



## Gruppo di Lavoro per la Convenzione sui Diritti dell'Infanzia e dell'Adolescenza

### Day of General Discussion on Children without parental care Geneva 16 September 2005

#### **Introduction**

In its annual follow up Report 2005 the *Gruppo di Lavoro per la CRC* (Working Group for the CRC) wrote a specific paragraph on the issue of children without parental care, with specific focus on those living in institutional care. We would like to contribute to the day of general discussion by sharing some considerations and concerns that have been highlighted in the Report with the Committee's members.

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

The Convention on the Rights of the Child includes a number of articles which make clear the States' obligations to support families.

In this light **art. 27, 3** states that “ *States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.*”

However, even in western countries where support to families is generally foreseen by national legislation, such support is then restricted to “the limits of available resources”.

Due to the limited resources allocated, this means that even if in theory the legislation is consistent with CRC principles this does not always translate into practice.

In Italy for example the law (Act 184/83 and following amendments) prescribes specific priorities in order to guarantee the right of the child to be raised by a family, first of all by his/her birth family. However, the implementation of the law, which includes measures such as aids to the family and foster parenting, is conditioned by the allocation of resources by central and local authorities. The obligation to provide support is not binding on such authorities as it is tied to the resources made available within their respective budgets.

Article 1 prescribes that: “The State, Regions and Local Authorities, in their respective authorities and within the limits of their autonomy must support with appropriate measures and within the limits of their financial available resources families at risk in order to prevent abandonment.”

In this way the right of each child to live in a family is not mandatory, since the implementation of the necessary measures such as economic support to the families and promotion of foster care is dependent on the allocation of public funds.

Governments should invest more in supporting families making the necessary financial resources available and supporting appropriate measures to guarantee the right of the child to be raised within the family.

As to the issue of **family reunification**, it is necessary to consider that separated children seeking asylum or otherwise present in a European country sometimes have family member(s) in other European States<sup>1</sup>. Applicants for refugee status within the scope<sup>2</sup> of the Convention relating to the Status of Refugees (1951) and its Protocol (1967) are admitted to reunification with their family members for the time their application is handled, as provided by 1990 Dublin Convention and the following EU regulation n°. 343/2003, February 18th, 2003.

The very first step, in order to let children exercise the right to a family unity, is the tracing, the process of searching for family members or primary legal or customary care-givers: it should be done at the earliest possible time, and verification of tracing process<sup>3</sup> is a basic action to keep on in the reunification procedures<sup>4</sup>.

European states should positively and proactively facilitate family reunion for the child in the State where the child's best interests will be met in accordance with safeguards; In any situation regarding a separated child, European States should always facilitate family reunification in the country where the child is living if it is in the child's best interests.

Where a separated child has a family member in a third country and both the child and family member wish to be reunited in that country, the child welfare authority should carry out a careful investigation on the suitability of the family member to provide care for the child<sup>5</sup>.

**The Gruppo di Lavoro recommends that:**

- 1. Government should allocate resources on the one hand to ensure the necessary support programmes for birth families and on the other hand to greatly promote foster care and adoption with investments in terms of economic resources, education and support to monitor personalised care plan.**

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

The following articles of the CRC could be taken as a point of reference for the Working Group (2)

### **Preamble**

*Recognizing that 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.*

### **Article 3, Paragraph (1)**

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<sup>1</sup> SCEP: Statement of Good Practice, 2004, [http://www.separated-children-europe-programme.org/separated\\_children/good\\_practice/index.html](http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html)

<sup>2</sup> Under the 1951 Convention relating to the Status of Refugees, a refugee is someone who is outside his or her country of origin and has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" (art.1)

<sup>3</sup> Verification is the process of establishing the validity of the tracing and confirming willingness of the child and the family member to be reunited.

