CHRONICLE CHRONIQUE CRÓNICA

Contents

Editorial — Avril Calder

I'd like to begin this editorial by saying thank you to those of you who have sent me articles for publication. I regret that I'm not able to include all of them in this edition, but I am working on editing them for the future. Included in this reserve cannon of writing are three short guides to the Youth Justice systems in Germany, Switzerland and Austria. The template for them was drawn up by Professor Sonnen of Germany—to whom I am most grateful—and I'm hoping that many of you will join in the aim of equipping members with handy guides to the Youth Justice systems in your countries. If you would like to take part, please contact me and I will forward the template to you.

Similarly, if you would like to help with drafting a **code of ethics**, please respond to Jean Trépanier's call printed below.

Developments in juvenile justice

I am very pleased to be able to continue the theme of publishing articles on recent developments in Youth Justice. So you will find articles from places as diverse as Sierra Leone and Bosnia & Hercegovina, as well as a second article from Turkey reporting on the Bar Association's very active role in setting up Children's Rights Committees.

Children's Rights

Two members from Argentina's Fondacion Emmanuel—Maria Rosa Benchetrit and Maria-Elvira Dezeo de Nicora—set out a strong argument for societal involvement in foster care as a right and Professor Elisabetta Lamarque shows us how Italy is working towards treating all children—whatever their origins—equally. Dr McCarney reports on the recent Council of Europe conference which, importantly, addressed the functioning of international instruments and monitoring mechanisms dealing with children's rights.

Book review

I hope that you will find Dr Gail Anderson's research into the biological causes of delinquency as fascinating as I did, when I picked up her recent book in the bookshop of Simon Fraser University, British Columbia. As a scientist myself (by early training), I simply could not put it down and am so glad that, while I was on the University campus, she agreed to write up an account of her book for us.

I know that many of you are authors and, if not authors, avid readers—so if you would like to contribute in a similar manner by writing a book review for the Chronicle please do.

Correspondents

I am grateful, as ever, for the continuing input from correspondents. The piece received from Françoise Mainil, a Belgian Judge, who speaks for many colleagues in her country who despair at the lack of resources available to them to deal positively with children in their courts, was especially resonant and the point is clearly echoed by Dr Barberis in his note from Argentina.

On a more positive note Martin Seel of the Legal Services Commission (LSC) in London sets out the aims of LSC in providing sustainable, efficient legal aid for vulnerable people in both criminal (juveniles included) and civil (for families) jurisdictions.

Tracey Cormack, a New Zealand researcher working in Judge Becroft's office, reports on the objections to and progress of a Bill through the NZ Parliament. The Bill sets out legislation which, if passed, would destroy the Youth Court as it exists at present in that country.

Lay Judges

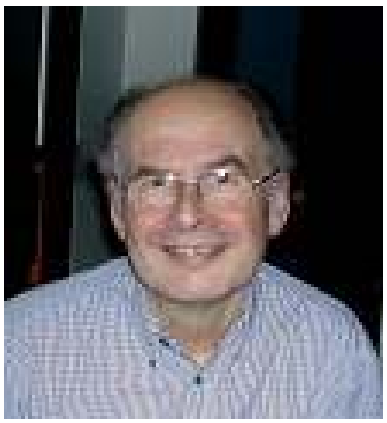
Piera Serra describes succinctly the role played by non-professional judges in Italy. In England and Wales and Northern Ireland too there are lay magistrates sitting in the specialised Youth and Family courts. And in Scotland there are the Children's Panels. I'm most interested to know from you whether this use of suitably trained members of the public and professionals other than judges are to be found in court settings in other jurisdictions.

Thank you

At the beginning of this new year, I should like to take the opportunity to thank the Editorial Board for all their help and support; to thank contributors, past and future and to wish you, the reader, well in 2008.

acchronicleiayfjm@btinternet.com

Developing a draft Code of Ethics—a call to Members — Jean Trépanier



The President and the Bureau of the Association have mandated the Scientific Committee to prepare a draft code of ethics to be submitted to the members of the Association. Such a code would hopefully serve as a source of inspiration for members of the Association as well as for other people who might wish to design and implement such a code in their respective countries.

The task will not be an easy one. Norms of ethics are likely to include rules that can be quite similar from one country to another, as well as other rules that may vary according to the cultural and legal traditions of various countries. The Scientific Committee will have to work in such a way that the document it proposes will be helpful to members in a range of different countries.

This can be achieved only if we are able to draw on the experience and reflections of members from several countries and continents. That is why we wish to call upon all members to come forward and help. At this stage, it would be particularly helpful to be informed of any rules of ethics that are currently in force or that might be contemplated for magistrates involved in youth and family matters. Similarly, any thoughts that members of the Association may have written or come across and that might be relevant for the task that the Committee will have to do would be welcome. This would stimulate the thoughts of Committee members and ensure that the final document reflects views and practices from a diversity of countries and legal traditions.

Please send any contribution you think might be helpful to me. **Professor Jean Trépanier**, **École de criminologie et Centre international de criminologie comparée, Université de Montréal C.P. 6128, Succursale Centre-ville Montréal, Québec H3C 3J7**

Tel:(1-514)343-7325 Fax : (1-514) 343-2269

Email: jean.trepanier.2@umontreal.ca

We look forward to receiving your contributions and we thank you for your help.

News from the President — Renate Winter

Renate Winter receiving the badge of ATUDE from Ridha Khemakhem, Sion

Dear friends and colleagues,

First and foremost—I hope it is not too late to send all of you our Association's best wishes for a happy and successful 2008 and to add my own personal greeting! It is going to be a challenging year for the IAYFJM, as quite a lot of events took place last year that need following-up!

Now I would like to tell you what has been happening since I wrote in the last Chronicle.

The regular meetings of the Executive and Council took place in October, as is almost becoming a tradition, at the Institut des Droits de l'Enfant (IDE) in Sion, Switzerland, where we were hosted by its director and our former President, Jean Zermatten. Jean is also vice President of the UN Committee on the Rights of the Child. We are very grateful to Jean for his hospitality.

I am very pleased to be able to tell you that the Council formally elected M. Ridha Khemakhem of Tunisia to the post of Deputy Secretary General. The highlight of our Executive meeting was indeed provided by our new Deputy Secretary General, who—supported by an extremely high-powered delegation from Tunisia, including a Minister of the Tunisian Government, M. Nadhir Hamada, the President of the Tunisian Association ATUDE—announced that ATUDE would be happy to host our 2010 International Congress in Tunisia. As you can imagine, the Executive was delighted by this extremely generous offer, especially as it will be the first International Congress that we will have held in Africa and will show the importance of collaboration with our African colleagues and the issues and problems they face.

At the Executive we considered some initial questions to do with the Congress and Willie McCarney kindly agreed to act with Ridha as a focal point for the next stages of planning. And the Executive will be going to Tunis in April to take the planning forward. An important aim of the Congress will be to identify common problems in the three main justice systems—Civil Law, Common Law and the Sharia—as they affect juvenile justice and the protection of children, and to propose solutions. I hope to give you more details about the topics for the 2010 Congress next time I write.

As usual, our Executive and Council meetings took place during the annual international seminar of IDE, which each year tackles a topical and complex subject connected to the Rights of the Child. This time the issue was street-children and it was addressed from every possible viewpoint, including legal, psychological, educational and health issues—you name it. (Dear Colleagues, you can find the extremely interesting outcome of this conference on the IDE website: www.childsrights.org).

In juvenile justice, the trend towards repressive 'Law and Order' approaches rather than prevention and rehabilitation seems to be gathering pace across Europe. The wave has reached Germany and Austria where politicians are demanding tough legal sanctions against young people without (as far as I can see) providing more resources for social services, probation officers, vocational training programmes, education and other alternative methods. Politicians seem to be more interested in playing on popular emotions than in really solving the underlying problems. The voice of the practitioners is not heard, perhaps it is not even wanted. [*Relevant here is Françoise Mainil's "Cri de Coeur' from the Francophone Judges of Belgium on page 19 below—Ed*.]

Two recent conferences of colleagues—in Freiburg, Germany (see report, page 25) and Paris—considered these developments. Building on the foundations of these discussions, it should now be possible for our Association to develop a common strategy to

make better known to politicians and the population at large the difficult but important work that the judiciary and their partners do on prevention of offending (especially on recidivism) and the resources that are needed. I would be very happy to start an exchange of ideas from all over the world about this and to use the Chronicle as a "letter box". Or could I dare to hope for the assistance of colleagues to set up and maintain a blog? (I am personally rather computer illiterate!) That might be another, interesting approach for effective "brainstorming"! Dear colleagues—the key is participation! Every e-mail is welcome; every suggestion may bring us good practices!

The Paris conference I've just mentioned involved 25 colleagues from nine European countries, under the umbrella of the IAYFJM, marking our first step towards a European branch of judges and practitioners in the field of juvenile justice. Hervé Hamon is preparing a report for the next Chronicle.

I am very pleased to be able to tell you about three conferences that are currently being planned. Our Argentinian colleagues (who send Association members their best wishes) are organising a conference this year, looking for a common strategy for Latin America and its young population. Terre des Hommes is also planning a Latin American conference looking for practical alternative measures for the continent. Might this be another opportunity for synergy? And, as you know from the last Chronicle, planning is already well under way for a conference in the Balkans. Taking into consideration the special difficulties of this region, it seems to me that, again, a common strategy and mutual assistance is the only way to try to get to grips with problems like the smuggling and trafficking of children, illegal adoption, non-existence of specialized institutions for children at risk, etc.

After participating in a conference in the Caribbean, organised by the Supreme Court of the Eastern Caribbean, UNICEF, our Association, Switzerland and Austria, colleagues from this region seem to be interested in joining our Association or in creating links with the appropriate Commonwealth institutions. Alternatives to punishment and deprivation of liberty is THE big theme there! Let's see what we can do together!

As you know, I have been working hard to link our Association to other international associations working in the same field. At the end of last year our application for membership of the International Panel on Juvenile Justice was accepted. Please look at my short piece in this issue of the Chronicle on page 10 that describes the Panel and what it is aiming to achieve. The Panel is a powerful network for the exchange of information. I think the synergies will be tremendous and effective. Participation and collaboration are once again key words.

Professor Paolo Vercellone, our former President, recently celebrated his 80th birthday in a very special way by publishing his latest book. Please read the letter I sent to congratulate him in the name of the Association, which is reprinted on page 40 in this issue of the Chronicle.

Finally, another good piece of news is that the UN Office on Drugs and Crime (UNODC), with the support of the International Bureau for Child Rights (Canada) and UNICEF, has finalised the manual on assistance to child victims and witnesses. The corresponding model law is also complete and I am now involved in drafting the commentary. I do hope that this year these three tools will be ready for use by practitioners and Member States of the UN. The Institut des Droits de l'Enfant in Sion will be holding the first international seminar on these issues in October. Another big problem to be addressed!

Dear colleagues and friends, you will have certainly have noticed that once more I am asking for your help in many fields. Our network is growing, and our ability to influence the development of juvenile justice and child protection in the best interest of children is growing as well. But seminars have to be arranged, money has to be found, publications have to be prepared, there has to be participation in workshops, consultants are needed for several projects, information has to be collected and distributed, common problems have to be discussed at least electronically to avoid costs and to save time and Avril always welcomes articles for the Chronicle and help with proof-reading in three languages. The executive and a handful of supportive colleagues cannot do it all alone!

REACT AND WRITE! PLEASE!

Hoping for even greater progress in the New Year, Renate

Biological influences on criminal behaviour

Dr Gail Anderson

I wrote my book[1] as a biologist turned criminologist, for a criminology audience. As I come from a solid biological background, it has always seemed obvious to me that biology, just as much as environment, up-bringing, socio-economic status and experience impacts everything about a person. This includes their personality and, of course, their behaviour. The way we react in certain circumstances is a result of a complex mixture of biology and environment, as it is for all animals.

Although this is a perfectly acceptable concept to a biologist, who considers the human animal to be just as much an animal as any other, simply with a bigger brain pan, it has not been acceptable to mainstream criminology. General criminology texts have considered a biological aspect to criminal behaviour to be taboo and usually have only considered sociological and psychological explanations for deviant behaviour. Clearly this is problematic as, although the 'causes' of crime are myriad and it is unlikely we will ever fully understand them all, it is impossible to even begin if a major part of the equation, the person themselves, is left out.

I believe that there are two major reasons why criminology and, consequently, the criminal justice system, have removed biology from the equation. The first is simple: fear. In the past, many people believed, quite wrongly, that most anti-social behaviour was entirely genetic. Lombroso, often considered the father of criminology, believed that a criminal could be identified purely on facial shape. This belief grew in the minds of powerful people and the mis-use of science resulted in state-led sterilizations in Nazi Germany, but also in North America. In Nazi Germany, it led to imprisonment and, eventually, genocide. This horrific past has clearly coloured people's view, despite the fact that these acts were not based on any true science whatsoever. The second reason is much less complex. Criminology and biology are two very different and multi-faceted disciplines. It is rare for a person to be a master of both. Therefore, although in recent years, a great number of very excellent biological studies have been published about the impact of biology on criminal behaviour, they involve complex biological concepts that are not readily understood by someone without a scientific background, and are published in scientific, not criminological journals.

My book was written to try to bridge this gap. I have tried to explain basic biological concepts to allow a non-biologist to understand the studies and the science behind the research, so that they can assess this rapidly growing body of research for themselves. It must be made clear that no scientist today believes that biology causes crime. Behaviour is much too complex to be directed by a single parameter. However, the great many studies in various aspects of biology and behaviour clearly show that biology has an influence on behaviour. This may be a very small influence, or it may be a major influence. In all cases, the behaviour itself is a result of the complex interaction between the environment and biology. Some years ago a common question was Nature *versus* Nurture? It is now much clearer that it is really nature AND nurture that impacts the person as a whole. Biology does not impact human behaviour in a vacuum. It is strongly impacted by the environment; in fact, most biological systems are pre-programmed to be influenced by outside influences. In the same way, our perception and response to environmental stressors is impacted by our biology, including our genetic background, our hormonal balances and our neurotransmitter responses. Even when a biological predisposition exists, it must be clearly understood that this is simply a predisposition, in much the same way that a person may have a predisposition for heart disease. A healthy life-style and good diet may completely ameliorate this predisposition.

When biology is considered at all in criminology, it is usually boiled down to genetics. Most people

[1] Biological Influences on Criminal Behaviour, **Anderson, G.S. 2007. Boca Raton, FL. CRC Press, Taylor Francis Group and Simon Fraser University Publications. 315 pp.**

are familiar with at least some of the early twin and adoption studies, although many are not aware of the more recent work. However, biology is the science of life and covers a great deal more than simply our genes. Therefore, my book attempts to summarize some of the major biological factors that could potentially influence criminal behaviour. This includes not only genetics, but also hormones, birth difficulties, brain chemistry, brain trauma and diet.

The book begins with a general introduction to the subject, including the past history and misunderstanding of biology. It then covers many basic biological concepts including natural selection, behaviour in humans and other animals, evolution of behaviour, genetics and patterns of inheritance. It then explains many misconceptions about genetics and inheritance, including issues surrounding cloning. I always find it interesting that many people will strongly deny a genetic basis for behaviour but then argue strenuously against the idea of cloning a human, in case a past murderer was cloned, indicating the belief that the crime was genetic.

Although many criminologists will strongly decry any attempt to suggest that there can be a genetic basis for behaviour in humans, these same people are frequently those who claim that certain breeds of dog are born and bred to be vicious, clearly believing that aggressive behaviour in other species can be under genetic control, but not in humans. Humans and dogs are both animals, and their behaviour, whether exemplary or aggressive, results from a complex mixture of environment and genes. People often seem to feel that a person is born as a blank slate, and the person they become is a sum of the many experiences, good and bad, that they go through in life. However, anyone who has ever been intimately involved with a newborn baby learns very quickly that this young child has a very strong personality, which is sometimes evident within hours of birth!

