



ACERWC
African Committee of Experts on
the Rights and Welfare of the Child

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Union**



General Comment No 10

On Children Without Parental Care in the Context
of Article 25 of the African Charter on the Rights
and Welfare of the Child and Care Systems Reform

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LIST OF ACRONYMS AND ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
CRPD	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organizations
CWPC	Children Without Parental Care
NHRIs	National Human Rights Institutions
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNGA	United Nations General Assembly
UN Guidelines	UN Guidelines on Alternative Care

I. INTRODUCTION

1. The African Charter on the Rights and Welfare of the Child (ACRWC/ the Charter) proclaims the family as ‘the natural unit and basis of society’.¹ States have a duty to assist the family and protect its ‘physical health and morals’. The care of children in the context of the family is seen as a ‘virtue’ in the African ‘historical tradition’. The rationale for a regional treaty to build on the special place of children in African families² and kinship groups is expressed in paragraph 5 of the Preamble with reference to the ‘unique and privileged position’ that the child enjoys ‘in the African society’, and notes that ‘for the full and harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love, and understanding’. Further, paragraph 6 of the Preamble highlights the virtues of the African cultural heritage, historical background and values of African civilisation, which ‘should characterise the reflection on the concept of the rights and welfare of the child’.

2. Children without parental care (CWPC) have been defined in the UN Guidelines on Alternative Care³ (hereafter UN Guidelines) as ‘[a]ll children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.’ Furthermore, ‘[i]t is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided.’⁴ While the term ‘alternative care’ is not defined in the UN Guidelines, it is broadly referred to as including both formal and informal, temporary, or permanent care of children who lack parental care. Children without parental care who are outside their country of habitual residence or who are victims of emergency situations may be designated as: (i) “Unaccompanied” if they are not cared for by another relative or an adult who by law or custom is responsible for doing so; or (ii) “Separated” if they are separated from a previous legal or customary primary caregiver, but who may nevertheless be accompanied by another relative.’

3. Similarly, the United Nations Convention on the Rights of the Child (UNCRC) defines a child without parental care (CWPC) as one who is ‘temporarily or permanently deprived of his or her family environment or in whose own best interest cannot be allowed to remain in that environment’. This definition is endorsed by the ACERWC, to explain the meaning of article 25 of the Charter.

II. OBJECTIVES OF THIS GENERAL COMMENT

4. Many CWPC are placed in a range of different alternative care settings, including family-based and residential care settings on the continent. The quality, content and duration of care that children experience in these settings varies widely. Similarly, children who are in alternative care are themselves not a homogenous group. Therefore, each child’s situation demands a unique strategy for preventing family separation, for ensuring that suitable care solutions are provided when alternative care is deemed necessary and in the best interest of the child, and for timely family reintegration if a care placement has occurred. The ACERWC

¹ The African Charter on the Rights and Welfare of the Child (ACRWC), Art 18.

² General Comment No 3 on the responsibilities of the child says, “that there is no homogenous family form that can be referred to as ‘the African family’ or family environment, as there are diverse family forms which combine both traditional or historical and modern or contemporary elements.” (Para. 29)

³ United Nations (UN) General Assembly (2010) Guidelines for the Alternative Care of Children (GA A/ RES/64/142).

⁴ United Nations Guidelines, para 5 and para 29(a). Another significant milestone for the protection of children deprived of their family environment at the UN level is the unanimous adoption of a Resolution on the Rights of the Child by the UN General Assembly in 2019, with a specific focus on children without parental care: UNGA Resolution No 74/133 on the Rights of the Child (A/RES/74/133) adopted on 18 December 2019 (hereafter UN Resolution 2019). This resolution calls on states to intensify child welfare and protection systems, as well as to strengthen care reform efforts (par 31). states are urged to take measures to, among others, protect children without parental care and provide a range of alternative care options (par 35 (b)). It is noteworthy that the resolution was co-sponsored by several African countries, supporting ongoing efforts towards care reform in the region. Benin, Côte d’Ivoire, Seychelles, Lesotho, Nigeria, Madagascar, Tunisia, Liberia, Morocco, Rwanda, Togo, and South Africa are among the list of countries that co-sponsored the Resolution.

study⁵ defines CWPC as abandoned children; double orphans and/or children in child-headed households; children in detention, incarceration, or remand homes; children participating in conflict (child soldiers, abducted girls); children living in residential care settings; children living in institutions; street-connected children or children living on the streets; unaccompanied minors; trafficked children; and children in forced or child marriages.⁶ A significant challenge, though, is that there is a large gap in the evidence base as regards the scale and nature both of the problem and of the continent's policy, regulatory and programmatic responses to it.

5. Article 25 of the ACRWC, focusing on safeguards for children separated from parents, demands clarity, particularly concerning explicit standards and normative frameworks for regulating alternative family care options, and services. Article 25 serves as the rationale for providing guidance to State Parties to the Charter through this General Comment, seen in the light of the fact that the article consists of various legal requirements which require further explanation and unpacking. The ACERWC during its 42nd Ordinary Session held on 08-17 November 2023, decided to develop a General Comment on article 25 of the Charter with the overarching purpose of defining the nature of State Party obligations under article 25. The goal is to assist Member States to formulate national-level policies, strategies and action plans in regard to CWPC, and to encourage care systems reform. At minimum, national policies should be accompanied by legislation and strategies to achieve appropriate high-quality care options that meet the needs of children and to comply with the obligations set out in this General Comment.

III. CONTEXT

6. The ACERWC study on CWPC details at length the continental context regarding these groups of children. Although citing very incomplete data, the study notes that there are an estimated number of 35 million CWPC or at risk of losing parental care on the continent.⁷ In particular, there is no reliable data on children in street situations, nor is there up to date information on orphans or children living in child-headed households. To these can be added the number of children with a disability and children with albinism.

7. In the absence of parental care or a family environment, children are more likely to be exposed to rights violations, including those related to life, survival, development, freedom from violence, abuse, exploitation, discrimination, and barriers to accessing education and healthcare. Furthermore, when children are placed in alternative care that is unnecessary or unsuitable, in institutions – a form of care deemed to be inherently detrimental to children – they suffer an immediate and lasting harm⁸

8. Common risks faced by CWPC include exposure to sexual and other forms of abuse; delinquency; substance and drug abuse; exposure to child labour and other forms of exploitation; mental health issues; inadequate food consumption; limited access to education and health-care services; and living in environments unconducive to children's emotional and physical well-being. In the long term, they may lack adequate life skills and face developmental challenges, low employment prospects, may experience mental health issues or come into contact with the law, and face increased social dependency.

5 ACERWC 'Children without parental care in Africa' 2023 p IV (hereafter ACERWC study). This is a research study commissioned by the ACERWC in 2023 and forms the basis of this General Comment.

6 ACERWC study p 11. However, the following are not regarded as CWPC in that study: children in kinship care or foster care; undefined orphans and vulnerable children (OVC); adopted children; and those in kafalah care.

7 ACERWC n 5 viii.

8 'Evidence shows that institutions are often characterized by living arrangements that are inherently harmful to children. The characteristics include but are not limited to: separation and isolation from families and the wider community; forced co-habitation; depersonalization; lack of individual care and love; instability of caregiver relationships; lack of caregiver responsiveness; lack of self-determination; and fixed routines not tailored to the child's needs and preferences.' Report of the Independent Expert leading the United Nations Global Study on Children Deprived of Liberty, (2019) A/74/136 64.

9. The ACERWC study underscored a significant discrepancy among countries in addressing the needs of CWPC. While many nations have constitutional and legal frameworks in place, the lack of explicit policies, strategies, and action plans specifically tailored to CWPC is glaring. This gap not only hampers effective response to CWPC but also results in a slow implementation of robust programs and initiatives. Furthermore, the absence of budgeted action plans exacerbates the financial gaps in addressing CWPC issues. The ACERWC is concerned by the continued establishment of institutions for the care of children, in circumstances where they are not subject to governmental scrutiny and in which children's rights may be seriously at risk. This is the challenge that the General Comment seeks to mitigate.

10. Commentators have also pointed to the need to focus on prevention, early detection and rapid response; prompt reintegration into families and communities; and to intentionally seek children's opinion and voices of those with lived care experience.⁹

11. There is a clear link between a system strengthening approach to both child protection and care systems reform. Systems strengthening in child protection, as detailed by this Committee in General Comment no 5,¹⁰ involves working to enhance entire systems of support for all vulnerable children, rather than focusing on single issues or groups. A system strengthening approach has been adopted because it enables coordinated cross-sector interventions that promote large scale change. Systems strengthening in the context of care reform will be detailed in section 12 below.

