

## CHRONICLE CHRONIQUE CRÓNICA

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## Editorial

Avril Calder

### Convention on the Rights of the Child

This year is the twentieth anniversary of the UN Convention on the Rights of the Child (UNCRC) and to mark the occasion I am pleased to be publishing an assessment of those first twenty years by Jean Zermatten, Vice Chairman of the UN Committee on the Rights of the Child and past President of our Association.

To reflect the child's right to be heard, I am delighted to precede Jean's article with an eloquent piece by Kent Cloete, a teenager who admirably expresses participation by children in decisions affecting them as well as recognizing the responsibilities of older children. Tellingly, she points out that children can only protect those rights and have their rights protected if adults, families and professionals in the field, care enough.

Some of the elements in Jean's article are echoed in in-depth articles on child trafficking. I am most grateful to Lena Karlsson, a Child Protection Specialist for Unicef and Corinne Dettmeijer, the Netherlands Rapporteur on Trafficking of Human Beings and past Secretary General of our Association for their illuminating contributions on this subject.

Similarly, Cyril Laucci, an expert involved in developing a model law justice system to protect children who are the victims of crime or witnesses to it, sets out the work involved and the applicability of the model law to common law, continental law and sharia. Our President greatly contributed to this and so it is especially appropriate that we report on it here.

### The early years and adolescence

As you will realize by now, I'm especially interested in what happens to children long before they are involved in court cases—the last four Chronicles have begun with articles addressing various aspects of that theme. So I continue in this vein with a compelling contribution from Dr Simon Rowley, Wellington, New Zealand, who writes about both normal and abnormal stages not only in infant brain development but also in late childhood and early adolescent development too.

In England and Wales, Lorraine Khan has been working on the prevalence of mental health issues in children and young people appearing in the youth courts and presents us with a revealing analysis of the problem based on recent research.

Again in England and Wales, forty percent of children in custody have been or are in the public care system. This is perhaps not surprising when risk factors associated with offending and risk factors for care are similar. Dr Di Hart of the National Children's Bureau examines the situation

and makes suggestions for changing this, pointing out that the separation of children's services from the youth justice system presents practical difficulties that need to be overcome if the welfare of the child is to be properly addressed.

Judge David Carruthers, Chairman of the New Zealand Parole Board, relates how children are innocent victims when their parent(s) go to prison and how, without a strong sense of self and well-being, they are six times more likely to become prisoners themselves than children without such a background.

### Youth Justice Systems

The articles on Youth Justice systems in this edition are from Bangladesh, Mexico and Brazil contributed by Mr Justice M. Imman Ali, Judge Martha Camargo Sanchez and retired Judge Alyrio Cavallieri respectively. It is particularly apposite that these articles make suitable references to the CRC and International Treaties.

### Family Court matters

You will recall that the last edition included an article about the history of the Family Court in Poland. This edition contains a follow-up article on issues currently challenging the court. The authors are Judge Ewa Waskiewicz, President of the Polish Family Judges Association, and Dr Magdalena Arczewska who wrote the earlier article. Their calls for professional training and life experience for Judges sitting in the Family Court and better links with the agencies involved with the court will strike a chord with many of us.

Our regular contributors, Anil and Ranjit Malhotra, bring us up to speed with the pressing issue of surrogacy in India as well as reporting on two recent Family Law Conferences. The first was the annual conference in South Africa where Kent Cloete made her speech and the second in Singapore—the Lawasia Conference on Children and the Law. Links to more information about both are available in Contact Corner.

Finally and fittingly in this twentieth year of the UNCRC I have written a review of a very good book—Deprivation of Liberty of Children in Light of International Human Rights Law and Standards by Ton Lieffard, the publication of which by the School of Human Rights Research in the Netherlands could not possibly have been better timed.

May I sincerely thank all those who unfailingly helped me to put together this edition of the Chronicle. Please keep on sending me articles for publication.

Avril [acchroniclejayfjm@btinternet.com](mailto:acchroniclejayfjm@btinternet.com)

**Letter from the President****Renate Winter****Dear Friends and Colleagues,**

Almost six months of the year over already, holiday season approaching....before I let you enjoy your well-earned vacations and before I turn to a subject very close to my heart, the issue of child soldiers, let us make a tour d' horizon to see what news we have.

First of all I would like to thank you for sending articles on family matters concerning children. It seems that now is a good time to discuss more intensively some especially difficult issues for family judges that are becoming more and more internationalised.

**Adoption**

During several seminars and in many discussions with fellow judges I have learned about lots of difficulties concerning inter-country adoption. I was of the opinion that everything was clear, at least for judges from countries that have ratified the respective Hague Conventions. This doesn't seem to be the case. I would therefore invite colleagues dealing with such matters to send a list of the difficulties they encounter and their comments. We could establish a comprehensive list and try to get the specialists at The Hague involved in discussing solutions—taking the lead in developing practical answers for practitioners!

**Family mediation**

Another issue of growing interest is international family mediation, especially concerning child-related issues in cases of divorce and/or separation of spouses. During a heavily-loaded conference of the Council of Europe many initiatives were discussed on how to mediate inter-ethnic, inter-religious, inter-cultural, inter-country family disputes concerning visiting rights, financial obligations, the right to raise the child etc. Mediation was seen as a tool help to avoid or at least soften harsh feelings of parents and their families that are to the detriment of the child. The

conference comprised lawyers, social workers, mediators, sociologists, psychologists and law-makers, but hardly any judges. Many good ideas were brought forward, many models were discussed, but listening to some of the proposals gave me, as a judge, some more grey hair.

I would like to send particular information from judges to the Council of Europe and would like those colleagues concerned with solving these conflicts between “inter-something” partners to say if they believe that mediation would help them to find solutions. If not why not and if so, how far would mediation help, what are the shortcomings of this type of approach in the eyes of family judges, what would be the legal conditions for it and what are the practical problems? As an example, we discussed the case of an Italian man whose children were with the mother, a US citizen, in New York. Legal differences were the major problem to solve there. Another case showed the problems of a German mother whose children were with the Jordanian father at his parents in Jordan. The problem in this case lay with the cultural traditions of the father's family.

**Child abduction**

Another issue that seems to be becoming increasingly important for family judges, as shown during several conferences, is child abduction—again at an international level. A putative case was discussed where a father from a South Asian country abducted his two children from their Central European mother. He took one to his own mother living in the UK and took the other with him to his new wife in South Asia. A nightmare! And it will be a nightmare in less complicated cases as well. It seems that, as in cases of inter-country adoption, international legislation, even for countries that have ratified the respective international protocols, is not too helpful. Any ideas, suggestions, comments, recommendations from your side, dear Colleagues?

**Forced marriages**

I now come to a very sad issue—forced marriages. The Special Court for Sierra Leone, where I currently preside, has ruled for the first time in the history of international law that forced marriages committed as part of a widespread or systematic attack against a civilian population may constitute a crime against humanity. This finding is a significant pronouncement for the victims of these crimes and surely more generally for the development of international criminal law. The Special Court of Sierra Leone looked into the issue of forced marriages as a crime in times of war or warlike events.

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This opens the door for further discussion by national family law judges concerning the problem of forced marriages in times of peace.

The co-lawyers for civil parties at the extraordinary Chambers in the Courts of Cambodia have requested a new investigation into the planning and ordering of forced marriages. I have heard from colleagues in the UK that they are very concerned about the number of cases detected in London in the last six months, many in the Pakistani community. German colleagues have told me about similar problems with some Turkish and Kurdish marriages. I think that a discussion using the Chronicle could be fruitful, as we have a lot of colleagues in countries where there are “arranged marriages”. “Arranged marriages” are not the same as “forced marriages” although the differences may not always be clear. The outcome of such a discussion might assist law-makers in many countries to tackle this problem. I am looking forward to hearing whether you are interested in such a debate, dear colleagues!

### **Some other news:**

The juvenile justice panel has reported a very encouraging ruling in India, where the Supreme Court has held that all persons between the ages of 16 and 18, accused, convicted or facing trial under the old law will be treated as juveniles. This is a major step forward as the Court addressed the problem of two separate definitions of age operating simultaneously—one taking the age of criminal responsibility as below 16 and another as less than 18 years. Nesrin Lushta, our Secretary-General, has sent the decision in English to all our members. I just wanted to summarise it for those of you who are not familiar with English.

### **Other good news:**

The Women's World Summit Foundation has published its new Guide for NGO and citizen action “Prevention is Key”. The objective is to prevent abuse and violence against children. It is a follow-up to the recommendations of the UN Study on Violence against Children and aims to create a global culture of prevention by strengthening preventative measures. The guide is available in English, French and German<sup>1</sup>.

The Rio Declaration and Call for Action from the Third World Congress against Sexual Exploitation of Children and Adolescents is now available in English and Portuguese and will be available soon in all UN languages. The Call for Action provides a comprehensive framework for the protection of children and adolescents from all forms of sexual exploitation. It also includes a Declaration to End Sexual Exploitation of Adolescents

Finally, news from Joseph Moyersoen (Italian Association):- in December 2007 our French Association started a discussion aimed at creating a European section of the IAYFJM, based on the work of our colleague Luigi Fadiga. This was taken further at the 2008 meeting in Italy. A text, “Mandat du Groupe”, was drafted as a preliminary document for discussion. As far as I know, the Belgian Association will look at the document soon and maybe the 2009 meeting of European Associations will continue to work on it. The aim is to have a document ready for submission to the plenary during our next World Congress in Tunis. Joseph Moyersoen will be happy to send the draft to anyone who would like to see it.

Now at the end of my letter I come to the topic most dear to me, most atrocious and most difficult to solve—the problems of children and war:-

### **Child soldiers and child victims**

Despite all the efforts of the international community, it seems that their number is increasing instead of decreasing, as was hoped. Their life is hell between atrocities, drugs and sexual abuse and when they are caught, they can only hope for a quick death. When they surrender after some peace agreement or when they manage to escape, big problems still await them. “Blood screams for blood” they say here in Sierra Leone, where the Special Court was the first to deal with the issue of child soldiers. Blood screams for blood and there is no sleep at night. Because of remorse about what they have done (if they ever remember, having been heavily drugged all the time) and fear that the spirits of the dead will haunt them, night after night they are sleepless. You may ask why I bring this to your attention, being judges and not politicians. There are two good reasons: In some of the countries where our members work, there is a legal issue pending concerning child soldiers. Should they or should they not be brought to justice? The Special Court of Sierra Leone, having the mandate to try child soldiers from their 15<sup>th</sup> birthday on, decided not to try them, but to consider them as the victims of atrocities that they truly are—even if they have committed atrocities themselves under orders from their superiors. It might be worthwhile finding out about the practice of other countries and to see if the IAYFJM could draft some legal and practical observations/recommendations on the issue that might assist lawmakers in devising adequate regulations.

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<sup>1</sup>The English version is at [www.woman.ch/children/files/WWSFprevention-Guide-June09-en.pdf](http://www.woman.ch/children/files/WWSFprevention-Guide-June09-en.pdf), same for French --fr.pdf, and German-de.pdf.

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The second good reason for sending this information would be to advocate the ratification of for the Optional Protocol<sup>2</sup> to the CRC on the involvement of children in armed conflict.

Many countries, where children are conscripted, enlisted or used as soldiers have not yet ratified the Protocol. Colleagues working in those countries need to be informed about the Protocol and to assist in getting it embodied in national law.

Finally, dear colleagues, I am pleased to be able to announce that the website for our next World Congress in Tunisia in April 2010 is now open with versions in Arabic, English, French and Spanish

Please visit it at [www.aimjf-tunis2010.org.tn](http://www.aimjf-tunis2010.org.tn) and pass the news on to colleagues. Meanwhile I hope you will get involved in the issues I have written about and I wish you all restful and pleasant holidays.

**Renate**

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<sup>2</sup> Optional Protocol to the CRC on the involvement of children in armed conflict General Assembly resolution A/RES/54/263 of 25 May 2000; came into force on 12 February 2002. See, for example: [www.unhcr.ch/html/menu2/6/protocolchild.htm](http://www.unhcr.ch/html/menu2/6/protocolchild.htm)



## A South African teenager's perspective on children's rights and responsibilities

**Kent Elizabeth Cloete**



**Cape Town, South Africa, Annual Family Law Conference Presentation – 12 March 2009.**

I would like to start by quoting the preamble to the Constitution of the Republic of South Africa, which came into effect on 4 February 1997:

"We, the people of South Africa,  
Recognise the injustices of our past;  
Honour those who suffered for justice and freedom in our land;  
Respect those who have worked to build and develop our country; and  
Believe that South Africa belongs to all who live in it, united in our diversity".

1. I was born in 1994, the year in which South Africa's first free and democratic elections were held. I am lucky

2. I have been raised in an environment in which what is important is whether people are nice or nasty, not whether they are white, brown or black. I have also been raised in an environment in which I have been made aware that I, too, am not only an important member of my family, but also an important member of society, and that, as a result, I have rights and I have responsibilities. Unlike the era in which my grandma grew up (in which, I understand, the attitude of adults was that children were there to be seen and not heard), I am entitled, not only to

be seen, but also to be heard. I must say, however, that I am not so sure whether my grandma was indeed never heard – for those of you who know my mom, it will not surprise you that my grandma is well known to be able to voice her opinions!

3. In terms of Section 28 of the South African Constitution, it is provided, amongst other things, that every child has the right:

- 3.1. to family care or parental care;
- 3.2. to receive food, shelter and medical treatment when they are sick;
- 3.3. to be protected from abuse;
- 3.4. to have a lawyer in any court proceedings affecting the child, if it is felt that, if this is not done, the child's rights will be negatively affected.

4. It is also provided that a child's best interests are of paramount importance in every matter concerning the child.

5. Children's rights became further protected when the Children's Act, No. 38 of 2005 became law on 1 July 2007. Section 2 of the Act provides that one of the purposes of the Act is to protect the constitutional rights of children which I have previously mentioned. And also, generally, to promote the protection, development and well-being of children.

6. Section 10 of the Act provides that:

"Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration".

7. Sometimes, when I become very angry with my parents for not allowing me to go to certain parties, I feel that my voice is not heard. I suppose the biggest challenge for both my parents and me is to try to balance my views and wishes against their views and wishes. Unfortunately, most of the time my dad wins! However, I do feel (most of the time anyway) that at least my parents do allow me the opportunity to explain how I feel and why I want to do a particular thing, even if I do not ultimately get my own way. Sometimes I get furiously angry with them and that is when the other part of what is important comes into play. That is respect.

8. I have been made aware that, with rights, come responsibilities. I have also come to learn that, even if I do not always get my way (which to me sometimes feels that I do not have rights), what is even harder is to respect my parents' decision. I believe that respecting the decisions of others, whether they are your parents, your teachers or your friends, and even if you do not

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agree with them, is a very important part of my responsibility, not only as a child, but as a member of society. Mostly I succeed in this, sometimes I do not. But, I believe, at least I have learnt to think about it.

9. I am also extremely privileged. I live in a beautiful home and attend one of the best schools in the country. I have a wardrobe of beautiful clothes, I have lots of friends, and we have lots of fun. I do know, however, that there are many, many children out there who are not as privileged as me. My school has outreach programs in which I do participate. We are made aware of those who are far less privileged than we are and we are encouraged to do our bit to help them. I believe that this is another responsibility which goes with having the rights which I do.

10. My mom has explained to me that, in some of the matters that she deals with, the parents cannot agree on what arrangements will be best for their child or children. I have a number of friends whose parents are divorced, and we have talked about how difficult it is for children when parents are divorcing. My mom has also explained that it is now possible for a child to have his or her own lawyer to represent them in court and in negotiations to put forward the views and wishes of the child. I think that this is a good thing: it must be difficult enough to watch your parents fighting over you, without you

having to be able to express how you feel about what you would like to happen. But what does scare me is whether I would be able to choose my own lawyer or whether I would have to simply take a lawyer who was available to assist me, and who I might feel completely uncomfortable with. What I would like is to know that, if it became necessary for me to have my own lawyer, that person would be a person who understands children, and who has a lot of knowledge about family law. I would also want that person to be able to explain to my parents, and to a Judge, how I feel in such a way that my parents are not made to feel that I am choosing one of them over the other.

11. I suppose what I am saying is that, from my point of view, children's rights can only be properly protected if there are adults who care enough and who are properly trained to protect them.

12. So, you see, in order for us children to promote and enforce our rights, we rely on you adults – our parents, our teachers, lawyers, and others – to help us get there. Please don't let us down! Thank you.

[Kent Cloete](#)

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## The Rights of the Child—first assessment, after twenty years... Outline

Jean Zermatten



1. Introduction
2. The CRC
3. Major Events
4. Poverty, Health, Education
5. Sexual Exploitation and Armed Conflicts
6. Child Labour
7. Juvenile Justice
  - A) General Comment 10 - The rights of the child in the juvenile justice system
    1. Prevention
    2. Intervention
    3. The issue of age
    4. The guarantees for a fair trial
    5. Decisions
    6. Deprivation of liberty
  - B) Child victims and witnesses of crime
8. Conclusion

### 1. Introduction

No other international treaty has ever had such a reception: 193 countries have signed and ratified this binding instrument, and the two latecomers are soon expected to rally around the common movement, as if offering a marvellous gift to the United Nations Convention on the Rights of the Child (from now on the Convention or CRC), which will be celebrating its 20<sup>th</sup> anniversary next November 20. In the history of human rights, this is very probably a record!

Making an assessment of these first 20 years is a difficult task, as we might run the risk of presenting a long list of complaints for violations of children's rights—which occur all over the world on a daily basis—or describing the recurrent problems come across by States in the implementation of the CRC. In the following

account, I will mostly try to point out the key areas of concern, but I will also mention a few events that have marked the past 20 years and the progress accomplished.

### 2. The Convention

The CRC is typically designated as the convention of the 3 Ps. **P** for **Provision**, **P** for **Protection**, and **P** for **Participation**. The first two Ps are not really new, because in the history of the development of the rights of the child, adults have seen the child as a being in the process of growing up, materially dependent on adults, who should enjoy specific provisions, and with a status of vulnerable person that deserves special protection.

The CRC realizes this vision of the child guaranteeing him **provisions** (services or goods) that were either already present in previous instruments (nutrition, housing, education, health), or new ones, such as identity (the child shall be entitled to a name and a nationality, and the protection of his identity), or re-adaptation and reinsertion, in particular of those children who have been victims of ill-treatment.

The CRC devotes special attention to the **protection** of children. It takes up already known principles such as the protection against forms of abuse, labour, sexual exploitation. It elaborates on some of these principles and extends the protection to new domains: protection against torture, involvement of children in armed conflicts, trafficking and consumption of narcotics, the unjustified deprivation of liberty, and the separation from their parents without cause. The promulgation, in 2000, of two Optional Protocols on the involvement of children in armed conflict and the sale of children, child prostitution and child pornography further emphasizes this aspect of protection.

However, the CRC drives all the adults' certainties onto the third P, **that of participation**, where, in my opinion, there also lies the main advancement made by this text. In effect, it grants a new status to the child, who is not only the recipient of provisions or protection, but also someone whose views we should now go for and listen to, being called upon to **participate** in those decisions that affect him.

The Convention does not use the term participation; however, in **its famous Article 12**, the CRC grants to the child the right not only to express his views, but also to see that his opinion is taken into account in any decision that may in any way have an influence on his existence. Article 12 should not be read by itself, as it goes beyond the "technical" function of gathering the



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child's views; it is **linked** with *freedom of expression* (Art. 13), *freedom of opinion* (Art. 14), *freedom of association* (Art. 15), and *freedom of information* (Art. 17).

This is then the most spectacular innovation of the CRC, as it introduces the concept that the child, in the course of his development (Art. 5 CRC, the notion of evolving capacity<sup>1</sup>) and according to the discernment that he is capable of, can participate in the life of his family, his school, his education centre and the city, in general. **He is not just a passive member to be taken care of, but becomes a player of his own existence.**

### **3. Major Events**

During the timeframe comprising the past 20 years, major events have taken place:

The **World Summit for Children**, held in September 1990 in New York, was the first meeting of nations displaying their engagement with the Convention. This summit, with the adherence of over 100 countries, issued a Declaration and a very ambitious plan of action for the following decade, dealing mainly on issues of basic care (education and health), as well as groups of vulnerable children. This plan of action should be used by countries as a basis to develop their own national action plan. We could describe this Summit as the best approach to make the provisions adopted by the Convention more concrete and more "popular".

In September 2000, the **Millennium Summit** was held in New York, where 189 United Nations members gathered to reflect upon the fate of countries in a new world that is globalized, interconnected and offering new instances for the development of man (and child), more respectful of individual rights. The Summit led to the adoption of eight Millennium Development Goals (MDGs), to be attained by 2015, which are divided in **21 quantifiable targets** that are measured by **60 indicators**.

- Goal 1: Reduce extreme poverty and hunger
- Goal 2: Ensure primary universal education
- Goal 3: Promote gender equality and empower women
- Goal 4: Reduce child mortality
- Goal 5: Improve maternal health
- Goal 6: Combat HIV/AIDS, malaria and other diseases
- Goal 7: Ensure a sustainable environment
- Goal 8: Develop a global partnership for development

Six of the goals affect children directly. These MDGs work as beacons for the governments' actions in the applicable areas.

From 8 to 10 May 2002, the historical session of the UN General Assembly specially devoted to children was held in New York with the participation of the 190 States parties to the CRC (at the time) and numerous children. An outcome document was adopted—"A World Fit for Children"—focused on:

- The promotion of a healthy life,
- The establishment of quality education,
- The protection of children against abuse, exploitation and violence,
- The combat against HIV/AIDS.

The States committed to develop national plans of action, reinforce the coordination of their policies and various protection mechanisms, and monitor the situation of their children. These four main objectives should be seen as an endorsement of the MDGs and understood as related to the Millennium Summit.

Clearly, these three events have evidenced the fact that States parties are required to take a closer interest in general measures for the implementation of the CRC, with the aim of providing a favourable framework for the application of the subjective rights in the Convention. These measures mainly address the following areas: legislation (need to legislate, amend laws and make them compatible with the Convention), the issue of the direct applicability of the Convention before national instances, the coordination among the different ministries and services with responsibilities over the children's rights (including the coordination between the national, regional, municipal and local levels), data collection, the allocation of necessary resources (funds and qualified personnel), the promotion of the Convention, and the development of awareness among the general public, parents and children in particular.

A fourth event should be mentioned, the world **Study on Violence Against Children**, started in 2001, following the Recommendations made by the Committee on the Rights of the Child of the UN General Assembly, and which was developed under the leadership of Prof. Pinheiro on a worldwide scale, with a regional preparation and a questionnaire administered in a very broad manner. The outcome of this study was a publication, a masterpiece in the field, the World Report on Violence Against Children, published in October 2006<sup>2</sup>. It can be asserted that this is a first-of-its-kind study, so complete that it takes as the object of observation all forms of violence against children (physical, sexual, mental and psychological, under the form of abuse, neglect and exploitation). The final message of this study is lucid: *No form of violence against children is*

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<sup>1</sup> Landsdown G., *The evolving capacity of the Child*, Innocent Center, Firenze, 2004

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<sup>2</sup> (A/61/299)

*justified and all forms of violence against children can be prevented.*

#### **4. Poverty, Health, Education**

##### Poverty

Since 1990, extreme poverty in the developing world is measured by means of a standard that represents the poverty threshold. Originally established at one dollar per day, the threshold is presently at 1.08 dollar per day. Poverty reduction depends on working opportunities (decent work for all) and productivity increase. "For the past ten years, productivity has increased at least by 4% per year in South Asia, East Asia, and in the Community of Independent States. Therefore, the number of working poor has declined in the three regions. On the other hand, the generally weak and irregular progression of productivity in sub Saharan Africa prevented working individuals in this region from escaping poverty."<sup>3</sup>

Since 2008, the world food crisis and the financial crisis of late 2008 and early 2009 bring a new look at such progression of productivity, resulting again in a rise of the number of people, children in particular, who live below the poverty threshold.

The poverty problem is very important for everyone, in particular for children. Material poverty, which certainly leads to all forms of exploitation (labour, prostitution, delinquency...); poverty of the environment, which does not offer much stimulation; the difficulty then to exercise one's own rights... There is no space for rights if the stomach is empty!

Poverty should also be understood well over the individual situation (low income, poor access to consumer goods), thinking more about general infrastructures that enable the enjoyment of rights (education, health...). In the attainment of the MDGs, it will be necessary to make massive investments in systems allowing the development of the children's potential.

##### Health

The main causes of death among children are easily avoidable diseases: pneumonia, diarrhoea, malaria and measles. They should be addressed through simple improvements in basic health care services and interventions. Malnutrition, no drinking water, lack of hygiene are the other problems that increase the potential hazards of disease. Not to mention HIV/AIDS and its effects on children (probably 25 million children will be orphaned by AIDS by 2010).

"In 2006, for the first time in history, the annual death rate of children aged under 5 has gone below the 10 million mark. However, millions of children die every year for avoidable causes, which is unacceptable. A child born in a developing country has a 13 times higher risk of dying during his first five years of life than a child

born in an industrialized country... In 2006, nearly 80% of the children in the globe were systematically vaccinated for measles. This result is certainly remarkable, but it will be necessary to repeat the efforts to guarantee the immunization of every child, and to attain the goal of a 90% reduction of mortality due to measles by 2010."<sup>4</sup>

With regard to the mothers' health, the rate of maternal mortality remains very high in numerous countries. In 2005, over 500,000 women died during pregnancy, in childbirth or within the six weeks following birth. At world level, maternal mortality has declined less than one percent per year between 1990 and 2005—a rate significantly lower than the 5.5% required to attain the target of the MDGs."<sup>5</sup>

The proportion of pregnant women who are examined at least once during pregnancy has improved, rising to a little more than half at the beginning of the 1990s in the developing world. However, in terms of family planning, it is again the poor households those that suffer from poor access to health advice.

