national level or their movement within care systems, and none have accurate data regarding children who are cared for by relatives, or who are entirely without care, such as children living on the street.

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<sup>1</sup> Including submissions presented jointly by UNICEF and the International Social Service

Despite the lack of systematic national data, there is strong evidence that most children without parental care are in the custody of relatives. Furthermore, research in several African and Eastern European countries, shows that the majority of children in residential care have contactable parent or other relative.

The risks for children without parental care and who are not cared for in an appropriate alternative setting are great. They are more vulnerable to physical abuse, hazardous child labour, sexual violence, HIV and trafficking, as well as being deprived of access to basic needs, such as food, clothing, education and accommodations. Girls in this situation are more vulnerable to child marriage, sexual exploitation, and being denied access to education. Any child who is denied the opportunity to grow up in a safe family environment is likely to suffer from the lack of love, inclusion, a sense of belonging, and the security gained by being part of the family and related community networks.

Children may be deprived, temporarily or permanently, of parental care for a wide-range of reasons, including the illness, death or imprisonment of parents, separation during migration or conflict, the removal by child welfare authorities and/or the courts based on the child's best interests, detention of the child, or following the child's own initiative to leave home. In many cases, however, children are abandoned or relinquished voluntarily by their parents, who believe they are unable to offer their children adequate care. These cases in particular are nearly always preventable, and should be addressed through appropriate programmes and policies.

In different regions of the world, poverty is repeatedly described as the first reason for resorting to institutional care. In Indonesia, parents choose to send their children to government or religious group-sponsored orphanages or boarding schools, to ensure that they have access to nutrition, health care, and educational services. In Georgia, independent surveys<sup>2</sup> and official data increasingly indicate that access to food is a major problem for many families, and it is estimated that between 12 and 20 percent of families are earning less than the monthly cost of a minimum diet. Economic poverty can also have broader social impacts. In Albania, for example, it has fuelled internal and external migration, which in turn is believed to have contributed to a weakening of traditional community support networks, a rise in divorce rates, family disintegration, and single-parent families. Children in such families are at greater risk of institutionalisation, and the combination of the absence of social safety nets with the concentration of public and private child welfare resources in institutional care, rather than family support services, exacerbates the risks to children in such situations.

Prejudice and discriminatory practices can further aggravate the negative impact of poverty. For instance, in Bangladesh, when the family resources are scarce, girls are more likely to be abandoned because the parents are required to pay a costly dowry when the girl gets married. In Georgia, it has been noted that for vulnerable families, securing care and rehabilitation for children with disabilities is a considerable financial burden. Furthermore, due to the social stigma still associated with certain disabilities, especially mental disabilities, families often choose to institutionalise their children.

Supportive policies, appropriate community-based social services, and adequately funded social protection systems, could make a significant difference to the most vulnerable families by supporting them in their child-rearing responsibilities and reducing overuse of institutional care. However, in many countries such policies and services remain either non-existent or insufficient: the impressive array of legislation in Georgia, for

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<sup>2</sup> "Food Security Situation" of the SDS for the years 2000 and 2001 (the survey was discontinued thereafter). See also "The Status of Households in Georgia – 2002". Save the Children. Tbilisi, Georgia.

example, has not had the desired impact due to a lack of implementation and the poor physical conditions of the social welfare infrastructure.

Children may also be deprived of parental care in situations of armed conflict or other emergencies. Children may be abducted by armed forces for recruitment, or separated from their parents in refugee situations. In Timor Leste, for example, many people were forcibly displaced during the turmoil preceding the independence to the Indonesian West Timor. According to UNHCR, while more than 2,300 children have already been reunited with their families there are 107 open cases of children who remain in Indonesia, separated from their parents and immediate relatives as a result of the conflict.

## **II. The Role of the State in Preventing and Regulating Separation**

### **A. The Legal Framework for Regulating Separation**

As stated in the CRC, removal from parents or relinquishment should only occur when absolutely necessary, and be subject to judicial review, as should placement decisions. For this obligation to be respected, an adequate national legal framework is essential, and yet in many countries while some legal framework exists it is often incomplete and does not always adequately protect children. Most importantly, even when the law is adequate, implementation mechanisms can be lacking, making the laws ineffective.