IV. SCOPE OF APPLICATION OF THIS GENERAL COMMENT

12. International and regional treaty law emphasises that the primary responsibility for giving effect to Charter provisions and ensuring the fulfilment of all rights of children lies with States, at national and at subnational levels. However, recognising the indispensable role(s) played by non- governmental organisations, faith-based organisations, community-based organisation, individuals and the international community in providing for CWPC, many of the obligations outlined in this General Comment apply on an equal basis to these sectors, as they operate in conjunction with, alongside, or under the direction of, State Parties. All stakeholders concerned with CWPC are thus required to adhere to the principles and legal guidance outlined substantively here, and hence to guarantee the protection of children's rights.

V. PRIORITISING PREVENTION

13. In developing services, priority should be given to preventing separation. The ACERWC reminds State Parties that the primary responsibility for family strengthening rests with the State. Some families just need access to universal services, such as health care or education, to enable them to keep their children with them and care for them well. Others need more intensive support or specialised services. Preventing unnecessary separation of children from their families can only be achieved through early identification, targeted support, and community-based interventions. This also means having strong community child protection structures that are equipped and having a workforce that has the necessary skills and knowledge to undertake prevention services. Poverty continues to be a main factor resulting in CWPC. That gender may be a driver of separation - like with child marriage, teenage pregnancy, domestic violence, and other practices which discriminate on the basis of gender – must be fully acknowledged.

9 <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.ohchr.org%2Fsites%2Fdefault%2Ffiles%2F2022-06%2F13Jun2022-DGD-Outcome-report-and-Recommendations.docx&wdOrigin=BROWSELINK>

10 https://www.acerwc.africa/sites/default/files/2022-09/GENERAL_COMMENT_ON_STATE_PARTY_OBLIGATIONS_UNDER_ACRWC_%28ARTICLE%201%29_%26_SYSTEMS_STRENGTHENING_FOR_CHILD_PROTECTION_0.pdf

14. The UN Guidelines provide some examples of services geared towards prevention, and explain that government policies should address the root causes of child abandonment and relinquishment by, among others, promoting measures to combat poverty.¹¹ These measures include household economic strengthening, addressing the causes of separation such as poverty, violence or lack of access to services, caregiver support – which may include parenting programmes, caregiver support groups and work to prepare and support new parents, counselling and mediation services, service provision and/or referral to services and help for families caring for a child with a disability.¹² The Independent Expert on Persons with Albinism highlights that all efforts to prevent the separation of children with albinism from their families are a priority over alternative care, and when separation is unavoidable, all efforts must be made to rectify the causes of the separation and to reunify the child with their family at the earliest safe opportunity.¹³ The Committee on the Rights of Persons with a Disability emphasises the need for preventing institutionalisation,¹⁴ and the 2019 UN resolution on the rights of the child emphasises the obligation of States to, amongst others, ‘take effective action to provide support to families and to prevent the unnecessary separation of children from their parents, including by prioritizing investments in child protection services and social services and by addressing the root causes of unnecessary family separation to ensure that children are cared for effectively by their own families and communities.’¹⁵ It is important to develop or enhance social protection programmes that focus on prevention and response. Prevention efforts can ensure that push and pull factors are addressed.

15. Taking account of the Preamble to the Charter, and article 22 dealing with armed conflict, prevention of armed conflict remains essential to avoid unwarranted separation of children from their families. The same applies to internally displaced children, whether through natural disaster, internal armed conflicts, civil strife, or breakdown of economic and social order.

VI. DEFINITIONS

After care means support and services provided to children after they leave a formal or informal care setting, either to enter a new care arrangement, for reintegration purposes, or in supported independent living.

Alternative care refers to all children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.

Alternative family-based care is the short-term or long-term placement of a child into the domestic environment of a family environment, with at least one consistent parental caregiver, a nurturing family environment where children are part of supportive kin and community such as foster care, kinship care and *kafalah*.

Care giver means a person with whom the child lives who provides daily care to the child, and who acts as the child’s ‘parent’ whether they are biological parents or not. A caregiver can be the mother or father, or another family member such as a grandparent or older sibling. It includes informal arrangements in which the caregiver does not have legal responsibility.¹⁶ It sometimes can also include those legally defined as caregivers in national laws and can relate also to foster care and guardianship.

11 UN Guidelines para 32.

12 General comment No. 5 (2017) on living independently and being included in the community CRPD/C/GC/5.

13 Enjoyment of human rights by persons with albinism (report of the Independent Expert, July 2024) A/75/179 par 70(b).

14 General comment No. 5 (2017) on living independently and being included in the community CRPD/C/GC/5.

15 UN Resolution 74/ 133 n4 para 34.

16 <https://bettercarenetwork.org/glossary-of-key-terms>

Care systems reform can be defined as changes to the systems and mechanisms that promote and strengthen the capacity of families and communities to care for their children, address the care and protection needs of vulnerable or at-risk children to prevent separation from their families, decrease reliance on residential care and promote reintegration of children and ensure appropriate family-based alternative care options are available.¹⁷

Case management is the process of ensuring that an identified child has his or her needs for care, protection and support met. This is usually the responsibility of an allocated social worker or para social worker who meets with the child, the family, any other caregivers, and professionals or paraprofessionals involved with the child in order to assess, plan, deliver or refer the child and/or family for services, and monitor and review progress.

Child protection system is defined as the formal and informal structures, functions and capacities that have been assembled to prevent and respond to violence, abuse, neglect and exploitation of children.¹⁸

Children without parental care (CWPC) are defined as children who are temporarily or permanently deprived of their family environment or in whose own best interest cannot be allowed to remain in that environment. Typically, the term includes '[a]ll children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.'

Deinstitutionalisation is the process of transforming the alternative care system away from using residential care institutions to providing family-based care and services within the community. It involves all types of efforts to return the child or adolescent to family care or, where that is not possible or in their best interests, to provide them with family-based alternative care.

Family preservation and family strengthening includes developing and strengthening inclusive and responsive family-oriented policies and programmes for poverty reduction, also designed to promote and strengthen parents' ability to care for their children, and to confront family poverty and social exclusion, recognizing the multidimensional aspects of poverty, focusing on inclusive and quality education and lifelong learning for all.

Formal care refers to all care situations where the child's placement was made by order of a competent authority, as well as residential care, irrespective of the route by which the child entered.

Foster care: Situations whereby a child is placed by a competent authority for the purpose of alternative care in the domestic environment of a family other than the child's own family, which has been selected, qualified, approved, and supervised for providing such care.¹⁹

Gate keeping refers to the prevention of inappropriate placement of a child in formal care. Placement should be preceded by some form of assessment of the child's physical, emotional, intellectual and social needs, matched to whether the placement can meet these needs based on its functions and objectives.²⁰

Informal care refers to any private arrangement provided in a family environment, whereby the child is looked after on an ongoing or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or

17 UNICEF ESARO et al CARING SYSTEMS Maximising synergies between care reform and child protection system strengthening in Eastern and Southern Africa (2021).

18 Caring systems | Maximising synergies between care reform and child protection system strengthening in Eastern and Southern Africa p 6.

19 UN Guidelines para 29(c)(ii).

20 <https://bettercarenetwork.org/glossary-of-key-terms#C>; see further the definition of gatekeeping used in the ACER-WC study (n5).

other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body.²¹

Institutional care While there is no agreed international definition of institutional care, it is generally understood to mean care that exhibits an institutional culture or characteristics, regardless of size. These characteristics include depersonalisation (lacking personal possessions and signs and symbols of individuality and humanity); rigid routines which override individual children's needs and preferences; a lack of individualised support or prioritisation of children's individualised needs; children's lack of control over their lives and decisions affecting them; and the isolation of children from families and communities.²² The UN Guidelines²³ recognise that residential care facilities (see the definition below) and family-based care complement each other in meeting the needs of children, but propose that where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalisation strategy, with precise goals and objectives, which will allow for their progressive elimination.

Kafalah is a form of family-based care used in Islamic societies that does not involve a change in kinship status, but does allow an unrelated child, or a child of unknown parentage, to receive care and legal protection. It is periodically provided for in legislation or subsidiary legislation in some African countries. It can be defined as a commitment to voluntarily take care of the education and protection of a child in the same way as a father would look after his own.

Kinship care: This is family-based care within the child's extended family or with close friends of the family known to the child, whether formal or informal in nature. Informal kinship care is the most prevalent form of alternative care for children in Africa. Although kinship care is perceived to be a 'private family matter', it is important for the authorities to work closely with traditional institutions, community and religious leaders, community-based structures, and civil society organizations to monitor the kinship care placements by conducting periodic home visits and intervening whenever the need arises. The ACERWC study excludes kinship care from its definition of CWPC. Although the UN Guidelines indicate that kinship care arrangements which are informal should be formalised under country regulations to make it easier to track and provide support services to children in kinship care, legal requirements that social service workers regularly monitor all kinship care families can overwhelm child protection systems, notably in Africa, and are therefore not prescribed by this General Comment.

Parental care means care by a child's biological mother and father or another adult who has adopted the child.