That being said, advances have been accomplished in several areas:

- a one-third reduction of mortality among children aged under 5 since 1990, in 63 countries;
- a one-half reduction of child death for consequences of diarrhoea;
- noticeable increase of vaccination rates;
- massive increment of possibilities of access to iodized salt, thus protecting nearly 100 millions of newly born from problems related to iodine deficiency (main cause of mental retardation).

##### Education

The millennium goal is to ensure primary education for all. "In virtually all regions, the net schooling rate in 2006 was higher than 90%, and numerous countries were on the point of attaining the goal of primary universal education. There has been a decline in the number of children of primary school age who are not attending school, which dropped from 103 million in 1999 to 73 million in 2006, in spite of a general increase in the number of children comprised in this age group."<sup>6</sup>

There remain pockets of resistance: in countries with civil wars or conflicts, or in countries that suffered natural disasters with lasting effects, children are at risk of being deprived of proper education. The other issue lies in the discrimination to which girls are subjected: in

<sup>3</sup> <http://www.un.org/french/millenniumgoals/poverty.shtml>

<sup>4</sup> <http://www.un.org/french/millenniumgoals/poverty.shtml>

<sup>5</sup> Ditto note 4

<sup>6</sup> Ditto note 4

numerous countries, schooling rates are very different according to gender. Yet, if we approach the girls' problem more comprehensively, it is a fact that by enabling the access to schooling by girls, cases of early maternity are reduced, new possibilities of qualified jobs open for them, the standard of living is increased, and visible social effects are produced.

On the other hand, if we look into the figures of secondary schooling, we are very far from universal education: in 2008, in developing countries, less than 54% of the children of secondary school age went to school. It would be helpful to see the effects of the quasi universal primary education producing an impact on secondary education.

Consequently, it is necessary to pursue the demand of quality education for all and fight against disparities. We should not forget that the school often provides a heaven of peace, a suitable diet, clean water, access to latrines, frequently vaccination, prevention information (HIV/AIDS, malaria...), socialization tools and an initial approach to rights.

### 5. Sexual Exploitation, Armed Conflicts, Two Optional Protocols

#### Sexual Exploitation

In **1996**, the first World Congress Against Commercial Sexual Exploitation of Children took place in **Stockholm**. 122 governments there adopted an agenda of action to prevent and fight against the sexual exploitation of children. The discovery of this terrible reality led many states to adopt legislative measures, in particular the introduction of the notion of extraterritorial jurisdiction, which allows the prosecution and judgment of individuals acting from abroad, and promotes trans-border cooperation. This was also the starting point of the commitment by tourism agencies to be concerned about sexual tourism.

In 2000, one of the results of this process of awareness was the promulgation of the **Optional Protocol on the sale of children, child prostitution and child pornography (OPSC)**, which to date has been signed and ratified by 131 States.<sup>7</sup>

In **2001**, the **Yokohama** Conference continued the work initiated in Stockholm and materialized its global mission with the appointment of a Special Rapporteur for matters related to the sale of children, child prostitution and child pornography. From then on, numerous legislative efforts have been conducted in a high number of countries to have their legislation in accordance with the OPSC, develop awareness of this

phenomenon and reduce differences. Mention should be made of the very significant involvement of NGOs such as ECPAT and UN agencies (UNICEF, ILO, WHO).

In November **2008**, the third World Congress took place in **Rio de Janeiro**, with the goal of passing from words to acts.

It is a fact that the movement for the development of awareness is important; the issue of the victims' fate is better taken into account; sexual tourism does not go unpunished any longer; the international collaboration on matters of prosecution and judgment has become more effective, also fighting against impunity. However, numerous violations of the rights of children (girls and boys) continue occurring, and the efforts made by the States in this area are still insufficient.

#### Child Soldiers

During the years 1995 – 2005, approximately 2 million children were killed in armed conflicts and many others were injured, disabled or psychological victims of the horrors of the war, in addition to the numerous children who jumped on land mines while they were peacefully playing near their villages. Not to mention the effects of population displacements, generally suffered first by women and children: during the same period, around 35 million people were displaced, out of whom 80% were women and children!

In addition, around 300,000 children throughout the world are involved in armed conflicts either directly on the front line or for second-line tasks, or in other missions associated with sexual exploitation, in particular thousands of young girls.

The question of child soldiers has been the object of great attention since the promulgation of the Convention. In particular, the report by Ms. Graça Machel in 1996 to the UN General Assembly, following upon a vast study conducted for several years, which drew the States' attention to this reality of the exploitation of children by certain governments or by armed groups, and the need to undertake something seriously and develop rules designed to give better protection to the young against this type of exploitation. Results have been numerous:

1. The appointment of a special representative of the UN Secretary General, who maintains the States' interest on this painful issue;
2. The annual debate held at the Security Council, which clearly established the connection between the violation of the children's rights and the issues of peace and security;
3. The child protection advisers appointed to the UN missions in Sierra Leone and Democratic Republic of Congo; similarly, the peace agreements reached in Burundi, Northern Ireland and Sierra Leone;

<sup>7</sup> Optional Protocol to the Convention on the Rights of the Child, concerning the sale of children, child prostitution and child pornography (date of entry into force 18 January 2002), ratified by 131 States on 14 April 2009.

4. **The Optional Protocol to the Convention on the Rights of the Child, concerning the involvement of children in armed conflicts**<sup>8</sup> (OPAC), 2000. This protocol prohibits the mandatory recruitment before the age of 18 and establishes the age of involvement in conflicts at the same limit of 18;
5. The Rome Statute of the International Criminal Court<sup>9</sup>, which defined the conscription, enlistment and use of children in armed conflicts as a war crime, and anticipated provisions of assistance and reinsertion for child victims and witnesses;
6. The Paris Principles on children associated with armed forces or armed groups, adopted in February 2007<sup>10</sup>, which are not legally binding. They are expected to provide a solid basis in order to improve collaboration and give children better protection.

Advances were then remarkable, and the first decisions came up at the Special Court for Sierra Leone, punishing adults for having used children in their fighting. But there is still a lot on the plate before obtaining the universal ratification of the Protocol, light weapons control, and the abolition of anti-personnel mines.

#### 6. Child Labour

Child labour is one area that has also received great attention from the international community, mostly in Western countries, already before the CRC, as at the time of the promulgation of the Convention, there existed Convention 138 concerning the minimum age for admission to employment. Numerous NGOs were active here, as well as the World Bank and UNICEF. These combined efforts led to the promulgation in 1999 of ILO Convention no 182, concerning the elimination of the worst forms of child labour (1999, entry into force in 2000)<sup>11</sup>.

This new Convention was certainly decisive, giving support to the already existing efforts to eliminate the forms of child labour that have a name: slavery, prostitution, forced labour, involvement in armed conflicts. It seemed important to raise the holistic concept of a fight against child labour that is not only waged to take children out of the exploitation circuit, but which above all envisages issues such as poverty, education, development of activities generating

income for parents. Numerous NGOs are very active in this field, working alongside the ILO and IPEC programmes. Mention should be made here of successful initiatives such as:

- The Rugmark initiative, which introduced a label certification for carpets that have been produced without child labour (South East Asia);
- The agreements reached in the valley of Sialkot, Pakistan, relative to the manufacturing of sports goods, in particular football balls, thanks to the combined efforts of UNICEF, ILO and the manufacturers of sports goods. These agreements are sustained on codes of ethics that are signed by the manufacturers. The role of Western consumers was not negligible in this success, exerting pressure on the large companies of sports products.

While a great progress has been accomplished in the formal labour sector, problems remain in the informal labour market. Agriculture and domestic work are still major demanders of juvenile labour, being very difficult to control. Nearly 70% of working children are occupied in these sectors.

#### 7. Juvenile Justice, a new General Comment

**A.** The Committee on the Rights of the Child has issued its General Comment no. 10<sup>12</sup>, **"Children's rights in juvenile justice"** (02.02.2007).

Why so much effort in a marginal field of childhood and adolescence, that of delinquency? There are numerous problems that are much more important, at any rate in number, than justice: health, nutrition, education, protection from substitution, child labour... But the question of juvenile justice is very sensitive for at least two reasons. Because this is the area where the State makes direct use on children of its right of punishment (public force), and where too frequently it does so by resorting to the deprivation of liberty. And because the States face an equation of difficult resolution: general security versus protection of child offenders, or punishment versus care. It is interesting to review the elements that the Committee has designated as **the core elements** of a juvenile justice system that is respectful of the CRC.

##### 1. Prevention

The General Comment recalls that one of the goals of the CRC is to promote the harmonious development of the child, under the idea of preparing him to live a free, independent and responsible life. The parents' educational role and responsibilities are highlighted. The Committee confirms its agreement with the Riyadh Guidelines, and it centres the principles of

<sup>8</sup> Optional Protocol to the Convention on the Rights of the Child, concerning the involvement of children in armed conflicts (date of entry into force: 12 February 2002), ratified by 127 States (14 April 2009)

<sup>9</sup> Doc. A/CONF.183/9

<sup>10</sup> <http://www.unicef.fr/mediastore/7/3107-4.pdf>

<sup>11</sup> For the texts of both conventions see <http://www-ilo-mirror.cornell.edu/public/french/standards/norm/whatare/fundam/childpri.htm>

<sup>12</sup> CRC/C/GC/10



prevention around the terms “socialization” and “integration”, which are sustained through the family, community, peers group, school, vocational training and the world of work.

The support given to the exercise of the parental function is pointed out several times, and the States are invited to implement programmes along these lines. In addition, the Committee assigns great importance to early childhood education, and it states that there is a correlation between properly taking responsibility from the child's very young age and a lower rate of future crime.

## 2. Intervention

The General Comment makes a distinction between intervention outside the context of judicial proceedings and intervention within the context of judicial proceedings. This is a fortunate distinction in the sense that often times quite a significant confusion reigns when we use the terms diversion or alternatives, or if we appeal to the principles of restorative justice, not always knowing well which exact procedures are being referred to.

States should contemplate **the intervention outside the context of judicial proceedings**. This type of intervention is highly justified for the large majority of the offences committed, in particular the less serious ones. But it should not be limited solely to these situations, as the resort to such interventions results in avoiding the complexity and stigmatization of the criminal system, leads to good outcomes, is not contrary to public security, and presents advantages in economic terms.

But then, the State should establish clear rules to make these “informal” procedures function so that the victims and the offenders’ interests are preserved. Among others, the elements to be taken into account when using this type of intervention (diversion<sup>13</sup>) include: the presumption of innocence, legality, the child’s right to participate in the proceedings, the right to be heard, the result, and finally confidentiality.

**The intervention within the context of judicial proceedings** is that referred to the competent authority. This implies that the State should have a system of instances, if possible specialized, as well as services to implement measures of a social or educational nature, aiming at limiting strictly the use of liberty deprivation.

## 3. The issue of age

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<sup>13</sup> The term diversion is used in French for practical reasons. It means “the fact of making a diversion”, i.e. taking out of the judicial system those offences that would normally go to the traditional judicial system and sending them to the informal system of intervention (police or prosecutor, even specialised protection service). It has been taken from the English word “diversion”.

The issue of age is the object of highly dissimilar provisions from one State to another, mostly for the lower threshold, and none of the major instruments establishes a quantified limit. So, for instance, the Beijing Rules (Art. 4) provide that the lower age should not be established at too low a level, making reference to the child’s emotional, mental and intellectual maturity.

Regarding the so called **minimum age of criminal responsibility**<sup>14</sup>, the Committee considers first of all that it is not appropriate to have several age limits, and that it would be better, in order to avoid confusion, to establish a single limit. Then, it deems that the establishment of a minimum age is an obligation required from the States (Art. 40 (3) CRC), which contributes to eliminate from penal law intervention all children who have not reached this limit at the time of committing the offence. On the other hand, if they have reached or exceeded this age limit (but not the upper age limit, see below), they can be subject to non-formal or formal penal law interventions, respecting the principles of the CRC.

The Committee, after many discussions and taking into account various studies and practices, has expressed its opinion that the States **should not establish a minimum age of criminal responsibility below 12 years**. This means that the absolute lower limit considered by the enforcement agency will be from now on placed at 12. The Committee, in addition to requiring that States should not lower the age to 12, states that they should aim at a higher age, and that establishing it at 14 or 16 represents an advance in the sense that this contributes to a juvenile justice system that is in accordance with the CRC. Inversely, countries that have higher intervention thresholds (13, 14 or 15) should not lower this limit; the Committee has been very clear in its General Comment when on section 17 it says that the States that are in such a situation are earnestly urged not to lower this limit.

Regarding the so called **upper age limit for juvenile justice**<sup>15</sup>, the Committee considers that it should be **established at 18 years**, to be consistent with the definition of child (Art. 1 CRC). This is already the case in numerous countries, though not everywhere. This means that the child who has reached or exceeded the minimum age of criminal responsibility, but who has not yet reached the upper age limit of 18, will be treated pursuant to the specific rules of juvenile justice. For the States that allow the application of the law for adults to certain minors or to certain acts committed by 16 or 17-year-old minors, the

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<sup>14</sup> MACR, minimum age of criminal responsibility, General Comment, Section C, ch. 16

<sup>15</sup> Upper limit for juvenile justice, General Comment, Section C, ch. 20



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Committee recommends that such cases should be eliminated with a view to achieving a non-discriminatory full application of their juvenile justice rules.

### 4. The guarantees for a fair trial

The General Comment devotes a very long chapter to the guarantees for a fair trial. These guarantees are not new—they are already set out by both Art. 40 of the CRC and by the Beijing Rules.

The following is a summary of the points developed in the General Comment<sup>16</sup>:

- The principle of non-retroactivity in juvenile justice,
- The presumption of innocence,
- The right to be heard,
- The right to effective participation in the proceedings,
- The right to prompt and direct information of the charges,
- The right to legal or other appropriate assistance,
- Decisions without delay and with the involvement of parents,
- The right to no self-incrimination,
- The right to obtain the presence and examination of witnesses,
- The right to appeal,
- The right to a free interpreter,
- The right to respect of privacy.

### 5. Decisions

The Committee makes a review of the decisions adopted during the pretrial phase (inquiry), in particular the possible alternatives to avoid referring all cases to court, the dispositions by the judge or the specialist juvenile court, and it devotes two sections (26 and 27) to the special issues of the death penalty and life imprisonment.

Concerning judicial decisions, the States are earnestly urged to anticipate the broadest range of possibilities, to respond to the great diversity of situations that may arise, from the points of view both of the offence and the child offenders' personal situations.

With respect to the death penalty, the General Comment restates the prohibition set forth by both Art. 37 (a) of the CRC, and by Art. 6 (5) of the Covenant on Civil and Political Rights; it intends to specify that the decisive moment is the moment of commission of the act, not the moment of judgement. The Committee invites all the States that have not yet abolished the sentence of death for minors to do it explicitly, and to suspend the execution of pronounced sentences to death, until the decision for the abolition of such penalties is made.

With respect to life imprisonment, the Committee repeats its regularly issued recommendations,

namely considering the inadmissibility of this type of punishment without the possibility of parole. The Committee recommends all States to abolish life imprisonment for minors.

### 6. Deprivation of liberty

It would be unimaginable to issue a General Comment without a chapter devoted to the deprivation of liberty, genuine "obsession" of the Committee since it took office. In effect, this is the area that evidences the most significant violations of children's rights, and probably, also on this matter, the area with the strongest potential to improve the situation of children in conflict with the law.

**Four** major issues arise in connection with the deprivation of liberty: legality, use of pretrial detention, conditions of execution of pretrial and post-trial deprivation, and systematic, or to say the least, exaggerated resort to the deprivation of liberty as sole response, or prioritized for juvenile delinquency.

With regard to this issue, the Committee underscores in a highly insistent manner that the deprivation of liberty must be used as **a measure of last resort and for the shortest appropriate period of time**. With regard to **pretrial detention**, the General Comment restates that this restrictive measure should not be used for every offence, and that States should foresee alternative possibilities, specifically measures outside the context of the judicial system.

The **conditions of execution** of the deprivation of liberty are well developed; they rest upon Art. 37 (c) of the CRC, on the Havana Rules as well as on the Minimum Rules for the Treatment of Prisoners. The primary condition for the Committee is the obligation to **separate** minors from adults, a separation that also involves specialized and qualified personnel. The other conditions are: obligation to **maintain family ties** for the duration of the execution; **respect of privacy**; need to implement **school education, vocational training and/or occupation; health care** (including mental and reproductive health); **no resort to force or violence; right to make complaints or requests; regular visits and inspections** of detention facilities.

In conclusion, the Committee on the Rights of the Child has produced a complete document, with arguments well presented, easy to understand and logical, to assist the States in the fulfillment of their reporting obligations on matters of juvenile justice. Clearly, this General Comment goes well beyond its primary goal, as it provides a vision of what the ideal juvenile justice system should look like.

**B.** With regard to **child victims and witnesses**, we should refer to the promulgation of the 2005

<sup>16</sup> See sections 23 a to 23 I, General Comment

ECOSOC Guidelines.<sup>17</sup> These rules are designed to give a new status to children that give testimony in criminal proceedings and/or child victims.

These Guidelines have a great relevance on matters related to the rights of the child to be protected, rehabilitated and indemnified. For the first time, juvenile justice takes a genuine interest in victims. The Guidelines are associated with a Model Law for the inspiration of the States, as well as different pedagogical instruments for their implementation.

### **Conclusions**

A lot has been accomplished in these twenty years of life of the Convention; however, it is clear that there is still much to be done. On my part, I am of the opinion that we have made great progress in all States with the realization that children hold rights, and by making significant efforts to develop laws and enforcement mechanisms.

At the international level, likewise, conferences multiply, the works of special rapporteurs are very useful, and several initiatives, such as the world Study on Violence against Children, open new roads. We also believe that the discussions recently started for the adoption of a **third Optional Protocol to enable the Committee to receive individual complaints** go in the direction of reinforcing this global awareness around the Convention and the rights of the child.

Strength also comes through a common sharing of all the actions and efforts made by a high number of NGOs and UN agencies. Strength that is needed to face the challenges ahead of us!

Jean Zermatten\* Director International Institute for the Rights of the Child (IDE); Vice Chair, Committee on the Rights of the Child and a Past President of our Association  
Jze / 15.04.2009

\*Here and throughout this edition of the Chronicle members are denoted by an asterisk.

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<sup>17</sup> Cf. ECOSOC Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, 2005, in particular art. 8, 19 and 20. Cf.  
[www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf](http://www.un.org/ecosoc/docs/2005/Resolution%202005-20.pdf)

## Child trafficking – a global concern

Lena Karlsson



### Child trafficking

Child trafficking affects children all over the world in both industrialized and developing countries. It is most commonly perceived and addressed as a cross-border issue, and for the purpose of sexual exploitation. However, research indicates that child trafficking occurs for various exploitative purposes, including labour, domestic servitude and begging, exploitation in the context of armed conflict, forced marriage, dispute settling, and adoption. It further exposes children to violence, HIV infection and violates their rights to be protected, grow up in family environment and have access to education.<sup>1</sup> In many cases trafficking routes follows migration routes, lead both into and out of a country, and it also takes place within the national borders.

The UNICEF Innocenti Research Centre has been conducting research on child trafficking since 1998, and the studies have so far explored the situation in Africa, Europe and Asia. Findings from the research have informed UNICEF's national and regional programmes to prevent and respond to child trafficking, and have also been used for policy advocacy at an international level. The most recent example of this was World Congress

III against sexual exploitation of children and adolescents, held in Brazil, November 2008.<sup>2</sup>

IRC's research highlights many positive initiatives undertaken to address trafficking in human beings, including children. Strong commitments are seen among many governments, UN agencies, donor agencies and NGOs. International and regional standards have been agreed upon and ratified by many countries, such as the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, (2003), and the CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002) and the Council Of Europe Convention on Action against Trafficking in Human Beings (2008). New laws have also been enacted based on international standards, policies developed, and special bodies established within governments to plan, coordinate and implement policies on human trafficking and on child protection. At a grass-root level communities have been mobilized to prevent child trafficking and violence against children.

### Child protection mechanisms at community level: Example from Nepal

Para-legal committees have been formed in 23 districts of Nepal<sup>3</sup> to address all forms of violence, abuse and exploitation of children and women. The emphasis is on prevention, early detection, case follow-up, conflict resolution and monitoring and reporting. The committees' raise awareness about risks, human rights and support structures among children and women, and have helped communities become more attentive to trafficking. The para-legal committees also challenge social norms, such as the acceptance of child marriage and domestic violence that put children at risk of trafficking. The committees have become an integral part of Nepal's district protection system, linking members of vulnerable communities with support service providers, government agencies and district-level nongovernmental organizations

*"In the past, women came to the court to settle cases without reliable proof. It was known that they were victims in the case, but they did not get remedies. But now there are para-legal committees in the community to support such*

<sup>1</sup> [www.unicef.org/protection/files/Trafficking.pdf](http://www.unicef.org/protection/files/Trafficking.pdf)

<sup>2</sup> UNICEF Innocenti Research Centre; A human rights-based approach to child trafficking: Key findings and recommendations (unpublished paper)

<sup>3</sup> UNICEF Innocenti Research Centre. South Asia in Action: Preventing and responding to child trafficking. Summary Report (2008)

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*innocent victims, and para-legal committees can help them to document the case and submit the case with strong proof” A judge in Tanahun, Nepal<sup>4</sup>*

Despite many positive developments, UNICEF IRCs research clearly indicates that much more needs to be done to strengthen legislation, to provide justice and services for child victims and to address attitudes and practices which condone abuse and exploitation.

### **How many children are being trafficked?**

Few reliable estimates of the magnitude of child trafficking exist. Statistics available are often limited to criminal justice data or reflect estimations of children who have been trafficked across national borders for sexual exploitation. Existing official data can therefore only give an account of identified and registered victims of trafficking, which does not give an accurate picture of the number of children trafficked. There is furthermore an absence of systems for harmonized data collection, analysis and dissemination of data on child trafficking by age, gender, national origin and different forms of exploitation.<sup>5</sup>

In addition, there is an absence of qualitative data and information on children's views and perception on the justice system and on the services available to them. These gaps have resulted in the development of responses that are sometimes ad hoc and at times even contra productive.

### **Children's views on the responses to child trafficking**

*“I gave hundreds of statements, lists of names and amounts and dates and so on. They are still free! The police did nothing because they are hand in hand (with the traffickers).” Girl, survivor of child trafficking in, South Eastern Europe<sup>6</sup>*

To learn from children's experience, UNICEF<sup>7</sup> conducted interviews with children<sup>8</sup> who were assisted in shelters for child victims of trafficking

in four countries<sup>9</sup> of South Eastern Europe (2005-2006). Each child described their lives before recruitment, their experiences during exploitation, and how they got away from the traffickers. The interviews formed part of UNICEF's broader assessment of approaches to counter child trafficking in the region.

Most of the children interviewed reported coming from families that experienced domestic violence and abuse. Half described their families as “poor” and many reported parental alcohol addiction. Poverty, domestic violence and abuse, neglect and parental alcohol addiction were often seen as interrelated problems. All children said that they did not receive accurate information on trafficking and on the risks of leaving home or migrating to another country. Less than half of the children received some information, mostly from informal networks

*I don't feel well and I don't have any plans for the future since the guys that kidnapped me were in prison for two and a half years after I testified against them and now they are out of prison. I heard from others that they said that if they ever get me they will kill me. I used to go out with a guy for a while and I told him the whole story and we wanted to get engaged, but those guys that got out of the prison beat him up badly and he left me. So this is the reason why I don't have a future here.<sup>10</sup>.” Girl, survivor of child trafficking in, South Eastern Europe*

Half of the children interviewed reported absence of protection by professionals in terms of legal, administrative and social measures. Children were given very little information about their legal status and fundamental rights, what types of services they could access, etc. Some of the children had been told by the police that they could contact a lawyer/attorney, but they had no financial resources to do so. Most children said that their wishes and concerns with regard to repatriation were seldom taken into account and many of the children had no idea what was going to happen to them. Most of the children felt that their views were not asked for, or not taken into account, by the professionals involved in the protection and rehabilitation process.

This report demonstrates that when children are given an opportunity to make their experience known and to express their views, they provide important insights for policy makers and practitioners. Children and young people, who have experienced trafficking, are experts on factors which make children vulnerable, the needs

<sup>4</sup> UNICEF Innocenti Insight South Asia in Action: Preventing and responding to child trafficking. Child rights-based program practices, pg 10 (2008)

<sup>5</sup> For more a more detailed discussion of the challenges in data collection on child trafficking, see UNICEF Innocenti Insight: Child Trafficking in Europe. A Broad Vision to Put Children First. 2008. p. 6-7

<sup>6</sup> UNICEF Innocenti Research Centre Young People's Voices on Child Trafficking: Experiences from Southern Eastern Europe, by Mike Dottridge IWP-2008-05, pg 31

<sup>7</sup> UNICEF Innocenti Research Centre Young People's Voices on Child Trafficking: Experiences from Southern Eastern Europe, by Mike Dottridge IWP-2008-05

<sup>8</sup> The aim of the report is not to presume that the experience of the 31 children interviewed represents the experience of all trafficked children in the region nevertheless it provided important insight into some of the dynamics and complexities of child trafficking.