<sup>4</sup> <http://www.unhcr.ch/cgi-bin/texis/vtx/protect/opendoc.pdf?tbl=PROTECTION&id=4098b3172>

<sup>5</sup> SCEP: Statement of Good Practice, 2004, [http://www.separated-children-europe-programme.org/separated\\_children/good\\_practice/index.html](http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html)

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*

### **Article 20, Paragraph (1 - 3)**

*1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.*

*3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.*

### **Article 21, Paragraph (2)**

*Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.*

According to available **data**, the number of children without parental care, for different reasons, is very high worldwide.

According to UNICEF the number of children without parental care is rising exponentially:

- In Central and Eastern Europe, roughly 1,5 million children are in public care (UNICEF, 2001).
- In Central Asia (CIS countries) 32.000 children are in institutions and 30.000 families at risk of abandonment.
- In Russia the overall number of children in out-of-home care has doubled from 1989 to 1999 and this is more significant because of the falling child population.
- In Romania in 2004 4.000 newborn babies have been abandoned at birth, 1.8 % of all live births.
- In the Democratic Republic of Congo are between 20.000 and 30.000 the street -children just in Kinshasa.
- In the 90's more then 1 million children were left orphans or separated from their parents because of a war.
- More then 14 million children, under 15 years old, today are orphans because of HIV, the majority is in sub-Saharan Africa.
- A recent study shows that, following current trend, by 2010, there will be 106 million children without both parents in the world. The greater number (in absolute terms) will live in Asia, but the greater percentage on children population will be in Africa. 25 millions children will be left orphans because of HIV. In 12 African countries more then 15 % of under 15 years old population will be orphans.

#### **In Italy:**

- In June 2003 2.633 children were still living in large institutions.
- In July 2003 there were 7040 foreign non accompanied children,

According to the Convention the family is the fundamental unit of society and the natural environment for the growth and the well-being of all its members, and particularly children. Hardly anyone today denies that **institutions** are unable to attend to the physical, cognitive and social needs of a child. The concept of deprivation is constantly used in specialized studies in order to describe the consequences of living in institutions and refers to the lack of affective and personal care suffered by institutionalized children. These children are submitted to collective routines and are unable to make use of sufficient spaces to allow the development and expression of the unique personality of each individual.

It is fundamental to achieve a permanent shift from extensive reliance on state institutions to family and family-based care for children at risk and those deprived of parental care.

For example in Italy, Act. 149/2001 (“Amendments to the law n. 184 of May 1983 regulating adoption and foster care of children”) recognizes the right of each child to live and grow up in a family; first of all in his/her birth family or, when it is not possible, in:

- An adoptive family, if there is a situation of complete moral and material abandonment;
- A foster family, in case of temporary difficulties of the birth family to take care of the child;
- A family-based community, waiting for one of the above-mentioned solutions.

According to the priorities prescribed by the law, the admission of a child in an institute is allowed only when it is impossible to provide any other solution.

Nevertheless the allocation of a child in an institute is, unfortunately, still the most common solution in Italy: around 20.000 children are located in residential structures (institutes and communities).

Act 149/2001 prescribes that from December the 31<sup>st</sup> 2006, all institutes (residential structure with more than 12 places) must be closed. Children without parental care have to be entrusted to a family (foster-care) or, when this is not possible, to a family-based community with an internal organization and interpersonal relationships similar to a family.

In order to achieve this goal, traditional large-scale structures have been reorganized in small communities. However it is necessary to underline that often this “reorganization” it is just formal and it does not translate into a different approach to child care. It could happen for example that the existing institute undergoes a mere change of name and a subdivision of the previous space into different areas but with no real improvement in the services offered to children. In this way even if formally provisions of the law are fulfilled its spirit is not respected.

**The Gruppo di Lavoro recommends that:**

- 2. State Parties approve clear instructions on the necessary features of family-based communities, preventing for example the grouping of these communities in the same building, in order to avoid that the implementation of the law results in a barely formal dismantling of the large-scale institutions for children without parental care.**

A child or adolescent may be placed with another family or in a family-based community when social services verify that the biological parents cannot guarantee the child with an adequate education due to temporary difficulties. However, it is clear to the social services themselves that once the crisis has been overcome, biological families, with all their faults, constitute the best environment to ensure that children receive the care and affection they need for their development.