Prevention means policies and programmes, budget allocation and human resources to support children, particularly children with disabilities and children living in disadvantaged, stigmatised and marginalised families, to address the root causes of unnecessary family separation and ensure that they are cared for effectively by their own families and communities.²⁴

Registration: All entities and individuals engaged in the provision of alternative care for children should receive due authorisation to do so from a competent authority and be subject to regular accreditation, monitoring, supervision and review by the latter.

21 UN Guidelines para 29(b)(i)

22 This definition was set out by a group of independent experts convened by European Commissioner Vladimír Špidla in 2009. European Commission. (2009). Report of the Ad Hoc Expert Group on the Transition from Institutional to Community-based Care. <https://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=614&furtherNews=yes> [Accessed 3 Jun 2021].²³

23 UN Guidelines par 23.

24 Resolution adopted by the General Assembly on 18 December 2019 [on the report of the Third Committee (A/74/395)] 74/133.

Reintegration means a multi-layered process focused on family reintegration; mobilising and enabling care systems in the community; medical screening and health care, including reproductive health services; schooling and/or vocational training; psychosocial support; and social, cultural and economic support.

Residential Care: Care provided in any non-family-based group setting, such as places of safety for emergency care, transit centres in emergencies, and all other short- and long-term residential care facilities, including group homes.

Reunification is the process of bringing together the child and family or previous care-provider for the purpose of establishing or re-establishing long-term care.

Safeguarding means the values and procedures to be upheld by those working with children and young people in order to protect them from all forms of abuse, exploitation and violence.

Social service workforce can be defined as paid and unpaid, governmental and non-government professionals and para-professionals, working to ensure the healthy development and wellbeing of children and families.²⁵

Supported Independent Living refers to where a young person is supported in her/his own home, a group home, hostel, or other form of accommodation, to become independent. Support/key workers are available as needed and at planned intervals to offer assistance and support but not to provide supervision.

Tracing: Where a child has been identified as separated from parental care, immediate efforts must be made to locate the child's parents and extended family, termed tracing.

VII. CONTENT OF ARTICLE 25

a) State party obligations under the African Children's Charter

16. Article 1 of the ACRWC obliges States Parties to recognise the rights, freedoms and duties enshrined in this Charter and to undertake to the necessary steps, in accordance with their Constitutional processes and with the provisions of the Charter, to adopt such legislative or other measures as may be necessary to give effect to the provisions of this Charter. As indicated in its General Comment on Article 1,²⁶ the Committee has adopted four general principles for the interpretation of all the rights under the African Children's Charter.

b) The four general principles

The principle of the best interests of the child

17. The best interest of the child, as provided for in article 4 of the ACRWC, must be given primary consideration and the CWPC must be given the protection and care necessary for his or her wellbeing. State parties must develop and use national case management guidelines and tools, as well as standardised procedures for best interests determination. Every person, institution, service, agency, organization and body responsible for the care or protection of children shall conform with the standards established by the appropriate authorities, particularly in the areas of safety, health, welfare, number and suitability of their staff, and competent supervision.

²⁵ UNICEF and the Global Social Service Workforce Alliance, Guidelines to Strengthen the Social Service Workforce, p9 available at <https://www.unicef.org/reports/guidelines-to-strengthen-social-service-workforce-for-child-protection-2019>.

²⁶ Committee General Comment No. 5 on "State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection, para 4.1

The principle of non-discrimination

18. This principle entails that children must not be treated in a discriminatory way on account of their gender, race, religion or creed, disability, birth, national or social origins, or other. Non-discrimination can also imply that placement option should be non-discriminatory. The first option is to consider inclusion and thereby, the prevention of separation

The principle of the right to survival and development

19. CWPC have the right to survival and development, as mandated by article 5 of the ACRWC. The ACRWC recognises that ‘for the full and harmonious development of his personality...the child should grow up in a family environment in an atmosphere of happiness, love and understanding’.²⁷ Nevertheless, for a variety of reasons, this is not possible for some children, e.g. those who have been orphaned, ill-treated by their care givers, or separated due to disaster or conflict. Some children may need to be accommodated outside of a family environment. Nevertheless, their optimal development necessitates that they receive the full range of supports required to grow and become capable adults in family-based care.

The principle of child participation

20. In accordance with article 4(2) and of the ACRWC, children have the right to participate in decisions that affect them. Where appropriate and feasible, families should also be consulted in the determination of placements in alternative care of their children, and their views and opinions given due weight. Child and youth participation must be mainstreamed in all policy and regulatory processes concerning CWPC.

c) Text of article 25.

21. At the continental level, the legislative protection for CWPC is prescribed under article 25 of the African Children’s Charter.²⁸ The text of this article reads as follows:

“ARTICLE 25: SEPARATION FROM PARENTS:

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance.
2. States Parties to the present Charter
 - a). shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;
 - b). shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.
 - c). When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious or linguistic background.

²⁷ Preamble, Para 4.

²⁸ Also relevant to the legal analysis which follows are the ACERWC aspirations for children 2040 (Agenda 2040), the AU Agenda 2063, the CRC Committee General Comment No 21 on children in street situations, the CRC Committee General Comment No 20 on adolescence, and ILO Convention 182 on the Worst Forms of Child Labour.

d) General Legal Analysis

The most important principles derived from international law in relation to CWPC concern two main principles:

22. Necessity: Children should only be placed in alternative care if absolutely required. The care must be genuinely needed. Alternative care can only be deemed necessary if all measures fail to prevent a child from needing alternative care. The gatekeeping system and assessment mechanism that determines entry into alternative care must be robust and applied on an individual basis without fail. Member States carry the overall responsibility for the prevention of family separation and provision of family support, family tracing and reintegration services. Organizations and authorities must provide family-focused services and interventions to prevent family separation, unless the best interests of the child so requires. Poverty should never be the driver necessitating placement of children in alternative care. Moreover, pursuant to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (African Disability Protocol) and the UN Convention on the Rights of Persons with Disabilities (CRPD), the disability of either parent or child should never be a reason for removing the child from his or her family.

23. Suitability and appropriateness: The provision of alternative care should be determined by the most suitable placement for each child. This means selecting the care setting that will, in principle, best meet the child's needs at the time, which is the priority. It also implies that a range of family-based and other care settings must be in place, so that a real choice exists,²⁹ and that there is a recognised and systematic procedure for determining which is most appropriate ('gatekeeping'). It also means that all care settings must meet general minimum standards and should match the care needs of the individual child concerned. Case management guidelines should be in place to direct stakeholders involved. Whatever the form of alternative care, minimum standards relating to a range of factors such as health and hygiene, safety, nutrition, privacy, contact with families, access to complaints mechanisms, to cite a few, must be regulated and monitored by authorities.

24. If family preservation efforts are not successful, priority should be given to family-based care. The African tradition is based on a preference for kinship care, almost entirely informally arranged. Preference should be given to placement of a child near to the child's usual place of residence. This will ensure continuous contact between the child and his/her family and possible family reintegration if this is in the best interest of the child, as well as minimize disruption to education and well-being and lead to stability for the child. Contact between the child in alternative care and his/her biological family, where known and in the child's best interests, must be encouraged and supported as a right of the child, as recognised by article 19(2) of the ACRWC.³⁰

e) Interdependence and indivisibility of the rights within Article 25

Article 16 (Protection Against Child Abuse and Torture)

25. This Article requires states to take all measures (legislative, administrative, social and educational) to protect the child from all forms of torture, inhuman or degrading treatment whilst in the care of (...) any other person who has care of a child. This places a clear obligation on States to ensure the protection of children in all forms of alternative care from any form of maltreatment, to which they are especially vulnerable. Safeguarding protocols must be mandatory for all institutional care settings, and alleged violations of article 16 vigorously investigated and where indicated, prosecuted.

29 This 'choice' should not be taken to imply that where residential facilities do not exist, they should then be established, as this would go counter to the care systems reform strategy.

30 'Every child who is separated from one or both parents shall have the right to maintain personal relations and direct contact with both parents on a regular basis.'

Article 29 (Sale, Trafficking and Abduction)

26. This Charter article, although it deals principally with the prevention of sale, trafficking and abduction, also proscribes the use of children in all forms of begging. As determined by the Committee in the Senegalese Talibe communication,³¹ CWPC have been and are being used in some contexts, such as where they are sent to Quranic schools, for begging. The Committee was of the view that the practice of forcing children to beg constitutes a worst form of child labour, and a violation of article 29. States Parties must take all feasible steps to prevent and address children being used in begging.

27. The Committee is cognisant of the practice of orphanage trafficking, which has also found root on the African Continent. Aware that children are also recruited, transferred, and harboured in institutions for the purpose of exploitation and profit, States Parties must ensure that anti-trafficking frameworks to enable the prosecution of orphanage trafficking and exploitation offences, including the unlawful removal of a child from their parents or guardians and placement in an institution or residential care for the purpose of exploitation or profit.

