CHRONICLE CHRONIQUE CRÓNICA

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Editorial — Avril Calder

XVIIIth World Congress, Hammamet, Tunisia

It is with great pleasure that I bring you a report of our recent World Congress hosted by our member Association, L'Association Tunisienne des Droits de l'Enfant (ATUDE), in the form of a sample of speeches and workshops from each of the three and a half days.

From Day 1, **The Child and the Family**, there is the opening address by Jean Zermatten, Deputy President of the UN Committee on the Rights of the Child who carried forward the theme of participation by children in situations that affect them (delivered at our XVIIth World Congress) by emphasising, on this occasion and shortly after the twentieth birthday of the Convention on the Rights of the Child, the **dignity** of the child—a value which, although we are diverse, unites us all.

From Day 2—**The Child and Society—**Mr Justice McFarlane, a High Court Judge sitting in the Family Court in London, very clearly sets down the challenges of putting the best interests of the child first when dealing with cases in England where there is a wide range of cultures and many children grow up outside marriage.

Also from the second day, Mme Béatrice Damiba, President of the Burkina Faso Superior Council on Communications, representing the Francophone Network of Media Regulators (REFRAM) discusses the regulatory, technical and legal issues involved in protecting the child in and from the media.

From Day 3—**The Child in difficult circumstances—**we hear from Judge Geoghegan of New Zealand and Dr Willie McCarney of Northern Ireland, two colleagues who have much experience of Youth Courts.

The **workshop** themes echoed the daily themes and so Grazia Cesaro, Vice President of the Children's Chamber, Milan, Italy writes about hearing children's voices during divorce; Dr Patricia Brown tells us about challenges facing the Children's Court Clinic in Melbourne, Australia and the media theme is amplified in a workshop addressed by both Maître Mactar Diassi of Senegal and Mme Damiba.

Her Excellency Judge Joyce Aluoch, of the International Criminal Court, The Hague, reminds us of the global nature of child trafficking—both within and between countries—and the lack of a clear definition of trafficking; while Sofia Hedjam of Terre des Hommes gives a valuable insight into unaccompanied children in several European countries, pointing out that many are vulnerable to trafficking.

Miri Sharon, is an Associate Legal Officer in the Justice Section of the UNODC in Vienna. Miri reminds us of the UN Resolution 2005/20 Guidelines for all of us dealing with the victims of and witnesses to crime.

On this theme, I have included an article written by Justice Renate Winter, which, although not delivered at the Congress, movingly relates the plight of child soldiers who are both victims and witnesses.

Judge Michel Lachat, past Treasurer of our Association and Deputy President on the Institute for the Rights of the Child, ably summed up the Congress, probing the relationship between articles 3 and 12 of the CRC.

And last but not least, there is the Declaration of Tunis. This was drawn up by the Scientific Committee led by Professor Kotrane of Tunisia, a member of the UN committee on the CRC who with his colleagues valiantly reviewed all the recommendations from each of the workshops and distilled them into a valuable whole of which we can be proud. The Declaration was recently submitted to a meeting of the UN Commission on Crime Prevention and Criminal Justice held in Vienna from 17 to 21 May.

And on a lighter note an article by Council member, Advocate Judy Cloete of South Africa, gives an overview of the whole Congress, which has become known as the 'friendly one'.

General Assembly Reports 24th April 2010

1 Ethics Committee Report

You will remember that, during the early years of the Presidency of Justice Winter, an Ethics Committee was set up under the leadership of Professor Jean Trépanier of Canada. The Committee finished its work in March of this year and the resulting twelve principles are so good that the UN might be interested in working with them and disseminating them on a global level.

2. Treasurer's Report

I am pleased to say that our finances have improved during the last four years, but not to the point where we do not have to worry about paying our way. Accordingly, the General Assembly agreed to realign subscriptions which will result in a small increase in 2011.

3. Editor in Chief's report

I set out below the closing comments of my report—the full report is on page 54.

> **The Chronicle—the future**
>
> I propose to keep the Chronicle at its current size, published six-monthly by our present electronic methods.
>
> I would like to establish a theme for each issue, set out in advance in a rolling programme to be discussed and agreed by the Editorial Board. Board Members with expertise on a particular theme would then be able to invite suitable authors to contribute an article.
>
> I would also welcome greater involvement by the Editorial Board in shaping and promoting the Chronicle.
>
> I propose to step down as Editor-in-Chief towards the end of the next four-year period. To maintain continuity, it would be helpful to appoint a successor and arrange an orderly hand-over.

So, if you have ideas for themes, please let me have them. If you would like to help, please let me know your strengths and availability.

To begin with I should be grateful if you would send me examples of cases where judgements have relied on the Convention on the Rights of the Child or other international instruments.

Finally, I would like to thank, most warmly, Monica Vazquez Larsson who has served on the Editorial Board for many years.

Avril acchronicleiayfjm@btinternet.com

Letter from the President — Joseph Moyersoen

Dear colleagues, dear friends,

I am writing to you, first of all, to thank you for the support that you gave the Executive during the last four years, and secondly for the confidence that those of you participating in the Hammamet Congress showed in electing the new Executive with me as President.

I thank the past President for the competence, determination, passion and heart that she put into all that she did to further the aims of IAYFJM. It is a challenge to succeed the "General", as Renate Winter was known during her Presidency.

I also have to thank Oscar D'Amours, the 'memory' of IAYFJM. Oscar always reminds us of our statutes and helps us to correctly implement our rules and procedures.

Thank you too to Avril Calder, firstly for having carried out her role as Treasurer with a lot of care and precision, secondly for her task of Editor in Chief of the Chronicle, thirdly for having replaced the Secretary General—who couldn't continue during the second part of the mandate for health reasons—and fourthly for having been a crucial support to the Executive during the last period before the Hammamet Congress particularly in linking with members.

Last but not least I thank Ridha Khemakhem, who organized a wonderful Congress in Tunisia with the aid of ATUDE—even the unpredictable power of nature couldn't prevent our Congress going ahead successfully.

The XVIII Congress could be named the Congress of IAYFJM's majority since it marked our entry into adulthood. But today we have to be clear; our mission isn't easy. A global economic crisis has involved the majority of our countries and we have to be watchful that this crisis doesn't extend also to a crisis of juvenile justice—it was very well brought out during the Congress that there is a wind blowing in the direction of more repression, of lowering the age of criminal responsibility and of increasing penalties.

But we have also to be positive. We know that we have a lot of things to say to our legislators, to political representatives, to all those who think and write the texts of changes going in the direction that I have mentioned and to journalists and the media. For this we have to continue to work together in the future building on what we already have in the area of justice for children. We have to make our voices heard by working with the new Executive and the new Council both of which I hope will be more actively involved in IAYFJM's activities in the future.

I think it is fundamental to have very concrete goals and priorities that will help to ensure that juvenile justice doesn't move backwards.

In addition it is important to:

- strengthen national associations;
- create new national associations; and to
- create new regional sections.

I hope we will be able to move forward in:

- supporting the exchange of information between colleagues of different countries,
- promoting technical assistance to disadvantaged countries and
- helping colleagues in disadvantaged countries to learn and to take part in IAYFJM's activities,
- supporting the essential and important work of the Institut des Droits de l'Enfant (IDE) in Sion which, over many years, has realized various important initiatives (for example in Africa).

Finally, in the era of technology, I think that it is necessary to reinforce the communication system inside and outside our Association using already known instruments (eg the website) and using new instruments (eg video conferencing by skype and an on-line forum).

During the next four years there are a lot of things to do but I will not be alone. The new Executive will benefit from the valuable help of Oscar D'Amours (Deputy President), Avril Calder (Treasurer and Chronicle Editor in Chief), Ridha Khemakhem (Deputy Secretary General), and from the energies of Eduardo Rezende Melo (new Secretary General).

We have to work together for the right end—the well being of children and juveniles.

I hope you will help me in this task during the mandate 2010-2014. I need all of you.

And I wish you well over the coming years.

Joseph Moyersoen*

Letter from the immediate past President — Renate Winter

Hello and good-bye

Dear friends and colleagues,

First of all a warm "hello" from Hammamet, Tunisia and our XVIIIth international Congress!

I am very proud to tell those of you who were not able to come that, thanks to everyone involved, it was a really great success. It was even more than that. Not only did we have a lot of important speeches, a lot of workshops, plenaries and round-tables (there is more detailed information in this edition of the Chronicle), not only were we able to continue our tradition of formulating a declaration—the Tunis Declaration 2010, we were even able to overcome the forces of nature! After years of preparation for our Congress, an unfriendly Icelandic volcano decided to erupt and send a huge amount of ash into the sky—preventing almost all air travel over Europe—exactly two days before the start of the Congress in Hammamet. European airports were closed, no way to get to Tunis. No way? The members of the IAYFJM were really united, this time not "united in diversity", but united by a strong determination to get this Congress going and to make it a success.

It is almost beyond belief how flexible our local partner ATUDE (and especially our colleague Ridha Khemakhem) had to be each day to deal with all the necessary changes; the lengths which the logistics people of the company ALICE went to in order to find alternative flights; the efforts that participants and lecturers took to be able to come just for their session and that lecturers who couldn't come took in order to get the full text of their papers to us at the last minute and what all our colleagues who were there did to fill the gaps left by those who couldn't make it in time—taking over workshops, reading out and explaining papers, joining round–tables, preparing themselves at night.... The unfriendly volcano made the conference "the friendly one" as we named it. The "friendly Conference" made the motto "United in diversity" a true one—theoretically as can be seen in the Tunis declaration and practically by creating the most pleasant, satisfying, collegial atmosphere you could imagine.

A big thank you to all: the success was well deserved!

Second, this short letter is also a good-bye. After four years of intensive but rewarding work for our "old lady", the 80 year-old IAYFJM, my part is done. I tried to do my best in the interests of our society and bring our members closer to each other.

I hope that I didn't disappoint anyone and that my friends on the Executive were not too unhappy with me (especially Avril who needed a lot of patience always getting my drafts at the last moment and Oscar, the "keeper" of the Statutes who tried hard to prevent me from making wrong choices) and I leave our Association in the capable hands of our new President, Joseph Moyersoen from Italy, and his "new/old crew".

I am looking forward to being invited, as a then very old lady, to the celebration of the 100th birthday of our "old lady"

Good luck and let's go on!

Renate*

The Tunis Declaration — April 24th 2010

The participants at the Eighteenth Congress of the International Association of Youth and Family Judges and Magistrates (IAYFJM), organized from 21 to 24 April 2010 in Tunis in partnership with the Tunisian Association for the Rights of the Child (ATUDE), with the general topic "United in Diversity: Juvenile Justice and Child Protection in the Principal Legal Systems",

Taking as their starting point the totality of the principles that guide the work of IAYFJM and ATUDE,

Recommend the following:

I. Ratification, adaptation of legislation, lifting of reservations

(a) Promotion of the universal ratification by all States of the relevant international and regional instruments and, in particular, the Convention on the Rights of the Child and its two Optional Protocols, that on the sale of children, child prostitution and child pornography and that on the involvement of children in armed conflict, and the adoption of a legislative framework in conformity with these instruments.

(b) Promoting inter-State cooperation with regard to private international relations, including cooperation among judicial institutions, through the conclusion of bilateral or multilateral agreements or accession to existing agreements, and, in particular, encouraging the ratification and implementation of the relevant Hague international conventions.

(c) Encouraging States to adopt systematic preventive legislation to protect children against all forms of violence, exploitation and discrimination.

(d) Supporting the proposal for IAYFJM to establish a database containing examples of good practices—such as the adoption by some countries of special codes or legislation for the protection of children—and a list of selected experts able to provide appropriate technical assistance.

(e) Encouraging States to reconsider their reservations and declarations contrary to the spirit and objectives of the Convention and its two Optional Protocols, with a view to their withdrawal.

II. Coordination of prevention systems, protection mechanisms and data collection

(a) Encouraging States to establish a multi-sectoral and inter-institutional system for coordinating long-term preventive action and measures for the protection of boys and girls against difficult situations of all kinds.

(b) Encouraging States to develop an integrated approach to the collection of data and the following up of cases of children in difficult situations, inter alia through the periodic enrichment of the relevant database.

III. Mechanisms for investigation, receipt of complaints and sanctions

(a) Encouraging States to introduce effective mechanisms for the receipt of complaints, for follow-up and for investigation—and consolidate or strengthen the mechanisms already existing in some countries—in the form of an independent human rights body to monitor and evaluate the application of the Convention at national and local levels, including its application by the private sector and by nongovernmental organisations as providers of services for children;

Ensuring, at the same time, that this institution is empowered to receive individual complaints concerning violations of the rights of children, investigate them, with full respect for children's sensitivities, and deal with them in an effective manner;

Encouraging States, in addition, to establish an independent national institution specialising in the rights of children.

IV. Police enquiries/justice systems/protection of child victims and witnesses

(a) Setting up, including through multilateral agreements between countries, a system for technical and financial assistance and the exchange of information and good practices, particularly with regard to police enquiries within the context of combating organized crime.

(b) Encouraging States, at the same time, to adapt the justice system to the needs of children, notably by establishing special measures and appropriate mechanisms and programmes to ensure the protection of child victims or witnesses of crime and their social reintegration, in application of the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20 of 22 July 2005).

V. Favourable environment/strengthening of capacities/training and dissemination of the Convention

(a) Guaranteeing a protective and secure environment for children within families, communities, schools and institutions, with the encouragement, in particular, of positive and non-violent education methods.

(b) Organizing specialized, multidisciplinary training for judicial personnel, police forces and all professionals working with and for children, particularly through the strengthening of partnerships among professionals and the networks and agencies representing them.

(c) Encouraging IAYFJM to develop its activities in the area of the provision of appropriate technical assistance in all fields relating to capacity-building and the training of judicial personnel and other professional groups working with and for children.

