

Day of General Discussion 2021, Committee on the Rights of the Child “Children’s Rights and Alternative Care”

Contribution of the Inter-American Children’s Institute (IIN/OAS)

The IIN-OAS welcomes the initiative of the UN Committee on the Rights of the Child to devote its Day of General Discussion during its 88th session to “Children’s Rights and Alternative Care”. The Day of General Discussion is an opportunity to foster deeper understanding of the contents and implications of the Convention on the Rights of the Child (CRC) as they relate to the right to care and family life.

The purpose of this paper is to share with the members of the Committee some reflections and proposals made by the IIN-OAS on the basis of its experience of working for the human rights of children and adolescents in the region of the Americas.

To begin with, we need to reflect on and reconceptualize what we mean by childcare. In order to establish minimum standards of care based on rights and design the necessary indicators to evaluate specific situations, we must start by developing a concept of the subject.

Traditionally, care was associated with addressing basic needs and the disciplinary processes necessary to bring children into line with the values, representations and principles of the culture to which they belonged. It is thus that the function of caring is associated with custody and social control.

As from the Convention on the Rights of the Child, and subsequent developments based on it, we can affirm that children, insofar as they are recognized as full rights holders, are no longer subject to protection, custody and control, and are recognized in their capacity to exercise the autonomous rights vested in them.

In this new paradigm, protecting and caring implies:

- ✓ Ensuring the environmental conditions and experiences necessary for their full development;
- ✓ Assisting, guiding and affectively supporting their progressive autonomy;
- ✓ Guaranteeing access to their rights; and
- ✓ Strengthening, enabling them to assume the promotion, protection and exercise of their rights individually and collectively, and according to their degree of development.

In accordance with the principle of joint responsibility, ensuring such care is a responsibility shared between families, the community and States.

But the State's role as "ultimate guarantor" should not be understood as an obligation to intervene in the event of the absence of family care, nor should it be limited to reactive policies, but should entail proactive policies. It is the duty of the State to ensure the necessary support to enable families to play their role fully (CRC, arts. 9, 10, 11, 18, 20, 21 and 27).

This implies defining and implementing regulations and policies aimed at promoting and enhancing the capabilities of families and communities in the protection and care of children and adolescents.

The strengthening and coordination of the various policies, both universal and specific, that support families in the exercise of their role, will contribute to guaranteeing the right of children and adolescents to live with their families, both by preventing separation and by providing support so that they can reassume care when there has already been an intervention with temporary protection measures (care institutions or family care).

These policies are linked to the consolidation of Comprehensive Systems for the Promotion and Protection of Rights; and they must include three levels of coordinated intervention, from the universal to the focused, with specific actions according to each situation or degree of vulnerability.

Level 1.

Promoting the Right to Family Life

At this level, efforts should be made to promote the best quality of family life and ways of exercising parental functions.

It includes the enhancement of family care and parenting capacities: the incorporation of non-violent forms of discipline and conflict resolution; the understanding of needs in each life cycle, and skills for cross-generational dialogue.

Gender stereotypes should be addressed as related to care and parenting responsibilities as well as in the transmission of sexist behaviour and the handling of possible dissent.

Homophobia and the rejection of dissident sexualities is a factor in the breakdown of ties and loss of care in adolescence.

When referring to family coexistence, we must avoid idealizing views of family life and assume that families, under certain conditions, can be a scenario where rights are violated. In this sense, the right to care is not necessarily identified with the right to family life.

In the survey on violence conducted by the IIN-OAS among adolescents in the Americas, 54% of the adolescents consulted considered that the setting where the most violence was perpetrated was the family, followed by schools (19%) and public venues (15%).

To contribute in this direction, the IIN-OAS makes available its training strategies for strengthening family capacities and non-violent discipline, in addition to supporting States in the development of awareness and information campaigns, research and other actions related to the promotion of the right to family life.

Level 2.

Prevention of the Loss of Family Care

This level of intervention is aimed at situations where there is a threat or risk of loss of family care. There are multiple factors that generate this risk.

It is, therefore, crucial to ensure the necessary support so that families can play their role. This includes technical support (assistance, psychosocial counselling, pedagogical guidance, healthcare issues; interventions in gender-based violence situations); support related to care (childcare centres, caregivers, solidarity networks); and concrete material support (food security programmes, housing, basic income). Threat of the loss of family care is related to the degree of realization of rights of adult responsible figures; in this sense, the laws that guarantee labour rights have a great impact on family strengthening, while informality and instability constitute a source of threats.