<sup>9</sup> Albania, Kosovo, Republic of Moldova and Rumania

<sup>10</sup> UNICEF Innocenti Research Centre Young People's Voices on Child Trafficking: Experiences from Southern Eastern Europe, by Mike Dottridge IWP-2008-05, pg 44



regarding prevention, assistance and protection. It further shows that children have an important role to play in helping to identify areas for intervention, design appropriate solution and to act as strategic informants of research.

#### **Children's own actions to stop child trafficking**

There are many examples on how children and young people take actions to prevent and respond to child trafficking.

The Youth Partnership Project for Child Survivors of Commercial Sexual Exploitation in South Asia is an initiative to empower and build the capacity of youth to take a lead in the fight against sexual exploitation of children. Young people have set up peer-support programmes in schools located in high-risk areas of Bangladesh, India and Nepal. They share information and provide support to their peers, to help them avoid becoming victims of sexual exploitation. Youth trained in media and advocacy skills conduct awareness-raising campaigns in communities to reduce the numbers of children trafficked to other cities and neighbouring countries. The project also works with trained caregivers and local organizations to equip them with the skills to provide quality psychosocial care for child survivors. There is support for them from ECPAT and local nongovernmental organizations.<sup>11</sup>

#### **What more needs to be done to prevent and respond to child trafficking<sup>12</sup>?**

##### **National legislation**

Most international standards and national laws focus on adults, and there is a tendency to address child trafficking as a sub issue of trafficking in human beings rather than granting special attention to safeguarding the human rights of children. Child trafficking is commonly defined explicitly or implicitly through a general definition of trafficking in human beings. Consequently, the special provisions of the Palermo Protocol, that trafficking takes place independently of the means used to recruit, transport, transfer, harbour or receive a child, for the purpose of exploitation is often overlooked.

In many countries assistance and regularization of the status of children from another country, are conditioned on the child's ability and willingness to cooperate with law enforcement. This leaves children who are not willing or not able to testify against their trafficker, without assistance and sufficient protection. Children who have been trafficked furthermore risk being misidentified as

undocumented migrants, asylum seeker, unaccompanied minors or juvenile delinquent – and are therefore not given the status and assistance as victims of child trafficking.

Furthermore, few countries explicitly protect children by law from criminal prosecution for offences committed in the context of the trafficking process and children are therefore at risk of being treated as criminals or juvenile delinquents, rather than as victims of crime.” For example in countries where prostitution is illegal, and the age of a child is defined as under 16 years old, trafficked children age 16- 17 are at risk of being treated as criminals. Furthermore, boys who are trafficked for sexual exploitation are in some countries less protected than girls, in particular where national legislation only cover sexual exploitation of women and girls.

Legislation does, furthermore, not always include welfare components such as medical, psychological and legal assistance; compensation; victim-witness protection and other measures to ensure the safety and welfare of a child who has been trafficked. The overall conclusion is that governments need to ratify all international legal instruments aimed at preventing and responding to child trafficking. They also need to revise and enact legislation to ensure full conformity with all relevant international standards.

##### **Policy responses**

Many countries have developed national plans of actions on trafficking in human beings, child trafficking, and for a range of child rights and child protection concerns. There is often a lack of synergy and coordination of those plans and the large number of actors involved in their implementation (government departments, UN agencies and NGOs). There is therefore a need to take stock of those plans and ensure that measures and activities are coordinated and fully implemented. A comprehensive national plan of action on children might be best tool to ensure the broadest protection. National plans of actions as, prescribed in the general measures of implementation of the CRC, cover a full range of child protection concerns. However, developing a plan is not enough. Active political support is necessary to mobilize resources to implement effective programs and monitor their implementation and impact on children.

##### **National Child Protection Systems**

Child protection systems- framed by children's rights- needs to be developed or strengthened and made operational at national and community level, with sufficient resources to prevent and respond to child trafficking, violence, exploitation and abuse.

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<sup>11</sup>UNICEF Innocenti Research Centre. South Asia in Action: Preventing and responding to child trafficking. Summary Report (2008)

<sup>12</sup> UNICEF Innocenti Research Centre; A human rights-based approach to child trafficking: Key findings and recommendations (unpublished paper)



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These systems need to embrace empowerment of children and youth, awareness raising, provision of child friendly legal, medical and psychosocial services, training of service providers, and development of data collection and tools to monitor the prevalence of child trafficking. Child friendly information, reporting mechanism and services must take children's diversity into account such as age, gender, ethnicity, disability. Professionals need to be screened and trained to ensure that they fully respect the right of the child.

Children who have experienced abuse and violence in the family, schools and communities are at risk of trafficking and exploitation. The common root causes and vulnerability factors, such as poverty, discrimination, harmful traditional practices and social norms therefore need to be addressed in a holistic way. Community mobilization, awareness raising and social and economic empowerment are critically important in this context. Child trafficking also needs to be addressed within a broader framework of children migration.

In many countries, the judicial process needs to be refined to include formal witness protection procedures. These should ensure the privacy of the child and the provision of support through in-camera proceedings, fast-track children's courts and the use of recorded video testimony. Children must be informed about their rights and have access to legal support and/or representation from adults before and during the legal process.

They should also be given the opportunity to participate in the development of their rehabilitation programmes. The UN Guidelines on the Protection of Children as Victims and Witnesses of Crime are a valuable reference, and they are also available in a child friendly version. Children and young people can play an important role in developing preventive programs and in evaluating their effectiveness, as well as in decision making structures and mechanism.

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## Trafficking of human beings, especially underage girls

Judge Corinne Dettmeijer



In this article, I will elaborate on my tasks and responsibilities as National Rapporteur on Trafficking of Human Beings, and the relevant national legal framework in which my Bureau operates. As a (former) committee member of the Chronicle and a juvenile court judge, I will discuss human trafficking by taking a closer look at juvenile prostitution and particularly the phenomenon of 'lover-boys', which has received considerable media attention in the Netherlands.

To give it a moment's thought, human beings are still exploited in modern society – whether trafficked across borders or within countries. The victims are equally children, men and women in various industries. Besides the obvious, Eastern European girls in the sex industry or Asian workers in sweat shops, other cases point to less known and more hidden forms of human exploitation, such as children being sold for their organs in Romania<sup>1</sup> or heavily exploited domestic servants in the Netherlands. Still, the essence of trafficking in human beings (THB) is exploitation, the abuse of people in the pursuit of profit, by ways of violence, threats, deception or the abuse of the victim's vulnerable position, as a result of which his/her freedom to choose is considerably, or even totally, restricted.<sup>2</sup> For this reason, THB should not be confused with human smuggling<sup>3</sup> and is regarded as a true form of modern slavery.

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[www.nineoclock.ro/index.php?page=detalii&categorie=homenews&id=20090317-10742](http://www.nineoclock.ro/index.php?page=detalii&categorie=homenews&id=20090317-10742)

<sup>2</sup> De Jonge van Ellemeet, H. & Smit, M. (2006). Trafficking for exploitation outside the sex industry. In: Van den Anker, C. & Doornik, J., *Trafficking and women's rights*. (pp. 219-232). Pallgrave Macmillan.

<sup>3</sup> Human smuggling concerns assisting people to enter or stay in another country illegally. Whenever the voluntary agreement between a human smuggler and the party smuggled is the result of deception, or involves high debts, and leads to forced labour, the smuggling case becomes a trafficking case (De Jonge van Ellemeet & Smit, 2006: 219-220)

In an effort to stop these atrocities, several treaties were drafted in an international context, including those focussing on the exploitation of children. In the Netherlands, the appointment of an independent National Rapporteur in the year 2000 resulted from such a document. Independency is vital as my task consists of reporting annually to the Dutch government and relevant organisations on the scale and nature of THB, the mechanisms that play a part, as well as on the developments in this field and the effects of the policy adopted and pursued in this respect. In order to execute this task, I am supported by the Bureau National Rapporteur on Trafficking in Human Beings (BNRM), which consists of several researchers and legally qualified staff members.

We use a variety of qualitative and quantitative methods of research to collect information for the annual report, covering all forms of THB. These methods include literature studies, reviewing relevant national and international legislation, police and court files, and interviewing key actors in the field of THB. The Bureau also conducts empirical research itself. Besides recurring themes, such as legal developments in the field of THB, victims, investigation and prosecution of THB, BNRM also conducts research on specific topics. For example, the fifth report concentrated on financial investigations by the police, exploitation in sectors other than the sex industry and trafficking in human beings for the purpose of organ removal. Our latest report concluded in 66 recommendations. Most of them were concerned with putting into practice arrangements that were already laid down on paper. Also I recommended that a 'high level' THB Task Force, with representatives from all relevant chain partners, would be installed to play an important role in stimulating and facilitating the implementation of these recommendations. A Task Force (including the NRM as a member) was indeed quickly established on 27 February 2008.

To give you an insight into our national legal framework, Article 273f of the Dutch Criminal Code is the most important provision to combat THB in the Netherlands. The article is derived from various international documents such as the UN Palermo protocols<sup>4</sup> and EU Framework

<sup>4</sup> Un Convention against Transnational Organised Crime, New York, 15 November 2000 (Treaty Series 2001, 68); and UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. New York, 15 November 2000 (TS 2001, 69).

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Decisions<sup>5</sup>, and should be seen as the primary legal field in which my Bureau operates.

The central expression of this comprehensive provision is exploitation and covers exploitation in the sex industry and – since January 2005 – other labour or services situations, and exploitation for the purpose of the removal of organs. This key term ‘exploitation’ is defined as an excessive abuse of individuals (i.e. breach of fundamental human rights). Human trafficking may further be accompanied by an element of coercion. This is, however, not a precondition for the existence of an exploitative situation for minors.<sup>6</sup> *Introducing* minors to prostitution is indeed considered a grave criminal act. And although the general ban on brothels in the Netherlands was lifted in the year 2000, a number of directly related provisions in penal law were tightened up in relation to youth prostitution at the same time.

Furthermore, Article 273f of the Dutch Criminal Code covers THB not only as a trans-national crime for in fact, many victims of trafficking identified and registered in the Netherlands are Dutch.<sup>7</sup> The presumption that victims of trafficking are largely foreign nationals was disproved in our latest report which can be downloaded – in English – from <http://english.bnrm.nl>. Of the 101 under-age victims whose age and nationality are known, Dutch nationals represented the largest group followed by Nigerians.

During our nine years of existence we have endeavoured to increase the knowledge about the nature and extent of trafficking and related subjects such as child pornography and juvenile prostitution in the Netherlands – phenomena which are so poorly understood. Since the appointment of the first National Rapporteur in 2000, it has been a prime objective to reveal the crime of THB and to expand our field of study to these related subjects. Developments in these areas are certainly relevant in the context of my annual report to the Dutch government. Indeed, collecting reliable data is thwarted because of e.g. its character (exploitation in the sex industry partly occurs in a hidden sector) and its victims (who may be reluctant to share their story). Valid information in relation to THB is also scarce due to the unavailability of proper identification and

registration systems within and between countries. Furthermore, we noticed that an additional problem is the lack of a unanimous international definition of THB. Different countries tend to interpret the same international definition in different ways.<sup>8</sup> Although human trafficking – and i.e. youth prostitution – is a crime with a trans-national dimension, large-scale international comparative studies are very limited. However, it is estimated that THB is a staggering multi-billion industry and makes millions of victims annually.

The huge material gains are the main reason for exploiting other human beings including children. A substantial part of the victims are trafficked entirely against their own free will, especially in cases of abduction or deception about the nature of the work to be carried out. However, so called push and pull factors give explanatory value to the question of victimization in cross-border THB and assume a certain form of involvement by the victim in what ultimately leads to a situation of dependency and exploitation.<sup>9</sup> The first mentioned factor relates to the situation in the victim's country of origin and its main cause of unequal distribution of wealth. Pull factors have to do with the attracting or drawing (economical) circumstances in the destination countries, which are partly complementary to the push factors. In this regard, it will be interesting to see if an increase will occur in the supply and demand of human trafficking caused by the current economic crisis.<sup>10</sup>

Another objective is to notice trends in the field of THB and related subjects as juvenile prostitution, and to make such trends knowable to both professionals and the wider public. For this reason, and the fact that it came to my attention that ‘lover-boys’ are also operating in Belgium, France, Germany and the United Kingdom<sup>11</sup>, I will examine this matter in greater depth.

The phenomenon ‘lover-boys’ came into light in the Netherlands at the end of the 1990s and refers to the situation when pimps use seduction techniques to draw girls into prostitution. Since then, ‘lover-boys’ have steered up many emotions. ‘Lover-boys’ are defined as pimps who win over girls through seduction tactics (called ‘grooming’), with the ultimate aim of exploiting

<sup>5</sup> The Framework Decision by the Council on combating trafficking in human beings, Brussels, 19 July 2002 (Official Journal of the EU 2002, L 203); and the Framework Decision by the Council on combating the sexual exploitation of children and child pornography, Brussels, 22 December 2003 (OJ 2004, L 13).

<sup>6</sup> Dettmeijer – Vermeulen, C.E. & et al. (2007). *Trafficking in Human Beings*. Fifth report of the Dutch National Rapporteur. Den Haag: BNRM.

<sup>7</sup> 146 persons of Dutch nationality in 2006, see Dettmeijer – Vermeulen, C.E. & et al. (2008). *Trafficking in Human Beings*. Sixth report of the Dutch National Rapporteur, Supplementary figures. Den Haag: BNRM.

<sup>8</sup> Dettmeijer – Vermeulen & et al. 2007: 5-8.

<sup>9</sup> Korvinus, A.G. & et al. (2002), *Trafficking in Human Beings*. First report of the Dutch National Rapporteur. Den Haag: BNRM : 5-6.

<sup>10</sup> <http://www.unmultimedia.org/tv/unifeed/detail/10769.html>, <http://www.irinnews.org/Report.aspx?ReportId=83454> [http://humantrafficking.change.org/blog/view/how\\_the\\_global\\_economic\\_crisis\\_will\\_increase\\_trafficking](http://humantrafficking.change.org/blog/view/how_the_global_economic_crisis_will_increase_trafficking)

<sup>11</sup> Bovenkerk, F. & et al. (2006). *‘Loverboys’ of modern pooierschap in Amsterdam*. Utrecht: Willem Pompe Instituut voor Strafrechtwetenschappen.

them in prostitution.<sup>12</sup> The method of these 'lover-boy'-pimps is associated with underage victims in their country of origin (i.e. the Netherlands). The seduction method, however, is also used with adult women and as a part of cross-border THB. Taking the above into account, the question could be raised if there is difference between today's 'lover-boy' and yesterday's pimp. Pimps have always used seduction techniques to get women into prostitution, and the same methods are applied in cross-border THB. However, it is my belief that this is a separate phenomenon and should be taken serious accordingly. In the end, 'lover-boys' are pimps nonetheless and, if they use coercion as part of their technique – or draw minors into prostitution – they are also human traffickers.

Interestingly, Dutch Justice Minister Ernst Hirsch Ballin has submitted a legislative proposal to the Lower House of Parliament that will provide children more extensive protection under criminal law against sexual exploitation and sexual abuse. The new legislation follows on from the signing of the Treaty of Lanzarote and involves, in particular, protection against new forms of sexual exploitation and sexual abuse that occur on the Internet. The legislative proposal will bring the following three significant changes: grooming – typical for lover-boys – will also become an offence. In this sense, grooming refers to actions deliberately undertaken by an adult on Internet sites with the aim of befriending and seducing minors in order to sexually abuse them. Following this new provision, groomers can be prosecuted as soon as they propose to meet the child and prepare to actually do so. The maximum penalty for this has been set at two years imprisonment.

As mentioned, the first signs of recognising 'lover-boys' as a new nominal phenomenon in other countries are emerging. Belgian media noticed and labelled the issue of 'lover-boys' in early 2000<sup>13</sup>; the phenomenon has just recently been reported in the United Kingdom as well.<sup>14</sup>

My Bureau has consistently discussed this topic since its first report in 2000. Successive reports have compiled the results of studies concerning 'lover-boys', modus operandi and its victims which I will discuss in the following paragraphs. Some (preliminary) indicators about the 'lover-boy' problem could be observed, although no conclusive or comparative studies have yet been conducted. Besides the above described *modus operandi* of seduction techniques, BNRM has

provided some general characteristics of this crime by means of a literature study.<sup>15</sup> A 'quick-scan lover-boy' describes the following characteristics of the perpetrators.<sup>16</sup> The 'lover-boys' are young men between age 20 and 30, who have a low educational level. They aim at power and money, have good social skills but lack empathy and respect for their female victims, and are known to the police. Their victims can be distinguished in several categories. The most vulnerable victims are girls who have experienced little love and safety at home and have been maltreated, abused or neglected. Girls, especially with multi problem backgrounds, or mentally handicapped girls have a higher chance of victimization.<sup>17</sup> In this sense, one could regard these characteristics as the victim's push factors while the lover-boy's attention (love, adoration, money, and an exciting and glamorous lifestyle) are the pull factors. Due to extensive media coverage of this phenomenon, both public and private projects were initiated to deal with the 'lover-boy' problem in the Netherlands. We listed the many local initiatives in our latest report and concluded that no nation-wide understanding and record-keeping of 'lover-boy'-THB exists today. Work is currently underway on a national register for juvenile prostitution.<sup>18</sup>

Another point of attention should be the (residential) care of the victims of 'lover-boys'. I see the need to place victims of THB in judicial juvenile institutions in cases where they will walk out of open accommodations for various reasons.<sup>19</sup>

However, boys (as perpetrators) and girls (as their victims) have occasionally been accommodated, although separated, in the same centre. Furthermore, parents and family could play a vital role in the girls' healing processes. I have stressed the importance of specific centres for victims of 'lover-boys' and the necessity to develop and evaluate specific treatments. But changes do not only have to be made on a ground level. Since the successful founding of a THB Task Force, I have suggested to the Task Force that they adopt a special interest in minor victims in their policies.

In the end, I can conclude that many positive changes have been made since the appointment of a National Rapporteur. The first steps of

<sup>12</sup> Bullens, R. & Horn, E. van (2000). Daad uit 'liefde'. Gedwongen prostitutie van jonge meisjes. *Justitiële Verkenningen*, 26 (6), 25-41.

<sup>13</sup> According to Bovenkerk & et al., 2006: 13.

<sup>14</sup> See <http://www.telegraph.co.uk/news/uknews/4303775/Schoolgirls-are-being-lured-into-prostitution-MP-warns.html>

<sup>15</sup> Korvinus, A.G. & et al. (2004). *Trafficking in Human Beings*. Third report of the Dutch National Rapporteur. Den Haag: BNRM, 50.

<sup>16</sup> Terpstra, L. & et al. (2005). *Loverboys, een publieke zaak. Tien portretten*. Amsterdam: Uitgeverij SWP/Terpstra & Van Dijke.

<sup>17</sup> Korvinus & et al., 2004: 50.

<sup>18</sup> See [www.jeugdprostitutie.nu/doc/meerjarenplan%20extern.pdf](http://www.jeugdprostitutie.nu/doc/meerjarenplan%20extern.pdf)

<sup>19</sup> This is a placement under civil law in a closed institution.

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revealing a hidden crime are in place in the Netherlands. Amongst others, the scope of THB situations has been broadened, a Task Force is established, a National Action Plan against THB launched and preliminary research is done. The next steps must be even bigger as many other challenges remain; now it is time to make an effort to implement effective policies to tackle human trafficking.

Victims should be protected, perpetrators should be brought to court, and the public and vulnerable groups have to be informed. The National Rapporteur's reports merely cover the situation in the Netherlands and my recommendations are aimed at the Dutch government. However, a global consensual perspective on THB is needed, which recognises THB as a world wide problem, frequently involving cross-border organised crime, and flagrant breaches of human rights of those individuals who are merely looking for a better life.

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Corinne is a member of the board of the Leiden University Fund and of the board of the Pro Juventute Foundation BNRM website: [www.bnrm.nl](http://www.bnrm.nl)



## A Model Law on Justice in Matters Involving Child Victims and Witnesses of Crimes

Dr Cyril Laucci



UN Guidelines on justice in matters involving child victims and witnesses of crimes (hereafter "the Guidelines") were adopted by the UN Economic and Social Council (hereafter "ECOSOC") by its Resolution 2005/20 of 22 July 2005. The Guidelines were prepared on the basis of good practices developed in domestic systems of the world in relation to the protection of the rights and interests of child victims and witnesses when confronted by police and judicial authorities.

As such, the Guidelines are not directly enforceable by domestic courts for two reasons.

First, the source of international law enacting the Guidelines, an ECOSOC resolution, is not binding on States, as opposed to a treaty. States remain free to implement these guidelines in their domestic legislation, or not. The ECOSOC resolution can only invite States "to draw, where appropriate, on the Guidelines in the development of legislation, procedures, policies and practices for children who are victims of crime or witnesses in criminal proceedings". Once the Guidelines have been adopted at the international level, such a legislative work remains to be done at the domestic level.

Second, the Guidelines, by nature, are no more than general directives expressed in such a vague way as it can adapt to the different domestic systems of law. These directives lack the required specificity to fit in the domestic legislation of a given State and cannot be directly implemented by a domestic judge. The Guidelines need first to be incorporated in the domestic legislation of the

State and find their place in local procedural schemes.

Domestic implementation of the Guidelines is also an indispensable prerequisite because of the complexity and cross-cutting nature of the problems addressed, such as modalities of providing information to the child about criminal proceedings or protective measures against re-victimization. Furthermore, expressing general principles adaptable to all domestic systems of the world is far different from providing actual modalities of their domestic enforcement. For instance, once admitted that child victims and witnesses shall be treated with dignity and compassion at all times, it is still necessary to determine the concrete impact of this principle on the proceedings and on the training for police, justice officers and social workers.

Finally, by being implemented in the domestic legislation of States, the Guidelines acquire the force of law. Once implemented, parties in judicial proceedings can rely on these principles in support of their claim and domestic judges can base their reasoning on them. This way, the Guidelines switch from the status of non-binding principles to the status of enforceable law.

### **Preparation and Drafting of the Model Law**

The UN Office on Drugs and Crime (hereafter "UNODC") played an important role in the adoption and promotion of the Guidelines.

Technical and legal assistance to domestic implementation of the Guidelines by States form an essential step in their promotion. The aim is to provide States, and in particular legislators, with efficient tools to assist them in implementing the Guidelines in their domestic law, in order to anticipate technical problems related to the implementation of an international instrument of general scope. The UNODC had already undertaken equivalent tasks in the past, in particular with respect to the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Know-how was therefore pre-existing. For the Guidelines, UNODC worked in collaboration with the International Bureau on Children's Rights – a NGO based in Montreal, Canada – and the UNICEF on the preparation of two complementary sets of tools: a handbook for professionals and policy-makers and a model law. A child-friendly version of the Guidelines was also prepared by UNODC together with the IBCR and UNICEF's Research Centre Innocenti.

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The two projects were conducted jointly. Both required, as a preliminary step, a comparative research on domestic practices of States belonging to the different systems of law (Common Law, Continental Law, Sharia Law) in the different fields covered by the Guidelines. The outcome of this research, which had to be as comprehensive as possible, was the selection of certain "good practices". By "good practices", we mean concrete modalities of domestic implementation which are best adapted in order to protect efficiently the rights of child victims and witnesses while respecting the balance of criminal

proceedings. The handbook and the model law were drafted on the basis of good practices identified throughout the comparative research.

An international expert was recruited by the IBCR to undertake the preliminary comparative research. He was assisted by two interns. The comparative law research was carried out between August and December 2006. The first outcome of this research was a database covering legislation and case law from 105 States and containing more than 1,000 references.

### **List of countries covered by the preliminary comparative study**

Algeria	Colombia	Honduras	Libya	Peru	Sweden
Argentina	Comoros	India	Lithuania	Philippines	Switzerland
Armenia	Congo B	Indonesia	Luxemburg	Poland	Syria
Australia	Costa Rica	Iran	Malaysia	Portugal	Thailand
Austria	Czech Rep.	Iraq	Malta	Puerto Rico	Tunisia
Bangladesh	Denmark	Ireland	Mauritania	Qatar	Turkey
Belgium	Djibouti	Island	Mexico	Romania	Uganda
Belarus	Dom. Rep.	Israel	Morocco	Russia	Ukraine
Bolivia	Ecuador	Italy	Mozambique	Rwanda	United Kingdom
BiH	Egypt	Japan	Myanmar	Salvador	United States
Brazil	Estonia	Jordan	Nepal	Saudi Arabia	Uruguay
Bulgaria	Ethiopia	Kazakhstan	Netherlands	Senegal	Venezuela
Burundi	Finland	Kenya	New Zealand	Sierra Leone	Yemen
Cambodia	France	Kuwait	Nicaragua	Slovakia	Zambia
Cameroon	FYROM	Kyrgyzstan	Norway	South Africa	Zimbabwe
Canada	Germany	Latvia	Oman	Spain	...
Chile	Guatemala	Lebanon	Pakistan	Sri Lanka	
China	Haiti	Liberia	Paraguay	Sudan	

The international expert was also in charge of selecting good practices. To this end, he made his selection based on the assessment of domestic practices in the legal literature, including prior publications by IBCR, UNODC and UNICEF, and also had to rely on his own assessment of procedural guarantees provided in the domestic legislation of the different States and of their consistency with the Guidelines.

