

ARMENIA'S ORPHANS

INTERNATIONAL CHILD PROTECTION LAWS

Previous child protection research offers considerable insight into how to develop policies advancing international child protection. To examine the “best interest of the child” standard, the current study explores how children housed in six Armenian residential childcare institutions (RCI) perceive relationships with facility caregivers and peers. Results indicate that the children perceive each other as siblings, while the relationship between the children and directors is nurturing and supportive. While biological families may be perceived as serving the best interests of the child because of a genetic relationship, the dismissal of RCI as efficacious alternatives is misguided. Rather than reflexively advocating for the repudiation of RCI, which may deny vulnerable children a de facto familial environment, decision-makers should weigh the consequences of child rearing with biological families against all alternative environments, including institutionalisation.

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INTERNATIONAL CHILD PROTECTION LAW

International children's rights law confers duties on global stakeholders, who are then charged with assuring that children are safeguarded from harm and have a supportive child-rearing environment. A strong international child

protection system can address the many interconnected risks that confront children and their families. The challenge is to create and sustain a system that respects the familial institution while appreciating the challenges of poverty and parental apathy, as the child-rearing environment is critical to shaping educational, emotional, health, and social outcomes. It is a practical reality that children cannot always be raised with their biological family, as a multitude of micro- and macro-level variables sometimes make this difficult, if not impossible, to achieve. The challenge faced by decision-makers is to evaluate the efficacy of all child-rearing environments and surrogate caregivers and delineate a spectrum of alternatives (Dillon, 2015, *Time for a truth-based policy: Humanitarian access to children living without family care, Florida Journal of International Law* 27: 2365) that can be balanced against each child's specific needs.

Child protection shields children who are either suffering, or likely to endure, significant harm. Children have the right to be protected from economic exploitation and poverty, sexual abuse, and physical or mental violence, and all governments who adhere to international law should promote child protection consistent with international human rights standards. The "best interests of the child" (BIC) standard, the guiding principle in international children's rights law, is used by decision-makers to make placement decisions when parental care is compromised.

Best Interests of the Child

Article 3 of the Convention on the Rights of the Child (CRC) adopted 20 November 1989, G.A. Res. 44/25, UN GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49, 1989, entered into force 2 September, 1990; provides that the BIC standard should consider the rights and duties of parents, legal guardians, or other legally responsible persons. Under this principle, a decision-maker must give the child's interest primary consideration. The principle affords flexibility because what is best for one child may not be so for another. The BIC standard

is not about the outcome, but the process, i.e., the best interest determination (BID). (Hammarberg, 2008, *The Principle of the Best Interests of the Child – What It Means and What It Demands from Adults, Council of Europe*) Specifically, a BID “describes the formal process designed to determine the child’s best interests for particularly important decisions affecting the child, that require stricter procedural safeguards . . . and involves decision-makers with relevant areas of expertise and balances all relevant factors in order to assess the best option”. (United Nations High Commissioner for Refugees, 2008, *UNHCR Guidelines on Determining the Best Interests of the Child, United Nations High Commissioner for Refugees*)

To better understand the rights enjoyed by children, we explore the CRC, the most comprehensive instrument of children’s entitlements that Nelson Mandela referred to as: “...that luminous, living document that enshrines the rights of every child without exception, to a life of dignity and self-fulfillment”. (Mandela, 2006, *Statement on Building a Global Partnership for Children, http://www.mandela.gov.za/mandela_speeches/2000/000506_children.htm*) In addition, we evaluate the 2010 Guidelines for the Alternative Care of Children (hereafter the Guidelines). (General Assembly Resolution 64/142, *Guidelines for the Alternative Care of Children, A/RES/64/142 (24 February 2010), undocs.org/en/A/RES/64/142*) By delineating the overarching principles that guide international child protection, the CRC and Guidelines have played a critical role in fostering humanitarian progress for children during the past 30 years.

The 1989 Convention on the Rights of the Child

The CRC was the first international instrument to address child protection as it relates to removal from the family unit and institutionalisation. Article 3 of the CRC states that, “States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision”. The Convention not only contemplates the need for institutions, but provides official guidelines to follow when children are institutionalised, including provisions for suitable caregiving staff. Article 18(2) of the CRC states that, “for the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children”. (Adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989))

(entered into force 2 Sept. 1990) Article 18(2) contemplates a reciprocal relationship between biological family and the state, recognising that there will be circumstances in which children will need to live outside of the family home.