In this sense, the vulnerability of single-parent households should be considered a priority.

The aim is to guarantee the minimum conditions necessary for the exercise of maternity and paternity.

The IIN-OAS undertakes to continue its technical support to the States, making available the 'Regional Observatory on the Right to Family Life' to strengthen research and dissemination of experiences that promote family care.

Level 3

The Restitution of Family Care

The IIN-OAS, as a specialized agency in policies on children and adolescents of the Inter-American System, aligns itself with the global position of avoiding institutionalization as a routine protection measure and only resorting to it as an exceptional measure. There is abundant evidence of the way in which institutional life inhibits the full development of children by reproducing vulnerability.

In cases where separation from the family of origin is unavoidable, we promote the prioritization of family-type alternative care modalities. Residential care should be limited to situations where particular conditions make it necessary because no other suitable options for protection have been identified, and it should occur in small, individualized care homes with properly trained and specialized human resources, and for the shortest possible time. Experience shows that despite attempts to “humanize” the model, it continues to be limited in its possibilities of replacing family life.

The IIN-OAS supports the need to assume that the institutional model is exhausted and to strengthen family and community-based alternatives.

The transformation of care systems – from residential to family-based – requires a clear political decision, investment (or redirection) of financial resources and a reconversion of care models: of institutions that depend on the State, as well as of those that depend on civil society. In this regard, evidence should be obtained about the high cost of the institutional model, in relation to both its maintenance and its medium and long-term consequences, inasmuch as it does not facilitate the acquisition of basic skills for life, making vulnerability and dependence chronic and extending them to adulthood. Resource reallocation strategies need to be developed to finance transformation, not necessarily leading to an increase in the budget.

In addition to the institutions as such, it is necessary that each of the people who compose them or who participate in decision-making be aligned with this paradigm shift and visualize the role they can assume in the new care model. In this regard, we emphasize the importance of promoting training, awareness and skill-building that include both operators

who occupy different places in the system and the general public, who often perceive institutionalization as a mechanism that provides security and is efficient in terms of social control.

In this way, knowledge-building through research and the systematization of experiences is key, led by both academics and the operators themselves and their institutions. National analyses of the reality of children and adolescents who are in the protection system should be conducted: Why do they enter the system? At what age? Under what conditions? Who decides on the measures to be applied? How have their lives unfolded during the protection measure? Under what conditions are they currently living? On the one hand, this makes it possible to generate information on the reasons that give rise to the need for alternative protection measures, which is essential for designing and formulating policies aimed at the prevention of separation. On the other, it enables obtaining information about the personal history of each child or adolescent, which makes it possible to identify the best protection alternative, within the framework of a deinstitutionalization process.

In this respect, the existence in the region of States that do not have information available about where, how and since when children have been separated from their families and are now under their full responsibility is worrying.

We consider it important to implement “child by child” information systems that allow for the monitoring of children and adolescents in alternative care, with indicators relating to access to rights, warning signs and the periodic review of situations.

We are also concerned about the existence in the region of private initiatives under weak State control and we see the need to reaffirm the responsibility of the States through their competent bodies, in order to control and ensure that any alternative care experience meets the minimum standards defined with a rights-based perspective.

We also wish to stress the importance of strengthening children, reversing their vulnerability through participation in the entire process, both in the identification of the protection measures that affect them and in the organization of the daily life of residential establishments or in the evaluation of family-based fostering.

Finally, we should underscore the importance of opportunities for political and technical sharing that contribute to increasing knowledge and moving forward on the basis of the experience of others, and generating partnerships that increase the capacity for advocacy and support in the implementation of a new care model.

In the context of its 2019-2023 Action Plan, the IIN-OAS reaffirms its commitment and willingness to promote and/or support the efforts of all of the stakeholders of the comprehensive system for the promotion and protection of rights in this path towards the transformation of the care system, through technical assistance to strengthen the systems and the design or evaluation of regulations and policies/programmes; training of human resources; and promoting the sharing of good practices.

Similarly, and taking advantage of the IIN-OAS's strategies and coordination facilities, we intend to continue fostering meetings and interactions between States, civil society, academia and the very voices of children and adolescents, in order to reach sustained agendas that display regional diversification and adaptation.