Much of the work on genetics of behaviour, not just criminal but also other behaviours such as smoking, has been done using twins. Human experimentation is clearly frowned upon, but twins offer a perfect natural experiment. There are two types of twins, dizygotic (DZ) twins which are the result of two individual sperm fertilizing two separate and individual eggs. The resultant children are no more related than normal siblings but are the same age so, it is believed, are raised in a similar environment. The only interesting thing that has happened is that the mother released two eggs, not the normal one. Such twins are said to share 50% of their genes and 100% of their environment. This is not strictly true as all humans share 99% of the same genes. This may seem surprising, but a vast number of our genes are involved in directing such things as the way our bodies digest food, or the way our eyes perceive and process visual images. We all do this the same way. So, DZ twins, on average, share 50% of the 1% of genes that differentiate us. Monozygotic (MZ) twins, often referred to as identical twins, result from a single sperm fertilizing a single egg, just as normal, but then shortly afterwards this tiny clump of replicating cells breaks into two. If this happens early enough in the process, two babies, not one, result. Such twins share 100% of their genes and 100% of their environment. Comparing the behaviours of DZ and MZ twins neatly allows us to compare the effects of the environment *versus* the genes on a particular behaviour, in a natural, non-experimental situation. Traits are studied using concordance rates. If the concordance rate for a trait is 90% in MZ twins, it means that if one twin pair displays the behaviour, there is a 90% chance that the other will also. When a trait is compared between a number of MZ and DZ twins, if the rate is 70% for MZ and 10% in DZ, then the trait has a strong heritable component. If it is the same in each, the trait is environmentally influenced as greater genetic relatedness does not affect the concordance rate. An even better research tool is that of adoption. It is often argued that the environmental influence on twins may be more or less, depending on whether the parents treat them similarly or deliberately treat them differently. This is eliminated in adoption studies as the child is removed entirely from the biological environment. Comparisons are then done between the adopted child and the biological *versus* the adoptive parents.

The subsequent chapter reviews some of the many historical and modern twin and adoption studies, many of which involve very large cohorts. In all cases, a genetic predisposition for certain types of crime, in particular, petty crime, seems very clear. There have been too many studies to discuss here but one of particular interest, that of Lyons in the USA, considers, amongst other things, juvenile *versus* adult criminality[2]. Lyons found that the environment, rather than genetics had the strongest influence on juvenile criminal behaviour but that genetics much more strongly influenced adult criminal behaviour. This work is ongoing. Large adoption studies, such as that of Mednick[3] in Denmark and more recently, Bohman[4] in Sweden have also shown a strong genetic influence on criminal behaviour, but have also shown the interaction between genetics and the environment. Invariably, when a trait is considered, the risks for the child increase many

[2] Lyons, M.J. (1996)A twin study of self-reported criminal behaviour. Ciba Foundation Symposium, 194: 61-70

[3] Mednick, S. A., Gabrielli, W. F. J., & Hutchings, B. (1984). Genetic influences in criminal convictions: Evidence from an adoption cohort. Science, 224, 891–894.

[4] Bohman, M. (1996). Predisposition to criminality: Swedish adoption studies in retrospect. Ciba Foundation Symposium, 194, 99–109.

fold when there is both a genetic and environmental predisposition. Many of these studies are now considering the relationship between mental illness and alcoholism to genetics and criminal behaviour. Studies have also identified genes that influence the development of conduct disorder and ADHD in children. It is interesting to note that almost all the genetic studies not only show that there is a strong interaction between the environment and biology, but also that the environment can be a trigger or a protective measure for later criminal behaviour. Again and again, studies show that a stable family home and good environment can ameliorate a criminal predisposition.

Hormones are chemical signals that are specifically designed to regulate such things as our metabolism and behaviour. Anyone who has been through puberty or known a teenager knows well that hormones affect our behaviour. This is one of the things that they are designed to do. So, naturally, an imbalance can impact anti-social behaviour. They act in tiny amounts, so a slight imbalance can impact behaviour adversely. Much has been written on testosterone, often considered the 'male' hormone, although females have testosterone also. There has been a great deal of research both supporting and refuting testosterone's supposed role in male aggression. However, a review of the many studies fails to show a direct link between testosterone and aggression. Whenever anyone thinks of hormones and crime, it is always testosterone that comes to mind, but many other hormones also influence behaviour and a number of studies on other hormones are also reviewed.

As a continuance of hormones, pregnancy and birth are also considered. It has long been known that alcohol during pregnancy is one of the most common forms of preventable mental retardation. However, there are many other traumas which can occur during pregnancy and birth which can leave permanent effects. A tremendous amount of development, including that of the brain and all the hormonal, neural and body chemistry systems are being developed at this time. Any damage to the foetus during this formative time is bound to be significant. Smoking, diet, alcohol, drugs as well as maternal age can all impact the health of the foetus. Again, much of this shows the interaction between the environment and biology, as birth difficulties, or birth defects may impact maternal rejection. Children who experience birth difficulties as well as maternal rejection have been found to be much more likely to be violent than those that experience one or the other.

There have also been many studies on minor physical anomalies or MPAs. These are exactly that, minor anomalies, such as low set ears, attached ear lobes and gaps between toes. MPAs have repeatedly been found to be highly correlated with later criminal behaviour. These MPAs are barely noticeable and do not, in any way, detract from the attractiveness of the child, so the results are not due to the child being treated differently. It is believed that they represent a much more serious internal disturbance that occurred during the third month of pregnancy, a time when ears are moving to the correct spot, but also when major brain and neural development is taking place. The MPAs are merely signs of more serious damage.

Medical advances have greatly increased our understanding of the brain and brain chemistry. Although more recent criminology texts are beginning to consider a genetic predisposition in some crimes, understanding neurochemistry and brain function involves very specialized knowledge. More collaboration between criminologists and neurochemists is needed to bring this specialized area to the criminal justice system. The brain is the seat of all behaviour so any defect to the brain can impact behaviour. Neurotransmitters pass messages from nerve cell to nerve cell. Any change in their levels, or their receptor sites, or the precursors used to make the neurotransmitters, can impact behaviour. Serotonin is probably the most well studied neurotransmitter. It was first linked to certain forms of suicide almost 50 years ago and has now repeatedly been shown to be linked to impulsivity and aggression. Serotonin is made by the body from the precursor tryptophan which comes from our diet. In some cases, serotonin imbalances can be corrected by a simple dietary adjustment or medication which increases serotonin levels. Turkey meat contains high levels of tryptophan, which explains the general feeling of well-being after a large turkey meal. It is this area more than any other which has begun to be taken seriously in the courts, at least in North America. In several cases, expert testimony on low serotonin levels has been allowed in trial or during sentencing, although so far its impact has not been great.

Other neurotransmitters such as dopamine, and norepinephrine have also been shown to impact anti-social behaviour. Dopamine is the so-called 'pleasure' neurotransmitter and is heavily involved in the body's reward system. Problems in this system often result in addictions to drugs which increase dopamine levels, and also in reward deficiency syndrome which means that some people who are low in dopamine, require greater highs than normal often resulting in greater risk taking. An allele or variant of one gene in particular, DAT1 has been linked to significant behavioural problems in children at age 4 and 7[5]. It is also known to be a risk factor for alcoholism.

[5] Young, S.E., Smolen, A., Corely, R.P., Krauter, K.S., DeFries, J.C., Crowley, T.J. and Hewitt, J.K. (2002) Dopamine transporter polymorphism associated with externalizing behavior in children. Am. J. Med. Genet., 114(2), 144-149

Recent research involving the neurotransmitter monoamine oxidase A (MAOA) has given us insight into the impact of child abuse on later violence. People have always wondered why some children who experience violent abuse later become violent, whereas others do not. Caspi and his research team in New Zealand have begun to explain one of the reasons why this might be so[6]. They studied the MAOA gene, and assessed a cohort of adults for the normal allele which results in normal MAOA production and a low activity allele which produces less. Eighty-five percent of the participants who had been severely abused as children who also had the low activity allele developed anti-social behaviour. The more severe the abuse, the more violent was the behaviour. Participants who had been severely abused but had a normal functioning gene were much less likely to become violent later in life. Again, an interaction between biology and the environment is seen. Children who were not abused but had the low activity allele were fine, as were those who were abused but had normal MAOA function. Several further studies have confirmed and enhanced this groundbreaking work.

Brain trauma can easily impact many aspects of a person's personality and behaviour. This is most famously illustrated by the case of Phineas Gage in 1848. Gage was a railway worker whose frontal lobe in the brain was pulverized by a metal rod which shot through his face and up through his brain. He recovered and his memory and working abilities were intact, but his personality was completely destroyed. In the words of friends and family, he was "no longer Gage". A more modern case involved Charles Whitman who, with no previous criminal behaviour or motive, climbed a university bell tower in Texas and opened fire on students, killing 15. At autopsy, he was found to have a large brain tumour in his amygdala, a part of the brain involved in aggression control and emotion. A large number of studies, in children and adults, have shown that brain injury often precedes violence. Many of these studies relate to injury to the frontal lobe, a commonly injured area in car accidents as it lies above the eyes, at the forehead. The frontal lobe is involved in the inhibition of violence and damage to this area often reduces this inhibition. It is particularly severe in children, which have not yet developed normal coping mechanisms.

The study of the brain has grown tremendously in recent years with the medical advent of such diagnostic tools as computer tomography (CT), magnetic resonance imaging (MRI) and positron emission tomography (PET), which can elucidate brain structure and function. It is expected that great strides will be made in this area in the near future.

Diet and pollution can also greatly impact behaviour. Low blood sugar affects our performance and behaviour and diet impacts levels of hormones and neurotransmitters which in turn, impact behaviour. Many pollutants also impact performance and behaviour. One example is that of lead. Lead is insidious as it is a neurotoxin that, even at subclinical levels, greatly impacts behaviour and school performance in children. Many large scale studies have shown that removing or chelating the lead from a child's body dramatically improved school attendance, performance and academic ability. This is an area where much could be done to improve the health and abilities of children and reduce crime, but little notice seems have been taken as yet.

It was difficult to separate this book into chapters, as biological systems are so inter-related. You cannot truly consider testosterone effects without also considering the balance of neurotransmitters or dietary serotonin, for instance. All systems inter-relate. Is the reason the head injury affects a person's behaviour due to the actual damage itself, or because an inhibitor system has been damaged or because a certain neurotransmitter or hormone are no longer released? When considering biology and crime, all the inter-relating factors must be taken into account.

In this book, I hope I have been able to dispel many of the myths surrounding biology and crime and also to open people's minds to the idea that not only can biology play a role in a person's behaviour, whether good or bad, but biological problems can often be treated. One could never hope to eliminate the influence of, for instance, brutal sexual abuse during childhood, but one can alter brain chemistry, hormonal imbalances and even genetic effects. Such issues are treated medically all the time. Therefore, I believe that not only is the biology of crime a long neglected area that must now be accepted as at least one area of study in the criminal justice system, but that it offers tremendous hope for reducing recidivism and even preventing some forms of crime. If nothing else, perhaps we can begin to realize that treatment and programs should be tailor made for people with biological predispositions for crime. A person who kills for avarice is a very different person from one who kills due to brain trauma. We are just beginning to see the courts take notice of this in retrials and sentencing and I hope that this is a trend that will continue.

Dr Gail S. Anderson,
Associate Director, Undergraduate Program,
Associate Professor, School of Criminology,
Simon Fraser University,
British Columbia, V5A 1S6 Canada
http://www.sfu.ca/~ganderso/

[6] Caspi, A. , McClay, J., Moffitt, T.E., Mill, J., Martin, I., Craig, W., Taylor, A. and Poulton, R. (2002). Role of genotype in the cycle of violence in maltreated children. Science, 297 (5582), 851-854.

Developments to the Child Justice System in Turkey—foundation and propagation of Child Rights Committees

Dr Betül Onursal
Dr Seda Akço

Betül Onursal

Seda Akço

The first attempts in Turkey towards trying children in conflict with the Law under procedures unique to children were started between 1940 and 1950. In those years, an ongoing debate took place among several lawyers on a trial procedure unique to children. And it was in those years that efforts started towards drafting various bills.

However, the first Law, The Law on the Establishment, Duty and Trial Procedures of Children's Courts was adopted in 1979. This Law provided the establishment of children's courts and that children under 15 years of age should be tried in these courts.

The first children's court was established in 1989 in Istanbul. The same year, a commission was established at the Bar of Istanbul to carry out a special study on the justice system for children. The commission undertook to contribute to the development of policies to monitor and improve the practices regarding the children tried in children's courts. The Commission later expanded its scope to cover all areas related to children's rights.

The Bars in Ankara, Izmir, and Diyarbakir then followed the example set by the Bar of Istanbul. By 2002, children's rights commissions had been established within Bars in seven cities in Turkey.

These Commissions were primarily established with a view to working on the protection of the rights of those children in conflict with the Law or who are victims of crime within the justice system. They also operated in order to promote children's rights, organise training on children's rights, ensure cooperation among institutions, and improve judicial assistance services for children. The Commissions played a vital role in the signing and ratification process of the United Nations Convention on the Rights of the Child. They carried the issue in the public agenda through visual and print media. They held meetings and took some initiatives before governments and the Turkish Grand National Assembly.

In 1995, following the ratification of the Convention, Children's Rights Commission of the Bar of Istanbul organised Working Days on Children's Rights with widespread participation from all around the country. At the meeting, every article of the Convention, along with the relevant legal regulations as well as the situation in practice were tackled and recommendations were issued in order to determine what needed to be done to implement these rights. These studies were prepared in accordance with the systematic of the report to be submitted by the countries.

With an amendment made to the law in 1992, it became mandatory to provide minors under 18 with legal assistance by an attorney at the cases they are tried in. The amendment ensured that attorneys play a more effective role in the legal system for children, enabled them to take part in preliminary and final investigations and helped them take a closer look at the problems and intervene in these.

In this process, the recommendations developed by the children's rights commissions contributed in important structural changes in Turkey. The first one of these was the establishment by the Bars of departments serving 24 hours / 7 days to provide legal assistance both for defendants and victims. The first vocational training efforts for attorneys started also in this period and became systematic and regular as well as widespread throughout the country.

In 2000-2005, UNICEF implemented the project, *Strengthening of the Justice System for Children* in cooperation with the Turkish Bar Association, Ministry of Justice, Ministry of Internal Affairs, Social Services and the Society for the Protection of the Children, and Türkiye Çocuklara Yeniden Özgürlük Vakfı (Foundation for Free Children Again in Turkey). The project was realized with the financial support of the European Union.

The main objective of the project was to establish best practices so as to contribute in the development of the justice system for children and capacity-building for the staff.

The spread of the children's rights commissions was among the most important activities of the Project between 2002 and 2005. In the first year, the number of children's rights commissions increased from 7 to 20, and reached 45 by 2005.

At the beginning of the project, interviews were carried out in pilot cities and attorneys willing to work in the field of children's rights were determined. Regional and general meetings were held in order to help gather together those attorneys working or aspiring to work in the field of children's rights. At these meetings, information and resource sharing was ensured and an e-mail group was formed for sustained communication. Through this group, which is still active, attorneys both carry out discussions on cases and are able to share information on the work of the commissions.

Representatives from all commissions periodically organise regional and general meetings. At these meetings, the work of each city is evaluated, common problems regarding children's rights and the justice system for children are tackled and common strategies are developed in order to overcome these problems.

The most comprehensive work is carried out in the field of legal changes. Recommendations regarding legal changes are prepared, meetings with members of parliament are held and deputies are provided with the necessary information to submit motions.

The commissions have obtained successful results on issues such as the establishment of children's courts in cities and ensuring institutional cooperation in services for children.

Currently, 48 Bars in Turkey have children's rights commissions and around 300 attorneys are members of these commissions.

We believe that the work of these commissions provides a successful model in improving the Justice System for Children and could set an example for other countries having problems on this issue.

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.

International Panel on Juvenile Justice

Renate Winter

In my President's Message, I announced the good news that IAYFJM has joined the International Panel on Juvenile Justice. Other members of the panel are:

- Office of the UN High Commissioner for Human Rights (OHCHR);
- UNICEF;
- the UN Department of Peacekeeping Operations (DPKO);
- the UN Development Programme (UNDP);
- the UN Office on Drugs and Crime (UNODC);
- the Committee on the Rights of the Child with its CRC task force;
- Defence for Children International (DCI);
- the International Juvenile Justice Observatory (OIJJ);
- Penal Reform International (PRI);
- Save the Children UK;
- Terre des Hommes (TdH); and
- the World Organization Against Torture (OMTC).

The Secretary General of the Panel is Davinia Ovett, who can be contacted at: dovett@juvenilejusticepanel.org . and all the relevant information about Panel members, including their contact persons and programmes can be found on the Panel's website: www.juvenilejusticepanel.org

Now that we belong to the Panel, IAYFJM members can address any of the other Panel members for assistance, and information on development of programmes, jurisprudence etc. Equally, we may be contacted by Panel members for information and assistance in our field of knowledge.

Currently, Davinia is asking for regular updates on new publications or documentation concerning juvenile justice and jurisprudence. Two members of our Association, Prof. Paolo Vercellone and Judge Michael Corriero, have recently published books and their titles will be found in the Panel's next electronic publication. Please, dear Colleagues, let Davinia have information on publications in your country, from you or colleagues you know. If we want our voices to be heard, we need to show what we have done! If we want to get assistance, we have to give assistance!