Strong legislative frameworks have been adopted in many countries. In Albania, for instance, the Constitution makes it clear that the State is responsible for the care of orphans. The Family Code gives the Court responsibility for appointing a legal guardian, approving placements, including adoption, and otherwise protecting the rights and interests of a child without parental care. Romania adopted a legislative package that includes four normative Acts for child protection. The laws legalized a new approach that shifts strategies of intervention from individual cases of rights violation towards strategies for all children and members of the family. In Azerbaijan, procedures for the placement of children without parental care are monitored by the Commission on Guardianship and Adoption, composed of one child protection inspector and one administrative staff in each district. Brazil's legal framework includes a judicial review of separation and placement, and allows families wishing to contest a separation order to be represented by a lawyer or public defender, providing free legal aid to those without means. In Bangladesh, if the mother dies, the child may stay with the father or other close relatives without Court intervention. If both parents die or abandon the child, the Court may appoint a legal guardian.

However, despite strong legislative frameworks, UNICEF's experiences in the countries included in this review point to the following shortcomings:

- Appropriate legislation is not always backed up by operational policies to support implementation;
- There is little or no focus on prevention within the legislative framework. Few countries, for example, mandate the provision of supportive services to families at risk;
- Even where separation is regulated by legislation and policy, implementation is often weak. Lack of funding for services and lack of trained personnel in sufficient numbers within both the social welfare and justice systems, are particular obstacles. There is often low awareness of laws, as well as of the rights of children and families both within the judiciary, and among social service

personnel and communities, as is the case in Brazil, where families rarely exercise their right to representation;

- Where religion or custom provides the basis for guardianship decisions, the best interests of the child and the principle of family preservation are not always respected. In Bangladesh, for example, a child whose father dies or abandons the family is considered to be an orphan, and guardianship passes to another elder man, such as the grandfather or elder brother. Such arrangements may potentially result in the unnecessary separation of a child from his or her mother.

## **B. Preventing Separation**

Preventing separation is key to addressing the issue of children without parental care, and yet it is often overlooked by governments. As outlined above, separation from parents is often linked to poverty and in many cases is preventable. However, prevention requires designing strategies and using social policies, basic services and other forms of support to vulnerable families to ensure that they do not resort to abandonment or institutionalisation, in line with Article 18 of the CRC. Furthermore, it is key that these strategies be used in synergy, rather than in isolation.

Several countries do have systems in place to provide assistance to families. In Indonesia, the Department of Social Affairs has had several pilot projects providing families of children living in the streets and working children with financial assistance, as well as entrepreneurship and good parenting skills training. In Nicaragua, the Ministry of Family Affairs has developed integrated actions to prevent separation, including:

- social protection programmes in six rural municipalities with a high prevalence of extreme poverty in which families receive food and education subsidies and school supplies;
- parenting skills education;
- training of Ministry staff to provide support to, and monitor cases of children and families at risk; and
- early childhood development centres for children under six years, so the parents can continue working.

In Albania, programmes aimed at preventing separation include providing ongoing psycho-social support and referral combined with material in-kind assistance to families in need. In Romania, in order to prevent children's separation from their parents, the local councils of municipalities, cities, and communes have the obligation to organize daytime services. The early identification of risk situations is followed by granting families the services they need, based on a plan of services.

Despite these positive examples, prevention strategies remain weak in most countries:

- Only a small minority of countries offer poverty alleviation schemes, and those which do rarely reach the most vulnerable families. Furthermore, many of the countries which do have family support grants do not allocate them effectively so as to reduce the use of institutional care;
- Several countries have too many institutions, and the missions, roles, and responsibilities of each of them remain unclear, with coordination between them often weak;
- In some countries, cash transfers and income generating activities are the only social protection mechanisms in place. However, additional supportive social services, including day care, parenting education, and social work outreach provided to at-risk families, could have a significant positive effect. Accordingly, UNICEF and other partners in Albania have promoted innovative

models in areas where services were lacking, such as the prevention of institutionalization through low-cost approaches that combine economic assistance with social support.

These issues require attention by states, and would benefit from clarification in any future UN Guidelines.

### **III. Meeting the Challenges of Out-of-Home Care Provision**

#### **A. Promoting Foster Care and Other Alternative Care Options**

Ensuring appropriate care in accordance with the CRC requires putting a range of care options into place, and guaranteeing that the most appropriate options are used for each child. It is well established that most children not in the care of their parents live in informal arrangements with families, usually with relatives. Governments are, therefore, faced with two challenges when trying to provide appropriate care. First, developing and implementing appropriate formal care options, and, secondly, making decisions about the levels of support, oversight and monitoring which should be provided when informal arrangements are in place.

