THE RIGHT TO EDUCATION AND HIGHEST ATTAINABLE STANDARDS OF HEALTH FOR CHILDREN LIVING IN PRISONS WITH THEIR PRIMARY CAREGIVERS: CASE OF MOLDOVAN AND ARMENIAN CONSTITUTIONS

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DOI: https://doi.org/10.59295/ssdoed2025.57

Abstract: *This study sought to identify the legal instruments and mechanisms use to protect children's rights who were deprived of their liberties because of living with their Primary Care Givers in Prison (PCG-P) in Armenia and Moldova based on their constitutions. The study was guided by the Interest-Based Theory of Human Rights. Qualitative research design was used to conduct the study. The targeted population were prison officials, female PCG-P with children in prison, government officials and human rights experts. Data was collected using focused group discussions and secondary sources of data were also used alongside internet-related search. The findings demonstrated robust legal frameworks for enforcing the right to health and education for children deprived of their liberties in both countries exist. The study recommends research be done to determine how effective are these mechanisms used in both countries. The study concludes the findings are valuable as they demonstrate existing loopholes in enforcement of mechanisms aimed at improving the health and education of these children. The study recommends periodic monitoring and evaluation of mechanisms needs to be done constantly.*

Keywords: *children deprived of liberty, primary caregivers in prison, right to health, right to education, prison reforms.*

Introduction

Each year, available estimates show that in the European Union (EU) alone, more than 2.1 million children are separated from parents who are serving jail terms every year in the European Union alone (1). Imprisonment of the primary caregiver of a child defines the way that child enjoys their rights based on various contextual factors such as imprisonment period, age of the child, nature of publicity and type of correctional facility, and the inherent culture permeating the facility (Ibid). Scholars concur that primary caregivers of children are usually women. They constitute the "central crux …serving as primary caregiver[s] to children" (2) women play an indispensable role in family life. The normative roles of women extend from reproductive role to the raising of children and caring for sick family members. These roles are very unique and are dictated by culture, religion and beliefs. Despite these, their contributions in caregiving remain unrecognized except by the beneficiaries. Caregivers of people living with HIV/AIDS (PLWHA. Consequently, when women are imprisoned, the effects of their incarceration has a likely greater impact on their children regardless of whether they live with them in prison or not. On the other side, various stakeholders concerned with children's rights are increasingly focusing, more attention on international laws and their effects on the rights of children can be used to advance the issue of children's rights in the contexts of those living with their PCG-P (3). Pursuant to that, the question of how the rights of children deprived of liberty and freedoms on account of being in prison with their caregivers persists. In the United States, children inadvertently detained alongside their primary caregivers may be subject to negative discrimination and treated in the same way as their parents (4).

Prison incarceration for adults usually neglects the unique position of children who are deprived of their rights and freedoms on account of their caregivers serving their jail terms or being legally detained in authorized facilities by law. All children have a right to live with their parents and receive parental care from them as per Article 9 of the Convention of Rights of Children (5,6)"container-title":"UNICEF","genre":"HTML/ TEXT","language":"en","title":"Convention on the Rights of the Child - 30th Anniversary","URL":"Accessed on 05/03/2024 from https://www.unicef.org/moldova/en/convention-rights-child-30th-anniversary","author":[{„family":"UNICEF","given":""}],"accessed":{„date-parts":[[„2024",3,5]]},"issued":{„date-parts":[[„2024"]]}}},{„id":4056,"uris":[„http://zotero.org/users/7049195/items/LH7W6JHZ"],"itemData":{„id":4056,"type":"web-