The next step was then the drafting of the handbook and of the model law, which initially took place between January and March 2007. The handbook was drafted by the same international expert. The model law was drafted by Judge Renate Winter, Presiding Judge of the Special Court for Sierra Leone and current President of the International Association of Youth and Family Judges and Magistrates. The model law was completed by a commentary, which explains the origins and reasons of each model provision.

The last step was finally the presentation of both projects to an International Expert Meeting held in Vienna in May 2007. The comments of experts The model law implementing the Guidelines could not fit the specific characteristics of the domestic

were then incorporated and the two documents finalized by the end of 2007.

### **Presentation of the Model Law**

The main challenge in drafting the model law was to prepare a law translating the general principles enshrined in the Guidelines into concrete regulations directly enforceable by police and justice officers and social workers. The law also had to be adaptable to the main procedural systems, namely Common Law, continental law and Sharia law.

Model laws in general are better adapted to the Common Law system, which traditionally enacts a single thematic law to cover all the aspects of a single problem. Model laws are in general less adapted to the continental law system, which divides the legislation into codes. In France, for instance, a full implementation of the Guidelines would imply amendments into the Code of Criminal Procedure, but also into the Criminal Code, the Code of Civil Procedure, the Civil Code, the Code of National Education, the Code of Public Health, the Code of the Press, etc. legislation of each country, of course. As such, the model law still needs to be adapted to each

country and this is the task of the legislator. But the model law aims at making this work of adaptation easier by clearly distinguishing between provisions relating to different pieces of legislation (general provisions, procedural aspects, etc.). Where possible, the model law provides options between the Common Law and Continental Law systems.

The general structure of the model law is as follows. After an optional preamble, which better fits criteria of Common Law countries, the model law is divided into four Chapters:

- (1) Definitions;
- (2) General Provisions on Assistance to Child Victims and Witnesses;
- (3) Assistance to Child Victims and Witnesses during the Justice Process; and
- (4) Final Provisions.

The model law is presented together with a commentary, which explains the origins and the aim of each model provision. The commentary also provides examples of national legislation where equivalent provisions are found. These examples are essentially drawn from the Handbook, which is also a reference tool aimed at assisting legislators.

**Chapter 1** provides a list of definitions. Some of the expressions defined are general terms which specific meaning in the context of the model law is clarified: "child victim or witness", "professionals", "justice process", "child's guardian". Others are specific terms directly drawn from the Guidelines and from specialized vocabulary: "child-sensitive", "support person", "guardian ad litem", "secondary victimization", "re-victimization".

**Chapter 2** – "General Provisions on Assistance to Victims and Witnesses" starts with Article 1, related to "Best Interests of the Child". In accordance with the majority practice of States, the best interests of the child are not defined. It is up to domestic judges to make their own assessment of these. With respect to criminal proceedings, the notion of best interests of the child shall be given a primary consideration, but shall not jeopardize other interests of justice, such as the rights of the defence and the guarantees of fair trial. Both interests deserve a primary consideration and judges are therefore in charge of striking a balance between the protection of child victims and witnesses, on the one hand, and the guarantees of fair trial, on the other hand.

Article 2 reaffirms some of the principles enshrined in the Guidelines, such as the protection against discrimination (paragraph 8(b) and Chapter VI of the Guidelines), respect for dignity (Chapter V), protection of privacy (Chapter X), and the right to express views and concerns and have them taken into account (Chapter VIII).

Article 3 implements the duty to report apparent cases of child victimization, as provided in

paragraph 33 of the Guidelines. The duty bears on teachers, doctors, social workers "and other professional categories, as deemed appropriate". The comparative research has shown, however, that lawyers are exempted from respecting such duty, because of the lawyer-client privilege of confidentiality. Information received by lawyers from their clients is universally protected against disclosure, whatever its nature. Besides, confidentiality is protected under Article 7 of the model law. By opposition, the so-called doctor-patient privilege does not exempt doctors from their duty to report crimes. The seal of the confessional is differently admitted for priests by the domestic legislation of each country.

Article 4 – "Protection of Children from Contact with Offenders" – implements an example of "special strategies" of prevention, as contemplated in Chapter XIV of the Guidelines. The aim is to make sure that a person who has been convicted, or who is currently charged for an offence against children is thereby not eligible to work in a service, institution or association providing services to children. This provision is consistent with the practice of several States, which have established lists of persons convicted for certain offences, such as sexual offences. These lists are put at the disposal of the police to assist in tracing and identification of perpetrators of new offences of the same nature. Sometimes, the lists can also be checked by potential employers for positions implying services to children, such as positions of teachers, educators, social workers, etc. Pursuant to the model law, any person who has been convicted in a final verdict of a qualifying criminal offence against a child shall not be eligible to work in a service, institution or association providing services to children. In continental law, the implementation of this provision implies an amendment to the Penal Code. There are different ways of implementing this provision, which can be more or less prejudicial to public freedoms. A good practice, respectful of public freedoms, may be to provide that persons may request for themselves a certificate that their criminal record is clean from any conviction in relation to specific offences against children. Employers providing positions offering services to children may request applicants to provide such a certificate in order to make sure that they have no prior convictions.

Articles 5 and 6 of the model law provide the creation of a national authority, or office, in charge of the protection of child victims and witnesses. The role of this national authority would be to coordinate the different activities related to assistance to child victims and witnesses. Equivalent bodies already exist in several countries, such as Belgium, Canada, Costa Rica, Denmark, Iceland, Italy and Mexico.

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Article 8 essentially provides the same provisions as in Chapter XV of the Guidelines with respect to the training of professionals.

**Chapter 3** of the model law – "Assistance to Child Victims and Witnesses during the Justice Process" – is related to the adaptation of judicial proceedings, especially in criminal cases, to the specific situation of child victims and witnesses.

Article 9 provides concrete modalities for implementing the right of child victims and witnesses to receive all relevant information on the criminal proceedings and the assistance they may be afforded.

Article 10 provides the right of a child victim or witness to be assisted by a lawyer. This provision actually goes further than the Guidelines, which do not mention any right to legal assistance by a lawyer. The rationales of this omission in the Guidelines are that assistance of a child victim or witness by a lawyer goes against the adversarial conception of criminal procedure in the Common Law system, which relies essentially on the bilateral confrontation between the prosecution and the defence. Victims or witnesses should not be represented or play a role in this confrontation, other than delivering the evidence they hold under the conditions fixed by the parties during the examination-in-chief and cross-examination. Article 10 most likely corresponds to a deliberate choice of the author of the model law in favour of the representation of child victims and witnesses by a lawyer, in order to enhance respect of their rights and best interests. Common Law countries, as well as other countries which do not authorize victims and witnesses to be represented by a lawyer in criminal proceedings, may disregard this provision, which is, once again, no more than an example of how best to implement the guidelines in domestic legislation. It is worth noting, though, that the representation of victims by counsel has been admitted in the international criminal procedure applicable before the International Criminal Court, which is essentially Common Law-based.

Articles 15 to 19, 23 and 32 of the model law are related to the "support person" assigned to the child and explain how this person is appointed and his or her functions. These functions are essentially related to the assistance to the child, information and protection against all forms of secondary victimization that may be generated as a consequence of the child's involvement in the proceedings. The tasks of the support person start

from the earliest stages of pre-trial proceedings and continue during the trial and in the post-trial phase.

Articles 20 to 22 are related to the issue of admissibility of the child's evidence. As a matter of principle, child's evidence is deemed admissible, whatever the age and other elements that shall be taken into account in the assessment of its reliability. In particular, these articles show how judges may assess the maturity of a child, for instance by way of a competency examination (Article 21). Article 22 further provides that judges have the discretion to exempt children from testifying under oath and may, as an alternative, offer the child to promise to tell the truth. Under no circumstances can a child be prosecuted for giving false testimony.

Articles 24 to 28 regulate the child's appearance at trial. A set of measures are provided in order to adapt, as much as possible, the trial proceedings to the situation of the child. The aim is to avoid, or at least minimize, secondary victimization caused by hardship. Among these measures, appropriate waiting areas equipped in a child-friendly manner, priority hearing of child victims and witnesses in order to minimize waiting time, the attendance of a support person and/or, if appropriate, of the child's relatives, and measures aimed at protecting the child's privacy are proposed. Article 27 is an optional provision for Common Law countries only. It relates to cross-examination of child victims and witnesses and prohibits direct cross-examination of a child by the accused himself. The article also gives grounds to the judge to intervene and prevent the asking of any question that may expose the child to intimidation, hardship or undue distress.

Articles 29 and 30 are related to reparation proceedings and transitional justice. Different options are proposed to countries, depending on their application of the Common Law or continental system of law.

Articles 31 to 33 finally provide concrete modalities of information on the outcome of the trial phase and post-trial proceedings, up to the release of the convicted person. The support person is once again playing a key role in the process.

**Dr Cyril Laucci** is the Regional Legal Adviser for Continental Europe, International Committee of the Red Cross, Budapest



## The early years—how experience shapes the brain

Dr Simon Rowley



Currently the world is dangerous place for more than half the world's children many of whom live in poverty and are subjected to neglect and abuse on a daily basis.

We need to understand how a child's brain develops and how it is affected by experience in either a positive or negative fashion, in order to find ways of changing the outcome and the world that children live in. This article focuses on some of the neurobiology of infant brain development and some of the more recent advances in our understanding of this topic.

The key to understanding the link between early childhood experience and subsequent behaviour is in the age-old nature versus nurture relationship. There is a complex interplay here that is at the core of human emotional development and behaviour. Our genes are not a static blueprint, they can actually alter with experience in the sense that they can be 'switched on' or off. Nature and nurture operate together to fashion our brains.

From the first few days of conception our brains begin to form from rudimentary cell tissue. As the foetus develops, in the brain, layer upon layer of nerve cells or neurones migrate to their ultimate anatomical positions. Although they send out long projections or axons to meet each other and become connected (and therefore able to communicate with each other), at birth we are only 15% connected. The organisation of our brain in this way is genetically determined.

In later foetal life and particularly from the moment of birth, experiences 'switch on' our connections and stimulate thousands of new connections to develop synapses. Each sensory experience

activates hundreds of surrounding neurones and in this way our brain becomes 'wired' and the other 85% connected. This process is environmentally determined.

All drugs, including alcohol that the mother ingests will be received by the foetus. Many of these such as alcohol can have direct teratogenic effects. In addition there may be less obvious but equally important effects on synaptogenesis that will cause the neurobehavioural issues such as attention deficit and hyperactivity.

Touch is the first sensory modality to come 'on line' and has been labelled the 'mother of all senses'. Smell, taste, balance, hearing and vision follow in that sequence, and it appears that each sense needs to follow the sequential pattern for complete development.

The type, the frequency, the intensity and quality, the order, and the number of experiences will all have an impact. The neurones 'talk' to each other via these connections and our brain becomes wired as axons and dendrites or spider-like projections reach out in all directions within the brain. They send their messages electrically with the help of brain chemicals, and larger distances are covered by the formation of long projections called axons, which can form nerves. Most nerves are eventually coated with myelin or white matter, which enables very rapid transmission of information. Myelin is particularly vulnerable to certain toxic insults in development especially excess cortisol.

In most areas of the brain this process of 'connectivity' or synapse formation and subsequent myelination occurs over the first 3 years. After this time there is a process of pruning where only the pathways that are being used frequently are retained and the brain becomes a more efficient and less complicated structure in terms of its neural pathways. Those connections that are not frequently being used are lost.

The more mature brain is less sensitive to experience and less likely to change. It becomes harder for new patterns to develop. We are 'hard wired' according to the quality and amount of experience we have.

There are critical and sensitive periods in brain development during which rapid changes take place, and after which it becomes difficult if not impossible to re-capture those developments, learning a musical instrument is a good example of this. Attachment to a consistent care-giver is another.



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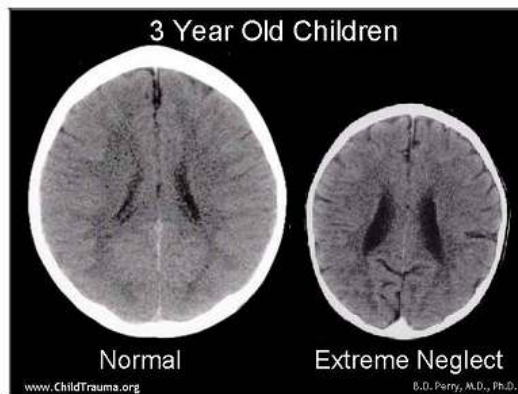
The connections that occur with an attachment relationship need to be made within the first 18 months before the window of opportunity is lost. With failure of this to occur there are likely to be problems in many areas in later life as the child grows up unable to establish firm trusting relationships with other humans, lack of early attachment has been shown to correlate with poor social competency, lower teacher ratings of educational competence and other outcomes in teenage years.

The experiences essential for activating neurones and promoting synapse formation need to be the right ones - if they are negative, then the hard wiring that takes place retains all the negative connotations including the emotional memory of the experience. This includes a triggering of the physiological and somatic sensations that accompany a negative experience such as a smack or witnessing family violence. Therefore if a child is repeatedly smacked, put down, ignored or abused they may become 'hard wired' for these emotions and after 2 or 3 years it may be too late to change.

### **Scan at 3 years**

## ***Neglect***

How Poverty of Experience Disrupts Development



Bruce D. Perry, M.D., Ph.D.

Just as negative experience can affect an infant in this way, lack of stimulation or neglect- lack of positive input can be equally devastating. The connections will be weak or may never develop. On the other hand, when a child is nurtured, played with, sung to, cuddled and stimulated positively, he or she will be programmed in a positive fashion. This type of experience sets a child up for life, hopefully receptive to all forms of communication and experience.

When negative interactions occur in infancy, the physiological associations that accompany the experience include the release of hormones including adrenaline and cortisol. This has been described as a 'fight or flight' reaction. Unfortunately cortisol can interfere with the

developing brain and there may even be structural changes occurring that are irreversible. The brains of chronically deprived and abused children have been shown to be smaller than normal.

The evidence for the link between early childhood experience and subsequent brain development comes from a number of sources and is still accumulating. Neuro-imaging techniques, animal studies, autopsy findings, and blood analysis of hormones can all support the hypothesis. The most compelling evidence comes from the case stories that we read in the media - countless stories of violence being perpetrated in our communities by offenders who themselves have been subject to abusive and/or neglected childhood.

There are now good data from longitudinal studies<sup>1</sup> that we can predict who is at risk of becoming an offender on the basis of a number of demographic factors present even before a child is born. eg. mother is young, unsupported, drug using, has psychiatric history, multiple partners. We can continue to add to those factors throughout childhood. There are also some intervention studies that have been shown that we may be able to interrupt the cycle of violence if we target interventions towards those at greatest risk.

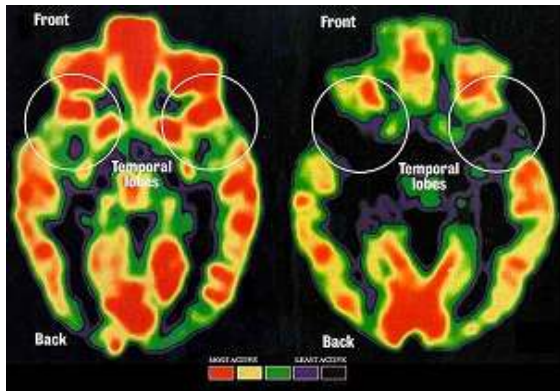
It is important that continuing research and support for such programmes is encouraged. Equally important is giving all prospective and new parents in addiction, and all childcare workers and policymakers this information so that there is awareness in the community of the importance of early childhood experience on late infant development. In the context of what is legally acceptable we need to remember that if we abuse or neglect our children, we don't just cause acute pain and suffering at a humane level, we also may potentially damage their brain forever.

Up until now I have focussed on the brain changes occurring in the first few years. Brain

<sup>1</sup> Fergusson D (1998) The Christchurch Health and Development Study; An Overview and some Key Findings. Social Policy J of NZ 10:154-176  
Fergusson, Horwood L (1998) 'Exposure to Interparental Violence in Childhood and Psychosocial Adjustment in Young Adulthood'. Child Abuse and Neglect 22: 339-357  
Fergusson D and Woodward L (1999) 'Maternal Age and Educational and Psychosocial Outcomes in Early Childhood'. J of Child Psychology and Psychiatry 35 (3) 287-96  
Silva P and McCann M. 'An Introduction to the Dunedin Study' in Silva P Stanton W (eds) (1996) From Child to Adult Oxford university Press New Zealand Auckland

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development continues at different rates in different areas throughout life. Functional and structural MRI scans are showing us just what the It seems that there is a burst of neuronal activity, with increased numbers of brain cells and increased connectivity with subsequent pruning of lesser used connections similar to that which occurs in the 1<sup>st</sup> 3 years, in the pre-frontal cortex, corpus callosum as well as in other parts.



The picture is of a PET scan showing the temporal lobes (encircled) of 2 people -the one on the right having been chronically abused/neglected. The red and orange colours show metabolic activity, and the temporal lobes of the abused/neglected person are lacking these colours indicating damage in these areas

The pre-frontal cortex is the area of the brain that controls 'executive functioning' or reasoning and judgment. Prior to 15 or 16 years of age we tend to make decisions based on our emotional ('gut reaction') rather than our rational thinking. This is based in the amygdala where emotional values are processed. Functional MRI scans show that teenagers use this part of the brain when making decisions.

From the early teen years there is a transfer of decision making to the prefrontal cortex where decisions are more rational and objective, and consequences are thought through. The pre-frontal cortex denotes social behaviour and knowledge and allows us to control impulsive behaviour. At the same time the corpus callosum (the bundle of fibres connecting the two sides of the brain) changes and grows. This allows problem solving and creativity to develop and assist us in planning.

extent of this brain development is, particularly in late childhood and adolescence.

Therefore, throughout our adolescence we slowly become more reasoned, and our decision making reflects the fact that we are using this important part of our brain in everyday life. Impulse control, planning and an understanding of the rules of conduct become incorporated into our thinking. There is a sex differential operating with boys lagging 2 or 3 years behind girls in this developmental process. The teen brain and the adult brain are therefore both anatomically and physiologically different.

The forces that shape this adolescent brain development are unclear. Obviously this is biologically driven as part of puberty, but just how important environmental factors such as nutrition, parenting, education, physical activity, peers, drugs, infections and many other factors are is not known. It is clear however that whilst the teen brain is undergoing these changes it is particularly vulnerable to the effects of drugs and alcohol.

The implications of this are huge. Teenagers are not the same as adults in their ability to think rationally or make sound judgments. It is probably not sensible to put boys behind the wheel of a car at 15 years of age, and it certainly doesn't seem right to submit youngsters in their early teens to the same expectations with regard criminal activities (within reason-the cultural context is also critical). A 14 year old cannot be expected to have the same ability to think through the consequences of a criminal action as a 40 year old. The legal process should acknowledge and reflect this. Similarly our thoughts around teenage pregnancy and the supports needed should reflect the fact that teenage parents may not always be able to control angry impulses or make rational decisions about a child's health needs.

It is therefore likely that at least until our mid 20's these neurobiological changes which are occurring create potential for change and in some cases repair. More research will hopefully show just how we might both enhance cortical development and promote such repair.

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## Mental health of young people in the youth justice system—England and Wales

Lorraine Khan



*The Sainsbury Centre for Mental Health has been exploring the case for improving services for under 18 year olds with mental health difficulties in the youth justice system in England and Wales. This article summarises some of the findings from this investigation*

Children who end up in the youth justice system are three times more likely to have diagnosable mental health difficulties compared with those who do not<sup>1</sup>. One national study found that four out of every five people aged 16-20 in the youth justice system have signs of more than one significant mental health difficulty, including personality disorder, common or severe mental health problems and reliance on drug and alcohol use<sup>2</sup>.

Many also have a range of other difficulties which further hamper their ability to achieve their potential. Three quarters have significant speech and communication impairments<sup>3</sup> and 1 in 5 has a

learning disability<sup>4</sup>. Others are summarised below. These difficulties all too often remain undiagnosed throughout school careers and even by the time they move into secure custodial settings.

### The Youth Justice System population:

- Nearly half of young people felt that they had been addicted to a drug and 65% were using substances on a daily basis before entering custody<sup>5</sup>.
- Just under three quarters of young people in custody have been involved with, or in the care of, social services.
- 75% of young people in custody have lived with someone other than a parent at points in their lives, compared with 1.5% of children in the general population<sup>6</sup>.
- 2 out of 5 girls and young women, and 1 out of 4 boys, in custody report suffering violence at home<sup>7</sup>.
- 45% of young people in custody have been permanently excluded from school<sup>8</sup>.
- One in 10 girls and young women under the age of 18 in custody has been paid for sex<sup>9</sup>.
- 1 in 3 girls and young women in custody and 1 in 20 boys report having previously been sexually abused<sup>10</sup>.

Sainsbury Centre for Mental Health has been exploring the case for improving services for young people with mental health difficulties in the youth justice system through a Youth Justice Project, funded through a partnership with the Department of Health and the Youth Justice Board in England and Wales.

We have carried out a review of the international evidence in relation to effective practice with young people with mental health difficulties in the Youth Justice System (YJS).

<sup>1</sup> Hagell A (2002) Bright Futures – The Mental Health of Young Offenders: Working with vulnerable young people London: Mental Health Foundation.

<sup>2</sup> Lader D (2000) Psychiatric Morbidity Among Young Offenders in England and Wales London: Office for National Statistics.

<sup>3</sup> Bryan K (2004) Preliminary study of the prevalence of speech and language difficulties in young offenders. International Journal of Language and Communication Disorders, 39, 391-400 and Bryan et al (2007) Language and Communication difficulties in juvenile offenders. International Journal of Language and Communication Disorders,

<sup>4</sup> Chitsabesan, P., Kroll, L., Bailey, S., Kenning, C., Sneider, S., Macdonald, W. & Theodosiou, L. (2006). Mental health needs of young offenders in custody and in the community. British Journal of Psychiatry, 188: 534 - 540

<sup>5</sup> Galahad SMS Ltd (2004) Substance Misuse and the Juvenile Estate. Youth Justice Board

<sup>6</sup> Youth Justice Board (2007) Accommodation needs and experiences as cited in the Bromley Briefing (June 2008). Prison Reform Trust

<sup>7</sup> Ibid

<sup>8</sup> Youth Justice Board information as cited in the Bromley Briefing June 2008

<sup>9</sup> Ibid

<sup>10</sup> Ibid



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We have interviewed a range of people including Youth Offending Team (YOT) workers and health practitioners, forensic and generic child and adolescent mental health workers, parenting and multi systematic therapeutic workers, Crown Prosecutors, resettlement workers, police representatives, substance misuse workers, Children's Trust directors, health service commissioners, sentencers (magistrates and judges), mental health diversion scheme workers for adults, mental health and prison health care workers in secure custodial settings, young people and families. And we have observed proceedings in Youth Courts. This article summarises what we have found so far and how we are beginning work to find solutions to the problems we, and many others, have identified.

### **The current system**

The age of criminal responsibility in England is 10 years of age, although it is possible for those as young as 8 to come into contact with the Youth Offending Services through crime prevention activity targeting high risk groups or those identified as being involved in anti social behaviour. This crime prevention activity can include access to constructive activities, establishing acceptable behaviour contracts with the young person and their parents/carers, and setting up parenting orders to support change in the young person's behaviour.

At the age of 10, young people who offend are generally dealt with through formal criminal justice legislation. At this stage they can receive a reprimand or a final warning which means they do not go through the court system. Interventions at the pre court stage focus primarily on restorative justice and the consequences of offending behaviour for the victim. Proactive and systematic attempts are not generally made at this stage to identify and address young people's needs. If they continue to offend (and are over 10) they will be prosecuted and will pass through the court system.

Although many Youth Offending Teams (Yots) include health workers, the mental health expertise of these workers varies and they describe significant challenges in trying to get young people into local mental health or social care services, even after successfully identifying need. Young people with the most complex needs are often held by Yot health workers without the benefit of broader support from local mental health resources. In many cases, because of variable levels of awareness among general Youth Offending staff (and because early stage mental health difficulties among this age group tend not to be easy to identify), such vulnerabilities can remain unidentified or unaddressed until young people are assessed by specialist teams in custody. At the point of release from custody, prison based mental health workers

describe continuing challenges in linking young people back into mainstream mental health and social care.

Local Children's Trusts, established in 2006, hold broader responsibility for the well being of all young people in their local communities and for their achievement of their potential. But while links between Children's Trusts and Youth Offending Services are improving, once young people move into contact with Youth Offending Services, they tend to remain stuck in 'Youth Offending' silos and are unable to access broader support and health services for children. There is also the risk of young people living up to negative 'Young Offender' labels.

### **Intervening early**

The Government's National Service Framework for Children, Young People and Maternity Services sets out the standards which health and social care services are expected to meet for children and families by 2014<sup>1</sup>. These standards emphasise the need, among other things, for early intervention with children and young people with mental health difficulties. Screening for potential risk factors for mental health difficulties it emphasises, should occur as *early* as possible<sup>2</sup> and be followed up with non stigmatising support.

Early intervention is the keystone of any effective diversion strategy. For example, conduct disorder is the most common mental health problem in childhood. According to a survey by the Office for National Statistics, it affects 5.8% of all children in Great Britain between the ages of 5 and 16. Longitudinal studies suggest that conduct disorder persists into adulthood in about half of cases and is strongly predictive of criminal behaviour, substance misuse, poor educational and labour market performance and disrupted personal relationships.

