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A child rights approach to child protection

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Outline

- The Committee on the Rights of the Child
- What is a child rights approach?
- General principles
- The importance of family
- The right to protection, art. 19
- Prevention of maltreatment
- Placement as last resort
- Conditions in alternative care
- Best interests and the right to be heard
- Conclusion

The Committee on the Rights of the Child

- Monitors the implementation of the Convention
- 18 members, 'independent experts' from around the world
- Examines reports from states + additional reports from children, children's ombudspersons, NGOs etc
- Holds a dialogue with a government delegation
- Gives **recommendations to states** on how to improve (concluding observations)
- Produces **general comments** on issues where more guidance is needed (23 so far)

A child rights approach

- The child should be viewed as a rights holder, not a beneficiary of adults' benevolence (General Comment No. 13, para 72 a).
- Rights first, then best interests
- *“places emphasis on supporting the strengths and resources of the child him/herself and all social systems of which the child is a part: family, school, community, institutions, religious and cultural systems.”* (GC 13, para. 59)
- A child rights approach is obligatory!

General principles of the CRC

- Art. 2 non-discrimination
- Art. 3 (1) best interests
- Art. 6 right to life and development
- Art. 12 right to be heard

These are rights, but have a special position as cross-cutting and are always to be taken into account

Importance of the family

- CRC preamble:

*“... 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”*

- Art. 18 and 27, states shall assist families
- Art 16, child’s right to respect for family life
- Art. 9, right not to be separated from parents unless necessary

Art. 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to **protect** the child from **all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse**, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Art. 3 (2)

2. States Parties undertake to ensure the child such **protection and care** as is necessary for his or her well-being, taking into account the rights and duties of his or her parents ... and, to this end, shall take all appropriate legislative and administrative measures.

Prevention of violence, abuse and neglect, overview

I. Tackling the root causes

- Poverty

II. Prevention directed at parents or children

- Neglect

- Violence and abuse

III. Educational measures

IV. Identification

Tackling the root causes: Poverty

- Poverty reduction strategies:
The Committee said to **Iceland 2011**:
“concerned that social benefits aimed at families in poverty, including single-headed families, are inadequate and that this has a negative impact on the development of children in such families”
- Parents go away to work, children left behind

Prevention directed at parents or children

- In order to enable **parents** to take proper care of their children, examples from GC 13:
 - community-based mutual-help groups
 - counselling support and therapeutic programmes for caregivers related to domestic violence, alcohol, drugs
- Directed at **children**:
 - early childhood care and education
 - after-school care programmes
 - child and youth groups and clubs
 - Counselling support to children

To **Denmark** 2017:

Provide all the support necessary to parents who may be at risk of neglecting their children, with particular emphasis on the situation in Greenland

To **Norway** 2018:

Provide parents with the necessary support to avoid the separation from their children

To **Finland** 2011:

Strengthen preventive services and early support and intervention measures, particularly with respect to families with problems related to substance abuse

To **Sweden** 2015:

Encourage community-based programmes aimed at preventing and responding to domestic violence, child abuse and neglect, including by involving former victims, volunteers and community members, and providing training and support to them

To **Norway** 2018:

- Improve **communication** and **information** between child welfare services and families, in particular **migrant** families

Educational measures

- In order to change attitudes in society or among parents
 - to children and their upbringing,
 - to violence in general
 - more specifically to violence and other harmful behaviour towards children, positive parenting
- Children's own empowerment!
 - Accurate, accessible and age-appropriate information
 - Training on life skills, self-protection and participation
- Training of professionals

Identification of child maltreatment

Sweden 2015:

Schools and institutions personnel are not properly trained to recognize the early signs of abuse and neglect, a situation which results in only a few cases being reported to social services

Denmark 2017:

Increase when necessary the capacity of municipalities to identify cases of child abuse and to promptly and adequately cater to child victims

Placement as last resort, art 9 (1)

- Gate-keeping mechanisms:
 - Separation only where in accordance with the law and «necessary for the best interests of the child», fx because of abuse or neglect, art. 9 (1)
 - Robust requirements must be established by law
 - Decisions to be made by competent body
- Procedural safeguards:
 - All interested parties shall have the opportunity to participate
 - The child's right to be heard. Party to the case?
 - Case properly examined by qualified professionals

