Policy Brief 4:

CHILD'S RIGHT TO IDENTITY

in alternative care for siblings

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These policy briefs are designed to explore specific issues through the protective lens of the child's right to identity as established in articles 7-8 of the Convention of the Rights of the Child (i.e. birth registration, name, nationality and family relations).

In their concise format, these policy briefs seek to complement the existing work of other stakeholders and where possible, reference is made to their work, with a view of facilitating a holistic approach to protecting children's rights.

As such, the policy briefs do not purport to provide a comprehensive analysis of all children's rights at stake such as non-discrimination, right to survival and development, health, education and other rights.

Child's right to identity in alternative care for siblings

Abstract

Sibling relationships are the longest relationships a person has in his or her life. They contribute to the individual's psychological development, are part of his or her identity and are a potential source of mutual support.

Although siblings are not specifically mentioned in the Convention on the Rights of the Child, Article 8 states that "States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations", the latter including sibling relationships.

When alternative care is provided, siblings can provide emotional support, make up for feelings of anxiety, guilt and loss of identity, and contribute to the well-being of children. However, there are situations that require siblings to be placed separately and this creates a tension between two rights: the right to family relations, which is part of the right to identity, and the best interests of the child, which requires separation from siblings and individualised care. Each situation is unique, complex and requires a rigorous assessment of the child's needs and the sibling relationship.

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Introduction

From ancient times, siblings have nourished myths, tales, classical and contemporary literature, and inspired cinema and theatre. This has demonstrated the universal character and the foundational aspect of this bond. Sibling relationships established in early childhood play a crucial role in the development of personality and identity. It is the first place where we learn sociability and it has an impact on all our future relationships. In addition, siblings are a potential source of invaluable emotional support and are among the most enduring relationships an individual can have in their lifetime.[1]

This unconditional sibling relationship is essential to a child's development and allows them to make mistakes while remaining loved.[2] Being a sibling is a role that is assigned, not acquired, and no matter what the circumstances, the sibling bond endures.[3] Nicole Prieur, philosopher and psychotherapist states that "in the psychological construction of an individual, the influence of siblings is much greater than that of parents."[4]

The course of life of children separated from their parents and placed in a foster family or institution can be traumatic, even if the decision is taken in the child's best interests and occurs after less intrusive measures have not worked. These children, already vulnerable due to life circumstances such as neglect, abuse, poverty or discrimination, have to leave a familiar environment. They are separated from their family, their friends, their community and therefore their origins. They may experience anxiety, sadness, guilt and loss of identity. All these feelings are likely to be exacerbated by the separation of siblings. This right to family relations, a component of identity, is protected by Article 8 of the

Convention on the Rights of the Child (CRC). As a young English man who spent his life moving from home to home, from family to family, without ever knowing his brothers or suspecting their existence, and who met one of them as an adult, recently testified:

"Meeting my brother made me imagine how things might have been if I had had regular contact with my siblings during all the twists and turns of the placement. Imagine if I'd had someone like that to talk to, someone to watch me grow up, it would have been a lifeline... He had an understanding of my journey. There was a connection between us."[5]

At the time of placement, it is therefore crucial to take siblings into account. The current trend is for siblings to be placed together unless it is not in the best interests of the child. The importance of this principle is such that it is part of international advocacy.[6]

Finally, the request to be able to stay with siblings also comes from children and is reflected in several testimonies.

"My sisters] are people I trust, people I love. And I have a lot of fun with them. They are more [than a best friend], yes more than that ... Having brothers and sisters means being with people who will always be there, who help you a lot, who love you and whom you love. So you don't spend all those days with your friends."[7]

Also:

"My brothers and sisters are still important to me, even today. I'm sure that if I hadn't been able to rely on them, I wouldn't be here anymore. Even if we don't see each other for a while, it doesn't change. They are important to me, you know? Some more than others of course."[8]

Although psychologists, sociologists and field workers as well as current research on siblings, **recommend the joint placement of siblings**, in certain situations of **violent conflict, abuse or major trauma**, placing siblings together is not recommended by professionals and **separation may be necessary**. We are then faced with a tension between two rights:

- the right to identity encompassing family relations and therefore including sibling relationships,

- and the interest of the child requiring a separate placement to protect his or her individual development.

