

Laws and policies to support the wellbeing of children: an international comparative analysis

Nicklett EJ, Perron BE. Laws and policies to support the wellbeing of children: an international comparative analysis. Int J Soc Welfare 2010; 3–7 © 2009 The Author(s), Journal compilation © 2009 Blackwell Publishing Ltd and the International Journal of Social Welfare.

The international community has raised concerns regarding the extent to which countries have implemented laws and policies to support the rights and wellbeing of children. This study evaluates the progress of least-developed countries (LDCs) and middle-income countries (MICs) in developing such legislation. Surveys were sent to 131 UNICEF country offices. Items included efforts to promote family preservation and family ties, family-based care over institutionalization, and child participation in placement decisions. A total of 68 surveys were returned, reflecting a 52 percent response rate (LDC, $n = 25$; MIC, $n = 43$). Legislation that addressed abuse and neglect of children, maternity leave, removal of children from the family, family care, adoption, and guardianship was widespread. Chi-square tests indicated that MICs had a substantially higher number of laws and policies related to child allowances, school feeding programs, maternity leave, and day care.

Emily J. Nicklett, Brian E. Perron

University of Michigan, USA

Key words: child protection, international child welfare, Convention on the Rights of the Child, adoption, family policies, institutionalization, development

Emily Nicklett, University of Michigan, Health Management & Policy, 500 South Observatory Street, 3rd Floor, Ann Arbor, MI 48109-2029, USA
E-mail: enicklet@umich.edu

Accepted for publication July 22, 2009

Introduction

The 1979 International Year of the Child (IYC) brought with it a firm commitment by local, federal, and international organizations to extend the tradition of human rights to children (United Nations, 1979). The Convention on the Rights of the Child (CRC) was adopted by the General Assembly of the United Nations (UN) a decade later on November 20, 1989 (1989ab). Stemming from the motivation of the IYC, the CRC was originally envisaged to be identical to the 1978 Declaration of the Rights of the Child (United Nations, 1959, 1978), but with the progress of a mechanism for implementation (Cohen & Naimark, 1991). Through ten years of deliberations, the CRC began to take its present form of emphasizing the civil and political rights of individual children as well as their economic, social, and cultural rights. The CRC contributed a reframing of children's rights through the enhanced emphasis of the individual child as a recipient of children's rights, dignity of children and the role of the state and domestic law in protecting children (Cohen & Naimark, 1991; Hammarberg, 1990; Melton, 1991a, 1991b).

The CRC articulates specific minimum standards and rights for children and is intended to be a guide for

establishing and monitoring laws and policies concerning the welfare of children. As it is an international human rights treaty, national governments' adherence to the standards is voluntary, but it is legally binding on countries that choose to ratify it (O'Donnell, 1992). Like other UN human rights treaties, countries (or states) are responsible for submitting reports on compliance to the UN Committee on the Rights of the Child. At the time of writing, with the exception of Somalia and the USA, the CRC has been adopted by the 159 members of the UN General Assembly, creating a "powerful moral obligation" (Cohen & Naimark, 1991: 63) and "moral pressure" (Wilcox & Naimark, 1991: 49) for all nations to uphold standards and reflect on their legal and practical treatment of children.

Despite the worldwide enthusiasm for ratification of the CRC, previous concern has been raised that the CRC fails to be translated into policies and laws, let alone be implemented on local and regional levels, and there has been scant information internationally on how it affects individual children and families. Since its completion, there has been a call from non-governmental organizations – particularly from developed countries – to advance the mandates of the CRC in legal as well as clinical settings (Melton, 1991a; Southall et al., 2000).

Meanwhile, concerns have also been raised by researchers regarding the respective roles nation-states and the international community should take in the development of laws and policies (Boyden, 1993; Burman, 1996; Cohen, 1990; Feshbach & Feshbach, 1978; Freeman, 1992, 1993; Harris-Short, 2003; Lachman et al., 2002; Spencer, 2000). Since its near-universal implementation, inconsistent reporting and analysis of countries' adherence to the Convention led Human Rights Watch (1999) to conclude that it has been half-hearted and piecemeal. Further, although it is the most ratified international human rights directive, it has been suggested that it is also the most violated (Muncie, 2005).

Over 20 years following the passage of the CRC, international organizations have continued to emphasize the need for adhering to the development of laws and policies, particularly in non-industrial societies (Connors, Zermatten, & Panayotidis, 2007; A European Parliament Committee for the Committee on Foreign Affairs for the Committee on Development, 2009; Hodgkin & Newell, 2002; Holmstrom, 2000; United Nations Children's Fund, 2006, 2008). This study focuses on the least-developed countries (LDCs) and middle-income countries (MICs), because they lack the infrastructure for developing and monitoring pertinent laws and policies.

