CHRONICLE CHRONIQUE CRÓNICA

Contents

Editorial — Avril Calder

I'd like to begin this editorial by saying thank you to those of you who kindly sent me e-mails following my first Chronicle.

Developments in juvenile justice

I am very pleased to be able to publish three articles from places with strong Muslim traditions—Mauritania, Turkey and Kosovo—about recent developments in law and practice in juvenile justice, demonstrating the central importance of the UN Convention on the Rights of the Child. In Kosovo great strides forward have been made since the war, although there is still much to be done. It is worth noting that in Turkey detention and imprisonment are very much a last resort and available only after a court has determined whether a juvenile over 12 years has criminal liability at all; imprisonment is prohibited in Kosovo for children under 16 years and in Mauritania, Dr Ramdan writes "given our traditions, our society does not need prisons or closed educational institutions for children, but alternatives". By contrast, the article from Sarah Curtis, an experienced magistrate, laments the over-use of imprisonment in England and Wales where alternatives to prison are not given enough time to work.

Yoshie Noguchi, a speaker at our congress in Belfast and an authority on the abuse of children in the workplace, reflects on the recent UN study on violence against children at work.

My thanks to André Dunant who gives us a fascinating historical and cultural survey of adoption and to our Correspondents who have taken the time to keep us informed of events in their countries. These include significant updates from Joseph Moyersoen on the EU's approach to the rights of the child and from Marie-Claude Roberge on an international conference held in Ottawa on the same theme.

Future editions

Please do keep sending me articles; proposals for articles; reports on recent and forthcoming events; and on developments in the law, society and family structures—as exemplified by Dr Ramdan in Mauritania and Advocates A and R Malhotra in India. I am trying to widen the range of contributors—we have members in over eighty countries—and I should like to hear from as many of you as possible. Guidance to contributors is at the end of this publication.

Finally, if you would like to respond to any of the articles or write a letter for inclusion in the next issue, please do so.
acchronicleiayfjm@btinternet.com

News from the President — Renate Winter

Dear friends and colleagues,

It is a great pleasure and relief for me to be able to confirm only positive reactions to the first edition of the Chronicle done by the "new crew". That was not a foregone conclusion because of the great work done for such a long time by the former president and editor in chief, Willie Mc Carney! In this context may I ask once again all members who received the first edition (and this one, of course) to check with their colleagues if they have also received them and to inform Avril Calder, the new editor-in-chief, if anything has gone wrong?

The first executive meeting of the new bureau took place in Vienna in April. We heard the sad news that our Deputy Secretary General, Judge Mohamed Habib Chérif, was unable to attend due to a very serious car accident. Fortunately, his local Tunisian Association ATUDE provided us with a representative, Judge Ridha Khemakhem who was co-opted to the Executive bureau and bravely took over at very short notice.

The weekend session was quite intensive but successful, I believe, as we discussed not only cumbersome administrative issues, but started to tackle the difficult subject of the next international Congress. We were assisted by Mr Justice Gillen and Gerry Mc Laughlin, both of whom are well known to all participants at the Belfast Congress for their excellent preparation and implementation work. Mr Justice Gillen provided us with a lot of valuable information and Gerry had his report of the Congress ready for us to check and see about lessons learned and examples to follow. It goes without saying that we were really grateful for so much assistance.

Willie Mc Carney also attended in his capacity as former president and was an extremely valuable "resource person" especially for all the tricky issues to be dealt with concerning the relation of the IAYFJM and international institutions, such as the UN and the Council of Europe. As I mentioned last time, I will try as far as I can to connect our Association to other international associations working in the same field of protection of children and youth; and to disseminate as much information as possible to all juvenile and family court judges and prosecutors in order to enable all of us to resist pressure in our work.

In this regard I have been contacted by Belgian juvenile judges who have had big problems in implementing protection orders and alternatives to imprisonment as the administration had not provided enough finance. (I still hope to get some information in the form of an article from a Belgian colleague to open a discussion among our members.) Influencing the work of judges by administrative decisions that hamper the execution of judicial orders seems to happen nowadays in several countries, especially in Europe. In this way a government can make the work of the judiciary impossible if the judicial policy (e.g. alternatives to incarceration) is disliked, without risking being denounced as interfering with judicial independence.

Several European national associations have expressed their concerns in this regard. The French national association is now planning a meeting in October to set up a European Association under the umbrella of the IAYFJM, as indicated in the last edition of the Chronicle. As trends in Europe usually have repercussions in each and every European country, it is important for European Associations to attend this meeting.

Our Vice-president, Oscar d'Amours, is already active with his colleagues in creating an all-Canadian representation, even possibly seeking links with US colleagues, who sometimes seem to have similar problems to their European colleagues. I hope to be able to present news about this undertaking in the next edition. From her side the German representative on the Council, Petra Guder, has started to establish connections and to create collaboration with the NCJFCJ in the US.

Discussions have also started with our Deputy Secretary-General concerning opportunities for a common representation of the Maghreb region. The same goes for the Balkans, where first initiatives have started between Albania, Kosovo, Bosnia & Herzegovina, and Macedonia to find common ground on representation, hopefully including other countries of the region as well. Again, I hope to be able to say a bit more about it in the next Chronicle and I also hope to have heard by then from the Argentinian association about progress in creating a network in Latin America, where judges from San Salvador, Costa Rica and Peru have joined the Association. I have not yet found a discussion partner for Asia and the Pacific region. Would any of our members be able to help with this?

Speaking about regions: In this Chronicle, two regions will be presented for the first time—the Balkans and West Africa. I hope (and have promises) to keep information about these two important regions continuing to flow through articles from colleagues there. But our "crew" is very ambitious: We have five continents: can we not present regularly in each Chronicle the achievements, problems for discussion and strategies developed in the fields of child protection and juvenile justice in every continent? It would be great to have global information in our global village!

André Dunant has agreed to write the history of our IAYFJM for its 80th anniversary to be celebrated in 2010 at the next international congress. For this he will need the help of all members who can recall special events that took place during these 80 long years, possibly having photographs from years long past and who are willing to contribute a few lines. I am asking all of you, dear members, who can contribute to please do so and send information, material, notes, photos etc to André at: andre.dunant@tdh.ch

Norbert Gerstberger, an Austrian juvenile judge, is busy developing a Code of Ethics for juvenile and family court judges. I thought it would be a good idea to ask Norbert if he would provide a draft for the Association to help develop an international Code of Ethics. Jean Trépanier from Canada and a member of the scientific committee has shown interest in working on this project that might become a very important one, able to attract the interest of other international institutions. If any of our members would be interested in working with Jean, please e-mail him at: jean.trepanier.2@umontreal.ca

Oscar d'Amours, heading the legislative committee, is drafting a revision of our Statutes to adapt to modern technology and to introduce changes reflecting the development of our Association. Anyone willing to assist Oscar, please send him an e-mail at: odamours@sympatico.ca

Finally I myself can provide some information of interest to our members: the Council of Europe is busy at the moment developing a new strategy on child offenders. Daniel Pical and Hervé Hamon from France attend these meetings and discussion rounds regularly and will let us know the outcome of the deliberations. As Recommendations of the Council of Europe usually have great influence on Member States in adapting their legislation and policy, it is of the utmost importance that our members know about these Recommendations as soon as possible perhaps with a discussion in the Chronicle on how best to implement them, with information about good practice as well as which approaches should be avoided.

UNODC (UN Office on Drugs and Crime) is tackling another most important issue in developing a programme for the legal assistance of child victims and witnesses. A manual for practitioners and a model law are being drafted as a guide not only for states but also for professionals working in judicial areas. I have had the honour of being involved in the drafting process and hope to be able to get information for our members on the final versions of both documents.

Dear friends and colleagues, as you can see, a lot has been done in the past few months, but a lot needs to be done in order to keep our Association alive and ready to contribute to the protection of children and youth, as well as to strengthening the legitimate interests of our members working for these children. Please let me repeat again: an association is as strong as its members and as effective as them. I will continue to collect information about new developments in our field of work and bring it to your attention as soon as I can. I will also continue to ask for your contributions, for your continuing interest and for your collaboration. I would be delighted to get your comments, reactions and ideas !

I hope for pleasant summer holidays for all of us!

Reform of Juvenile Justice in Mauritania

Dr Haimoud Ramdan

The year 2006 marked an important step in the protection and promotion of children's rights. Upon ratification of the UN Convention on the Rights of the Child, Mauritania passed a decree in December 2005 establishing a penal code for children. From 2006 this has enabled the justice system to provide appropriate treatment for children in conflict with the law.

The legal treatment of children in conflict with the law now derives from the instruments ratified by Mauritania and respects Sharia law. However, the transition has not been easy to achieve. To understand the scope of the reform to the juvenile justice system, it is necessary to look back at the situation which prevailed before the adoption of the decree for the protection of children.

Part 1: The previous situation

Before the adoption of the decree for the penal protection of children, Mauritania lacked a coherent juvenile justice system. Given the increasing proportion of children in conflict with the law, this could not be ignored. The situation in the country—rapid urbanization, social problems, family break-up, increasing poverty of the vulnerable and marginalized—no longer allowed people to be entirely self-reliant, although the example of the pilot project at Nouadhibou (see part 2, c below) shows that it is possible to find solutions for children in conflict with the law.

a. those involved in juvenile justice were unprepared and untrained

Those involved in juvenile justice were neither prepared nor trained to undertake the duties needed for the protection and promotion of children's rights.

- **an inexperienced police force**

The police were confronted with the rapid transition of a semi-nomadic population to an urban population. The consequences of this speedy urbanisation were harmful for children in poverty, in difficult social situations, in families that were breaking up, and victims of rejection or neglect. The rules of a traditional and tribal society, which are based on the extended family rather than on the intervention of the State and its machinery, added to the difficulty of dealing with the increasing problems of those children and adolescents adversely affected by the changes.

To cope with daily problems, police officers in the field followed traditional approaches. These were generally outside the legal system and sometimes involved corporal punishment or detention in not always satisfactory conditions. Senior officers were unable to provide appropriate guidelines, because they did not exist. In most cases, officers in the field and their senior officers were unfamiliar with international standards for the protection of vulnerable children and children in conflict with the law. Difficulties increased when moral issues were involved, because religious norms play an important role in Mauritanian society.

A group within the police, dedicated to young people and specialising in children's issues, was seen to be required because it would support the police and help them solve problems with children more effectively. Most policemen would need training in juvenile justice and international standards for police work with children. On the other hand, in less serious situations the police seem in a good position to mediate between the child offender and the victim as they often do this already in an informal way. To give legitimacy to this entirely appropriate approach, a legal provision would be necessary, as would oversight by the justice system (the prosecutor) to avoid possible abuse.