Early years support has a massive impact on the costs of offending. The lifetime benefits of preventing conduct disorder amount to around £150,000 per case, two-thirds in costs relating to crime<sup>3</sup>. By comparison, the costs of early intervention are very low, ranging from £1,350 per child for group interventions and £6,000 for individualised interventions. Thus, early intervention needs a success rate of just 1 in 25 in preventing conduct disorder to be worth undertaking.

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<sup>1</sup> Department of Health (2004) The National Service Framework for Children, Young People and Maternity Services.

<sup>2</sup> Skowrya, K and Davidson Powell, S (2006) Juvenile Diversion: Programs for Justice-Involved Youth with Mental Health Disorders. National Center for Mental Health

<sup>3</sup> Friedli, L. & Parsonage, M. (2007). *Mental Health Promotion: Building an economic case*. Belfast: Northern Ireland Association for Mental Health. <http://www.niamh.co.uk/>



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In recent years there has been a growth in government-led initiatives to bolster early intervention for vulnerable young children and their families. Promising outcomes have emerged both from the work of primary mental health outreach nurses engaging with teenage mothers and from the work of Sure Start Children's Centres engaging with local vulnerable families<sup>4</sup>. The Youth Crime Action Plan<sup>5</sup> recently supported the development of Family Intervention Pilots for vulnerable young people at risk of offending, while the multi-systemic therapeutic approach<sup>6</sup> is being piloted by the Department for Children, Schools and Families for young people with emerging personality disorders.

The need for improved awareness among teachers of the mental health and psychological challenges faced by their pupils, and for services to support them, is also increasingly recognised. We need more systematic and non stigmatising screening of pupils for learning disabilities, speech and communication problems and mental health vulnerabilities such as Attention Deficit Hyperactivity Disorder and conduct disorders. There is also greater potential for working with groups who are at risk of poorer mental health (and other outcomes), such as the children of drug and alcohol using parents in contact with substance misuse services and the children of prisoners.

### **Dealing with the current challenge**

In the meantime, there is the challenge of dealing with the here and now. Too many young people who offend are not having their mental health and broader support needs identified until quite late on in their criminal 'careers'. The full range of support services for vulnerable children and families remains inaccessible to many young people in contact with Youth Offending Teams. They require effective inter-agency planning and working between children's services, the NHS and Youth Justice Services. Better and quicker responses are needed from specialist services when needs are identified. We also need improved information sharing across agencies and better co-ordination of interventions and support.

Support from Youth Offending Teams tends to be offered individually to the young person and does not always seek to engage with the wider health and social care network around them. Yet much of

the evidence suggests that the systems around the young person are crucial to stand a chance of influencing change<sup>7</sup>. Our findings indicate that to try to address some of these issues, we need an enhanced system to identify vulnerable young people and to support them into the full range of services they need at the point of entry into the youth justice system.

### **The need for diversion**

The term 'diversion' is often used to describe very different processes and outcomes. For example, diversion can mean diverting away from something (from prosecution, the criminal justice system or from custody) as well as towards something (treatment, support services, restorative justice etc). The definition we have used combines these two concepts. Its goals include<sup>8</sup>:

- Avoiding negative labelling and stigmatisation (particularly for children)
- Reducing recidivism
- Providing access to services and other forms of help
- Reducing costs.

Evidence of the effectiveness of mental health diversion schemes tends to be adult focused and is still underdeveloped, primarily due to a lack of consistency between schemes and limitations in research design. Studies tend to be descriptive and rarely assess services' effectiveness in reducing offending behaviour or improving mental health. However, where schemes are well run, research has found they can produce:

- reductions in days spent on remand<sup>9</sup> and in the time required to process cases through the court
- a reduction in the use of custody<sup>10</sup>
- a reduction in the number of young people entering the court system
- a reduction in the number of arrests<sup>11 12</sup>.

There is also some evidence of improvements in levels of homelessness, the uptake of services<sup>13</sup> and in other psychosocial outcomes<sup>14</sup>.

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<sup>7</sup> *ibid*

<sup>8</sup> Palmer, T. (1979). Juvenile diversion: When and for whom? *Youth Authority Quarterly*, 32, 14-20 and Palmer, T. & Lewis, R. V. (1980).

<sup>9</sup> Steadman and Naples (2005) "Assessing the effectiveness of jail diversion programs for persons with serious mental illness and co-occurring substance use disorders" *Behavioural Sciences and the Law* 23(2) 163-170.

<sup>10</sup> Lamberti et al (2001) "The Mentally Ill in Jails and Prisons: Towards an Integrated Model of Prevention" *Psychiatric Quarterly* 72(1) 63

<sup>11</sup> Cuellar, A, McReynolds, L, and Wasserman, G (2006) A Cure for Crime: can mental health treatment diversion reduce crime among youth produced for the Association of Public Policy Analysis and Management.

<sup>12</sup> James (2008) "Court Diversion in Perspective" *Australian and New Zealand Journal of Psychiatry*, 40:6, 529-538

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<sup>4</sup> National Evaluation of Surestart (2007) Understanding Variations amongst Surestart local Programmes. Report 024

<sup>5</sup> Her Majesty's Government (2008) Youth Crime Action Plan

<sup>6</sup> An evidence based approach which involves intensive work with the family and with the young person looking at all the systems surrounding the family which might hamper the child's progress. See Greenbaum, P., Foster-Johnson, L., & Petrila, A. (1996). Co-occurring addictive and mental disorders among adolescents: Prevalence research and future directions. *American Journal of Orthopsychiatry*, 66 (1).

### Youth Justice Liaison and Diversion (YJLD)

Effective diversion for young people with mental health and other difficulties, such as homelessness, speech and communication or substance misuse problems, requires that identification should take place proactively as early as possible at the point of entry into the Youth Justice System<sup>15</sup>.

Sainsbury Centre is now managing a pilot project in six areas of England to test a new model of youth justice liaison and diversion (YJLD). In each area, a 'triage' worker is funded and managed through a partnership between the Children's Trust, the Primary Care Trust and the Youth Offending Services. They will complete a brief screening of all young people passing through a police custody suite. Rather than trying to identify a single problem, such as a mental health difficulty, they will look at the whole person and their range of vulnerabilities, including risk factors such as academic failure, substance use and family crisis.

The worker may then arrange for further specialist timely assessment from mental health workers, funded through the same multi agency partnership. The partnership will also arrange for other 'immediate response' specialist assessments, for example focusing on drugs, alcohol or child protection concerns.

The triage and mental health worker will also liaise with the police and the Crown Prosecution Service to provide any information which may be relevant to plea, charge and disposal. Finally, they will link up young people and their families with a range of local services, which may include:

- Parenting support such as Family Nurse Partnerships, Family Intervention Projects, and Multisystemic therapy (MST)<sup>16</sup>
- Intensive fostering
- Behaviour and Education Support teams in schools
- Community outreach youth work
- Other Health and Social services
- Organisations involved in employment, training, mentoring and positive activities.
- Accommodation providers.

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<sup>13</sup> Trupin et al (2003) "Seattle's mental health courts: early indicators of effectiveness" International Journal of Law and Psychiatry 26: 33

<sup>14</sup> O'Keefe (2006) "The Brooklyn Mental Health Court Evaluation: Planning, Implementation, Courtroom Dynamics, and Participant Outcomes" Center for Court Innovation, September 2006.

<sup>15</sup> Skowrya et al (2006)

<sup>16</sup> DCSF(2008) Youth Taskforce Action Plan: Give respect, get respect; DCSF (2008) Youth Crime Action Plan; House of Commons (2007) Care Matters: Time for Change, White Paper.

### What will diversion achieve?

In some unusual cases, the Crown Prosecution Service and the police may not consider prosecution to be in the public interest after receiving information from the mental health practitioner. For example, a young person may be diverted away from the youth justice system altogether where they are assessed as ill at the time of the offence, if the offence is not serious and if a package of medication and intensive ongoing mental health support can be organised with a good chance of avoiding any further repeat of the offending behaviour. On other occasions, information from the mental health worker may help the police to assess the young person's capacity to understand the offence and the criminal justice process.

In the main, however, the aim of the YJLD will be to divert young people much earlier *within* the system towards packages of personalised and multi agency support designed to address their needs. These packages may supplement some of the restorative justice work completed at the cautioning stage, if the young person and their family consent to the help offered; or workers will have sourced and negotiated earlier a more personalised menu of care which can inform the Pre Sentence Report or later sentencing decisions. Most importantly, young people will not simply be in Youth Justice 'silos' unable to access broader community support. And the diversion partnership managing the scheme will reinforce its members' joint accountability for meeting young people's needs and contributing to safer local communities.

Where the decision is made that a young person should continue through the court, the mental health worker will have an important role in advising YOT report writers and sentencers about the need for any further assessment. By fulfilling this role, the mental health worker will help the court to speed up the production of formal psychiatric reports and improve their quality; thus improving the efficiency and reducing the costs of justice<sup>17</sup>.

Workers will liaise with bail support workers in the Youth Offending Teams as well as with mental health and health care staff in custodial secure settings. This will enable better exchange of relevant information about young people facing or on remand.

It is particularly important for diversion workers to monitor whether engagement with much needed services has been successful and to troubleshoot problems.

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<sup>17</sup> Sainsbury Centre for Mental Health, 2009. Diversion: A better way for criminal justice and mental health. London: Sainsbury Centre.

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Young people also value having a worker who is trustworthy, genuine, approachable, who is not office bound, who helps with practical problems and on occasion who actively supports them into services (rather than merely signposting where help is available).

Finally, it is vital that Youth Justice Liaison and Diversion schemes collect standardised data, including evidence such as what impact their activity has on linkage with services, the young person's progress, re-offending and school attendance. Our pilot schemes will be subject to a rigorous academic evaluation over their two-year timescale.

### **Conclusion**

Too many vulnerable young people are finding their way into the Youth Justice System. Once there, they cannot get the full range of support which might address destructive and self destructive behaviours.

We strongly support emerging government initiatives to strengthen very early intervention with vulnerable young children. Early intervention is likely to make an impact some way down the line. In the meantime, Sainsbury Centre sees the need for improved systems for identifying vulnerable young people at the very point of entry into the Youth Justice System and for supporting them into the full range of services that they need. Government departments have provided funding for a pilot, which began in January 2009, of this YJLD model in six areas in England. An independent evaluation will monitor the impact of the pilot.

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The link to the SCMH site which details where the pilot sites are:

[http://www.scmh.org.uk/news/2009\\_youth\\_justice\\_schemes.aspx](http://www.scmh.org.uk/news/2009_youth_justice_schemes.aspx)

## In care and in custody

Dr Di Hart



### In care and in custody

*The worst place for a kid to go is prison – they get abused, bullied, end up killing themselves. They might as well have left them at home in the first place.*

The above comment was made by a looked-after child<sup>1</sup> in prison. He felt there was little point in removing children<sup>2</sup> from abusive parents if their experiences in public care led to even worse outcomes – including imprisonment. This article will examine the links between being a child in care and a child in custody in England.

### Introduction: a dual approach

The child welfare and youth justice systems for children under the age of 18 have operated largely independently of each other since the implementation of the Crime and Disorder Act 1998. Children who are thought to be in need of protection are the responsibility of the government's Department for Children, Schools and Families (DCSF) and, at the local level, Children's Services Authorities<sup>3</sup>. If they are thought to be at risk of significant harm, their case may be brought to a Family Proceedings Court to determine whether they should be made the subject of a care order and placed in accommodation provided by children's services. Other children may be cared for in such

accommodation by agreement with their family (voluntarily accommodated). There are roughly 60,000 children looked after (looked after children) under these provisions at any one time and plans are made for them by childcare social workers employed by children's services. The main legislative framework for making decisions about their welfare is the Children Act 1989 and decisions must be based on the child's best interests. There is a single system for assessing and planning to meet the needs of any child with welfare needs called the Integrated Children's System.

Children who commit offences, and to some extent those thought to be at risk of offending in the future, are the responsibility of the Youth Justice Board (YJB). Until recently, the YJB was governed by the central government departments responsible for law and order: the Home Office and Ministry of Justice (MoJ). The decision was taken in 2007 that the YJB should be sponsored jointly by the DCSF and MoJ, in recognition that young offenders may also be children with unmet welfare needs. On a day to day basis, however, the systems and processes for responding to young offenders remain separate. Intervention will be organised by their local Youth Offending Team (YOT), containing a variety of professionals but whose primary task is to prevent offending and re-offending. They use a different assessment and planning tool, known as Asset, from their social work colleagues and it is designed to identify the risk factors in that child's life associated with offending. If a decision is taken to charge the child with an offence, the matter will be brought before the Youth Court. The case will be heard by magistrates specialising in criminal law, not child welfare legislation. They have a number of disposals available to them, including community or custodial sentences. There are just under 3000 children held in locked custodial facilities at any one time, about 85% of them in prisons.

Despite this separation, there is considerable overlap in the population of children who come to the attention of these agencies. We know that the risk factors associated with offending are similar to those for entry to the care system<sup>4</sup>.

<sup>1</sup> The Children Act 1989 describes children who are in the care of the state for welfare reasons as 'looked after'

<sup>2</sup> The term 'child' is used throughout to describe children and young people under the age of 18.

<sup>3</sup> Referred to as 'children's services' throughout the article.

<sup>4</sup> NACRO (2008) *Some facts about children and young people who offend* – 2006.



We also know that looked after children are twice as likely to be cautioned or convicted of an offence as their peers<sup>1</sup>, that about 12% of children known to YOTs are looked after<sup>2</sup> and approximately 40% of young people in custody have been in care at some point<sup>3</sup>. In theory, it should be easier to safeguard and promote the welfare of looked after children who enter custody because of existing involvement from children's services but this does not seem to be the reality. Mr Justice Munby has recently ruled that one children's services plan for a young person subject to a care order and in prison were 'little more than worthless'<sup>4</sup>.

Why is this the case? One problem is the confusion surrounding the care status of looked after children in prison. Whilst those on care orders remain 'in care', those who were voluntarily accommodated do not because children's services have not placed them there. Although there is an expectation that such children will continue to receive support and that children's services should be involved in planning for their release, hard pressed social workers and their managers may not see this as a priority. Even where the need for ongoing involvement is uncontested, the continuing separation of 'welfare' and 'justice' services creates practical difficulties for front line staff in fulfilling their responsibilities.

### Looked after inside project

In recognition of this, NCB were commissioned to consider the care planning system for looked after children and care leavers in custody. The aim of the project was to develop a model of good practice supported by guidance for social workers in children's services. Twelve case studies of looked after children in prison were undertaken so that the work would be informed by their views and experiences both whilst they were in custody and following release. The picture that emerged was one of fragmented planning and poor outcomes. Key themes were:

### The disappearance of children's services

This was a recurring theme described by both children and practitioners. Social workers' contact with the children during their time in custody was patchy and there was a perception by custodial and YOT staff that children's services sometimes

'heave a sigh of relief' when children go into prison because they are not responsible for them, at least for a while. Some of the social workers spoken to during the project felt under pressure from managers not to visit children in custody because of the time commitment and costs. Another barrier to retaining an active role was uncertainty about **how** to remain involved when a child is in an institution where the social worker has no control and little understanding about how it operates.

It was clear, however, that continuing involvement from children's services is essential. The children listed many people responsible for helping them but reserved their highest expectations for children's services, who are 'like your mum and your dad'. This led to a real sense of abandonment if their social worker didn't visit:

*I told him I wanted to see him – even just to say goodbye – but he hasn't come.*

Children's services must also remain involved because of their unique responsibility for providing resources. The primary aim of the youth justice system is to prevent offending, not to promote children's welfare, and YOT and custodial staff can never hope to provide the holistic support into adulthood that looked after children need.

### Fragmented plans

This need for ongoing involvement is not supported by the fact that there are two distinct planning systems with no formal links between them: the Integrated Children's system and the Sentence Planning system. Social workers and YOT workers talked about 'gatecrashing' or 'hijacking' each other's meetings rather than having a clear structure in which they could work together. This confusion was evident to the children: as one boy said of the planning systems 'It's all a mess ain't it?' (isn't it).

The usual care-planning process for looked after children was thrown into confusion by imprisonment and normal review meetings often didn't take place. Sentence planning meetings did take place but social workers were either not involved or unclear about their role. For example, one social worker said: 'When I went to a meeting, I didn't really know what I was there for.' This fragmentation led to gaps in the services available to the young people both in prison and on release because of a lack of clarity about who should be providing what. Money was a particularly contentious issue during sentence with some authorities withdrawing all the financial support that looked after children normally receive, such as clothing or birthday grants, whilst others continued to provide it or saved allowances until release.

<sup>1</sup> DCSF (2008) *Outcome indicators for looked after children: 12 months to 30 September 2007- England*.

<sup>2</sup> Healthcare Commission & HMI Probation (2009) *Actions speak louder: a second review of healthcare in the community for young people who offend*.

<sup>3</sup> Hazel, N., Hagell, A., Liddle, M., Archer, D., Grimshaw, R., and King, J. (2002) *Detention and Training: Assessment of the Detention and Training Order and its Impact on the Secure estate Across England and Wales*. London: Youth Justice Board.

<sup>4</sup> R (J) v Caerphilly County Borough Council. 11 April 2005.

Perhaps the biggest problem caused by the lack of children's services involvement in planning is the impact this has on the child's resettlement into the community after release. There was widespread consensus about the factors that would improve the children's outcomes: suitable accommodation and constructive activities to keep them occupied being top of the list. Yet there were real problems in achieving these, with some plans containing vague statements of intent that these were 'to be arranged'. The most specific aspects of release plans tended to be those relating to surveillance, such as arrangements for electronic tagging and reporting to the YOT, rather than the support services that the child would be offered.

*Imbalance between support and monitoring*

Many of the children got into difficulties shortly after release. Only two had returned to their previous placement: the rest had to adapt to new living arrangements or negotiated a stay with family or friends. Within three months the majority of placements had broken down, four children had returned to custody, others had re-offended and the promised education or employment opportunities had not materialised. The children with the most rigorous surveillance seemed to struggle the most: electronic tags were cut off and reporting arrangements breached, with the risk that they could be returned to custody. Once the young people got a sense that they might be 'breached' they tended to give up. One boy said:

*I cut the tag off – I was keeping to it for 3 or 4 weeks and he told me I was breached so I thought there's no point and cut it off. So I thought I might as well go back to crime – robbing.*

One factor that did make a positive difference was a feeling of being supported as well as monitored. Some children described relationships with individuals who were able to convey that they cared what happened to them and would 'fight their corner'. This was demonstrated partly by practitioners who 'actually did something', like accompanying the child to appointments at the job centre but one boy valued his volunteer mentor simply because she regularly telephoned him just to ask how he was. Another girl mentioned the fact that her social worker had sent a postcard from her holiday as a sign that she was interested in her. Although some social workers were very active following the child's release, others continued to defer to the YOT even though they would have ongoing responsibility long beyond the end of the youth justice order. The following anonymised case example illustrates some of the issues.

**Matthew** was subject to a full care order when he went into prison but his social worker left and his case was still unallocated when plans were being made for his release. It was decided that Matthew would go and live with his sister and would be subject to an intensive programme of supervision and monitoring via an electronic tag. It was thought that this would provide him with the structured activity he needed, including basic education and vocational training. There was no specified role for children's services other than to provide financial support. Matthew says that he found it difficult to understand the complicated timetable required by his programme and could never work out where he was meant to be, missing some sessions. The promised training didn't materialise and he got bored and discouraged. Children's services gave him some money but he still had no allocated worker. Tensions arose with his sister and her boyfriend and he decided not to stay there. His YOT worker warned him he was breaching the conditions of his release and would have to return to court. Matthew gave up hope of surviving in the community so cut off his tag, used heroin and committed several robberies. He was returned to prison within 6 weeks of release for the breach of his previous sentence and for new offences. He was nearly 18 but was not aware of any arrangements for ongoing support from children's services.

**What are the implications for policy and practice?**

There are a number of challenges to be overcome if looked after children who commit offences are to receive a more effective service, particularly those who enter custody.

Firstly, there needs to be greater understanding of the reasons why looked after children become involved in the youth justice system.

- Are looked after children more likely to commit offences and, if so, to what extent is their criminality caused by the care system?
- Are looked after children 'criminalised' by receiving a more punitive response from carers, the local authority and the criminal justice system than their peers?
- Is this a troubled population of young people who commit crimes because of damaging early experiences but who may be diverted from offending by good care within the looked after system?

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There is no simple answer to these questions: the reality is likely to lie in the interplay between different aspects of an individual child's experiences<sup>5</sup>. Once these pathways are better understood, more can be done to divert children from criminalisation.

Secondly, a system is needed that enables children's and youth justice services to work together from the point a looked after child begins to offend through to rehabilitation after a custodial sentence. This would require agencies to share information, co-ordinate plans and identify clear roles at each stage of the child's pathway through services. Rather than handing responsibility for the child backwards and forwards, there would be an acknowledgement that all agencies have a part to play. The lessons from the looked after inside project have been used to develop a model of joint practice that could enable such a shared approach. The title for these materials was suggested by one of the children participating in the project: *Tell them not to forget about us*.<sup>6</sup> One positive step has been the introduction of childcare social workers within prisons for children under the age of 18.

They are able to act as a bridge between agencies and have brought valuable expertise about children's services into establishments focused on criminality, although their success has been marred by ongoing wrangling about who is responsible for funding the posts. It is to be hoped that similar initiatives to close the gap will follow.

A more fundamental question is why the child welfare and youth justice systems are so separate in England, given the fact that they are often dealing with the same children. Many practitioners hold the view that, if the child welfare system were to fulfil its purpose, to safeguard and promote the welfare of children in need, then it would also be preventing offending and a distinct youth justice system would become redundant. Perhaps it is the political climate that requires them to remain separate in order to demonstrate that government is 'tough on crime'.

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<sup>5</sup> Darker, I., Ward, H., and Caulfield, L. (2008) An Analysis of Offending by Young People Looked After by Local Authorities. *Youth Justice*, 8 (2), 134-148.

<sup>6</sup> NCB (2006) *Tell them not to forget about us: a guide to practice with looked after children in custody*

## Imprisonment and the consequences for families —New Zealand

Judge David Carruthers



*"A nation should be judged not by how it treats its highest citizens, but how it treats its lowest ones."*  
Nelson Mandela

I attended a conference recently on the "Causes of Crime". At the end of the conference, we were presented with a challenge by the New Zealand Principal Youth Court Judge Andrew Becroft. He referred to the evils of past years, involving stocks, the gallows, and hanging, drawing and quartering. He asked "what is it that we do today that subsequent generations will look upon with equal horror?"

I think there is one answer. It is imprisonment and the way we are presently using it. There are terrible unintended consequences from the way in which imprisonment is used by western nations generally at the present time. I am confident that one day people will look back with horror at the way in which we have systematically locked up in one small location hundreds, sometimes, thousands of like-minded, mostly young men, largely from indigenous and ethnic minorities in the name of safety and then have returned them to the communities of our country, less minded to be contributing members of a civil society and more minded to be defiant, disruptive, abusive and violent.

I chair the New Zealand Parole Board. The purpose of any parole system is to manage the safe release of a prisoner from prison during the term of his or her imprisonment with the right of

recall to prison if there is further offending or the threat of such. The international research shows that such a managed release with the right of recall, is between two and three times more likely to be successful in preventing re-offending than automatic release at the expiry of a set term.

There are other advantages from a well resourced parole service. One further contribution is the way in which the incentive of parole can have a beneficial effect on conduct in prison. Yet another is the way in which the incentive of parole can encourage prisoners to take part in well run, well researched and well validated behaviour changing programmes i.e. child sex offenders programmes with a consequent desirable result in terms of community safety.

Yet another desirable consequence is the saving of money. It is now estimated that each New Zealand prisoner costs about \$90,000 per annum to maintain in prison. As New Zealand has an appallingly high adult imprisonment rate (contrasted with very low incarceration rates for young people) the costs are enormous. There is much more that all of us here would wish to do with our national treasure than use it simply to lock up young men.

Then there is a final contribution which is never emphasised enough. In New Zealand, it has a particular cultural flavour. Over 51% of prisoners are Maori compared with Maori representing some 15% of the total population. The prognosis for children of prisoners is well researched and well-known. The outlook is dismal. If parole can act to ameliorate that statistic in some way, then again it is a significant contribution to a civil society.

And it is this last which I want to concentrate on in this brief article.

As I write this, the New Zealand prison population is hovering around the 8,000 inmate figure.

In very rough terms, one-third of these are on remand waiting trial – one-third are short term prisoners and one-third are long term prisoners. The short term prisoners may be serving anything from one month or a few weeks in prison to two years. The overall rate of New Zealand adults in prison is extremely high – the second highest in the Organisation for Economic and Cooperation and Development (OECD). It is higher than the United Kingdom, Australia and Canada. But, none of us can be proud of what we are doing. Only some of our European cousins can boast of



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that and I notice that even there the figures are rising also.

It is estimated that next year, approximately 9,000 prisoners will be released back into communities of New Zealand. For the most part, these will be prisoners who have served a short term of imprisonment as a result of more minor offending. Some will be remand prisoners who have been found not guilty on the charges and returned accordingly.

Will any of them be the better for their experience in prison?

And what of the families to which they return? When they return as caregivers, as mothers or fathers, as family members, uncles and aunts, grandparents, cousins and so forth, will they be more loving, more able to assist their young people grow up, more mature, more able to cope in a modern world? Will they have received the skills whilst in prison to live better lives and to contribute towards a more peaceful society?