The purpose of the present study was to systematically examine the extent to which LDCs and MICs have enacted laws that support the CRC standards for children. The following two research questions guided this study. First, what are the general policy strategies being implemented – what laws and policies have been enacted? Second, to what extent do LDCs and MICs differ in the degree to which laws and policies are in place? The specific laws and policies examined here include provisions for family assistance, prevention of separation, maintenance of family ties, preference of family care over institutional care, and participation of children in placement decisions.

Methods

This study employed a cross-sectional survey design. A survey comprised of open-ended and closed questions was constructed for the purpose of analyzing existing laws and policies for children without parental care. The following definitions of the sets of laws and policies regarding the wellbeing of children were used to guide the formulation of survey items. From these definitions, a total of 34 dichotomous survey items were formulated. These are summarized in Table 1.

The sample frame for this study included UNICEF offices located in least developed countries and middle-income countries. UNICEF, an international organization dedicated to working to protect children's rights, survival, development, and protection, employs expert

project officers in the field of child protection. A list of LDCs (2003) was obtained from the United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (retrieved November 1, 2007). In the 2003 review of LDCs, the Economic and Social Council of the United Nations distinguished LDCs as those adhering to each of the following three criteria: (i) a low-income criterion based on a three-year average estimate of the gross national income per capita (under US\$750 for inclusion and above US\$900 for graduation); (ii) a human resource weakness criterion involving a composite Human Assets Index based on indicators of nutrition, health, education, and literacy; and (iii) an economic vulnerability criterion involving a composite Economic Vulnerability Index based on indicators of the stability of imports and exports, the importance of non-traditional activities, size and isolation, and displacement by natural disasters.

A list of MICs was created by merging two different country lists (lower-middle income and upper-middle income countries) of the World Bank Group (2004). Middle-income countries are classified using merged World Bank (2004) classifications, based on data for 2002. The thresholds of middle-income countries were US\$736 to US\$9,075 per capita. This classification is based on countries' gross national income and calculated from the World Bank Atlas Method. Low-income countries were classified by the World Bank (2004) as US\$735 per capita or less; however, the UN Least Developed Country criteria superseded the World Bank low-income countries for the purpose of this analysis, given the importance of geographic and socio-economic characteristics and how they potentially relate to the development of laws and policies to protect children.

A cover letter was e-mailed to UNICEF Project Officers and Assistant Project Officers in 131 different countries, with an electronic version of the 4-page survey instrument attached (LDCs, $n = 43$; MICs, $n = 88$). The cover letter, which was sent to "primary contacts" for the UNICEF headquarters, provided instructions for filling out the questionnaire and the option of e-mail correspondence regarding specific questions. All survey respondents had professional expertise in the area of child welfare. In some cases, UNICEF staff consulted – or contracted the survey to consult – governmental or non-governmental entities with a particular focus on child protection. It should be noted that UNICEF staff were the respondents of the survey, but the individual country was considered the unit of analysis for the present study.

It should also be noted that all surveys were provided in English. This decision was based on the widespread proficiency in English among UNICEF program officers and their staff. Although French translations were made available upon request, no translations were

Table 1. Comparison of laws and policies for family assistance and prevention of separation.