Article 20(1) of the CRC states that children, “temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State”, (*ibid*) and that, “States Parties shall . . . ensure alternative care for such a child”, **Specifically, the Guidelines, “support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption**

Article 20 not only acknowledges the quagmire that some children cannot be raised by their biological family, but suggests that child rearing outside of the family environment may be permanent. Article 20(3) states that non-filial care “could include... foster placement... adoption or ... placement in suitable institutions for the care of children”, adopted 20 November 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49, 1989, entered into force 2 September 1990. This was the first statement in international law where alternatives to biological child-rearing were contemplated.

The 2010 Guidelines for the Alternative Care for Children

A UN General Assembly (GA) resolution is a decision or declaration voted on by Member States, usually requiring a majority to pass. While there is debate as to whether GA Resolutions are an authoritative source of international law, (*Kerwin, 1983, The role of United Nations General Assembly Resolutions in determining principles of international law in United States Courts, Duke Law Journal 1983: 876-899*) they derive their authority from the UN Charter and are intended to clarify existing Conventions, which *are* authoritative sources of international law. The Guidelines “are intended to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so”. (*General Assembly Resolution 64/142, Guidelines for the Alternative Care of Children, A/RES/64/142 (24 February 2010)*),

available from undocs.org/en/A/RES/64/142) In the Annex, the Guidelines suggest a preference for familial care above other options. Specifically, the Guidelines, “support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption” (*ibid*) While there is no mention of residential childcare institutions (RCI) in the Annex, the Guidelines suggests that when familial care is not possible or contrary to a child’s best interests, “the most suitable forms of alternative care” (*ibid*) should be provided.

The Guidelines suggest a hierarchy of preferred childcare environments, beginning with biological parents and then kinship care. Residential childcare facilities are then discussed as “alternative care” options. Following biological parents and kinship care, the Guidelines indicate that the “use of residential care should be limited to cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests. (*ibid*) The phrase “limited to” suggests that residential care should be considered only when all other options have failed to serve the child’s best interests.

RESEARCH METHODS AND FINDINGS

There are two types of RCI in Armenia: orphanages and special boarding schools. The children housed in these institutions are either natural orphans (i.e., children who have no living family or whose parents have had their rights terminated) or social orphans that is children with living biological parents who are unable and/or unwilling to care for them but whose rights have not been terminated. Armenia acceded to the CRC in June 1993 and this obligation requires (https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV11&chapter=4&clang=_en) national authorities to safeguard institutionalised children by applying the BIC standard. This requires balancing all the elements necessary to make a child-specific placement decision and assuring that all such decisions are made to foster the child’s happiness, security, and emotional development.

Sampling

Data were collected in collaboration with the Society for Orphaned Armenian

Relief (SOAR) (www.soar-us.org) and approved by Armenia's Ministry of Labour and Social Affairs and the Ministry of Education. A total of 160 children from six institutions, and their respective directors, were interviewed between February and May 2021. Facilities which *only* house residents 18 years of age and older, special needs children, or children under the age of six were excluded. Data were collected confidentially after oral consent was obtained from each respondent.

Descriptive statistics

A total of 163 children were approached to participate in the study. Of those, 160 (98 per cent) participated. These strong response rates are consistent with previous research conducted in similar settings (Yacoubian, 2022) and suggest that hidden populations can be studied successfully when there is collaboration with national authorities and professionally trained research staff. Of the 160 respondents, a majority was female (58 per cent). The average age was 14.5 years old. Most of the children had lived at their current institution for at least 4.5 years, an important consideration in

the attachment and social bonding literature. (G. Armsden, and M. Greenberg, *The inventory of parent and peer attachment: Individual differences and their relationship to psychological well-being in adolescence*, 16(5) J. YOUTH ADOLESC. 427 (1987)

Positive interaction between a child and primary caregiver significantly impacts the development of the brain. Children seek interaction with adults, especially between birth and three years of age. The absence of this reciprocal relationship can hinder brain development.

Perceived Relationships by Children

As shown in Table 1, the results indicate strong attachment between the children and directors. The children reported that the directors *always or often*: speak to them in a warm and friendly voice (91 per cent); smile at them (92 per cent); make them feel wanted (94 per cent); and tell them they are loved (87 per cent). Seventy per cent of the children *always or often* perceived the director as their parent.