Any other reason for separation, including reasons related to resources, would be contrary to the rights of the child.

After defining the notion of siblings in section 1, we will explain why and how siblings play a role in the construction of identity and the sense of identity in section 2. Section 3 will focus on international standards that protect the rights of siblings in alternative care. Sections 4 and 5 will elaborate on the benefits of joint placement of siblings and the risk factors that require separate placement. Section 6 will conclude by looking at how siblings should be considered throughout the placement decision process.

Definition

Siblings is a complex concept with several dimensions (legal, social, cultural, sociological) that do not necessarily overlap. The notion of siblings refers first of all to blood ties and having the same parents. Scailteur, Batchy and Kinoo (2009) state that *'a "brother of" is one who is born of the same parents and who shares the same genetic and socio-cultural heritage. Siblings represent a subsystem of the family, in the same way as the conjugal and parental subsystems."[9]*

But the notion of siblings cannot be reduced to common ancestry. With the increase of divorce and step families, family situations have become more complex and family patterns involving half-siblings (one parent who is the same) or step-siblings (no parents that are the same) are now very common.[10]

For several authors, it is the shared time, the common memories that forge the sibling bond as specified by Ruffo (2002) who insists on the strength of memories, space and shared objects.[11] Peille (2005) who speaks of "*longevity and shared time that weaves the sibling bond.*"[12] Beyond blood ties and having the same parents, a sibling is therefore the result of "*the affective ties woven between the members who make it up.*"[13] Siblings are also defined by various elements that greatly influence sibling relationships: the number of children, gender, age difference, birth order, and which make each sibling unique.

For the purposes of this analysis, therefore, we will consider full siblings, half-siblings, step-siblings, whether or not they have lived together, and adopted children who have no biological ties but live in the same household.[14]

The influence of siblings in the construction of identity and in the function of identity

a. Construction of the psyche

Different psychic mechanisms will be triggered with the arrival of a brother or sister. Seen at first as a similar person by the subject, he or she will then be perceived as another, a rival because the child must share his or her territory, the family heritage and above all the mother's love. According to Wallon and Lacan, the jealousy felt for the brother or sister has a fundamental role in that it will allow the child to leave the fraternal fusion by giving rise to a dynamic of differentiation which is absolutely necessary for the construction of identity.[15]

The child will have to overcome the fact that he or she is no longer unique and overcome this crisis of uniqueness[16] by setting up a progressive differentiation between him or herself and the other[17] consisting of the accentuation of certain characteristics in himself or herself and in the other in order to distinguish himself or herself. These processes of identification and differentiation are essential in the formation of identity.[18]

The child will experience two identity movements in his or her sibling relationships: one that consists of sharing a culture, a common history, values, through intergenerational transmission and that will give him or her a feeling of belonging, and the other that consists of differentiating. Each sibling, while having a common family heritage that represents a shared identity, will in fact own it in a different way according to different factors.[19]

b. Siblings' functions

"Sibling relationships perform a variety of functions including "attachment, security, resources and also a function of learning social and cognitive roles.""[20]

Attachment, security, resources

Fraternal ties are complex and ambivalent. After a period of rivalry, sibling relationships evolve towards greater complicity and solidarity. Siblings provide comfort, the feeling of belonging to a group, and offer models to identify with, which are rooted in the "*early promiscuity of early childhood.*"[21]

Learning social roles

Sibling relationships represent the first experience of socialisation with peers, the first form of relationship with the other,[22] the brother or sister being the first representative of otherness.[23] According to Daniel Gayet, "*siblings obey rules that prefigure the social relations of individuals, they are the draft.*"[24] Moreover, the sibling relationship allows for experimentation with peer relationships characterised by more freedom than with friends.[25]

Siblings are therefore part of our identity in two ways: not only do they play a part in the construction of our identity and contribute to a sense of belonging, but they also situate us in a family system.