Establishing the full range of needed care options requires a reasonably comprehensive child welfare system. At a minimum, regulations and standards are needed, along with trained personnel who are empowered to provide oversight and support. Foster care programmes are, as yet, just beginning in Brazil and currently there is no national policy or programme structure for foster care. However, there are successful local foster care experiences. At present, there are four main local examples: in Rio de Janeiro, Campinas, Sao Bento do Sul, and Porto Alegre. In Sao Paulo, relevant legislation tackling issues, such as recruitment, training and supervision of foster families was passed, but with a change of municipal administration, the programme was not implemented.

The Rio de Janeiro programme has had a 90% reintegration rate of children taken into foster care with their families of origin over a 6 year period. The programme was developed by the Municipal Child Rights Council, and involves a partnership between the municipal administration and NGOs. The NGOs provide specialized training and supervision to municipal social workers and psychologists. A key element of the methodology involves the combination of social workers and psychologists, following up with children, foster families and families of origin, with weekly home visits. Families of origin can receive this regular follow-up for as much as 18 months after reintegration. One of the challenges of such a public policy assumed by a municipal or state administration is the capacity to maintain high quality professional staff, especially with public service employment of psychologists being less common

Experience suggests when children cannot be cared for by their parents, living with other family members often provides the most appropriate alternative solution. However, it is important to note that this is not always the case. The more distant the relationship between the child and the designated caregiver, the higher the risk to the child. In some environments, informal 'fostering' arranged by parents or other family members frequently leads to exploitation or abuse. In other situations, where a child does receive the love and care of a substitute family, the economic hardship of caring for additional children needs to be recognised. This is especially urgent when we consider that such care providers are often grandparents or other elderly relatives. In Eastern Europe, this is often the case for

both guardianship and informal fostering, as well as in those instances where formal fostering has developed. It is certainly true in Sub-Saharan Africa, where the loss of many parents, due to AIDS, has increased the pressure on grandparents.

With a view to tackling the issue of children orphaned or made vulnerable by HIV/AIDS, South Africa adopted a Policy Framework in July 2005. The policy aims to:

- Ensure coordinated action at national, provincial, district and local level to realise the rights of orphans and other children made vulnerable by HIV and AIDS, their caregivers, families and communities;
- Ensure that legal, policy, and institutional frameworks for the protection and promotion of the rights of affected children are implemented at all levels;
- Provide an overarching framework to support stakeholders in the development of comprehensive, age appropriate, integrated and quality responses to orphans and other children made vulnerable by HIV and AIDS.

The six key strategies towards these goals are:

1. Strengthen and support the capacity of families to protect and care.
2. Mobilise and strengthen community-based responses for the care, support, and protection of orphans and other children made vulnerable by HIV and AIDS.
3. Ensure that legislation, policy, strategies, and programmes are in place to protect the most vulnerable children.
4. Assure access for orphans and children made vulnerable by HIV and AIDS to essential services.
5. Raise awareness and advocacy to create a supportive environment for orphans and vulnerable children (OVC).
6. Engage the business community in playing an active role to support the plight of orphans and children made vulnerable by HIV and AIDS.

In East Asia, efforts are underway to promote community-based care. In Indonesia, for example, the Department of Social Welfare is developing guidelines for community-based care of children without primary caregivers, particularly through group home.

Indonesia also adopted a Government Policy in February 2005 – a month after the tsunami – regarding Separated Children, Unaccompanied Children, and Single-Parent Children Affected by Emergency Situations. Even though it is related to emergencies, it promotes family and community-based models for care of separated children and considers placement of children in institutions as the last resort. It also calls for provision of support to single-parent households, with a view to prevention of family separation. This policy has provided an opportunity to examine and review the entire national system of care for children without parental care, and to improve the legislation, regulations, and other mechanisms, and has facilitated the development of sustainable community-based models, in partnership with the government, NGO sector, as well as religious institutions.

Despite growing awareness of the need to establish a range of care options, and to improve regulation and oversight, many countries are still struggling to scale-up family-based alternative care options beyond the pilot phase. Some of the difficulties encountered include:

- Lack of continuity following changes in administration has been a major threat to the establishment of such programmes as public policies;

- Few quality standards, norms, and control mechanisms ensure the quality of services;
- Few resources are allocated to fund alternative care options. The identification of services is resource driven, rather than demand driven.