VI. Private enterprises/media/information and communication technologies/personal data

(a) Making the private sector (the Internet, telecommunications, the tourist industry, etc.) and the media aware of their responsibilities in regard to the combating of violence against children, trafficking in children and the exploitation of children.

(b) Preventing the use of the Internet and other technologies for the recruitment of children for purposes of sexual abuse online or offline or for purposes of commercial or other exploitation of personal data.

(c) Detection and dismantling of financial mechanisms permitting the conclusion of transactions whose aim is trafficking in children and the exploitation of children.

(d) Developing public-private partnerships in support of the development of education and awareness campaigns.

(e) Encouraging IAYFJM to contribute its field experience in all the areas mentioned above and promote the exchange of good practices among justice professionals and other professional groups working with and for children.

VII. Follow-up to the Tunis Congress

The International Association of Youth and Family Judges and Magistrates will encourage all activities directed towards following up the Tunis Congress, and will in particular facilitate:

—The establishment of a network bringing together resource persons and organizations that have participated in the activities of the Tunis Congress and other activities of IAYFJM concerned with children's rights;

—The promotion of exchanges of information, documentation, databanks and training and research activities related to children's rights.

Tunis

24 April 2010

Dignity

Jean Zermatten

This is the opening address given to our Eighteenth World Congress in Tunisia by Jean Zermatten, a Past President of our Association.

Some six months ago, with great ceremony, the UN Committee on the Rights of the Child—the body that monitors the implementation of the Convention on the Rights of the Child—celebrated the first twenty years of 'Mademoiselle Convention' who has now grown up into 'Madame Convention'. Over one hundred countries took part together with a large number of NGOs, professionals who work with children, academics, independent experts and so on…..

I mention this celebration of the Convention's twentieth anniversary because I want to draw attention to the three-part theme of the official debates that took place under the title of 'Dignity, Development and Dialogue'.

At least two of these terms refer to the child's situation. Children are, of course, developing, but they are also people with dignity with whom adults should engage in dialogue. That seems to me to be the common understanding that brings together all professionals in the field of justice, whether we are police officers, prosecutors, judges, social workers, teachers or are in charge of a prison or institution. And I could, of course, add psychologists, academics, doctors, lawyers to the list. Indeed, whether we are involved in a professional or personal capacity, we are all motivated by a clear and shared belief: children are not raw material to be worked on, nor the objects of our goodwill nor the recipients of our charitable endeavours. They are people and people who deserve respect.

People

The UN Convention on the Rights of the Child (CRC) is not a bland document content simply to list the rights to be accorded to children. Of course, the Convention lists these rights, but it goes further. The Convention creates what I call a new democratic dynamic in the sense that children—who have historically been seen as under our protection (the concept of vulnerability) and as the recipients of the care that adults are willing to afford them (the concept of dependence)—have become as if by magic (as we would say in a fairy story) the holders of rights.

The Geneva Declaration of 1924 and the Declaration of the Rights of the Child of 1959, although devoted entirely to the child, did not venture upon this new vision. They both considered the child only from the point of view of protection (against various kinds of exploitation, especially by adults) and of basic needs (food, shelter, education, health care, etc). It was only in November 1989—a very short period of time in human history—that the perspective altered and we no longer looked on a child as a small, friendly, rather curious being, but recognised that he or she was a complete person.

Of course, the CRC still stipulates benefits to be accorded to the child—I am thinking here of basic care—and these (health care and education to name just two) are set out in much greater detail than in the two earlier declarations. Moreover, the CRC goes further by raising the issue of social security for children under 18, specifying in great detail the care that should be provided if neither parent is able to carry out their responsibility to educate the child and requiring States to have in place services with adequate budgets that are properly monitored.

On protection, the CRC has a very broad requirement that every effort should be made—including prevention—to stop adults exploiting children—not only in familiar forms, such as child labour, but in newer guises, such as domestic violence, child abuse, sexual abuse, child prostitution, sexual tourism, pornography, the dangers inherent in new technologies, trafficking, substance abuse, kidnapping etc, not forgetting child soldiers, migrant children, children used by criminal gangs… The section on protection is highly developed but unfortunately not exhaustive. It illustrates the sad fact that the child, often described as the thing we most cherish, is all too often considered as a thing in the sense of merchandise to be sold, trafficked, swapped, exploited, manipulated or made to disappear.

But now that the Convention has brought in a new dimension—consideration of the child as a person—the paradigm has altered. Children are no longer our most precious possessions; they have become very precious **people**. And if children are people, it is no longer possible to think of them in the same way that we think of pieces of furniture, commodities or things.

The big step forward is purely and simply this: **recognition that a child is not a thing and not even a small grown-up or miniature adult, but is simply a person** who has rights like every other person.

The fact that the Convention has been ratified by almost all the countries on the planet, so that all these countries have undertaken to consider children as people, is an unprecedented event. It is probably one that escaped some of the countries when they were ratifying this binding treaty. I get a bit restive when I see what some countries have made of their ratification (or more often have not made), leaving this binding international treaty to moulder at the bottom of a drawer or gather dust on the highest bookshelf.

Because, in recognising that a child is a person, the first implication for the State is the obligation to admit that this person—small and childlike as he or she may be—has rights (I am tempted to say: full rights) which go with the fact that he or she exists ; and that these rights cannot be taken away. The person—in this case, the child—may not appreciate them, but cannot relinquish them. These rights are strictly personal.

Dignity

What does it mean to say that a child is a complete person? I think we are now getting to the idea of dignity.

The Convention, as you all know, sets out certain general principles (art 2 on non-discrimination; art 3.1 on the paramount interest of the child; art 6 on the right to life, survival and development; and art 12 on the right to be heard and to have their views taken into account). But the Convention does not devote an article to dignity, as we might have expected that it would.

However, the word 'dignity' does appear in article 40.1 in relation to juvenile justice where it serves to emphasise that a child in contact or in conflict with the law has the right to be treated in a way that 'respects his or her sense of dignity'. The Committee on the Rights of the Child in its tenth General Report devoted to juvenile justice[1] also takes up this point and bases a large part of its thinking on the need to find alternatives that do not affect the child adversely but rather enable him or her to develop and foster a sense of self-respect and encourage integration into society from which their crime has temporarily excluded them. The idea is simple: a child, even a delinquent, remains a human being and cannot be treated anew like an object or be seen as a lower class of humanity.

Indeed, in basing article 40 on this idea, the Convention is not inventing anything new but is simply looking to article 1 of the Universal Declaration of Human Rights, which confirms that all human beings are born free and equal in rights and dignity.

Dignity is a concept that is inherent in all members of the human race and so inheres just as much in children. It is usually defined rather negatively—in terms of what offends or violates it—instead of in a positive way. The shared dignity of all human beings encourages them to act towards each other in a spirit of brotherhood.

It is important to say that this common human dignity imposes duties as well as conferring rights. Putting it another way, recognising dignity imposes obligations for each person towards others. (that deals with those who think that the rights of the child do not impose any duties.)

Dignity and the CRC

So dignity is not mentioned explicitly in the Convention, but it is there implicitly and the Convention's preamble refers to it. This principle of dignity should be respected in any procedure engaged in by adults (parents, teachers, directors, judges, police officers or whoever they may be) with or for children.

Of course, dignity is more than just a formality to be respected when a child is in trouble with the law or its officials. Dignity is a good deal more—it is a quality to be recognised as integral to the child, who has become a holder of rights by virtue of being a person and because people have dignity. Korzack would have said, 'because everyone is worthy'.

In fact, making the link to Korzack and establishing the right to respect is simply applying the principle that the child is a whole human being and therefore equal to others and as dignified as others. Indeed, if this person—a child—has dignity, he or she is worthy of everyone's respect—from other children, from the parents who will bring him up, from adults in general and decision makers in particular (in the courts, schools, health centres, institutions, in centres for migrants and asylum-seekers, in police stations or prisons) who should seek her views and take account of his interests; respect also from the communities who will help her mature and States who should establish forums where he can find his voice and speak out; laws that will ensure her rightful place and services that will protect him from the unexpected or from exploitation by older people—all offering benefits and dialogue according to the individual child's particular needs.

[1] General Observation 10, the rights of the child in juvenile justice, 2.February.2007

The 'human rights' perspective is founded entirely on this recognition of the worth of the person. Moreover, the preamble to the CRC says no less than:

> 'Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person;'[2].....

The interesting thing is not only to find that the CRC preamble makes this declaration of faith, but that the recognition of the individual rights of the child (rights and civil liberties, since you cannot talk of political rights in the strict sense) clearly confirms this explicit recognition.

If you add that there can be no discrimination against the child on the grounds of race, colour, sex, language, religion, opinions, disability etc and that he or she has a right to life, to survival and development in accordance with their developing capacities, you must definitely admit that the way we look at children has changed. It is nothing less than the recognition of their individual worth, capacities and dignity.

Although it is twenty years old, we are confronted with a completely new vision of the child and I think that means that we should rethink our relationships with the individual children and groups of children that are around us. If we have a new child, we must find a place for her that takes account of her rights and accords with her dignity. That is what I call the new democratic dynamic. Finding the right approach to children in all the different contexts will probably mean building a new **social contract**.

United in Diversity

It is quite obvious—as this Congress will demonstrate—that we are all different from each other—in language, legal systems, culture, traditions, our approaches to life and the attention we pay to the smallest among us.

But what I perceive is that the new look that the CRC takes at children has brought us closer together—

- it emphasises the considerable potential and resources of the young: expressing great confidence in young people wherever they live;
- it does not put children on a pedestal (despite what some may believe) but it gives them a voice; not to make excuses but to talk sensibly and to be heard everywhere in the world;
- it makes all children equal, especially children from marginalized or vulnerable groups: so it is founded on the value of equality that transcends cultures and systems;
- it establishes this new idea—that children are not the property of adults and they cannot be bartered, treated or abused as if they were a piece of merchandise: the CRC maintains their status as individuals, whatever their position in life;
- it accords the right to life, to survival and to development: and so it gives legal status to an obvious point—that all children have the right to grow up;
- but beyond all that, it states that a child is not only a person, but that he or she has that quality of immense importance in their eyes and ours—that of dignity.

Recognition of the dignity of children is what unites us and should encourage us to improve our methods in order to strengthen respect for human rights to give children all the attention they deserve.

That will certainly not weaken us; it will make us better individuals and professionals.

Jean Zermatten* is Vice-President of the UN Committee on the Rights of the Child, Director of the International Institute of the Rights of the Child in Sion, Switzerland and a retired juvenile judge.

[2] CRC preamble para 2

The child and society: a view from the English High Court

Mr Justice Andrew McFarlane

I have regarded the invitation to speak on 'The Child and Society' as one that invites my own professional perspective as a judge in the Family Division of the High Court in England and Wales moving through the early years of this new century. I will first sketch some of the facets of modern 'society' in England and Wales which render the world in which the child may live (and the judge must operate) both highly complex and potentially confusing. I will then look at some recent legislation in our jurisdiction and two specific cases which may be of interest.

The changing nature of society

I have no desire to bore you with an elaborate philosophical discourse on the nature of modern society; I am a practical family lawyer whose professional aim is to assist in resolving the individual family troubles of clients and, now, the parties to the proceedings that come into my court. It is however, instructive, and indeed necessary, to raise one's eyes above individual cases and look at the wider picture for a moment or two.

Margaret Thatcher once famously said that 'there is no such thing as society; there are individual men and women and there are families'.[1]

In the field of family law, it is a truism that in any particular dispute or court case there will be just individual men, women and children involved in some form of familial relationship; but those individuals and that relationship fall to be evaluated by the law and the courts against the wider landscape of moral, cultural and, at times, religious parameters of the society within which they live.

One of the great values of an international Congress such as this is that a rich panoply of different models of society is available for comparison and contrast. In describing the situation in England, I am doing no more than reporting to you on the landscape as it currently is in our jurisdiction. My purpose is not to trumpet these reforms, or the organic development of the highly diverse society on our island, as a model to be followed; I am simply giving you a small snapshot of how it is.

A central and increasingly prominent feature of English society is the number of children who are growing up in relationships outside that of a formal marriage. A year or so ago, the public interest was captured by a mother, Karen Matthews, who had arranged for one of her daughters, Sharon, to be abducted by a relative in order to reap whatever financial benefit might flow from the ensuing publicity and possible reward for her subsequent discovery. The police traced the whereabouts of the child, who was being kept boxed in under a bed in the relative's flat. The mother and the relative were arrested and are now serving prison sentences.

The reason for recounting this bizarre tale is not to draw attention to its details, which were, thankfully, well out of the ordinary, but to report that Karen Matthews was the mother of seven children by no fewer than six different fathers. The British public and media seemed to be as astonished by the number and complex paternity of Karen Matthews' family as it was by the events around Sharon's abduction and subsequent discovery. I doubt, however, that any family judge would have shared the nation's astonishment on this point. The family courts very regularly encounter familial groups with multiple children, possibly each with different family names and with multiple parental figures. If it is a problem for the judge to unpick and evaluate each of these relationships, it must be infinitely more difficult for the individual children to do so as they try to carve out a life and an identity within such a complicated and shifting structure.

[1] Prime minister Margaret Thatcher, talking to Women's Own magazine, October 31 1987

At this Congress four years ago the then President of our Family Division, Sir Mark Potter, said:

'Over the last 30 years ... for a variety of reasons unmarried cohabitation has become socially so widely practised and accepted at all levels of society and the number of couples electing to cohabit has risen so fast, that social and peer pressure to acquire married status, even for the purpose of childbearing, is now confined to particular sections of society.'

Sir Mark's description is entirely accurate. One set of statistics report that 14% of couples are cohabitants, up from 9% 10 years ago. 13% of children live with the 2m cohabiting couples who have 1,250,000 dependent children.[2] 65% of cohabiting unions with children dissolve; half doing so before the child is 5.