It is worth mentioning that siblings also play a key role in child-headed households. Such family patterns are common in areas affected by high mortality from HIV/AIDS, war or genocide.[26]

International standards

The following three international standards are relevant to siblings.

a. The Convention on the Rights of the Child

The notion of siblings (section 1) is not explicitly mentioned in the CRC, but the notion of family is mentioned several times, for example in the preamble and in articles 5, 8 and 9. Moreover, Article 20 provides that, in the event of separation of the child from his or her family, he or she *"shall be entitled to special protection and assistance provided by the State"* and in its paragraph 3 that *"due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background,"* a requirement that will be partly met by keeping siblings together.

In this context, the Committee on the Rights of the Child refers to siblings in its General Comment No. 14: *"When separation becomes necessary, the decision-makers shall ensure that the child maintains the linkages and relations with his or her parents and family (siblings, relatives and persons with whom the child has had strong personal relationships) unless this is contrary to the child's best interests"*(2013).[27] The Committee recently reaffirmed in its report issued following the day of general discussion in September 2021 that "*States should ensure that siblings remain together, whenever possible, when they are in alternative care settings, whenever it is safe to do so and consistent with the views and wishes of the children.*"

At a minimum, siblings should have regular contact with each other, when it is safe and consistent with their wishes."[28] In relation to identity, Article 8 provides for the right to preservation of the child's identity, which includes name, nationality and family relations. It is the term family relations, and not parental relations, that has been retained, undoubtedly marking a desire to apply the CRC as openly as possible, as Nigel Cantwell observes.[29] Articles 7 and 8, which outline the right to identity, including family relations, which are not limited to parental relationships but also include siblings. UNICEF notes that "*a child's identity means more than just knowing who one's parents are. Siblings, grandparents and other relatives can be as, or more, important to the child's sense of identity as his or her parents are.*"[30]

b. The Guidelines on Alternative Care for children of 20 November 2009

The Guidelines are based on two fundamental principles: the principle of "necessity" and the principle of "suitability" of the alternative care measure.[31] Any decision to remove children from their families should occur only when all efforts to support the family have been exhausted. If placement is absolutely necessary, the Guidelines advocate that "*the type of facility chosen should be appropriate to the situation and needs of the child concerned, or children in the case of siblings.*"[32]

In the light of the principle of necessity, paragraph 17 of the Guidelines recommends that "*Siblings with existing bonds should in principle not be separated by placements in alternative care unless there is a clear risk of abuse or other justification in the best interests of the child. In any case, every effort should be made to enable siblings to maintain contact with each other, unless this is against their wishes or interests.*"

Furthermore, according to the principle of suitability, paragraph 62 states that: "*planning for care provision and permanancy should be based on notably ...the child's need or desire to feel part of a family, the desirability of the child remaining within his/her community and country, the child's cultural, linguistic and religious background, and the child's relationships with siblings, with a view to avoiding their separation.*"

According to the Handbook "Moving Foward: Implementing the 'Guidelines for the Alternative Care of Children", the national policy should, *inter alia*, "*require planning and placement processes to take into account the need to place a child with his/her siblings unless this is not in the best interests of the child*"[33] and "*require that siblings are kept together and that strenuous efforts are made to keep children in contact with their extended families and communities.*"[34]

c. The UN Resolution on the Rights of the Child focusing on children without parental care, adopted by the United Nations General Assembly on 12 November 2019

It recalls that every child deprived of his or her family environment has the right to quality alternative care and the preservation of family relations. It does not explicitly mention siblings but recalls the right to grow up in a family setting as well as the right to identity, including his nationalitý, name and family relations.

Some regional standards also state that siblings should not be separated.[35]

Advantages and benefits of keeping siblings together

The need to meet these international standards is justified by the many advantages of joint placement of siblings.

The theory of attachment developed by John Bowlby partially explains why joint placement of siblings should be encouraged. Attachment arises from reciprocal interactions between the mother (or her substitute) and the child. If it is positive, this attachment constitutes a basis of security for the child which will encourage a positive opening to the world (exploration function).