To Denmark 2017:

According to recent findings, the Municipality of Copenhagen made certain decisions on placing children into alternative care without a **legal basis**, without **party consultation**, without providing instructions on making a **complaint**, without an assessment of the child's right to **contact** and without an **action plan** for the child, and that such mismanagement in placing children in alternative care is, reportedly, also taking place in other municipalities;

To **Norway** 2018:

Ensure that all forms of separation of children from their parents are always in the best interests of the child, including by:

- (i) Reviewing the current practices with a view to ensuring that such drastic steps are only used as measures of **last resort**, based on the needs as well as best interests of the child and are subject to adequate safeguards, with a particular emphasis on **Roma families** where children seem to be disproportionately separated from their families;
- (ii) Ensuring that **all municipalities** follow the same criteria regarding out of home placements; ...

To Sweden 2015:

The Committee is concerned at reported arbitrary interferences in the family life of minorities, in particular **Afro-Swedes and Africans** and removal of children by social welfare authorities

To Denmark 2017:

Ensure that children have the opportunity to be **heard** in these cases and that their views are given due weight, including in Greenland;

Emergency placements

To Norway 2018:

Review the procedures to remove children in emergency cases and provide for a **more sensitive approach**, ensure that no form of **coercion** is used, and provide **regular training** to relevant professionals in this regard

Type of placement

- Clear preference for family type care
- Deinstitutionalisation
- Build a (better) foster care system
- Residential care should be limited to where it is appropriate, necessary and in the child's best interests

To **Denmark** 2017:

Many children who cannot stay with their families continue to be placed in alternative care institutions, especially children with disabilities

Norway: Foster parents complain that their procedural position is weak, they are regarded as part of the child protection services, not as a private family

Conditions in alternative care

- CRC Art. 3 (2) and 20

To Denmark:

- The living conditions in alternative care institutions may not always be in compliance with the Convention;
- Ensure that children in alternative care institutions are not frequently moved from one institution to another;

Siblings

- **To Norway 2018:**
 - Ensure that siblings are not separated when placed in alternative care
- Siblings' right to family life is recognised by the European Court of Human Rights as well

Education and mental health

- To **Finland 2011**:

Ensure that children in institutions are integrated into mainstream **education**, and that they have access to **mental health services** when required; and

Children of minorities

To Norway 2018:

- Take the measures necessary, including adequate training of personnel, to ensure that children belonging to an indigenous or national minority who are placed in alternative care learn about and keep the connection to their culture;

Restraint

To **Denmark** 2017:

Strengthen regulations on the use of restraint and adequately train staff in alternative care facilities,

Monitoring and periodic review

To **Finland** 2011:

ensure adequate supervision and monitoring of the situation of children placed in foster homes or institutions

To **Norway** 2018:

Ensure periodic review of the placement of children in foster care and institutions, and monitor the quality of care therein, including by providing accessible channels for reporting and remedying maltreatment of children

Complaints mechanisms

To **Finland** 2011:

Take necessary measures to ensure the provision of effective, well-publicized, independent and impartial complaints mechanisms for children without parental care

To **Denmark** 2017:

establish anonymous and accessible complaints mechanisms in institutions, such as closed complaint boxes, to enable children residing in these facilities to report the use of excessive restraint or any other form of abuse

Aftercare

- Children need to be prepared for the transition to independent life
- To **Iceland 2011**:
The Committee recommends that the State party conduct a study on the integration and success rate of children after leaving alternative care settings, which should also include recommendations regarding the measures to be taken to ensure their full integration

Best interests

- Need to be considered in the implementation of the rights of the child
- Should guide the professional judgment
- Best interests should be assessed individually; this child in this specific situation
- General Comment No. 14 gives guidance
- The **child's views** are essential at all stages
- Adults still have the responsibility for making the decision

All in all

- Children have the right to protection and care
- A lot of good work in the Nordic countries. Some challenges:
 - Prevention of maltreatment
 - Alternative care as a last resort, especially in emergency cases
 - Migrant families
 - Procedural issues
 - Conditions in alternative care
- Ask children about their experiences and ideas for improving the system