page”,”abstract”:”Entry into force: 2 September 1990, in accordance with article 49 Preamble The States Parties to the present Convention, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,”,”container-title”:”OHCHR”,”language”:”en”,”title”:”Convention on the Rights of the Child”,”URL”:”https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child”,”author”:[{„family”:”UNCRC”,”given”:””}],”accessed”:{„date-parts”:[[„2024”,6,17]]},”issued”:{„date-parts”:[[„1989”]]}}}],”schema”:”https://github.com/citation-style-language/schema/raw/master/csl-citation.json”} . The significance of this study was to provide more information about children and the question of how Moldova and Armenia go about enforcing the rights of children in the prison systems. It also suggested areas for further research for academic. Policy formulation and legislation need to be adequately informed of the status of the rights of these children to develop policies, rules and guidelines that adequately enable the States to competently and effectively meet their obligations of ensuring that children who are in prisons with their caregivers are considered, their rights to education and health addressed and ensure they get the best opportunities like their counterparts outside the prison facilities. The objectives of the study were to find out the legal instruments and mechanisms used in enforcing the rights of CLIPs with their primary caregivers in Moldova and Armenia

Method

The study used qualitative study research design and was conducted Moldova and Armenia. The rights that were within the scope of this study were the rights to health and education for children who were deprived of their liberty on account of living with their caregivers serving their jail terms. It was based on the concerns of Articles 9, 24, 28 and 29 of the UN Convention of Rights of Children (CRC) which has resulted in similar provisions in the European Convention on the Exercise of Children’s Rights (ECECR). The study relied on focused group discussions (FGD) when data was collected from the participants that were involved in the study. The secondary data was heavily relied on which included but not limited to UN and national reports, national constitutions of Armenia and Moldova, information from web sources (as listed in the reference list), filled questionnaires (that acted as a foundation to the web-information search) and an FGD of 14 people constituting officials from Mol-

dovan Office of the Ombudsman, students of Yerevan State University and Moldova State University and faculty members from the Moldova State University. Some of the documents analyzed included but were not limited to the Constitution of the Republic of Moldova, the Constitution of the Republic of Armenia, Education Strategy 2030 of Armenia, the Education Code of the Republic of Moldova, the Law of Republic of Armenia on General Education and the UNDHR amongst others. The study faced insurmountable bureaucratic and logistical problems that impeded on the effective collection of enough data to meet all the research objectives in both Moldova and Armenia.

Data analysis used thematic, contextual, content, and textual analyses to develop an understanding of how prison authorities, primary caregivers, child welfare officers, education officials and relevant others contribute to ensuring that the rights to education and health are fulfilled for CLIPs with their PCG-P. The research study adhered to ethical standards of research, and legal requirements of the Republics of Armenia and Moldova.

Results and discussion

The two countries of Armenia and Moldova have national constitutions that provide for the right to health as well education in. This are important aspects that have a heavy impact on the way a child grows in terms of developing life skills and having a healthy life in making them productive members of the society.

The Constitutions of Moldova and Armenia construct their human rights articles based on United Nations Declaration for Human Rights (UNDHR), which further constitutes the laws of the countries. In recognizing international legal instruments as being operational, Article 11 of Constitution of Moldova (CORM) clearly provides for this by stating explicitly that "The Republic of Moldova shall recognize… international treaties… [and that once] ratified by Parliament shall be part of the national law" (7).

This provides the link in the way international laws are domiciled by the constitution of the Moldova to be operational as legal instruments that provide direction on how to conduct human rights issues in the country to be in line with internal laws, policies, and regulations. For Armenia, this domestication of international norms into the national laws and policy frameworks is guided by Article 6 of the Constitution of the Republic of Armenia (CORA) constitutions which categorically states to the effect that the country "… recognizes… international law and their implementation in the Republic of Armenia…"(8). Both CORA and CORM have provisions that state in case of any conflict between national and

international laws, the international laws take precedence over the local laws of both countries (7,8)

Article 85 of the CORA provides that everyone has a right to health care, this law stipulates the free of charge medical services and care and the procedures for ensuring that said right is PPF (9).