The quality of the attachment will contribute to the structuring of the child's personality and early attachment problems will lead to behavioural and emotional problems (Bowlby).[36] Although the preferred and primary attachment figure is the mother or her replacement, the child may develop attachments to others that will be "differentiated and hierarchical.[37]

Secondary attachment figures can help the child when the primary attachment figures fail. The older sibling can under certain conditions be a 'bridge attachment figure.'[38] The older sibling can provide a secure base for the younger sibling and fulfil the attachment exploration function.[39] The quality of the attachment also promotes resilience. Cyrulnik notes that "*a member of the family system (can) compensate for parental deficits. A brother or sister ... can obviously become the available parent, sensitive to the signals on which the little boy or girl builds his or her internal models.*"[40] Keeping siblings together can therefore contribute to greater resilience because "*we are not resilient on our own* (Cyrulnik)."[41]

a. Decrease sense of loss of identity

Some studies show that children in care, experience a loss of self, a loss of identity.[42] Because they share a common history, a joint placement with their brothers and/or sisters allows them to stay in touch with their past,[43] to have a sense of their history, a better understanding of themselves[44] and ensures family continuity.[45] They retain a sense of belonging that contributes to the stability of their personal identity.[46] Moreover, when they are placed with a family of a different culture or religion, joint placement would promote the link and continuity with their culture of origin.[47] SOS Children's Village International believes that "*at traumatic times in a child's life, sibling relationships that share a common history and strong emotional bonds are a fundamental source of continuity and security, not to mention a sense of belonging and identity.*"[48] According to Alan Kikuchi-White, siblings are a component of identity that contributes to a sense of family unity that goes beyond the parent-child relationship but also involves the children themselves, who serve as each other's anchors. And it doesn't have to be a positive, loving relationship. It's still part of your identity. Being able to stay with one's siblings strengthens the sense of belonging, and is a factor of resilience and permanence.

b. Mitigation of placement trauma and emotional support

The trauma that a placement situation can represent is accentuated by a separation from siblings.[49] Wojciak *et al* (2013) state in their study that positive sibling relationships help to mitigate the consequences of such trauma and are a protective factor for mental health.[50] Children experience a great deal of confusion, anxiety and guilt following separation from parents, and may also feel a lack of esteem and confidence, a sense of worthlessness.[51] Siblings are **"important mutual supports" and "compensate for the loss of parents in a placement context."**[52] In a placement, siblings provide stability and continuity for the child[53] which reduces the uncertainty of the placement, as their presence is often the only predictable factor in the situation.[54]

c. Stability of the placement

Studies are relatively unanimous on the fact that siblings placed together would also contribute to the stability of the placement[55] and would lead to less disruption of the placement.[56] The study by Drapeau, Simard, Beaudry and Charbonneau (2000) showed that children who are separated from their siblings at the time of placement will experience a greater instability than those placed together.[57] A joint placement would also contribute to a better adjustment to the placement.[58]

d. Facilitating reunification and networking for the future

Studies equally suggest that joint placement would contribute to accelerating reunification with the original parents, especially if the siblings have always been placed.[59] This type of placement would indeed contribute to strengthening family cohesion[60] by facilitating meetings with the natural parents. Siblings also represent a natural and accessible support network for the future.[61]

"I felt ready now to welcome people to my home, like a grown-up. My first guests were my brothers and sister (...) I was afraid of our miserable condition. I was not equipped to face it (...) As we saw each other very little, we had very little to talk about. We could go for long periods without speaking, long silences where our eyes would meet, elusive. (...) These moments were painful and frustrating. (...) A little snack was perhaps a good start... And then I wanted to show them that their elder brother had grown up, that he wasn't doing too badly and that he was even capable of living alone. I had to set an example. (...) I spent an excellent afternoon with Ludivine, Oliver, Christopher and Quentin. We talked to each other without running away from each other (...) We left each other, moved, promising to meet again soon.

