UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.4/1157/Add.2
E/CN.5/506/Add.2
13 February 1975

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Thirty-first session
COMMISSION FOR SOCIAL DEVELOPMENT

STUDY OF DISCRIMINATION AGAINST PERSONS BORN OUT OF WEDLOCK

Note by the Secretary-General

Addendum

Annex II

Part I

Replies received from Government* (continued)

United States of America

[8 January 1975]

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*/ Because of time pressure on the services concerned, the replies have been reproduced in the original language only.

COMMENTS AND OBSERVATIONS ON DRAFT GENERAL PRINCIPLES ON EQUALITY AND NON-DISCRIMINATION IN RESPECT OF PERSONS BORN OUT OF WEDLOCK*

The principles are excellent and clearly show that a great deal of time and thought went into their development. Throughout the draft the importance of giving persons born out of wedlock equal status with those persons born in wedlock is obvious.

Before making specific comments on the principles, it would be well to note that the Children's Bureau calls attention to two recent decisions of the United States Supreme Court which expand the rights of unwed fathers and affect children born out of wedlock. The decisions have far-reaching implications for both custody and adoption cases. The decisions and their implications are being studied by the American Bar Association, the Child Welfare League of America, the Children's Bureau, and social agencies.

In Stanley v. Illinois (405 U.S. 645, 1972) the decision, although made in a custody case, also would appear to be applicable to adoption cases. It ruled that an unwed father who has sired and reared a child has a right to be heard on whether he is fit to have custody. Therefore the consent, voluntary surrender or judicial termination of such an unwed father's parental rights should be secured before the child can be legally freed for adoption. Subsequent to this Supreme Court decision, the Illinois court decided that Stanley was not fit to have custody.

In Rothstein v. Lutheran Social Service of Wisconsin (405 U.S. 1051, 1972) a case concerned with the placement of a child for adoption, the Supreme Court vacated a prior State court judgement and remanded the Rothstein case to the Wisconsin Supreme Court for further decision, in light of the Stanley case. More than two years later, after many court continuances and referral to the lower court where the unwed mother's rights had been terminated some years before, Rothstein was declared to be unfit to have custody of the child, and his rights were terminated.

There have been different interpretations of the intent of the Supreme Court, and both decisions have caused considerable concern and confusion in cases where paternity has not been established. Many courts require the consent of an unwed father to an adoption plan for a child whether or not paternity has been established. During the time exhaustive efforts are being made to identify or locate the unwed father to secure such a consent, the child remains in foster care and cannot be placed for adoption. Such delays have adverse effects upon children who should have permanent plans made for them as early as possible.

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*/ These comments and observations are current as of December 10, 1974.

Pending further developments, the Children's Bureau recommends that adoption agencies confer with their attorneys on the implications of these decisions for their practice under their local laws. It also cautions that, where an unwed father is known, it would be wise to obtain his consent or a judicial judgment of his rights before a child is placed for adoption.

There are no definitive answers at this time regarding the applicability to situations where the identity or whereabouts of an unwed father is unknown. Some attempt to notify him may even be necessary, to satisfy the requirements of due process of law.

It is important to note that the Supreme Court decisions changed the role of the unwed father, since at the time that comments were last made on the STUDY OF DISCRIMINATION AGAINST PERSONS BORN OUT OF WEDLOCK (United Nations document E/CN.4/Sub.2/265/Rev.1, 1967), the unwed mother had sole rights to her child.

Some specific comments on the principles follow:

It would be well to provide a definition of the word "filiation" since various countries might have different interpretations of its meaning. Although it is not a word commonly used in the United States, when it is used it means "the establishment of a parent-child relationship and whatever rights and responsibilities flow from it."

Part I, principle 3:

We agree with the various provisions set forth for establishment of paternal filiation. However, the second part of this principle which states "Judicial proceedings to establish paternal filiation shall not be subject to any time-limits" might require some qualification. This statement would apply in the absence of any intervening legal cause that would terminate the rights of the unwed father. Some recognition should be given to the need for a provision under which the rights of the unwed father are terminated by a judicial process or otherwise as may be appropriate. The need is apparent when children are placed for adoption. A similar provision of termination of parental rights should be available also in other circumstances where needed. Such termination of parental rights would preclude subsequent proceedings for paternal filiation.

Part II, principle 9:

At the end of the first sentence, it should be required to add the words, "provided filiation has been established." (Refer to the first sentence in Part I, principle 3.)

Part II, principle 13:

The meaning of the first sentence in the second paragraph is not clear. A child born in the United States becomes a citizen of the United States and it would be impossible for a person to acquire "statelessness" except in very unusual circumstances. We agree that when only maternal filiation of a child born out of wedlock is established, that the effect would be the same as in the case of paternal filiation.

Part II, principle 14:

While the meaning is obvious, the wording could be more succinct.