In Moldova, Article 36 of the CORM clearly establishes that health is a right that is an entitlement to everyone and whose rights should be promoted, protected and fulfilled (PPF) is, or should be secured, by provisions of the law that must establish the relevant mechanisms (7). Based on this observation, it follows that Children Living in Prisons (CLIPs) with their PCG-P are humans who deserve that protection, and the special situation calls for special mechanisms must be implemented through legislative enactments to give the CORM stipulations meaning in terms of the guarantees of protecting human rights for these children.

CORM in that sense should be construed as providing the overall legal framework at the national level for establishing healthcare systems that positively respond to the dictates of assuring the individual of their physical wellbeing, being free from biophysiological anomalies and sound mental health as so covered in Article 37 of CORM (8). It provides that all people in Moldova have a right to inhabit a safe and healthy environment that "is ecologically safe and healthy… to consume healthy food, …" (7). Furthermore, Article 27 (3) of the CORM provides that concealment or misrepresentation of facts that may affect a person's health may lead to either that public official or individual in their private capacity to be held liable and accountable (*Ibid*). However, a survey of available literature and responses did not uncover any specific policy framework in both Moldova and Armenia that seeks to safeguard the right to good health through good nutrition for children living with their PCG-Ps.

The Moldovan government adopted Government Decision Number 1025 on the 21st day of December in the year 2010. This policy delves into the issue of CDTL and are living in prison with their primary caregivers. This law develops a legal framework for the protection of these children by stipulating the kind of care they should receive, where the legal prescribed care should be in tandem with the international recognized human rights standards, norms, and values. This law prescribes that child living in prison conditions with their primary caregivers need to be accorded an environment that facilitates their safe and healthy growth and development. Furthermore, it has provisions on the standard of healthcare, nutrition, and educational rights of the child where each child be

given an opportunity. What the legislation did was to seek to attempt to address a legal lacuna that failed to address the unique situation of these children and making the legal environment governing children's right must be aligned to international norms and standards as stipulated in international laws like CRC, and the Nelson Mandela Prison Rules.

The legal frameworks for the PPF of children's rights with special focus to HAE are derived from international treaties and national constitutions. The fact the two countries are signatories to many international human rights treaties such as the UNDHR, European Convention on the Rights and Welfare of the Child (ECRWC) and the United Nations Convention on Rights of Children (UNCRC) establish a concrete base upon which international norms, values and systems evolving through jurisprudence in children's rights trickle down into the legal systems and practices of the respective countries in the PPF of rights. Therefore, the obligation of the States to ensure children enjoy their rights to education and health regardless of their state, nature, social standing, race, and gender are not used to discriminate them. The constitutions of both countries require the elimination of prejudice in the way children's rights are enforced in a consistent manner with the tenet of the best interest principle coming into play.

The importance of that code is that it satisfies a legal condition which covers CDTL regarding living with their PCG-Ps. Part 2 of Article 9 of the education code further requires that the standard packet for all services due to one regarding compulsory education is affirmed by the government regardless of the property of education institution, which implicitly also covers the question of state institutional typologies such as prisons. In that case, for the government to meet its international obligations as enshrined in treaties like the UNDHR, UNCRC, and the ECECR, once supreme laws of the Constitution dispense with the legal framework, they establish mechanisms under which such rights are to be protected and fulfilled by the State Parties. In that regard, the Republic of Moldova and that of Armenia developed legal frameworks under which the rights of children to education have been laid down by legislative action, leading to establishing of mechanisms that pursue the education agenda in line with international treaties and local established laws. On a comparative basis, both Moldova and Armenia have enforcement strategies in complying with the issue of making education a universal right enjoyed by all children. The enforcement of the right to children for education is done on the principle of the BIC within a framework considering a commitment to achieve equality, universal access, and quality despite the various challenges both countries face.