Article 11 (Education)

28. Every child shall have the right to an education, and this includes CWPC. Such education should preferably be accessed in community settings, and in the ordinary education system. In accordance with the article 14 of the ACRWC, the disabled child must have effective access to training and preparation for employment in a manner conducive to the child achieving the fullest possible social integration, individual development and his cultural and moral development. Due to their visual impairment and risk of skin damage, children with albinism require reasonable accommodations and innovative approaches to make education accessible.

Article 14 (Health and Health Services)

29. CWPC must enjoy the right to the best attainable state of physical, mental and spiritual health, which includes the provision of adequate nutrition and safe drinking water according to the ACRWC. Of importance to CWPC is access to appropriate psycho-social support, where needed. Moreover, children in institutions are especially vulnerable during the outbreak of pandemics and epidemics, and targeted measures need to be adopted by authorities to minimise any risk to these children. Any steps to remove vulnerable children from institutions during such health emergencies must take due account of the need for robust reintegration plans. Children with albinism also require accessible and affordable health care services and products, such as dermatological and ophthalmological services, including sunscreen.

Articles 18 (Protection of the Family)

30. Article 18(1) recognises the importance of a family environment by stipulating that the 'family' is the 'natural unit and basis of society' and affords it 'the protection and support of the State for its establishment and development.'

Articles 19 (Parent Care and Protection)

31. Article 19(1) further reinforces this recognition by affording every child the right to 'the enjoyment of parental care and protection.' The provision prohibits the separation of children from their parents against their will unless such separation is deemed to be in their best interests by a judicial authority.

³¹ No. 003/Com/001/2012.

Articles 20 (Parental Responsibilities)

32. Furthermore, article 20 outlines the responsibilities of parents and others responsible for the care of the child, as well as the obligation of States to provide assistance so that they can fulfil their childrearing duties. As article 20(2) spells out, States Parties to the Charter shall in accordance with their means and national conditions take all appropriate measures to assist parents and other persons responsible for the child, and in case of need, provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing. This provision underscores the crucial role of prevention of family separation through targeted measures of support and social protection to families.

f) Textual analysis of article 25

33. A child who is permanently or temporarily deprived of his family environment for any reason...

Article 25 envisions any temporary or permanent deprivation of a family environment; it applies to situations from temporary incapacities of a short- to medium-term nature to more long-lasting situations such as the death of parents or the 'definitive withdrawal of parental rights and responsibilities.'³² This is an expansive sphere of operation.³³ And, while it is not possible to define 'temporary' to cover all such situations, as a general guide a temporary placement should not exceed, at most, three months. The State Party must become involved in a temporary placement at the earliest opportunity, at minimum in an oversight capacity, unless it is a temporary placement in informal kinship care in which state involvement is not necessitated. The reasons for the deprivation of a family environment are not relevant, and may include death, abandonment, voluntary departure, economic circumstances, natural disaster, and national or internal armed conflict.

34. special protection and assistance

According to article 25(1) 'any child who is permanently or temporarily deprived of his or her family environment for any reason shall be entitled to special protection and assistance.' The State is in this respect the primary duty-bearer, even where day-to-day care is provided by a non-governmental organisation or other entity. In providing special protection and assistance, alternative family care should be prioritised. With respect to children who are, exceptionally, placed in institutions, the ACERWC requires States to monitor that those institutional care facilities meet the required minimum standards, in terms of living conditions, social work capacity, child protection policies, and record-keeping mechanisms. Furthermore, this Committee has stressed that States must ensure that all residential care facilities are registered and that systems are in place to facilitate such registration. All providers of care services should be appropriately qualified or approved in accordance with legal requirements to provide alternative care services. It has further urged States to ensure the closure of unregistered institutions. States should enhance child safeguarding initiatives, including in both State-run and private facilities, to ensure that all children under the various care options are protected from all forms of abuse and neglect, which would violate their right to special protection and assistance. It is important, among other measures, to enhance community-

32 N Cantwell 'The human rights of children in the context of formal alternative care' in W Vandenhoe and others (eds) Routledge International Handbook of Children's Rights Studies (2015) 257.

33 N Cantwell & A Holzscheiter 'A commentary on the United Nations Convention on the Rights of the Child article 20: Children deprived of their family environment' in Alen, A et al (eds) A Commentary on the United Nations Convention on the Rights of the Child (2008) para 37, reflecting on the words 'for any reason'. However, it does not include where a child stays overnight with friends or family as part of a visit or holiday.

based systems that facilitate appropriate case management through reporting and response mechanisms. All agencies and facilities should be required to develop a staff code of conduct, consistent with the present Guidelines, that defines the role of each professional and of the carers in particular and includes clear and mandatory reporting procedures on allegations of misconduct.³⁴

35. *Kafalah* is an elaboration of 'special protection and assistance', applicable in several African countries. Under this care option, parental care is provided on a permanent basis, comparable to long-term foster care. Although Article 25 of the ACRWC does not expressly refer to *kafalah* as one of the alternative care options, *kafalah* falls within the scope of this article given that *kafalah* represents a family-based form of care.³⁵ *Kafalah* must be practiced in a manner that ensures compliance with The Charter and with the best interests of the child, and ideally should be based on a written agreement between the family of the child if known, and the person agreeing to act as *kafiil* for the child. This agreement should specify the terms of the care arranged, including providing for the obligation of the *kafiil* to fulfil the care, welfare, health and education needs of the child.

36. *Article 25(2)(a)'states shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment...shall be provided with alternative family care'*

This injunction should be read with article 19(1), which allows for the removal of a child from his or her parents when a competent authority determines that such removal is in the child's best interests. Under this provision, States are required to 'ensure' the provision of alternative care, rather than 'provide' alternative care, which indicates that States do not have to directly provide alternative care services. However, even in cases where the State delegates the delivery of any aspect of alternative care services to non-state actors, it does not absolve the State of its obligation to regulate and ensure the availability of alternative care services and monitor the appropriate use of resources. The proper regulation of the alternative care system (from setting policies and procedures in place, to ensuring the availability of placements, to licensing of institutions and services) is at the core of the State obligation, along with other obligations as detailed in this General Comment.

37. It must be stressed that the placement of a child in alternative care must be child-centric, and that the overriding principle is the best interests of the child. To this end, a multidisciplinary assessment of the child's circumstances is required, as well as an investigation into all possible options, with institutional care being the last option to be considered. The first option, where a child cannot remain within the family, is to give primacy to alternative family-based care, such as kinship care.

38. A significant number of CWPC on the continent are living in institutions established and privately managed by civil society organisations, faith-based organisations, and charities/welfare organisations. Services to children living on the street are often provided by non-governmental organisations. They, too, have to ensure that standards and principles adopted in this General Comment are equally applicable to them, albeit that the ultimate duty bearer for the fulfilment of the rights of CWPC remains the State.

39. The Charter employs the term 'alternative family care'; as opposed to the broader term 'alternative care' used in the CRC.³⁶ This particular choice of phrasing clearly suggests a preference for family-based alternative care options for children deprived of their family environment and indicates that non-family alternatives, such as institutional and residential

34 UN Guidelines para 107.

35 Sponsorship of children in institutions under the guise of *Kafalah* is not consistent with this General Comment or the Charter.

36 Article 25(2)(a) of the ACRWC.

placement, should be secondary options. The ACERWC's concluding observations also reaffirm that preference should be given to family-based alternative care options and that the placement of children in institutional care should only be used as a measure of last resort and be temporary. The Committee considers that any form of placement that is not family-based is institutional care.

40. Elaborating the legal implications of this principle, the ACERWC has consistently in its concluding observations encouraged State parties to work towards the deinstitutionalisation of children by adopting a comprehensive deinstitutionalisation strategy (see further section 12 below) and ensuring that institutions integrate exit strategies in their operations specifically to enhance transitions from care and after care services. The focus is that children do not get into alternative care in the first place, and facilities must be transformed into providers of family and community-based services that complement the care system and improve the quality of care that children receive.

