

Statement
of the Committee on the Rights of the Child
on article 5 of the Convention on the Rights of the Child

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Purpose of the Statement

1. The purpose of this statement is to clarify the concepts of parental guidance and evolving capacities of the child as enshrined in article 5 of the Convention on the Rights of the Child (Convention). It further seeks to explain how article 5 strikes a balance between the rights of the child and the responsibilities, rights and duties of parents as well as the State obligation to ensure the rights of the child in light of the importance of the family “as the fundamental group of society and natural environment for the growth and well-being of all its members and particularly children”, as stated in the preamble of the Convention.

2. While the family was already protected by international law when the Convention was drafted¹, the Convention – notably through its article 5 – brought a new, ground-breaking element: not only was the family protected against undue State interference, but children now both had the right to receive appropriate direction and guidance from their parents or persons legally responsible for the child, and to receive direct protection from the State, in cases where parents were failing to provide adequate protection.²

Holistic understanding of article 5

3. Any interpretation that singles out one of the elements of article 5 while ignoring or discarding the other elements – for example, highlighting the

¹ UDHR, art. 16 (3); ICCPR, art. 23; CESC, art. 10.

² CRC, General Comment No. 20, para. 19.

rights of parents without also mentioning ‘appropriate direction and guidance’, ‘in the exercise of the rights recognized in the current Convention’ would be contrary to an accurate and holistic understanding of the article.

Children as rights-holders

4. The Committee on the Rights of the Child recalls the legal commitment from State parties through the adoption of the Convention in 1989, to recognise children as rights holders separately from their parents.

5. The Committee reiterates that article 5 affirms that all children have rights, irrespective of their age, and that, as they grow, develop, mature, and expand their social circle beyond their family, they are entitled to an increasing level of responsibility, agency, and autonomy in the exercise of those rights. Children’s evolving capacities must be recognized and respected by those adults who provide direction and guidance over children’s lives.³

Children’s right to receive “appropriate” direction and guidance

6. In the exercise of their rights, children should receive appropriate direction and guidance by parents. They should also receive direct protection from the State, in cases where parents fail to provide adequate protection of, or in some cases, abuse, the rights of children.⁴ States also have a responsibility to build the capacity of parents, extended families, legal guardians and community members to provide appropriate direction and guidance to children.⁵

7. The Committee notes that parents’ responsibilities, rights and duties to guide their children is not absolute but, rather, delimited by children’s status as rights holders. The provision of direction and guidance by parents must be exercised in a manner to respect and ensure children’s rights. Article 18 of the Convention, which underlines the primary responsibility of parents, or legal guardians, for the upbringing and development of the child, states that ‘the best interests of the child will be their basic concern’.

8. Parents should take into account the views of children while providing appropriate direction and guidance to children. As a child grows and matures, greater weight should be given to the views of the child, with parents adjusting their guidance and direction to reflect the child’s evolving capacities in the exercise of their rights.⁶ Soliciting and hearing children’s views are requirements both when providing direction and guidance, and when assessing and determining the child’s best interests.⁷

³ CRC, General Comment No. 20, para. 42-43; CRC, General Comment No. 15, para. 31; CRC, General Comment No. 8, para. 47; CRC General Comment No. 7, para. 5; CRC, General Comment No. 4, para 7.

⁴ CRC, Article 19. CRC, General Comment No 8, para. 13; CRC, General Comment No. 20, para. 19 (CRC, General Comment No. 21, para. 35).

⁵ CRC, General Comment No. 21, para. 35.

⁶ CRC, General Comment No. 4, para. 7; CRC, General Comment No. 7, para. 17; CRC, General Comment No. 12, para. 84 and 85.

⁷ CRC, General Comment No. 14, para. 44.

Evolving capacities as an enabling principle

9. The Committee reiterates that the direction and guidance provided by parents should aim at the harmonious development of children to their fullest potential and should enable them to gradually exercise their rights.⁸ Parents should be encouraged to offer direction and guidance in a child-centered way, through dialogue and example, in ways that enhance the capacity of children, including younger children, to exercise their rights.⁹

10. The Committee reaffirms that the concept of children's evolving capacities is central to the recognition of children's status as rights-holders independently from their parents, and contributes to protecting the child from arbitrary family control.¹⁰ It establishes that when children reach a sufficient level of maturity and capacity to exercise their rights independently, there will be a decreasing need for parental direction and guidance.¹¹ As children acquire capacities, they are entitled to an increasing level of responsibility for the regulation of matters affecting them.¹² The evolving capacities should be seen as a positive and enabling process, not an excuse for authoritarian practices that restrict children's autonomy and self-expression, and which are often inaccurately justified by pointing to children's relative immaturity.¹³

11. The Committee recalls the importance of parents' responsibility to continually adjust the levels of support and guidance they offer to a child. These adjustments should take account of children's interests and wishes as well as the children's capacities for autonomous decision-making and comprehension of their best interests.¹⁴ The more children know, have experienced and understand, the more the parent, legal guardian or other persons legally responsible for the children have to transform direction and guidance into reminders and advice and later to an exchange on an equal footing. This transformation will not take place at a fixed point in children's development but will steadily increase as children are encouraged to contribute their views, which should be given greater weight.¹⁵

Article 5 read as a whole and consistently with the objective and purpose of the Convention

12. The Committee reiterates that article 5 is always to be read as a whole and consistently with the objective and purpose of the Convention and its affirmation of children as rights-holders.¹⁶ Here again, interpretation of "appropriate" direction and guidance must be consistent with the whole Convention and leaves no room for justification of violent or other cruel or

⁸ CRC, General Comment No. 12, para. 91.

⁹ CRC, General Comment No. 7, para. 17.

¹⁰ As stated in the CRC Travaux Préparatoires, 'in protecting the family from the State, the family must not be given arbitrary control over the child. Any protection from the State given to the family must be equally balanced with the protection of the child within the family. E/CN.4/1987/25: para. 106 and Legislative History, Vol. 1, 35.

¹¹ CRC, General Comment No. 7, para. 17. See also CRC, General Comment No. 20, para. 17.

¹² CRC, General Comment No. 12, para. 85.

¹³ CRC, General Comment No. 7, para. 17.

¹⁴ CRC, General Comment No. 7, para. 17.

¹⁵ CRC, General Comment No. 12, para. 84; CRC, General Comment No. 14, para. 44.

¹⁶ Vienna Convention on the Law of Treaties, Article 31, para. 1.

degrading forms of discipline.¹⁷ Accordingly, where parents exercise their responsibilities, duties or rights in a manner that is contrary to the rights of the child under the Convention, the State's obligation shifts from support for the responsibilities, rights and duties of parents towards a greater focus on the obligation to protect or uphold children's rights.

13. The Committee reiterates that all individuals under 18 years of age are children and are entitled to all the rights enshrined in the Convention, without any exception. Further, the rights of women and girls to equality in the family has been recognized in international human rights law.¹⁸ Therefore, neither the 'protection of the family'¹⁹, nor references to culture or religion, can be used as a justification for laws, policies or practices – such as child marriage, female genital mutilation, or discrimination in relation to nationality and custody – that would deny girls their full and equal human rights.²⁰ Parental direction and guidance should aim at enabling children, including girls, to exercise their rights free of any form of discrimination. States are not required to respect the right of parents to provide direction and guidance when such direction and guidance would promote discrimination.

¹⁷ CRC, General Comment No. 8, para. 28.

¹⁸ CEDAW, Article 16.

¹⁹ A/HRC/Res/29/22.

²⁰ Vienna Declaration and Programme of Action, para 5.