Developments and Reform of Juvenile Justice in Bosnia and Herzegovina

Dr Hajrija Sijerčić-Čolić

Introduction

For over 100 years now (to be precise, since the coming into force of the Juvenile Justice Court Act of the State of Illinois, USA, in 1899) juvenile justice has been the subject of serious and often controversial debate. There have been ongoing heated discussions about the approaches and directions a society or a state should take in reacting to and treating juvenile delinquency. Over the past 100 years a plethora of issues about juvenile delinquency has been raised and a plethora of answers has been suggested. For example:

- Regarding the reform of juvenile criminal justice, it has been generally accepted that application of correctional measures is the preferred approach in response to offensive behaviour by juveniles.
- In terms of youth court justice, it has been found that repressive measures are contradictory to the idea of correctional treatment, i.e. correctional and repressive measures are mutually exclusive.
- Juvenile delinquency is a complex and ever-changing issue, which has seen tremendous transformation over the past 30–40 years. The changes are manifested in increased or decreased rate of juvenile delinquency, in changes in its nature and increasing occurrence of extremely serious offences and violent crimes.
- The fact that nowadays children and juveniles develop and mature much faster demands a different approach towards them.
- The need to respect human rights and freedoms as part of the juvenile justice system has long been recognised. In this respect, the UN Convention on the Rights of the Child has set the standards for the status of alleged juvenile offenders in terms of material and procedural law ensuring that basic human rights are respected.
- When considering how to organise social or state reaction to juvenile delinquency, general binding standards set out in international regulations are taken into consideration—for example, Article 40 of UN Convention on the Rights of the Child, Article 17 of the Beijing Rules, or provisions of the European Convention on the Exercise of Children's Rights. According to these regulations, the respect of basic human rights in reacting to juvenile delinquency implies that due consideration is given to the juvenile's age, development, encouragement of positive change, re-integration into society and education—all of which is in the interest of society itself.

According to empirical research and other studies, the youth justice system should be more proactive in offering new forms of reaction to juvenile delinquency, especially in terms of specific new manifestations and requirements. In other words, new models and methods of correctional and punitive measures must be developed and added to the existing ones. As a result of recent comparative studies of European youth justice systems, the following layered reaction system to juvenile delinquency is recommended—based on the principle that the response to juvenile delinquency should start with mild measures, while more serious measures should only be imposed as a last resort:

- Informal extra-judicial measures;
- Mild formal measures issued by the prosecutor or the police (e.g.: juvenile diversion, mediation);
- Measures in the jurisdiction of the designated social care agency (training, supervision);
- Prescribing instructions and prohibitions (e.g.: repair of damage, monetary fine, community work);
- Imposing a sanction (e.g. juvenile facility);
- Imposing a more serious sanction, *ultima ratio*, relative to the seriousness of the offence.

International legal framework for juvenile justice in Bosnia and Herzegovina

Bosnia and Herzegovina has ratified the UN Convention on the Rights of the Child and has adopted it as legally binding. With the signing of the Dayton agreement in 1995 and the ratification of the UN Convention on the Rights of the Child, Bosnia and Herzegovina has agreed to comply with this convention and, consequently, to include in its national jurisdiction a set of acts, rules and regulations which apply to juvenile offenders and to institutions and individuals entrusted with administering juvenile justice. These acts, rules and regulations have the following objectives:

- Respond to particular needs of juvenile offenders while protecting their basic rights;
- Respond to the needs of society;
- Ensure thorough and just application of these rules.

In addition to the UN Convention on the Rights of the Child, the international framework for juvenile justice consists of the following:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice—the Beijing Rules (1985),
- United Nations Guidelines for the Prevention of Juvenile Delinquency—the Riyadh Guidelines (1990),
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990),
- Guidelines for Action on Children in the Criminal Justice System—the Vienna Guidelines (1997),
- United Nations Standard Minimum Rules for Alternative Sanctions—the Tokyo Rules (1990).

The international community has also adopted other inter-national instruments concerning general exercise of human rights which are also important in juvenile justice but preceded the UN Convention on the Rights of the Child. They include:

- Universal Declaration of Human Rights (1948),
- UN Covenant on Civil and Political Rights (1966),
- European Convention on Human Rights and Fundamental Freedoms (1950).

The development of juvenile justice in Bosnia and Herzegovina

The juvenile justice system in Bosnia and Herzegovina at the end of the 20th century saw new developments and new forms of social and state reaction to juvenile delinquency. These forms represent an alternative approach, which seeks to eliminate harmful effects of criminal sanctions of traditional legal and procedural practice. In this regard, the turning point in reconsidering juvenile delinquency was in 1998 when the Criminal Procedure Law of the Federation of Bosnia and Herzegovina came into force. At a time when Europe and the US already had a developed system of alternative measures in respect of juveniles as well as adult offenders, Bosnia and Herzegovina for the first time introduced a justice system (or provisions in graduated, procedural criminal legislation) which reflected a modern approach to treating juvenile delinquency. The expectations from the introduction of these alternative measures and of the effect of the new legal provisions were great. They were supposed to be the starting point, or a test, for the solution of similar issues in proceedings against adult offenders.

In addition to the introduction of alternative forms of reacting to offensive juvenile behaviour, the development of juvenile criminal justice in Bosnia and Herzegovina was marked by the reform of criminal legislation (in substance, procedure and execution). An important milestone in the evolution of juvenile criminal justice was the adoption of modern juvenile justice trends, which advocate avoidance of traditional legal reactions to offensive juvenile behaviour. As a result, dedicated youth facilities were introduced in the juvenile criminal legislation in order to serve the best interests of this population. An example of such a reform is the aforementioned alternative measures.

In line with international juvenile justice standards, it was necessary to introduce separate juvenile legislation. Modelled upon other modern juvenile justice systems, the **Draft of the Juvenile Criminal Justice Act (2003)**[1] contains parts which deal with juvenile delinquency in a systematic way. It contains provisions regarding material and procedural criminal law, organisation of youth justice courts, execution of sanctions imposed on juveniles, as well as provisions regarding offences committed against children and juveniles. Most of the solutions contained in the text of the proposed draft are based on the results of the research study conducted by The Open Society Fund of Bosnia and Herzegovina, entitled “Youth in Conflict with Law, In View of Current Problems of Juvenile Criminal Justice in Bosnia and Herzegovina”. Last but not least, new criminal legislation, which has been in force in Bosnia and Herzegovina since March 2003, has also been taken into consideration when preparing this draft. It is important to note that when this Act comes into force, certain provisions of criminal justice Acts, criminal proceedings Acts and criminal sanctions Acts of Bosnia and

[1] The Draft of the Juvenile Criminal Justice Act was prepared by Jasmina Kosovi□, judge of Cantonal Court Sarajevo, prof. dr. Miodrag Simovi□, University of Banja Luka, and prof. dr. Hajrija Sijer□i□-□oli□, University of Sarajevo. This Draft is still under discussion.

Herzegovina, the two federal entities, and the Brčko District of Bosnia and Herzegovina in respect of youth criminal justice will no longer apply. Consequently, the same Act, which introduces a new way of regulating and reacting to juvenile delinquency, will apply to the entire territory of Bosnia and Herzegovina.

Summary of key innovations proposed in this Draft

- To protect the best interests of juveniles, this Draft proposes the establishment of dedicated juvenile departments in courts, consisting of one or more juvenile justice judges and a juvenile justice council. Only primary courts should have a juvenile department, while secondary courts, when adjudicating in juvenile cases, should engage judges specialised in juvenile delinquency.
- The youth justice judge, prosecutors, legal counsels and other parties involved in proceedings against a juvenile must be knowledgeable in the rights of children and in juvenile delinquency. In this regard, the Draft proposes that all legal officials who deal with juvenile delinquency cases are legally required to undergo special education and training.
- The Draft proposes that specialist consultants work in courts and prosecution offices and perform certain tasks during the proceedings against a juvenile.
- The Draft promotes the application of alternative measure programmes and insists on the adoption of special regulations in order to establish conditions for the application of alternative measures.
- The Draft proposes a new sanction specifically applicable to juveniles—the so-called special obligations, which aim to deter the juvenile from repeated offensive behaviour.
- In response to demands identified through practical experience, shortening of the imprisonment sentence term and other correctional measure terms is proposed.
- In criminal proceedings against juveniles, based on the demands identified in legal practice, the Draft proposes that the pre-sentence proceedings (inquest) are placed under the prosecutor's jurisdiction.
- Special attention has been given to solutions regarding deprivation of liberty and detention of juveniles, taking into consideration international standards.
- The Draft contains provisions aimed at ensuring that proceedings against juveniles are brief and efficient. Such provisions aim to ensure that in case of serious offences the purpose of the proceedings is efficiently achieved, while in case of minor offences protracted proceedings are avoided.
- During the execution of correctional sanctions against juveniles, intensified court supervision is proposed.
- The Draft includes a separate chapter dealing with offences against children and juveniles. The intent of these provisions is to ensure adequate protection of victims during criminal proceedings. In line with other contemporary justice systems, the draft provides for special methods of taking statements from child and juvenile victims of criminal offences.

Dr. Hajrija Sijerčić-Čolić is Professor of Law at the University of Sarajevo, Bosnia and Herzegovina and a Member of the Committee for Cooperation in Juvenile Justice in Bosnia and Herzegovina for the period 2006–2010.

Recent Developments and Reform of Juvenile Justice in Sierra Leone

Hon Justice Bankole Thompson Ph D

I. Introduction

The existence in Sierra Leone of a separate criminal justice process for juveniles within the criminal justice system dates back to its English common law antecedents. In effect, it is a colonial legacy. However, from a comparative perspective, it can be said that the existing juvenile justice system of Sierra Leone, an export of the British common law mode, no longer reflects some of the key features of a modern and progressive system. Its contemporary profile is anachronistic. This is largely due to the fact that juvenile justice reform in Sierra Leone has lagged behind other governmental legislative reform priorities. It is regrettable that such a key component of the Sierra Leone criminal justice system has been treated as a Cinderella institution. There is absolutely no justification for this attitude of neglect towards reform of juvenile justice in Sierra Leone, given the present day socio-legal and related realities including the changing perceptions, nationally, regionally, and globally as to how society should treat juvenile offenders, especially having regard to the increasing emphasis on the best interest and the paramount welfare of the juvenile as the overriding consideration in such matters.

II. The Case for Reform: Key Dimensions

This article addresses the urgent and pressing need for juvenile justice reform, from a socio-legal perspective, on three grounds. The first is that the existing juvenile justice system of Sierra Leone no longer serves the contemporary needs and realities of the country in the spheres of juvenile delinquency and youth criminality. The second is that of the recent incorporation within the Sierra Leone domestic legal system of the *United Nations Convention on the Rights of the Child, 1989*, imposing upon the State of Sierra Leone certain major international legal obligations designed to promote the welfare of the child in various aspects of national life. The third is the Report of the recent Juvenile Justice Strategy Workshop held in Freetown by the Justice Sector Development Programme of Sierra Leone. Given the current level of awareness of the citizenry of Sierra Leone, including youths, of their human rights and freedoms and the tendency towards greater justice literacy, progressive penal reforms of the juvenile justice system are essential for nation-building and social, educational, and economic development in a post-conflict Sierra Leone with its complex and diverse demands for modernisation. Also noteworthy is that one adverse consequence of the decade-long hostilities in the country is that today some juveniles are processed through the criminal justice system for diverse allegations of delinquency and misconduct without due regard for the widely recognised and acknowledged juvenile justice bifurcation of offenders into (a) status offenders and (b) criminal offenders.

III. Juvenile Justice Strategy for Post-Conflict Sierra Leone

What is the state of the current advocacy for a new juvenile justice strategy for Sierra Leone? In an insightful Report of a Workshop on Juvenile Justice Strategy in Sierra Leone held in Freetown, in February 2006 by the Justice Sector Development Programme, Sierra Leone, the subject of the modernisation of the juvenile justice of Sierra Leone was examined from five main perspectives, namely, (i) the perceptions of juvenile justice by Sierra Leonean juveniles, (ii) the obsolescent nature of the juvenile justice process, (iii) the current needs of juveniles who come into contact with the criminal justice system and those at risk, (iv) community prevention and response mechanisms, and (v) gaps between national norms and international law norms applicable to juvenile justice.[1]

As regards the first perspective, the Workshop found that most Sierra Leonean youths have no conception or understanding of the notion of justice and that when asked to define justice they merely described incidents of injustice primarily because of their familiarity with unjust practices in the country.[2] The reason for this is threefold: (1) that most Sierra Leonean youths have a negative rather than positive image of law enforcement officials, perceiving police officers not as law enforcers but as abusers of children's rights; (2) that criminal justice officials and practitioners are arbitrary dispensers of justice and interpreters of the law who victimise juveniles through

[1] See Report, 6th - 8th February 2006, pp. 1-51.

[2] Ibid, p. 16.

'detention'[3]; and (3) the desire of juveniles in Sierra Leone for improvement in the laws governing juvenile justice to international law standards.[4]

The second main finding of the Workshop emerged from a critique of the legal process relating to children in conflict and in contact with the law. The focus of the Report's examination of this theme is the need for new laws and institutional mechanisms designed to enhance the effective and efficient administration of justice in respect of children in vulnerable situations, namely, child offenders and child victims of abuse or neglect. The Report also highlighted the major statutory enactment, namely, the *Children and Young Persons Act (Chapter 44 of the Laws of Sierra Leone, 1960)* as the *grundnorm* of juvenile justice in Sierra Leone.

The third aspect revolves around the need for a new strategy. In this regard, the Report identifies in respect of children processed through the criminal justice system, certain categories of immediate needs: (a) legal needs covering birth certificate, standardised age of juvenile and age of criminal responsibility, diversion scheme, police child protection unit, a child friendly court, speedy trial, and mediation; (b) protection needs covering confidentiality, child friendly police and court, contact with families, variety of alternatives to detention and adjudication and reconciliation; (c) survival needs, addressing socio-economic problems; and (d) development needs, that is mainly intensive intermediate treatment including schooling and skills training, recreation, access to information, reformation and reintegration scheme.[5] In the case of children at risk, the categories of identifiable needs are: (a) legal needs, comprising registration at birth, working conditions, minimum wage, age children can work, decriminalisation of status offences such as loitering and street begging; (b) protection needs, consisting of standard laws, widespread and responsive police, community solidarity and care, primary or alternative care; (c) survival needs, addressing underlying socio-economic problems; and (d) development needs, such as schooling, skills training, recreation and community reintegration.

The fourth key facet of the proposed new strategy is that of community prevention and response mechanisms. According to the Report, "the demographic characteristics of the adolescents' and children's living environment can also be a contributing factor to crime in juvenile justice".[6] Predicated upon this theory, the Report notes that a crime-prone community and neighbourhood, characterised by the threefold culture of gangs, violence and drugs, is a fertile source of juvenile criminality.[7] Hence, the Report's emphasis on the need for community policing as an effective tool of juvenile crime prevention and juvenile recidivism. On the issue of juvenile recidivism, the Report recalls that the international trend is to focus on restorative rather than retributive justice, thus shifting the perception of crime from the retributive aspect to that of crime as a wrong against a person, community or organisation for which the offender must make reparation to the victims directly affected by the alleged wrong.[8]

Next, addressing the issue of gaps between international law norms and national law norms in the field of juvenile justice, the Workshop recalled the judicial observation of Justice Stewart of the United States Supreme Court that juvenile proceedings are neither criminal trials nor civil proceedings. In this regard, the Report highlights existing gaps between international prescriptive norms providing minimum standards for the administration of juvenile justice and those regulating juvenile justice in Sierra Leone. The existing international norms are embodied in *The Convention on the Rights of the Child 1989, The African Charter on the Rights and Welfare of the Child 1981, The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990,* and *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990*. According to the Report, the rationale behind these international instruments is that actions (administrative, judicial or legal) relating to the conduct of children in the criminal justice system must always conform to their best interests and that the deprivation of the liberty of a juvenile must be a measure of last resort.[9]

As to response mechanisms, the Report comes up with the novel suggestion that peer groups and youth organisations should be empowered to deal with juvenile offences including measures to protect them when in conflict with the law.

Alluding to the doctrine of *parens patriae* as the conceptual linkage between the Juvenile Court and the State, on the one hand, and the offending juvenile, on the other, the Report bases this conceptual linkage on a correlation between

[3] Ibid.

[4] Ibid, p. 17.

[5] Ibid, p. 18.

[6] Ibid, p. 31.

[7] Ibid.

[8] Ibid, p. 32.

[9] Ibid, p. 35.

irresponsible parenting and neglect by the State and juvenile delinquency and criminality. Hence, the need for the intervention of the State and the Courts to defend and promote the best interests and welfare of the child, rather than worsen his or her plight by confining or punishing him or her.[10] The Law Centre for Legal Aid (LAWCLA)—an NGO operating in Sierra Leone—has also focused considerable attention on juvenile justice reform in the country.