These problems should continue to be addressed by States in their efforts to improve care provision, and minimum standards should be clearly delineated in UN Guidelines.

## **B. Institutionalisation**

In Article 20 of the CRC, institutional care is listed last among the care options which should be available, implying that this type of care should be a last resort. Indeed, studies have shown that long-term institutional care is potentially damaging to children's development, especially for children who are placed when they are very young. Yet, some children, especially when they enter care at an older age, do not actually want to be in a family setting. The challenge facing States is to ensure that residential options are used only when appropriate, and that any current overuse is addressed. They also need to guarantee that any such facilities meet acceptable standards, and are regularly monitored.

Institutionalized children form a segregated underclass face significant disadvantages in adapting to mainstream society once they "age out" of the institution at age 18. Lacking the skills needed to locate viable employment, many resort to street crime, drug dealing, and prostitution. Their upbringing in an institution predetermines their future and limits their potential, and accordingly services are also needed to ensure the effective reintegration of children who have spent a significant portion of their lives in institutional care.

Some efforts have been made to draft policies regarding the care of children in institutions. In Timor Leste, policy and regulations for child care institutions have recently been finalized. These address issues of education and care, encourage family visits, and promote family reunification whenever possible. They also address gaps in current management and administration, and lay out professional standards for managers and care givers.

De-institutionalisation efforts have increased in recent years in countries where overuse is common, particularly in Eastern Europe and Central Asia. In the Republic of Azerbaijan, there is increased acknowledgement of the need to prevent new placements, by providing children with community-based social services, including supportive services for children with disabilities. In Albania, "Youth Albania Professional Services" is an initiative that reintegrates marginalized youth leaving their institution into society, while providing them with employment and psycho-social support.

Some children are sent to the institutions in order to enable them to attend primary school when they reach school age. This implies that free educational services are a significant pull factor when considering the institutionalisation of children. Others are sent to live in an institution with the hope that they may be provided better prospects for marriage and employment.

Living conditions in institutions are repeatedly described as very poor:

- Children living in institutions are often deprived of the emotional support and social care that parents and families can provide.

- The food served in children's institutions is often insufficient, repetitious, and not nourishing. Clothing, especially footwear, is severely limited, and institutions often have a deficit of hygienic supplies. Many institutions are not equipped with heating or water heaters.
- Children suffer from abuse, including sexual abuse, neglect and mistreatment, although in some countries corporal punishment tends to be decreasing;
- Monitoring mechanisms are inconsistent and inefficient. More often than not, procedures for complaints are not established, and/or accessible to children.
- In order to enhance their emotional support, caregivers and staff should be given training opportunities, ranging from basic childcare, child rights and child development, to training of teachers, and medical training.
- Most often, directors of the institutions are not motivated to change, and there is also very little motivation for change in communities as well. The belief that institutions are the best solution for a child is still very strong in most countries under review.

### **C. Children's Voice**

As provided by the CRC, children have the right to express their views in all matters affecting them. Children's views offer precious guidance to policies and programmes dealing with the care of children without parental care. A participatory research project for children outside parental care was undertaken in Dhaka (Bangladesh) in 2003. During the course of the research, 646 children, aged 4 to 18, living in institutions and communities, were given the opportunity to express their opinions and concerns, and a group of these children were regularly consulted as an advisory committee. The practical suggestions made by children are related to recreational activities, medical treatment, food, education, accommodations, clothing, love and care, and security.

## Recommendations

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In order to address the many continued shortcomings in the protection of children without parental care, UN Guidelines should be developed for adoption by the General Assembly. These Guidelines would complement relevant provisions of the Convention on the Rights of the Child.

### **These proposed Guidelines should assist States to:**

- Restructure social welfare and child protection systems in order to diminish the use of institutions, develop alternative care approaches, and strengthen effective community-based preventive and protective social services;
- Strengthen the legislative framework, in line with the CRC, to ensure that the rights of all children without parental care are fulfilled;
- Fight discrimination that brings children into public care, including gender, disability, ethnicity, and HIV status of children or their family members;
- Adopt standards and develop good monitoring procedures for all services providing out of home care; and
- Reallocate funds to prioritise preventive and alternative care services.

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