In the Republic of Moldova, the country's constitution establishes the right to education by making basic education universal and free for every child. This is another example that qualifies it as a right to children living with their PCG-P, even though the age by which the children can stay in the prison facilities with their primary caregivers is given as maximum of 3 years, which may not adequately fit for the pre-school age for kindergarten and nursery. However, while the government pushes for reforms that are intended to achieve greater inclusivity for compulsory education until the age of 16 years, the maximum age of which children can stay with their caregivers in prison is 3 years. However, a survey of available of available literature and survey of responses from participants rarely captures the question of children deprived of liberty by virtue of the imprisonment of their primary caregivers, the contribution of the civic society and international NGOs and multinational bodies like UNICEF is nearly absent regarding this special category of children. This is explained by two probable causes, the first one being that the maximum age of which children can stay with their PCG-P is 3 years. Alternatively, this group may systemically be in exclusion because of the assumption that once they exit prison facilities at the age of 3-4 years, they are accorded within the mainstream education system outside the prison facility.

The situation in Armenia takes a divergent vector which is a conflicting position albeit with some similarities to the Moldovan scenario. In Armenia, the right to education is compulsory until when one attains the age of 17 years. The key difference is the fact that technically, in Armenia a child can stay with a primary caregiver after attaining the age of 4 years maximum unlike in Moldova. The research data analysis shows that both countries face challenges of fulfilling the rights of children to education living with their PCG-P as they are technically omitted from legal definitions of CDTL because of the crimes they committed neither are they prisoners living with their parents but as persons deprived of liberty by virtue of the incarceration of their primary caregivers.

What is evident with the Moldovan strategy of aligning the rights of the child deprived of their rights due to living in prison with their caregivers was to balance the need to accord, protect and fulfill the rights of the child with international legal norms and balance it off with the realities of the prison system. The enactment of government decision number 1025 was lauded as a step in the right direct by human rights bodies and interested person as it demonstrated a serious attempt to combine human rights issues with the penal system practices and realities alongside

viable social policies where applicable in the drive of safeguarding the wellbeing of the child vis a viz with the imprisonment of the parent, who are usually women that end up being the primary caregivers of the child.

A common feature of many countries is that they derive their national laws from the constitutions and concerns of children's rights in Europe are majorly constructed to reflect the European Convention on the Rights of the Child (ECRC), UN-CRC, and the UNDHR. State Parties that have ratified these international conventions must ensure that their national laws and constitutions reflect these international norms in their domestic laws in order to satisfy everyone that these treaties have effect and meaning in their national contexts

Despite the enactment of laws aimed to address the plight of children especially those who are vulnerable, according to Save the Children, it could account for children in protected institutions, but the report does not give an account of those who are deprived of their liberties but living with their PCG-P. This inadvertently shows that Civil bodies and NGOs may be overlooking this special group of children and incorrectly aggregating them as juveniles denied their liberties in detention facilities due to their offending the law and not as victims of deprivation of liberty since their primary caregivers were in detention forcing them to live with them in this detention facilities. The same report indicates that the functions of undertaking protection of child rights is undertaken in a manner that is compatible with annual programs, but are devoid of assessment standards by exhibiting a lot of assessment programs that "have a lot of shortcoming[s]" (10).

Under the Family Law Code of Armenia, the CORA and international treaties, children have a right to be cared for by their parents and where this is not achievable the BIC should be taken into consideration. This creates the chance of parents who are caregivers of their children to be allowed to live with their children within the Armenian prisons if it is in the BIC. Article 45 of the Family Code of Armenia stipulates that child have a right to the protection of their lawful rights and interest (National Assembly of Armenia 2005). The law recognizes that the protection of this rights and interest of the child is to be realized by the parents and where this is unachievable, by the departments of custody and guardianship. It is in this context that the prison authorities may act as guardians in the BIC should the child be in a situation deprived of liberty because of the incarceration of their primary caregivers. Consequently, the question of having the parents take care of the interests of their children in

prison is made possible via the various legal instruments that address the rights of the child. It also gives the primary caregiver a chance to participate in their children's upbringing despite the limitations in prison in ensuring the physical, emotional, and psychological development of the child is taken care of.