- **non-specialised magistrates**

The situation of magistrates (judges, prosecutors) was not dissimilar to that of the police. Because the law had not adapted to

changes in the condition and behaviour of the population, the legislation in force proved to be too rigid to solve problems effectively in the best interests of the child. Even when magistrates made great efforts to become familiar with standards relating to children, this specialisation did not bear fruit because of the continual rotation of legal personnel (as also happens with the police).

Moreover, many magistrates were not well informed or trained with regard to international standards and norms, and they did not have the opportunity of benefiting from continuous training or the sharing of experience with colleagues from other countries. These exchanges are essential to keep up with developments in jurisprudence at national and international levels.

- **lawyers lacking interest in juvenile justice**

From the moment a child is held in pre-trial detention, international norms on juvenile justice and most national systems provide for the assistance of a lawyer, if necessary, free of charge.

Normally, it is the responsibility of the bar to organise its services in a regulated, accessible and effective way. In Mauritania, it is NGOs who seek the services of lawyers, since the majority of children and their families cannot afford to do so. And, if they are present, public defenders frequently do not seem to want to get involved. Moreover, lawyers are not very interested in specialising in juvenile justice, because it brings them neither fame nor income.

b. inappropriate institutions

The new code, as well as the decree of the Ministry of Justice which sets out the internal organisation of centres, provides for three different types of institution: closed, semi-open and open, equipped with the necessary infrastructure and specialised staff.

- **the absence of follow-up programmes for young people**

Experience had shown that the sole institution, Beyla, did not have sufficient equipment or specialised staff. But even after an improvement in equipment, the almost total absence of educational programmes, of vocational training and opportunities for sport prevented staff, however hard they tried, coming close to achieving their ultimate aim of reintegrating child offenders into society.

Moreover, apart from some provision by NGOs, there were no follow-up programmes after release for young people and their families and not even any preparation of young people and their families for their future life.

- **poorly motivated staff**

Poorly paid staff sometimes misappropriated food and other supplies intended for the children. Specialised training to provide close and continuous collaboration with social workers had not yet been organised.

Professional social and educational workers specialising in children's issues are totally new to Mauritania, because they only became necessary when family structures weakened as the population became urban.

The police, magistracy and institutions all needed the support and permanent presence of social workers, but these posts were not provided for in the public sector. It was NGOs that financed them. Like all other professionals, these social workers and educationalists in the juvenile justice field need continuing training in methodology and case management.

- **NGOs lacking resources and expertise**

National and above all international NGOs were needed to tackle the gaps in the system of child protection. Since there were not sufficient funds to ensure the proper functioning of the only institution, NGOs covered the shortfalls in supplies, equipment and technical support. The same goes for the management of social workers and the many tasks needed to organise the juvenile justice system in line with international standards and the best interest of the child.

In addition, it fell to NGOs to seek the services of a lawyer for a young person where necessary. In this context, international NGOs occasionally sensed a certain distrust emanating from some public institutions. The latter would have preferred only local NGOs to work in this field both to avoid external interference and the risk of instability if an international NGO were to pull out. This view was certainly not in the best interests of the country, since local NGOs did not yet have either the resources or the know-how to undertake that role.

A separate module on juvenile justice had not yet been established, either in the curriculum of universities (law, social sciences), in the National Police School or in the training of magistrates. However, the creation of such a

module was of great relevance for juvenile justice professionals. Professionals could derive great benefit from basic training of this kind, because the system of rotation of staff, which is not conducive to continuity of approach, needs personnel to be trained at least in the basics.

Part 2: Progress achieved

Even if the proportion of children (especially girls) in conflict with the law is not high at present, one should consider possible future developments in society The poor and illiterate part of the urban population is increasing rapidly and social problems can quickly get worse. It is therefore important to put in place structures capable of responding to needs as and when they arise.

Given its traditions, Mauritania currently has a unique opportunity to create something effective within its culture of peace, consensus and mediation with no need to resort to heavy-handed or severe procedures. Our society does not need prisons or closed educational institutions for children, but alternatives which facilitate reconciliation between the parties and compensation for the victim, while providing education for the child.

In a society where the value of the family environment is still recognised, it is certainly not necessary to build a closed institution for the few (usually 2 to 3) girls in conflict with the law. It would be better to provide their families with help to deter recidivism—a far cheaper policy. And it is always better to place children up to 10 years of age with a foster family (with supervision and assistance) than to place them in a centre.

a. urgent measures

Several measures were urgently needed to ensure the effective treatment of juvenile delinquency.

- **creation of a special force for young people**

Given the difficulties the police faced in dealing with juvenile delinquency—the lack of specialisation of officers in the field and the lack of knowledge on the part of senior officers of appropriate measures set out in international instruments—the creation of a brigade for minors, specialising in prevention, investigation, interrogation and follow-up after release was needed. Such a force has now been set up in Nouakchott, with units in each police station in Nouakchott, and will be extended soon to the wilayas.

- **creation of a corps of social workers with a vocation for the law**

The almost complete absence of a cadre of social workers contributed to the difficulties of both the police and the magistracy, who also lack knowledge and expertise in this area. The development of an optional legal module in the training of social workers will help improve the situation. This course is to be taught by the National School of Health from June 2007.

- **creation of a centre for the rehabilitation of children in conflict with the law**

The conditions at Beyla were hardly conducive to the placing of children there and the lack of other, smaller institutions—big ones are not necessary—added to magistrates' difficulties. A solution is now in sight with the creation in line with international standards of a centre in Arafat for the rehabilitation of children in conflict with the law. Two other centres in Nouadhibou and Rosso are being developed in partnership with the Terre des Hommes Foundation of Italy.

- **education in children's rights**

Neither the legal profession nor the universities realised the importance of their roles in an effective juvenile justice system. From now on this will be brought out by the organisation of the module on juvenile justice, which will be taught in the schools of the National Gendarmerie and the National Police, as well as a course on the rights of the child, which will be incorporated in the curriculum of the law degree and the certificate of aptitude for the legal profession as well as becoming a part of magistrates' training.

b. new legislation on young people

Since 5 December 2005 Mauritanian children have been more effectively protected thanks to decree nº 2005/015 relating to their penal protection. The first part of this document constitutes the penal code for children, setting out in detail (a) the principle of a lesser degree of criminal responsibility on the part of the juvenile as well as (b) the consequences of any crime or offence committed against them.

The second part of the decree establishes the penal procedure for children. It sets out a framework for legal proceedings, the judging of offences and the carrying out of any punishment. Provisions relating to the people,

institutions and services looking after young offenders are included at the end of the document.

Sanctions are provided against abandoning or neglecting children and against anyone acting as an intermediary for adoption.

Regarding offences against children, the decree provides for sanctions where a child is abandoned, unless the health and security of the child have been provided for (art. 29). Sanctions are even tougher if neglect leads to adverse consequences. The same applies if the father or mother do not live up to their legal obligations to the extent that the health, security, moral well-being or education of the child are seriously compromised (art. 41).

Furthermore, the act of inducing one or both parents—either by means of a reward, gift, promise or threat, or through an abuse of authority—to abandon a child (born or unborn) is to be punished with a sentence of 1 to 2 years imprisonment and a fine (art. 77). A similar punishment is specified for anyone acting as intermediary between a person who wants to adopt a child and a father who is willing to give up his child (born or unborn) (art. 78). It should be noted that, under article 1 of the decree, the adoption of the child has no legal status and does not lead to filiation. This follows the principles of Islamic law.

In its treatment of offences committed by children themselves, the decree establishes the principle that a child below the age of 7 is deemed incapable of infringing the criminal law. If an infringement is proved to have taken place, however, the juvenile court will summon the parents and inform them or the child's guardians (art. 129). If the child is aged 7 to 15, he may be submitted only to protection measures (art. 130). Only if the child is 15 or more can he be placed in an educational rehabilitation centre, in a boarding school for juvenile offenders of school age or in a centre specialising in the treatment of drug-addicts (art. 131).

c. improvements in child protection

Eager to put in place a modern juvenile justice system in line with the now ratified Convention on the Rights of the Child, the authorities have provided the resources, finance and staff required. These will be supplemented with other measures.

Short-term

In the short-term, the following actions have been taken:

- frequent meetings of members of the juvenile justice system were organised through seminars;
- professional information and international papers were translated into Arabic and disseminated;
- a short, intensive education module lasting about two weeks was developed to help with the creation of social worker posts within Beyla and soon after that in the police force;
- a medium-term education course (lasting about three months) and a long-term course (of about six months) were developed for Beyla and the observation centres;
- contacts were established between the relevant Ministries (Justice, Interior, Social Affairs and Health);
- a standing committee was set up to focus in a coherent and long-term way on the protection of vulnerable children and children in conflict with the law;
- a pilot project at Nouadhibou to create structures for mediation and community service, a small semi-open centre and a playground; and
- help with the creation of a platform for local NGOs and documentation of their respective mandates and the distribution of these documents to the police.

Medium-term

The following measures will contribute over the medium term to a more effective juvenile justice system:

- training of the police in juvenile justice, international standards, protection of victims, modern interrogation techniques, preparation of reports for the prosecutor, collaboration with social services, prosecutors and the legal profession;
- signing of a protocol with the Ministry of the Interior to keep specialised officers in their position for at least 5 years;
- organisation of regional training and information seminars for the magistracy;
- creation of specialised magistrates for minors;
- training of specialised magistrates (meetings with magistrates from other countries to share experience, study trips and participation in international symposia);
- training of social workers and specialised educators already in their posts;
- keeping specialised magistrates in their positions for at least 5 years;

- assistance in the creation of a discussion forum within universities (including Ulemas) to follow-up on the fine-tuning of new strategies;
- the establishment of a global project '*development of a coherent juvenile justice system'* and presentation of this project to development partners; and
- awareness-raising campaigns to inform the population about alternative measures for dealing with young offenders.

Long-term

Finally, from the perspective of juvenile justice, long-term measures include in particular:

- the choice and training of foster families;
- the training of specialised educators to assist those families;
- assistance to national NGOs with a view to facilitating their independence with regards to their administration and the training of their collaborators;
- awareness-raising campaigns on children's rights; and
- the spreading of information on modern techniques and structures to members of the juvenile justice system in other regions of the country.

Dr Haimoud Ramdan is Professor of Law at the University of Nouakchott, Mauritania.
haimoud303@hotmail.com

Legislative Changes in Argentina — Dr Juan Carlos Fugaretta

A range of international documents recently signed by the government of the Argentine Republic is bringing about very important juridical changes both at the federal level where law 26.061(consistent with the CRC) has been passed and at the provincial level where further laws have been passed in consequence.