Policy and/or law	LDC	MIC	χ^2
	Percent (<i>n</i>)	Percent (<i>n</i>)	
Child allowances	48.0 (12)	88.4 (38)	13.24***
Housing assistance	32.0 (8)	58.1 (25)	4.32*
Subsidized school fees	56.0 (14)	69.8 (30)	1.31
School feeding programs	0 (0)	32.6 (14)	10.25*** ^a
Paid maternity leave	76.0 (19)	93.0 (40)	3.99*
Free day care	16.0 (4)	44.2 (19)	5.6* ^a
Child abuse prevention	68.0 (17)	74.4 (32)	0.32
Parental education	28.0 (7)	41.2 (18)	1.31
Temporary removal	60.0 (15)	62.8 (27)	0.05
Abuse considered grounds for removal	64.0 (16)	88.4 (38)	5.74*
Neglect considered grounds for removal	72.0 (18)	88.4 (36)	1.32
Born out of wedlock not considered grounds for removal	80.0 (20)	67.4 (29)	1.24
Single parenthood not considered grounds for placement	80.0 (20)	74.4 (32)	0.27
Removal requires approval of authority	72.0 (18)	97.7 (42)	10.04*** ^a
Placement requires approval of authority	60.0 (15)	90.7 (39)	9.11
Judicial decision required for family-based placement	48.0 (12)	69.8 (30)	3.17
Judicial decision required for institutionalization	44.0 (11)	65.1 (28)	2.88
Family reunification or adoption specified as an ongoing goal in institutional placements	32.0 (8)	53.5 (23)	2.94
Family reunification or adoption specified as an ongoing goal in family-based placements	48.0 (12)	53.5 (23)	0.19
Family contact permitted in family-based placement	56.0 (14)	60.5 (26)	0.13
Family contact permitted in institutional placement	48.0 (12)	62.8 (27)	1.43
Provisions for family-based care	60.0 (15)	88.4 (38)	7.40**
Prioritization of family-based care over institutionalization	56.0 (14)	65.1 (28)	0.56
Provisions for adoption	80.0 (20)	90.7 (39)	1.58
Provisions for foster care	52.0 (13)	67.4 (29)	1.60
Provisions for guardianship	80.0 (20)	76.7 (33)	0.10
Allocations to family care providers	28.0 (7)	53.5 (23)	4.17*
Institutional care provided as a last resort	60.0 (15)	65.1 (28)	0.18
Institutional care provided as a temporary measure	64.0 (16)	67.4 (29)	0.08
Monitoring of family-based placements	60.0 (15)	62.8 (27)	0.05
Required child participation in family-based care placement decisions	32.0 (8)	48.8 (21)	1.83
Required child participation in institutional care decisions	28.0 (7)	37.2 (16)	0.60
Permitted child participation in family-based care placement decisions	36.0 (9)	65.1 (28)	5.40*
Permitted child participation in institutional care placement decisions	40.0 (10)	51.2 (43)	0.79

LDC, least-developed countries ($n = 25$); MIC, middle-income countries ($n = 43$).

^a p -value based on Fisher's exact test due to cell count < 5 ; * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$.

actually requested. Of the 43 LDCs to which the instrument was sent, 25 were returned, giving a response rate of 58 percent. Of the 88 MIC countries to which the survey was sent, 43 were returned, giving a response rate of 49 percent. The overall response rate was 52 percent, which is high for e-mailed surveys (Kaplowitz, 2004; Sheehan, 2001; Sheehan & McMillan, 1999), particularly those administered internationally. To increase the response rate, surveys were collected over a two-month period with multiple (up to four) reminder e-mails. Post-hoc analysis revealed that the language of the country was not associated with non-participation in the study.

Analytic strategy

Descriptive statistics were used to summarize survey responses. Chi-square and Fisher exact tests were used to test differences in responses across country classification.

Summary of results

As demonstrated in Table 1, LDCs had, for the most part, lower proportions of law and policies to protect children than did MICs. Specifically, all 10 items addressing “family assistance and prevention of separation” were incorporated to a greater extent in MICs than in LDCs, with five of the ten items reaching a statistically significant chi-squared test at $p < 0.05$. Two items – both of which concerned grounds for removal – were more prevalent in LDCs (extra-marital birth and single parenthood were *not* considered grounds for removal), although these differences were not statistically significant. Otherwise, most items for “maintenance of family ties” were more widely addressed in MICs than in LDCs (with two positive chi-square results). Nine of the ten items for “preference for family-based care” were addressed to a greater extent in MICs (with the exception of provisions for guardianship), with two positive chi-square outcomes. Finally,

all four items addressing participation of children in treatment decisions were more widely incorporated in MICs than in LDCs, with one item (“permitted child participation in family-based care placement decisions”) of statistical significance. Despite wider adoption of such laws and policies in MICs than in LDCs, it should be noted that roughly one-half of the measures were not significantly different, suggesting that level of economic development is a blunt predictor of implementation.

Contribution and limitations

This research examined the extent to which countries have implemented policies and laws related to the protection of children in the two decades following the Convention on the Rights of the Child. Further, this study described the current progress of both LDCs and MICs in developing policies to support the rights and wellbeing of children. This is the first study to comprehensively analyze and document the progress of countries in implementing laws and policies related to child protection with a non regional-specific sample. Doing so has enabled us to quantify the extent to which such laws and policies are in place, as well as to establish a baseline of implementation for future studies.

Despite these contributions, the study has several limitations. First, although the response rate is respectable for a study of its kind, non-response bias might limit the generalizability and interpretation of the findings (Aday, 1996). Further, these results are not applicable to small island countries or those lacking a UNICEF office. Such countries out of the scope of our analysis might have laws and policies in place (possibly inherited during colonialism), but might lack the legal infrastructure to implement them in practice or to provide resources on a local level. It is also difficult to assess the effect of whether respondents were not aware of a law or policy (that was subsequently erroneously recorded as absent); if a law or policy is present but not known by a UNICEF country officer, it is not likely to be widely enforced. However, subsequent analyzes should examine the effect of “not known” versus “not present” responses, as well as the effect of officer-versus outsourced-survey bias.