Examination of Article 49 and Article 50 provides the legal conditions of the prison facility in creating avenues that are intended to address the interest of the child living with their primary caregiver in prison towards health and education. These rights are also highly protected when the CRC is referred to in Article 28 which stipulates free basic education be made compulsory to all children. In this case, the State must align its laws and policies in ensuring that this right is enforced through creating enabling mechanisms within the prison framework in dealing with this unique subset of people deprived of their liberty in their status as children living with their PCG-P. One of the ways in which this right can be enforced is through creating an enabling environment that can promote their wellbeing in terms of health and education which are rights they should enjoy based on Article 50 stating that children and adults should be distinct treatment that recognizes their minor/adult statuses depending on the age of incarcerated person. However, the enforcement of this right may contradict the best-interest principle of the child and lead to separation of the child from the primary caregivers depriving them their right to parental care and family. It is on these premises that the BIC should be upheld and allow the child to stay in prison with their primary caregivers but due attention be accorded in ensuring that the prison grants them the highest attainable standards of health and quality education. The aim is reducing the gap in terms of the quality of healthcare and education in comparison with how others of the same standing but with no restrictions on their liberties in the external environments of the prison facilities have their issues addressed by the State.

In Article 6 of the LPRC in Armenia, Article 6 provides a good avenue for establishing working mechanisms that address the health challenges of this special group of children that is usually sidelined in policy formulations yet they are vulnerable group that needs healthcare due to living with their parents in prisons. Article 14 of the LPRC assuages of the provision of healthcare to these children even though the explicit mechanisms were not investigated by this study determine how effective they are. The general comments and survey of available literature does not provide adequate information for assessing the effectiveness

of these mechanisms established by law or are a direct outcome of the legislative actions.

Article 24 in the Armenia Laws of the Rights of the Child provides a legal basis for establishing mechanisms that lead to enforcement of actions and activities aimed at ensuring children enjoy their rights to education whatever the circumstances they are in in Armenia. However, while different scholars have examined this issue of universal education in Armenia, it remains evident that its concept as touching on CDTL courtesy of living with their primary caregivers is not addressed in scholarly discourses (11). Secondly, it is evident that more needs to be done to eliminate issues of accessibility to quality education in Armenia for CDTL courtesy of living with their PCG-P (12). This law is important because it establishes the right to education as a compulsory for all children in Armenia (13). It adds credence to the States efforts to make education available and enjoyed by all children including those living in prisons alongside their primary caregivers (14). While seeking to expand accessibility to education, Armenia must also exert more efforts in ensuring that CDTL are able to get quality education for a protected future alongside those of other entities like refugees.

The function of the Ombudsman is to investigate on allegations of human rights violations even within the prison settings. This underlies the importance of getting the right evidence to either certify a violation is taking place or otherwise. The study was not in a position the trace any documentation or relevant evidence of real-case studies where CLIPs in PCG-P have been able to accrue any benefits from this perspective, because such interventions are usually targeting CDTL but are offenders, unlike those CLIPs whose liberties have been restricted due to living with their PCG-P. This tends to lend credit to the fact that follow up and monitoring of these children's welfare is not well undertaken by the various constitutional mandated bodies that are required to achieve that goal such as the Ombudsman (10). The study could not clearly establish real cases of advocacy in which the Ombudsman has been promoting the rights of the child deprived of liberty and living with their PCG-P in terms of education and health. What the study established was that the Office of the Ombudsman may be presuming that these group of CDTL were in a similar situation like those facing penal code verdicts and sentences for their juvenile delinquencies which may not be the case. For the case of Moldova, the study found evidence that the Office of Obudsman was more proactive in the pursuit of PPF the rights of these special category

of children who have their rights restricted courtesy of the imprisonment of their primary caregivers.