These new laws remove the primary intervention of the Judiciary, known as "Patronato", (the role assigned to the justice system by the National Constitution and the constitutions of the Provinces). The purpose is to guarantee the rights of the child.

The new juridical order gives primary intervention—protagonism—to the main organs of society, such as NGOs and municipal authorities, with the objective that problems are understood and solutions reached at a local level by local organisations.

The Judiciary will still be engaged with youth offending, family problems and cases where the exercise or ownership of the rights of the child may be affected.

The prevention of criminal behaviour is the innovative activity that the State has to address and promote, looking at all possible alternatives to institutionalisation.

In order to help families, especially children, and to respect their rights, protagonism, granted to recognised existing social organisations needs resources for the promotion of this new approach.

The new laws have also advanced recognition of the obligations of the family, their responsibilities as well as their rights and needs. Previously these were not always appropriately covered by the State in the Universal Declaration of Human Rights (1948).

Finally the changes make space for enhanced government responsibility and for the exploration of new juridical tools in both the administrative area and the judicial one to promote the defence of the rights of the child.

Developments to the Child Justice System in Turkey

Dr Betül Onursal
Dr Seda Akço

Betül Onursal

Seda Akço

Introduction

The Turkish Criminal Code was patterned after the Italian Criminal Code when the Republic of Turkey was founded. Passed in 1926, this law included special provisions on children. It ruled that children up to eleven years old had no criminal liability and that therefore they could not be prosecuted or sentenced to punishment. As for children who were older than a full eleven years but had not lived through their fifteenth year, an examination had to be made as to whether they were physically, psychologically and morally mature enough to have criminal liability. The principle was adopted that children considered to be at a level of maturity sufficient to make them liable for the consequences of their actions as a result of such examination were to be sentenced to punishment and that cautionary judgments were to be passed on those that were not. And lastly, a regulation was made regarding children who were older than a full fifteen years but had not lived through their eighteenth year to the effect that they did have criminal liability. The sentences passed on children were carried out with a reduction. This approach persists in the new law, as well.

The Law on the Establishment, Duties, and Litigation Procedures of Child Courts was passed in 1979. Thus, the principles pertaining to the criminal liabilities and trial procedures of children came to be regulated by law.

Major legal amendments were made in Turkey in the course of harmonisation with the European Union. These include the laws on children. Firstly, the Law on the Establishment, Duties, and Litigation Procedures of Child Courts passed in 1979 was rescinded and replaced by the Child Protection Law. The latter regulates both the procedures and principles for the protection of children and the principles related to the establishment and trial procedures of child courts. These amendments are aimed to create a child justice system conforming to the UN Declaration of the Rights of the Child and the Beijing, Havana, and Riyadh Guidelines.

Regulations pertaining to the child justice system

The Child Protection Law regulates the procedures and principles for the protection of children who need protection and who are in conflict with the law. It includes regulations on the measures applicable to children, the procedures to be followed in enforcing the measures and the institutions that have been tasked with pronouncing and enforcing a cautionary decision. Also regulated in this Law are the principles pertaining to the social examination that has to be conducted prior to passing a decision on children and to the supervision of the decisions passed. This Law also regulates the duties and powers of child courts and child prosecutors.

Regulations on children are to be found also in the Turkish Criminal Code, the Code of Criminal Procedure, the Law on the Enforcement of Sentences and Security Measures, and the Law on Parole and Assistance Boards.

The provisions regarding the criminal liability of juvenile delinquents were reinserted into the Turkish Criminal Code when the legal amendments were being made. In the new Turkish Criminal Code, juvenile delinquents are considered in three different age groups as was the case with its predecessor. The first group comprises those that have not completed twelve years of age. This group has no criminal liability. Therefore, no crimes may be attributed to these children and they cannot be sentenced to punishment.

However, they may be subjected to security measures.

The second group comprises children in the twelve-to-fifteen-year age span. It is up to the court to decide whether children in this age group are criminally liable. The court needs to examine the child's level of maturity and the social environment he/she lives in before making this decision. The court may pass a sentence of security measures if it decides that the child has no criminal liability or one of imprisonment or fine if it decides that the child does have criminal liability.

Children who are older than a full fifteen years but have not lived through their eighteenth year are accepted as having criminal liability. Only a sentence of punishment – and not one of measure – may be given if children in this age group are proven to have committed a crime.

The penalties to be given to children are determined by making a reduction in the penalties to be imposed on adults for the same crime. Thus, the penalties to be given to children who have completed their twelfth year of age but not their fifteenth are determined by reducing by one half the penalty that the law provides for in the case of adults committing the same act; and the penalties to be given to children who have completed their fifteenth year of age but not their eighteenth are determined by reducing the adult penalty by one third.

New procedures such as conciliation, deferment of public prosecution, and deferment of the pronouncement of the sentence have been introduced into the criminal justice system through the new legal arrangements.

Enforcement of punishment and measures restricting freedom

In accordance with the Law on the Enforcement of Punishment and Security Measures, each day a child spends in a penal enforcement institution counts for two days until the child is eighteen years old.

Using detention and imprisonment as a last resort for children is one of the basic tenets of the Child Protection Law. To implement this principle, it has been forbidden to detain minors younger than fifteen for crimes punishable with a maximum of five years of imprisonment.

The sentences of detention of children are executed in juvenile houses of detention, if such are available, or in the juvenile sections of adult houses of detention. At present, there is one house of detention exclusively for children in Kayseri. The Penal Enforcement Institutions in Pozantı (Adana) and Bergama (İzmir) serve as houses of detention and prisons for women and children. The Penal Enforcement Institution in Sincan (Ankara) is structured as a building serving only children and youths on a campus with four different types of penal enforcement institutions.

The law calls for two types of penal enforcement institution for the execution of the sentences of imprisonment passed on children. Houses of education are open institutions. Children serving their sentences in these institutions can go to school or vocational training outside the institution and can participate in social activities. There are three houses of education in Turkey (Ankara, İzmir, Elazığ) with an approximate capacity of 70 each.

Prisons are closed penal enforcement institutions. The children in these institutions can continue their education only inside the prison. Children that have received disciplinary punishment because of the difficulties they experienced in adapting to the rules of the open institutions are sent to closed penal enforcement institutions.

Psycho-social programs and personnel training programs are being prepared by the Ministry of Justice with technical support by UNICEF and financing by the European Union to be implemented in the institutions where children are present. Psychosocial programs on such topics as anger management, brief group studies, and entrepreneurial skills are implemented in the institutions along with work done with the children's families.

Protective and supportive measures

Protective and supportive measures may be imposed on children who have no criminal liability and are in need of protection.

The Social Services and Child Protection Institution has many facilities for children of various age groups that need protection. In addition, efforts are being made to expand the practice of foster parenting and child adoption.

The absence of organizations offering specialized services for the benefit of children that are the victims of neglect, child abuse, and substance addiction or have developed criminal behaviour habits is the greatest hardship encountered in the protection of

children at risk. To overcome this obstacle, an amendment has been made in the Social Services and Child Protection Institution (SHÇEK) Law, assigning the SHÇEK the task of establishing institutions to meet the requirements of such children. The SHÇEK is preparing to establish new institutions for this purpose. Besides, the new legal arrangements also allow for private institutions to provide services in this field under the supervision of the SHÇEK, which is already engaged in preparations to work out permission criteria and operating standards for private institutions.

Supervising the carrying out of court sentences

The supervision of the cautionary judgments passed on children was provided for in a Law that went into force in 1979 but the practice never gained viability.

The practice of parole was introduced into the Turkish legal system by means of a new arrangement made in the course of harmonization with the European Union. A Parole Division was established subordinate to the General Directorate of Prisons and Houses of Detention of the Ministry of Justice with parole branches and assistance boards set up in the provinces.

The parole branches are assigned the task of judiciary supervision and the supervision of the execution of the decisions of deferment of public prosecution, deferment of the pronouncement of the sentence, deferment of the punishment, and conditional release.

The Social Services and Child Protection Institution has the duty of supervising the execution of the protective and supportive cautionary decisions passed on children. The Social Services and Child Protection Institution also supervises the execution of the cautionary decisions on children with no criminal liability.

Conclusion

2005 was a year of major legal amendments concerning children. According to data gathered by the General Directorate of Criminal Records Statistics, legal action was initiated for criminal charges against 36,678 children in the 12-15 age group and 122,239 in the 15-18 age group in 2005. This gives a total of 158,917 children placed under trial, which corresponds to 1,530 children per 100,000-child population.

Of these children, those that were tried under detention numbered 1,255 as of June 2005. The number of children sentenced to imprisonment, which was executed, was 110 in the same time frame.

We are confident that these developments will continue with the joint efforts of all the disciplines making up the justice system.

The next edition of the Chronicle will include an article on the Foundation and Propagation of Child Rights Committees in Turkey by the same contributors.

Dr Betül Onursal is a member of the Bar of Istanbul, a Member of the Children's Rights Centre, and an Honorary Member of IAYFJM

Dr Seda Akço is a member of the Bar of Istanbul, a Member of the Children's Rights Centre, and a Member of IAYFJM.

New Legislation on Juvenile Justice in Kosovo — Nesrin Lushta

My aim is to tell you briefly about the juvenile justice system in Kosovo and its recent development.

The post-conflict situation, starting in June 1999, was a difficult period for Kosovo. In the beginning, the infrastructure was damaged and we didn't have trained and specialised personnel, but the most difficult part was to deal with traumatised children who committed criminal offences. Other problems that juveniles in Kosovo faced were, and remain, the difficult financial situations of their families, lack of employment (we see children selling goods in the street), street children in bigger cities, expensive education and so on.

Before 1999, certain provisions applied in criminal law and procedure and in sentencing. There were special provisions for juveniles set down in five laws. These laws were federal, of the republic of Serbia and of the autonomous province of Kosovo.

After the United Nations Mission in Kosovo was established and regulation 1999/24 was introduced, the law in my country was recognised as meeting human rights standards as set down in many international conventions including the Convention on the Rights of the Child (CRC). Consequently, it became mandatory to apply the CRC in domestic law and on April 20th **2004** the new **Juvenile Justice Code of Kosovo**(the Code)was promulgated.