IV. The Existing Juvenile Justice System: An Overview

The existing machinery for the administration of juvenile justice in Sierra Leone is *The Children and Young Persons Act, (Cap 44 of the Laws of Sierra Leone*. Since its enactment there have been no major changes to its provisions except for the limited non-penal reforms recently introduced by the *Child's Rights Act, 2007*.

The major feature of the Act is the creation of a criminal juvenile justice system separate and distinct from a criminal justice system for adults. Evidently, the rationale for this bifurcation is the need to keep distinct the concept of juvenile criminality or delinquency from the concept of adult criminality, recognising the need for different societal responses to the law of juvenile delinquency and the criminal law as a social control mechanism. To this effect the provision in the Act is for a juvenile court to sit in a separate building or room from where ordinary criminal trials are held or on different times from those at which ordinary sittings are held.[11]

Another major feature of the statutory framework is that it applies to all youths below the age of 18 years.[12] This means that youths above the age of 18 years are, for the purposes of the criminal law, classified as adults. A related legal differentiation recognised by the Act is that between a "child" and a "young person"; the former being used to refer to all minors aged under 14 years, the latter designating all minors aged 14 years and above but below 18 years.[13] The Act makes no provision as to the age of criminal responsibility, the presumption then being that the common law doctrine fixing the age of criminal responsibility at 10 years was applicable in the context of the administration of juvenile justice in Sierra Leone. This doctrine has now been superseded by section 70 of the *Child Rights Act No. 7 of 2007* which prescribes 14 years as the age of criminal responsibility.

Significantly, the Act establishes a Juvenile Court for Sierra Leone, meaning a Magistrate's Court sitting as prescribed by law for the hearing and determination of cases relating to children or young persons and includes a juvenile court held by a Magistrate and two or more Justices of the Peace.[14] The Act also provides for the creation of special juvenile courts in any judicial district.[15]

In recognition of the pre-eminent need for respect for the privacy of juveniles in criminal matters, the Act guarantees that the trials shall be conducted in private rather than public sessions.[16] However, to ensure press freedom, the Act makes it permissible for members of the press to be present during proceedings, subject to the restriction that no information regarding the name, address, school, photograph, or anything likely to lead to the identification of the accused juvenile should be published.[17] A person who violates these restrictions may incur criminal liability.[18]

Further, in recognition of the need to ensure respect for family rights and the need for family support for youths in conflict with the law, the Act provides for the presence during juvenile court proceedings of relatives of the accused juvenile.[19] Provision is also made for the parties to the case, their advocates, and other persons directly concerned to be present during the proceedings.[20]

The Act also provides certain major due process safeguards for a juvenile appearing before a juvenile court. One such safeguard is the right to bail. To this effect is the provision that when a person apparently under the age of 17 years is apprehended with or without a warrant and cannot be brought forthwith before a court, the officer in charge of the police station to which such person is brought shall release such persons on his own recognisance or the undertaking of his parents or guardian, or other responsible person, with or without sureties for such amount as will, in the opinion of the officer, secure the attendance of such person for the purpose of his trial.[21] However, bail is impermissible where (a) the charge is one of homicide or any offence punishable with imprisonment for a term not

[10] Ibid, p. 34.

[11] Children and Young Persons' Act, section 3(4)

[12] Ibid, section 2, as amended by section 2 of the *Child Rights Act, No. 7 of 2007*.

[13] Ibid, section 2, as amended by section 2 of the *Child Rights Act, No. 7 of 2007*.

[14] Ibid. section 2.

[15] Ibid, section 4.

[16] Ibid, section 3(5).

[17] Ibid, section 3(5).

[18] Ibid, section 3(5).

[19] Ibid., section 3(5).

[20] Ibid, section 3(5).

[21] Ibid, section 5.

exceeding seven years; (b) it is necessary in the interest of the accused juvenile to remove him from association with any undesirable person, or (c) the officer has reason to believe that the release of the accused juvenile would defeat the ends of justice.[22] The Court reserves the power to vary the terms or conditions of such pre-trial release.[23]

A further statutory safeguard for youths processed through the juvenile justice system of Sierra Leone is the policy of separating accused juveniles from adult criminals while in custody.[24] This is a legal obligation imposed on the Inspector General of Police.

Establishing the Court as a specialised forum for the final disposition of the case against the accused[25], the Act provides certain key procedural steps for adjudicating juvenile criminal cases as follows: First, the substance of the offence should be explained to the child or young person.[26] Second, after the explanation, the child or young person is required either to make a statement or plead guilty in answer to the charge.[27] Third, where the statement given by the child or young person amounts to an admission of guilt, the court is authorised to find the offence proven and to record the same.[28] Fourth, where the child or young person does not admit the offence or the court does not accept the accused's statement as a guilty plea, it will proceed to hear the evidence of the prosecution witnesses.[29] Fifth, after the close of the evidence of each prosecution witness, the court shall put to the witness such questions as appear to be necessary or desirable either for the purpose of establishing the truth or otherwise of the facts alleged or to test the credibility of the witness.[30] Sixth, the accused, on his election, may put any questions to each witness testifying against him; the answers to those questions thereupon forming part of the records.[31] Seventh, if after the prosecution witnesses have given their evidence, the court is satisfied that the facts properly before it establish a *prima facie* case against the accused which, if unanswered, would leave no reasonable doubt as to his guilt, the court shall hear witnesses for defence and any further statement which the accused may wish to make in his defence.[32]

As regards the procedure, upon proof of the offence, the governing provision is that where a child or young person admits the offence and the court accepts his plea or if after hearing the witness, the court is satisfied that the offence is proved, the court shall record that the offence is proved, and shall then, except in cases where the circumstances are so trivial as not to justify such a procedure, obtain such information as to his character, antecedents, home life, occupation and health as may enable it to deal with the case in the best interest of the child or the young person, and may put to him any questions arising out of such information. [33]

Significantly, the Act prohibits, in relation to a child, incarceration as punishment.[34] It, likewise, prohibits incarceration in relation to a young person except[35] when the court considers that none of the other methods in which the case may be dealt with is legally suitable,[36] in which case any association between the young person and an adult prisoner is impermissible.[37]

Under the Act, there are two main treatment options available to a convicted juvenile, namely, (i) probation orders[38] and (ii) approved school orders.[39] The Court also has authority to vary a juvenile's conditions of release or of any of the aforementioned orders. The Court is, further, empowered statutorily to order, in addition or in the alternative to any other order, in respect of a convicted juvenile, (a) the discharge of the child or young person without making any order, (b) the child or young person to be repatriated at the expense of the Government to his home or district of origin, or (c) the child or young person to be handed over to the care of a fit person or institution named in the order, such person or institution being ready to undertake such care.[40]

There is also provision in the Act empowering the Court to order a parent or guardian of a convicted child or young person to pay a fine, compensation, or costs in a proceeding before the Court.[41]

---

[22] Ibid, section 5(a),(b),(c).
[23] Ibid, section 21.
[24] Ibid, section 6.
[25] Ibid, section 7.
[26] Ibid, section 8.
[27] Ibid, section 9.
[28] Ibid, section 10.
[29] Ibid, section 11.
[30] Ibid, section 12.
[31] Ibid, section 13.
[32] Ibid, section 15.
[33] Ibid, section 16.
[34] Ibid, section 24(1).
[35] Ibid, section 24(2).
[36] Ibid, section 24(3).
[37] Ibid, section 24(3).
[38] Ibid, section 20.
[39] Ibid, section 26.
[40] Ibid, section 25.
[41] Ibid, section 23.

V. Effect of the Child Rights Act No 7 of 2007

A already noted, the Sierra Leone legislature recently enacted *The Child Rights Act No. 7 of 2007*. What then, is its effect on the existing machinery for the administration of juvenile justice in Sierra Leone? It is simply that it incorporates within the municipal legal system of Sierra Leone certain major rights of children explicitly or implicitly recognised and guaranteed internationally by the *Convention on the Rights of the Child* adopted by the General Assembly of the United Nations on 20th November, 1989 and its *Optional Protocols* of 8th September, 2000, and the *African Charter on the Rights and Welfare of the Child, 1981*. Specifically, the Act amends section 2 of *Cap 44* of the Laws of Sierra Leone by the substitution in the definition of "young person" wherever it appears "eighteen years" thereby providing, as a matter of Sierra Leone national law, in so far as the administration of juvenile justice is concerned, for a new definition of a "child" as "every human being below the age of 18". Regrettably, however, the Act introduces no major reforms in the penal sphere of the Sierra Leone juvenile justice system. Contrastingly, it modernises the law relating to the adjudication and treatment of status offenders by the creation of three sets of mechanisms for dealing with status offenders: (i) Child Welfare Committees; (ii) Child Panels; and (iii) Family Courts.[42]

VI. A Brief Socio-Legal Analysis

Predicated upon the view that the primary objective of a juvenile justice system, in its penal context, is the rehabilitation and reintegration of the juvenile and that societal actions in respect of youths who are in conflict with the law should be premised on the need to promote their best interests, it is submitted that the *Child Rights Act, No 7, 2007* falls far short of implementing new major progressive reforms in the penal sphere of juvenile justice in Sierra Leone. One implication of this is that it is absolutely clear that there does not as yet appear to be a governmental mindset in Sierra Leone attaching a high priority to juvenile justice penal reform. The system, as presently organised and structured, certainly does not enjoy the respect and confidence of the civil society. One way of remedying this situation is that juvenile crime must first be perceived as an important societal issue that should be addressed more proactively than reactively.

Any modern and progressive juvenile justice must be predicated upon four major objectives, namely: (i) the protection of society, (ii) the care of juveniles who are in conflict with the law; (iii) reinforcement of social values, and (iv) the need to afford misguided young people the opportunity to become responsible and productive human beings. Evaluating the penal component of the Sierra Leone juvenile justice system against the foregoing criteria, certain defects become evident. The first is that not much is being done by society to prevent youth at risk from pursuing a life of crime. The second is that there is an urgent need for improvement in the methods and strategies for processing and treating criminally-disposed youths. The third is that there is undue emphasis on institutionalisation, for example, approved schools and remand homes as against the need for instilling social values such as responsibility and accountability.

VII. Conclusion

Finally, it is abundantly clear that there is, in the context of the penal aspects of juvenile justice in Sierra Leone, a pressing need for greater emphasis on intensive rehabilitation strategies both in the juvenile's interests and those of society. Youths must be made to realise that criminal behaviour offends society's collective values and has adverse consequences. Hence, the rationale for a reformed and re-designed juvenile justice system in Sierra Leone, is the belief that the rehabilitative capacity of juveniles is a fundamental principle of an effective juvenile justice system.

The author is a judge in the Special Court for Sierra Leone, a United Nations–backed war crimes tribunal. He is on leave from Eastern Kentucky University, USA where he is a Professor of Criminal Justice and former Dean of the Graduate School. In his native country of Sierra Leone he has served as a Judge in the High Court. Publications include The Constitutional History and Law of Sierra Leone (1961-1995), The Criminal Law of Sierra Leone and American Criminal Procedures.

[42] Ibid, section 61.

A Cri de Coeur from the Union of French-speaking Magistrates of Belgium

Judge Françoise Mainil

Descartes wrote: "Whoever has a firm and consistent desire always to apply reason as best he can and in all his actions to do what he judges to be the best is as truly wise as his nature will allow."

The Juvenile Magistrates of the French-speaking Community in Belgium want to aim for that kind of wisdom and claim the right to be able to carry out their role of making judgements in the best interests of society and the young people referred to them and their families.

Ever since 1965 Belgian law has provided juvenile magistrates with a framework that allows them to take protective measures in respect of young offenders, taking into account the offence, the character of the young person and his or her environment.

The French-speaking magistrates were delighted that this philosophy of protection was confirmed in the Acts of 15 May and 13 June 2006 which reformed the 1965 law.

In principle, this law offers a package of measures and an interventionist approach reflecting, on the one hand, the wishes of society for retribution and correction while, on the other hand, recognising the need to respond to the young person's problems.

The design of the law shows that—whatever the risks—the response that society makes to a young offender should be educational, preventive, quick and effective. The law requires that the measures taken must promote protection, education and constraint.

However, to illustrate the present situation, we note the following, by no means exhaustive, examples. The judge can:

- refer the young person to a specialist social worker—this service is overwhelmed;
- require the young person to be treated as an outpatient for psychological, psychiatric or attitude problems—these services are virtually non-existent;
- place young offenders in public protective institutions—places are woefully scarce;
- involve the young person in a process of mediation or reparation—there are no services able to achieve this;
- place the young person in a drug or alcohol rehabilitation centre—no such services exist for young people; and so on…

More absurdly, the new law expects the judge to take account of the availability of resources for any of the measures he or she proposes.

The French-speaking magistrates are seeking some concrete ownership and commitment at all those stages where intervention can help and protect young people and also upstream of these (education, housing, etc.)

We maintain that the most frequent offenders are the most neglected and that to do nothing to change this would make us complicit in not helping a person in danger.

That is why we have made our dissatisfaction known to politicians and asked them to shoulder their responsibilities to make the necessary resources available to carry out the laws they have passed.

On 24 April 2007 the Union of French-speaking juvenile magistrates—by means of a press-notice and demonstration by its members—symbolically arraigned the Belgian state, the French community and four political parties to appear on a charge of not assisting young people in danger, noting especially their persistent violations of the provisions of the European Convention on Human Rights and the UN Convention on the Rights of the Child.

The French-speaking Union is pleased at the impact their action has had, as much in the political sphere as in the judiciary and among youth workers.

Following the Parliamentary elections in Belgium on 10 June 2007, we are waiting to see what effects our demands will have, but it is clear that our actions have laid the foundations of a movement that will question and probe all aspects of political power.

We shall see!

Françoise Mainil
Juvenile Justice

Improving Children's Access to Justice

Dr Willie McCarney

One of the objectives of the Council of Europe programme "Building a Europe for and with children" is to improve children's access to justice. A conference entitled "International Justice for children" was held in Strasbourg (France) against this background on 17 and 18 September 2007.

The aims of the conference were to: examine the functioning of international instruments and monitoring mechanisms dealing with children rights; highlight landmark decisions; and analyse evolutions and identify trends. The conference also examined children's access to these mechanisms, attempted to identify obstacles and ways to remove them, and discussed the principles of a child friendly justice at international level. The conference was a platform where members of various monitoring bodies from different regions in the world came together to exchange views and share their expertise and where lawyers and NGOs making use of the mechanisms could express their concerns. Participants were invited to identify issues that could be put forward to the 27th Conference of European Ministers of Justice (Lanzarote, 25-26 October 2007).

The quality of speakers was exceptionally high– all internationally known experts in their field. These included Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe; Françoise Tulkens, Judge at the European Court of Human Rights; Jane Connors, Senior Human Rights Officer in the Treaties and Commission Branch, OHCHR; Marta Santos Pais, Director, Innocenti Research Center, Unicef; Christos Giakoumopoulos, Director of Monitoring, Directorate General of Human Rights and Legal Affairs, Council of Europe; Isabelle Berro-Lefèvre, Judge at the European Court of Human Rights; Helen Seifu, Director of the Children's legal protection Center, African Child Policy Forum; George Moschos, Chair of the European Network of Ombudspersons for Children; Thomas Hammarberg, Council of Europe Commissioner for Human Rights; Michael Nicholls, Former Member of the Committee Experts on Family Law (CJ-FA), Council of Europe; Yanghee Lee, Chair of the UN Committee on the Rights of the Child; Ms Josiane Bigot, Magistrate at the Court of Appeal of Colmar; Peter Newell, Co-ordinator, Global Initiative to End All Corporal Punishment of Children; Paulo Pinheiro, Independent Expert, author of the UN report on violence against children.

I was honoured to be invited to represent the International Association of Youth and Family Judges and Magistrates at this conference and to present a paper on "Child-Friendly Justice".

I believe that the outcomes of this conference are of interest not only to Council of Europe members but to all those around the world who are concerned about improving children's access to justice. You will find below a detailed report of the conference and of the outcomes.

INTERNATIONAL JUSTICE FOR CHILDREN

STRASBOURG, 17-18 SEPTEMBER 2007

CONFERENCE REPORT

The purpose of this high level conference was threefold: to examine the functioning of international monitoring mechanisms dealing with children rights, to examine children's access to these mechanisms, identifying obstacles and ways to remove them, and to discuss the principles of child-friendly justice at international level. Around 90 participants attended the conference, including representatives from governments, NGOs and international organisations as well as judges, lawyers, researchers and ombudspersons. This report presents their findings and recommendations.

I. FINDINGS

1. International standards and children's rights

Since the Universal Declaration of Human Rights was adopted in 1948, over 60 United Nations treaties addressing concerns such as slavery, the administration of justice, genocide, the status of refugees and minorities, and human rights have been elaborated. Each treaty is grounded in concepts of non-discrimination, equality and recognition of the dignity of each and every individual. It is clear from these principles that the rights and protection measures they contain apply

to all, including children. Children are therefore entitled to the rights and protections set out in the UN Convention on the Rights of the Child (CRC) as well as the eight other UN human rights treaties.