The answers are self-evident.

If they have been young prisoners will they have received their entitlement to education while in prison? In New Zealand, there are some 560 prisoners between 15 and 19 years of age. These are all theoretically of school age, yet few of them are receiving their education entitlement. Education as a major protective factor in preventing offending is internationally recognised and accepted.

There is very good evidence about the prognosis for young people who have an absent parent in prison. Again, our Principal Youth Court Judge Andrew Becroft has been outspoken about this. There is no doubt where many of these young fathers are. Will they be better fathers when they return from prison?

And are they impossible to educate these hard to reach at risk students? Not according to Mrs Susan Baragwanath, now a member of the New Zealand Parole Board, but famous here as the founder of He Huarahi Tamariki, a second chance school for teenage mothers. She says her experience is that *“young mothers and some young fathers almost all with disadvantages equivalent to those faced by young prisoners, found untapped talents and have gone on to find success and security in the workforce. Now, over thirty such schools have been established on the model in New Zealand with similar success.”*

Very often, it is correct to say that the real punishment is often borne not by the prisoner himself, but by the family of the prisoner. Just as the victims of the crime for which an offender is imprisoned will sometimes continue to re-live their victimisation again and again so families of prisoners also suffer repeatedly.

I need no reminding of this sad fact. Everyday I receive heartfelt pleas for release from both prisoners and by members of the families pointing out the desperate circumstances of those left to fend for themselves in the often harsh environment of daily life. Particularly this is so of prisoners who are foreign nationals from countries where there is no other support available from Government; the family alone carries the burden. The stories of hardship in other countries are horrific. But even in our own lovely country, the children of prisoners suffer with the imprisonment of the care-giver and principal breadwinner.

An estimate by the thoughtful New Zealand Non Government Organisation, “Rethinking Crime and Punishment”, estimates that ten thousand New Zealand children are affected by having a parent in prison. There are no official statistics collected so this is an estimate only. In the United States of America, it is estimated that one child in fifty has a parent in prison.

It is clear from international research that children of prisoners are between six and seven times more likely to become prisoners themselves than the children of non-prisoners.

Verna McFelin, Chief Executive of PILLARS a Non Government Organisation, which has a long history of operating prevention programmes serving children with a parent in prison, talks about the experiences of children. *“The children of prisoners have committed no crime, but the penalty they are forced to pay is steep. They forfeit too often, much of what matters to them; their homes, their safety, their public status and their private self image – their primary source of comfort and affection. They are innocent victims, their lives are filled with instability and uncertainty and damaged by stigma and shame”.*

This suffering can be at many different levels and in many different ways.

Here is a more recent example. There is legislation in force in New Zealand which allows mothers to have their young babies in prison, at the present time for up to nine months. At that point, the baby is required to be removed from the mother. That is a strict and absolute requirement regardless of whether the baby is being breast fed or not.

In 2008, an amendment was passed into law with the unanimous support of all parties in the New Zealand Parliament. The Act extends the period of time during which some mothers can keep their babies with them in prison up to 24 months.

The Act has not come into force. It is to do so when facilities are available and they are not yet available. The present law requires babies to be removed from their mother at nine months. There seems to be unanimity amongst psychologists dealing in the important field of bonding and

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separation issues for young children that this can be critical psychological and development stage.

Dr Jan Pryor, Director of Roy McKenzie Centre for the Study of Families at Victoria University in Wellington, has written about the psychological impact of such separations – *“In sum, children are well-served if their early social environment fosters stable and responsive care-giving. This gives them the best chance of establishing secure relationships, a strong sense of wellbeing in themselves and, importantly, a framework that guides them towards positive social relationships. While those who form insecure relationships in early life are not doomed to have dysfunctional relationships for the rest of their lives, and secure attachments are not by themselves a life-long guarantee of positive relationships and self esteem, lack of attachment or insecure attachment styles pose risk factors for social development. Furthermore, the working models of self and others that are established by the end of the first year become decreasingly susceptible to modification with age.”*

I conclude then this brief article by returning to the unintended consequences of imprisonment.

There is no doubt that families of prisoners suffer in an uneven way when their family member is incarcerated. The rates of imprisonment in most western countries have now reached worrying proportions. There is good evidence of the effect of imprisonment, not only on family members, but on other institutions which form the essential structure of all civil societies.

Again, I turn to the observations of “Rethinking Crime and Punishment”. Their comments are pertinent. *“The argument goes like this – social institutions such as families, communities, education systems and labour markets provide and enforce norms of behaviour that keep most of us out of criminal activities. When the ties to these institutions are weakened or lost, individuals and families become more marginalised, which*

*creates higher levels of violence and crime...Urban, low socio-economic communities are extremely vulnerable in this regard. .... Remaining adults are less effective in controlling children, and single mothers are left to raise children and link with new, potentially unstable partners. Imprisonment reduces connection to labour market and promotes family disruption and family violence.”*

All of this is avoidable. It is avoidable if we as societies and communities are careful about those who are required to be in prison for our own security and safety and who cannot be dealt with appropriately in more effective ways. It is avoidable if we take the extra steps to ensure that those who must go to prison, receive assistance with their many problems and are returned with community support back to their communities.

In Singapore, the world class Yellow Ribbon Project achieves just this in terms of giving prisoners a second chance of being contributors to society and to their families. The challenge for us all is to do the same and to work together to provide the more inclusive and the more gentle societies which we all long for.

His Honour Judge Carruthers\* was Principal Youth Court and Chief District Judge for New Zealand. He is renowned as an advocate for alternative dispute resolution and supporter of restorative and therapeutic justice initiatives. He holds that it is better to involve communities directly in the criminal justice system in order to obtain better outcomes which reduce crime and acknowledge victims' concerns. He was appointed a Distinguished Companion of the New Zealand Order of Merit in 2005

Judge Carruthers is currently Chairman of the New Zealand Parole Board

April 2009

**The Justice System for Children in Bangladesh in the light of International Conventions and Treaties**

**Justice M. Imman Ali**



**Introduction**

In the realms of law it was not until the middle of the nineteenth century that it dawned on the human race that children are children and not smaller versions of adults. Legislatures across the globe now realise the need to have special provisions to cater for the needs of children. It is now universally accepted that children are a vulnerable group, being physically weaker and mentally immature, whose interests need to be protected.

Specific laws for the protection of children were enacted in most developed countries in the early twentieth century. Under British rule we had the benefit of the Bengal Children Act, 1922. Since independence we have gone one step further and enacted the Children Act, 1974 (the Act), which is an all embracing statute, beneficial to children and promulgated as a direct manifestation of the Constitution<sup>1</sup>. It covers the rights of children in all aspects of their lives and well-being—including neglect, victimhood or allegations of criminal offences. Hence we are emboldened to argue that the child's fundamental right in Bangladesh is to be dealt with in accordance with our Children Act.

The philosophy behind laws relating to children is that they are to be nurtured and guided. If they deviate from the norms as perceived by society in general, or if they become vulnerable due to family circumstances, or if they become victims of crimes perpetrated upon them, then it becomes their inalienable right to get protection and succour by every means so that they can come back to the fold.

**International developments**

Over the last century many International Conventions and Treaties have laid down norms and principles to be applied, giving directives, recommendations and suggestions—

- Geneva Declaration of the Rights of the Child, 1924;
- Universal Declaration of Human Rights, 1948;
- Declaration of the Rights of the Child, 1959;
- International Covenant on Civil and Political Rights (ICCPR) 1966;
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) adopted by General Assembly resolution 40/33 of 29 November 1985;
- The Convention on the Rights of the Child, 1989 (also referred to as UNCRC or CRC);
- United Nations Standard Minimum Rules for Non-Custodial Measures, 1990 (the Tokyo Rules) adopted by General Assembly resolution 45/110 14 December 1990;
- United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (the Riyadh Guidelines) adopted and proclaimed by General Assembly resolution 45/112 of 14 December 1990;
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 adopted by General Assembly resolution 45/113 14 December 1990; and
- Guidelines for Action on Children in the Criminal Justice System, recommended by the Economic and Social Council, resolution 1997/30 of 21 July 1997.

Needless to say, the signatories to the conventions/treaties are bound to apply their suggestions or enact national laws in conformity with them.

<sup>1</sup> Article 28(4) in Part III (Fundamental Rights).

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The underlying theme of the treaties is that children are not born criminals or destitute; they find themselves before the law-enforcing agencies and the Courts due to the failure of their parents/guardians—either as a result of economic constraints or excesses—to provide surroundings congenial to their proper upbringing. A secondary liability falls upon the State to provide the facilities for their future so that they become an asset to society rather than a liability. Children are an asset to be nurtured and cherished. Given a chance they may become tomorrow's leaders, whereas without care they will become thieves and vagabonds—an uncontrollable menace.

### **The Bangladesh Children Act, 1974<sup>2</sup>**

The Act deals with three broad categories of children who are in need of protection:

- delinquent children—those who have come into conflict with the law;
- neglected children—those who have no parent or guardian or are uncared for in spite of having them; and
- victim children—those who come before the law due to some unlawful act perpetrated upon them.

### **Delinquent Children**

The UNCRC provides a large body of rules which are bound to be followed by signatory States. The following articles are relevant, particularly with regard to children who come into conflict with the law:

- Art. 40(3)(a)—states to establish law setting a minimum age below which a child is not capable of committing an offence;
- Art. 1—definition of child to include any human being below the age of 18 years;
- Art. 37(a)—neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age; and
- Art 37(b)—detention or imprisonment must be used as a last resort and for the shortest appropriate period.

Sections 82 and 83 of our Penal Code have been duly amended, incorporating the provisions with regard to age of criminal responsibility.

The Children Act defines a child as one under sixteen years of age,<sup>3</sup> whereas in many countries,

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<sup>2</sup> Act No. XXXIX of 1974—an Act to consolidate and amend the law relating to the custody, protection and treatment of children and trial and punishment of youthful offenders.

<sup>3</sup> Section 2(f) "Child" means a person under the age of sixteen years, and when used with reference to a child sent to a certified institute or approved home or committed by a Court to the custody of a relative or other fit person means that child during the whole period of her/his detention notwithstanding that he may have attained the age of sixteen years during that period.

(n) "youthful offender" means any child who has been found to have committed an offence.

following the UNCRC, the age has been raised to eighteen<sup>4</sup>. It has been observed in a recent judgment of the High Court Division that Bangladesh, which ratified the UNCRC in August 1990, is duty bound to reflect the provisions contained in the various articles of the UNCRC in our national laws<sup>5</sup>.

### **Duty of the Police**

Section 13 of the Act provides that when a child is arrested and brought to the police station, the officer-in-charge shall forthwith inform the parent or guardian.

Section 50 provides for the submission of information to a Probation Officer immediately after the arrest of a child. The Probation Officer will thus be able to proceed forthwith in obtaining information regarding the child's antecedents and family history and other material circumstances likely to assist the Court in making its order.

Section 48 provides that, where a person apparently under sixteen years of age is arrested for a non-bailable offence, the officer-in-charge of the police station may release him on bail. If the child is not released then section 49 provides for him to be detained in a remand home or a place of safety until he can be brought before a Court.

### **Duty of the Probation Officer**

The pivotal role in the justice delivery system concerning children is played by the Probation Officer<sup>6</sup>. Essentially s/he is appointed for the purpose of assisting the Court to gather information regarding the background of the child—whether delinquent, neglected or victim—in order to enable the Court to secure proper care and protection of the child by parent, guardian, relation or any other fit person and to pass any other order which is in the best interests of the child.

### **Duty of the Court**

Apart from checking that the other agencies—Police and Probation Officer—have acted properly in dealing with the youthful offender, if he/she appears to be a child, section 66 of the Act casts a duty on the Court to make inquiries to ascertain her/his age<sup>7</sup>. One may venture to add that, even if it does not appear to the Court that the person is a child, if the person claims to be a child, then the same procedure must be followed. The person must be given the opportunity to prove any claim to benefits under the law—justice must be seen to have been done.

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<sup>4</sup> For example in India: *The Juvenile Justice (Care and Protection of Children) Act, 2000*.

<sup>5</sup> See *The State v Md. Roushan Mondal @ Hashem*, 26 BLD 549

<sup>6</sup> The definition of "Probation Officer" is in section 2.(l) of the Act and the provisions regarding appointment and duties in section 31.

<sup>7</sup> Any order passed under this provision would be an appealable order under section 76 of the Act.



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Section 6 of the Act categorically forbids joint trial of any child with an adult. In this regard we stand ahead of some developed countries where, for certain serious offences, joint trial is allowed. In my humble estimation, joint trial militates against one of the most important themes of the international instruments concerning children—to screen and protect children from exposure to other adult accused and from exposure to the rigours of criminal trial, stigma, negative and damaging publicity etc. In the case of a serious offence triable only by a Court of Sessions, section 5(3) provides that the case shall be transferred to the Court of Session for trial and section 8 provides for a separate trial of adults with the case(s) of the child(ren) being transferred to a Juvenile Court.

### **During Trial**

The essential element of the trial<sup>8</sup> is that the child shall not be exposed to the atmosphere of a criminal trial with all the grim and awesome face of officialdom and courtroom paraphernalia. The Rules provide specifically that the atmosphere must be home-like and there should not be a close police guard. The child must be put at ease, keeping her/him in the company of a relative, friend or Probation Officer, giving assurance that all efforts will be made to help her/him.

The Court must ensure absence of outsiders, the presence of parent/guardian and must prohibit publicity<sup>9</sup>. The Court may also dispense with the presence of the child under section 11. The Rules also enjoin expeditious trial.

The Court is at liberty to put questions to the child in order to get a full picture of the child's background. In order to decide what would be in the best interests of the child, it shall also take into account all the facts concerning the child as well as the report of the Probation Officer. Where a child is found to have committed an offence, however, section 15 requires these facts to be taken into consideration **after** the Court has recorded a finding against him to that effect.

### **Decision of the Court**

The goal of the international instruments is that States should formulate laws and sanctions with a view to reformation and rehabilitation of the child. Hence there is directive not to 'punish' any child. And indeed the word 'punishment' appears only once in our Children Act—to specify what punishment may **not** be inflicted upon a child.

The aim, purport and philosophy of the laws relating to children are all the more apparent from section 71, which provides that the words 'conviction' and 'sentenced' shall cease to be used in relation to children or youthful offenders dealt with under the Act.

Rule 4(5) provides how the Court is to deal with the child upon finding him guilty. The wording of the order passed by the Court often speaks a volume about the learned trial Judge's understanding of the requirements of the laws relating to children. The sentence passed is often indicative of the mechanical way in which a trial involving children has been held and decided.

One cannot overemphasise UNCRC Art 37(b)—detention or imprisonment must be used as a last resort and for the shortest appropriate period.

The law circumscribes the mode of punishment which may be awarded upon finding a child guilty. Section 51 provides that no child shall be sentenced to death, imprisonment for life<sup>10</sup> or imprisonment.

Although in certain cases, imprisonment may be awarded, it is humbly suggested that in the context of Bangladesh, where there are no facilities for any separate prison wings for children, and in view of section 51(2):

a youthful offender sentenced to imprisonment shall not be allowed to associate with adult prisoners.

incarceration in jail is not an alternative. The child may be detained in another suitable place, namely any certified institute.

Moreover, section 52 makes it clear that even in cases of serious offences carrying the death penalty or imprisonment, the Court may order the child to be committed to a certified institute for a period not less than two and not more than ten years, but in any case not extending beyond the time when the child attains the age of eighteen years.

In these circumstances one must keep in view the fact that the aim of the law is to bring the deviant child back to a way of life considered by society as acceptable and normal. The purport of the law is to give the child the benefit of the system to assist him in life by providing him with education and training and to otherwise rehabilitate him. To this end, the law provides suitable means for telling the child that what s/he did is not right and should not be repeated. Hence the more lax regime provided by section 53 and Rule 12.

<sup>8</sup> The place and mode of trial is described in Section 7 of the Act

<sup>9</sup> Sections 9, 10, 12, 13 and 17

<sup>10</sup> Originally 'transportation'. Amended in the Penal Code by Ordinance No. XLI of 1985

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The aim of the law is also to involve the parent/guardian in the proper upbringing of the child. Hence the requirement for their presence in Court during the trial and provision under section 62 for contribution towards the maintenance of the child in a certified institute or approved home. In addition—where a child is convicted of an offence punishable with a fine—there is power under section 54 to order the fine to be paid by the parent or guardian of the child.

### Issues concerning age

The state of the law as it stands is that the relevant age is the age of the offender at commencement of the trial, i.e. framing of charge<sup>1</sup>. However, it may be pointed out, with respect, that in the case of *Mona*, the Court was ill-informed about the purpose and purport of the legislation concerning children. Moreover the point in issue in that case was with regard to joint trial with an adult and the appellant was not able to prove her/his age with any materials.

Arguably the relevant date should be the date of commission of the offence, otherwise the purpose of the CRC would be defeated. The Supreme Court of India has settled the issue thus<sup>2</sup>:

‘Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing *mens rea* as in the case of an adult. This being the intention of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child.’

We have suggested<sup>3</sup> that—being signatories to the UNCRC—Bangladesh is obliged to formulate laws in conformity with the provisions of the Convention. We also suggested that the anomalies, such as the relevance of age at the time of the commission of the offence and exclusive jurisdiction of the Juvenile Court to deal with all matters concerning children, could be ironed out.

Another most pertinent point has often been raised as to what happens when the child reaches her/his 18th birthday having undergone only a part of any sentence awarded. The law appears to be silent. It would be illogical to suggest that the person who was all along treated as a youthful offender should be sent to jail to serve out her/his sentence. This would again undermine the philosophy, aim and purport of the legislation

concerning children. The whole scheme of the process of trial and procedure is based on the foundation that when the deviant act was committed, the child was not mature and acted in ignorance of the result of her/his action.

### Neglected or destitute Children

Although the numbers of neglected or destitute children must be huge, we do not see any cases brought to the Courts. A child who falls within any of the categories mentioned in the Act is to be brought before a Juvenile Court<sup>4</sup> by either Police or the Probation Officer. The Act sets out the duties and powers of the Police and the Probation Officer on an equal footing<sup>5</sup>, although surprisingly there is no duty on the Police to inform the Probation Officer. However, I would suggest that it must be read into the scheme of the Act since the Probation Officer is on the same footing as the Police; and the Court is liable to pass any order in respect of a neglected/destitute child upon inquiry and after receiving the report of a Probation Officer, whose duty extends to all three categories of children covered by the Act.

### Victim Children

Neither do we see many cases of victim children referred to the Juvenile Court. On the contrary, we have seen cases of failure of the trial Court concerned to refer any victim child to the appropriate Court in accordance with the provisions of the Act<sup>6</sup>. Under section 43, on the complaint of any person, the Court has power to deal with a girl under the age of sixteen who is exposed to the risk of seduction or prostitution. Also the Court has power to issue a warrant to search for any child against whom it is suspected that an offence has been or is being committed<sup>7</sup>. Thereafter the Court may pass an order to detain the victim in safe custody. In addition the Court has power under section 55 to deal with the child and to pass any appropriate order until the institution of proceedings against the offender before an appropriate Court. At the time of the trial of that offender that Court shall direct the child (victim) to be produced before a Juvenile Court<sup>8</sup>.

<sup>4</sup> The Court's powers to deal with neglected/destitute children are derived from section 5 and section 32(2). The provisions of sections 7(1), 9, 10, 11, 12, 13 (1) (3) (4) and (5), 14, 15, 16, 17 and 18 are equally applicable.

<sup>5</sup> In Part V, section 32(1).

<sup>6</sup> Offences against children are enumerated under Part VI of the Act, designated as cognizable offences. Under section 5 of the Act, the Juvenile Court is precluded from trying any of these offences where the accused is an adult.

<sup>7</sup> Section 61 of the Act

<sup>8</sup> Section 57 of the Act

<sup>1</sup> held in *Mona & Zillur Rahman vs State*, 23 BLD (AD) 187.

<sup>2</sup> *Pratap Singh v. State of Jharkhand and another*, 2005 (3) SCC 551.

<sup>3</sup> in the *Roushan Mondal* case.

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The Juvenile Court will then pass the necessary order in respect of the victim<sup>1</sup>. In reality this procedure does not appear to be within the knowledge of the Courts trying the offenders. The victim is often sent to 'safe custody', sometimes to prison, but not referred to the Juvenile Court, as required by law. A proviso in section 58 allows the Court to let the child remain with her/his parent or guardian, if fit and capable of exercising proper care, control and protection, but this provision is often overlooked.

### Nomenclature of the Court dealing with children

It matters little by what name the 'justice-provider' is known. But our Children Act deals with children who are destitute, neglected and vulnerable to cruelty and abuse, as well as delinquent children and is therefore concerned with children of every age. I would suggest therefore use of a more neutral term—such as 'Children's Justice Panel' or 'Children's Justice Board' or even 'Children's Court'—in order to encompass the non-delinquent children whom the Act also seeks to protect. Suffice to say, the term 'Juvenile Court' is felt to be not appropriate.

### Conclusion

A more localised and less formalistic system of 'Children's Justice Panel'—as in Scotland, for example—might be considered in the future. The delivery of justice to children depends crucially on a uniformity of attitude towards them—to act for their benefit and well-being. The Children Act, 1974 is an all-encompassing piece of legislation, well structured to the needs of children who find themselves in need of protection from the law. The international instruments referred to in this article all enjoin the various actors to keep the welfare of the child paramount. Many have advocated that upon reaching the conclusion that the child has violated the law, s/he is not to be branded a 'delinquent child' or a 'wayward child' or a 'juvenile delinquent'—it should merely be adjudged that the child is in need of the care and protection of the State.

I feel that it is our bounden duty to protect and nurture our children for our own sakes. If they are guided in the proper path, they become good citizens and an asset for the nation. If their nature and character is allowed to be contaminated and degenerated then they will become a liability on the State and a menace to society, endangering the peace and tranquillity of the general citizenry. In a case in the High Court Division<sup>2</sup>, presided over by the author, it was observed in relation to youthful offenders:

'In the event that a child or juvenile does come into conflict with the law, then the aim is to

provide a system of justice which is 'child-friendly' and which does not leave any psychological scar or stigma on the child, and, on the contrary, prepares him for a fruitful future.

The state or the crown, as the case may be, stands *in loco parentis* and through the 'court' ensures that the unlawful activity of the child does not go unpunished and at the same time that the child is not exposed to the rigours of the criminal justice system with all its awe-inspiring paraphernalia and the stigma of criminality at the conclusion of the proceedings leading to a finding of guilt.'

The Supreme Court of India has observed<sup>3</sup>

'If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today's children will be the leaders of tomorrow who will hold the country's banner high and maintain the prestige of the Nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the government of the day.'

A similar observation may be made in respect of all children who are brought before the authorities. They are meek and vulnerable and in need of protection from all who come across them. Their behaviour at a moment of indiscretion or the unfortunate situation in which they find themselves are not of their own making, but they are the victims of our failure, either as parents or those who stand *in loco parentis*. Countries all over the world are striving to give children all the benefits of systems evolved to help children in need. Let us not deny them their inalienable right to protection, nurturing and development into worthy citizens.

I say finally: a sensitised team of players in the children's justice arena, including Police, Probation, Judiciary, the personnel running the Approved Homes and Certified Institutes, will bode well for the future of our children in need of protection.

LET ALL OUR CHILDREN HAVE A CHANCE—  
WE OWE IT TO THEM.

**Justice M. Imman Ali\*** sits in the High Court Division of the Supreme Court of Bangladesh. He serves on the IAYFJM's Ethics Committee

<sup>1</sup> under sections 58, 59 or 60.

<sup>2</sup> Roushan Modal

<sup>3</sup> in *Sheela Barse v. Secretary, Children's Aid Society and others*, 1987 (3) SCC 50.

## Juvenile Justice in Mexico



## Magistrate Martha Camargo Sanchez

Finally, after many years and with great effort, a specialised system of justice has been introduced for our young people in Mexico. I stress that a great deal of effort was involved, because young people had not hitherto been recognised in our legal framework. Although a specialised court for juvenile offenders was first established in San Luis Potosi in 1923, it was not until 1964 that the legal position of young people was established at the constitutional level by an amendment to article 18 of the Supreme Law.

Moreover, although Mexico ratified the UN Convention on the Rights of the Child on 21 September 1990, a key feature of the Convention—assigning juvenile justice to the judicial authorities—did not take effect until 12 March 2006, following a final amendment to article 18. The reform placed a duty on both the Federation and the 31 States and Federal District to acknowledge, guarantee and protect the rights of young people established in the Federal Constitution and various laws and international treaties. These rights acknowledge adolescents' status as developing human beings and eliminate the penal concept from juvenile justice. As a result, it has been necessary to establish completely different approaches to juvenile and adult justice, with an integrated system for 12-18 year-olds who have done things that—if done by an adult—would be considered a crime.

This reform with its system of guarantees marks a complete change from the previous inquisitorial approach. Under that previous system, young people had no guaranteed rights and—although the State took on a paternalistic role—it was Judge, Jury and Executioner all rolled into one

and so, with all these functions combined, it was the judge who prosecuted, defended and punished violators of the law, making no distinction between the behaviour of adults and adolescents. This system rarely achieved the rehabilitation of a young person or improved the relationship between the adolescent and his/her family and society that our new system is designed to achieve.

In this article I describe the legal foundations of the new system of Youth Justice in Mexico as a whole and more particularly in the State of Mexico to which I belong and where reform took effect on 25 April 2007. In Mexico each of the 31 States has its own Law of Juvenile Justice—all broadly similar, but each with its own particular procedures for its young people.