In the new Code, many provisions are the same as before. Thus:

- the age of criminal responsibility remains 14 years The upper age limit for the juvenile court is 18 years.
- imprisonment of a juvenile under 16 is **prohibited**
- educational measures of special observation (supervision) and institutional measures apply. Supervision (3months to 2 years) may be imposed on a juvenile whose best interests do not require isolation from his/her environment but only supervision while in the care of parents, another family or by the guardianship authority. Institutional measures require the removal of the juvenile to an institution where he/she will receive special treatment for his/her re-education.
- for a young person under 21 years it is possible to impose juvenile sanctions if his/her psychological development is consistent with a juvenile's.

There are two new measures in the Code which I should like to emphasise. These are the introduction of:

- diversion; and
- the community service order

The purpose of **diversion** is to prevent commencement of criminal proceedings against a juvenile if at all possible and to prevent recidivist behaviour.

Diversion may be used for offences punishable by a fine or imprisonment up to three years if certain legal conditions are met. In addition there are obligations which the juvenile must fulfil. For example compensation must be paid to the injured party; an apology must be made to the injured party and the juvenile must attend school regularly. Failure to do any of these may result in the juvenile being prosecuted.

The **Community Service Order** (CSO), well known in other countries, is one of the best new measures to be introduced. According to the new Code, it may be treated as punishment or in certain circumstances as a diversionary measure; but it always involves unpaid work (30-120 hours) for the benefit of society. Because of the help of Mrs Renate Winter, who was sitting as an international judge in Kosovo at the time, and the Suisse Foundation, Terre des hommes, Kosovar

judges and prosecutors were able to use CSOs before the new Code was in place. It was a significant step forward and the order has been successfully applied and accepted.

It would not be possible to implement these and other new measures without the Probation Service. Although the service was established in 2002 for adults, its mandate is even broader for dealing with juveniles. Not only does the Probation Service have to supervise all of the measures imposed on a juvenile offender, it also has to write a social inquiry report for the public prosecutor and the court so that decisions can be made in the best interests of the young person in the light of age, psychological development, family background and living circumstances, school career and any other relevant information.

These new options were welcomed for juveniles even when imprisonment was not an option.

Where there is evidence of an offence, a decision **whether or not to prosecute** a juvenile where there is evidence of an offence (it is mandatory to prosecute an adult) may only be taken after consideration of:

- the nature of the offence;
- the damage to or consequences for a victim—there should be none
- the juvenile's record and personal characteristics and
- whether or not the juvenile is already subject to a court order

The procedural part of the Code addresses many issues. I should like to stress the following:

- cases should be addressed with urgency;
- cases are at all times confidential;
- judges and lay judges are specially appointed. The lay judges must be of different genders and are selected from professors, teachers, educators and similar professions;
- if a legal basis exists, a juvenile offender must be legally represented. If the offender or his family does not engage a lawyer, an ex-officio defence counsel must be appointed. This would be done by the police, the public prosecutor or the judge, depending on the stage of the proceedings;
- pretrial detention must be the exception and only ordered if alternatives to ensure a juvenile's presence during the pretrial phase are insufficient. In any case, pretrial detention cannot last longer than 3 months;
- some final sentencing decisions (not imprisonment, but educational or supervision disposals) are 'flexible' so that they can be changed by the juvenile panel which must bear in mind the best interests of the juvenile; and
- for a juvenile who is a witness or victim there are special protection measures available in cases where there is trafficking in persons, where the young person's sexual integrity (safety) is involved and where domestic violence is involved.

Despite the fact that juvenile judges and prosecutors were trained for the new Code, initially they hesitated to impose the new measures. Happily, this phase has now been overcome. Weaknesses in the system are the continuing shortage of facilities and specialized public prosecutors and other personnel to allow juvenile judges to implement many of the new measures.

But overall, the new Code, set against the background of the CRC, is very much welcomed. The youth in Kosovo were and still are in a difficult situation. We very much hope that the proper implementation of the Code and overcoming the weaknesses mentioned above will improve it.

Judge Nesrin Lushta is a specialist in juvenile justice, national and international penal law sitting in Kosovo.

Locking up children in England and Wales

Sarah Curtis

During the course of 2005-6, the last year for which there are official figures, over six and a half thousand children and young people aged ten to seventeen who had been convicted of crimes were held in custody or secure accommodation in England and Wales.[1] During the month of February 2007 there were nearly three thousand juveniles locked up.[2] Most of them were over fifteen, held in young offender institutions, but on any one day during 2005-6 there were two hundred and fifty younger children, from the age of twelve, in secure training centres and another two hundred in secure children's homes. In addition, over six hundred young people, some of whom may not subsequently have been convicted, were held on remand in secure conditions. England and Wales lock up more of their young than any other nation in Europe.

So why does a country, with an historical reputation for tolerance and fairness, think that a good way to tackle serious young offenders is to lock them up and separate them from their families and peers rather than punish and educate them in the community? Linked to this question are the findings of a report, commissioned by Unicef and published in February 2007, which placed the UK bottom among the world's twenty-one richest nations according to an overall measure of child-wellbeing.[3] Child poverty in a country where television is universal and almost every household owns a washing machine does not mean that children are starving. It is the contrast between richer and poorer which is striking, with 2.8 million children below the agreed poverty line for rich nations. The UK achieved its highest rating for health and safety, coming twelfth in the table, but it was second to bottom for education. As far as delinquency is concerned, British children showed far the worst 'risk behaviours'. These behaviours were of concern to the society in which they lived and to the young people themselves. More fifteen-year-olds than anywhere else smoked, became drunk, used cannabis, had sexual relations, did not use contraception and had pregnancies. They were also most involved in fights and experienced bullying most.

Recent development

The UK Government has set a target to halve child poverty by 2011, a goal that looks hard to reach at the moment in spite of increased resources being allotted to many areas of child welfare including the prevention of offending. Tony Blair famously declared when he became Prime Minister that his government would be 'tough on crime and the causes of crime'. The legislative framework for Youth Courts in England and Wales now states that the principal aim of the youth justice system is "to prevent offending by children and young people". The Youth Justice Board (YJB)

[1] YJB (2007) *Youth Justice annual statistics 2005/6*; Scotland has a separate youth justice system

[2] Nacro *Youth Crime Update March 2007*

[3] Unicef, Innocenti Research Centre Report Card 7, *Child poverty in perspective: an overview of child well-being in rich countries*

was established in 1998 to oversee the treatment of young offenders in England and Wales. It marshalled research[4] to analyse the youth justice system and as a consequence the government has given more resources to the Youth Offending Teams (YOTs) which deal with young offenders in the community. Justice for young offenders has been speeded up. The courts have been encouraged to make the judicial process more intelligible to children and their families, and the need for co-ordination between services, from education to housing, has been emphasised. Parenting Orders have been introduced to help parents to support and discipline their children.

Alternatives to custody

As far as custody is concerned, the YJB regards it as a last resort. Intensive Supervision and Surveillance Programmes (ISSP) were introduced in 2001 as an alternative to custody, requiring for the first three months of the programme at least 25 hours a week of education, training in practical skills for future employment and courses to deter offending, alcohol abuse and the use of drugs. Five and a half thousand ISSPs were made in 2005-6. Re-offending after ISSPs and other community sentences was lower than the rate of re-offending within twelve months of leaving custody – a shocking 78 per cent for the over fifteens and 82 percent for children aged 10 to 14, figures which surely indicate defects in the secure system – but a significant number of young people on ISSPs breached their orders. As a result, they ended up in custody, too, accounting for more than 13 percent of all Detention and Training Orders made in 2005-6. Similarly, over a quarter of young people who by the end of 2003 had breached the conditions of Anti-Social Behaviour Orders (ASBOs), introduced in 1999 as a measure taken under civil jurisdiction to deter unruly behaviour) were punished with custodial sentences.[5] Burglary, theft and other offences concerning property remain the main crimes committed by children but there has been an increase in violent offences. Violent offences represented 19 per cent of the total, a rise from 12 per cent in 1993. A recent spate of stabbings and incidents with guns resulting in death (seven in the first four months of this year) has understandably added to public alarm but a majority of violent crimes by juveniles are on the lower end of the scale of seriousness. An episode in which a boy or girl on the way to school is robbed of dinner-money is terrifying for the victim and all too common an occurrence but it appears in the statistics as a robbery, the same classification as an armed raid on a bank.

Dangerousness and deciding on custody

Why then is the custody rate for juveniles so high, mirroring the high imprisonment rate for adults? Most people would agree that the public has to be protected from dangerous people of any age but what should the definition of dangerousness be? A number of judgments in the Court of Appeal[6] have clarified that there must be significant risk of serious harm and that a young person's circumstances, from previous offending to state of maturity, must be taken into consideration when sentencing. 'Serious harm' has in turn been defined as "death or injury (either physical or psychological) which is life-threatening and / or traumatic and from which recovery is expected to be difficult, incomplete or impossible".[7] Only a handful of children and young people in custody have committed crimes which meet these criteria.

For all children and young people on criminal charges, one of the YJB's most useful achievements has been to develop an assessment tool (*Asset*) to be used by the YOTs for producing their reports to

[4] The 1996 report of the Audit Commission, *Misspent Youth*, was influential in shaping the present youth justice system.

[5] Evidence to Select Committee on Home Affairs Report on Anti-Social Behaviour (HC 80-III)

[6] Notably *R v Lang and others: Court of Appeal (Criminal Division) [2005] EWCA Crim 2864*

[7] *Asset Core Profile Guidance*, April 2006

the courts and planning interventions which will address the factors leading to risk of further offending. The relevant factors range from personal and family relationships to physical and mental health, educational attainment, lifestyle, attitudes to offending and motivation to change. These are numerically rated to assess the likely risk of future offending and are the basis of the YOTs recommendations for sentencers. It is a well-structured approach but it is focused on the possibility of further offending, not on the level of danger.

What happens in practice

In a frequent Youth Court scenario a persistent offender appears after being involved in a fight or committing a burglary. The magistrates who determine the sentence are unpaid volunteers from the community. They are not usually lawyers but they are well schooled in the relevant law before they take up their appointments and they attend regular training meetings. They should receive information about the services offered by the YOT in their area and have visited local projects for young offenders as well as secure institutions. (A project in South London, for example, has recently been established for children thought to be at risk of joining gangs which have access to guns.) They must have confidence in local provision to be sure that any punishment and training given whilst the offender remains in the community will protect the public. A major difficulty they face is that protecting the public is not always the same as satisfying the public. Neither politicians nor the media adequately explain the complexities of offending by young people, nor do they often describe schemes in the community which achieve good results for deterring young people from crime. Hence the popular clamour for custody persists.

It follows that tinkering with the law is not the only way to reduce the high custody rate. It would be beneficial if education and training for young people in secure establishments were improved but the problem would remain of how to reintegrate young people into the law-abiding community. The introduction in 2000 of the Detention and Training Order was intended to give a seamless progression from a few months of custody to a period of supervision in the community. The intention may have encouraged magistrates to use custody more frequently. Unfortunately, it has proved harder than anticipated to ensure such continuity.