It is important to recognize the challenges associated with the use of cross-sectional surveys. For example, this particular design was primarily descriptive and could not be used to understand policy changes over time or to determine the influence of the CRC or other mechanisms on the adoption of laws and policies. However, this research can serve as an important baseline set of indicators to inform longitudinal design strategies that would help overcome these challenges. Additionally, qualitative research methods can be used

to help understand the actual experiences of implementation on children and families.

The present study does not include a sample of industrialized countries or changes over time. Future studies are needed to examine the effect of policy and administrative reform over time in developed and developing countries. Finally, the extent to which laws and policies in place are actually evaluated and enforced in practice (and how this varies by country, region, and other characteristics) and the actual experiences of children and families need further attention. Such research would more effectively link the macro-level attributes with the micro-level effect on the protection of children in different societies. The use of survey methods remains a valuable tool, but qualitative methods can serve as an important step to help ensure that the full range of experiences is addressed.

As raised in Article 4 of the CRC:

State parties shall undertake all appropriate legislative, administrative, and other measure for the implementation of the rights recognized . . . to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

As the first study to examine the implementation of CRC statutes across countries and regions, the degree to which studies have adopted laws and policies cannot be determined as high or low. In this study, however, in both LDCs and MICs, we found limited implementation of laws and policies to protect children in countries that had ratified the CRC. We also found that the rates of implementation varied greatly, being high in some items (such as maternity leave programs, protection from abuse and neglect, and options for non-institutional care), and lower in other items (such as school feeding programs and subsidized day care). Further, the rates of implementation varied to some extent by level of economic development, with LDCs having a lower overall rate of implementation than MICs. As suggested by Himes (1995), the institution and support for laws and policies to protect children draw on several resources – human, economic, and organizational – some of which are lacking in low-income countries.

Further evaluation is necessary to examine other areas of the CRC and other laws and policies to protect the health and wellbeing of children. In light of the variable (and overall low) proportions of implementation, a comprehensive strategy should be formulated by the international community, particularly from developed countries, international organizations, and non-governmental organizations, to promote the development of laws and policies to protect children, particularly in developing countries.