At regional level, children's rights are also protected by regional human rights treaties, specific treaties addressing children's rights in general and/or treaties protecting children from some forms of violence. In Europe, the Council of Europe has developed an impressive and efficient arsenal of standards, which include the European Convention on Human Rights, the European Social Charter, the European Convention on the Exercise of Children's Rights and, most recently, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

The administration of justice is inherently linked with the implementation of human rights standards, and the UN Convention on the Rights of the Child has set up an important platform for the advancement of children's rights. The convention is a comprehensive international charter of children's rights that addresses issues related to critical areas of children's lives: child survival and development; education and health; family life; leisure and cultural activities; protection from abuse, violence and exploitation; and participation in decision-making in the family, in schools and in the community as a whole. The progress that has been made over the last few years in standard setting has been largely due to the entry into force of the CRC. Its principles and provisions are increasingly taken into account by international and regional human rights mechanisms and bodies. In most cases, these positive changes have had an impact on children's legal standing vis-à-vis national justice systems.

The CRC also addresses justice related questions. Very often the tendency is to perceive this dimension as reduced to criminal justice issues. However, the legal protection of children in the justice system, together with children's right to participate in proceedings, has a scope that reaches far beyond the criminal sphere. The justice system is, in fact, instrumental to safeguard inter alia, a child's right to: have an identity; not be separated from his or her parents; maintain personal and regular contacts with both parents, even when they or the child live in different countries; have a say in cases of adoption; have requests to enter or leave a country for purposes of family reunification dealt with in a positive, humane and expeditious manner; be protected against unlawful or arbitrary interferences with the child's privacy, family, home and correspondence; be protected from all forms of violence, abuse and exploitation, as well as from discrimination, including in the context of the enjoyment of economic, social and cultural rights. With this far-reaching approach, the justice system and, more broadly, the legal protection of the child mirrors and reaffirms the inter-relationship of children's rights, and is inherently linked with their effective safeguard.

In Europe, the European Convention on the Exercise of Children's Rights contributes to the implementation of the CRC in the context of family proceedings. The Council of Europe convention grants procedural rights to children and facilitates the exercise of these rights by ensuring that children are themselves, or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority.

2. Children's access to international justice

If universal and regional standards are to be meaningful for children, they must first be accepted and implemented by the different countries. All major human rights treaties have set up monitoring mechanisms to assess implementation in individual countries. Monitoring can take different forms. It can be based on government reports and/or allow for individual and/or collective complaints, petitions, enquires or communications.

An assessment of how the various monitoring systems function can identify the advantages and disadvantages of each. For example, report-based monitoring can lead to an in-depth review of the situation in a given country and foster dialogue amongst stakeholders. However, the conference participants felt that the results of this kind of monitoring rarely reached the public and consequently governments were less pressured to ensure proper follow-up.

Monitoring based on individual complaints such as established by the European Convention on Human Rights has the advantage of referring to a specific situation which is, in principle, easier to remedy and more likely to receive media coverage and be understood by the general public. However, the complainant must be a direct victim of a human rights violation and have exhausted all domestic remedies. The monitoring system allowing for collective complaints, such as that established by the Protocol to the European Social Charter, was found to be particularly interesting for the promotion of children's rights, in that it presented all the advantages of the individual complaints mechanisms and none of its disadvantages. Several participants regretted the absence of a complaints mechanism for the CRC and referred to a proposal presented by a group

of international NGOs to elaborate an optional protocol to the CRC allowing for such complaints.

Children's rights have gained in global visibility through the almost universal ratification of the CRC and through the commitment of governments and civil society to its reporting process, which makes states internationally accountable for their response to the full range of children's rights.

Treaty bodies for international and regional instruments, which cover the rights of "everyone", including children, have paid increasing attention to children's rights. And human rights mechanisms, including regional ones such as the European Court of Human Rights and the Inter-American Commission and Court, have become more sensitive to children's rights, often using the CRC as a reference point.

The *United Nations Secretary-General's study on violence against children* underlines that children in every country of the world suffer widespread and often severe breaches of the full range of their rights—civil and political, and economic, social and cultural. In many cases, children do not have adequate or realistic remedies for breaches of their rights at national level. So seeking remedies through the use of international and regional human rights mechanisms is certainly growing, but it is not yet common or well-developed.

Few of the complaints dealt with by international and regional human rights mechanisms were initiated by children. It seems likely that most if not all of the cases in which children are named as applicants were in fact initiated and pursued by adults and that the named children had very little or no involvement in the procedure.

Many of the applications have been submitted by parents and children together. Parents are often their children's strongest advocates—but given children's initially dependent status and traditional attitudes which tend to see children as property rather than as individual people and rights holders, parents can also breach, directly or indirectly, children's rights. Parents' and children's rights can be in direct conflict. And parents—for example, those involved in separation or divorce—may seek to interpret their children's rights to pursue their own interests, rather than their children's. Monitoring is needed to ensure that applications apparently submitted by or on behalf of children are in fact pursuing their best interests.

Few children know of the existence of human rights mechanisms, let alone how to use them to pursue a remedy for breaches of their rights, and it goes without saying that babies and very young children will not on their own initiative submit applications to them, however accessible and child-friendly they become.

In some cases, NGOs and human rights institutions or individuals such as human rights activists or lawyers have identified particular widespread breaches of children's rights and also identified mechanisms that could be used strategically to pursue remedies. They then need to find individual child victims who are willing to have an application pursued on their behalf, and seek their consent.

It should be emphasised that it is not only cases initiated by children, or on their behalf, that are relevant to children's rights. Many others submitted by adults to the monitoring mechanisms and the decisions or judgments which have followed are about the interpretation and implementation of universal rights, which may also be equally relevant to children.

3. The principles of a child friendly justice

In the area of justice administration, as in all other areas, the general principles of the Convention on the Rights of the Child provide a decisive, normative and ethical approach to deal with children and ensure the safeguard of their rights:

- Non-discrimination is instrumental to avoid the marginalisation, stigmatisation or punishment of any child for reasons of birth, gender, economic status, race or any other grounds;
- the best interests of the child remains a primary consideration to guide any legislative, administrative or judicial decisions and to help in addressing any conflict of interests concerning the child;
- the right of children to life, survival and development should be clearly stated in legislation and become a primary concern for all policies affecting children ;
- child participation and the respect for the views of the child are a requirement in all decisions affecting the child, and also a corollary of the consideration of the child as a subject of rights.

The general principles of the CRC constitute core indicators with which to assess the extent that a justice system (whether national or international) is child-friendly and effective in the safeguard and fulfilment of children's rights. These general principles are relevant in civil and criminal matters, in immigration and refugee law when fundamental freedoms or economic or social rights are at stake, and they are valid for both national and international justice systems. Their growing influence reflects the incremental changes that are taking place in Europe and beyond, but they also remind us of how far we still

have to go before we attain the ideals set forth in the convention.

In other regions, and indeed in Europe, as a recent UNICEF study in the CEE/CIS region also confirms, children are still criminalised for being homeless, for running away or living on the streets. Vulnerable and marginalised children face added stigmatisation and violence during interrogation by police and while in detention. Children at risk are taken into custody and placed in institutional care. The conference participants expressed significant concern over the number of children held in detention centres and the non-respect of international standards of juvenile justice. They therefore welcomed the Council of Europe work on a draft recommendation on European rules for juvenile offenders deprived of their liberty or subject to community sanctions or measures.

There is a great deal of inconsistency in the weight accorded to children's views. With regard to proceedings affecting children, we continue to be confronted with contrasting legal and procedural solutions in the same country. On the one hand, we find proceedings where the views of a child may be *unnecessary* to establish that child's identity—name, nationality or access to origins—and on the other, we find certain criminal proceedings where a child's participation may be seen as instrumental and a "must". Further, neglecting children's opinions in asylum-seeking decisions and failing to provide child-friendly procedures and mechanisms that enable children to challenge any violation of their rights runs counter to children's best interests.

Child-friendly procedures are also lacking in international and regional human rights complaints mechanisms. As not much effort has been made to inform professionals working with and for children how these mechanisms function, they are of little help to children seeking remedy. Developing child-friendly materials and procedures would certainly contribute to improving children's access to international justice.

The participants agreed that, even in those countries with a considerable body of procedural law, enforcement of legislation has often remained weak.

II. RECOMMENDATIONS

The conference participants drew up recommendations that were addressed mainly to governments and international organisations.

1. Recommendations to governments

The participants agreed that governments had the primary responsibility of promoting respect for children's rights and children's access to justice. Governments should:

- speedily ratify and effectively implement universal and regional human rights standards relevant to the realisation of children's rights;
- provide children with child-friendly information and with education on their rights, including existing national and international remedies;
- ensure that children have access to legal advice and free legal aid;
- ensure that information and training on children's rights is available to all those involved in their care and welfare, including social workers, foster-parents, teachers, and the police;
- provide for specific training of lawyers, judges and law enforcement officials in contact with children. On the job training could be undertaken, and become a component of more specialised accreditation schemes. Any training must include the essential elements of child development and family dynamics;
- recognise and support the efforts of ombudspersons, professional networks and NGOs in their task of delivering information to children about their rights and how to uphold them;
- guarantee children unrestricted access to human rights mechanisms. This involves looking at issues such as the need for parental consent and the legal capacity and representation of children in proceedings. When others act on behalf of children, there should be a mechanism to ensure that the application is being pursued in the child's best interests and, where the child has capacity, with his or her consent. It should also be possible for groups of children, and child- and youth-led organisations, to make complaints;
- develop and apply the principles of child friendly justice, adapting both civil and criminal procedure to accommodate the needs of children, either as applicants, perpetrators, witnesses or victims;
- take urgent steps to find alternatives to detaining juveniles whenever possible, using detention only as a last resort and for the shortest possible time for older children involved in the most serious cases. In event that detention is necessary, states must apply existing and forthcoming international standards and offer appropriate conditions of detention, including being separate from adults.

The participants discussed a set of detailed and concrete measures to be taken by states if they have not already done so. They pointed out that some individual states had already taken significant steps to improve children's access to justice, and recommended an exchange of information on this topic. Participants felt there was a need for **a comprehensive set of guidelines for child friendly justice** applicable

to administrative, criminal and civil proceedings and encouraged the Council of Europe to work on this issue.

2. Recommendations addressed to international organisations and monitoring bodies

Many international organisations (such as the Council of Europe and the Office of the High Commissioner for Human Rights) provide secretariat services to existing monitoring bodies and/or are instrumental in the development of international standards and co-operation. Monitoring bodies, through the development of internal rules and the interpretation of treaties, can make a crucial contribution to the effective protection of children's rights.

International organisations and/or monitoring bodies should:

- use relevant international standards, in particular the Convention on the Rights of the Child as a reference;
- ensure that monitoring mechanisms are genuinely accessible to children. Each mechanism should review all aspects of their procedures to ensure that this is the case. In particular:
- information about the mechanism should be disseminated in child-friendly language;
- any "hurdles" in applying should be carefully reviewed from a children's perspective. For example, the common condition that applicants must have exhausted domestic remedies should be applied in a flexible way in the case of children: mechanisms should be very careful not to reject applications unless they are fully confident that domestic remedies are effective and genuinely available to children. Similarly, time limits on making an application should be treated flexibly in the case of child applicants who might not have had access to information on the mechanism;
- if the procedure includes a hearing, review all aspects of it to ensure it is child-sensitive;
- consider fast tracking applications from or on behalf of children. Decisions should be arrived at as rapidly as possible. Any process for enforcement of the decision should also be speedy;
- consider appointing a rapporteur for children's affairs, with the responsibility of monitoring children's cases, ensuring that best practice is applied to them and producing an annual report;
- establish a special unit within the secretariat likely to advise colleagues and members of the monitoring bodies dealing with children's rights-related cases. This unit should also be able to assist in directing children in need of legal advice and assistance to national instances having experience and expertise in dealing with litigation involving children and their rights;
- make sure that those involved in the mechanisms, such as decision-makers or judges and secretariat or support staff, receive special training. Training should also be available for lawyers and others representing children before the mechanism;
- improve access of professionals, the general public and children to information concerning the monitoring bodies and notably their decisions;
- continue promoting and developing standards for a child friendly justice.

As concerns the European Convention on Human Rights, the participants suggested the following measures:

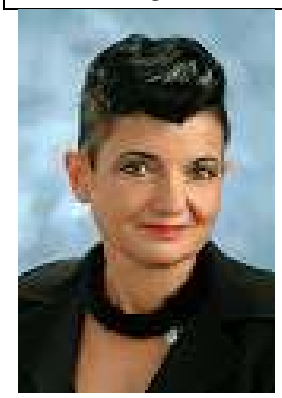
- the publication and wide dissemination of a child-friendly version of the European Convention on Human Rights;
- the appointment of a judge rapporteur on children's rights, responsible for monitoring children's cases, advising colleagues on international standards and ensuring that best practice is applied to the cases before the Court;
- the appointment of a focal point for child-related cases within the Court registry, responsible for fast tracking such cases, gathering documentation, advising colleagues and assisting the judge rapporteur;
- the maintenance of a data base of Court cases concerning children's rights.

The conference participants welcomed this opportunity to discuss the issue of children's access to international justice and congratulated the Council of Europe for the initiative. They agreed on the need to increase collaboration amongst international human rights bodies and mechanisms with a view to enhancing synergies between their mandates and enabling a regular exchange of information to advance children's rights. More particularly, the Council of Europe should continue to act as the regional forum in Europe to support and implement global action in favour of children's rights, including implementation of the recommendations contained in the *United Nations Secretary-General's study on violence against children.*

The participants welcomed the Council of Europe's intention to suggest concrete activities as a follow-up to the conference and asked that the conclusions be brought to the attention of the next Conference of European Ministers of Justice (Lanzarote, 25-26 October 2007).

Tri-state Conference, Freiburg im Breisgau, Germany

Petra Guder



Despite research and criminology demonstrating otherwise, politicians across Europe never tire of trying to convince the public that nowadays youth crime is the highest risk to society; and that the only way to fight this is through more repressive laws.

For example, on the political side, the State Governor of Hesse recently based his re-election campaign around juvenile crime and accusations of high levels of criminality among young immigrants with a call for tougher laws. And in New Zealand there has recently been an attempt to eliminate the Youth Court.

On the research side, Professor Frieder Dünkel is conducting a study to compare juvenile justice systems across Europe. The first results will be presented to the public in Verona in the Spring of 2008, where a conference on restorative justice in Europe will also take place. The IAYFJM is also starting a series of short descriptions of countries' systems.

It is also important to establish which methods of intervention are effective. In Germany a research study funded by the Federal Department of Justice has shown that some popular interventions are not effective—re-offending rates of over 80% for first-time juvenile prisoners and over 70% following a first-time detention of four weeks; whereas rates following a first-time probationary sentence were around 50%.

This is the background against which Germany, Austria and Switzerland held a joint conference from 17th to 20th September 2007. Participation spanned the many professions involved in juvenile justice and extended beyond German-speaking states to include some delegates from other European countries. Approximately 800 people attended.

The conference was built around three themes:

- **Nurturing**: which means a comprehensive, modern approach to youth justice;
- **Demanding**: that young people take responsibility for their actions; and
- **Dropping**: which is never an option for young people, however serious or persistent their offending.

The seventeen forums and workshops produced many valuable insights and conclusions, including:

- Non-secure facilities and social rehabilitation produce better results than locking young people up. These forms of intervention should be supported in legislation and by administrations. Professional training also needs to be improved;
- there needs to be better funding and support for youth welfare agencies and encouragement for them cooperating with the youth justice system;
- diagnosis of mental health problems underlying some juvenile offenders' behaviour should be given greater priority, with proper case management where appropriate;
- negative public perceptions of young people and offenders, especially of those within immigrant communities, need to be addressed with facts and research evidence. We should promote a positive appreciation of young people and their development. The legitimate demands of victims in criminal proceedings should not be misused to justify repressive approaches.

It was clear from the three days of discussion at the Conference that, although approaches to dealing with young offenders and to prevent further offending differ between countries, the underlying problems are more or less the same and that there is much to be gained from cooperation across national boundaries.

I would be happy to provide a fuller set of conclusions from the Conference to anyone who is interested. My e-mail address is: Petra.Guder@t-online.de

Petra Guder is a criminologist and Council member of our Association.

Legal Services Commission—sustainable, efficient, Legal Aid will help even more vulnerable people

Martin Seel—London

The name Legal Services Commission may be unfamiliar to some of you but you will probably recognise our national "brand": Legal Aid. We help some of the most vulnerable people in society through a network of High Street solicitors, law centres and Citizens Advice Bureaux covering the whole of England and Wales.