Conclusion and recommendations

The study findings indicate that the two countries of Moldova and Armenia, have children living with their primary caregivers who face a unique situation that is technically different from those in detention due to the offences they have committed. This implies that the challenges they face may appear *prima facie* similar but are inherently different based on the grounds of their detention. The study findings demonstrated existence of strong legal frameworks derived from international conventions such as UNDHR, ECHR, CRC and related protocols which have informed the construction of the human rights Articles in their national constitutions. Pursuant to this, the study determined that the national laws as enacted by the Legislatures of both countries reflect a strong commitment by the two countries to achieve international human rights standards in the meeting their obligations in fulfilling, protecting, and promoting. The study makes the following recommendations.

1. For Armenia, she needs to incorporate proactive measures of monitoring and evaluating the mechanisms and ensuring that they are working and delivering on the goal of improving the health and education aspects of child rights for these children in prison with their primary caregivers.
2. In order to achieve the effect and intents of laws aimed at improving the health and education status of children living with their primary caregivers in prison this study recommends that proactive steps need to be undertaken to ensure that there are necessary resources, facilities, adequate funding and provision of healthcare givers who can actualize the law pragmatically in achieving the provision of healthcare services of the highest attainable level to these children in both Moldova and Armenia respectively
3. Due to the bureaucratic demands needed to get clearance to access primary caregivers living with their children in prisons, both in Armenia and Moldova, it was not practical to interview them, which meant the study was not able to meet all its objectives. It is the opinion of the researcher that more studies need to be conducted to determine how well are the mechanisms put in place are effective in achieving their goals regarding rights of children living with their primary caregivers in prison. These explorative study findings and

survey of available literature indicates that this is a grey area in academic circles that needs more effort to develop a better understanding of the situation of these children who have not been well considered for human rights research studies and there exist very scarce research findings about their situation. They have often been lumped together with children who are deprived of their liberty courtesy of their offenses instead of their unique position as deprived of liberty due to living with their incarcerated primary caregivers in prison.

4. The study also recommends incorporating child play as part of lifelong learning for children living with their primary caregivers in prison. This is strongly proposed for Armenia where it was established that playgrounds were deemed not necessary for the children under the age of 6 years, yet it is through play that children are able to learn through imitation and mimicking others and learn social skills through this. It is an aspect that has lifelong impacts on the child and should not be discounted as not necessary.
5. In both Armenia and Moldova, the Office of the Ombudsman should become more proactive in policy advocacy and monitoring of mechanisms that are used to enforce the rights of children to education and health when they are deprived of their liberty due to incarceration of their primary caregivers. This is likely to increase the effectiveness of these mechanisms that are geared towards addressing the unique position of children living with their primary caregivers in prison.
6. In relation to civil bodies and NGOs, further research needs to be conducted to determine their role in improving the welfare of these children deprived of their liberty by virtue of living with their incarcerated primary caregivers in prison. This study was not able to determine the extent of their involvement in addressing these children's right to education and highest attainable standards to health yet it is a priori knowledge that they do contribute to the lives of these children.
7. This study recommends that relevant government offices dealing with these children such as the prison authorities, and Ombudsman offices need to be kept with accurate and timely data that will not only be beneficial to future research related to these children, but also in terms of policy formulation and implementation which is a central feature of decision-making in undertaking correct actions in enforcing the rights of children living in prison with their PCG-P.

Acknowledgement

I want to acknowledge my research supervisor Prof. Mariam Muradyan of CES, Yerevan State University, for having given effective guidance that saw me undertake this project successfully. I also appreciate the entire staff at CES, Yerevan State University for having given me the much-needed help when I faced logistical challenges, in particular Kristine Gevorgyan, and Lilit Mirzoyan. In Moldova, I acknowledge the help I got from Mariana Rosca, Natalie Creciun and Olga Baciu, all from Moldova State University.

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