References

- Aday LA (1996). *Designing and conducting health surveys*. San Francisco, Jossey-Bass.
- Boyden J (1993). Childhood and the policymakers: A comparative perspective on the globalization of childhood. In: James A, Prout A, eds. *Constructing and reconstructing childhood*, pp. 184–215. Basingstoke, Falmer Press.
- Burman E (1996). Local, global or globalized? Child development and international child rights legislation. *Childhood* 3: 45–56.
- Cohen CP (1990). Relationships between the child, the family and the state. In: Bayles MD, Moffat RCL, Grcic C, eds. *Perspectives on the family*, pp. 293–316. Lewiston, New York, Edwin Mellen Press.
- Cohen CP, Naimark H (1991). United Nations Convention on the Rights of the Child: Individual rights concepts and their significance for social scientists. *American Psychologist* 46(1): 60–65.
- Connors J, Zermatten J, Panayotidis A, eds (2007). *18 Candles: The Convention on the Rights of the Child Reaches Majority*. Available at <http://www.ohchr.org/Documents/Publications/crc18.pdf> [date last accessed 16 June 2009].
- European Parliament Committee for the Committee on Foreign Affairs for the Committee on Development (2009). Opinion of the Committee for the Committee on Foreign Affairs for the Committee on Development on a Special Place for Children in EU External Action. Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+COMPARL+PE-415.364+02+DOC+PDF+V0//EN&language=EN>. [date last accessed 23 May 2009].
- Feshbach ND, Feshbach S (1978). Toward an historical, social, and developmental perspective on children's rights. *Journal of Social Issues* 34(2): 1–7.
- Freeman M (1992). The limits of children's rights. In: Freeman M, Veerman P, eds. *The ideologies of children's rights*, pp. 29–46. Dordrecht, Martinus Nijhoff.
- Freeman M (1993). Laws, conventions and rights. *Children and Society* 7(1): 37–48.
- Hammarberg T (1990). The UN Convention on the Rights of the Child – and how to make it work. *Human Rights Quarterly* 21(1): 97–105.
- Harris-Short S (2003). International human rights law: Imperialist, inept, and ineffective? Cultural relativism and the UN Convention on the Rights of the Child. *Human Rights Quarterly* 25(1): 130–181.
- Himes JR, ed. (1995). *Implementing the Convention on the Rights of the Child: Resource mobilization in low-income countries*. Boston, Martinus Nijhoff.
- Hodgkin R, Newell P (2002). *Implementation handbook for the Convention on the Rights of the Child*. Geneva, UNICEF.
- Holmstrom L, ed. (2000). *Concluding observations of the UN Committee on the Rights of the Child (1993–1998)*. The Raoul Wallenberg Institute Series of Intergovernmental Human Rights Documentation, Vol. 1. The Hague, Martinus Nijhoff Publishers.
- Human Rights Watch (1999). Promises broken: An assessment of children's rights on the 10th anniversary of the Convention on the Rights of the Child. Available at www.hrw.org/campaigns/crp/promises [date last accessed 5 February 2005].
- Kaplowitz MD (2004). A comparison of web and mail survey response rates. *Public Opinion Quarterly* 68(1): 94–101.
- Lachman P, Poblete X, Ebigbo PO, Nyandiyi-Bundy S, Bundy RP, Killian B, Doek J (2002). Challenges facing child protection. *Child Abuse & Neglect* 26: 587–617.
- Melton GB (1991a). Socialization in the global community: Respect for the dignity of children. *American Psychologist* 46(1): 66–71.
- Melton GB (1991b). Preserving the dignity of children around the world: The U.N. Convention on the Rights of the Child. *Child Abuse & Neglect* 15: 343–350.
- Muncie J (2005). The globalization of crime control – the case of youth and juvenile justice: Neo-liberalism, policy convergence and international conventions. *Theoretical Criminology* 9(1): 35–64.
- O'Donnell D (1992). Guidelines for NGOs on monitoring the implementation of the Convention on the Rights of the Child. New York, Defence for Children International.
- Sheehan K (2001). Email survey response rates: A review. *Journal of Computer-Mediated Communication* 6(2). Available at <http://jcmc.indiana.edu/vol6/issue2/sheehan.html> [date last accessed 3 September 2009].
- Sheehan K, McMillan SJ (1999). Response variation in e-mail surveys: An exploration. *Journal of Advertising Research* 39(4): 45–54.
- Southall DP, Burr S, Smith RD, Bull DN, Radford A, Williams A, Nicholson N (2000). The Child-Friendly Healthcare Initiative (CFHI): Healthcare provision in accordance with the UN Convention on the Rights of the Child. *Pediatrics* 106(5): 1054–1064.
- Spencer GE (2000). Review: Children's competency to consent: An ethical dilemma. *Journal of Child Health Care* 4(3): 117–122.
- United Nations (1959). Declaration on the Rights of the Child: Proclaimed by the General Assembly (G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354). New York, NY.
- United Nations (1978). Commission on Human Rights: Report on the thirty-fourth session (U.N. Doc. No E/CN.4/1292; E/1978/34, 123–127). New York, NY.
- United Nations (1979). Question of a Convention on the Rights of the Child: Report of the Working Group (U.N. Doc. No. E/CN.4/1349). New York, NY.
- United Nations (1989a). Adoption of a Convention on the Rights of the Child (U.N. Doc. No. A/44/736). New York, NY.
- United Nations (1989b). Convention on the Rights of the Child: Text of the Working Group on a draft Convention (adopted by the Working Group at second reading; U.N. Doc. No. E/Cn.4/1989/29/Rev. 1). New York, NY.
- United Nations Children's Fund (2006). *Compilación de observaciones finales del Comité de los Derechos del Niño sobre países de América Latina y el Caribe (1993–2006)* [A Compilation of Committee on the Rights of the Child Concluding Observations for Latin American and Caribbean Countries (1993–2006)]. Available at http://www2.ohchr.org/english/bodies/crc/docs/publications/compilacion_1993_2_006.pdf [date last accessed 1 November 2007].
- United Nations Children's Fund (2008). Report on implementation of the “modified system for allocation of regular resources for programs” approved by the Executive Board in 1997. Available at http://www.unicef.org/about/execboard/files/08-20-allocation_RR-English.pdf [date last accessed 23 May 2009].
- United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS). List of Least Developed Countries. Available at <http://www.un.org/special-rep/ohrls/ldc/list.htm> [date last accessed 1 November, 2007].
- Wilcox BL, Naimark H (1991). The rights of the child: Progress toward human dignity. *American Psychologist* 46(1): 49.
- The World Bank Group (2004). Data and statistics: Country classification. [Web document]. The Bank, 2004. Available at <http://www.worldbank.org/data/countryclass.html> [date last accessed 2 February, 2005].