Our legal structure consists of

- the Federal Constitution of the United Mexican States;
- International Treaties;
- the Constitution of the Free and Sovereign State of Mexico;
- the Law of Protection for Children and Adolescents of the State of Mexico; and
- the Juvenile Justice Law of the State of Mexico.

### Constitution of the United Mexican States

The amendment to article 18 of the Federal Constitution guarantees the following rights to adolescents that were not previously granted to them:

- i. the agencies of the new system must guarantee and protect all individual rights under the Constitution as well as those rights that recognise their particular status as developing beings;
- ii. a young person under 12 years of age cannot be prosecuted. However, if their behaviour is anti-social, they may be subject to rehabilitation and community service in a public or private institution, under the supervision of parents or guardians, with state involvement only if parents or guardians are not available;
- iii. all procedures concerning adolescents will be in the hands of dedicated, specialised institutions, courts and authorities. All young people suspected of anti-social behaviour will be dealt with from the investigation stage through judicial consideration and possible treatment by specialised authorities, dedicated to adolescents.



- iv. A Public Prosecutor for Young People has been set up and, in accordance with our law, there will be a separate section of the police force to deal with adolescents, separate from other sections with members who have not previously been in the police. There will be specialised juvenile judges to oversee the whole process who differ from the previous Execution and Monitoring Judges. At the Appeal level as well, cases are to be resolved by specialised juvenile judges... An Office has also been established for the defence of young people, which will look after the young person's interests from the investigation stage until any trial or appeal. The State Directorate of Prevention and Social Rehabilitation can also be seen as a specialised authority because it directly supports these dedicated judges and magistrates.
- v. the system will aim to protect and rehabilitate young people, not punish them, and will give highest priority to their best interest and their future development. The aim is to re-educate, not to punish, and to guide the young person back to their family and society—without losing sight of the rights of victims.
- vi. whenever possible, alternative forms of justice will be employed. In our State of Mexico, possible alternative approaches are:
  - a. conciliation;
  - b. avoiding imprisonment whenever possible; and
  - c. suspension of the procedure (see below)
- vii. due process of law and separation between the judicial authorities and those carrying out the decisions of the courts. This implies a right to flexible, prompt and confidential proceedings carried out by properly constituted, specialised, independent and impartial authorities.
- viii. prison is a last resort. No-one under the age of 15 can be imprisoned and for young people between 15 and 18 prison is a last resort, used for the minimum time and only in serious cases. In Mexico State the maximum sentence of deprivation of freedom is 5 years for adolescents (and in a specialised establishment, not a prison). If proceedings are lengthy, the judge can keep a young person in detention for a maximum period of 90 days, after which, the judge must continue the procedures with the accused young person no longer in an establishment for young persons, but given conditional freedom.

#### **International Conventions and Treaties**

The five international bases for Youth Justice in Mexico are:

- i. UN Convention on the Rights of the Child  
This began as a UN Treaty and was the first legally binding international law on children's rights in that all countries that signed and ratified it are legally obliged to abide by it.
- ii. UN Beijing rules on the administration of juvenile justice;
- iii. UN Riad directives on the prevention of youth offending;
- iv. UN rules on the protection of young people deprived of their freedom;
- v. UN Tokyo rules on deprivation of liberty—these refer to adults, but can also be applied to young people.

These international conventions and rules all have the aim of promoting the young person's wellbeing and of reducing intervention by the juvenile justice system as far as possible.

#### **The Protection of Children and Adolescents' Rights Law of Mexico State**

The last three paragraphs of article 4 of the Mexican Federal Constitution, establish the rights of children and adolescents in Mexico and the duty of their families, guardians and the State to preserve these rights. In response, our State of Mexico promulgated two Acts in the Official Gazette:

- The Protection of Children and Adolescents' Rights Act (10 September 2004); and
- The Juvenile Justice Act of Mexico State (25 January 2007).

These laws cover adolescents (over 12 and below 18 years of age) and young adults (over 18 and below 23 who committed anti-social behaviour when they were under 18). The previous law of Social Prevention and Treatment of Minors was repealed and the new specialised authorities and procedures needed by the new system were established, based on three judicial districts centred on Toluca, Tlalnepantla and Texcoco, with their respective specialised courts.

This new legislation also specifies two specialised procedures: an ordinary procedure and another, abbreviated one. It also considers the possibility of a suspension of proceedings.

#### **Ordinary procedure**

When the prosecutor brings an adolescent before the juvenile judge, the judge must decide whether the young person should be committed before him or in another court for trial. Before coming to a decision, the judge must:

- a. check whether the arrest of the young person was justified by the fact that he was captured committing an offence (*in flagrante*);

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- b. check the age of the young person and that an arrest is appropriate for that age;
- c. confirm the detention arrangements made by the specialised public prosecutor and establish that, if serious anti-social conduct is alleged, the young person's freedom is restricted in an appropriate way. If the anti-social conduct is of a minor character, but the young person is in a state of neglect, then the young person must be found temporary accommodation without restrictions on his/her freedom until someone takes responsibility for him/her. When this happens, the Director of the hostel must immediately transfer custody of the young person;
- d. to decide a date and time for the young person to make an initial statement, if he/she wishes to make one. If evidence has been offered, a date will be set for it to be heard. If not, his status must then be resolved.
- e. the legal position of the young person must be determined at a hearing within 72/144 hours of his/her arrest.
- f. if the judge decides on a committal, he/she must decide whether to grant bail or to remand the young person in custody; and will set the time and date for the preliminary hearing, which must be held within five working days.
- g. at the preliminary hearing, the judge must attempt to achieve reconciliation between the alleged offender and his/her victims. If that proves impossible, the hearing continues.
- h. all parties involved in the case must disclose all relevant events that might have a bearing on the judgement.
- i. if further incidents are alleged, the judge will inform the other party. Any evidence required is brought before this hearing and the judge makes his judgement there and then, because the subsequent course of the trial could be affected.
- j. if further incidents are not brought forward (or are ruled out), the secretary informs the judge of the evidence put forward. The parties to the case can propose that some specific items of evidence should not be admitted and the judge rules on their admissibility and presentation.
- k. the full hearing is scheduled within the next five days.
- l. at this hearing the court will aim to hear all the admissible evidence offered. If, exceptionally, it is not possible to hear all the evidence, a further hearing date will be fixed with the aim of taking all the evidence in the smallest number of hearings.
- m. once all the evidence has been heard, the procedure is declared closed and a court session will be fixed within the next three working days for the parties to put forward their arguments.
- n. at that hearing, both parties can put forward arguments orally or in writing. If the specialised Public Prosecutor does not appear, the hearing can be adjourned for no more than five days.
- o. if the Public Prosecutor decides that there are no reasonable grounds on which to proceed or that the anti-social behaviour alleged in the original charge cannot be proved to have occurred, then the judge must find that there is no case to answer.
- p. the judge must pass judgment and sentence within the following five working days. The judge calls the parties to an oral hearing to deliver his/her verdict.

### **Abbreviated procedure**

This can be adopted only if the following conditions are met:

- a. first offence;
- b. the young person pleads guilty before the judge in court (not just in a confession beforehand);
- c. evidence supporting any confession and plea of guilty is available;
- d. the young person agrees to this form of procedure.

If these conditions are met, there must be a hearing with the young person, his/her lawyer, parents or guardians and teachers present at which the judge sets a date for a single oral hearing within the next five days.

At this hearing the young person and his lawyer are asked to confirm their agreement to the shortened procedure, that any confession was freely given and that the young person understands the consequences of agreeing to the shortened form of procedure. If so, the arguments of the prosecution and then the defence are heard and the judge delivers his/her verdict. Exceptionally, the judge may reserve the verdict for up to three working days.

### **Suspension of the procedure by agreement**

This applies only in cases of serious anti-social behaviour where reparation can be made.

The public prosecutor for young people, the young person's lawyer or his/her parents or guardians can apply for a conditional suspension at any time between charge and before court appearance.

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An application for suspension must be supported by a proposed detailed reparation plan to repair the damage caused by the serious anti-social behaviour that can be repaired and set out all the conditions to be imposed on the young person. The plan can consist of financial recompense for the damage,,, immediately or in several payments, or can take the form of symbolic reparation,. For suspension of proceedings to be agreed, it is essential that the young person admits responsibility for the offending behaviour and there must also be corroborative evidence.

### **Conclusion**

This new system does not diminish either the seriousness of anti-social behaviour or the significance of the damage that is done to victims.

This must be evaluated taking into consideration the psychological, family and social conditions in which the behaviour has occurred. With this in mind the most important objective is to decide how best to reintegrate the young offender into his/her family, community and society rather than simply punishing; and to re-educate and reawaken offenders' ethical and social values.

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**Brazilian Law**

**Judge Alyrio Cavallieri**



**Imputability and penal responsibility**

In 1921 the Brazilian Penal Law set the age of penal responsibility at 18 years. The law defines two technical terms: imputability – the capacity to understand the criminal character of an act, or rather, to have discernment; responsibility – the obligation to support the consequences of the act, that is, to serve a criminal penalty. Thus, a mentally ill person is not condemned to a penalty because he/she has no discernment. However, in relation to minors, even if they have discernment, they have not a penal responsibility; they are never condemned to penalties, but rather are subject to re-educative and re-socializing measures. These may be applied up to the age of 21, provided the crime has been committed before the age of eighteen years.

The first general law dates from 1927 and was replaced by another in 1979. Both were named Code of Minors. The age of 18 years was confirmed by the Federal Constitution of 1988 and the current law of 1990, named as the Statute of the Child and Adolescent.

**Juvenile delinquency**

It may be said that the problem of juvenile delinquency in Brazil is not quantitatively severe, representing about 10% of the general criminality (of minors and adults). And most of a minor's wrongs are within the area of acquisitive criminality: larceny, robbery and drug dealing. The socio-economic profile of delinquent minors indicates that larceny and robbery (crimes against property) show the authors are poor. Drug users often are also drug dealers.

The answer of the law to a minor's crime, which has not the character of a criminal penalty, as to proportionality, was a widely discussed subject in

the IAYFJM. Congress in Bremen in 1994; however, due to different opinions, a consensus was not reached. In our country, the family-socio-economic profile is more considered than the severity of the practiced wrong, since the answer has as its purpose the social/family recovery. Instead of a penalty, the judge imposes a socio-educative measure. Once the wrong is committed by the minor, he/she is presented by the specialized police to the proper court, the case examined and the offender submitted to an evaluation – extended to his/her family, by a psychologist, and as the case may be, a social worker, and the Prosecution Attorney will be heard; for the most severe cases there will be a trial, with prosecution and defence. An attorney will always be present, hired by the family, or an official, afforded by the Court. The decision of the Judge, always subject to an appeal to a highest Court, in case of recognition of the practiced fact, may be to apply one of the following measures: warning; obligation to render services to the community; reparation for the damage caused; a freedom regime under vigilance and guidance; a semi-freedom regime; and, finally, the most severe, internment, with privation of freedom, in a reeducation establishment. Other measures may be applied, such as school attendance, psychological treatment. The parents of the offenders may also be subject to attend rehabilitation groups.

**International rules**

It may be stated that Brazil has been following the international rules and the decisions of the IAYFJM. congresses, including the 17 rules of the Belfast Congress, 2006. The sovereign rule is the one universally consecrated – the best interest of the minor (child and adolescent).

Our Association had its 12th congress held in Rio de Janeiro, 1986, attended by 768 members of congress of 34 countries.

Legislation improvement is always a goal, and the National Congress is currently discussing dozens of bills with this intention.

**Abandoned children**

In addition to rules upon juvenile delinquency, the Brazilian law also covers family, children and adolescents that are abandoned or separated from their families. The rules about family insertion, mainly adoption, are comprehensive, including the adoption by foreign families.



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There is a national register, covering the whole country, in which adoptable minors are listed. Recently, the author of this article received a letter from Sweden announcing the birth of the grandchild of a couple that in 1971 adopted a two-

year old Brazilian when he was the Judge of Minors of Rio de Janeiro.

**Alyrio Cavallieri\***, High Court Judge, retired –  
Honorary Member of the IAYFJM.

## Current Problems of Family Courts in Poland

**Judge Ewa Waszkiewicz  
Dr Magdalena Arczewska**



Judge Waszkiewicz



Dr Arczewska

### Introduction

Family courts in Poland were established to remedy the shortcomings of the juvenile court system. The first family courts in Warsaw, Łódź and Lublin, set up as early as in 1919 by a decree of the Chief of State, were modelled on the American system. In 1949, as a result of the amended Common Court Structure Law, family courts were closed down while criminal divisions for minors were established. The latter often applied not only punitive measures but also those measures provided for in family law. Family courts were reinstated as late as 1978.

Under the instruction of the Justice Minister of December 1977 ninety-seven family and juvenile court divisions were established, which employed 496 judges<sup>1</sup>. Over the last thirty years several important issues concerning the work of family courts in Poland have been identified. The thirtieth anniversary is also an opportunity to put forward recommendations on the changes in the structure and work of the family court system.

### The structure of family courts in Poland

The separation of family courts was a breakthrough in the organisation of Poland's common court system. Before the reform entered into force, the courts had heard about 300,000 criminal cases and 700,000 civil cases annually. Over 300,000 of them were family law cases which fell under the jurisdiction of family courts after they were created. In 2005 there were over

one million family law cases brought to district courts and this trend was on the rise in the consecutive years. For example, in 2007 there were 1,000,192 family law cases submitted to the court as compared with 1,860,045 criminal cases and 220,421 labour law cases<sup>2</sup>.

In 2008 Poland had 330 family and juvenile divisions within 315 district courts. On the regional court level 13 civil divisions dealing with family law cases have been established so far (in 12 regional courts). A family court is a division of a district court, which is the court of first instance in Poland. Under the relevant provisions, a district court is established for one or more municipalities (*gminy* – the smallest local administration units) but in justified circumstances there may be more than one district court in the same municipality. It includes the following divisions: civil, criminal, family and juvenile (family court), labour (labour law court) and land and mortgage register. Thus the notion of the family court in Poland is exclusively organizational in its nature.

Family cases investigated by the district court of first instance may be appealed against at the regional court. Such appeals are examined at the civil division which is competent to hear civil and family cases in the first instance as well as civil cases and cases that come within the jurisdiction of family courts in the second instance (except for cases against juveniles for committing a punishable act, if a corrective measure has been carried out with regard to the juvenile in question or, if the appeal measure includes a motion for applying a corrective measure). The regional court investigates the following cases in the first instance: divorce, separation, marriage annulment and establishment of marriage validity or invalidity. Its decisions may be appealed against at the court of appeal where they are also examined at the civil division. If such an examination reveals a legal problem that raises serious doubts, the court may commit the case to the Highest Court, which is competent to take it over for examination, or decide the problem be solved by the court of appeal with an extended composition of the bench.

<sup>1</sup> W. Patulski: *Sądownictwo rodzinne [The Family Court System]*, 'Nowe Prawo' 1978, no 2, p. 205

<sup>2</sup> Data published by the Ministry of Justice in the report entitled *Ewidencja spraw według działów prawa w sądach powszechnych w 2004 i 2005 roku [Records of Cases Submitted to Common Courts in 2004 and 2005 Broken Down by Sections of Law]*; file reference DO-II-0352-3/06, p. 1

### **Jurisdiction of family courts in Poland**

The jurisdiction of family courts is very broad. It involves cases related to family and guardianship law, depravity and punishable acts committed by minors, treatment of persons addicted to alcohol, narcotic drugs and psychotropic substances as well as other cases that come within the jurisdiction of guardianship courts under separate acts of law (Civil Registry Records Act, Medical Profession Act, Mental Health Act, Social Assistance Act, Passport Law). With such competences of family courts, family judges in their daily work apply provisions from various fields of law, both substantive and procedural. Assigning family issues to one court is not equivalent to the unification of the procedure applied.

The majority of cases are examined in the civil procedure. A lawsuit may involve litigation but, if there are relevant provisions in the Civil Code, non-litigious proceedings may be applied. In its proceedings, the family court may apply a general procedure (e.g. in alimony cases) or a separate procedure (e.g. in paternity cases). In non-litigious proceedings the court may either follow the general rules of this procedure (e.g. in the case of persons related by affinity seeking permission to marry) or the procedure in place before the guardianship court (e.g. in adoption cases). Yet a different type of procedure is observed by the family court when it decides cases involving minors. It is provided for in a separate act, the Juvenile Court Proceedings Law, and some parts of it are modelled on the criminal procedure while others on the civil procedure.

Because of the broad scope of family court jurisdiction, a family judge is required to have an extensive knowledge of the law in force and its application. The nature of family law cases is very specific and the judge needs both professional and life experience as well the knowledge of psychology, sociology and pedagogy. Family judges are in an exceptional position because they adjudicate issues that go far beyond the legal framework and interfere in family life. Their decisions very often concern the lives of children who, as individuals, are not entitled to make decisions about themselves. Given all this, a family judge is a profession of public trust.

### **Problems faced by family courts**

Family law cases are fundamentally different from other civil cases, ownership law or property disputes. Not only do family judges run court proceedings and are responsible for deciding the case but they must also oversee the verdict enforcement and make sure it is sufficiently fast so that it benefits the child and the family.

Their preventive, mediating, guardianship- and rehabilitation-oriented activities are also of key importance. Given the expectations faced by family judges and the scope of casework they deal with, the operation of this court division may not raise any objections. But the experience so far reveals serious systemic problems that concern both family judges as a professional group and family courts as an institution. They are related to the system of training, limited opportunities of professional promotion for a family judge and difficult relations between family courts and welfare institutions.

### **Additional non-legal qualifications of family judges**

When family courts were being established in Poland the candidates for family judges had to meet specific requirements as regards their age, years of practice, knowledge and experience. It was even postulated that the programme of law studies should include a family judge specialization and the Ministry of Justice set a requirement that a candidate for a family judge must finish a postgraduate course or a graduate programme in psychology, sociology or pedagogy. Although the issue of additional training for family judges has often been discussed in the doctrine and among the representatives of the profession themselves, these postulates have never been met. The legal education system in place prepares future judges for work in every division of common court in an equal measure. Family court staff is randomly recruited, just like judges who work in criminal or civil divisions. In the course of legal studies and postgraduate practical training future judges receive very little non-legal guidance, which is definitely insufficient to adjudicate in family law cases.

### **Promotion and prestige**

Family courts were established in an attempt to provide a comprehensive approach to family issues, coherent jurisdiction and appropriate verdicts based on the understanding of problems occurring in a given family and an extension of preventive and rehabilitating activity. One way to achieve these aims was the recruitment of competent and experienced judges who would be promoted to adjudicate in family courts and thus held in high esteem by the public. These targets have never been met. Even at the start of family courts in Poland it was not easy to recruit staff and accepting work in family courts has never been associated with the prestige family judges expected. They were usually recruited in a random way and, if there were no candidates, some forms of pressure were applied.

The fact that family courts are only divisions of district courts has always been the cause of the depreciation of the profession. It is so because there is no promotion path for family judges within family courts. A family judge is a judge of a district court. If someone is appointed a judge of the regional court, they will adjudicate in all civil cases heard at the civil division and they will not specialize in family law. Promotion within the common court system is in fact equivalent to the end of the career as a family judge.

#### **Relations between the family court and welfare institutions**

Under the internal Rules of Procedure in Common Courts, a family judge shall cooperate with the bodies, institutions and social organizations working in a given area and dealing with the problems of family, children and young people, education and training, health as well as law and public order<sup>3</sup> but these regulations are not observed. Despite consecutive amendments to the provisions of the Family and Guardianship Code, the Code of Civil Procedure as well as the Social Welfare Act the cooperation between family courts and welfare institutions has never reached the level that would ensure well-functioning foster care of children. In their daily work family judges almost exclusively rely on the services within the legal system provided by probation officers and family centres for diagnosis and consultation. The assistance system for children and families in local communities, which was reformed in 1999, has turned out to be completely ineffective. Local administration districts (*powiats*) are not prepared to implement the tasks related to the provision of foster care for children and the family receives no support from inept local government institutions. Moreover, courts, as justice system institutions, are structurally isolated from the welfare system, and so there are barriers in their cooperation.

#### **Conclusions and recommendations**

Family judges are a unique group. They have a strong sense of belonging to the professional community they represent and have, as the only group of judges, their professional association (the Association of Family Judges in Poland). The association, through its activities, aims to raise the standing and status of the profession. Given the nature of the problems they deal with in their everyday work, family judges very often have a sense of vocation.

However, because of limited or non-existent opportunities of professional advancement, they feel unappreciated and neglected within the justice system.

When the first family courts were established in Poland, it was assumed that the position of a family judge would be the crowning of the judge's career accessible only for selected individuals. The candidates had to meet strict requirements of age, years of practice, knowledge and experience. But the aims of the reform have never been achieved. Family judges are recruited in a random way, just like the staff of any other division in the common court system. Training for judges is purely technical and boils down to teaching about laws and regulations. There is no place for the necessary professional experience along the path of training. Such experience is essential, especially for a judge who interferes in family issues and decides about the lives of children without guardians. A family judge must be very sensitive to the problems of children and understand the need to take actions in order to strengthen and protect the family. The activities of the court, as an element of the justice system, overlap in this area with the competencies of welfare institutions operating at the lowest and middle level of the local administration system (*gmina* and *powiat*). Coordination of activities is necessary to make sure the assistance provided is efficient and useful.

Structurally independent family courts have been present within the Polish court system for over thirty years and this experience proves that such a solution is appropriate, beneficial and effective. The current system enables full integration of activities taken by the court and ensures coherent jurisdiction. A major function of the family judge is service in the name of well-being of the child and the family as well as supervision of the enforcement of measures provided for in court verdicts and assistance in the prevention of any failings in the family.

The analysis of the above problems has led to the following recommendations as regards the future of family courts:

- The training system of future judges needs to be reformed. A compulsory course in family law should be included in the programme of university studies. Classes for trainee judges should involve the rudiments of psychology and pedagogy. Judges who wish to devote their career to family courts should be required to take a postgraduate course and so expand their knowledge by the essentials of medical and social sciences.

<sup>3</sup> Regulamin urzędowania sądów powszechnych z dnia 23 lutego 2007 roku (Dz. U. 2007, Nr 38 poz. 249) [*Rules of Procedure Applied in Common Courts of 23 February 2007 (O.J. 2007, No.38, item 249)*]



## INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

- Candidates for family court judges should undergo obligatory psychological tests that would verify their aptitude for this profession.
- Work in family courts should become the crowning of the judge's professional career. This postulate concerns the entire judicial system. Family judges should have gained experience in other court divisions or acquired theoretical and practical knowledge in another legal profession.
- Family court judges should have life experience. It is recommended to introduce an age limit, just like it was postulated upon the establishment of family courts in Poland. Assistant judges should not adjudicate in family courts.
- Not only is it necessary to establish family courts of appeal in the largest possible number of regional courts in Poland so that family cases are dealt with by specialists, i.e. experienced family judges, but also to maintain the current structure of regional courts and oppose the idea of incorporating family courts into civil divisions, which is advocated by the executive power.

- Cooperation between family courts and welfare institutions needs to be improved. It is recommended to increase the controlling powers of a judge and extend the scope of competencies of probation officers so that they become coordinators of the assistance system for the child and the family.

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## Surrogacy and adoption in India— New Trends

**Anil Malhotra**  
**Ranjit Malhotra**



Anil Malhotra



Ranjit Malhotra

Surrogacy has become big business in India. One estimate puts the annual turnover of the 'fertility market' and reproductive tourism at 250 billion rupees (about US\$ 5 billion) with 200,000 clinics offering artificial insemination, IVF and surrogacy services across the sub-continent. The wide choice of donors and relatively low cost of medical services make India attractive to people from many different countries and races. Websites in India typically offer surrogacy services at around one-fifth of the cost in the USA, UK or Australia. However, the lack of a legal structure governing surrogacy has led to exploitation, trafficking and ethical abuses.

Indeed, it is clear that Assisted Reproductive Technology (ART) has overtaken the law. No law in India prohibits surrogacy, but—on the other hand—no law specifically permits or regulates it either. A recent case in the Supreme Court of India<sup>1</sup> highlighted some of the difficult issues involved:

### **Manji Yamada**

Manji Yamada is a Japanese baby who was born to an Indian surrogate mother using IVF technology after fertilisation of her Japanese parents' eggs and sperms in Tokyo with the embryo being implanted in Ahmedabad, Gujarat. Manji was born in Anand near Ahmedabad on 25 July 2008, a month after her father and mother had divorced and the mother had disowned the infant.

Following a law and order situation in Gujarat, Manji was moved to Arya Hospital in Jaipur on 3 August, where she was provided with much needed care, including being breast fed by a woman who had given birth to a baby girl as the

surrogate mother had also abandoned the baby. Mr. Kamal Vijayvargiya—a jeweller from Jaipur settled in Tokyo and a friend of Manji's father, Ikufumi—was instrumental in getting the baby shifted to Jaipur and also in getting Ikufumi's mother to come to Jaipur to take care of Manji.

It transpires that Ikufumi had come intending to take custody but failed in his attempts and had to return before his visa expired. Custody was denied even to Ikufumi's mother after a Habeas Corpus petition was filed in the Jaipur Bench of the Rajasthan High Court by an NGO, Satya, which claimed that, in the absence of surrogacy laws in India, the custody of the child should not be given to the grandmother. To complicate things further, neither the biological father nor the surrogate mother had moved an application before the Rajasthan High Court seeking custody.