Perhaps the best-known part of our work is carried out in police stations and the criminal courts, with solicitors working for us delivering quality legal advice to people, including juveniles, under arrest and often facing serious charges. It is fundamental to justice that people in these situations are presumed innocent until proved guilty and are effectively represented.

But that is just part of the picture. In civil law we work with specialist solicitors, law centres and other providers to offer advice on family issues, debt and housing problems. It may also surprise you to know that we work hard to help people resolve their issues without going to court, for example through family mediation.

All this is funded by the taxpayer and in the last year we spent some £2.2 billion in England and Wales, around £400 million of this in London, where I am responsible for delivering the service. However, the budget is not bottomless and we face real challenges in ensuring value for money. That is why we have begun probably the biggest transformation in the history of Legal Aid to ensure it has a sustainable long-term future.

The change will affect the way we purchase specialist legal services across the nation. As the Commission's regional director for London, I want to share with you my vision of the changes we are making here in the capital. That vision will focus on centres offering what we call Integrated Social Welfare legal help.

We are looking to develop Integrated Social Welfare and family law across all London boroughs. I emphatically believe London should lead in developing these ambitious services, which will help some of the most vulnerable people here in the capital. This work is focused on improving their access to general and specialist legal advice services.

Wherever possible, we will be working in partnership with the London local authorities in order to deliver quality, access and good value. I'm envisaging around 30 of these new services across the capital—generally one in each borough (local authority), although some boroughs may wish to work with us jointly across their boundaries. We are already talking with some local authorities.

With the money available, we will commission one contract holder (which may be a single legal firm or agency or perhaps a consortium) to deliver these social welfare and family law services in each area. We will specify the range and quality of services we require, how clients should be able to access them, and any special conditions that may need to be met to serve particular groups of clients.

We will then give the contract holder discretion on how best to deliver the services within the objectives we have set. Depending on the local area and needs of clients the provider might choose to run one main office with satellite offices or perhaps a network of local offices. The most important thing is that whichever office a client walks into they have access to the full range of social welfare and family law services that they need. This is why we need to contract with successful, dynamic providers.

These innovative services will soon start to appear under a new brand, **Community Legal Advice**, with its own distinctive logo.

Of course, any sort of change can feel uncomfortable to those directly affected by it. And

a few of our providers have made their discomfort clear. But these changes are important to secure a sustainable base for the future and ensure we are flexible to the needs of local communities whilst demonstrating value for the taxpayers' money.

Like many public services, we are moving towards a market-based economy and will be commissioning services from solicitors and not-for-profit agencies based on proven quality criteria, then on price. This is essential to enable us to focus our finite resources on the clients who need the help.

And you may be interested to know that between April 2006 and March 2007 we were able to help more than 112,000 Londoners, many of them among the most vulnerable members of society, this year. That's an increase of around 12,000 cases handled—and without any additional financial resource.

These really are fundamental changes to the way we work. All the early indications are that our many good suppliers in London want to work with us and are ready to rise to this challenge.

More than 90 per cent of solicitors doing civil Legal Aid work in the capital have recently signed new contracts with us, re-affirming that they share our deep commitment to the service. I believe this is an excellent opportunity for providers who are efficient, well-managed and adaptable.

That's my personal vision for Legal Aid services across the capital. As with many long-range forecasts, the ideas will undoubtedly develop further with time. Over the next few months we shall be engaging with local authorities, solicitors and not-for-profit agencies and look forward to building this exciting future together.

Nationally, we are also developing services which can be delivered directly to people in their own homes. Our **Community Legal Service Direct (CLS Direct**) is available by telephone or over the internet to eligible people who need advice on, for instance, employment, debt and family problems.

For those people who find themselves in trouble with the police, we run a Criminal Defence Service Direct (CDS Direct) along similar lines. Initial advice can be given over the telephone to the client in the police station. If further help is needed, an advisor will attend the station under the Duty Solicitor Scheme.

We are also developing online ways of working more efficiently with our solicitors, law centres and Citizens' Advice Bureaux (a national service which offers free legal and other advice). From 2008 we will be moving to full electronic working. Replacing even the most frequently used Legal Aid forms with electronic systems will save a minimum of 1.8 million sheets of paper (or at least 240 trees) each year. It will also, incidentally, prevent 150 tonnes of carbon entering the atmosphere each year. That's the equivalent of taking 50 cars off the roads of England and Wales.

In addition, we constantly seek efficient and effective working arrangements with our partners in the Criminal Justice System. Our chief executive, Carolyn Regan, sits on the Criminal Justice Board alongside the Home Secretary, Lord Chancellor, leading judges and representatives of the courts, probation and police services. Throughout England and Wales, my colleagues are represented on their Local Criminal Justice Boards.

At the start of the 21st Century the Commission is building a sustainable, efficient and effective Legal Aid service capable of helping even more people every year.

Martin Seel is Regional Director, Legal Services Commission, London & South East of England, UK

The equality of children in the Italian legal system

Professor Elisabetta Lamarque

Italian Constitution and the European Court of Human Rights.

In providing equal treatment for different categories of children the Italian legal system, and particularly the case law of the Italian Constitutional Court (ICC), differs significantly from the European system and case law built up by the European Court of Human Rights (ECHR).

On this subject, the Strasbourg Court has made a real choice in judicial policy since its earliest decisions at the end of the nineteen seventies.

ECHR and equality for all children

The ECHR chose to proceed with a minute examination of the differences between the treatment of children in each national legal system, imposing **absolute equality of treatment** for all children: legitimate or illegitimate (born of unmarried parents or of an adulterous relationship); biological or adoptive. In other words, from the very beginning the Court has faced "the delicate issue of inequality of treatment of illegitimate children, enunciating solid principles", with the result that "the case law on this subject is consistent and definitely in favour of the abolition of any discrimination on the grounds of birth"[1].

Not only do we have decisions taken with reference to Article 14 of the European Convention on Human Rights, which prohibits, *inter alia*, discrimination on the grounds of "birth", we also have decisions, taken by the Court in various areas, founded on the principle of the best interests of the child, where the Court stresses the impossibility of making distinctions according to the status of the relationship of filiation (parentage).

Prohibition of discrimination

Here we examine some aspects of the workings of the prohibition on discrimination. We all know that article 14 of the Convention is—as the former President of the European Court of Human Rights says—"an almost parasitic provision, which has no independent existence as it is linked exclusively to the enjoyment of the rights and freedoms laid down in the other substantive provisions"[2]. The other "substantive provisions" that the Strasbourg Court has taken into consideration when it has dealt with children's discrimination on the grounds of birth are, above all, the right to "family life," protected by Article 8 of the Convention, but also the right to property enshrined by Article 1 of Protocol no. 1.

Marckx case

As far as article 8 is concerned, the leading case is the Marckx case (1979[3]) in which the Court inaugurated four very important innovative directives, which have been adopted in all subsequent case law.

First the Court maintains that Article 8 does not merely compel the State to abstain from interference in family life because, "in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective "respect" for family life".

This means, amongst other things, that when, in its domestic legal system, the State determines the regime applicable to certain family ties such as those between an unmarried mother and her child, it must act in a manner calculated to allow those concerned to lead a normal family life. In the Court's view, as envisaged by Article 8, respect for family life implies, in particular, "the existence in domestic law of legal safeguards that make the child's integration in his family possible as from the moment of birth".

The **second** historic declaration is the decisive refusal to identify the "family life" protected by Article 8 with the "life" led within a traditional family constituted subsequent to a marriage. A distinction between the "legitimate" and the "illegitimate" family, indeed, "would not be consonant with the word "everyone", and this is confirmed by Article 14 with its implied prohibition on discrimination based on "birth"".

The **third** important statement is that "family life", within the meaning of Article 8, includes at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life.

[1] A. OPROMOLLA, Children's rights under Article 3 and 8 of the European Convention: recent case law, (2001) 26 E. L. Rev. 55.

[2] L. WILDHABER, Protection against Discrimination under the European Convention on Human Rights: A Second-Class Guarantee?, (2002) 2 Baltic Yearbook of International Law, 71 s.

[3] Marckx v.Belgio,13 June 1979, appl.no. 6833/74

The **fourth** and final pointer to emerge regards the circumstance that Article 8 does not only include social, moral or cultural relations, but also covers the **patrimonial and hereditary aspects** (inheritance) of family relationships.

Italian Constitution—a different approach

The Italian Constitutional Court approaches the subject in an entirely different way from the Strasbourg Court, both from the theoretical point of view and in some practical applications.

The prime cause of the divergence of views lies in constitutional and judicial parameters. On the issue of filiation, a great distance separates the European Convention of Human Rights, as interpreted by the Strasbourg Court starting from the Marckx case, from the text of the Italian Constitution. The underlying cultural background and view of family life prevalent in the Italian Constituent Assembly informed the basis of the Constitution and is still alive in the minds of some Italian authors and judges.[4].

According to the Italian Constitutional text: the family as an object of protection is the "natural group based on marriage" for which the Republic "recognises rights" (Article 29, first paragraph); and, in order to guarantee the "family unity" of the legitimate family, "legal limits" can be applied to the "moral and legal equality of the spouses" (Article 29, Marriage, second paragraph). Also the "legal and social protection" that the law must ensure to children born out of wedlock is not complete, only reaching a point at which it is "**compatible** with the rights of the members of the legitimate family" (Article 30, Parental Duties and Rights, third paragraph).

Furthermore, the fourth paragraph of Article 30 of the Constitution—"the law lays down the rules and limitations for the determination of paternity"—should have served to specify the meaning and reduce the scope of the meaning of the first paragraph of Article 30, which says that "it is the duty and right of parents to support, raise and educate their children, even if born out of wedlock". It should have limited (defined) the duty of parents to support, raise and educate their children to those children who could obtain by law (voluntary or judicial) recognition of the natural tie.

And the Italian Civil Code, before the reform of Family Law in 1975, dictated extraordinarily limiting rules on voluntary recognition and on the search for paternity by children born in adulterous and incestuous relationships, in order to protect the serenity of the legitimate family in the case of the former and the image of the legitimate family in the latter.

Finally, staying with the analysis of the textual tenor of the Italian Constitution, it can be seen that with regard to the equality of children, the limiting "compatibility" clause in some way reinforces the rights of the legitimate family because "birth" is absent from the list of discriminatory factors expressly forbidden by the principle of formal equality before the law enshrined by Article 3, first paragraph, of the Constitution.

Constitutional Court and change

It is true that, following the evolution of social conscience and sexual morality, the ICC has contributed to sanctioning the progressive weakening of all those clauses that the majority of the Founding Fathers wished to include in the Constitution with the exclusive and openly declared aim of protecting the institution of the traditional family. And it is also true that the Court did to some extent anticipate and then support in its subsequent decisions the choices brought about by the Italian Parliament with the reforms of 1975. The reforms, while maintaining a different legal treatment as regards children born as a result of incest, sanctioned the disappearance of the category of children born as a result of adultery and the almost total equalisation of the position of natural and legitimate children. So, today, thanks to the Constitutional Court, we can say that those Constitutional clauses that textually seem to authorise a different and inferior legislative treatment of children with the aim of safeguarding the legitimate family, are basically inoperative[5].

Filiation and 'compatibility'

Nevertheless, in its decisions regarding the legal condition of children, the ICC never requires an unconditional application of the principle of equality, as the Strasbourg Court does. The reason for this is that the wording of the constitutional article on filiation, with the limit of "compatibility", maintains a high degree of ambiguity, which it is impossible to eliminate, despite the systematic, evolutionary interpretation that the Court has given it over the years[6].

---

[4] Compare, for all, M. BESSONE – G. ALPA – A. D'ANGELO – G. FERRANDO - M.R. SPALLAROSSA, La famiglia nel nuovo diritto: principi costituzionali, riforme legislative, orientamenti della giurisprudenza, Il Mulino, Bologna, 2002, 35.

[5] On the interpretative paths that the Constitutional Court has followed to reach this outcome founded on the enhancement of the principle of general equality from Article 3, paragraph 1, and the personalistic principle from Article 2 of the Constitution, see E. LAMARQUE, Famiglia (dir. cost.), Dizionario di diritto pubblico, edited by S. Cassese, III, Giuffrè, Milano, 2006, 2421 ss.

[6] The wording of Article 30 is objectively ambiguous since it is a strong compromise, resulting from a great unresolved tension between the equality of children, supported by the secular group, and the safeguarding of the stability of the

So, when the ICC makes a **direct** reference to the principle of equality of children, it manages to say, at the most, that there is "the **obligation** deriving from the **guidelines of equalizing** natural children to legitimate children" sanctioned by Article 30, third paragraph, of the Constitution (our emphasis)[7] .

However, the ICC manages **indirectly** to ensure the equality of all children's entitlement and enjoyment of rights in the relationships with their parent by relying on the constitutional regulation that makes it **every parent's** duty to support, raise and educate their own children (Article 30 Parental Duties and Rights, first paragraph, of the Constitution) and on a strong appeal to the principle of the **best interests** of the minor: This regulation and this principle are always applied by the Court independently of the nature, legitimate or illegitimate, of filiation.

Civil Code and Children's Rights—Article 30

The ICC has stated that Civil Code provisions regarding children's rights when married parents separate must be extended to natural children on the basis of a systematic and constitutionally orientated interpretation. In other words, the regulations of the Civil Code must be "read in the light of the principles of parental responsibility written in Article 30 of the Constitution and in the light of the overriding interest of the child to continue to live in the family home"[8].

Again, in a decision regarding the right to family reunion between an immigrant and his/her natural child, the Court declared unconstitutional the Italian law which imposed on the parent requesting reunion (with a child) marriage with the other parent, insisting on the need to consider the "situation of those who, while not married, bear the right/duty deriving from their condition as parent—"a situation that concerns the "relationship between parent and minor, in order to ensure the constitutional protection of the latter"[9].

Moreover, the possibility of asserting the existence of one single, homogeneous category of children—thus following the Strasbourg Court in the proclamation of an absolute prohibition on differentiating between children on the basis of their birth—is almost totally precluded to the Italian Court, because of the wording of Article 30 in the Constitution. This confirms a formal distinction between legitimate and natural filiation (parentage). Moreover, the fact that the Italian Constitution recognises the existence—and perhaps imposes the conservation thereof—of two categories of children (those born in wedlock and those born out of wedlock) is happily admitted in the constitutional decision that presents the greatest motivation for the need to promote the principle of general equality and addresses the individualistic principle in the interpretation of the constitutional provisions in matters of filiation.

We should also consider the decision that declared unconstitutional the provision of the Civil Code which excluded, to the detriment of "incestuous" children, the action for legal declaration of their natural parentage.[10]. In this decision, the Court claimed—for the first time—that the general constitutional clause which recognises the rights of the family as a natural group founded on marriage "does not justify the notion of the family as being against persons and their rights". The court argued that precisely because the individualistic principle proclaimed by Article 2 of the Italian Constitution suggests "the position of the family holding prime place lies in its aim of promoting the individuality of human beings". *This quote has been simplified.*

In the same decision the Court, interpreting in a limited way the clause of "compatibility", also states that "caution about compatibility is ill-suited to be used to refer to the psychological well-being of the legitimate family", *[this quotation has been simplified]* adding that "in any case, the inclusion of natural children into a married relationship and legitimate family life is not in itself a violation of rights but an uncertainty in the business of living" (these last words are a quotation taken from a famous Italian writer, Cesare Pavese).

institution of the family, supported by the Catholic group (see, for all, A. JANNARELLI – E. QUADRI, La rilevanza costituzionale della famiglia: prospettive comparatistiche, L'influenza dei valori costituzionali sui sistemi giuridici contemporanei, edited by A. PIZZORUSSO e V. VARANO, I, Giuffrè, Milano, 1985, 30 ss.; A.M. SANDULLI, Rapporti etico-sociali, Commentario al diritto italiano della famiglia, diretto da G. Cian – G. Oppo – A. Trabucchi, I, Cedam, Padova, 1992, 3 ss. e R. BIAGI GUERINI, Famiglia e Costituzione, Giuffrè, Milano, 1989, 8 e 19).

7 Const. Court., 26 May 1989, n. 310.

8 Const. Court., 13 May 1998, n. 166 e 21 October 2005, n. 394.

9 Const. Court., 26 June 1997, n. 203 (but see also the claims of principle by Const. Court, 19 January 1995, n. 28)..

10 Const. Court, 28 November 2002, n. 494. That decision has, however, kept the veto of the recognition of children by incestuous parents and is criticised by C.M. BIANCA, La Corte costituzionale ha rimosso il divieto di indagini sulla paternità e maternità naturale di cui all'art. 278, comma 1, c.c. (ma i figli irriconoscibili rimangono), Giurisprudenza costituzionale, 2002, 4068.