Only 35% of cohabitant children will find themselves with both parents up to the age of 16 years, whereas 70% of children of married parents do likewise.[3] A recent UK Government Green Paper recorded that 63% of dependent children are living in families with married couples (not necessarily both being their parents); 13% with cohabiting couples and 24% with single parents.[4] Step families are the fastest growing family form in the UK. Finally, the number of children born outside marriage was 10% in 1971 but had risen to 45% by 2008.

Recent developments in statute law

In recent times the UK Parliament has introduced a number of significant changes to our statute law. I will list the main changes in a moment, My purpose in referring to them is not to look at their substance, but to point up the marked increase in the variety and complexity of familial relationships that English society has now recognised within its statute law and to question how these societal changes may impact on an individual child who finds herself at the centre of such a relationship.

I propose to illustrate my point with one detailed example—artificial insemination or in-vitro fertilisation (IVF) as it is more commonly known. Since the early 1990s the UK has had a statutory scheme[5] which governs the creation of human embryos and the subsequent implantation of an embryo in a potential mother. By 2006 the use of IVF had developed so that around one in 60 of all live births in the UK was the result of IVF treatment.[6]

Where the donors who have contributed the gametes to the creation of an embryo are the couple who have sought treatment (the 'commissioning couple'), then the parenthood of any resulting child, both as a matter of law and of genetics, is straightforward—they are his parents. The matter becomes more complex, however, where gametes from an anonymous donor have been used.

Under the 1990 Act, the woman who carries the child to birth is to be treated as a matter of law as his mother. So far as the father is concerned, if the woman was married at the time when the embryo was placed in her, then her husband will be treated as the child's father unless it can be shown that he did not consent to the process. If she was not married, but she received the embryo as a result of a course of fertility treatment given to her and a man together, then that man will be treated in law as the father of any resulting child.

Let us stand back and consider that situation. The man, who will in law become the child's father, will have no genetic relationship to the child. Whilst he has attended the course of treatment with the mother, he has contributed nothing to the treatment and his body has not received any treatment. As a case that went as far as the UK House of Lords demonstrated[7], the underlying relationship between the couple may be comparatively superficial or weak. It is no business of the IVF clinic to assess the quality of the relationship between the couple or their potential as prospective parents, as would be the case were they to seek to adopt or foster a child. Yet this man will be in law the child's father and is likely to have parental responsibility for him, shared with the mother.

My purpose in explaining this facet of the law is simply to flag up one example of modern law, where society, acting through Parliament, has created the relationship of 'parent' and 'child' from a situation where the two individuals are not in fact related genetically, or as a result of marriage to the child's mother.

These circumstances have recently been further developed by amendments to the 1990 Act which provide for:

1. the right of a child who has been born by IVF after insemination by an anonymous donor, to trace the identity of that donor once he, the child, has reached 16 years of age; and
2. provision of artificial insemination (and consequent parent status) to same sex couples who are either in a civil partnership or simply in a relationship.

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[2] British Household Panel Survey

[3] K Kiernan, LSE CASE paper 65, 2003, J Ermisch 'The achievements of the British Household Panel Survey', 2008

[4] 'Support for All: the Families and Relationships Green Paper' (January 2010: Cm 7787).

[5] under the Human Fertilisation and Embryology Act 1990

[6] HFEA: 'Facts and Figures 2006': 13,100 babies born by IVF/Donor out of 749,000 babies born.

[7] *Re R (IVF: Paternity of Child)* [2005] UKHL 33; [2005] 2 FLR 843.

These changes have been brought about after anxious and very full consideration both inside and outside Parliament. My purpose in pointing to them is not to criticise, but simply to demonstrate how complicated the position of the child may be as he begins to grow up and come to terms with the situation which society has encouraged by its legislation. In the situation in (ii) above, the child will have a mother, who carried him and gave birth to him, and a second female parent. He will also come to know that there is an anonymous male who made a donation in order to enable his creation. He will also be given the tantalising information that, once he is over 16 years old, he will be able to trace that male individual.

I can do no more than list other socially important statutory changes, but do so with the observation that each, in its own way, has the potential for throwing up situations of some complexity and difficulty for the individual adults involved, for those in society with whom they interact and, above all, for any children whose lives may be involved.

The legislative changes are those that relate to:

- surrogacy
- same sex civil partnership
- gender recognition—in the field of family law the paradigm example is of a father who, following the birth of his child, goes through treatment and subsequently has his gender confirmed as female so that the child has two female parental figures, one of whom is his genetic father;
- adoption by unmarried couples, including adoption by same sex couples; and
- the increased ability for step-parents to obtain parental responsibility for a step-child.

How does the court approach individual cases?

I will now look at the impact of our modern society on children from another perspective. The UK is now home to individuals and families from all corners of the globe. I gather that the Central London family court in Wells Street now has, and needs to have, the capacity to provide interpreters in no fewer than 250 different languages or dialects. The richness and variety of culture that these individuals bring to our island is beneficial and truly enhances our collective life. But, just as the range of relationships now recognised by statute law increases the complexity of family life and family law, so too the range of cultures and religions may bring increased complexity and a need for insight and understanding from the family judge that may not have been required, say, 30 or more years ago.

'British society' is now so multi-faceted and multi-layered that it may not be relevant to speak in terms of 'society' as if there were one homogeneous national grouping.

In this regard Margaret Thatcher's words are not out of place—there is no one society, just individual men, women and children and individual family groups. But that is not the total picture, as a substantial number of the individuals who live in the UK are very closely involved in cultural and religious groupings within the wider community. They are members of something readily identifiable as 'society' based on the grouping to which they are affiliated by birth or faith or both.

When a child from such a community is the subject of proceedings in the English Family Courts, what regard, if any, does the court have to the mores, dictates and expectations of the cultural or religious group to which the family belongs? When, to take one example, a Muslim family is before the court, what regard does the secular English court have to Sharia Law?

As a common law jurisdiction, the answer is that the approach develops case by case, but always subject to the statutory requirement that any issue regarding a child's upbringing must be determined by giving paramount consideration to that child's welfare. Within the overall welfare evaluation, the cultural and/or religious context must be taken into account. The court will need to understand how one or other arrangement for the child's care will be received by the family and wider community in accordance to the dictates of the faith and law of that community.

In those parts of our jurisdiction which have large immigrant communities, deciding precisely where the balance lies in welfare terms for an individual child between recognising and accepting the traditional norms of other cultures and a judicial system based on European traditions and values is, and will remain, one of the greatest problems facing family courts in the 21st century.

How does that play out in practice? I offer two examples:

Example Number One:

Early on in my judicial career[8] I encountered a case were a mother wished to remove her son, then aged 9, in order to set up home with him and her new husband in Holland. All the parties were Iraqi nationals. The father was the 'mantle head' of his group of families in Iraq which numbered some 20,000 individuals. The boy, as his eldest son, would in normal circumstances succeed him as mantle head, but that succession depended upon the continuation of a close relationship between the father and son.

The court heard evidence from experts in Sharia Law and from members of the family committee in Iraq which would ultimately decide whether or not the child would inherit his father's role.

[8] *Re A (Leave to Remove: Cultural and Religious Considerations)* [2006] EWHC 421 (Fam); [2006] 2 FLR 572.

For some time the boy had been living in the primary care of his mother, the father accepted that this state of affairs should continue and the expert evidence established that if it did, and the boy was not in the primary care of his father, then he would be unlikely to inherit. Thus it appeared that his prospects of becoming mantle head were already badly compromised whether or not there was a move to Holland. In the event, the other welfare factors in the case pointed strongly towards granting the mother's application, which was the outcome that I as the judge endorsed. But the position in Sharia law was by no means irrelevant to the court's considerations. It was a substantial factor that played in favour of the father's position as part of the overall welfare evaluation. No one element in any welfare evaluation is automatically the determining factor in any particular case; and, in an appropriate case, the impact or consequences of the various options under Sharia Law may well be very persuasive.

Example Number Two:

In a multicultural society such as the United Kingdom, it is, of course, not unusual for young couples to form relationships outside their own community and across the religious divides. Again, where there is a dispute as to the welfare of a child born to such a couple, the cultural and religious aspects of the case may well be prominent. One striking example, again from my own experience when I was still a barrister, arose from a dispute between a young Muslim mother and her Jain husband around the care of their two children[9]. The principal issue was whether their son, who was then aged 8 years, should be circumcised. Whilst neither of the parents had been regular adherents of their respective religions when they were together, the religious imperatives had become prominent once they had separated and returned to their respective families. The mother, supported by her family with whom she had become reunited, was adamant that the boy should be circumcised and that this was an absolute requirement of the Muslim faith. The Jain faith, however, is well known for its advocacy of non-violence, which involves reverence for all life and the avoidance of harm or injury to others. Circumcision is strictly forbidden in Jainism and the father was firmly opposed to his son undergoing this procedure.

The evidence heard by the judge included detailed expert evidence on both the Muslim and the Jain faiths.

In her conclusions, the judge gave prominence to the fact that the children had been brought up to the ages of 10 and 8 with a mixed cultural heritage and had experienced life in both a Jain and a Muslim household. They were by then of such an age that they were too old for one of their religions of origin to be favoured over the other. In due time, as children of a mixed heritage, the judge held that each child should be allowed to decide for themselves which, if any, religion they would wish to follow. Circumcision, once done, cannot be undone. The judge therefore decided that the question of whether or not he should undergo circumcision was a matter for the boy to decide once he was old enough to do so. She therefore refused to permit the operation to take place at that stage.

As in my first example, the dictates of the religion or internal faith based law were described in detail to the court and fully evaluated by the judge. In this case there was a stand-off between two different, and on this point, opposing beliefs. Under English law the judge was obliged to decide the issue by affording paramount consideration to the child's welfare and did so by giving prominence to the mixed cultural heritage which had been characteristic of the family's life before separation.

Modern Western societies provide the circumstances where it is possible for young people from different faiths to meet and, if the inclination is there, to set up home together and start a family. It is, in our eyes, a basic human right for them to do so, but one only has to think for a second to see just how difficult the position of any resulting child might be, particularly where the relationship ends and the parents return to their original faith. It is yet one more illustration of how society has developed in a manner that makes the role of a child growing up, finding his way and seeking his own secure identity all the more complicated and difficult.

Nuclear and extended families

The term "nuclear family" was first devised in the middle of the 20th century as a convenient term by which to distinguish the majority of Western households consisting of father, mother and children, from the wider Eastern and African concepts of the "extended family" in which far larger family groups including grandparents and other relations live together in a wider family community sharing or taking responsibility for each other's children.

It would be wrong to suggest that such larger family groups lack the cohesion of the more restricted European model; quite the reverse. My experience is that an extended family unit usually maintains a greater degree of social contact and frequently involves family members in business as well as their domestic life.

[9] *Re S (Specific Issue Order: Religion: Circumcision)* [2004] EWHC 1282 (Fam); [2005] 1 FLR 236.

Family systems of this kind are older and more extensive across the world than the more fragmented "nuclear" European form and, for many families who now live in England, they continue to provide the framework within which family life is organised, even though they may need to be adapted to the customs of the host country. English family judges are rightly encouraged to understand features such as corporate family enterprises and "arranged" marriages in terms of their original context and not simply as departures from the norms of the host country[10].

In my view both nuclear and extended families are of value and are to be respected. The difficulty that I perceive from my vantage point is of a 'society' where both models are being operated. The court must rightly be sensitive to the particular family that comes before it and the particular needs of the child within that family, rather than approaching the resolution of issues with a preconceived 'one size fits all' model of how a family should be run.

In my example of the Muslim/Jain union, the difficulty for the couple, and for the children, was that the life that they lived before and after their separation did not just cut across religious divides, it also jumped from one model of family structure to another. When they were together, and estranged from their families of origin, they were a paradigm nuclear family comprising a mother, a father and two children. On separation they each returned to their extended and contrasting families of origin. Again the potential for confusion for the children, caught between these two families, is, in my view, all too plain.

None of what I have said should be heard as a plea to put the clock back or return to a more simple and straight-forward age. We are where we are. My purpose has been to point up just how complicated modern society in our jurisdiction has become and to try to see how this maze of relationships may be experienced through the eyes of a child who is trying to get on with the task of growing up within them.

At the end of the day, it is as well to remember that, whatever the definition of a family, its principal function and value in any society is the provision through parental care of nurture, upbringing, safety and happiness to the children who will form the next adult generation. As Dr Claire Sturge, a leading consultant child psychiatrist, has stated: "from the child's perspective nurture is overwhelmingly more important for their healthy development than nature.

The child's healthy development depends on the quality of their relationships—with anyone who is committed to them. Psychologically, it is the nurturing parent or co-parent who is all important in meeting their emotional needs".[11]

So far as families are concerned, one size certainly does **not** fit all, and never has. The English judge may encounter a family where both parents are of the same gender, they may, in the case of a father who has subsequently had his gender recognised as female, actually be the biological parents of their offspring, or, in another case of birth post-IVF, neither or them may be genetically related to their child. He may be asked to rule on a child in a traditional faith-based extended family, or a secular nuclear family, or a child in the midst of a chaotic set of transient parental relationships. The ways in which familial care may be provided are legion and best judged by their effects, rather than the degree of their conformity with an attempted definition.

I have asked you to think of the position of the child in each of these different settings. I am sure that you will also give more than a passing thought to the plight of the judge who has to try to unravel it all. Children are the future generation. There is no more important task that any judge may undertake than to make decisions about a child's future welfare. It is a pleasure and privilege to be here and I am very grateful to you for inviting me to speak. Thank you.

Mr Justice McFarlane* is a judge in the Family Division of the High Court of England and Wales.