41. One of the aspirations of the ACERWC's Agenda 2040 is that '[e]very child grows up well-nourished and with access to the basic necessities of life.'³⁷ To this end, the two indicators of this aspiration are for States to have adopted legislation and policies for children in need of alternative care and special support, as well as to ease laws on adoption and fostering, and sensitise the community to the benefits of fostering and adopting children deprived of their family environment.³⁸ After an assessment of the first phase of implementation of Agenda 2040 (2016-2020), the key recommendation for the next monitoring period underscores the need for States to scale up care reform efforts by establishing necessary frameworks 'to prevent separation, strengthen families, increase the availability of family-based alternative care options, and implement carefully planned and funded deinstitutionalisation efforts.'³⁹

42. Gatekeeping is reportedly generally weak in every country in Africa. 'Gatekeeping' is defined in the ACERWC study on CWPC as a set of measures put in place to effectively divert children from unnecessary initial entry into alternative care or, if already in care, from entry into an institution.⁴⁰ It involves preventing the inappropriate placement of a child in formal care. Therefore, it is crucial to reinforce the gatekeeping system to ensure children are placed in alternative care only after a comprehensive gatekeeping assessment that considers both necessity and suitability, the twin overarching principles of the UN Guidelines. Indeed, as established in the Kigali Declaration,⁴¹ it must be recognised that the provision of a range of quality alternative care options, including, family and community-based care and, where relevant, redirecting resources to family and non-institutional community-based care services, with adequate training and support for caregivers and robust screening and oversight mechanisms, and progressively replacing institutionalisation accordingly is an imperative for State Parties to the ACERWC.⁴² Gatekeeping should be undertaken by multi-disciplinary teams, which should include State authority representation at the minimum, as well as members who are attached to any settings that are being considered for placement of a child. The gatekeeping system must operate effectively regardless of whether the potential formal care provider is public or private.⁴³

37 ACERWC 'Agenda 2040, Africa's agenda for children: Fostering an Africa fit for children' (2016) Aspiration 5.

38 Agenda 2040 Monitoring report (available at <https://www.acerwc.africa/en/page/agenda-2040-implementation-report>), p 55–56.

39 As above, 169.

40 ACERWC study (n 5) p IV.

41 Kigali Declaration on Child Care and Protection Reform, Commonwealth Heads of State, Rwanda, 2022 (Kigali Declaration).

42 Kigali Declaration: Principle 3: Tackle the underlying causes that lead to children requiring care and protection; principle 4. Tackle the underlying causes of the separation of children from their families and communities, including by progressively replacing institutionalisation with quality alternative care across the Commonwealth; principle 5: Put in place the necessary frameworks and resources to ensure sustainable and effective child protection and safeguarding systems for care and protection of all children, including the elimination of child labour in all its forms, forced labour, trafficking and sexual exploitation.

43 ACERWC study (n 5) p 63.

43. It is international good practice that all CWPC have an individualised care plan, which amongst others sets out the minimum package of care for that child, plans for maintaining contact with families (where appropriate and in their best interests), and reintegration objectives. Where a child is not to be reunified with his or her family for any reason, a plan for transitioning into adulthood should be developed (see further section 9 below). Where indicated, this might include preparation for the child to enter a supported independent living arrangement.⁴⁴ State Parties must provide in legislation, policy or regulation for a case management approach,⁴⁵ explain the steps required and the participants needed. Case management requires certain competencies, and involves a social service worker or para-professional social service worker who collaboratively assesses the needs of a child and arranges, coordinates, monitors, evaluates and advocates for a package of services to meet a specific child's needs.⁴⁶ Provision should be made for the participation of the child and his or her family (where this is in the best interests of the child) in case management.

44. All State entities involved in the referral of, and assistance to, CWPC, in cooperation with civil society, should adopt policies and procedures which favour information-sharing and networking between agencies and individuals in order to ensure effective care, aftercare and protection for CWPC.⁴⁷ A child's right to privacy should also be fully protected.

45. ...alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children...

Article 25(2)(a) provides a non-exhaustive list of potential alternative care options to be considered for children deprived of their family environment i.e. foster care placement, or placement in suitable institutions. But even though institutions are mentioned in the Charter text, the consensus is that this placement must be considered as a last resort, with kinship and non-institutional community-based care as the preferred option. The ACERWC has consistently recommended to States to expand and promote family-based alternative care options, including foster care and domestic adoption, through community-based campaigns, sensitisation, and incentives. 'Placement' is a social work term for the arranged out of home accommodation provided for a child on a short- or long-term basis and should be geared towards a permanent and family-based solution to the child's care needs.

46. Frequent changes in care setting are detrimental to the child's development and ability to form attachments and must be avoided. Short-term placements must be temporary and should aim at enabling an appropriate permanent solution to be arranged.⁴⁸

47. ...'shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters'

Article 25(2)(b) of the Charter requires states to take *all necessary* measures to ensure the reintegration of children with parents or relatives in the case of internal or external displacement caused by armed conflicts or natural disasters. Similar obligations can be found in article 23 of the Charter, which deals with refugee children. According to the concluding observations of the ACERWC, measures to implement this provision include strengthening efforts for family reintegration through, among others, 'a system of tracing, legal assistance, travel arrangements, and financial support.' Where reintegration is not possible, efforts must be directed towards long term care planning.

44 UN Resolution 2019 (n 4) par 35 (l) recognises that state must ensure that 'adolescents and young people leaving alternative care receive appropriate support in preparing for the transition to independent living, including support in gaining access to employment, education, training, housing and psychological support, participating in rehabilitation with their families where that is in their best interest, and gaining access to after-care services consistent with the Guidelines for the Alternative Care of Children.'

45 ACERWC study (n 5) p 61.

46 ACERWC study (n 5) p 72.

47 UN Guidelines para 70.

48 UN Guidelines para 60.

48. Although this Charter provision (article 25) refers specially to children separated due to conflict or natural disaster, there is a general legal obligation to trace parents of all CWPC, as also to undertake reintegration efforts. Moreover, concerning children whose families cannot be traced, the Committee recommends that States increase the number of social workers, strengthen the capacity of already existing social workers, establish new family-based alternative care options and strengthen existing ones, and collaborate with civil society organisations.⁴⁹ In addition, strong collaboration and coordination between humanitarian actors and government agencies can assist family tracing and avoid duplication of efforts. Family tracing and reintegration generally is dealt with in a separate section, section 8 below.

49. Article 25(2)(c) ...'When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background'

The scope of this provision envisions that the best interests of the child are considered both in the decision to take the child out of his or her family environment, as well as in any decision regarding the choice of an alternative placement.⁵⁰ Children should be encouraged and supported to participate in this choice, and child participation should be integrated in all policies and decision making processes. Continuity with regards to the child's upbringing requires measures to be taken to ensure that the child maintains contact with parents, family, and the community. All decisions concerning alternative care should take full account of the desirability, in principle, of maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life.⁵¹ Such consideration also extends to taking measures to ensure that, wherever possible, the child is placed in foster care or an adoptive family with a similar cultural background. But it is important to note that the requirement to give 'due regard' to these considerations is not a rigid requirement.

50. CWPC should be allowed to satisfy the needs of their religious and spiritual life, including by receiving visits from a qualified representative of their religion, and to freely decide whether to participate in religious services, religious education or counselling. Training on cultural sensitivity should be included in any curricula pertaining to CWPC and care systems reform.

VIII. FAMILY TRACING AND REINTEGRATION GENERALLY

51. Protection, confidentiality and safety of the child and his/her family is the priority and should underline all tracing activities and information-sharing. In sharing information and using traditional or social media, priority should be given to ensuring minimum risk to the child and family, while at the same time providing as much information as is necessary. Good practice requires tracing to, upon receipt of necessary information from the child: verify details; assess whether the family is willing and able to take care of the child; plan the reintegration; prepare the family; prepare the child; re-assess needs and wishes and decide whether to reunify the child. In circumstances where no information can be obtained from the child or the community, the use of social media or traditional media such as newspapers or radio is mandated. The process of tracing should be thorough and well-documented, coordinated, and using standardized forms and mutually compatible procedures, wherever possible.

52. States should formulate clear policies to address situations where a child has been abandoned anonymously, which indicate whether and how family tracing should be undertaken and reintegration or placement within the extended family pursued. Policies should also allow

49 As above.

50 See article 25(3) of the ACRWC. See also Cantwell & Holzscheiter (n 33) para 38.

51 UN Guidelines para 11.

for timely decision-making on the child's eligibility for permanent family placement and for arranging such placements expeditiously. The Committee reiterates that adoption should not occur during or immediately after emergencies.

53. When a public or private agency or facility is approached by a parent or legal guardian wishing to relinquish a child permanently, the State should ensure that the family receives counselling and social support to encourage and enable them to continue to care for the child, given that article 20 of the Charter obligates States to assist parents in their child rearing duties. If this fails, a social worker or other appropriate professional assessment should be undertaken to determine whether other family members wish to take permanent responsibility for the child, and whether such arrangements would be in the best interests of the child. Where such arrangements are not possible or are not in the best interests of the child, efforts should be made to find a permanent family placement within a reasonable period.

54. Once determined that it is in the child's best interests, family reintegration should be designed as a measured, regulated and monitored process, supplemented by regular follow-ups and support mechanisms that consider the child's age, needs, evolving capacities, causes of separation and current alternative care placement. Before reintegration, the immediate needs in a household should be addressed, including by referral to services and counselling, and training on topics including positive parenting, trauma-related or institutional behaviours, and home hygiene and health. Reintegration should be positively communicated to families and communities.