However, on the same occasion, the Court also said that the classification created by the Italian Constitution "recognises, in Article 30 (first and third paragraphs), only two categories of children: those born within and those born out of wedlock, without further distinctions of the latter". But, as the best doctrine teaches, it is the same distinction between children born in and out of wedlock which is itself the primary and most serious form of discrimination[11].

Inheritance

What remains to be examined are those areas (in particular inheritance between close relatives) where the principle of the best interest of the child is not considered, where parental responsibility is not emphasised and where everything is based on prohibition of discrimination on the grounds of birth. It is in these areas that the enormous gap can be identified between the case law of the ICC and that of the Strasbourg Court.

All the solutions offered by the ICC on the issues regarding the position of the "natural parent" in inheritance clash with the principles expounded and often repeated by the Strasbourg Court since the Marckx case—i.e. the claim that the essential demand on the part of the natural child is to see his or her relationship not only with the parent but also with the relatives of the parent fully recognised by the State and the further claim that effective equality of children results from the legal recognition of their inheritance rights on the part of their natural relatives. The ICC has carefully examined (ahead of the State) the Civil Code on inheritance rights of natural siblings on intestacy, but it has placed them in a **discriminatory** position compared to the legitimate siblings[12]; and it has discriminated against "natural relatives" of fourth, fifth and sixth degree thus treating them differently from the legitimate relatives of the same degree[13].

Statistically, these decisions affect a relatively small number of cases, but the argument in support of the decisions is very serious in its other consequence of maintaining discrimination.

In its last decision on the issue in 2000 the Court stated that the principle of formal equality is not violated by the provision in the Civil Code that excludes natural parents from succession on intestacy because of "the difference that exists between the situation of persons between whom there is only a blood relationship and the one in which the individuals are also tied by a veritable bond of parenting". It goes on to say that "from Article 30 of the Constitution the equalisation of all natural parents with legitimate parents is not constitutionally necessary".[14].

Perhaps the Italian Constitutional Court, before deciding on this issue, or at least before redrafting the reasoning of those decisions, should have taken a glance towards Strasbourg.

Elisabetta Lamarque is Professor of Public Law at the Università degli Studi di Verona, Italy. She has published in various areas, such as Constitutional Justice, Regional Law and Human Rights.

E-mail: elisabetta.lamarque@univr.it

[11] C.M. BIANCA, Diritto civile. II. La famiglia – Le successioni, III ed., Giuffrè, Milano, 2001, 277.

[12] Const. Court., 15 June 1979, n. 55 e 12 April 1990, n. 184, which overtake the precedent Const. Court., 11 May 1977, n. 76.

[13] Const. Court, 23 November 2000, n. 532, on which the strong criticism, also regarding the compatibility with the Strasbourg Court case law, by C.M. BIANCA, I parenti naturali non sono parenti? La Corte costituzionale ha risposto: la discriminazione continua, Giustizia civile, 2001, 594 ss., and by G. FERRANDO, Principio di eguaglianza, parentela naturale e successione, Famiglia e diritto, 2001, 363. Both authors carry on the battle against the lack of recognition of natural family ties in the Italian legal system, claiming it is a source of severe discrimination against natural children: Bianca for several decades (since C.M. BIANCA, Famiglia (Diritti di), in Noviss. Dig. It., VII, Utet, Torino, 1961, 73, until, among other writings, ID., Dove va il diritto di famiglia?, Familia, 2001, 8, e ID., Pubblico e privato nei rapporti personali, Studi in onore di Gianni Ferrara, I, Giappichelli, Torino, 2005, 2), and Ferrando in many more recent works (among which G. FERRANDO, La successione tra parenti naturali: un problema aperto, Familia, 2002, 311 ss.).

[14] Const. Court, 23 November 2000, n. 532.

Young Offenders (Serious Crimes) Bill New Zealand	**Tracey Cormack**

6

Judge Andrew Becroft attended a Parliamentary Select Committee in July 2007 to address both the structure and unintended consequences of the proposed Young Offenders (Serious Crimes) Bill which would effectively abolish both the Youth Court and end the family group conferences system.

In keeping with constitutional convention, Judge Becroft's submissions were limited to matters of drafting, structure and implications for the Youth Court, but not matters of policy.

Judge Becroft's prime concern was that the drafting of the Bill was very poor—"abysmal"—his words to the Select Committee. Despite suggestions by framers of the Bill that the Bill was being misrepresented, Judge Becroft submitted that its effect is plain and that there are six unintended consequences of the Bill. These are:

1. The Bill would remove YC jurisdiction for almost all criminal offences from the Youth Court.
2. Family Group Conferences would be removed for virtually every offence
3. The Bill is inconsistent and confusing where it maintains existing procedures for dealing with 10-13 year olds and at the same time introduces a new system whereby virtually all children will be charged in the adult criminal courts.
4. The Bill will mean that almost all under 17 year olds, if charged, will be able to be imprisoned (section 18 of the Sentencing Act 2002 currently allows young people to be imprisoned only in respect of "purely indictable" offences—a small handful of very serious offences). This is because the definition in the Bill of serious offences is so wide.
5. The historic protection of the *doli incapax* presumption afforded to 10-13 year olds is virtually abolished. This doctrine presumes children are criminally incapable, but is rebuttable and a child may be convicted of an offence if there is proof that the child understood their act to be wrong. In practice, capability is virtually always conceded. The authors don't know of a single case in the last 5 years where the doctrine was relied upon, but it is important that it be retained as a matter of principle. [*The protection afforded by doli incapax was removed in England and Wales in 1998 and is still regretted by many working in the Youth Justice system. Editor]*
6. Provisions of the Bill conflict with statutory youth justice principles. Judge Becroft urged the Select Committee to consider these obviously unintended consequences of the Bill as it is currently drafted.

The Bill also addresses the age of prosecution and Judge Becroft acknowledged that this was a legitimate policy decision for Parliament and outside his scope. However he did say that in any debate it would be important to consider;

- . Offending rates for 10-13 year olds, and whether offending was growing and out of control; and
- . Whether the existing child offender provisions are working and the extent to which they could be modified and improved. This issue is within the domain of the Principal Family Court Judge as child offenders (10-13) are dealt with by that Court.

Judge Becroft submitted figures to the Select Committee to show that apprehensions overall decreased by 10.8% for 10-13 year olds over the years 1997-2006. In addition, he demonstrated that while there has been an increase in apprehensions for violent offending for 14-16 year olds in recent years, this trend is similar for all adult age cohorts *except* for 10-13 year olds.

Age	% change in violent offending 1997 to 2006
10-13	10.8% *reduction*
14-16	47.5 % *increase*
17-20	41.8% *increase*
21-30	7.8% *increase*
31-50	47.0% *increase*
51-99	71.7% *increase*

Update New Zealand December 2007

The New Zealand Parliament's Law and Order Committee has recommended **against** Parliament passing this Bill.

The Committee's conclusion was:

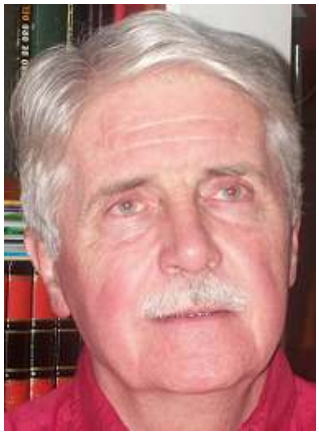
"We believe much work still needs to be done to improve the youth justice system. While the majority of us did not believe that the Young Offenders (Serious Crimes) Bill was an effective tool to make such changes, we think our consideration has been very useful in highlighting many important concerns. We are sure that the submissions and advice received in consideration for this bill will prove to be a valuable resource for future legislative proposals."

Copies of Judge Becroft's submission may be obtained by emailing a request to:

Tracey.Cormack@justice.govt.nz

Tracey Cormack is Research Counsel to Principal Youth Court Judge, Judge A J Becroft, Chief District Court Judge's Chambers

Good intentions in Argentina — Dr Horacio E. Barberis



In recent times, the most significant legislative change in juvenile matters in the Republic of Argentina is the passing of Law 26.061 that expressly repealed Patronage Law 10.903 which had applied from the first quarter of the last century.

Law 26.061 was the way in which the Argentine Nation adapted its legislation in concert with those countries that modified their laws in order to harmonize them with the principles set down in the Convention on the Rights of the Child. Some provinces of Argentina had already undertaken reform of this kind, demonstrating that the complete protection of children is one of the highest duties of justice and that the justice system can combat the negative/irregular situations of children and young people.

At the same time, it should be noted that the reform has not yet been matched by firm, clear actions of public policy directed to the same ends; nor—from a practical point of view—by the resources needed to support the recovery of children whose growth and development have suffered from a lack of protection, which may adversely have affected their family life, position in society, their health or education.

Many assert that the passage of Law 26.061 has shifted the system of Youth Justice away from its defined role of resolving the judicial issues that can arise when a child's rights have been denied or there is a risk of that happening. However, the responsibilities of political and administrative organisations should also be noted—that, if they do not meet their unavoidable obligations to deal with the problems of children in distress, these responsibilities will again fall to the judicial system. This is bound to lead to complaints, given that the court's role as guarantor of legality and equality before the law oblige it to restore equilibrium and put an end to the violation of rights in order to promote social harmony.

We hope that political institutions and administrators will shoulder their undeniable obligations towards society to ensure that children and young people can enjoy their rights to the full.

Dr Barberis is President of the Youth Court (No 3) in the Federal Capital and President of the Argentinian Association of Youth and Family Judges and Magistrates

Association News from Argentina — Ivonne Allen

Dear friends,

This has been a complex year for Argentineans, marked by a changing institutional situation, especially concerning decisions about child and youth matters. The changes introduced by new legislation have generated confusion, paralysis, discussion and applause. As with all changes to processes, they will require time to mature and settle down.

After a long period of work on the reorganisation of the Association, undertaken mainly by Dr. Horacio E. Barberis and Dr. Juan Carlos Cairo, some significant changes were introduced during our Annual Assembly on 1st December 2007.

First, the Association's change of title was approved. We are now **Asociación Argentina de Magistrados, Funcionarios y Profesionales de la Justicia de Niñez, Adolescencia y Familia** . You may observe the significant inclusion of professionals in our title. The Assembly also agreed that professionals could hold positions on the Association's Executive Committee. This has resulted from an important opening out on the part of our members, which counteracts, in a favourable sense, the widespread tendency, which Renate Winter has pointed to, towards a lack of professional involvement in child and youth affairs.

Second, an interim Executive Committee has been appointed, as follows:

Presidente Provisional	Dr. Elbio Ramos
Vicepresidente	Dra. Maria Eugenia Arbeletche
Secretario	Dra. Cristina Landolfi
Prosecretario	Dr. Juan Carlos Fugaretta
Tesorero	Dr. Mariano Alessandrini
Protesorero	Lic. Ivonne Allen

This interim Committee has a commitment over the next four months to revise the Association's statutes, to reorganise administrative aspects and to put forward proposals for academic activities during 2008.

It is important to emphasise that one of the points discussed during the Annual Assembly was the formalisation of the relationship with the International Association. Our reorientation will not only allow us to share activities and enjoy better communication with the IAYFJM, but should also strengthen links with the local IAYFJM´s Associates. Although there were informal contacts and some subscriptions have been collected and new members recruited, the task fell to individuals, without support from collective work.

During the first days of February, after the summer vacation, I will be sending advance notification of the academic activity proposed up to November 2008, as well as a report on the situation of IAYFJM´s Associates locally.

Best regards, Ivonne

Ivonne Allen is a Professor at UNLaM
E-mail: eiallen@sinectis.com.ar

The Right to Foster Care

María Rosa Benchetrit
María Elvira Dezeo de Nicora

Maria Elvira Dezeo **Maria Rosa Benchetrit**

We understand that a child deprived of living with a family is a damaged child because he/she lacks part of his/her essence and it follows that the exercise of his/her rights will also be damaged.

Each member of a family—mainly the child— is part of a human ecosystem in which there is mutual interaction and where the child develops as a person. So to intervene for the child (a subject of rights) when we consider his/her rights are at risk, while at the same time disregarding his/her family, results in the weakening of the chance of the child's rights being exercised and the child becomes vulnerable to losing his/her rights.

The legislatures of most States have ratified and integrated international treaties about human rights and the treaties deem unconstitutional anything opposing or contrary to what they say as well as any behaviour on the part of the State itself which impedes, delays or fails to promote the rights acknowledged by them and the State.

More than 50 years have passed since the Universal Declaration of Human Rights, and more than 15 since the Convention on the Rights of the Child (CRC). During that period, and even closer in time, there have been many and different conventions, pacts and declarations ratifying the family as the natural and fundamental basis for the development and well-being of its members, mainly its children. So the family must be provided with every kind of protection and assistance to fulfil its responsibilities, since it is considered one of the very few collective subjects entitled to the application of international rights.

The CRC conceives the child as a subject of rights within a family which is also entitled to rights. In this view, f**oster care should be seen as a right** which allows a child/adolescent a place in a foster family for as long as needed. In this framework, respect for a child's identity and family attachment are favoured and protected at a time when the child's family is experiencing a difficult situation.

That acknowledgment would avoid the pendulum movement: Birth Family ↔ State; State ↔ Birth Family; Birth Family ↔ State, which supports the conviction that between the State (in its administrative, legislative and judicial actions) and a child's family, there is no other possibility when in fact there are families in the community willing to be foster families.

In the above lineal view, the rights of a family experiencing a crisis are nonexistent, the child is a 'subject of protection' and attempts by the family to exercise their rights are frustrated.

The right to foster care is exercised by the child and his/ her family and the foster family. Although there is a transfer of rights and duties from one family to the other, they are agreed on according to the norms that each State establishes for the rights and duties of parents towards their children.

The implementation of the right to foster care requires organic structures with people and professionals trained to act upon events so that channels are set up to reflect fraternal and supportive dynamics for each other that exist in communities and societies.

In recognizing this right to foster care, we argue that it is necessary to set out exactly what is meant by foster care since terminology leads to instruments and practical approaches that are different between different kinds of care and each is supported by different ethical, philosophical and ideological considerations related to children at risk and their relationship with their birth families.

Thus, we claim that foster care **is not the same** as:

Pre-adoptive care

Many countries include the concept of foster care in pre-adoptive care—a period of time before adoption. This is the opposite of foster care, where re-insertion into the birth family and family reattachment are key aspects. Here, the path is to new filiations. The key word for pre-adoptive care is **another** (another family, another culture, another community, another country.)

Family placement
In a wide sense, family placement is a protection measure whereby the child is withdrawn from his/ her birth family at a time of difficulty. In general, the action is centered on safeguarding the child's well-being, minimizing action within the birth family while running the risk of becoming another form of institutionalisation. The relationship with the birth family revolves around contact, which may or may not be successful. The importance of family placement lies in the fact that a child is protected by another family in the belief that a new structure will modify the problems leading to intervention. The key word is **placement**.

Substitute family
To substitute means 'to change, to take one instead of another one' … the birth parents are put to one side. A foster family is not a substitute family: Foster parents are not the new parents of the child. On the contrary, in foster care both families interact dynamically and reciprocally to meet the needs of the child. The key word for a substitute family is **replacement**.

Wardship
Wardship of a minor by someone who is not his/ her legal guardian is providing him/her with material and spiritual assistance with limited room for the birth family. In general, the family welcoming the child is not supported in the complex process of reintegrating the child with the birth family, so uprooting deepens the feeling of emptiness and loneliness that children feel when they are withdrawn from their parents. The key word for wardship is **instrument**.

Transient family
Although the right to foster care is within the framework of transience and temporariness—be it on a short, mid or long term basis—, it is used because of the causes and evolution of the need for care. A transient family is not encouraged to make bonds with a child because attachment may hinder the passage to the definite/future family. The key word is **passage**.

Instead, **foster care** is a RIGHT; it is a cooperative, fraternal answer from one member of a community to another, from one family to another in need, providing a place within a family—for as long as needed—to children and adolescents. The key word is **complementary**, based on cooperation and fraternity.

The right to foster fare is not identified with 'another family', or 'a place', or 'replacement', or a mere 'legal instrument' or a mere 'passage'.

Thus we state that it is highly important to clarify and to make a distinction between these different terms, which are often confused or used interchangeably leading to ambiguity, vagueness and grey conceptual and operative areas by all concerned in their use. Otherwise the right to foster care is reduced into mere and simple social assistance, protective, administrative, judicial or institutional alternative, blurred and included in a long list of alternative care; and the protection of family rights and the rights of the child are further weakened.

Latin American legislations are not clear on Foster Care, particularly on the Right of Foster Care. Argentina, our country, is included, as is clear from the above and the recently approved 26061/05 Law and its regulation decree 415/06 that abolish the Patronage Law 10.903 of 1919.

The Right to Foster Care lies in a grey and hybrid area of Human Rights and there are other countries (according to François Tulkens and Sergio Llebaría Zampes) that are not free from legislative imprecision. However, in those countries, Foster Care is already established in the community praxis, and in the collective unconscious mind.