[10] Judicial Studies Board. Equal Treatment Bench Book. March 2008

[11] Dartington Conference "Integrating Diversity" 29th September 2007.

Children and the media—a view from Burkina Faso

Mme Béatrice Damiba,

Foreword

First of all, I would like to congratulate you on holding your XVIII[th] Congress and especially on the relevance of its theme. For our society the protection of children is both noble and of great importance.

I would also like to welcome the involvement of the International Francophone Organisation (OIF) in the form of the Francophone Network of Media Regulators (REFRAM), which I am representing here, as I was its President from 2007, when it was established, to 2009. Our involvement has the aim, among others, of bringing to your attention the problems of protecting children's rights in the media. You have all witnessed the development of communications which—while offering opportunities for development—can also be detrimental to the rights and liberty of individuals, especially the most vulnerable.

Introduction

How can the activities of the media impinge on the rights of children and how can we arrange matters to avoid these activities weakening their rights? That is the question I consider in this paper.

In this explosion of communication, the exposure of children to certain kinds of images can put before them male and female role models that do not incorporate the qualities of citizenship that we would wish them to adopt either for the good of our countries or human-kind.

Realising the need to raise awareness of this issue among all concerned, the Burkina Faso Superior Council on Communications—the body with responsibility for implementing the law and for media regulation—held a workshop in Ouagadougou in July 2009 under the title The media and the protection of children's rights.

The issue has been a recurring theme in several REFRAM conferences—particularly at a colloquium in Dakar in November 2008 and at a meeting in Granada in October 2009 of the Network of Mediterranean Regulatory Authorities—with the aim of sharing experience and strengthening the ability of national authorities to deal with the problems that arise.

The Network of African Communication Regulatory Authorities is also concerned, aware of the great influence on young Africans of the flood of externally produce programmes.

The protection of children and adolescents from the portrayal of violence in the media is a key issue for magistrates, such as yourselves, to keep the judicial system in tune with requirements in this area.

My task today is to outline the problems for you and to give you the benefit of the experience of my country—Burkina Faso. The structure of my paper is as follows:

1. the protection of children in the media;
2. technical solutions to the protection of children's rights by the media;
3. regulatory solutions and
4. legal issues.

1. Protection of children in the media

The risks posed to children by certain media activities are undeniable. Confronted with violent or erotic scenes, for example, a child's moral well-being is attacked; and, if children take part in these scenes, they lose all their rights and any means of protection. Concerns about children's rights in the media appear in the forms of communication, the contents of programmes and even the systems of broadcasting.

a. the forms of communication

Violence in the media occurs in all kinds of output and in all forms of communication—internet, television, radio, newspapers, cinema, mobile phones……Every day, the frequent broadcast of violent or erotic content violates the physical or spiritual well-being of young people.

Newspapers also, to a lesser extent, bear responsibility for disseminating shocking and degrading images:

- pictures of nudity and dead bodies;
- pictures with a tendency to pervert;
- overly-daring photographs, etc.

While one should not ignore the frequently negative influence of some forms of audio-visual communication—such as radio, DVDs, video-cassettes and video games—that are available without restriction in many countries, currently

television and the internet seem to be the main carriers of violent images.

In 2007 one African person in 13 owned a television; 1 African in 40 owned a land-line telephone; 1 in 40 owned a mobile phone; 1 in 30 a computer; 1 in 150 had an internet connection; and 1 in 400 subscribed to PayTV.

By 2009 in areas of Burkina Faso like the capital Ouagadougou and the second city Bobo-Dioulasso almost all the children of salary-earners or businessmen owned video-games. Television ownership has greatly expanded. Almost all households in the large towns own one. In medium-sized towns, 1 household in 4 has a television set, which it shares with three others. Even in villages with no electricity there are sets which run on solar power or on batteries and provide communal viewing.

b. the content of programmes

There is no doubt that these days television carries images which are not educative, in the sense prescribed by local moral values. All the same, they should contribute to general education.

For example, the 21 television channels in Burkina Faso (public and commercial stations) mainly broadcast films and programmes made in the USA, France and Latin America, whose costs of acquisition seem to be lower than films produced in Africa. Burkina Faso—which as you may know is the home of FESPACO[1]—is a major film producer.

Without their own production facilities, television stations in southern Africa make use of programmes over whose content they have no control, reinforcing these unfortunate effects.

In order to deal with the problem of the exposure of young people to programmes that are not suitable for them, some countries, such as the United Kingdom, have introduced television for young children. Is this the answer?

c. the state of broadcasting

Although the majority of films containing violent scenes are screened after 22.00, they are often repeated during the day. Also, some films are banned on days when children are likely to be at home (Thursdays and weekends with us) but are wrongly shown then. Soaps are generally shown during peak hours, because it is a condition imposed by the sponsors.

In the main, audio-visual broadcasts are characterised by:

- **inadequate control over the programming.** Cinema or audio-visual productions and cassettes that are supposed to be reviewed by the national commission for film classification are not always reviewed and can later on be shown on television without a certificate—that is without prior control;
- **the need to monitor programmes**. Rigorous monitoring by the viewing commissions set up within media organisations turns out to be essential.
- **use of content-alerts.** The CSC[2] requires warnings to be shown with films, but compliance is hit-and-miss.

2. Technical solutions

How can the media protect children in our information society?

i. production of suitable material

Home production of audio-visual material should provide a means and an opportunity to create healthier images. Television is a fascinating knowledge-bearing invention which is a daily companion in the lives of men and women and especially the young. The programmes that are broadcast will determine how well people are informed by the media. Television stations in southern Africa do not have a great deal of choice over the contents of their programmes. So we need to promote local production by making the necessary resources available, to strengthen programming for children (with their involvement) and promote films with a positive outlook. The state should increase its support to the media for the purchase of less violent programmes.

ii. reporting or publicity concerning children

Abiding by ethical principles in reporting about children is essential for maintaining their rights. UNICEF has set out principles to help those working in the media to produce reports on children in an appropriate way without compromising their rights.

The CSC, which is also responsible for advertising, watches out for commercials or other advertisements that might disturb children or subject them to propaganda on matters having nothing to do with them. It can ban any television advertisement that breaks the law on this.

iii. warning on content

An effective use of alerts coupled with a public awareness campaign to encourage people not to expose children to images detrimental to their rights, particularly in the audio-visual arena. The media have a role in the alerts and strengthening their internal monitoring.

[1] FESPACO is the Panafrican Film and Television Festival held in Ouagodougou, Burkina Faso every 2 years—known as 'Africa's Oscars'.

[2] Conseil Supérieur de la Communication

3. Regulatory solutions

The state's role in the protection of children through regulation depends upon the smooth running of the authorities regulating communication. This role is carried out by taking the following steps:

i. establish, with the involvement of the media, an ethical charter seeking to protect children's rights and make available programmes suitable for their age;
ii. take every step to make compulsory within a short time-scale the nation-wide use of pictograms or warnings in audio-visual media (and cinema);
iii. strictly enforce rules on the protection of children's rights;
iv. control programmes in video-clubs and internet cafés;
v. make children, teachers and communities aware and encourage parents to meet their responsibilities for their children in respect of programmes and inform the public about the media;
vi. encourage public and private media organisations to set up (or revitalise them where they already exist) to review films and film-clips before they are broadcast;
vii. develop and implement a national policy to reduce the cost of locally produced audio-visual material; and
viii. establishing a formal framework between parents of schoolchildren, consumer organisations, media and financial organisations to deliver a coherent and concerted approach to these issues.

4. Legal issues

It is essential to have in place an appropriate legal and regulatory framework. Our countries have ratified the CRC and, in the case of African countries, the African Charter on the Rights and Well-being of the Child, as well, because we believe that protecting children's rights is essential for upholding human values.

A repressive arsenal is needed when possible solutions are exhausted and harm is still going on. In the current situation, we need:

- to bring together existing documents with a view to publicising them;
- to work up some guidelines for those in charge of internet cafés and video-clubs;
- to insist on software filters;
- to put on an extensive public awareness campaign;
- to impose tax on pirated DVDs and CDs; and
- to popularise and implement the law on the protection of children.

Conclusion

In conclusion, one has to say that—in the era of globalisation and at a time of the convergence of information, communication and digital technologies—faced with the audio-visual boom, it is becoming increasingly complicated to control media content.

Several other difficulties and problems could complicate the introduction of a good policy of protection—among others: ignorance, misunderstanding of the issues and the lack of a single body (bringing together producers, broadcasters, parents and teachers) to defend children's rights.

In the end, the highest priority is to set up a good partnership on all fronts at the national and international level with good synergy between the different component parts.

Regulation of the media is the job of the regulatory authorities. It is for you, as magistrates, to play your part in the establishment of an efficient and effective system of legal protection.

Mme Béatrice Damiba is President of the Burkina Faso Superior Council on Communications www.csc.bf and a Member and Honorary President of the Francophone Network of Media Regulators www.refram.org

New alternatives to punishment

Judge Paul Geoghegan

Sometimes there are no alternatives to punishment. The more serious the offence, the less prospect of any meaningful rehabilitative or alternative approaches to sentencing.

The term 'consequence' and the term 'punishment' may be interchangeable. Most would argue that it is extremely appropriate that there should be consequences for offending. The key is in the nature of those consequences and their success in the prevention of re-offending. Any consideration must take account of the competing interests of the victim, the wider community and the offender.

In New Zealand the Youth Justice system deals with offenders between the ages of 14 and 17. Its principles, set out in the Children, Young Persons and Their Families Act 1989, recognise these balancing considerations. The first principle is, however, key—

> "Unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter."[1]

In New Zealand this legislative imperative means that approximately 80% of youth offenders never reach the Courts and are dealt with by way of alternative action. The police deal with the offender, the offender's family and the victim by means of the family group conference. While the system is not perfect, it ensures that only the most serious of youth offenders are dealt with by the Court.

It also ensures that where possible youth offending is dealt with at the community level. It also recognises that most youth offenders will not be persistent offenders, but fall into a group described as "adolescent onset" offenders who, having exercised poor judgment in committing offences, are generally not going to trouble the Courts to any significant degree.

As the role of the media becomes greater in New Zealand society my impression is that there is a greater push for more punitive sentences. While such a sentiment reflects society's abhorrence at the more serious offending, it ignores the fact that most young offenders are not a serious threat to our community and that the emphasis on punishment can often be at the expense of mature consideration of alternatives which may be more effective in reducing re-offending.

In 1988, before the current youth justice legislation was enacted, 2000 children in New Zealand were in state institutions. Today, the figure is approximately 100. Previous research had firmly established that incarcerating 'hard core' young offenders did not deter them from future offending. Putting offenders into state institutions was more likely to reinforce their criminal identity and restrict their opportunity to choose a non-criminal lifestyle through normal integration in the community.[2]

As a result of this new approach and the decreased number of children in state care, the New Zealand government was able to close down many borstals and boys' homes. We have also noticed that overall rates of youth offending have been relatively stable over the last 10 years.

The primary goal of any youth justice system must be to prevent re-offending. To do that there needs to be some understanding of the causes of the offending in the first place. To deal with offenders without understanding why they have got to the point they have reached and failing to address their needs is simply to invite greater re-offending.

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[1] Appendix A : Youth Justice Principles outlined in s 208 Children, Young Persons and Their Families Act 1989

[2] Walters, R "Punitive Responses to Juvenile Crime: Do they work?" a paper from *"Youth Justice:The Vision"* Proceedings of a National Conference heid on 31 October 1996 at Victoria University of Wellington. Ed. Morris, A and Maxwell, G, page 26,

Preventing re-offending involves strengthening the protective factors surrounding young offenders by supporting their family, re-engaging them in meaningful education, endeavouring to distance them from anti-social peers and dealing with any psychological moods or drug and alcohol issues they may have. All of these things are of huge importance in achieving a reduction in re-offending and yet none of them has anything to do with punishment.

While New Zealand Statistics are unavailable, research in the United States shows that 77% of males and 63% of females in the juvenile justice system have a diagnosable mental health disorder and 27% have a severe disorder requiring immediate and significant treatment[3]. In the United Kingdom research has shown that among young people who offend, 31% have mental health problems, 18% have problems with depression; 10% suffer from anxiety; 9% report a history of self-harm in the preceding month; 9% suffer from post-traumatic stress disorder, 7% have problems with hyperactivity; and 5% report psychotic like symptoms.[4] I would venture to suggest that the figures in New Zealand may well be similar.

The objects of the Children, Young Persons and Their Families Act also reinforce the need for balance. The Act provides that where children or young persons commit offences they should be held accountable and encouraged to accept responsibility for their behaviour and that they are also to be dealt with in a way that acknowledges their needs and will give them the opportunity to develop in responsible, beneficial and socially acceptable ways. I would like to describe four initiatives in New Zealand legislation which provide alternatives to punishment and also to mention other initiatives which are shortly to come into law.

1. Alternative action—diversion

It could well be said that one of the most certain ways to ensure a lengthy relationship between the Courts and offenders is to introduce them to Courts in the first place. As I have said 80% of the young offenders in New Zealand are dealt with by way of alternative action. They will not see a Court but will be dealt with in the community. In New Zealand the effectiveness of this has revolved around the development of the skills and status of Youth Aid Officers in the New Zealand Police, whose aim is to deal effectively with the offender, the victim, the offender's family and any other appropriate agencies, such as schools, and health agencies.

The significance of this work is recognised by the establishment of Youth Offending Teams which comprise representatives of the Police, the Ministry of Education, Child Youth and Family Services and health agencies who regularly meet to share information about general strategies and programmes and, on occasion, about individual offenders. Youth Offending Teams are also empowered to engage actively with community organisations and local NGO programme providers who have an interest in giving Youth Aid Police a wide range of non-court options for dealing with young offenders.