Early and consistent intervention

The crux of the matter is that in spite of the declaration of New Labour to tackle the causes of crime, and the launch of schemes like Sure Start to support the most vulnerable young families, there is not enough emphasis on early diversion from delinquency.[8] By the time children become persistent offenders and commit crimes serious enough to make them eligible for custody, turning them round has become increasingly difficult - which is one reason why there are too many breaches of ISSPs.

So what can be done to convince those who think that a spell in custody will give the community respite from the activities of delinquents and also teach the young villains a lesson? There is a discontinuity in logic here. No one expects children to learn to read in a few weeks, especially those who are not blessed with quick minds and come from families of reluctant readers. Why should children quickly learn the moral code which underlies the social contract, especially if they live in a neighbourhood where crime is prevalent? And why is there reluctance by magistrates and judges to repeat community sentences? A youth may be said to have held the court in contempt by breaching the Order the court imposed, but it could be argued that the court is weak when it changes the type of punishment it imposes, lacking confidence in its previous adjudication. Some magistrates may have a teaching,

[8] Smith, D (2006) *Social inclusion and early desistance from crime*, report no. 12, Edinburgh Study of Youth Transitions and Crime. University of Edinburgh

medical, youth or social work background but the welfare of the child is not the paramount consideration for the Youth Court as it is in the Family Court where the child's contemporaries – and many of the children themselves – may appear if they are at risk of harm or the subject of marital disputes. Some but not all Youth Court magistrates also sit in the Family Court and thus have more experience and training in child development and the factors that can put a child at risk of delinquency, from low intelligence and truanting from school to an unstable family. If all Youth Court magistrates were more aware of the way children and young people learn, they would perhaps be more willing to repeat community sentences rather than demand custody as the necessary next step on the tariff.

Long periods of supervision are sometimes opposed as an infringement of children's rights (the justice versus welfare argument which stresses that punishment must be proportionate to the crime) but it is only by sustained support and diversion to new activities at an early stage, and similar work with their families, that many children and young people will find their way out of crime. The same argument supports the raising of the age of criminal responsibility in England and Wales to at least fourteen. At the moment Scotland is the only other country in Europe which brings into court and gives criminal records to children as young as ten years old.[9] Other measures are taken to divert the children from crime, a solution which British political leaders must convince their public will give better protection and improve the future for everyone.

[9] Muncie, John (2006), 'Repenalisation and Rights: explorations in comparative youth criminology', *The Howard Journal of Criminal Justice*, Vol. 45 No. 1, February 2006, p 55

Sarah Curtis was a Juvenile, Youth and Family Court magistrate for twenty-three years in Inner London and a member of the Lord Chancellor's Advisory Committee on Justices of the Peace for Inner London. She has written two books on offending by young people, 'Juvenile Offending: prevention by intermediate treatment' (1989, Batsford) and 'Children Who Break the Law' (1999, Waterside Press).

Juvenile Justice in Europe — Joseph Moyersoen—Italy

Launch of the European Forum on the Rights of the Child

The new body created by the European Commission as a forum for the discussion and study of children's rights with the participation of EU public and private institutions was inaugurated on 4 June 2007 in Berlin.

Given that at the moment the EU has no specific competence on the rights of the child – at least not unless and until the Treaty establishing the European Constitution is adopted – last year, following a proposal by the Vice-president of the European Commission, Franco Frattini, the Commission adopted a Communication entitled "Towards a European strategy on the rights of the child". The Communication included specific objectives of the EU strategy:

1. Capitalising on existing activities while addressing urgent needs;
2. Identifying priorities for future EU action;
3. Mainstreaming children's rights in EU actions;
4. Establishing efficient coordination and consultation mechanisms;
5. Enhancing capacity and expertise on children's rights;
6. Communicating more effectively on children's rights;
7. Promoting the rights of the child in external relations;

Objective no.4 provides for the creation of the European Forum on the rights of the child.

"This will be your Forum" stated Franco Frattini in his speech of presentation of the Communication to the 200 participants of the meeting, including Ministers, Under-secretaries, officials of the EU Ministries for Justice and of the Ministries dealing with childhood, representatives of EU institutions, international organizations (among which the Council of Europe and Unicef), European networks (ENOC and ChildONEurope) and national associations of NGOs.

The initiative was organized by Franco Frattini together with the German Minister for Justice Brigitte Zypries. In her speech, Mrs. Zypries described some of the most important actions carried out in Germany to prevent and fight against child abuse and exploitation, such as awareness campaigns like "my body belongs to me", protected judicial hearings, suspension of the statute of limitations (prescription) for sex crimes until the victim comes of age.

Among the other speakers, Ronald K. Noble, Secretary General of Interpol, illustrated techniques to identify paedophiles through the detailed analysis of videos and pictures of child pornography which never portray the faces of the paedophiles.

As coordinator of the Secretariat of ChildONEurope, I presented the results of the survey on the Concluding Observations of the UN Committee on the Rights of the Child concerning the reports of EU Member States on administration of juvenile law.

The survey highlighted that this is the only topic in which all the countries (27+2) received one or more recommendations from the UN Committee, which mainly stressed the need to implement the existing national and international regulations – in particular as regards arrest and custody – as well as to have enough human and economic resources, disaggregated data in this field, adequately trained personnel and to create or strengthen measures alternative to detention and a restorative justice system.

In the afternoon, the participants were divided in two working groups: the first one on child pornography and the second one on the Forum. The latter, which was chaired by Francisco Moreno Fonseca Morillo, Director of Civil Justice, Rights and Citizenship in the EU Directorate-General *Justice, Freedom and Security*, focused on the future structure and organization of the Forum (membership, bodies, working methodology), on the active participation of children in the Forum (methodology, timing, costs, coordination and supervision of children involvement) and on the topics which the Forum will have to analyse in depth. Given that a unanimous consensus was not reached, it was agreed to postpone any decisions to future meetings.

As regards the structure and the active participation of children, a decision was made to hold a smaller meeting in July, with one or two representatives of the six groups involved (EU institutions, Member States, International Organizations, ENOC, ChildONEurope and NGOs) in order to adopt a shared proposal. Many topics of study have been proposed, such as child poverty, parenthood support, juvenile justice and child abuse, but the most debated topic – which will probably be the first one to be analyzed by the Forum – is the participation of children and adolescents.

We can reflect on some questions that haven't at the moment an answer: the need to better clarify the structure of the Forum, its status and the adoption procedures of the European Commission; the need to have terms of reference; the need for guidelines on how to select the children (who should select them, which age groups, etc.) and on how and when they should participate in the Forum and the need to prepare and inform children with the help of facilitators (2 or 3-day long training) and to hold joint discussions with children and adults together and the need for the Commission to get all the necessary financial resources for this specific issue.

At the end of the meeting, the Declaration of Berlin was adopted, in which the Ministers of EU Member States and the representatives of EU institutions, of the Council of Europe, of Unicef, of the ENOC network, of ChildONEurope and of the civil society pledged to provide their support to the launch of the Forum and to the EU strategy on the rights of the child.

Joseph Moyersoen is a judge, jurist and Coordinator of the Office of ChildONEurope

Rights of the Child — Marie-Claude Roberge—Canada

Report on the International Conference held on 15-17 March 2007 at the University of Ottawa, Canada

The United Nations Convention on the Rights of the Child (CRC), which came into force on September 2, 1990, is considered today to be one of the most important human rights landmarks. This Convention regulates children's rights from a broad interdisciplinary perspective. With 193 State signatories it is the most widely ratified human rights instrument. While this legal document has been widely welcomed, it has also been strongly criticized. Some critics highlight issues such as its western approach to human rights and the Convention's weak monitoring system.

It was precisely to discuss the various issues and address the gaps in the Convention that the Human Rights Research and Education Centre and the Faculty of Law of the University of Ottawa organised an International Conference on the Rights of the Child. The three day conference included panels that addressed different aspects of children's rights issues that constitute a priority in both governmental and non-governmental agendas: How has this Convention been implemented by State signatories? Are States observing the legal standards required by this international instrument? What role are international organisations, the judiciary, NGOs and the academic sector playing in this process? How can collaboration between the different sectors be enhanced?

The conference brought together the different players involved in the implementation and monitoring of the CRC to share their perceptions of the current situation and challenges posed by this legal instrument. It provided an overview of the latest research and experience on each of the conference themes:

- monitoring of child's rights observance by States;
- youth criminal justice system;
- refugee children and abducted children;
- exploitation of children;
- children's privacy rights;
- economic and social rights;
- the family and the child;
- Aboriginal children;
- child sexual abuse and child labour;
- children and armed conflicts; and
- violence against children.

There were more than 200 participants (of whom 60 were from Europe, Asia, Africa and Latin America), representing all sectors and disciplines—government officials, both Canadian and foreign; academics specialising in children's rights from disciplines such as law, economics, sociology, criminology, anthropology, health sciences, and gender studies; academic and research institutions; youth and students; Canadian and international NGOs; judicial bodies; international organizations and the general public. There were 37 presentations.

The Conference welcomed distinguished representatives from, among others, the UN Committee on the Rights of the Child (Jaap Doek, President). UNICEF **(**Marta Santos Pais, Director, UNICEF Innocenti Research Centre)**,** UNHCR, the International Bureau of Children's Rights, Save the Children Canada, the First Nations Association for Children and the Family, and the Foundation Paul Gérin-Lajoie., Also present were distinguished representatives of judicial bodies, including the International Criminal Court, the Special Court for Sierra Leone and the Quebec Court.

Of special interest was the powerful presentation of the Honorable Renate Winter, Judge in the Special Court for Sierra Leone and President of the I AYFJM, on the use of child soldiers and its repercussions. In addition, the Conference benefitted from the participation of the Honorable Oscar D'Amours, Judge in the Quebec Court and Vice-president of the IAYFJM, who acted as moderator of the panel on the Family and the Child**.**

The outcomes of the Conference included:

- the achievement of a broader framework of analysis
- a clearer focus on the links between the themes and the research agenda for the future;
- an increased Canadian and international awareness, understanding and knowledge of the issues surrounding children's rights and
- the fostering of new relationships between professionals of all disciplines that hopefully will result in future collaboration to enhance children's rights.

In order to contribute to the discussion and research, the conference academic committee is in the process of editing a book of selected papers in their original language (French and English). These papers will be published by Collection Bleue, Wilson & Lafleur (Montreal, Canada). The publication aims to include research from different countries, as well as from the different disciplines represented at the conference. The book will also be available in Spanish, published by the Universidad de Buenos Aires.