Hakan Marty, dans Marty, H. (2021). Enfant mal placé. Ed. Max Milo.

Personal and social risk factors that require separate placement

Personal and social factors

Despite international standards that encourage the joint placement of siblings (section 3) and the multiple benefits of sibling placement (section 4), various personal and social factors prevent the joint placement of siblings. In the best interests of the child, siblings may need to be separated.

Professionals and experts are unanimous that one should not, in the name of a sibling ideology, try to place siblings together at all costs because this may be to the detriment of the child's best interests, which should be the primary consideration. These situations highlight the tension between two rights: the right to family relations, including sibling relations, and the best interests of the child, which may require individual placement and personalised treatment.

Although it has many benefits, in some situations joint placement is not recommended because it would hinder the proper development of the child.[62] A child may represent a physical or sexual risk to his or her sibling. There may also be great sibling hostility, rivalry and intense jealousy. In this case, one may ask whether it is not better to place the brothers and/or sisters together and repair and support this weakened tie rather than separate them[63] and risk depriving them of a precious resource. The maintenance of harmful hierarchical positions can also occur, for example in the case of a child who is stuck in the role of the victim or the harasser. The reproduction of harmful relationships or even pathogenic behaviour is also a risk. In this case, siblings placed together may reproduce these relational patterns and the children then remain stuck in their roles.[64] The children may also act as triggers for trauma in each other. Berger (2012) found that the presence of a sibling could bring back traumatic experiences.[65] Another fear is the "parentification" of the older child with the younger child and implicitly placing the responsibility for one child on the sibling.[66] It is generally perceived negatively but can have beneficial aspects in that it nourishes the sibling bond and is part of the dimension of gift and exchange that is important for the child. According to Thomas (1998), keeping siblings together can also entail the risk of a law of silence out of loyalty to their parents.[67] This loyalty can also be an obstacle to the process of becoming an individual.[68]

Several experts mentioned situations where siblings are separated because the different needs and pathways mean that the placement of a sibling is necessary for one child and not for the other. In this context, care is necessary for the young person but not necessarily for his or her brothers and sisters. One professional described the situation of a brother and sister who were in the middle of a severe parental conflict. The brother was very distressed by this situation, while his younger sister was not affected. As the boy grew older, he began to make suicidal threats and had to be hospitalised, which raised the question of placement. The child psychiatrists recommended placing the two children together, but the Regional Office for the Protection of Minors opposed the placement of the sister, considering that this decision was not appropriate for her because she had another history, another experience, and that this was the problem of the brother.

Professionals have also raised the situation that within a sibling group, one child is likely to enter foster care straight away, another who may not fit in at all because he or she is caught up in a loyalty conflict with the parents and therefore cannot be expected to fit in with a foster family. This child will then be placed in an institutional setting in which children are not in a position of competition with the educators and their parents. However, this would lead to a separation of the siblings.

"My meeting with my half-brother (...) accentuated my sad feeling of 'finding myself with nothing'...

But that said, those four years of separation seemed to have been worse for him than for me. (...) I looked at him, mute, staring at his features which spoke of the symptoms of a life spent in perpetual quarrels, which the judge called 'conflict of loyalty'."

Adrien Durousset, dans Durousset, A. (2016). *Placé, déplacé*. Ed. Michalon.

Various factors are involved in deciding whether to place children together or separately. Firstly, regarding the timing of entry into care, if siblings are not all placed at the same time, they are less likely to be placed together.[69] Age is also a factor, as young children are more likely to be placed together than adolescents. Similarly, where there is a large age difference, they may be placed separately and together, when they are close in age. Finally, children part of large sibling groups are less likely to be placed with the whole sibling group[70] .

Consideration of sibling placements is more complex in stepfamilies, which are increasingly common and reflect societal changes in the family. Professionals have to deal with fairly complicated configurations, for example, a mother who has four children from different fathers. The fathers are sometimes able to take care of the children and we end up with situations where one of the children is with his father, two others are placed in institutions and the last is placed with his grandfather. We also see some fairly common situations where for example two children have the same father and mother, who may be placed in alternative care. One of the parents moves on, has children again and has the capacity in this new situation to care for the children. This is still a separation of siblings, even if they have never met. In these situations, the existence of a pre-existing bond could be the decisive criterion for deciding whether siblings should be placed together.