Typically the police will enter into a contract with the young .person which will involve a range of consequences and actions ranging from the tendering of an apology to the victim together with a gift or reparation if required, to the young person attending alcohol and drug programmes, enrolling at and attending school, undertaking community work, making donations to charities, being subject to curfews and disqualification from driving and agreeing not to associate with co-offenders or negative peers. While that contract will be signed by the young person it is also imperative that the young person's family is involved through a family group conference

2. Family Group Conference

The family group conference is central to any youth justice process in New Zealand. Nothing happens without it. The conference looks to engage the offender, the police, the offender's family and the victim in a process which is designed to take account of the interests of the victim, to promote accountability and responsibility in the offender and also to look at meaningful interventions to reduce further offending. Run well, a family group conference will achieve all of these goals.

There are many occasions where the involvement of the victim enables the young person to appreciate the consequences of their actions, enables the victim to see the offender from another perspective and the parties to agree on outcomes that will cater for the needs of both offender and victim.

There are many occasions where a young person will be offered work by the victim as reparation for the harm suffered. On other occasions it will be offered simply out of an appreciation for the offender's difficult circumstances. Punishment will often be an outcome of the family group conference, in the sense that a young person is often required to pay reparation or undertake community work, but it is the interaction between the victim and the offender which often holds the key to the effectiveness of the process.

[3] Teplin, L. Psychiatric Disorders of Juveniles in Detention. OJJDO Juvenile Justice Bulletin April 2006.

[4] Youth Justice Board "Mental Health Needs and Effectiveness of Provision for Young Offenders in Custody in the Community"

In circumstances where the young person fails to engage, either initially or subsequently, the police retain the ability to place charges before the Court so that more serious sanctions can be considered. That is the exception rather than the norm.

3. Section 282 discharge

Where offenders do come before the Court it is not inevitable that they will be faced with a criminal conviction. If it considers it appropriate, the Court may—in all but the most serious cases[5]—grant an offender a discharge. The effect is as if the charges had never been laid. For all first-time offenders before the Court the granting of a s 282 discharge is standard practice for a young person who has appropriately completed a family group conference plan.

The granting of a s 282 discharge can act as a considerable incentive to young persons to comply with a family group conference plan, which may well include such things as the completion of community work, the payment of reparation, the undertaking of specific programmes and compliance with bail conditions. Young offenders tend not to think of the later consequences of their offending. When it is explained to them that a conviction may affect their ability to travel or to obtain insurance for their car, they tend to see things in a different light.

If it grants such a discharge, the Court is still empowered to impose penalties, such as the payment of reparation for emotional harm or damage to property, the forfeiture of property, disqualification from driving or confiscation of motor vehicles.

4. Supervision with activity

The sentence of *supervision with activity* provides a last chance for youth offenders short of a custodial sentence. The order can require the young offender to attend a specified centre for such hours as the Court sees fit for a period of up to three months. The order can also require the offender to take part in any specified programme or activity.

The Court may make a *supervision with activity* order only if it is satisfied that otherwise it would have considered imposing a custodial sentence on the young person. Such an order is often accompanied by a supervision order which provides further general supervision for a young person for a further three months.

New developments in law and policy

In October this year, the law governing young people in trouble with the law in New Zealand will undergo the most significant change in its 20 year history.

Among other reforms, the Youth Court's powers to impose orders which are alternatives to punishment will be expanded. The range of programme options available under those orders will also expand, due to a significant increase in Government funding.

The potential length of *supervision with activity* orders will be doubled to allow young people to participate in longer programmes, often in residential settings, and be supervised for longer periods once these programmes have finished and they have returned to their community or family. As we all know, it is important to pay special attention to a young person in the period immediately after leaving a residential setting. Many of the factors involved in that young person's offending are to be found in their home or with their peers or otherwise in their everyday environment.

New Zealand's abundant wilderness areas are providing the venues and the inspiration for many of these activity and residential programmes. Adventure camps and military-style activity camps provide young offenders with opportunities to develop physical and personal confidence, leadership skills, and to live in a structured drug and alcohol free environment

Welfare organisations and the military will work in partnership to provide military-style activity camps for the 40 most persistent young offenders as a last chance for those young people to start turning their lives around. These camps will focus on the young person, setting daily routines, establishing boundaries, and expectations of behaviour, but will also build a group culture and a supportive team philosophy. Military-style activity camps will only be offered to young people who are already subject to the most punitive *supervision with residence* order, which requires detention in a secure residence run by Child, Youth and Family Services. The introduction of military-style activity camps as a part of this order is an attempt to seek a more meaningful and effective alternative to the punitive nature of a purely residential setting.

Only time will tell whether any of this will have an effect on offending. What we know though is that prison and increasingly punitive measures are not only ineffective but also tend to increase the risk of further criminal offending after release. I would suggest that continuing to work with young offenders in a way which develops a sense of responsibility for their actions, a sense of empathy for their victims and which deals with the factors contributing to their offending is a far more effective alternative.

Judge Paul Geoghegan* is a Youth Court and Family Court Judge in Tauranga, New Zealand

[5] known as purely indictable offences

Children in institutions

Dr Willie McCarney

Millions of girls and boys grow up under the control and supervision of care authorities or justice systems. The institutions they live in have many names, including orphanages, children's homes, care homes, prisons, juvenile detention facilities or reform schools.

How do we define Child Care Institutions?

Institutions provide round-the-clock care of children who live apart from their families, and supervision by remunerated staff. The size, organisation and activities carried out within these institutions can vary widely. The number of children living in individual institutions may range from a few dozen to hundreds.

Who runs them?

They may be run by Governments, private companies or individuals, or by non-governmental or faith-based organisations. They may be open (where children can leave at will) or closed (where children are locked in).

From their earliest inception, these institutions were essentially set up as repositories for the unwanted. They were a means of removing neglected, abandoned or orphaned children from the streets and making the problem invisible to society.

Why are children institutionalised?

Some children have lost their parents and have no extended or surrogate family to go to. Others have run away, or have been removed by the authorities, from violent and abusive homes. Some are there because of physical or mental disability.

Many have been given up by parents who, lacking money or support services to cope with their child's disabilities, feel they have no alternative.

The 'institutionalised' umbrella also includes migrant and refugee children, including those seeking asylum and children charged with vagrancy who are criminalised because of homelessness and/or poverty. Children are institutionalised within the justice system when they are deemed to be in conflict with the law.

Children remanded in custody are also "institutionalised". It is a matter of concern that children with a care background are over represented in the justice system. Group home settings are especially problematic and have the largest effect in terms of crossing over from welfare to justice. Children in out-of-home care settings are twice as likely to commit delinquent acts as those receiving in-home services.

The majority of children in the custody of police, or in detention because of actual or perceived offences, should not be there. Most are charged with minor or petty crimes, and are first-time offenders. Very few have committed violent offences. Many have mental health problems.

All of these Institutions are established to provide care, guidance, support and protection to children. And yet there is indisputable evidence that institutional care has negative consequences for both individual children and society at large.

Alternatives to institutional care which support children's development and allow them to remain at home and at school are far preferable to judicial procedures and institutionalisation. There is a critical need for awareness raising and training of police, lawyers and judges regarding the impact of institutionalisation on children.

What are the harmful effects of institutionalisation?

Institutionalisation contributes to social exclusion and stigmatisation. It deprives the children of emotional nourishment, attachment, lasting relationship and the development of social skills. It hampers intellectual development, causes anxiety, personal uncertainty and passivity. It increases aggressiveness and the inclination to antisocial behaviour.

Institutionalised children are often subjected to violence from staff and officials responsible for their well-being. This can include torture, beatings, isolation, restraints, rape, harassment, and humiliation.

Ill-treatment – and outright negligence stems from overcrowding, squalid conditions, lack of resources. There is widespread discrimination against children in institutions. There is a lack of public concern about brutality towards children in correctional institutions. Stigma contributes to violence against children with disabilities.

They are frequently at higher risk of staff violence in institutions than other boys and girls.

One might assume that children would be OK once released from an institution. This is not always the case. The long-term effects of institutionalisation include severe developmental delay, disability, irreversible psychological damage, and increased rates of suicide and criminal activity.

What is the problem with institutions?

Institutions housing children are often closed to public scrutiny. They lack a basic legal framework prohibiting all violence. They lack adequate Government regulation and oversight, effective complaints mechanisms, and inspection systems. Perpetrators are rarely held accountable, allowing high rates of violence to continue unchecked, thereby perpetuating tolerance of violence against children.

Most institutions have a problem of under-staffing. Staff is generally unqualified and poorly paid and so have little motivation. They are overwhelmed by problems they don't understand.

Relatively few staff in care institutions receive any special training in child development or children's rights.

Ineffective Management is a large part of the problem. Lack of supervision means staff are left to their own devices. Staff, faced with intractable problems, suffer burnout. This leads to rapid staff turnover.

Individuals with histories of violence against children, including sexual abuse and exploitation, may seek out jobs that allow them easy access to children. Rigorous background checks on personnel are still rare, allowing an employee who has been dismissed from one institution to be hired by another and to continue a pattern of abuse.

Many facilities fail to segregate vulnerable children from dangerous peers and adults. Children who are vulnerable to violence because of age, size, sex or other characteristics are often housed together with older children and/or adults with a history of violent behaviour.

Violence in residential institutions is six times higher than violence in foster care, and children in group care are almost four times more likely to experience sexual abuse than children in family-based care.

The Convention on the Rights of the Child (CRC) requires States to provide special protection to children who are deprived of a family environment (Articles 19, 20). The increased risk of abuse in institutions adds to a State's obligations to take effective legislative and other measures to protect children in care or detention and to reduce significantly the number of children who are institutionalised or detained.

Article 9 highlights the need for family contact in cases where children are separated from their families. Article 23 specifically addresses the rights of boys and girls with disabilities. Article 25 entitles all children who have been placed in care to have a periodic review of all aspects of their placement. Article 37(b) asserts that "the arrest, detention and imprisonment of a child shall be used only as a measure of last resort, and for the shortest appropriate period of time." Article 40 states that children in conflict with the law should be treated "in a manner consistent with the child's sense of dignity and worth… and which takes into account the child's age and the desirability of promoting the child's reintegration."

Other International Instruments to consider include the Beijing Rules on the protection of children's rights and respect for their developmental needs; the Riyadh Guidelines for the Prevention of Juvenile Delinquency; the Rules for the Protection of Juveniles Deprived of their Liberty (the JDL). These, together with the CRC, complete the framework of prevention, case management, and social rehabilitation of children in institutions.

Article 10 of the International Convention on Civil and Political Rights (ICCPR) stipulates that juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status. Article 14 states that procedures against juvenile persons should take account of age and the desirability of promoting rehabilitation.

Article 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires States to take effective legislative, administrative, judicial or other measures to prevent acts of torture.

By ratifying the CRC States have committed themselves to supporting families to the maximum extent of their resources (Article 18.2). When living with the biological family is not in the child's best interests, a range of family-based alternatives should be put in place to provide safer and more beneficial care than large-scale institutions (Article 20).

Unfortunately there is a large gap between theory and practice. In theory children are amply protected by national and international instruments. In practice these instruments have little or no impact.

Consequently, in 2005, the Committee on the Rights of the Child called for the drafting of guidelines to assist States in meeting their obligations. On November 20, 2009, to mark the 20th anniversary of the Convention on the Rights of the Child, the United Nations General Assembly formally welcomed the *Guidelines for the Alternative Care of Children.*

The Guidelines are intended to assist Governments to implement the Convention and the relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so.

The Guidelines seek in particular to guide policies, decisions and activities which support efforts to keep children in, or return them to, the care of their family or to find another appropriate and permanent solution, including adoption and *kafala* of Islamic law. They also aim to ensure that the most suitable forms of alternative care are identified and provided, under conditions that promote the child's full and harmonious development.

The *Guidelines for the Alternative Care of Children* outline the need for relevant policy and practice with respect to two basic principles: *necessity* and *appropriateness*.

Let us first consider necessity

The primary concern is to support children to remain with, and be cared for, by their family through supportive social work services. A rigorous participatory assessment is required before any decision is taken to remove a child. Removing any child from his/her family should be a measure of last resort.

What do we mean by "appropriateness"

In cases where alternative care is deemed both necessary and in the child's best interests, efforts must be made to ensure that the choice of care setting and the period spent in care are appropriate in each case and promote stability and permanence.

Each child in need of alternative care has specific requirements with respect to, for example, short or long-term care or keeping siblings together. The Guidelines define a range of suitable alternative care options. The care option chosen has to be tailored to individual needs. The suitability of the placement should be regularly reviewed to assess the continued necessity of providing alternative care, and the viability of potential reunification with the family.

The Guidelines present the need to support and empower vulnerable families with the necessary capacities to care for children themselves; ensure sound and rigorous decision-making processes; assess which alternative care option is appropriate.

Options to reintegrate children into their families are a key part of a care review process.

The Guidelines outline a regulatory framework that emphasises State responsibility for the authorisation, monitoring and accountability of care providers, care facilities and individual carers.

A balance needs to be struck between state responsibility and decentralization, the shifting of resources from residential care to alternative solutions, and the way in which child welfare systems make decisions on behalf of children. Sporadic or isolated efforts to improve individual institutions will not solve the problems of children in residential care, or meet their best interests.

Legislation, policies and programmes are necessary, although not sufficient. A whole context amenable to change has to be created. Efforts must focus more especially on the underlying reasons for decisions to place children in care in the first place – e.g. poverty, family breakdown, disability, ethnicity, inflexible child welfare systems and the lack of alternatives to residential care.

These are complex and often interlinked factors which require holistic responses that identify families at risk, address their needs and prevent the removal of their children. Governments must ensure that families have the support they need to nurture and raise their children and effectively assume their childrearing responsibilities.

Placement in residential institutions must be the very last resort. In the few cases where children simply cannot receive the care they need within their family, family, and community-based alternatives, must be sought as a priority.