IX. AFTERCARE

55. Aftercare can refer to support for children who have been reintegrated, but also to mechanisms to ensure young people who leave care are supported in their journey toward independence. Agencies and facilities must have a clear policy, based on national care reform frameworks with binding obligations for the delivery of aftercare services, and should carry out agreed procedures relating to aftercare to ensure appropriate aftercare and/or follow-up through to case closure in accordance with the child's care plan. Throughout the period of care, they should systematically aim at preparing children to assume self-reliance and to integrate fully into the community, notably through the acquisition of social and life skills. Aftercare should be prepared as early as possible in the placement and, in any case, well before the child leaves the care setting. Aftercare could be preceded by a transitional phase. Ongoing educational and vocational training opportunities should be imparted as part of life skills education to young people leaving care to help them become financially independent and generate their own income. Children in care and care leavers should be involved in aftercare planning and programming. Aftercare support is required for children after the age of 18 years to ensure access to education, housing, employment and trauma-informed, culturally appropriate mental health services, as well as assistance with obtaining legal identification and documentation before leaving care.

X. SPECIFIC CATEGORIES OF CWPC

a) Children in institutional care (orphanages, children's homes, charitable institutions, shelters, group homes, etc)

56. According to the ACERWC study, institutional care remains prevalent across Africa, provided for by both the government and private sector role-players.⁵² The alternative care system in Africa has been grounded and centred on institutions, which for some time have been the first resort rather than the last, and the most accessible option for 'rescuing' children from abandonment, orphanhood, family poverty, family disintegration, disability, or displacement.⁵³

⁵² ACERWC study (n5) p78-79.

⁵³ ACERWC study (n 5) p 87.

57. To curb the number of children in residential care, governments and stakeholders should undertake comprehensive care systems reform based on a national framework, as detailed in this General Comment. They must prioritise family-strengthening services that can empower families to provide adequate care for their children and prevent separation. Partly because institutional care is harmful to their development, if children cannot be placed in family care, every effort should be focused to that ensure children remain in (or speedily return to) the care of their parents or, when appropriate, other close family members and that, where alternative care is necessary, family and community-based care should be promoted over placement in institutions and residential care.⁵⁴ Whilst both the UN Guidelines and the ACERWC do recognise a place for residential care in the provision of alternative care, it should be in view of gradual elimination and limited to where it is necessary and suitable. The objective should generally be to provide temporary care and to contribute actively to the child's family reintegration or, if this is not possible, to secure his/her stable care in an alternative family setting.

58. There must be a moratorium on the registration or establishment of any new institutions, and registration and periodic monitoring of all current institutional care settings accommodating children is an essential responsibility of States Parties to the Charter. State Parties must strive continuously to strengthen monitoring and accountability systems, where possible, in collaboration with communities. Moreover, minimum norms and standards for all institutional care settings should be developed at national level, including standards (amongst many others) for hygiene, nutrition, accommodation standards, safety, violence prevention, community contact, staff-children's ratios, children's privacy, and a complaints mechanism which is accessible and confidential to children in care. Child safeguarding rules and complaints reporting and responding mechanisms must be put in place for every institutional care context. In addition, State Parties must ensure that justice systems have adequate capacity and mechanisms to address any cases of criminal violations.

59. Decisions regarding establishing or permitting new residential care facilities, whether public or private, should fully account for the deinstitutionalisation objective and care systems reform strategy advocated in this General Comment.⁵⁵ The ACERWC strongly discourages the registration of new facilities.

60. Concerning the rights of children in alternative care, individuals, families, and organisations providing alternative care should ensure that any child in alternative care is not deprived of the following rights:

- Name, birth registration and certification,
- access to formal education for the children of school-going age, and access to non-formal and vocational training where appropriate,
- health services and health care,
- access to any social security system provided by the state or by the government,
- the opportunity of taking part in cultural activities as per their religion and culture, as well as recreational pursuits,
- the opportunity of taking part in activities taking place in the family, community, local level, district level and state and national level according to their age, maturity and stage of development,

⁵⁴ UNGA resolution 2019, 22. CRPD General Comment no 5 (2017) highlights that 'although institutionalized settings can differ in size, name and set-up, there are certain defining elements, such as obligatory sharing of assistants with others and no or limited influence over whom one has to accept assistance from; isolation and segregation from independent life within the community; lack of control over day-to-day decisions; lack of choice over whom to live with; rigidity of routine irrespective of personal will and preferences; identical activities in the same place for a group of persons under a certain authority; a paternalistic approach in service provision; and supervision of living arrangements (par 16(c)).

UN Guidelines para 23.

- and the discipline of children in alternative care shall be provided in an empowering and positive environment designed to guide the child towards good conduct, and all forms of corporal punishment, inhuman or degrading treatment or punishment must be prohibited.

61. All persons working at childcare institutions, including volunteers, must be screened for their suitability to work with children. Volunteers who come and go (as is the case with ‘voluntourists’) are, in any event, disadvantageous to the well-being and development of children, and State Parties must regulate that voluntourism is prohibited. All visitors who interact with children in institutional care should be able to provide an up-to-date good conduct certificate.

b) Children requiring emergency care (e.g. abandoned children)

62. Responders to children requiring emergency care should prioritise family-based placement and use residential care only as a temporary measure until family-based care can be developed.⁵⁶ Children aged below 3 years requiring emergency placement must be accommodated in a family setting, such as in emergency foster care, and never in institutions.

63. States must formulate clear policies to address situations where a child has been abandoned anonymously, which indicate whether and how family tracing should be undertaken, and whether reintegration or placement within the extended family pursued. Policies should also allow for timely decision-making on the child’s eligibility for permanent family placement and for arranging such placements expeditiously.

c) Children separated during internal or international armed conflict or disasters, and unaccompanied refugee children

64. Standards that are informed by the international guidelines already in place for separated and unaccompanied children must be developed by States Parties. Family tracing and reintegration efforts must be mandatory, as a first option, and the establishment of new residential facilities structured to provide care to large groups of these children on a permanent or long-term basis is prohibited.⁵⁷ Especially for such children as are affected by internal or international armed conflict or disasters.

65. Strategies for facilitating access by children on the move to documents such as birth certificates and passports should be an integral part of legal assistance initiatives. These documents are often requested to prove age and for issuing a permit to stay when a cross-border situation is involved. As soon as an unaccompanied child is identified, States must appoint a guardian or, where necessary, representation by an organisation responsible for his/her care and well-being, to accompany the child throughout the status determination and/or decision-making process. Placement decisions must prioritise the child’s best interests and be based on thorough assessments with a view to long-term care planning.

66. Coordination between States when a cross-border migration is involved is essential. Unaccompanied or separated children must not be returned to their country of habitual residence if, following the risk and security assessment, there are reasons to believe that the child’s safety and security are in danger; and, unless, before the return, a suitable caregiver, such as a parent, other relative, other adult caretaker, a Government agency or an authorized agency or facility in the country of origin, has agreed and can take responsibility for the child and provide him or her with appropriate care and protection. Cross-border collaboration is likewise required for best interest determinations in situations of international armed conflict.

⁵⁶ UN Guidelines para 154.

⁵⁷ UN Guidelines par 154.

d) Children living and working on the street without parental care

67. Children living on the street without parental care are not a homogeneous group. Characteristics are diverse in terms of age, sex, ethnicity, indigenous identity, nationality, disability, sexual orientation and gender identity/expression, among others. This diversity implies different experiences, risks and needs. The nature and time spent physically on the street vary significantly from child to child, as does the nature and extent of relationships with peers, family members, community members, civil society actors and public authorities.⁵⁸

68. Causes, prevalence and experiences of children in street situations differ within and between States. Inequalities based on economic status, ethnicity and gender are among the structural causes of the emergence and exclusion of children in street situations. These are exacerbated by material poverty and inadequate social protection. It may be an intergenerational phenomenon, where children living on the street themselves bear children. States Parties must emphasise policies which address the root causes of separation before providing alternative care options.

69. Types of alternative care for children living on the street include drop-in and community/social centres; night shelters; day-care centres; temporary residential care; foster care; family reintegration; and supported independent living or long-term care options, including (but rarely) adoption. However, interventions that do not respect children as active agents in the process of moving off the street into alternative care do not work: children often end up back on the streets when they run away or when placements break down.⁵⁹

70. A transitional stage between living on the streets and a long-term placement is often required; the length of this period being determined on a case-by-case basis with the child. The use of police or other detention cells to hold children living on the streets should not be allowed. In the ACERWC study on CWPC, reference is made to transit and street-children rehabilitation centres at the heart of street-children's family reintegration.⁶⁰ This strategy recognises that it is important to rehabilitate street children before any family reintegration can occur. On the one hand, due to the physical and emotional damage suffered while on the street, a child living on the streets needs psychosocial support services. On the other hand, because relations between the child and his or her family have been severed, the two parties can live together willingly again only after efforts to address the root causes of separation, if necessary, using family counselling and mediation, have been made. Nevertheless, it must be cautioned that rehabilitation does not have to be necessarily in an institution, and not all children living or working on the street need 'rehabilitation'.