Table 1. Perceived Relationships by Children to Directors (N=160)

	Always	Often	Sometimes	Never
Speaks to you in a warm and friendly voice	71%	20%	6%	3%
Helps you as much as necessary	65%	21%	12%	2%
Lets you do things you like doing	42%	28%	26%	4%
Is emotionally connected and warm to you	67%	19%	8%	6%
Understands your problems and worries	63%	21%	9%	7%
Is affectionate to you	72%	16%	10%	2%
Wants you to grow up	85%	12%	2%	1%
Invades your privacy	2%	1%	3%	94%
Enjoys talking things over with you	65%	22%	8%	5%
Frequently smiles at you	70%	22%	6%	2%
Understands what you need	69%	16%	8%	7%
Lets you decide things for yourself	24%	23%	34%	19%
Makes you feel wanted	70%	24%	3%	3%
Makes you feel better when you are upset	59%	22%	10%	9%
Talks with you	57%	25%	15%	3%
Praises you	57%	25%	13%	6%
Tells you that you are loved	63%	24%	8%	5%
You think of the director as a parent	58%	12%	19%	10%

As shown in Table 2, the results indicate strong peer relationships. The children reported that their peers can *always or often*: tell when they are upset about something (75 per cent); accept them for whom they are (92 per cent); listen to what they have to say (91 per cent); and care about how they feel (84 per cent). Eighty-one per cent of the respondents *always or often* perceived and treated their peers as siblings.

Table 2. Perceived Peer Relationships (N=160)

	Always	Often	Sometimes	Never
You like to get your friends' point of view on important things	56%	20%	16%	8%
Your friends can tell when you are upset about something	53%	22%	11%	14%
Your friends care about your point of view	53%	19%	24%	4%
Your friends understand you	58%	24%	13%	5%
Your friends encourage you to talk about your problems	50%	27%	12%	11%
Your friends accept you for who you are	68%	24%	6%	2%

Your friends listen to what you have to say	61%	30%	6%	3%
You feel your friends are good friends	79%	16%	4%	1%
Your friends are easy to talk to	59%	26%	13%	2%
When you are angry about something, your friends are understanding	62%	15%	12%	11%
Your friends help you understand yourself better	54%	25%	14%	7%
Your friends care about how you feel	63%	21%	12%	4%
You trust your friends	55%	26%	15%	4%
Your friends respect your feelings	63%	24%	11%	2%
You can tell your friends about your problems	42%	19%	23%	16%
If your friends know something is bothering you, they ask you about it	49%	29%	12%	10%
You think of the children at this facility as yoursiblings (brothers and sisters)	57%	24%	9%	10%
You treat the children at this facility as your siblings (brothers and sisters)	64%	17%	11%	8%

Director Perceptions

Of the six directors, half were female. On average, the directors had served in their position for at least five years. The average age of the directors was 45.5 years old, approximately 30 years older than the children in their charge. Table 3 illustrates how the directors perceived the children at their institutions. The directors reported that they *always or often*: speak to the children in a warm and friendly voice (100 per cent); help the children as much as necessary (100 per cent); let them decide things for themselves (100 per cent); make them feel wanted (100 per cent); talk with them (100 per cent); praise them (100 per cent); and tell the children they are loved (100 per cent). All the directors *always or often* perceived themselves as parents and treated the children as their own children.

The practical reality, however, is that no biological families are immune to environmental and situational factors, like poverty, alcohol and drug abuse, and domestic violence, that sometimes contribute to the dissolution of the family unit.

Table 3. Perceived Relationships by Directors to Children

	Always	Often	Sometimes	Never
Speak to them in a warm and friendly voice	50%	50%	0%	0%
Help them as much as necessary	67%	33%	0%	0%
Let them do things they like to do	33%	17%	50%	0%
Are emotionally connected and warm to them	83%	17%	0%	0%
Understand their problems and worries	67%	17%	16%	0%
Are affectionate to them	50%	17%	33%	0%
Want them to grow up	100%	0%	0%	0%
Invade their privacy	0%	0%	0%	100%
Enjoy talking things over with them	67%	17%	16%	0%
Frequently smile at them	67%	17%	16%	0%
Understand what they want and need	83%	17%	0%	0%
Let them decide things for themselves	67%	33%	0%	0%
Make them feel wanted	100%	0%	0%	0%
Make them feel better when they are upset	67%	33%	0%	0%
Talk with them	83%	17%	0%	0%
Praise them	67%	33%	0%	0%
Tell them that they are loved	50%	50%	0%	0%
I think of these children as my own children	67%	33%	0%	0%
I treat these children as my own children	83%	17%	0%	0%

Discussion

Nurturing family environments are positively associated with child development. To rear emotionally healthy children, caregivers must provide love, a sense of belonging, and a lifelong connection to a small community of people. Within “families,” children participate in cultural traditions, have a sense of shared history, and learn important social skills that help them engage and interact as community members later in life. Research during the past three decades has demonstrated that positive interaction between a child and primary caregiver significantly impacts the development of the brain. Children seek interaction with adults, especially between birth and three years of age. The absence of this reciprocal relationship can hinder brain development. (Groark et al., 2011, *Characteristics of environment, caregivers, and children in three Central American orphanages, Infant Mental Health Journal* 32: 232-250)

