**Residential Care Controversy: The Promise of the UN Convention on the Rights of Persons with Disabilities to Protect All Children**

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**Plain English Summary**

**Introduction**

This paper examines the controversy over conflicting interpretations of the Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) regarding placement of children in residential care. The CRC has been interpreted to allow placement in so-called ‘suitable’ residential care, but the CRPD recognizes a right to family life for children. There is growing recognition that large or small residential institutions are dangerous for children. This paper describes how the right to family life in the CRPD is needed to protect against discrimination for *all* children with actual or perceived disabilities.

**Main findings and arguments**

This paper views the placement of children in residential care as a violation of the protection against discrimination established by the CRPD. The protections in the CRPD are based on a concept called the ‘human rights model of disability’ which understands disability as a social construct -- created when barriers prevent a person with an impairment from full participation in society on an equal basis with others. Whether a person’s impairment is actual or perceived, a person can be subject to disability discrimination if barriers deny that person the same rights as others.

This paper examines conflicting international standards that interpret the CRC and the CRPD. The CRC was adopted in 1989, at a time when it was assumed that some children would have to remain in institutions. Article 20 of the CRC states that when children are deprived of a family environment, they may be placed in institutions ‘suitable’ for the care of children.

A growing body of scientific evidence has shown that all children need to grow up in a family and that institutions are inherently dangerous for children. Growing up without the love and care of a committed, adult caregiver leads to psychological damage and developmental delays.

Evidence also shows that children in residential care are more likely to be subject to violence, abuse, or trafficking.

Recognizing these dangers, experts in the care of children adopted the ‘UN Guidelines for the Alternative Care of Children’. The UN Guidelines called for the ‘progressive elimination’ of large institutions. But they also allow placement in smaller, well-staffed and well-managed ‘residential facilities’. The UN Guidelines say that children should only be placed in residential facilities if it is ‘necessary’ or ‘appropriate’ for that child.

This paper argues that labelling any child as a person who cannot benefit from family life is inaccurate, creates damaging stigma and constitutes a form of disability discrimination. Scientific studies show that residential care is dangerous for all children whether it is in a large or small facility, even if well-staffed. Experience has also shown that children with any kind of disability can live and thrive with a family and they need the connections of families as much as any other child. Whether or not a child has an actual impairment, any social service system that sends child to residential care is damaging that child – creating the impression that the child is unable to live with a family. Inevitably, such placement is likely to cause emotional and developmental damage to the child.

The CRPD provides new protections for children. Article 23 recognizes a right to family life for children and article 19 recognizes a right to live in the community. The UN Committee on the Rights of Persons with Disabilities (CRPD Committee) adopted General Comment No. 5 recognizing that ‘[f]or children, the core of the right to be included in the community entails a right to grow up in a family’ (CRPD Committee, 2017, para. 37). The CRPD Committee (2017, para. 16(c)) explains that:

Large or small group homes are especially dangerous for children, for whom there is no substitute for the need to grow up with a family. ‘Family-like’ institutions are still institutions and are no substitute for care by a family.

General Comment No. 5 makes clear that any placement of a child in large or small residential care, or a group home, is a violation of the CRPD. And based on the human rights model of disability established by the CRPD, that protection applies to any child – whether or not they have a diagnosis or label of disability.

Based on knowledge gained through scientific studies and experience of children with disabilities, it is no longer possible to say that any institution is ‘suitable’ for children. The provision of CRC article 20 allowing for placement in suitable institutions should no longer be used. The UN Guidelines should be amended or replaced to avoid misleading guidance to governments that undermine protections for children.

The United Nations has established a working group of the CRC and CRPD Committees to harmonize international standards on children with disabilities. These committees must resolve conflicting standards. Until the UN Guidelines are revised, governments will continue to invest in residential institutions and children will be deprived of family life. New international guidelines must be clear that an ‘institution’ is any placement that deprives a child of the opportunity to live with a family.

As the human rights model of disability shows, children with and without a label of disability must be protected. This insight underscores the need for disability groups to come together with mainstream children’s rights organizations to work toward full inclusion. Changing laws and standards alone will not protect all children. Avoiding placement in residential care will require more inclusive societies that support all children to live and grow up with a family. To this end, in July 2021, a coalition of more than 250 disability rights and children’s organizations adopted a common ‘Call to action to protect the right to family life and prevent institutionalization of all children’.

**Follow this link to Call to Action**

[Call to action to protect the right to family life & prevent institutionalization for all children](https://www.driadvocacy.org/call-to-action-children-2021/)

**More information**

The danger of investing in group homes for children is documented in Disability Rights International, “A Dead End for Children: Bulgaria’s Group Homes” (2019) posted at <https://www.driadvocacy.org/media-gallery/our-reports-publications/>

Video findings posted at “[A Dead End for Children: Bulgaria’s Group Homes](https://www.youtube.com/watch?v=YNXP9-RapsI)” (2019).

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