The problem of structural factors

Often, the main barrier to joint placement of siblings is unfortunately a structural reality due to insufficient resources. This results in a lack of places in foster families and institutions. Some foster families are not prepared to care for sibling groups. Moreover, institutions are sometimes organised in such a way that they cannot accommodate siblings with a large age gap.

Even in cases where the law prescribes keeping siblings together and professionals try to implement it as much as possible, the system is not always organised in this way and a change in care structures would be necessary. These structural obstacles that prevent the keeping siblings together lead to a lack of respect for the rights of the child, particularly their right to identity in family relations.

Consideration of siblings throughout the placement decision procedure

a. The importance of assessing the child's situation and best interests

In the determination of a joint (section 4) or separate (section 5) placement, various factors and facts must be weighed in order to assess and determine the best interests of the child, which must be a primary consideration. An assessment of the situation is therefore the first step. The United Nations High Commissioner for Refugees (2021) has identified four factors to be taken into account in this determination: the views of the child and his or her relatives, safety and protection, family and close relationships including siblings, and the child's development and identity needs.[71]

According to the Scelles et al. report (2007)[72] and the opinion of Olivia Paul and Chantal Zaouche Gaudron(2015),[73]an assessment of the sibling dynamic, in which the characteristics of the siblings (gender, age gap, number of children) and the quality of the relationship are essential factors to consider before deciding on the type of placement. Indeed, a 2002 study by Kim found improved adaptations to placements based on the quality of their sibling relationship.[74]

Thus, among siblings with a positive sibling relationship, children placed together exhibit lower levels of adaptive problems, whereas those placed separately from their siblings have higher levels of adaptive problems. If the sibling relationship is negative, the sibling separation does not seem to have affected their adaptation. In assessing the situation, professionals attach great importance to the child's voice and to taking into account his or her needs.

b. Placement location

It is debatable whether it is better to favor a joint placement in an institution or separating siblings in foster care. The Guidelines generally recommend foster care, especially for young children. However, it states in paragraph 22 that institutional care for young children may be considered to avoid separation from siblings. A professional working in Geneva mentioned the situation where very young children stayed in institutions with their siblings and never experienced a family environment. She wondered whether, in this case, the fact that a very young child is growing up in a family environment should not take precedence over keeping siblings together.

c. Maintaining the link

When joint placement is not possible for personal or structural reasons, all professionals stress the importance of maintaining the bond between siblings. This is prescribed by international instruments such as the Guidelines. The maintenance of the link makes it possible to resolve this tension between the different rights mentioned above.

Recommendations

While the situation of siblings should always be determined on a case-by-case basis and in the best interests of the child, the following general elements should take into account their identity rights throughout the process and for each of the siblings:

- In order to facilitate the child's right to identity, the law should include an obligation to place siblings together, unless a separation is necessary and in the child's best interest on the basis of previously identified and documented indicators

- Establish a child's life book with information on siblings[75] (Guidelines. Para. 100), so as to keep track of family relationships and the identity of biological or other siblings in the family (fostered or not, biological or non-biological siblings, blended families, etc.);

- Increase human and financial resources so that care arrangements (family or residential) can accommodate siblings, allowing them to maintain a sense of belonging or at the very least facilitate contact with other siblings;

- Provide more support, financial and psychological, and specialised training to foster families or residential institutions, to better accompany and train them in the care of siblings (whether they are placed together or separately);

- When siblings are separated, promote their placement in geographically close locations, with the aim of maintaining sibling relationships if such contact and encounters are positive for all siblings;

- Increased training of professionals and staff in placement arrangements on the characteristics and importance of the sibling relationship, particularly in the sense of identity it provides.

End Notes

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CHILD IDENTITY PROTECTION