For more information about the Conference and its outcome, please visit http://www.uottawa.ca/hrrec/index_e.html

Marie-Claude Roberge is Director of the Human Rights Research and Education Centre, University of Ottawa, Canada. Her Department and the University's Faculty of Law jointly organised the conference.

Violence against Children in Places of Work **Yoshie Noguchi**

Reflections on the United Nations Secretary General's Study

Children are frequent victims of maltreatment, physical and psychological violence or abuse by supervisors, co-workers and outsiders in places where they are made to work - in factories, fields, mines, private homes and other settings. Such violence compounds the exploitative practices of child labour - one more reason why children should not be put to work in contravention of international labour standards. Because of their immaturity and inexperience, children and adolescents even above the minimum working age are more vulnerable to workplace violence and its serious effects than adult workers.

Introduction: the UN Study on Violence against Children

The World Report on Violence against Children by an independent expert, Prof. Paulo Sérgio Pinheiro, was launched in 2006. It was the United Nations Secretary General (UN-SG) who, mandated by the General Assembly (UN GA Resolution 57/190), appointed him in order to lead a global study on violence against children.[1] The UN-SG's report[2] on this issue was presented to the UN General Assembly and discussed in the Third Committee. The Study was an UN-wide collaboration, rooted in children's human rights to protection from all forms of violence. It aims to promote action to prevent and eliminate violence against children in different settings – including in places of work – at international, regional, national and local levels. The ILO contributed to the Study as a key partner with reflections and information on violence against children who are working. The Study was an opportunity to shed light on the global issue of child labour from a different perspective. Child labour is not the same as violence, but child labour and violence against children[3] at work both have to be eliminated.

Children at work

According to the ILO estimates, more than 200 million children are found in situations of child labour in violation of international or national standards and which therefore need to be stopped. Even though the global number of child labourers had fallen by 11 per cent over the last four years (from 246 million in 2000 to 218 million in 2004; and in particular, that of children in hazardous work decreased by 26 per cent from 171 million in 2000 down to 126 million in 2004), this is still too large a number of children working too young or in impermissible conditions worldwide. The decline in the overall figure is, however, encouraging; in particular, the reduction of younger children (5-14 years) in hazardous work was even steeper—by 33 per cent. Some regions (e.g. Latin America and the Caribbean) showed more rapid progress than others (e.g. Sub-Saharan Africa).[4]

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[1] See for details and documents, including the World Report to download: http://www.unviolencestudy.org/ Chapter 6 covers violence in places of work.

[2] UN General Assembly document A/61/299, available at: http://www.unicef.org/violencestudy/reports/SG_violencestudy_en.pdf

[3] "Child" in this study covers all girls and boys under 18 years of age, in line with the CRC and the ILO Conventions on Child Labour. In some cases, those children above the minimum working age who are legally at work may be called "adolescents" or "young workers". Nonetheless, they are within the scope of concern here.

[4] For more on these global situations of child labour, please see: *The end of child labour: Within reach*, Global Report under the follow-up to the ILO Declaration on

The elimination of child labour does **not** mean withdrawing all the working girls and boys under 18 years of age (total of more than 300 million) from every kind of work. More than 100 million children (adolescents) are in fact working in a permissible situation, as they have reached a minimum age specified for the kind of work or as a permissible exception to the minimum age in line with international standards and national norms. Nonetheless, they are also exposed to violence at work and are more vulnerable than adult co-workers, because of their young age and inexperience.

Child labour and its worst forms

Let us briefly look at the line between acceptable work by children and unacceptable – i.e. what we call "child labour" for elimination. Within the latter category, the concept of the "worst forms of child labour" (WFCL) focuses on what must be tackled with urgent priority.

The ILO has been setting international standards on child labour since the very foundation of the Organization in 1919 particularly in requiring the minimum age for specific economic sectors (such as industry, agriculture, maritime employment), until finally consolidated into the comprehensive Convention No.138 of 1973 on Minimum Age (C138). C138 calls for the fixing of a minimum working age in harmony with the end of compulsory education, and normally at 15 (developing countries may start at 14[5]). Furthermore, nationally specified "hazardous work[6]" must be prohibited for young workers under the age of 18, while flexible exceptions may be made, e.g. for light work from 12 or 13 years of age, as long as non-harmful and compatible with schooling. C138 also contains other flexibility clauses to take account of practical difficulties, and to permit work by children under protection, for instance, in education or training or for artistic performances.

While the ultimate goal of eliminating all child labour under C138 is a long-term one given the complex and deep-rooted nature of the problem, it became globally recognized that certain forms of child labour that are so fundamentally at odds with children's rights and dignity cannot be tolerated irrespective of the economic development of the country. Thus, Convention No.182 on the Worst Forms of Child Labour was unanimously adopted in 1999, and confirmed the need for urgent action against the worst forms of child labour, which comprise: (a) slavery and forced labour, including child trafficking and forced recruitment for armed conflict; (b) the use of children in prostitution and pornography; (c) illicit activities such as production and trafficking of drugs; and (d) "hazardous work" likely to harm the health, safety or morals of children. This Convention is action-oriented and requires ratifying States not only to prohibit the worst forms of child labour in law, but to design and implement programmes of action, to establish or designate appropriate mechanisms for monitoring implementation and also take effective and time-bound[7] measures for prevention, the removal of children from the worst forms of child labour and their rehabilitation.

The notion of "work place" in the discussion of child labour, therefore, extends not only to locations for manufacturing, agriculture or other economic production, but also to settings where children are engaged in activities – in some cases illicit or illegal – that are defined as the worst forms of child labour (streets, brothels and entertainment places)[8]. Children are consequently exposed to violence in these various places of work.

Fundamental Principles and Rights at Work, report to the 95th session of the International Labour Conference, ILO, Geneva 2006. available online at: http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-i-b.pdf

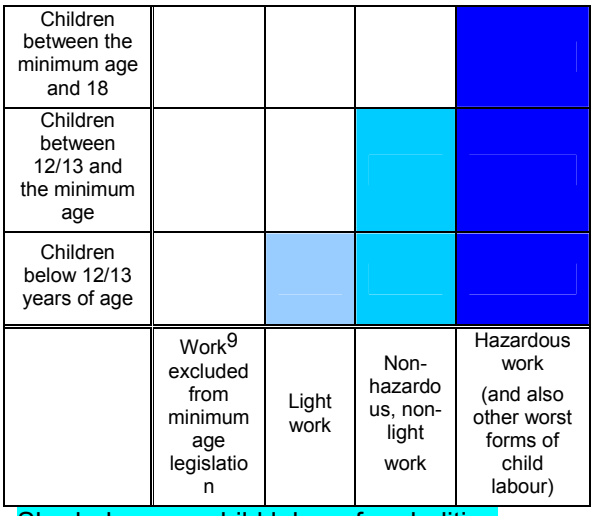
5 This is an option and not an obligation: Some countries voluntarily choose to set a higher minimum age, e.g. at 16 years in Brazil, China and Kenya, while some of the most industrialized countries remain at the general level e.g. 15 years in Germany, Japan and Switzerland.

6 The exact contents of hazardous work – "work which, by its nature or circumstances in which it is carried out, is likely to harm/prejudice the health, safety or morals of children"– must be determined nationally by laws or regulations after tripartite consultation (i.e. among the government, and workers' and employers' representatives). [see C138 Article 3, and also C182 Articles 3(d) and 4]

7 This requirement for time bound measures is an important concept – as opposed to leaving the solution of the issue till indefinite future – and guides the practical action with a sense of urgency.

8 In this article, the term "work" or "workplace" refers to a wide concept, including the latter sense, without any intention of legitimising or condoning, for instance, commercial sexual exploitation of children as "work ".

What child labour should be abolished?



Shaded area = child labour for abolition

Workplace violence in general, and against children

Violence at work, ranging from bullying and mobbing, to sexual harassment, rape and homicide, is increasing worldwide and has reached epidemic levels in some countries, according to a recent ILO publication.[10] The ILO has published several major studies and papers on the subject and also convened a number of Expert Meetings to develop codes of practice in different sectors. Workplace violence is defined in one Code of Practice as: "Any action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a direct result of his or her work." [11] This definition clearly puts emphasis on the personalized nature of any *action, incident or behaviour* and does not involve the nature of work itself. In other words, violence can occur in any workplace and work situation and against children, adolescents or adults at work. A particular form or type of work cannot be qualified as "violence" as such, but is an important determinant of the risk of violence.

Some people might argue that all child labour should be labelled as "violence," but the UN Study did not take this position. Even legally working adolescents (i.e. not child labourers) are exposed to and suffer from violence at work. Although global figures are unobtainable due to the "hidden" nature of the problem and the difficulties for children to report incidents of violence against them, it would appear that in some areas, most working children have faced some form of violence in the workplace—either verbal, physical or sexual. Being a "child" or being young at work is already a "special vulnerability" to workplace violence.[12] Because children and adolescents are usually at the bottom of the hierarchy in the workplace, they have little power to defend themselves in the workplace. Their physical characteristics, dependence and lack of experience make them easy targets for physical attack, bullying and abuse, either internally (from co-workers, supervisors or managers) or externally (from clients or other people having contact with them). In addition, where the children are working in breach of labour rules, their position would be even weaker for reporting violence or seeking relief or recourse, because there is no structure to protect them as workers.

Furthermore, some categories of child and adolescent workers are particularly at risk of violence: domestic workers, youth in the informal economy, victims of child trafficking, children in debt bondage or other forms of forced labour, and those doing hazardous work. What's more, some "child labour" situations—especially its worst forms—are tantamount to violence by their very nature, including sexual exploitation and trafficking in children. The exploitation of children under 18 in prostitution and pornography is a blatant example of violence against children; making the situation worse still, the sexual violence intrinsic to such exploitation is often compounded by exposure to additional physical or psychological violence.

What can we do—

(1) against child labour?

One obvious answer to workplace violence against children is to reduce the number of child labourers—who should not be working to start with. The worldwide movement against child labour must be further invigorated, enlisting all those who can help– governments, employers, trade unions, civil

[9] For example, household chores done by children in their own home, and work carried out in the context of education and training under protective conditions.

[10] Chappell D.& Di Martino V. (2006): *Violence at work, Third edition*, International Labour Office, Geneva http://www.ilo.org/public/english/support/publ/violence3ed.htm

[11] Code of Practice on workplace violence in services sectors and measures to combat this phenomenon – Meeting of Experts to develop a Code of Practice on Violence and Stress at Work in Services: A Threat to Productivity and Decent Work (8-15 October 2003), ILO, Geneva.