In order to reform policies and institutions providing care for children whose rights are threatened or infringed, it is also essential to strengthen policies and programmes of inclusion and integration, which need to be tailored to suit the specific situation of the country concerned.

It is important that we acknowledge and use the value of communities and local initiative to devise and develop local policy options; to identify solutions which are close to hand; to restore normal conditions; to respond to the need for measures adapted to local situation. We should not impose a centralised and standardised strait-jacket.

The focus must be on shared responsibility. Users of services must be actively involved in their development rather than being passive recipients of aid. The focus must be on family resources and capabilities and not on family deficiencies.

Let us consider the basic principles of child care

The family is the natural environment for the well-being of the child and the parents have the primary responsibility. Preventive measures of support for children and families must be provided as far as possible. The placement of a child in an institution should remain the exception and have as the primary objective the best interests of the child. The family of the child should be involved in the planning of the child's placement—to the extent possible.

The child's own wishes must be taken into account as outlined in Art 12 of the CRC.

The decision taken about the placement of a child and the placement itself should not be subject to discrimination. The procedure, organisation and individual care plan of the placement must guarantee the rights of the child.

Measures of control or discipline need to be compatible with the child's dignity and human rights and in no case tolerate any form of violence. They should be based on public regulations and approved standard.

The placement should not be longer than necessary and should be subject to periodic review.

When the return of the child to his/her own family is not possible, other means of care should be envisaged, taking into account the child's wishes and the continuity in his or her life path.

A child leaving care is entitled to an assessment and appropriate after-care support.

Every child has the right to be heard in decisions affecting his/her future and to regular contact with his/her family and significant others. Siblings should be allowed to stay together to the extent possible. Every child has the right to privacy, including access to a person they trust and a competent body for confidential advice and to good quality health care adapted to the needs and well-being of the individual child.

Every child has the right to an identity - the child's ethnic, religious, cultural, social and linguistic background must be respected (Article 12, CRC).

Every child has the right to respect for his/her human dignity and physical integrity; to conditions of human and non-degrading treatment and a non-violent upbringing; to protection against corporal punishment and all forms of abuse.

Every child has the right to equal opportunities; to have access to all types of education, vocational training, under the same conditions as for all other children; to be prepared for active and responsible citizenship through play, sport, cultural activity, informal education and increasing responsibilities.

Every child has the right to participate in decision-making processes concerning him/her self and the living conditions in the institution; to be informed about children's rights and the rules of the residential institution in a child-friendly way; to make complaints to an identifiable, impartial and independent body.

Let us now consider Guidelines and Quality Standards

A placement should be selected which is as close as possible to the child's environment. A small family-style living unit should be provided. Priority should be given to the physical and mental health of the child.

An individual care plan should be drawn up which is based on the development of the child's capacities.

Conditions should allow continuity of the educational and proper emotional relationship between staff and children. All residential institutions should be accredited and registered with the competent public authorities on the basis of regulations and national minimum standards of care.

An efficient system of monitoring and external control of residential institutions should be ensured.

We must demand high professional standards of staff, and provide in-service training. There must be codes of ethics, consistent with the United Nations Convention on the Rights of the Child. Any infringements of the rights of children living in residential institution should be sanctioned in conformity with appropriate and effective procedures.

Relevant statistical data should be collected and analysed. Research for the purposes of efficient monitoring should be supported.

Non-governmental organisations (NGOs), religious organisations and other private bodies may play an important role concerning children living in residential institutions. This role should be defined by member states' governments. Involving non-governmental bodies should not release member states from their obligations towards children in residential institutions.

Let me draw this presentation to a conclusion. No residential institution, no matter how well meaning, can replace the family environment so essential to every child. There is a growing global consensus on the need to promote family-based alternatives to institutional care for children. The *Guidelines for the Alternative Care of Children*, the Beijing Rules, the Riyadh Guidelines and the JDL Rules help to clarify the CRC and show us how this might be done.

Policies to discourage institutionalisation are not enough. The right climate is needed to create alternatives, including raising public awareness. Let us hope that this World Congress will play its role in this regard.

This is an edited version. The complete paper, with detailed references, is available from **Dr McCarney*** at w.mccarney@btconnect.com

Hearing the children during the divorce of the parents

Judge Grazia Cesaro

The International Convention on the Rights of the Child (1989) introduced a fundamental concept: the minor, insofar as he or she [henceforth 'he'] has from birth been a competent human being and an active subject in his relationship with adults, is the object, but above all the subject, of certain rights.

Discernment

To render the minor an "active subject" means to take account of his views, within the limits of his capacity for discernment, in all the proceedings that regard him. This is expressed unequivocally in Art.12 of the International Convention on the Rights of the Child and also in the more recent European Convention on the Exercise of Children's Rights in 1996. It is the task of Member States to establish the criteria to evaluate whether the minor is capable of producing and expressing his views and, therefore, whether he has the capacity of sufficient discernment. The States are, in fact, free to establish the age of the minor to whom such criteria is applicable. Where domestic law has not fixed a specific age in relation to which the minor is considered as having a sufficient capacity of understanding, the judicial or administrative authority must, in relation to the nature of the matter, determine the level of discernment required so that the minor may be considered capable of producing and expressing his views.

The International Convention on the Rights of the Child, therefore, allows a broad space for conflicting interpretations that might prevent an actual implementation.

The legislation of most Member States, including Italy, does not in fact contain a precise definition of sufficient capacity of discernment and it is very often left up to the judicial authority to decide this, case by case.

The recent **Italian law 54/2006** regarding joint custody in case of divorce of the parents, determined the right of the child to be heard by the judge. This law considers "sufficient capacity of discernment" for a child as 12 years old, before this age the judge has to decide.

Before this law our judges did not respect this rule and preferred only sometimes to appoint an expert to hear a child. An analysis of court verdicts would seem to point to a tendency on the part of judges to reach decisions that are based more on personal conviction than on theoretical calculations or jurisprudential elements.

This law is very important giving children the right to be heard when their parents divorce, but there are many problems to solve.

We can sum up with six questions:

1. when to hear the child: at the beginning or at the end of the trial ?
2. where to hear the child: in the court or in a social services office?
3. who to hear the child: the judge or his expert, or a judge with an expert?
4. what does it mean "the right of the child" or is the child a witness in the hearing?
5. who can be present: the parents and/or the lawyers?
6. how to defend the child from the negative effects of the divorce hearing ?

The law says nothing about these very important questions.

Guidelines for judges

In Italy, judges, lawyers and experts thought about guidelines which would respect the right of the child to be heard and to protect him at the hearing and in Milan in 2009 approved the following:

1. It is very important to hear the child at the beginning of the hearing but only if the parents do not agree about custody, not for economic problems (alimony, house etc.)
2. The child has to be heard in the court but the judge has to pay attention to the hour (not during the time of school for example) and the special needs of the child
3. The judge has to hear the child, only in particular situations (for example mental illness or parental alienation syndrome) or, because of the tender age of the child, the judge can decide if the child can be helped by an expert

4. The child is not a witness in the hearing of his parents' divorce. He has the right to be heard but he doesn't have to take part and no one can oblige him to speak. The judge has to explain to him that he wants to know his point of view, and the consequences of the hearing.
5. To give more opportunity to a child to speak freely, the parents and the lawyers cannot be present, however, before the hearing the lawyers can give to the judge the questions for the child. The judge has to write down what the child says, and the child has to sign (if possible) what he said.
6. In special cases the lawyers and parents can ask to be present at the hearing but in a special room with one-way glass so that they can see the child but the child cannot see them
7. It is very important to defend the child from the negative effect of the parents' hearing: first of all the lawyers have to tell their clients not to speak to the child about the hearing, not to show him the submissions and documents of the trial, not to influence his opinion or ask/tell him to say something. The lawyers also cannot meet the child for any reason, or speak with him. The child has to be free to say what he wants to the judge.

It was a good multidisciplinary experience working together in the workshop.

Recommendation

Our recommendation to the World Congress of the International Association of Youth Family Judges and Magistrates is to promote the importance of multidisciplinary training, for judges and lawyers, to make more effective the voice of the child in all the proceedings that relate to him.

Judge Grazia Cesaro* is a Lawyer and Vice president of the Children's Chamber, Milan Italy

The Independence of a Children's Court Clinic. Dr Patricia Brown

The idea of having a Children's Court Clinic attached to the Children's Court, to which judicial officers can refer children, youth and families for assessments, can be compelling since it increases the information available to judges and magistrates for decision making.

Measurements of usefulness of a clinic's reports are possible – indices of judicial satisfaction using criteria like relevance, thorough researching of material and so forth or, in protection matters, measures like the number of case settlements after Children's Court Clinic involvement. More revealing for the perception of a clinic's usefulness and its survival is where it is positioned in Government. That positioning will determine what kind of clinic it becomes – the model of service adopted – and indeed whether it is able to provide an independent clinical voice to the court, when that voice has the potential to give an opinion contrary to that of the Welfare, the as-it-were 'prosecutors' in protection matters, which is also seated in a government department.

The Children's Court Clinic in Victoria, which was, until 2001, the only such Clinic in Australia, is now 66 years old, having been founded in the 1940s to service the needs of the Children's Court, in both child protection and child criminal matters.

Originally the Clinic was placed under the Health Department and into a division which became the Office of Psychiatric services. Consistent with this placement, it became a psychiatric facility in model, having psychiatric nurses, consultant psychiatrists, a psychiatrist superintendent, clinical psychologists and social workers and, for a time, a team approach decided what was put to the Court.

Young offenders were visited in institutional venues for treatment but different superintendents added to the number of these venues and, with a staff of approximately eight professionals, however proficient, their availability for actual Children's Court work was progressively diminishing. At the same time, the Court matters were requiring ever more sophistication in forensic clinical assessments.

In the 1980s there was a questioning by a state government committee of whether the medical, psychiatric team approach of the Court Clinic was applicable to the times when the majority of referrals related to learning and social problems. That notwithstanding, two pieces of research done by Brown and Steger in 1988, examining issues relating to professional reports to the various courts in Victoria for Sir John Starke's Sentencing Committee, indicated which disciplines the Court was wanting to hear more from. While showing that the judiciary were very pleased to accept reports from social workers—social workers presenting the majority of reports within the court system—the stated **preference** was for more reports from psychiatrists and psychologists. When blind ratings of efficacy by the judiciary and lawyers were made of reports by psychiatrists, social workers and psychologists, however, it was found that in the Children's Court, the reports of psychologists were rated most highly.

These researches were soon followed in the late 1980s by two events which impacted on how one might view team approaches (as had previously been used at the Court Clinic) to deriving an opinion for the Court: First, a Victorian Supreme Court Judge, Justice Vincent, refused to hear evidence in an adult court case of an opinion that had been derived from a clinical team meeting. He said he would have no idea whose opinion he would actually be hearing when it was collectively derived. Subsequent to this, Professor Martin Kaplan, a U.S. psychologist and world expert on organisational psychology and group interaction was asked for his view, in light of literature, on a team meeting approach to deriving opinions for the Court. His advice was that they would be contraindicated, the opinions being weighted by those in the group with the most status and power, rather than the most cogent knowledge of the case. A number of factors was thus militating for a change of model for the Court Clinic.

In 1992 the Children's Court Clinic changed materially; a senior psychologist was appointed as Director and orchestrated change. In view of a perceived need for the Court Clinic to have its charter to the Court underscored, the Court Clinic's function was pared back and specialised to doing court work and primarily assessments.

The psychiatric team model was abandoned and an individual practitioner model was established, psychologists and psychiatrists being employed according to the needs of the cases referred.

Previously the Court Clinic had relied exclusively on full-time staff who needed to operate as generalists, assessing cases from the protection of babies to criminal matters of robbery. In the Clinic's new era, a small core of five clinical and forensic psychologists have become full-time staff members and numbers of experts, in the main psychologists but also psychiatrists, are employed sessionally, these now numbering 50 clinicians. Specialists in different areas have been engaged. The Director matches the presenting problems of the case referred from the Court to the expertise of the clinician but oversees each Court Clinic report before its submission to the Court.

The capacity for treatment has been retained, but restricted exclusively to short-term treatment in those cases where such input could potentially make a difference to what might be recommended at the end of a three month interim order in protection matters or a four month order in criminal matters. Those needing further treatment are generally referred on, with care.

Where the Court Clinic has been 'seated' to do this work has proved crucial. Although for many years the Court Clinic remained under the Health Department, its position in that Department was anomalous because of the legal groundedness of its work. Further, although the Court Clinic worked for the Court under Health, and could be seen to be independent of the prosecution in protection matters (the Welfare) it had a pull to another master for its policies, its model and resources, which were Health Department specific and not necessarily Court related.

Significant controversy surrounded the departmental relocation of the Court Clinic in 1993. The change was ostensibly occasioned by the amalgamation of two large government departments, the Health and Welfare Departments, by an incoming (state) government. Within this new department the Court Clinic was strategically quickly moved under the protective services division of the mega-department. By this move the Children's Court Clinic was thus then effectively working for, and being paid by, the party responsible for the initiation of every child protection case in the Children's Court. It could no longer be perceived to be independent. But, why would that be important?

The key is in the fact that the Court Clinic, being the clinical investigative arm of the Court is to work solely for the magistrates and judges and not for any party in proceedings. As such, it must be seen to be assiduously independent of other parties to maintain the Court's confidence in its impartiality, which is paramount.