71. The application of 'zero tolerance' policies criminalising children in street situations and resulting in forced institutionalisation must be avoided, and this General Comment prohibits the use of such methods.

72. Non-state authorities, services and facilities for children living or working on the street should be supported, resourced, accredited, regulated and monitored by the State. Personnel involved in such services should be trained.

58 CRC Committee General Comment no 17 (2021) par 6.

59 CRC Committee General Comment no 17 par 45.

60 ACERWC study (n 5) p 62.

e) Children living in child-headed households

73. Neither the Charter nor the CRC provides explicit guidance on the status of child-headed households. Research findings show that a solid majority of children prefer the family-support solution to any other feasible alternative care option, provided that they receive effective protection and can access education and other basic services. Many fears losing the family home if they leave it, or being deprived of their inheritance rights, or being otherwise exploited – even if they go to live with members of their extended family. The ACERWC recommends that States enable children to remain in a child-headed household with their rights safeguarded, provided the household head can play that role and wants to do so. States must provide guidelines as to how child-headed households are to be recognised and protected.

74. States must ensure, including through the appointment of a legal guardian, a recognized responsible adult or, where appropriate, a public body legally mandated to act as guardian, to ensure that such households benefit from mandatory protection from all forms of exploitation and abuse, and supervision and support, with particular concern for the children's health, housing, education, social protection and inheritance rights.⁶¹

f) Trafficked children and refugee children

75. States Parties must take measures to ensure the protection of children in emergencies, including ensuring the provision of alternative family-based care for children who are victims of trafficking, internally displaced, asylum-seeking or refugees. Such children should neither be detained nor returned to their country of habitual residence or place of origin unless there are sufficient guarantees as to their safety and care arrangements there. Importantly, definitive care measures in the host country, such as adoption or long-term *kafala*, should never be envisaged during or immediately after an emergency, and before all efforts to trace family or primary caregivers have been exhausted. States must establish a clear mechanism to address family tracing, if necessary, initiate cross-border collaboration, and explore possible repatriation. African regional entities should consider the development of regional programmes to address cross-border issues around CWPC. The programmes should include, among others, addressing trafficking in children, children on the move, and street-connected children.⁶²

XI. CHILDREN AT HIGH RISK OF LOSING PARENTAL CARE.

a) Children with a disability

76. Children with a disability are not necessarily CWPC, but they are especially vulnerable to placement in alternative care. Persons with intellectual disabilities, especially those with complex communication requirements, among others, are often assessed as being unable to live outside institutional settings. The CRPD extends the right to live independently and be included in the community to all persons with disabilities,⁶³ regardless of their level of intellectual capacity, self-functioning or support requirements. Member States must adopt and enforce laws and improve the implementation of policies and programmes, budget allocation and human resources to support children with a disability, to address the root causes of unnecessary family separation. They should provide early and comprehensive information, services and support to children with disabilities and their families to prevent concealment, abandonment, neglect, discrimination and segregation and to ensure they have equal rights concerning family life.⁶⁴

⁶¹ UN Guidelines, para 37.

⁶² ACERWC study (n 5) p 88.

⁶³ CRPD General Comment no 5 (2017) para 21. See too CRPD Guidelines on deinstitutionalization, including in emergencies (2022) (CRPD/C/5).

⁶⁴ GA Resolution A/RES/74/133, para 34 b, 34 i.

77. Deinstitutionalisation in the context of disability requires a systemic transformation, which includes the closure of institutions as part of a comprehensive strategy, along with the establishment of a range of individualised support services, including individualised plans for transition with budgets and timeframes, as well as inclusive support service to strengthen the capacity of families to care for their children with a disability, and eliminate any need for institutional care. Therefore, State Parties must implement a coordinated, cross-government approach which ensures reforms, budgets and appropriate changes of attitude at all levels and sectors of government, including local authorities.⁶⁵ Deinstitutionalisation reforms must be accompanied by comprehensive service and community development programmes, including awareness programmes.⁶⁶ Transitional plans must be developed in direct consultation with persons with disabilities, including through their representative organisations, to ensure full inclusion of children with disabilities in the community.⁶⁷

78. State Parties must collect consistent quantitative and qualitative data on children with disabilities, including those still living in institutions.⁶⁸

b) Children with albinism

79. Children with albinism are at high risk of losing parental care. Albinism is a rare, non-contagious, genetically inherited condition that affects people worldwide, regardless of ethnicity or gender. It most commonly results in a lack of melanin pigment in the hair, skin and eyes (oculocutaneous albinism), causing vulnerability to sun exposure. Africa as a continent has the highest prevalence; owing to their visual impairment and high susceptibility to skin cancer, persons with albinism are also considered persons with disabilities.⁶⁹ Children with albinism are at risk of being ritually attacked, mutilated or murdered for their body parts in some African countries owing to a mistaken belief that their body parts hold magical powers for use in ritual practices.⁷⁰ In areas where there is a high prevalence of attacks, a child may be removed from the family and placed in the perceived 'safety' of alternative care, often a secure form of residential care, such as a shelter or specialist boarding school.

80. The ACERWC has called for Member States of the African Union to safeguard the rights and welfare of children with albinism, including advocating for their rights in their families and communities.⁷¹ The Committee on the Rights of Persons with Disabilities considers any large or small residential facility, including 'family-like' facilities, an unacceptable form of institutional care. The Committee rejects all segregated spaces – including 'small group homes', 'special boarding schools', 'family-like homes', and 'albinism hostels' – and considers any placement that is not family-based to be institutional.⁷²

81. To ensure the prevention of separation from families and communities, State Parties must provide community-based inclusive education that provides reasonable accommodations for the needs of children with albinism to prevent them from being placed in specialist boarding schools. Reasonable accommodations include access to assistive devices such as glasses and protection from the sun's harmful rays. Further, social protection schemes that target vulnerable families through cash transfers and livelihood programmes are a key factor in preventing family separation for these children. State parties must additionally address barriers to justice and the perceived impunity of perpetrators to deter others from committing discriminatory acts or crimes against children with albinism. States must assist in the provision

65 CRPD General Comment no 5 (2017) para 58.

66 CRPD General Comment no 5 (2017) para 33.

67 CRPD General Comment no 5 (2017) para 42.

68 CRPD General Comment no 5 (2017) para 38.

69 Enjoyment of human rights by persons with albinism (report of the Independent Expert, July 2024) A/75/179 para 3.

70 African Committee of Experts on the Rights and Welfare of the Child, "Report on investigative mission on the situation of children with albinism in temporary holding shelters: Tanzania", March 2016.

71 African Committee of Experts on the Rights and Welfare of the Child, "Day of general discussion on the solutions to the challenges faced by children with albinism: outcome statement", 2024.

72 CRPD General Comment no 5 (2017).

of security, which is an essential factor in reducing the possibility of children with albinism being ritually attacked.⁷³ Awareness-raising can result in local community members stepping in to provide support and reduce vulnerability to attacks.

82. Where it is not possible, even with appropriate support, for a family of a child with albinism to provide adequate care and protection for their child, this responsibility must be taken on by the State in arranging for the child to be placed in alternative care, and that should be in a family setting.⁷⁴

83. As inclusive boarding schools are settings which approximate institutional alternative care, States should regulate them as such to ensure that children with albinism are safeguarded and receive the best quality care possible in such a setting.⁷⁵ States must further ensure that disaggregated data about children with albinism is collected, recorded and utilised to guarantee that care system reform strategies are evidence-based.⁷⁶

XII. CARE SYSTEMS REFORM AND DEVELOPMENT OF A MULTI-YEAR CARE REFORM POLICY OR STRATEGY

84. Care systems reform is designed to lead to improvements in the care system, which can be defined as the legal and policy framework, the structures, and the resources that determine and deliver alternative care, prevent family separation and support families to care for children well.⁷⁷ Systemically addressing care with linkages to the wider child protection system is essential as there are large numbers of children at risk of separation, unnecessarily separated, or who are unsafe in their families or alternative care. Systemic and scaled change is needed to address the magnitude of this problem. Care systems and child protection are inextricably linked, but do not fully overlap. Child protection systems aim to address other factors that expose children to harm, such as exploitation by employers. Care systems reform does require the broader child protection system to be operating effectively.

85. Care systems reform is an essential part of the implementation of Article 25, and is a mandatory requirement for State Parties, as highlighted in this General Comment. The ACERWC study contains several important recommendations underpinning care reform, which this General Comment repeats for ease of reference:

State Parties should invest in the prevention of family separation and strengthen communities economically to avoid recourse to alternative care; State Parties should establish systems for licensing alternative care provision in all settings, monitoring it, and ensure that it meets quality standards; In collaboration with all development partners, Member States should work to strengthen their national child protection systems. This, in turn, means that programmes should be designed to address gaps in the following areas:

- normative frameworks (laws, policy, plans, and the like).
- the coordination and oversight of national child protection systems.
- data management information systems; structures, finances, resources, and systems for the delivery of social services.
- the sufficiency and skills of a multisectoral workforce; child protection case management tools and procedures.
- the continuum of suitable care options.