As we have said, the lack of precision brings with it confusing methodological approaches which impose time limited resolutions without respecting the child and his/her family and without understanding that foster care is a crafted construction, unique and non-repeatable, which takes shape from the interacting dynamics of the child, his/her family and the foster family. The task of the professional teams is to support each construction and its individuality.

Any other approach runs the risk of losing sight of the rights of the child and his/her family, opening gaps so that the chain of operators (State, professionals, agencies, associations, etc.) deepen the risk violating the Convention on the Rights of the Child, by omission and action.

So, if we place the right to foster care first, before all other forms of care, we are favouring an approach which is complementary to the family, promotes cooperation in society and places the family in a position where it can be proactive in pursuing its rights and where the rights of the child can also be upheld.

Fundación Emmanuel is a secular, NGO made up of families, children and adolescents, professionals and others. It has been providing Foster Care in Argentina since 1985 E-**mail**:emmanuel@emmanuel.org.ar - Web Page: www.emmanuel.org.ar)

María Rosa Benchetrit: Professor of Philosophy, Lawyer (Universidad Nacional de La Plata), Coordinator of the Judicial Area of Fundación Emmanuel

Elvira Dezeo de Nicora: Psychopedagogist and Criminoloist (Lovain University, Belgium), founded Fundación Emmanuel, together with her husband and daughters, and is currently its President.

The part-time judge in the Italian system

Piera Serra

Honorary juvenile judges (*giudici onorari minorili*) are part-time juvenile judges—professionals in the field of childcare like psychologists, pedagogists, social workers, physicians—who for a set time become part of the juvenile court. They work two to three days a week as judges, continuing to do their normal job on remaining weekdays.

The specialisation of juvenile law in the Italian legal system took place in 1934 by a law enacted to set up juvenile courts creating the profession of part-time judges[1]. This reform had the merit of increasingly focusing law enforcement on the personality of minors and adjusting it to their needs. Repressive and punitive criminal conviction tends to be replaced by rehabilitating, therapeutic, supportive intervention.

Currently, juvenile courts are collegiate courts made up of two professional judges and two part-time judges[2]. It is in charge of rendering judgments on all criminal and civil issues regarding minors[3].

Judgment-rendering powers and hearing functions

Part-time judges must have an appropriate professional training and work experience. Each collegiate court is made up of two professional judges and a male and female part-time judge, in order to achieve a comprehensive perspective and a combination of different sensitivities[4]. Part-time judges have the same power to render judgements as professional judges. Clearly, as with a citizens' jury, it is the professional judges' task to explain to part-time judges applicable legislation and its application to the relevant case (the chair of collegiate courts is always a professional judge). Usually the decision is unanimous. Judgments are therefore the result of a 'peer-to-peer' dialectical confrontation between jurisprudence and specialists' knowledge.

Part-time judges not only take part in collegiate courts, but also sit in single-judge courts (except for certain issues in the field of criminal jurisdiction which are the exclusive responsibility of professional judges). Part-time judges may, like professional judges, sit separately at hearings of minors, or relatives, or social workers. This may happen when a court, before passing a provision, establishes that the minor, or a relative or social worker needs to be heard, delegating the task to one of the four members of the collegiate court, who may indeed be either one of the part-time judges. In other cases the chair of the court may have a part-time judge sit at a hearing.

Usually, before the hearing, the court already has psychological, social and health information on the minor, provided by social workers and by the psychologists of the local public services, who meet the minor and family in their offices and out-patient facilities and send a report to the court. The hearings subsequently conducted in court by the judges are required to directly hear the people concerned and to check and supplement the information received. Therefore, the role of part-time judges is not the same as the role of care professionals: part-time judges during hearings may not use any diagnostic, therapeutic or counselling technique. For example, if, meeting at a hearing a couple who wants to adopt a child, a psychotherapist part-time judge suspects a dysfunctional communication modality, he/she may not use the same techniques as in a therapeutic session for diagnostic purposes to investigate, but may only ask explicit questions. Or, if a physician part-time judge is informed that an adult receiving a minor in foster care may have

[1] Royal Decree dated 20 July 1934 no. 1404.

[2] Law dated 27 December 1956 no. 1441. It is worth mentioning that pre-trial examinations of under-age defendants are held by a collegiate court made up of three judges: two part-time judges and one ordinary judge (art. 50 of royal decree of 30 January 1941, no. 12, as amended by art. 14 of Presidential Decree no. 449 of 22 September 1988).

[3] Except for the custody of under-age children after separation, limited to married couples, which is the responsibility of a specialized division of the general Court and for the supervision of the performance of parental authority, as well as the protection of orphans or minors whose parents have fallen from parental authority, the jurisdiction of a "probate judge".

[4] See Constitutional Court, order no. 172/2001 (constitutional legality of art. 2 of royal decree-law of 20 July 1934) and the decision of the Superior Council of Judges of 25 July 2002, paragraph 1.

a disabling disease and deems it necessary to ascertain its seriousness, he/she may not ask any questions on the medical history of the adult which imply specific scientific knowledge, but only general questions. If it is necessary to get in-depth information in addition to the information supplied by the services, the court, instead of carrying out specialist investigations directly using the part-time judge's professionalism, request advice from an external professional.

This restriction on the part-time judge's specialist skills ensures compliance with the defence guarantees and the performance of cross-examination: the appointment of a professional establishes that the parties may in turn appoint trustworthy professionals to supervise the performance of the professional appointed by the court and supplement it or challenge its outcome[5].

While it is true that the part-time judge during hearings may not use his/her diagnostic and treatment specialist skills, he/she may use his/her knowledge and experience at different levels:

1. The information on the developmental age processes helps to put forward pertinent questions concerning the reason for the tribunal intervention;
2. The habit of listening learnt from clinical practice helps to recognize the emotional upheavals that the problems of minors inevitably cause: such recognition results in the judge at the hearing being able to understand the feelings of the minor and family better;
3. Professional sensitivity makes one more attentive to the suffering of the person brought by the court's intervention and leads to minimize said intervention.

Therefore, a unique characteristic of the role played by part-time judges is to make use of his/her knowledge and professional expertise without adopting his/her normal professional methods of intervention.

Appointment

Part-time judges are not recruited by lot, as in some other countries, or elected, but they apply voluntarily. A professional who wishes to become a part-time judge sends his/her application to one of the juvenile courts with his/her references; the chair of the court together with the professional judges and two part-time judges examine the references and draws up a ranking on which basis the Superior Council of Judges (which is the judges' self-governing body) will appoint some professionals as part-time judges. Part-time judges work two to three days a week, following their own profession on the remaining weekdays. Formerly they were unpaid volunteers. Currently they receive a fee. They remain in office for no longer than nine years.

Once the appointment has been made, part-time judges' tasks are established by the chair of the court on the basis of their individual specialist skills. For example, interviews with couples applying for adoption are in general undertaken by psychotherapist part-time judges, hearings of teenagers with antisocial behaviour by psychologist part-time judges, as well as social worker or youth worker part-time judges.

Convergence of the objectives of juvenile judges and care professionals

Every juvenile judge knows that psychological, social, pedagogical and medical sciences are an essential aid to make the best provisions in the interest of the minor. However, the profession as part-time juvenile judge shows something more than the fact that these professionals are an aid to the law: it shows that the relationship between judges and representatives of psychological social, pedagogical and medical subjects in the juvenile jurisdiction is different from the relationship between judges and representatives of specialist subjects in the ordinary jurisdiction. Usually, indeed, judges use the expertise of scientists and experts during the hearing phase, but the final judgment is left to the judge. For example, a judge requested to establish responsibility for the collapse of a bridge, may confer with engineers and geologists for their know-how, but the final sentence on culpability is decided by the judge. However, in the juvenile jurisdiction the judge and the representative of juvenile psychology (or pedagogy or sociology or medicine) work together at the time of making a decision: a specialist becomes a judge in the person of the part-time judge. This unique exception in the judicial world is made possible by two factors:

[5] See resolution of the Superior Council of Judges no. 25/PA of 9 July 2003.

I— There is a definite convergence between the objectives of the profession of juvenile judge and the objectives of the professions assisting young people. The profession of the juvenile judge implies a motivation to apply juvenile law which, in turn, aims to remove any psychological, social, health or cultural obstacles to the young person's well-being[6]. Equally, the profession of the juvenile psychologist implies a motivation to remove any psychological obstacles to the minor's well-being, the social worker any social obstacles, the youth worker any pedagogical obstacles, the paediatrician any health obstacles.

Thanks to this convergence of professional objectives in the same individual, the profession as juvenile judge and childcare professional may coexist. In the collegiate decision-making work, this common intent of professional judges and part-time judges results in, both for professional judges and for part-time judges, convergence of the intention to apply the law and the intention to apply the guidelines of the specialist subjects, despite the limited knowledge of legal matters of part-time judges and the limited knowledge of specialist matters of professional judges.

The crucial test of this common intent emerges when the application of the law is in conflict with the specialist assessment on what is best for the minor—when, for example, the foster care of a minor is granted to a relative because such a relative is legally entitled, even if from a psychological viewpoint a different guardian would have been more suitable; or when prosecution is dismissed because the minor is legally entitled, even if from a pedagogical viewpoint a rehabilitating intervention would have been a better solution. Well, in these cases the judgment is perceived to be a failure not only by part-time, but also by professional judges. This shows that the will to apply the criteria of psychology or pedagogy or sociology or medicine exists in both professional and part-time judges. And, *vice versa*, in these circumstances, part-time judges are made no less aware of the need to comply with the law than professional judges and are also ready to be subject to the law against the criteria of their own job;

II– There is another reason why the professionals' vocation in childcare is achieved without interruption when they act as part-time judges: as much as the activity of these professionals is usually focused on the client, likewise the provisions passed by the juvenile court aim at the interests of the minor. In the civil field, indeed, there are often no conflicting parties or, in case of conflicting parties, provisions shall not establish which party's interest has to be protected, but strive to achieve in whatever way the best interests of the young person. In the criminal field, even if it is necessary to respect the community interests, the main aim is rehabilitating the minor[7].

To conclude, the interaction between judges and specialists at the time of judgment is made possible by a convergence of professional intentions: thanks to that convergence, the different perspectives, experience and knowledge may work in synergy at the time of making a decision in order to overcome psychological, social, health and moral obstacles to the minor's well-being.

Pierra Serra is a psychotherapist, a member of the Italian Society and a former part-time judge of the Juvenile Court of Emilia Romagna in Bologna, Italy.

[6] See the Convention on the Rights of the Child, UN General Assembly, resolution 44/25 of 20 November 1989, article 24.

[7] Presidential Decree no. 448 of 22 September 1988.

Professor Paolo Vercellone — Renate Winter

I would like to share with Chronicle readers the text of a letter I recently sent to Professor Paolo Vercellone on behalf of the IAYFJM to congratulate him on the occasion of his eightieth birthday and publication of his latest book.

Dear Paolo,
I am writing this message to you in English from quite far away (otherwise I would have been very happy to join this great celebration!), from Sierra Leone, where English keyboards don't have accents, which would allow for a correct understanding of any message in French!

It is a great honour and even a greater pleasure for me to congratulate you on behalf of the IAYFJM and on my own first of all to your 80th birthday, a really "round" one, and second to the presentation of your latest book! What an amazing way to celebrate a birthday!

Maybe I should say that it isn't that amazing after all, to celebrate the finalisation of a book on child issues taking into consideration your lifelong dedication to juvenile justice and child protection!

Maybe this is an opportunity for me to thank you as well for your membership to our association, where you have been president (during the years 1990-1994)! Isn't it a wonderful way to show continuous interest and commitment to our common goal in dispersing information on legal assistance to children worldwide, to help to upgrade it and thus to secure some development at least in the right direction, as to combine a birthday party with the presentation of an instrument designed to do just that?

Dear Paolo, let me mention the way I met you for the first time, as a quite personal contribution to praise you for all you have done for the IAYFJM.

I came to our quadrennial international congress in Bremen, quite tired and not really willing to immediately take over the responsible job to assist our Honorary President Horst Schueler-Springorum in revising some texts for the next morning's session.

I tried to find some excuse to disappear and to be able to sleep. At this very moment you entered the room, a bit shaky with a rather heavily bandaged head. You just arrived from the hospital, where they have treated you after a traffic accident if I remember correctly. You looked a bit scary and really worn out and everyone present told you to immediately retreat and go to bed. I remember your answer till today: You said: "no way, we have to finalize the content of the paper. That's important"

It really made me understood what dedication means and I thank you for that. I will try my very best, being the present president of our association, to do my job as responsibly as you have taught me!

Dear Paolo, please accept all the best wishes from the IAYFJM and myself for many other prosperous years and other books to come!

I hope you will allow that your book can be presented in our Chronicle so that all our members have to opportunity to know about it and to use it!

Happy birthday and success for your book!

Renate

Treasurer's column — Avril Calder

Subscriptions 2008

In the early months of 2008 I will send out email requests for subscriptions to individual members (GBP 20; Euros 30; CHF 45) and national associations.

May I take this opportunity to remind you of the ways in which you may pay:

1. by going to our website at www.judgesandmagistrates.org, clicking on subscription and paying online, using PayPal. This has two stages to it, and is both the simplest and cheapest way to pay; any currency is acceptable. PayPal will do the conversion to GBP;
2. through the banking system. I am happy to send bank details to you of either the account held in GBP (£) or CHF (Swiss Francs). My email address is ac.iayfjm@btinternet.com; or
3. if under **Euros 70**, by **cheque** (either in GBP or euros) made payable to the International Association of Youth and Family Judges and Magistrates and sent to me.

If you need further guidance, please do not hesitate to email me.

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.

Council Meeting Sion, October 2007

Hervé Hamon, Nesrin Lushta; Renate Winter, Ridha Khemakhem, Willie McCarney; Petra Guder
Avril Calder and Dhaouadi Chakib

Bureau/Executive/Consejo Ejecutivo 2006-2010

President	Justice Renate Winter	Austria	renatewinter@hotmail.com
Vice President	Judge Oscar d'Amours	Canada	odamours@sympatico.ca
Secretary General	Judge Nesrin Lushta	Kosovo	nesrinlushta@yahoo.com
Deputy Secretary General	Judge Ridha Khemakhem	Tunisia	cdh.justice@email.ati.tn
Treasurer	Avril Calder, Magistrate	England	ac.iayfjm@btinternet.com

Council—2006-2010

President - Renate Winter (Austria)
Vice-president - Oscar d'Amours (Canada)
Secretary General - Nesrin Lushta (Kosovo)
Dep. Sec Gen. - Ridha Khemakhem (Tunisia)
Treasurer - Avril Calder (England)
Alejandro Molina (Argentina)
Juan Carlos Fugaretta (Argentina)
Christian Maes (Belgium)
Antonio A. G. Souza (Brazil)
Guaraci de Campos Vianna (Brazil)
Yang Chengtao (China)
Daniel Pical (France))
Frieder Dünkel (Germany)
David Carruthers (New-Zealand)
Feridun YENISEY (Turkey)
Len Edwards (USA)

Co-options:
Corinne Dettmeyer (Netherlands)
Petra Guder (Germany)
Hervé Hamon (France)
Joseph Moyersoen (Italy)

The immediate Past President is an ex-officio member and acts in an advisory capacity.

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.

Articles for the Chronicle should be sent directly to:
Avril Calder, Editor-in-Chief,
e-mail : acchronicleiayfjm@btinternet.com

Copies in our three working languages (English, French and Spanish) would be appreciated. Alternatively, articles may be directed to any member of the Editorial Panel. Names and email addresses are given below

Dr Atilio J. Alvarez	infanciayjuventud@yahoo.com.ar
Judge Oscar d'Amours	odamours@sympatico.ca
Jacob J. van der Goes	j.vandergoes@tiscali.n
Prof. Jean Trépanier	jean.trepanier.2@umontreal.ce
Mónica Vazquez Larsson	Monimar50@yahoo.com
Dra Gabriela Ureta	gureta@vtr.net

17th Conference
of the
International Association for Research
in
Juvenile Criminology
Swansea University, Wales, UK
26th – 29th March 2008

Promoting Positive Practices: Transforming Youth Justice Policy and Practice

The conference will:

- address the theme of 'Promoting Positive Practices: Transforming Youth Justice Policy and Practice';
- embrace positive practices in the areas of
  - prevention of delinquency; and
  - direct work with young people who have offended; and
- explore policy and practice interventions in communities, schools, sentencing, youth justice services/interventions and specialist institutions (education, treatment centres and custody).

Please visit the website below for further information and a booking form.

http://www.swansea.ac.uk/human_sciences/News/Events/Headline,18499,en.asp

Or, alternatively, visit: http://www.swansea.ac.uk/human_sciences/ and follow the What's Happening link.