



UN Disability Rights Group
On Behalf of Children without Parental Care
Key Recommendations
May 30, 2019

Core Principles: Right to Family Recognized Under International Law

All children have the need and the right to live and grow up with a family.¹ The preamble of the Convention on the Rights of the Child (CRC) recognizes that for their “full and harmonious development”, all children “should grow up in a family environment.” Reflecting the CRC standards, the UN Convention on the Rights of Persons with Disabilities (CRPD) sets out that the best interests of the child are the paramount consideration in all decisions affecting them (Article 7(2)), and places clear obligations on States to protect the right to family life (Article 23) and to live and be included in the community (Article 19). In the General Comment No. 5, the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) unequivocally states that “[f]or children, the core of the right to be included in the community entails a right to grow up in a family.”² The CRPD Committee goes on to explain that:

Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. ‘Family-like’ institutions are still institutions and are no substitute for care by a family.³

¹ See Eric Rosenthal, “The Right of All Children to Grow Up with a Family under International Law: Implications for Placement in Orphanages, Residential Care, and Group Homes”, 25 Buffalo Human Rights Law Review 101 (2019) (describing the development of the right to family under international law and summarizing research findings on the need and ability of all children to grow up in a family).

² U.N. Secretary-General, *General Comment No. 5 (2017) on living independently and being included in the community*, U.N. Doc. CRPD/C/GC/5 (Oct. 27, 2017), para. 37. [hereinafter General Comment No. 5] (emphasis added).

³ *Id.*, para. 16(c).



CRPD General Comment No.7 recognizes the families' role by considering organizations of family members of persons with disabilities as "pivotal in facilitating, promoting and securing the interests and supporting the autonomy and active participation of their relatives with intellectual disabilities, dementia and/or children with disabilities"⁴

The undersigned disability rights organizations call on the UN General Assembly to include the following in its forthcoming resolution on the rights of children without parental care:

There are no exceptions to the right to grow up in a family for any child, and the provision of care never justifies the denial of this right. All children, regardless of disability or social background, have the same right and should be given the same opportunity to have their basic emotional needs met by living and growing up in a family and establishing the emotional bonds necessary for their healthy development.

In order to implement the right to grow up in a family, States are under the obligation to provide family support to prevent unnecessary break-up of the family. Families are the main community support and the key to facilitating community inclusion and rights protection of children with and without disabilities. Thus, it is important to preserve family relationships in order to preserve the rights of the child as well as her psychological well-being. Where children are living without parental care, governments are under the obligation to create supportive services so that children with and without disabilities have a range of options for living in the community in a family setting, including extended kinship care, foster care, or adoption, and including the maintenance of the child's sibling relationships.

Where States fail to meet their legal obligations to create the family-based support systems necessary to implement the right to family for all children, this is a human rights violation. Nevertheless, the State still has the duty to minimize the physical danger and emotional damage caused by depriving children of the right to family. States who fail in these obligations must ensure that any placement of a child in a non-family environment is only a temporary measure and that urgent steps are taken to restore the opportunity for family life. During any temporary

⁴ U.N. Secretary-General, *General Comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities through their representative organizations, in the implementation and monitoring of the Convention*, U.N. Doc. CRPD/C/GC/7 (Nov. 9, 2018), para. 12(d).



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placement, there must be full respect for family or extended family connections that a child has, and steps must be taken to support reintegration into family life and the maintenance of connections with family, extended family, and friends in the community. The need for care, support services, treatment or education can never justify violating a child's right to family, and deprivation of family life on the basis of disability amounts to discrimination and must be prohibited by law.

For older adolescents making the transition to adulthood, the adolescent may choose to live in a community-based supported living arrangement that is not family-based. Such choice may only be viewed as informed and voluntary, however, if the adolescent is provided support to make an informed decision and after being provided the opportunity to observe, live in, and experience a safe and stable family-based setting with support services appropriate to his or her age, gender, and/or disability.

Endorsed by: Autism-Europe, Disability Rights International, European Disability Forum, European Network on Independent Living, Inclusion International, International Federation for Spina Bifida and Hydrocephalus, TASH and Validity Foundation

(still open to endorsement)