Politically this is a difficult situation for any facility to be in which is small in the scheme of things if not positioned under the Justice Department. Any political jeopardy to the Court Clinic lies not in its clinical contribution to the Court in criminal cases. Its input in those matters does not impact on the work of the prosecutors, the police. Indeed, in the majority of criminal cases the Court Clinic is merely to provide evidence for mitigation in the magistrates' deliberations on disposal. In protection matters, however, where the Court Clinic may be asked by the Court to enter into proceedings before proof, that is, to resift or clarify or add other data or perspectives to allegations about a family made by the as-it-were 'prosecutors', the Welfare, or else after proof, where an advice is offered to the Court about what should happen in a case, that situation can potentially be politically fraught. The Court Clinic may well, of course, agree with the case made by the prosecutors, and often does. The Clinic is not set up in opposition to the Welfare but to give an independent advice to the Court itself and many protection workers on the ground are often grateful for Court Clinic insights in the Court process. Those who drive the case for the Welfare may however view the Court Clinic as a potential irritant to what the Welfare believes to be the best interests of the child.

So, what happened when the Court Clinic was controversially placed in a conflict of interest under the Welfare in 1993? Individuals, legal bodies and the Chief Justice of the Family Court of Australia appealed repeatedly to the state government and comment was given to the media over a protracted 14 month period. The Victorian Premier then finally signed the Court Clinic over to the Victorian Department of Justice. Over the past 16 years it has become safely ensconced under the umbrella of the Children's Court, where it remains, although vigilance is needed to obviate further coups occurring against its sanguine placement within the Justice Department. Indeed, just before I left for IAYFJM's Congress, in the wake of the Victorian Ombudsman's enquiries into child protection legislative arrangements, eyes were again being cast on the Children's Court Clinic, with a tacit suggestion that it might be positioned under the prosecution; the lesson of history will need to be recalled.

At this stage the Court Clinic, the child-centred, clinical investigative facility for the Children's Court, sees over 1000 children and their families annually, referred from Children's Courts across the state of Victoria. The clinicians are of the most qualified and experienced in the field; the Clinic is a teaching facility and it is a research resource. Last year it received the award from the Judge President of the Children's Court, "for the provision of outstanding service to the Children's Court of Victoria".

Dr Patricia Brown* is Director of the Children's Court Clinic, Victoria, Australia

The Media and the Juvenile Court

Maître Mactar Diassi

Can the media help the juvenile court?

Let us begin with some general reflections—

We might look more broadly than the title of the workshop and ask: 'what should be the relationship between children and the media?'

And we might note that article 17 of the UN CRC raises the same question.

A careful reading of the article brings out two strands in this relationship:

- a request for the media to provide everything of use to the child's fulfilment; and
- a demand to avoid doing anything that might bring misfortune to the child and to protect the child from any harmful effects.

Faced with these two requirements expected of the media in general, one can consider a more specific relationship—that between the media and children involved with the law.

Introductory analysis on the subject of the workshop

The issue can perhaps be reduced to the following question—what should be the relationship between the justice system and the media?

The court is at the epicentre of today's social problems. Judges are asked to decide not only individual disputes but also collective ones. And juvenile justice cannot escape this context

Two requirements seem to be in conflict here:

- the need for transparency, which follows from the individual citizen's right to know and the freedom of information, on the one hand; and on the other hand
- the need to afford the judge the opportunity for calm reflection that is needed for the job.

Moreover, guarantees of a fair trial—which involve the presumption of innocence, of due process, of equal rights for the defence and prosecution—require a balance to be maintained for the proper functioning of the system of justice.

We should also bear in mind that—except as a party to an action—the media have no direct role in the judicial process.

So what is the role of the media in this area? Two are possible:

- to increase public understanding of the concepts of juvenile justice, especially the problems, methods and solutions, and of the main participants, their problems and limitations, without any interference in the process of justice;
- to help combat the stigmatisation of young people in conflict with the law, especially when a child is involved in a particular case.

The first bullet emphasises the undoubted role the media can fill in promoting and protecting children's rights. Indeed, given the media's power to give a voice to those who are not being heard, it can make a major contribution to setting out the difficult situations that confront them.

In the second bullet, another explanatory role can be looked for from the media—helping to combat the stigmatisation of young people in conflict with the law—especially when the public reacts irrationally to certain events in the legal arena.

It is important to be clear about the details of how this should be done, guided by rules that are necessarily respected by everyone.

The judge needs calm space when he is involved in a case in order to carry out his judicial function properly. The media should not interfere with this calm, even at the expense of their duty to provide information to the public that is needed for democracy to function.

Because the proper functioning of justice needs everyone to respect certain basic principles:

- the presumption of innocence;
- a fair trial;
- equal rights for the defence and prosecution; and
- *specifically for juvenile justice*—confidentiality

we need to find a fair balance that will avoid the media having a weakening effect.

Should curbs on the media be considered to counteract any adverse effect on the justice system?

We should bear in mind that the media are not part of the formal court proceedings, but can have a strong influence on public opinion, which—in turn—can influence the case under consideration. This can be especially so in court where those on trial can be judged and condemned by public opinion before the trial has even started. Nowadays lawyers have the awesome duty of defending their clients both in court and in the opinion of the public.

Excluding the media from judicial proceedings would not work—they have a duty to inform the public. The question is to see how to develop responsibility consistent with the effects their activity can have.

So the issue is how to ensure that the actions of the media benefit justice and society. concern children. They should be based on the following framework:

Workshop recommendations for the Scientific Committee (Mme Damiba[1] & Maître Diassi)

The media have a role in promoting and protecting the rights of children, but it is necessary to impose restrictions when judicial proceedings

- journalists should be provided with training to emphasise their key role in promoting and protecting children's rights;
- public information campaigns are needed to publicise children's rights in order to support preventive measures and avoid any stigmatization of children
- legislation is needed to guarantee confidentiality in juvenile court proceedings and to punish any infringement;
- an information unit should be established between the justice system and the media to avoid the publication of misleading or stigmatising information about young people, recognising the principle of confidentiality.

Maitre Diassi is an independent advocate at the bar of Senegal.

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1 Mme Damiba's speech is at page 15 above

How to prevent and how to prove child trafficking

Her Honour Judge Joyce Aluoch

The Palermo Protocol

The Palermo Protocol, the United Nations protocol adopted in 2001, gives the elements which must be established in order for an act to amount to trafficking in general. These include recruitment, transport, transfer, harbouring and receipt of persons. This is followed by the means by which people are trafficked such as threats or the use of force, coercion, abduction, fraud, deception and abuse of power or position of vulnerability. Further is the purpose for which people are trafficked such as exploitation which includes prostitution, sexual exploitation, forced labour or services. Though the Palermo protocol initially laid emphasis on cases of transnational trafficking, with time it has been recognised that there are many cases of internal trafficking, that is when children are exploited, or moved to be exploited within their own country.

Global problem

Child trafficking is a global problem affecting many children. It is lucrative and linked with criminal activity and corruption and is often hidden and hard to address. It is a violation of the rights of the child as it denies the child the right to grow up in a family environment. It follows in the same pattern as adults in recruitment and the purpose, except that for children, consent is irrelevant due to their age and stage of development. For children, the Protocol defines as trafficking any situation in which someone is responsible for the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation and the ILO convention 182 defines it as a form of child labour. There is a demand for trafficked children as cheap labour or for sexual exploitation. Quite often children and their families are unaware of the dangers of trafficking believing that better opportunities and lives lie in other countries.

Vulnerable children

Certain categories of children are particularly susceptible to trafficking. They include children who migrate to another country without their parents, children who have suffered abuse, children from certain ethnic or minority groups, children from some socio-economic backgrounds, children who live on the streets and orphaned children. In order to prevent the vice and protect them, there is need to identity and address the underlying causes such as economic, societal and cultural factors.

There is also need for both governments and NGOs to find ways to decrease the demand for trafficked children as human trafficking often occurs through small agencies. The corporate sector too should get involved in combating trafficking, as there is evidence that businesses benefit from such illegal acts. There is need for governments to regulate the operations of such agencies as well as the tourism industry.

Lack of trafficking definitions

Many countries do not have clear definitions of trafficking or victims of trafficking, recruitment, exploitation, etc in their national laws and policies. This poses a challenge to prosecutions of the perpetrators as the police sometimes resort to arresting traffickers for crimes that are easy to prove with the result that victims of trafficking do not get the help and protection they need. The prosecution has the burden of proving such criminal cases beyond reasonable doubt, so they must know the evidence to look out for. This can be best done by training of law enforcement personnel

Prevention

On prevention of child-trafficking, responses in the different areas where children are recruited and exploited should be co-ordinated to make them effective. Furthermore, there should be initiatives to protect unaccompanied and separated children. This can serve as an appropriate action to prevent children from being trafficked for sexual purposes, and such children should be utilized where possible in any anti trafficking initiatives being undertaken because of the experience they have undergone. Governments should enact stringent laws to prove and punish child trafficking and also have policies in place for the protection of children. Members of trafficking rings should be identified by the police during investigations. Furthermore, law enforcement agencies including judicial officers, the police, immigration and indeed the general public should be trained to be sensitive to issues of child trafficking and awareness raising campaigns should be conducted to educate the public about child trafficking particularly, aimed at protection, prevention, prosecution, severe punishment and promotion of cross-border and international partnerships.

H.E Judge Joyce Aluoch,
International Criminal Court, The Hague

Disappearing, departing, running away— a surfeit of foreign, unaccompanied children in Europe?

Sofia Hedjam

This article is a précis of a study carried out recently by Terre des hommes. The full report is available on www.tdh.ch

1. Introduction

- The study was carried out between April 2008 and August 2009 in Belgium, France, Spain and Switzerland and addresses the disappearances of Foreign Unaccompanied Minors (FUM) placed in institutions in those countries.
- These children, as their name suggests, are less than 18 years old, are outside their home country and are separated from their parents or from their legal or customary caregiver.
- These children come from the Congo, Morocco, Afghanistan, Romania, Somalia, Nigeria, China etc.
- Most of them are boys and the average age is 14 years old, although some professionals we met noticed a decrease of age for some nationalities, especially for Afghan and Moroccan children. Some children are 12, 13 and the youngest case we met was only 8 years old.
- The report shows the different reasons for their migration: some children flee a region at war, others are sent by their family to work or to study, some of them are victims of trafficking etc.
- Foreign Unaccompanied Minors arrive in Europe, by plane, boat, trucks etc. But generally we can say that they rarely arrive on their own. For example minors arriving by plane are often accompanied by smugglers who hold identity documents, sometimes fake.
- According to the International Convention on the Rights of the Child and other international instruments, the State who welcomes FUMs has to protect them and provide special assistance for them.

2. Disappearances—a reality.

- After 17 months of research which included street work and interviews with approximately 90 professionals, the first observation from this study is clear: hundreds of unaccompanied minors are no longer where they should be, that is in the institutions in which they were placed.
- This phenomenon is known at local and regional levels, but publication of consolidated national statistics is non-existent.
- The report shows from the visits made to shelters that disappearance is not a marginal phenomenon: it is a variable but significant percentage that can reach 50% depending on the institutions.
- The disappearances often happen in the 48 hours after the admission of the child to an institution.
- In view of this situation, should we speak about disappearing or departing or running away children? There is no unanimity among the professionals on the word to use, but the result remains the same: with the exception of certain cases, no one is able to ascertain where these children are and if they are safe.

3. Why do FUMs leave the institutions?

- According to the professionals, these children leave the institutions where they are placed for several reasons:
  - Some of them leave because the protection offered doesn't fit their needs so they go in search of a better (different?) protection. This is the case for children who want to work in order to send money to their family.
  - Other children leave because the country where they stopped was not their country of destination but only a transition one,
  - Other children left because their administrative application for asylum was rejected. Several of our respondents highlighted the impact on minors of being faced with refusal to regularise their situation. This discourages them. They are afraid of being forced to return to their country. So they prefer to leave the centre/institution to seek protection and to settle elsewhere.

- Other professionals report that minors leave the centre because they have a network outside. What should be understood by the term 'network'? It is very difficult to ascertain if the young person is safe within the network, whose members are often impossible to identify, and who can be both a source of support and/or a risk
- The report also shows that pressures are exerted on children by the network to leave the centre, especially in Spain and Switzerland, by the use of direct or indirect means.

4. What are the risks for children who disappear?

- We tried to learn during this study where the children who disappear go, how they manage to live outside the centre and what they do during their absence
- Here the results have to be looked at carefully.
- First of all, it is unacceptable to be told that there is no need to worry about these children because they are used to travel and so are fairly mature. They remain children and the fact of travelling never makes them adults.
- Secondly, according to the professionals we met, the child is exposed to several kinds of risk:
  - The deterioration of physical and psychological health.
  - Risks linked to drugs
  - Risks linked to delinquency
  - Economical or sexual exploitation.
  - The risk of being trafficked, which continues even if several people are arrested. Testimonies given to professionals show that if centres are not safe, traffickers find them perfect places to choose their preys.

5. What are the actions taken after a disappearance?

- After a disappearance, most of the centres declare the absence of the child to the police.
- We tried to find out whether a missing minor was then actively searched for. According to the majority of professionals that we met, there is an active search when the disappearance is considered worrying, but practically the information relating to the child is so poor that it is impossible to evaluate the level of gravity of the disappearance. So in the absence of good information, no research is conducted.
- In other cases, according to the professionals, searches are rarely active because:
  - Nobody is interested in the minor
  - There is a lack of shared information due to a lack of cooperation between stakeholders.
  - Many stakeholders are discouraged because of the high number of disappearances
  - In many centres there is a kind of "institutional relief"
- Another and serious consequence of disappearance can be the cancellation of the child from different databases. In Belgium for example, if after 4 months the Guardianship Service has no news of the minor, the case is closed and the guardianship is terminated. It is the same in Spain, after a minor has disappeared; the centre warns the guardianship authority and the juvenile police. If the minor does not return after 15 days, he or she is removed from guardianship.

6. Who is legally responsible for the child?

There are various answers to this question.