It is necessary to ensure that children temporarily entrusted to a foster family or to a family-based community, are not left unmonitored for long periods. The situation of these children and of their birth families should be regularly reviewed.

There should be a clear and individualized care plan, periodic assessment of the situation which includes both changing children’s needs and family circumstances. Furthermore it should be granted social support both for birth and foster families.

**The Gruppo di Lavoro recommends that:**

- 3. the State Parties create an updated database on individual and family situation of children living in out of home care, using unified, shared standards in order to facilitate the**

**monitoring and assessing processes and the identification of a specific intervention plan for each child.**

The Convention recognizes **inter-country adoption** as a last resort for providing child's care in order to fulfill the fundamental right of a child to live and grow up in a family.

The *principle of subsidiarity* is highlighted also in the Hague Convention of 29 May 1993 for the Protection of Children and Cooperation in Respect of Intercountry Adoption.

The Convention imposed procedures on States for the evaluation selection, preparation and assistance of adoptive couples, in order to guarantee a successful outcome for a very complex form of adoption, given obvious problems intrinsic in 'transplanting' a child to a different culture.

It should be emphasized that foster care and adoption are instruments which fulfil different situations. Adoption is the right answer to the needs of a child whose "birth family has completely renounced its responsibility towards him/her, it is the clear will of the parents to relinquish their responsibilities to educate the child and they show no interest in her or him, the lack of parental presence seems to be irreversible and consequently any attempt at recuperation would be pointless."

Mentioning also the newsletter of the Cir/Ssi, Centre international de référence pour la protection de l'enfant dans l'adoption/Service Social International of Geneva, February 2005: "Adoption is a protective measure of a child without family, it is based on child's interest and not on adult's wish and it is meant to give a family to a child and not a child to a family". Inter-country adoption is, first of all, a protective measure of a child even if it is a long way from being able to gauge adoption on children needs, to establish valid rules for its implementation and to control rates as foreseen by the Hague Convention. Temporary interruption of inter-country adoption by a country, when there are high risks of severe abuses, could be a constructive and prudent decision. But when a country cancels or strictly limits inter-country adoption while having a big number of institutionalised children (as is the case of Romania), this is in contrast with children rights.

**The Gruppo di Lavoro recommends that:**

- 4. State parties promote inter-country adoption as an alternative means for child's care, if the child cannot be placed in his/her birth family or in an adoptive family in the child's country.**

Another phenomenon involving children without parental care is the **temporary entry into a country on holidays or health-related reasons**.

In Italy the phenomenon of temporary entry of foreign children was first developed following the Chernobyl disaster, in order to provide children from that area with the opportunity to live for a certain period in a healthier environment, away from nuclear radiation. However, the concept of temporary entry has since been expanded, as evidenced in the number of unaccompanied foreign children who have been granted entry in Italy: around 40.000 foreign children per year. Personal situations of children coming to Italy for these reasons every year are complex and multifaceted, as are both the aims of the groups organizing their reception and the features of host families. A lot of these children come from institutions, and they find it most difficult to cope with the return to their life in the institute, as they develop strong bonds with the host family. To some extent, this stems from the fact that these periods of stay are frequently longlasting, thus creating high expectations of permanent introduction into Italian families. Furthermore, host families often hope they can obtain in this way a «de facto adoption» permit by skipping ordinary procedures. The risk involved in this practice is that it can be used to elude international adoption controls and regulations; in other words, the real purpose of the program could be misunderstood.

These stays should exclusively involve children coming from a family, and not children coming from an institution. Children living in institutions should be included in programs aiming at giving them a permanent family care according to priorities given here above.

**The Gruppo di Lavoro recommends:**

- 5. the monitoring and the regulation of this phenomenon, in order to ensure that the best interest of the child will be a primary consideration. It also recommends the development of projects in the countries of origin of these children.**

Rome, June 2005