⁷³ Independent expert (n 69) para 38.

⁷⁴ Independent expert (n 69) para 46.

⁷⁵ Independent expert (n 69) para 62.

⁷⁶ Independent expert (n 69) para 74.

⁷⁷ Caring system | Maximising synergies between care reform and child protection system strengthening in Eastern and Southern Africa (UNICEF ESARO et al 2021).

- and social and behavioural change in community attitudes and practices.⁷⁸
- There are increasingly good practice examples of such policies or strategies on the continent.

86. Care system reform aims to transform the child protection and care system from one orientation to another, in pursuit of an approach to care and protection that better meets the needs of children and their families, by their rights. Care reform serves to prioritise and build the services that support the prevention of family separation and, where prevention is not possible, ensure that there are safe and temporary family-based alternative care options available. Care reform serves to manage the transition to the new care system, including the reintegration of children from institutions back to their families or other family-based care placements, as well as ensuring support for older care leavers. Hence, transition planning for aftercare must be seen as an important element of care systems reform.

87. Several essential components of care system reform have been identified. Care systems reform should always begin with evidence. Plans cannot be successful in the absence of a detailed mapping of the existing system of care for CWPC. In particular, social welfare authorities should know which institutions in existence at the outset of the care reform process accommodate CWPC, the profiles of the children in their care (age group, disability, emergency refuge, etc), and the services and standards that prevail in those institutions. This mapping should, of necessity, include government institutions, those run by the private sector, and registered and unregistered institutions. Evidence, ideally, should include the following:

- Numbers and flow of children in different forms of care.
- The number and location of residential care facilities and other alternative care services.
- Community responses to children without adequate parental care, such as the use of kinship care or community child protection committees that support vulnerable families.
- Reasons for family separation and factors that may affect the capacity of families to care for children well
- Information on where decisions for children's separation and care are made and the gatekeeping mechanisms that exist.
- The situation of particularly vulnerable groups, such as girls, children with disabilities or refugees.
- The capacity of the social service workforce to support children's care, including how many workers there are and where they work.
- Prevention and response services, considering their accessibility, availability and quality, and
- The public and private financing of the system. Where possible, strategies and action plans should be costed to initiate the mobilisation of funding for responses for CWPC.

88. Care systems reform must be guided by an overarching, time-bound, multi-year strategy, which must be developed by States, with the support of coordination mechanisms. A clear description of the roles of different stakeholders should exist, complemented by details of the coordination body that will oversee the implementation of the strategy. A monitoring and evaluation framework, with indicators, must be adopted and implemented. The engagement of communities, caregivers, children, care leavers and young people is essential in all stages of the care reform process. It must be cautioned that any focus should not be exclusively on law and policy reform at the expense of implementation.

⁷⁸ ACERWC study (n 5) p XIII.

89. Like child protection, care systems reform often suffers from being under-resourced. A systems approach enables actors to come together to agree on common goals, develop costed strategies and advocate effectively for enhanced provision. A systems approach also means that the limited available resources can be used more strategically and effectively.

90. Care reform is premised on the development of robust gatekeeping procedures to screen referrals of children to an alternative care setting, assess the need for placement, and authorise placement based on available options and resources. A strong gatekeeping mechanism helps to ensure that children are admitted to the alternative care system only if all possible means of keeping them with their parents or wider (extended) family, or in family-based care, have been explored. Decisions regarding the removal or reintegration of children should be based on an assessment which should be made by suitably qualified and trained professionals, on behalf of or authorised by a competent authority, in full consultation with the child and all concerned and bearing in mind the need to plan for the child's permanency.⁷⁹

91. Finally, consideration should be given throughout any care form process to the linkages between care and the wider child protection system, and efforts made to use care reform to leverage wider change. Although care reform in some countries focuses on reducing the number of children in institutions, or deinstitutionalisation, which is important, States need to expand the aims of reform to include preventing separation, supporting families to care for children well, and providing a range of alternative family-based care options.

XIII. DATA COLLECTION

92. The ACERWC has previously raised concerns regarding the lack of data on children placed in informal alternative care. The 2019 UN Resolution details that improving data collection, information management and reporting systems related to CWPC in all settings and situations is required to close existing data gaps and develop global and national baselines, including by investing in quality, accessible, timely and reliable disaggregated data through capacity building, financial support and technical assistance and ensuring that quality data guides policymaking. Comprehensive and up-to-date records should be maintained regarding the administration of alternative care services, including detailed files on all children in care. Further, the ACERWC recommends that States conduct data collection and assessment on the conditions of children in informal care settings and child-headed households for informed planning and intervention. Data and research are also needed on aftercare, and all data collection and programming must be gender responsive.

93. State parties should consider integrating national statistical agencies with relevant government departments to ensure that categories of CWPC are mainstreamed into national data collection systems (censuses, DHSS, MICS and others). States should consider conducting national-level studies to quantify the prevalence of CWPC. Such national statistics would be used to determine the prevalence of CWPC at a continental level. There is now a comprehensive monitoring tool developed by the ACERWC with specific indicators to consistently and comprehensively assess member states' efforts and progress in promoting the rights and well-being of CWPC, which, when used, will provide States with critical data they need for the development of informed policies and services.

94. Laws must be enacted to strictly regulate the collection, use and distribution of images and personal data about children in alternative care. Explicit and informed consent must be required from children and their legal guardians before images or personal information is shared, and these may not be used for fundraising or promotional purposes without adherence to ethical guidelines. Exploitative use of images of children in alternative care must be criminalised, and social and media platforms alerted to remove unauthorised images.

⁷⁹ UN Guidelines par 40.

XIV. MONITORING AND PERIODIC REVIEW OF PLACEMENT

95. It is the role of the State, through its competent authorities, to ensure the supervision of the safety, well-being and development of any child placed in alternative care and the regular review of the appropriateness of the care arrangement provided. Challenges remain in terms of periodic monitoring of alternative care placements and settings, often due to a lack of capacity and the limited number of social workers. Therefore, scaling up the social workforce must be a priority.

96. Periodic monitoring of placements is not only international best practice, but is mandated by Article 25 of the CRC, to which all African Member States are State Parties. Moreover, it serves the best interest of the child to ensure that the placement remains suitable and that continuation of that placement remains necessary. It is critical, also, to have in place an independent monitoring mechanism that is easily accessible to children, parents and those responsible for children without parental care.

XV. TRAINING AND AWARENESS RAISING

97. These are part and parcel of the effort to build a child protection system from the grassroots up and have been referred to throughout this General Comment. Communities also need sensitisation on the development of family-based care options, such as foster care and adoption, to promote their acceptance.

98. States must provide adequate resources and channels for the training and recognition of the professionals responsible for case management for determining the best form of care to facilitate compliance with this General Comment. Training will be more sustainable if it is built into standardised curricula and delivered by national universities and similar institutions. Training should build on an analysis of the core competencies needed to promote better care for children.

99. National care reform strategies and policies should be popularised among all relevant stakeholders in the sector, including in the mass media, to broaden the use of these national tools. They should be accompanied by effective communication plans, national budget allocations, and advocacy strategies which are promotive of family-based care.

100. It is also essential that non-governmental and faith-based organisations currently managing institutions are held accountable to the principles outlined in this General Comment and are supported in transitioning to family-based care models.

XVI. ROLE OF STAKEHOLDERS

101. The effectiveness of States in addressing the rights and needs of children without parental care, as articulated under Article 25 of the ACRWC, largely depends on their capacity to adopt integrated and multisectoral approaches. These should be grounded in strategic partnerships with a broad range of stakeholders who hold varying degrees of influence and expertise. Such stakeholders include civil society organisations (CSOs), national human rights institutions (NHRIs), judiciaries, United Nations agencies, the media, religious institutions, traditional leadership structures, and community leaders. States are encouraged to engage these actors in a coordinated and strategic manner to reinforce national efforts aimed at preventing family separation, strengthening family-based care, and reforming alternative care systems, thereby ensuring the long-term sustainability and effectiveness of interventions.

XVII. DISSEMINATION OF THE ACRWC AND THE CONCLUDING OBSERVATIONS OF THE ACRWC, RATIFICATION OF OTHER TREATIES, AND PUBLICISING THIS GENERAL COMMENT

102. States should ensure that national legislation, policy and practice fully support the implementation of other human rights instruments such as the CRPD, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2018), and the Convention Against Torture.

103. Additionally, State Parties incur the overarching obligation to ensure the wide dissemination of the provisions of the ACRWC within their territory, including in forms and via means that are accessible to children and young people. So, too, must State Parties disseminate the contents of this General Comment widely, including to social welfare authorities, NGOS, charities and religious organisations (especially those involved in the alternative care system), and to communities.



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African Committee of Experts on
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