[12] Chappell D.& Di Martino V, op cit.

society and children themselves—so as to make this a world without child labour. Such action will be guided by international standards such as ILO C138/182 and CRC through the promotion of their universal ratification and effective implementation in practice. It is also indispensable to mainstream the elimination of child labour into national development policies, poverty reduction and other goals such as education for all, in order to cut the vicious cycle of poverty, social exclusion and child labour. An example for such an approach is the ILO's "Time-Bound Programmes"[13] (TBPs) to eliminate child labour, comprising a package of interventions covering prevention, withdrawal, rehabilitation and future protection. Over 20 countries have adopted such (TBP) programmes with the assistance of the ILO's International Programme on the Elimination of Child Labour (IPEC).[14]

(2) against workplace violence?

Violence at work, however, is unacceptable, whether against child labourers, legally working adolescents or adult workers; we must prevent and tackle workplace violence as a whole with "zero tolerance" whatever the age of the victim. ILO already has a wide ranging experience and many tools to tackle workplace violence, which should be tapped into. It is important to aim for prevention and also to consider reporting and complaint systems. Some of the recommendations[15]l of the UN Study on Violence against Children are fully valid to tackle any form of violence, for instance: violence (against working children) should be condemned; perpetrators of violence should be brought to account; data should be collected about violence; and interventions should be monitored and evaluated. Some elements are, in turn, common to other child rights issues: build the capacity for all who come into contact with children; and enforcement and judicial procedures should be child-friendly.

Concluding remarks

The UN Study now sheds a new light on an under-studied aspect of child labour, i.e. violence against children in their places of work. Throughout the process of the UN study, the ILO participated and contributed actively—not only in Geneva by providing substantial contents and conceptual reflection, but also through ILO field colleagues working against child labour who have participated in various regional consultations for the Study or related meetings throughout the world. The same should continue in the follow up efforts to the UN Study combining legislative prohibition with practical action. This is an opportunity to underline the relation between two issues: violence against children on the one hand and child labour on the other—they are not the same, but both need tackling[16].

Yoshie Noguchi is a lawyer from Japan, promoting international labour standards and dealing with legal issues in the International Programme on the Elimination of Child Labour (IPEC), International Labour Office, Geneva, where she is a Senior Legal Officer.

[13] ILO/IPEC has developed a "Time-bound programme" (TBP) approach inspired by C182, so as to tackle the WFCL in a comprehensive manner within a clear time frame. See section 5 below for more on TBP.

[14] IPEC is a strong alliance of over 80 participating countries, supported by more than 20 donors. See its website at: http://www.ilo.org/childlabour

[15] Specifically on workplace violence against children, see p.268 et seq of the World Report, op cit.

[16] The views expressed in this article are those of the author and not necessarily of the Organization.

Non-resident Indians and the challenge of broken marriages

Ranjit Malhotra
Anil Malhotra

Anil Malhotra

Ranjit Malhotra

The problems

Of a population of over one billion Indians, twenty five million are non-residents (NRI), living all over the world. A significant problem is the contracting of multiple, bigamous marriages by NRIs, duping their previous spouse and providing no maintenance to them or their children.

India has plural systems of family laws and the family law enacted by the Indian Parliament has not changed fundamentally since 1956. Registration of marriages, which is optional under Hindu family law, has not been made compulsory in India despite a Supreme Court judgment in February 2006. Foreign divorce decrees are not accepted by Indian Courts. Despite the 1984 Family Courts Act, few States have yet established a Family Court.

There are no bilateral agreements or treaties with foreign countries. Defending a matrimonial matter in a foreign court from India is an impossible task. Legal recourse in India is difficult, time-consuming, and expensive. Parallel proceedings initiated by both sides in different countries can lead to a conflict of jurisdiction and flouted court orders. About 25,000 abandoned women in Punjab alone are fending for themselves in a legal system which provides no solutions.

There are also issues of inter-parental child abduction. As India is not a signatory to The Hague Convention on law on the subject and legal recourse is very difficult. Moreover, inter-country adoptions are governed by a maze of laws and procedures.

How are all these family law-related issues to be resolved? Who will do it and how? These were the questions considered by a distinguished group of jurists and academics at a seminar held at Panjab University, Chandigarh on 13 February 2007, widely reported in the Indian press.

Conclusions of the seminar

1. multi-media awareness programmes: should be launched, especially in rural areas where most of the gullible brides come from, to make them and their parents aware of the risks of entering into foreign marriages without proper verification of the antecedents of the non-resident groom.

2. enact new legislation on NRI marriages, divorce, maintenance, child custody and settlement of matrimonial property, giving legal remedies in India to abandoned brides. Indian law should be made applicable to NRIs settled abroad and holding Indian passports.

3. registration of NRI marriages should become compulsory with stringent checks to avoid malpractice. A complete proof of marriage would be a very strong deterrent against bigamy. The passport number and brief details of the NRI husband should be included in the marriage certificate. A mandatory certificate of marriage in the wife's Indian passport would provide her with proof of marriage if she is abandoned.

4. international conventions and bilateral treaties: Dialogue with countries with substantial Indian diaspora is urgently needed. Harmonising legislation to recognise inter-country court verdicts in family law areas has become increasingly significant. Marriages solemnized in India should be dissolved in accordance with Indian law. Inter-country arrangements require bilateral agreements. India should accede to the 1980 Hague Convention on Child Abduction and Parliament should legislate accordingly. Children's rights and child protection must become priorities over parental rights.

5. existing legislation should be strengthened to include details of the wife with her photograph in her husband's passport and to allow cancellation of the passport of an offending NRI spouse and

increased penalties for matrimonial frauds with extradition of matrimonial offenders for trial in India.

6. conciliation and legal assistance schemes: The Ministry of Overseas Indian Affairs is introducing a scheme, using and paying NGOs as appropriate, to provide free legal and counselling services to NRI women overseas, as well as to foreign citizens of Indian origin. More such schemes should be floated. Contact officers should be appointed in Indian Embassies in countries with a large Indian diaspora to aid deserted Indian spouses. A network of caring people in different countries should be coordinated through the Ministry.

7. disclosure of information by foreign authorities: Consular divisions of foreign embassies in India should have designated officers required to supply relevant information about offending NRI husbands to wives abandoned in India.

8. amend the Indian law of maintenance so that courts can make provision for maintenance and settlement of matrimonial property for an abandoned Indian wife in accordance with the income and living standards of the husband resident abroad. This would be a major deterrent to matrimonial defaulters living abroad.

9. creation of family courts: States where Family Courts have not yet been established should be directed to provide them.

10. addition of breakdown as a ground for NRI divorces: Subject to safeguards, breakdown of the marriage should be introduced as an additional ground for divorce when at least one of the spouses is an NRI. This would enable spouses of NRIs to seek a remedy or defend an action on Indian soil. This would be convenient and affordable.

Anil and Ranjit Malhotra are advocates in Chandigarh India, specialising in all areas of matrimonial and family law, child protection and foreign court orders. They were deeply involved in this important seminar on NRI issues. They may be contacted at: anilmalhotra1960@gmail.com and malhotraranjitindia@rediffmail.com .

Treasurer's column — Avril Calder

A gentle reminder for subscriptions

In the early months of 2007 I sent out email requests for subscriptions to individual members (GBP 20; Euros 30; CHF 45) and national associations.

I am pleased to say that many of you have now paid, but there remain a number outstanding.

If you have not yet paid, may I take this opportunity to remind you of the ways in which you may do so:

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It is, of course, always possible to pay in cash if you should meet any member of the Executive Committee.

Without your subscription it would not be possible to produce this publication.

Historical Perspectives on Adoption

André Dunant

Cavemen practised adoption.

Unfortunately, we have no archives!

But it is easy to imagine, at the dawn of humanity, a mother of two babies dying, disappearing in a hunting accident or being kidnapped by another clan. In this situation, what happens to the babies? They simply are taken over and brought up by another mother of the tribe. She takes care of them exactly as she would her own children.

It is not yet a full adoption, with all the papers and the "benediction" of the Court, but we are on the way!

The first stories and documents

So many old stories tell the extraordinary adventures of abandoned or stolen children who were taken in by shepherds, princesses or kings and raised as their own children. **Moses** is a famous example of a child adopted into a foreign culture.

"And the child grew, and she [the child's mother] brought him to Pharaoh's daughter, and he became her son. And she called his name Moses, because she said : "I drew him out of the water".[1]

Later Moses broke away from **Egyptian culture** and led his people to the Promised Land.

It is not the same with **Joseph.** Pharaoh gave him an Egyptian name and made "him rule over all the land of Egypt".[2] Unlike Moses, Joseph integrated perfectly into the foreign culture.

The Codex Hammurabi (18th century BCE) is one of the oldest written law codes. It contains provisions on the adoption of children, in particular foundlings. The text, which you can find in Article 3 of the United Nations Declaration of 1986 is very precise about one of the principal conditions to be respected: "The first priority for a child is to be cared for by his or her own parents". Nearly 4,000 years ago, section 106 of the Codex Hammurabi stipulated that before a man can adopt a foundling, he must look for the child's parents, and if he finds them, he must restore the child to them.[3]

In **ancient Rome,** the principal object of adoption was to provide a son and heir to a childless man as a means by which the family line could be saved from extinction. Several Roman Emperors, among them Tiberius and Nero, had been adopted for this purpose."[4]

Under **Justinian Law**, there were two forms of adoption:

- **adoptio plena,** full adoption, limited to the case of adoption by a natural ancestor, such as a grandfather, and
- **adoptio minus quam plena,** incomplete or simple adoption, which does not impair the rights of the natural family, the natural father.

Both kinds of adoption figure in the development of adoption as an institution and are still to be found today. In many legal systems, they exist side by side.[5]

Ancestral and religious traditions

Adoption practices exist all around the world in cultures which are very different from each other, for instance, the **Kikuyu in Kenya,** the

[1] Exodus 2:10.

[2] Genesis 41:40-45

[3] Cf. Report on intercountry adoption, Hague Conference on private international law, drawn up by J.H.A. van Loon, April 1990, p. 20

[4] Report on intercountry adoption, p. 28

[5] "Adoption and the law : present situation and new trends", Claire Rihs, in International Child Welfare Review, No 28, March 1976, p. 52

Moluccans in Indonesia, and the Inuit in the North American Arctic.