There are approximately 1,600 children residing in Armenia's orphanages and special boarding schools. This is a relatively small number compared to the overall and child populations in Armenia. Official data indicate there are approximately three million residents in Armenia (*Worldometer, Armenia Population* (2020)), of which at least 600,000 are children. (https://armstat.am/file/article/sv_06_19a_520.pdf?fbclid=IwAR3dDa1fgxlyET318ZJvpVB3W4OaddELWa58YAj0L3oK4kshcF7a-Qk0ayo (2020)) This means that only .00005 per cent of Armenia's population, and .003 per cent of the child population, resides in RCI. This small proportion suggests that orphanages and special boarding schools satisfy a critical need for the most vulnerable of Armenia's children.

The rights of the child are the least contentious human rights in the world, particularly as they pertain to protection against violence, exploitation, and abuse. Now in its 30th year, the CRC is the most ratified human rights treaty in history. Despite near universal ratification of the CRC, few scholars have addressed the relationship between the protections afforded in the CRC and institutionalisation. (*Yacoubian, 2022*) An assessment of Armenia's residential childcare institutions as a case study in international child protection, *Advanced Applied Sociology*; (*Sandberg, 2015*) The Convention on the Rights of the Child and the vulnerability of children, *Nordic Journal of International Law* 84: 221-247), (*Rosenthal, 2018, the right of all children to grow up with a family under international law: Implications for placement in orphanages, residential care, and group homes. Buffalo Human Rights Law Review* 25: 65-137) have offered extensive commentary, but the work is flawed in several respects. First, Rosenthal asserts that parents are required to relinquish children to RCI "because medical or social service authorities tell them that their children would be better off in institutions". (*Rosenthal ibid*). Blanket generalisations are why the coalescence of science and law are critical to understanding the evolution of child protection decision-making. Our experience in Armenia illustrates that no medical personnel, facility directors, or state authorities *encourage* institutionalisation or *recruit* children into residential

Compelling legal arguments are only reinforced when supported by empirical findings. Our research demonstrates that blindly rejecting RCI may hinder a child's emotional, physical, intellectual, and professional growth. While the "family" unit is presumed to be the ideal child-rearing environment, the definition of "family" must be fluid if a child's best interests are to be served.

facilities. Second, Rosenthal argues that all children should live in families. By reflexively calling for the repudiation of *all* RCI, he overlooks the advantages of residential care relative to other environments and discounts those scenarios where living in a care facility *is* best for a child. Third, Rosenthal (*ibid*) states that humanitarian organisations perpetuate institutionalisation because “extensive charity aid and volunteer support create incentives for governments or private business to build new orphanages, “international assistance programs often have an impact far beyond the cash value of assistance” and “the plaque on the wall of the institution from a prestigious donor signals that a program is respected by the international community”. (*ibid*) These statements are as contemptible as they are groundless. Humanitarian organisations improve the lives of institutionalised children through an array of environmental improvements and educational programmes. Rosenthal erroneously prioritises familial reunification over basic human rights, including education, cultural activities, and hygienic living. Renovated bathrooms, academic programmes, and holiday celebrations, for example, do not make institutional life more appealing but instead actualise a physical environment that all children, institutionalised or otherwise, *are entitled to under international law*.

Policy Recommendations

Critics of institutionalisation operate under the assumption that biological families provide a more optimal child-rearing environment than *familial environments generally*. The fundamental flaw to the deinstitutionalisation argument is the assumption that the *biological* family, because of a genetic relationship, affords children a greater opportunity for more positive long-term outcomes than a surrogate family. The practical reality, however, is that no biological families are immune to environmental and situational factors, like poverty, alcohol and drug abuse, and domestic violence, that sometimes contribute to the dissolution of the family unit. It is important to recall that the CRC and Guidelines *contemplate* the disruption of the family unit. That international law recognises institutionalisation as a potentiality means that “environmental reassignment” should always be *considered* as a viable child placement alternative.

There are two major implications for the current study. First, compelling legal arguments are only reinforced when supported by empirical findings.

Our research demonstrates that blindly rejecting RCI may hinder a child's emotional, physical, intellectual, and professional growth. While the "family" unit is presumed to be the ideal child-rearing environment, the definition of "family" must be fluid if a child's best interests are to be served. Second, a BID must begin by exploring *all* alternative physical environments within which a child can be raised. Our research belies the presumption that authorities should defer to biological families. Instead, those RCI which meet international human rights standards may indeed offer greater long-term outcomes, and comparable emotional love and support, than biological parents or kinship care. If the BID demands a child-focused approach, then the process must also include a thorough and perpetual assessment of the residential facility in which a child would be placed. ❧ DI2632022AOGYLB@136147