Against the directions of the Rajasthan High Court, Manji's grandmother, Emiko Yamada, filed a writ petition in the Supreme Court of India. It was contended in the Supreme Court that under the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India, the surrogate child is the legitimate child of its genetic parents. Indeed, the Municipal authorities in Anand (Gujarat) had issued a birth certificate for Manji in the name of her biological father.

The Japanese embassy in Delhi refused to issue a passport, saying that since Manji had been born in India, she needed an Indian passport and a no-objection certificate to leave the country. Under Indian law, an infant's passport has to be linked to the mother's, which had become difficult because of the refusal by both biological and surrogate mothers to take custody of the baby.

Following the direction of the Supreme Court, Manji was issued with a "certificate of identity"<sup>2</sup> by the Jaipur passport office on 17 October allowing her father and grandmother to apply for a visa to take her home to Japan. The Japanese government issued her with a one-year visa on humanitarian grounds. Manji is now with her father in Osaka, but her future status and citizenship remain to be determined.

<sup>1</sup> reported as Baby Manji Yamda vs. Union of India, Judgements Today 2008 [11] Supreme Court 150

<sup>2</sup> These certificates are normally granted to people who are stateless or cannot get a passport from their own country.

### Adoption in India

Foreign and non-resident Indians who genuinely wish to become adoptive parents face an almost insurmountable wall. There are an estimated 12 million orphans in India. But child adoption in India is a highly complex matter, over-burdened with complicated and lengthy procedures. The Constitution ordains India to be a secular republic, yet 60 years after Independence we still lack a comprehensive adoption law applicable to all citizens, irrespective of the religion they profess or the country they live in. At present, for example, non-Hindus cannot adopt. Those who cannot legally adopt turn in consequence to IVF clinics or surrogacy arrangements.

### Guidelines and legislation

In 2005 the Indian Council of Medical Research (ICMR) issued guidelines on surrogacy designed to check malpractices and establish rules. However the guidelines are silent on some major issues and, being non-statutory, they are not enforceable or justiciable in the courts. The guidelines state, for example<sup>3</sup>, that a child born through surrogacy must be adopted by the biological parents. But, as we have seen, that is not possible in the case of non-Hindu parents from abroad who cannot legally adopt.

Recognising that there are many legal and ethical issues to resolve, a Bill has been drafted by a 15-member committee of experts, sponsored by the ICMR and the Ministry of Health. It is now available on the web for consultation and comment<sup>4</sup>.

The draft Bill would legalise commercial surrogacy, allowing the surrogate mother to receive payment. She would relinquish all parental rights. Single parents would be allowed to have children using a surrogate mother and foreigners, registered with their embassies, would be able to seek surrogate arrangements. However, it is clear that there are two serious gaps in the proposals:

- the lack of a defined Court or set of clear legal procedures with authority to resolve disagreements and disputes on the myriad of knotty issues that will arise; and
- the absence of proposals to undertake a comprehensive reform of the adoption laws.

We raised some of the specific issues that need to be dealt with in any proposed reform at seminars<sup>5</sup> held in New Delhi on 13 February 2009 and Chandigarh on 4 March 2009 under the auspices of the School of Oriental and African Studies (SOAS) and attended by a wide range of eminent Indian jurists, social workers, related professions and public spirited individuals—

- i. what would be the remedy available to biological parent/s to obtain exclusive legal custody of surrogate children?
- ii. how can the rights of the surrogate mother be waived off completely?
- iii. how can the rights of the ovum or sperm donor be restricted?
- iv. how can the genetic constitution of the surrogate baby be established and recorded with authenticity?
- v. can a single or a gay parent be considered to be the custodial parent of a surrogate child?
- vi. what would be the status of divorced biological parents in respect of the custody of a surrogate child?
- vii. would a biological parent/s be considered the legal parent of the children?

These questions have an ethical as well as a legal / practical dimension. In other words, we need to be clear about what **should** happen as well as setting up a thorough and robust legal framework that will help to ensure that it does. At present, in any particular case, the law would certainly provide answers to these and other questions in due course, but they would not necessarily be ones that were seen to be fair or that protected the interests of the more vulnerable parties involved in these difficult and emotional matters.

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<sup>3</sup> In para 3.10.1

<sup>4</sup> The full text of the draft Assisted Reproductive Technology (Regulation) Bill, 2008 (135 pages) can be accessed for example at <http://subalternmedia.com/?p=2195> or at [www.icmr.org.in](http://www.icmr.org.in). As the Indian Parliament is currently dissolved for elections, the Bill has not so far made legislative progress.

<sup>5</sup> *Surrogacy—Bane or Boon*, seminars held at the India International Centre, New Delhi, sponsored by the India International Centre and Faculty of Laws, Panjab University, Chandigarh were organised by the present authors. For more details on the topics raised in this article, please visit [www.surrogacyindia.blogspot.com](http://www.surrogacyindia.blogspot.com).

## Conference report: The Old and The New – Challenges in Child and Family Law, South Africa

Anil Malhotra

Held amidst panoramic surroundings by the Atlantic Ocean overlooking the Lion's Head Mountain, the 11<sup>th</sup> Annual Family Law Conference<sup>1</sup> in Cape Town, South Africa in March 2009 was a highly commendable achievement by the South African hosts, Zenobia Du Toit and Judy Cloete.

The conference attracted over two hundred delegates from many countries and fields, including academic lawyers, family law advocates, judges, magistrates, social workers, psychologists, NGOs, government departments. It was a unique professional treat and academic feast for global family law professionals interacting with each other and discussing viewpoints from other jurisdictions.

The conference focused on the rights of children and challenges in family law now facing global interactions in different countries. After the introduction by Professor Julia Sloth-Nielsen from the University of Western Cape, Mr. Vusi Mandosela, Director-General of Social Development gave the South African perspective on children's rights. Kent Cloete, a school-girl, opened the floor with "A teenager's perspective on children's rights and responsibilities"<sup>2</sup>. It was striking to open a conference on child rights with a teenager's frank, down-to-earth viewpoint. It opened new perspectives in the minds of the audience.

In the opening session, UK District Judge Nick Crichton narrated real-life instances from his adjudications during his address on parental Rights and Responsibilities and Children Rights. Wendy Galvin, attorney from New Zealand, narrated her experiences on children's rights in her speech, "Relocation". Denise Carter, Director Reunite International Child Abduction Centre, UK, spoke on "Hague Matters and Mediation". These three deliveries enlightened the audience with real-life situations in which children had been helped.

In the India Session, Advocate Anil Malhotra discussed recent instances of child removal to convention countries from India, a non-convention country, lamenting that by digressing from the

Hague Convention Principle of Summary Return, Convention Countries were resorting to adjudication instead of returning children to their country of habitual residence—a contradiction in terms. Advocate Ranjit Malhotra pointed out the pitfalls faced by adoptive parents in taking children to foreign lands. These two presentations led to a volley of questions from the audience sharing their experiences, concerns and opinions.

The post lunch session looked at some excellent presentations on Mediation. These were delivered by Dr. Praveena Sukhraj Ely, South Africa Law Commission; by Professor Omri Gefin from Israel; by Attorney John O' Leary; by Advocate Shirin Ebrahim; by Clinical Psychologist Andrea Seidel-Phillips; by Denise Carter; and by Advocate Patsi Weyer.

The next day started with a break-away Africa Session looking at some exclusive children's rights topics in Malawi, Zambia, Namibia, Lesotho and Eastern and South Africa. In parallel, the Canada session looked at international adoptions, legal limits to foster care and litigation challenges of social services. There followed seven presentations with a focus on the Children's Act in South Africa. The post-lunch session looked at religious and customary marriages in Muslim Personal Law in different jurisdictions and implementing mediation in education and community.

The day ended with a brilliant heart-to-heart talk by Justice Albie Sachs from the Constitutional Court of South Africa, who spoke on "A Constitution for All Families – The South African Constitution and Family Law". Narrations of instances of spouse rights in relationships of new-age marriages opened a brand new perspective.

Overall, the exchange of ideas and learning from experiences left me pondering that the Family Law Conference was unforgettable—delightful and educative every minute. If more of these global interactions were to occur, family law professionals would gain food for thought to implement new ideas in their own jurisdictions. I keenly look forward to attending the 12<sup>th</sup> Annual Family Law Conference in Cape Town. For those interested in reading individual papers, please see the conference website

[www.millerdutoitcloeteinc.co.za](http://www.millerdutoitcloeteinc.co.za).

<sup>1</sup> Organised by the law firm, Miller Du Toit Cloete Inc. in partnership with the Law Faculty of the University of the Western Cape 12 & 13 March 2009.

<sup>2</sup> See below.



**Lawasia Conference report: Children and the Law,  
Singapore May 2009**

**Anil Malhotra**

Lawasia and the Law Society of Singapore very successfully conducted the Children and the Law Conference on 21-23 May in Singapore. It provided a basis for discussion of a wide range of contemporary issues about Children and the Law in the Asia Pacific region and beyond and involved family law practitioners, academics, decision makers who shape policies pertaining to children and Judges. Delegates came from Singapore, India, Australia, UK, Hong Kong,

Japan, Singapore, Cambodia, Malaysia and New Zealand.

The Conference was opened by The Hon. Chan Sek Keong, Chief Justice, in the majestic building of the Supreme Court of Singapore. A video entitled "Child Court Proceedings" commenced the sessions on 22 May 2009. There followed ten well-crafted and professionally designed sessions—

Session 1: Implementation of the Hague Convention: Practical Issues and Lessons Learnt in Convention Countries	Chair: Mr KS Rajah Senior Counsel (Singapore) Professor Frank Bates (Australia) Mr Andrew Davies (Australia) Ms Delia Williams (UK)
Session 2: More than the Order : Effective Enforcement and Related Issues	Chair: Hon'ble Justice P. Sathasivam, Judge, Supreme Court of India. Mr Philip Sim (Australia) Mr Yap Teong Liang (Singapore) Ms Lalitha Menon (Malaysia)
Session 3: The Child Expert : Dispelling the Mystery	Chair: Ms Ellen Lee (Singapore) District Judge Jocelyn Ong (Singapore) Ms Carmelia Nathen (Singapore) Dr. Parvathy Pathy (Singapore)
Session 4: Being Special: Providing for Children with Special Needs	Chair: Mr Rajan Chettiar (Singapore) Mr Conrad Campos (Singapore) Mr Gregory Vijayendran (Singapore)
Session 5: The Abused Child: Battling Child Labour and Child Prostitution	Chair: Mrs Wee Wan Joo (Singapore) Special Speaker Ms Somaly Mam (Cambodia)
Session 6: Relocating the Child: Parental Movement and International Adoptions	Chair: Mr. Ranjit Malhotra, Senior Partner, Malhotra & Malhotra Associates (India) Chief Federal Magistrate John Pascoe (Australia) Federal Magistrate Paul Howard (Australia) Associate Professor Debbie Ong (Singapore)
Session 7: Child Abduction: The Child's Perspective and Problems of non-Convention countries	Chair: Hon'ble Justice Dr A.R. Lakshmanan, Chairman, Law Commission of India Mr Russell Bywater (UK) Mr Anil Malhotra (India) Ms Chew Swee Yoke (Malaysia)
Session 8: The Child's Voice : Representation for Children and Specialists Courts	Chair: Associate Professor Chan Wing Cheong (Singapore) District Judge Regina Ow (Singapore) Ms Minal Vohra (Australia) Ms Tamiko Nakamura (Japan)

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Session 9: Custody, Care and Control and Access – Theory vs. Practice, Natural Parents vs. Non- parents	Chair: District Judge Koh Geok Jen (Singapore) Ms Lim Hui Min (Singapore) Professor Leong Wai Kum (Singapore) Dr Katijah Dawood (Singapore)
Session 10: The Family Lawyer Forum: Common topic - Mechanisms for Effective Maintenance Enforcement: Thinking out of the Box. Additional individual topics presenting Developments in Child Law Issues in the region.	Chair/Moderator: Michael Hwang Senior Counsel and President Law Society of Singapore Featuring: Mr Raymond Yeo (Singapore): Enforcement of Maintenance Orders Chief Federal Magistrate John Pascoe (Australia): Family Law on De Facto Relationships Mr Andrew Davies (Australia): Child Abduction Protocol for Singapore, Malaysia, Hong Kong, New Zealand and Australia Ms Foo Yet Ngo (Malaysia): Developments in Child Law in Malaysia Mr Russell Bywater (UK): Developments in Child Law in UK Ms Winnie Chow (Hong Kong): Domestic Violence Ordinance Ms Tamiko Nakamura (Japan): Amendment of Japanese Single Custody System Mr Anil Malhotra (India): Surrogacy Issues in India – All Aboard For The Fertility Express

This special conference designed for various specialists to present and share their views from their experiences in their jurisdictions, was enriching for all present. The sessions relating to the Hague Convention on Civil Aspects of International Child Abduction saw a very well-narrated account by Ms. Delia Williams on her work as Legal Secretary to Lord Justice Matthew Thorpe (England and Wales), dealing with inter-country child removal problems. Anil Malhotra related his professional experiences in highlighting the problems surrounding the return of children removed to and from India. Ranjit Malhotra, in chairing the session on adoption laws, made reference to his own work from an Indian perspective on the conflict of law in inter-country adoptions. The special presentation by Ms. Somaly Mam from Cambodia on her fight against the trafficking of women and children for sex slavery blended with her own personal, tragic account was eye-opening and chilling.

An exceptional feature of the conference was a special Family Lawyer Forum in which all the speakers from different jurisdictions described the

methods for effective enforcement of maintenance orders in their respective legal systems. Thereafter, each individual participant spoke of different legal family law issues in their separate territories. This idea of bringing legal experts of different countries together on one platform to speak on family law issues was a very enriching occurrence. Anil Malhotra spoke on commercial surrogacy issues in India and Domestic Violence, Custody laws, child abduction, *de facto* relationships and other child law topics were also covered. Ms. Janet Neville (Secretary General, Lawasia) did a highly commendable job in drafting the concluding conference summary and in bringing so many family law specialists together for two days discussion of such a full family law agenda. (The Conference is reported in the July edition of the Singapore Law Gazette—please see Contact Corner, Editor)

**Anil Malhotra**

**Book review: Deprivation of Liberty of Children in  
Light of International Human Rights Law and  
Standards by Ton Liefwaard**

**Avril Calder**

This book is the 28<sup>th</sup> in a series published by the School of Human Rights Research in the Netherlands. It is an excellent work well timed for the 20th year of the Convention on the Rights of the Child (CRC) and prefaced by Professor Jaap E. Doek Chairperson of the CRC Committee 2001-2007. Both the author and the School can be proud of this book.

Its aim is to 'provide an analysis of the implications of International Human Rights Law and Standards for children (potentially) deprived of their liberty', seeing this as a global issue.

It achieves this aim both with in depth examination of the instruments involved—at the International, Regional and Domestic level—and with clarity. It should and will be a very serious addition to the literature of all those—judges, magistrates, lawyers, probation officers, youth social workers, justice departments, the police and others—connected with young offenders at risk of losing their liberty. At the same time it recognises that children and young people lose their liberty in other ways too—for example in deportation centres—but, in essence, the study on which the book is based addresses the issue in the context of offending.

Ton Liefwaard's original study was to assess the 2001 Dutch Youth Custodial Institutions Act (YCIA) in the context of international human rights and the whole of chapter 4 is devoted to this useful assessment in the Netherlands. But it became apparent that his analytical approach could be applied to other countries too and so the book extends to five chapters.

Following the short introductory chapter 1, are two very valuable chapters setting out the evolution of children's rights as opposed to those of adults. This starts with the 1959 Declaration of the Rights of the Child and continues through the International Covenant on Civil and Political Rights (ICCPR)—with the first provision in Article 24 for the protection of children—and the International Covenant on Economic, Social and Cultural Rights with its statement that children should be apportioned resources to meet their economic, social and cultural rights to the thinking behind the drafting and adoption on 20<sup>th</sup>

November 1989 of the Convention on the Rights of the Child and its ratification by almost all countries. The enormous value of the CRC is examined in detail. And set against the CRC, the lacunae in the European and Inter-American conventions, which are not child orientated, are pointed out. The African region, on the other hand, does have a convention which is specific about the rights of the child (the African Charter on the Rights and Welfare of the Child, ACRWC, and the African Convention on Human Rights), but falls a long way short on provision for children deprived of their liberty.

A thorough examination of the UN Rules for the Protection of Juveniles Deprived of their Liberty (JDLs) shows the value of these rules not least because they provide a definition of the right to liberty, which the CRC does not and because the CRC Committee endorses this definition in its guidelines.

Other issues—and I include just a few—such as non-discrimination, best interests of the child, participation, dignity, proportionality, minimum age for deprivation of liberty and principle of last resort are all given their due attention and are good to read not least to refresh one's thoughts and direction in our practices with the young.

**Complaints procedure**

Where a youth has been wrongfully deprived of his liberty, there is the right to compensation<sup>1</sup>, but, as Ton Liefwaard writes, the CRC does not provide for a complaints procedure or even a system for individual communication and so the CRC Committee cannot hear individual complaints or issue legally binding decisions. However, he argues that had there been a complaints procedure at the birth of the CRC, it might well have hindered its almost global ratification. He also points out that the Reports, sent by States Parties to the CRC Committee, are carefully considered and then discussed at regional meetings with the States Parties thereby covering issues that could give rise to complaints.

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<sup>1</sup> (article 9(5) ICCPR)

He comments on the retroactive rather than proactive nature of a complaints procedure and refers to the European Court of Human Rights (ECtHR), which can hear complaints but where there is little in the way of case law about children deprived of their liberty. Rather, it is the European Committee for the prevention of Torture (CPT), a body without judicial authority, which has looked at the issue.

#### **Recommendations**

But, despite these comments about a complaints procedure, in an extensive rehearsal of recommendations in chapter 5, (mainly focussed on the Dutch YCIA), the author says 'the potential of an individual complaints procedure is significant' and would offer legal remedies to young people as well as addressing their legal capacity and the participation of parents/guardians.

A further heavyweight suggestion is for the CRC Committee to set up a monitoring system for children deprived of their liberty. It is argued that monitoring would help with the updating of the JDLs and could encompass closed institutions not associated with youth justice. The argument that monitoring would make vulnerable children more visible is a persuasive one. Altogether, in chapter 5, Recommendation XXI, there are seven points put forward for consideration by the CRC Committee.

This book is an important work which rightly sees the CRC as 'Head of the Children's Rights Family' and admirably and clearly sets out the interpretations and connections between the CRC and all the other International, Regional and Domestic instruments. This is a complex field made accessible to all those—legally qualified and otherwise—who are involved with children deprived of their liberty. It is clear in its organisation, presentation of the facts and arguments. The author knows his subject inside out—the selected bibliography runs to some 18 pages—and if, you have ever stumbled over an acronym, here they are, about 100 of them. This is a highly readable book which we should study and keep handy for it is a valuable reference tool essential to us all.

#### **Avril Calder**

Book title:-

Deprivation of Liberty of Children in Light of International Human Rights Law and Standards  
by Ton Liefwaard

ISBN 978-90-5095-838-7: 695 pages

[www.intersentia.com](http://www.intersentia.com)



## Contact Corner

Editor

We receive many interesting e-mails with links to sites that you may like to visit and so we are including them in the Chronicle for you to follow through as you choose. Please feel free to let me have similar links for future editions. **Editor**

From	Topic	Link
<b>Bernard Boeton*</b> Fondation Terre des Hommes (TdH)	Child Protection Project In Europe	<a href="mailto:newsletter@tdh-childprotection.org">newsletter@tdh-childprotection.org</a>
<b>Jean Zermatten*</b> Institut international des Droits de l'Enfant (IDE), Vice Chair UN Committee on Rights of Child	Children in street situations. Prevention, intervention, rights-based approach Book available from IDE website	<a href="http://www.childsrights.org">www.childsrights.org</a>
<b>IDE</b> , 5 events world wide	20 <sup>th</sup> anniversary celebration UNCRC	<a href="http://www.childsrights.org">www.childsrights.org</a>
University Institute Kurt Boesch, Sion, Switzerland July 20 <sup>th</sup> to 24 <sup>th</sup>	Summer University —Children's rights: childhood and poverty. An interdisciplinary event.	<a href="http://www.iukb.ch/fileadmin/ude/plaquette_ude09.pdf">http://www.iukb.ch/fileadmin/ude/plaquette_ude09.pdf</a>
<b>Maud de Boer-Buquicchio</b> , Deputy Secretary General Council of Europe	Human Rights interview with references to child exploitation	<a href="http://www.neurope.eu/articles/94606.php">http://www.neurope.eu/articles/94606.php</a>
<b>Davinia Oveti Bondi</b> Secretariat Coordinator	Annual Meeting Interagency Panel on Juvenile Justice Amman, Jordan, on 17-18 May	<a href="http://www.juvenilejusticepanel.org">http://www.juvenilejusticepanel.org</a>
<b>Judy Cloete*</b> , Family Law barrister	Annual Family Law Conference in Cape Town. Papers available on website	<a href="http://www.millerdutoitcloeteinc.co.za">www.millerdutoitcloeteinc.co.za</a>
Singapore Law Gazette July edition	Lawasia conference	<a href="http://www.lawsociety.org.sg/">www.lawsociety.org.sg/</a>

### Dear friends,

As you already know, the first **World Congress on Restorative Juvenile Justice will be held in Lima - Peru** from November 4 to 7, 2009. This Congress is organized by the Terre des hommes Lausanne Foundation, jointly with association Encuentros-Casa of Juventud, the General Attorney's Office and the Pontificia Universidad Católica de Peru. Besides, this important event has the support of the International Association of Youth and Family Judges and Magistrates, The International Institute for the Rights of the Child (IDE-Switzerland) and the International Society of Criminology, among others. We have developed a Web site [www.congresomundialjrperu2009.org](http://www.congresomundialjrperu2009.org) which will provide you with all the information you may require on the objectives, central themes and topics to be discussed, the speakers, panelists, the modalities of registration, how to submit your papers, etc. This web site will be constantly updated with the latest news, until the date of the Congress. E-mail address is: [apunte@congresomundialjrperu2009.org](mailto:apunte@congresomundialjrperu2009.org) We would like to thank you in advance for your great support and enthusiasm. We will be waiting for you in Lima. **Jean Schmitz\***

### Master interdisciplinaire en droits de l'enfant (MIDE),

This full-time Master programme on children's rights is offered in French and is designed for students with a BA degree in law, sociology, psychology or social work who seek to complete their studies in the field of children's rights. The MIDE addresses children's changing position in society and their rights at local, national and international levels. Students are expected to acquire a sound background in children's rights, develop analytical and interdisciplinary skills while specializing in specific fields through research projects, an internship and group works. The MIDE is organised by the Institut Universitaire Kurt Bösch (IUKB) in partnership with the University of Fribourg, Switzerland. The studies take place at IUKB in Sion, Switzerland over a period of three semesters (one year and a half) and count for 90 ECTS Credits. The dead-line for inscriptions is 15 Mai 2009 and the next cycle will start on 14 September 2009. For more information, see the website: [www.iukb.ch/mide](http://www.iukb.ch/mide)

**Treasurer's column**

**Avril Calder**

**Subscriptions 2008**

In the early months of 2009 I sent out e-mail requests for subscriptions to individual members (GBP 20; Euros 30; CHF 45) and national associations.

If you have not already paid, may I take this opportunity to remind you of the ways in which you may pay:

1. by going to the website at [www.judgesandmagistrates.org](http://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 e-mail address is [ac.iajfjm@btinternet.com](mailto:ac.iajfjm@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 e-mail 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 the Hague, Netherlands March 2009**



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

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## Chronicle Chronique Crónica

## Voice of the Association

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

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

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

A resource of articles has been built up for publication in forthcoming issues. Articles are not published in chronological order or in

order of receipt. Priority tends to be given to articles arising from major IAYFJM conferences or seminars; an effort is made to present articles which give insights into how systems in various countries throughout the world deal with child and family issues; some issues of the Chronicle focus on particular themes so that articles dealing with that theme get priority; finally, articles which are longer than the recommended length and/or require extensive editing may be left to one side until an appropriate slot is found for them

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

### Articles for the Chronicle should be sent directly to:

Avril Calder, Editor-in-Chief,

e-mail : [acchronicleiayfjm@btinternet.com](mailto: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

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## **THE VEILLARD-CYBULSKI AWARD 2010**

The Veillard-Cybulski Fund Association aims to reward deserving works, particularly those which make a new contribution towards perfecting methods of treatment for children and adolescents in difficulties and their families.

To achieve this objective the Association has established a Veillard-Cybulski Award.

### **Rules (summary)**

- The award is made every four years, on the occasion of the quadrennial Congress of the International Association of Youth and Family Judges and Magistrates (IAYFJM).
- Candidates must submit four copies of their work in English, French or Spanish, together with a summary of not more than ten pages, to the address of the Association. Papers will not be returned.
- The next award will be made in 2010. The deadline for submission of works will be 31 October 2009.
- The prize winner receives an award of 10,000 (ten thousand) Swiss Francs. The amount of the second prize, where appropriate, will be decided by the VCFA Committee. Where two winners are classed ex aequo, they share the award. There will be no addition to the total amount of the prize.

### **Applications must reach the Veillard-Cybulski Fund Association**

**at the address below no later than**

**31 OCTOBER 2009**

### **Enquiries should be directed to the following address**

Association Fonds Veillard-Cybulski  
c/o Institut International des Droits de l'Enfant (IDE)  
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