The social functions of adoption tend to be very similar throughout non-literate societies. But some aspects are more prominent in one tribal tradition, less so in another. Still very common today are adoptions practised among relatives or people from the same area or culture. These adoptions may serve a range of different functions, such as: relieving natural parents who have many children, providing the child with education or extra care, or helping the adoptive family who may need a girl to help in the home or a boy to look after the cattle.

A frequent motive is to preserve property, particularly land, and also to continue the main line of descent of the family. In such cases the interests of the family are clearly predominant. In the instance where adoption serves the purpose of transmission of property, the adoption may involve the whole community and require a public statement by the adopters and traditional ceremonies.

It is important to keep in mind that sometimes it is very difficult to differentiate between what does and does not constitute adoption. In some cases we may hesitate between categorising a **customary practice** as **fostering, guardianship** or **adoption.**[6]

The Hindu tradition puts priority on the spiritual benefit to the adopter and his ancestors. The existence of a male child is necessary for solemnizing the last rites of the adoptive parents.[7]

The Islamic tradition constitutes an exception.

Adoption, with the artificial creation of family ties called **tabanni**, existed in pre-Islamic times and resulted in the complete integration of the child into the new family, including enforcement of the same marriage prohibitions that applied to biological relatives. Precisely because of those marriage prohibitions, the Prophet Mahomet at first declined the offer of Zaid, his adopted son, who had repudiated his wife so that the Prophet could marry her.[8] When the Prophet did finally marry her, the *tabanni* practice could not be maintained. Consequently, the Koran explicitly provides that adopted sons shall not be treated as natural ones and shall not be named after their adopters ("Call them after their true fathers".[9])

In compliance with the Koranic injunctions, Islamic jurists conclude that adoption cannot confer the status of a legitimate child, and even that adoption cannot exist in Islamic law.

That does not mean that a child placed or accepted in a foster family has no legal protection. Let us read what one of the Islamic states, Kuwait, declares six years before the Convention of the Rights of the Child was ratified:

"While some features of adoption are to be found in our laws, they are included in the system of foster care of the child which performs its role in the psychological, health, social and educational care of the child, with the aim of securing a better life for him in the future and granting him nationality as a basic pre-condition".[10]

That kind of foster care is called **kafalah**. Some Islamic countries do allow true adoption for their non-Islamic citizens or residents (e.g. Egypt and Syria) and a few other Islamic States have introduced adoption into their laws (e.g. Tunisia since 1958, and Indonesia).[11]

The Code Napoleon

The Code Napoleon of 1804 marked the beginning of modern legislative concerns with adoption. Napoleon himself wanted adoption for children. He is reputed to have supported the cause of illegitimate children; more generally he takes the view that "men have the feelings which are instilled into them. Thus if an adopted son's feelings are shaped at an early age, he will prefer his adoptive father to his biological father".[12]

However, the Code Napoleon abolished the adoption of minors, only permitting the adoption of adults who in their youth had been cared for by the adopters for six years. The adopter has to be 50 years of age and without descendents. The adoption is a contract and has to be approved by the court.

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6 Report on intercountry adoption, p. 22 and 24

7 id. p. 30

8 Sura 33.37

9 Sura 33.40

10 UN General Assembly Document A/38/389 of 6 October 1983, p. 23

11 Report on intercountry adoption, p. 26 and 28

12 See F. Boulanger, Droit civil de la famille, tome 1, Paris 1990, p. 80, quoted by J. van Loon

This new approach worked against homeless, and particularly abandoned, children. It took more than a century, until 1923, before the law made the adoption of minors possible.

The Code Napoleon inspired Spanish legislation—in 1889 the Spanish Civil Code introduced adoption, including minors. Both French and Spanish Codes have served as an example for some Latin American States.

Full adoption, leading to an almost complete integration into the new family, originated in the United States of America.

Generally, however, although adoption exists *de facto* in many societies, it was only after the **First World War** that—under pressure from public opinion and with a view to regularizing numerous *de facto* situations, in particular *de facto* adoptions of orphaned war children—several countries promulgated their first adoption laws, or revised existing laws.[13]

Adoption in industrialized countries

The Second World War and its consequences made the problem of parentless children very acute. This in turn reinforced the concept of adoption as "a unique means of providing parental relationships for children deprived of their natural parents".

But it still took some time before this new idea gained wide-spread acceptance.

Around 1960, when the welfare state gained a firm foothold in many industrialized countries, adoption started to be brought within the framework of family and child protection and welfare.[14]

In the early 1960s the Hague Conference started to prepare its Adoption Convention.

Transcultural and interethnic adoptions

Adoption of ethnic minority children – such as **black, Hispanic and native Indian** children in the United States, of native Indian children in Canada, and of Aboriginal children in Australia – may be seen as a transition from the traditional mono-cultural and mono-ethnic in-country adoption towards intercountry adoption in its present form which, more often than not, also involves a cross-cultural and cross-ethnic element.[15]

In Australia **Aboriginal people** have taken the initiative to gain recognition of abuses against their communities and for the special needs of their children. The Supreme Court of the Northern Territory in 1975 responded to these concerns, and several states and territories as well as the federal government have prepared or are preparing legislation in order to better protect Aboriginal children and respect Aboriginal values, e.g. by no longer ignoring traditional *de facto* marriages, and giving preference in placements of Aboriginal children to a parent, members of the child's extended family or other members of the Aboriginal community.[16]

Adoption in developing countries and societies in transition

"In several developing countries resistance to adoption of children from different class, ethnic group, caste or extended family and, in some cases, to the adoption of girls, is strong."[17]

In many parts of **India** boys are preferred over girls, and girls are often difficult to place for adoption.

Korea, which is a major industrial nation in South East Asia, takes an interesting position on adoption:

"….Korea is now a country, like Japan or the US, which is fully able to care for its own, and as such, we do not wish to send our children to foreign countries…….The Korean Government intends eventually to reduce all foreign adoption to near zero. This, of course, will come about gradually as Korean society adjusts to accepting non-related children for adoption."[18]

We can find similar problems in many countries in **Asia, Africa and Latin America.**

That leads us to consider how

Intercountry adoption is developing.

Intercountry adoption started developing on a large scale at the end of the **Second World War.** Hundreds of thousands of German, Italian, Greek, Japanese, and Chinese children were adopted in the United States of

[13] Report on intercountry adoption, p. 30 and 32 and Adoption and Foster Placement of Children, Report of an Expert Meeting on Adoption and Foster Placement of Children, Geneva, 11-15 December 1979, ST/ESA/99, p. 2

[14] Report on intercountry adoption, p. 34

[15] idem, p. 40

[16] idem, p. 40

[17] Report on intercountry adoption, p. 46

[18] idem, p. 48, quoting a Consul of the Republic of Korea in Washington, DC, in 1990

America. After the **Korean War**, between 1953 and 1981, over 38.000 Korean children were adopted by US families.[19]

Around 1970, in many industrialized countries, birth rates started falling because of easier access to birth control, legalized abortions and because less stigma was attached to single parenthood. Fewer children were available for adoption. The main question then becomes :

How to find a family for this child ? (better than "How to find a child for that couple?")

During that period, several Western European countries and Australia adopted many children from Viet Nam, Indonesia, Thailand, and Korea. But the new Government of Viet Nam stopped intercountry adoptions abruptly in 1975.

[19] idem, p. 56

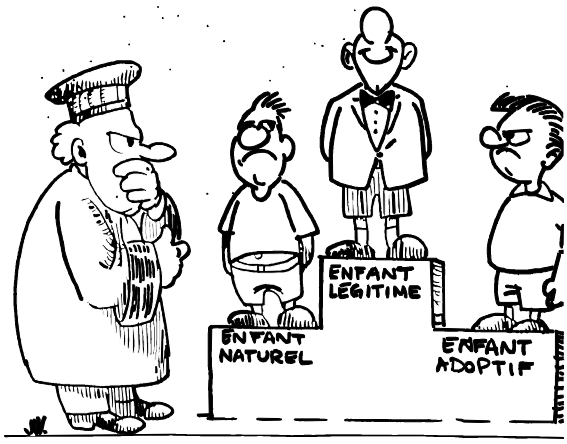
In more and more developing countries resistance to children to be "given" for adoption is growing.

I will not deal here with some contemporary problems sometimes seen as connected with adoption, such as:

- Abandonment as the main cause of children being homeless
- Street children and children on the street
- Refugee children
- Kidnapping and trade of children
- Trade in foetuses and organs of children, etc [20]

But, in conclusion, simply say that adoption, as practised throughout the centuries, is **still evolving**.

[20] Report on intercountry adoption, p. 62 - 94



André Dunant is a former Juvenile Judge and President of the Juvenile Court of Geneva and a former President of our Association. Since 1996, he has been an International Juvenile Justice Consultant and is in charge of many training and fact finding missions in Central and Eastern Europe, Africa, Middle-East and Asia for UNO, UNICEF, European Union, Council of Europe, Terre des homes and many others.

April 2007 Executive Meeting

Renate Winter, Ridha Khemakhem, Avril Calder, Oscar d'Amours and Nesrin Lushta

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Chronicle Chronique Crónica — Voice of the Association

The Chronicle is the voice of the Association. It is published bi-annually in the three official languages of the Association—English, French and Spanish. The aim of the Editorial Board has been to develop the Chronicle into a forum of debate amongst those concerned with child and family issues, in the area of civil law concerning children and families, throughout the world

The Chronicle is a great source of learning, informing us of how others deal with problems which are similar to our own, and is invaluable for the dissemination of information received from contributions world wide.

With the support of all members of the Association, a network of contributors from around the world who provide us with articles on a regular basis is being built up. Members are aware of research being undertaken in their own country into issues concerning children and families. Some are involved in the preparation of new legislation while others have contacts with colleagues in Universities who are willing to contribute articles.

A resource of articles has been built up for publication in forthcoming issues. Articles are not published in chronological order or in order of receipt. Priority tends to be given to articles arising from major IAYFJM conferences or seminars; an effort is made to present articles which give insights into how systems in various countries throughout the world deal with child and family issues; some issues of the Chronicle focus on particular themes so that articles dealing with that theme get priority; finally, articles which are longer than the recommended length and/or require extensive editing may be left to one side until an appropriate slot is found for them

Contributions from all readers are welcome. Articles for publication must be submitted in English, French or Spanish. The Editorial Board undertakes to have articles translated into all three languages—it would obviously be a great help if contributors could supply translations. Articles should, preferably, be 1500 - 2000 words in length. 'Items of Interest', including news items, should be up to 500 words in length. Comments on those articles already published are also welcome. Articles and comments should be sent directly to the Editor-in-Chief. However, if this is not convenient, articles may be sent to any member of the editorial board at the addresses listed below.

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Avril Calder, Editor-in-Chief,
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