- For some professionals, the responsibility lies with the centre that has custody of the child. However, most of the directors of the centres we visited considered that in cases of disappearance their responsibility ended after they reported the event to the police.
- Guardians are often cited as the authority responsible for the minor, in that they become the legal representative of the child (the parents being temporarily unable to exercise their power of representation of the minor)
- However, the majority of our respondents were clearly unable to give us a straightforward answer with respect to knowing which authority is responsible for a FUM.
- Many professionals, including judges, believe there is a real legal *vacuum* with respect to this issue. We have no knowledge of a legal precedent that would yield some answers.

But the majority of actors believe *the States* are legally responsible for a FUM present on their territory, since they devolve legal and administrative guardianship to the private or public institutions where they have placed the minors. Many international Conventions affirm this fact for example the Geneva Convention of 1951 relating to the Status of Refugees and the United Nations Convention on the Rights of the Child Article 20.

7. Recommendations.

In view of this situation, Terre des Hommes propose several recommendations including:

1. Country wide harmonisation of data on FUMs

A dialogue between the ministries and agencies involved at national level should lead to the harmonisation of criteria used to determine the legal status and the modalities of care to be followed.

The sharing of data within a country would avoid the same minor having separate files in each of the care administrations he or she is placed in. When a minor disappears from an institution, search procedures are cumbersome because the information relating to the minor is not joined up. It would therefore be wise to establish district or regional offices within each State, to ensure the 'global' care of FUMs. The centralisation of national statistical information on children who have disappeared from institutions is essential.

2. Collaboration between countries

Collaboration must be established between countries of the European Union. It should begin by creating a special status for the FUM. Several interviewed minors said they had crossed several European countries yet there is little communication between the various States on this specific issue. The creation of a European file for each child would facilitate the monitoring of the FUM. Disappeared FUMs should be sought with the same urgency and purpose as used for any missing child. The exchange of data and reports of *disappearances* of unaccompanied minors would greatly assist this.

Similarly, collaboration is required between host and home countries, and more precisely between the home town and the host town where the child was found.

The need for a cross-border approach is reflected in the model of action TACT (TACT means Transnational Action against Child Trafficking) introduced by Terre des Hommes between EU Member States and neighbouring countries. This collaboration between countries of origin and countries of destination can be accomplished either by means of an operational link initiated by NGOs (for immediate protective intervention) or through bilateral agreements, such as the agreement between Albania and Greece. In every instance, this kind of approach must involve strict supervision in the best interest of the child.

3. Steps to be taken after a disappearance

Following the *disappearance* of a minor, in most cases, no authority is able to say with any certainty where the young person is. More care should be taken in dealing with cases of disappeared minors, for even if the worst is unknown, the worst is possible. Search procedures, as mentioned above) should be launched as they would be for any national minor.

A foreign family, having learnt that their child has gone missing from an institution in a foreign land, should be able to request the judicial authorities in that land to initiate and follow search procedures for the missing child.

Sofia Hedjam, Juriste, Master in Human Rights and International Law, is the author of the report: "Disappearing, departing, running away, a surfeit of children in Europe?" for Terre des homes, of which this article is a précis. She is Project manager, Tdh Lausanne delegation, Kosovo

Protection of child victims and witnesses—UN Guidelines

Miri Sharon

In its resolution 2005/20, the Economic and Social Council adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (hereinafter referred to as the "Guidelines"). The Guidelines filled an important gap in international standards in the area of the treatment of children as victims or witnesses of crime.

The Guidelines, which represent good practice based on the consensus of contemporary knowledge and relevant regional and international norms, standards and principles, were adopted with a view to providing a practical framework to achieve the following objectives:

- to assist in the review of national laws, procedures and practices;
- to assist Governments, international organizations, public agencies, nongovernmental and community-based organizations and other interested parties in designing and implementing legislation, policies, programmes and practices in this area;
- to guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels; and
- to assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

In order to assist countries in implementing, at the national level, the provisions contained in the Guidelines and in other relevant international instruments, UNODC, in cooperation with the United Nations Children Fund (UNICEF) and the International Bureau for Children's Rights, has developed several tools. The first is the *Handbook for Professionals and Policymakers on the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*,[1] which is based on international best practices in the treatment of child victims and witnesses of crime by the criminal justice system. It is intended to serve as guidance for policymakers and professionals dealing with child victims and witnesses of crime, such as judges, medical and support staff, law enforcement officials, prosecutors, social workers, staff of non-governmental organizations and teachers.

To assist States in adapting their national legislation to the provisions contained in the Guidelines and in other relevant international instruments, a *Model Law on Justice in Matters involving Child Victims and Witnesses of Crime*[2] was developed as a second tool, intended for drafting legal provisions concerning assistance to and the protection of child victims and witnesses of crime, particularly within the justice process. The Model Law is adaptable to legal systems with different legal traditions, including informal systems. It focuses on the provisions of the Guidelines whose implementation requires legislation and on key issues related to child victims and witnesses of crime, in particular the role of child victims and witnesses within the justice process.

The online *Training Package on Child Victims and Witnesses of Crime* is a third tool that intends to assist professionals in their daily practice with child victims and child witnesses of crime and to encourage the development of a fair and effective Justice for Children system that safeguards the fundamental rights of child victims and child witnesses of crime at all phases of the justice process. Furthermore, the training package aims to increase awareness and understanding of the fundamental rights of child victims and child witnesses of crime. It includes both general modules on the different rights enshrined in the Guidelines, as well as specific modules for different practitioners, including judges.

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[1] Available on-line at http://www.unodc.org/documents/justice-and-prison-reform/hb_justice_in_matters_professionals.pdf.

[2] Available on-line at http://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf .

The draft training module for judges addresses the ways in which judges can ensure respect of all ten fundamental rights of child victims and child witnesses as laid down in the Guidelines. In particular, judges

- can make sure that child victims and witnesses are provided with all the information they need to feel as comfortable as possible during the justice process and to make an informed decision on their participation and especially whether or not to testify.[3]
- can guarantee that children understand the court proceedings and available protective measures while testifying.
- can make efforts to enable child victims and witnesses to communicate their views, wishes, needs and feelings about their participation in the justice process and especially in the trial stage.
- should give children's opinions and concerns due weight and explain the reasons why certain requests or expectations could not fully be taken into consideration.
- can assist child victims and witnesses to overcome the harm they suffer as a consequence of the crime and ensure that children have access to services that are necessary for their physical and psychological recovery and social reintegration.
- should guarantee that information that can unfold the identity of a child victim or child witness is kept confidential
- can guarantee that child victims and witnesses are protected from undue distress and additional harm caused by their contacts with and decisions of professionals in the justice system.
- can ensure that cases involving children are given priority in trial scheduling and monitor the appearance of child victims and child witnesses in court to make sure they are not distressed or otherwise suffering undue discomfort.
- can also order safety measures for child victims and child witnesses, such as pre-trial detention of the accused, protection by the police, avoiding direct contact between the child and the accused and holding closed court sessions.

Some of the measures described above may require specific legislation, as suggested in the Model Law, however, other measures can be taken on the basis of existing legislation and wide judicial discretion.

Congress Wokshop

During the workshop on the protection of child victims and witnesses, the following two questions were discussed:

- **What are the legal tools currently available to judges to protect children from hardship during the justice process?**
- **What are some of the changes that should be made both in practice and in law?**

Participants in the workshop made the following recommendations:

1. In order to protect the child's well-being, judges need to be supported by other experts. Judges also need to acquire a special knowledge and experience in dealing with children.
2. In both custody and criminal cases the number of persons having contact with the child should be limited to the necessary minimum, and such persons should have special training in working with children.
3. The children's family should also be supported by other institutions, cooperating with each other (such as schools, police, welfare systems). Such support should be provided at an early stage of the proceedings.
4. It is vital to inform children on the judicial proceedings and what is going to happen at each stage, in a language they can understand.
5. The procedures in court should be conducted expeditiously, and decisions should be taken quickly to ease the child's tension/stress.
6. More attention should be given to training of parents, and preparing them for certain challenges in the different stages of their children's lives, as a measure of prevention.

Miri Sharon is an Associate Legal Officer in the Justice Section of the Operations Division of the United Nations Office on Drugs and Crime Vienna, Austria

[3] When informing children of their rights, they may use the child-friendly version of the UN Guidelines on Justice in matters involving child victims and witnesses of crime, available on-line at— http://www.unodc.org/pdf/criminal_justice/Guidelines_E.pdf.

Child soldiers

Justice Renate Winter

1. Introduction

I have seen so many of them. in so many places. Buried, incarcerated, sick, apparently healthy, but haunted by memories, recovering, helpless, in resocialisation programmes, without job, without future, rejected by their families, accepted back in their village. So many of them—in different countries, in different situations. Not one of them happy.

In the south of Iran I visited a graveyard. Some 20,000 children are buried there, killed during the war between Iran and Iraq. Children killed during bomb attacks, child soldiers killed while running in the forefront of adult soldiers, children as young as five, as old as nineteen.

I have spoken to children in Africa, abducted by armed forces, having been forced to run through mine fields to clear them for the "army" whatever this "army" was, as cattle are too precious to be sacrificed this way. By pure luck they survived. By pure luck I survived as well when a mine exploded not less than 100 metres away from me in the field where I was, declared "cleared", killing two goats and not the child next to them. I will not forget. Neither will the children.

I met some twenty former girl soldiers in Bogota. They have been living in a protected house after their release from rebel groups. The youngest was eleven, the oldest thirteen. All of them were trained to kill, all of them had to deliver sexual services, all of them had gone through forced abortions. None of them had even basic education.

I had to visit a prison in Rwanda after the "events", the genocide. Approximately 250 children had been held there for three years by the time I visited them. The youngest one, age eight, was incarcerated when he was five year old. Almost all of them were accused of genocide and of having participated in the killings. Almost none of them understood the meaning of "genocide", having executed the orders of their elders, commanders, parents, and village leaders. Some time after my visit there was a rumour that they had been sold as child soldiers to neighbouring countries.

As a judge, I had a 14 year old boy in front of me in Kosovo, accused of having murdered a soldier. He proudly claimed to be a war hero and not a murderer, to have been taught to transport arms, to shout slogans, to pillage, to arson, to kill. He just couldn't understand that he should be punished for having done something that brought him glory only two years ago.

There are thousands of former child soldiers in Sierra Leone after a decade long terrible war. Thousands who have now to adapt to a new life in peace time. Thousands who have no education, no vocational training, not the slightest chance of a job. Thousands not yet integrated, competing with thousands of children they mutilated, for a share of the meagre resources of the country to survive on a day-to-day basis.

In his report on Children in Armed Conflict, the former Secretary General of the UN, Kofi Annan,[1] stated that the number of children under the age of 18 who have been coerced or induced into taking up arms as child soldiers is generally thought to be in the range of 300 000 (the number increased considerably lately especially in internal conflicts in Africa and Asia to over half a million).

Children are used as soldiers by rebel groups and armies alike for the same reasons: they don't have the experience to know about dangers, they risk therefore their lives by far easier than adults, they obey as they are easy to frighten or to convince under the influence of drugs and alcohol, they cost almost nothing and they are "in easy supply". Experience shows that the longer the armed conflict lasts, the younger the child soldiers become. A minister told me once: We have enough of them and if we need some, we make some…..

[1]. United Nations, *Children and armed conflict. Report of the Secretary-General,* UNGAOR, Fifty-fifth session, UNSCOR, Fifty-fifth year, A/55/163-S/2000/712 (2000).

Children are coerced in rebel groups or armies sometimes even by their family. In combat zones in Colombia, families have to send one child to the militia and one to the rebels in order to survive. The same strategy seemed to apply in Sri Lanka in zones under the shifting influence of the two combating fractions.

Children often join even "voluntarily" the army or rebel groups, as in some regions this is the only possibility left for them to get something to eat or to support their family with the money they are given. This applies even more to girls raped in the course of war, not accepted back into their families (as happened for instance in several Balkan countries) thus without any kind of protection. They "voluntarily" stay with the army or the rebels, having no other choice for survival, carrying weapons, supplies, used as servants as well as combatants. Those abducted are used at a very young age as servants for the military/rebels and later on as sex slaves if they don't have the chance to become "wives" of a commander or are given to a soldier in recompense for "good services". It is very difficult for these girls to ever find back into a normal life even after hostilities stopped, as nobody wants them.

It is especially difficult for those abducted at a very young age, girls and boys alike, to find back home as they often don't even know where "home" is. And many of them don't have a great deal of self-esteem that would help them to claim assistance, because they have been treated as servants and slaves almost all their life.

Is there nothing to stop the use of child soldiers? Is there noting to be done?

2. The international documents

There are first of all important international documents that deal with this issue.

a) The United Nations Convention on the Rights of the Child, ratified by all State bodies worldwide save two (United States and Somalia).[2] Article 38 states:

State Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

State Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take direct part in hostilities.

State Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, State Parties shall endeavour to give priority to those who are oldest.[3]

b) Convention 182 of the International Labour Organization. [4] This Convention prohibits forced or compulsory recruitment of children, as use of children as soldiers is one of the worst forms of child labour according to the definition in the Convention.

c) Optional Protocol to the Convention of the Rights of the Child on the Involvement of Children in Armed Conflicts.[5] Article 1 of this protocol states: "States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities."[6] Article 2 continues stating that no one under the age of 18 should be recruited compulsorily into the armed forces, and article 4 sets out that armed groups not being armed forces of a State should as well respect the Optional Protocol. Article 6 finally states that children recruited or used in hostilities have to be demobilized.

d) The African Charter on the Rights and the Welfare of the Child, which defines a child as a human being below the age of 18, deals with armed conflicts and states, as does the Convention on the Rights of the Child.[7] The African Charter, in article 22, notes that "State Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child." Furthermore, "State Parties shall […] refrain in particular, from recruiting any child."[8] Finally, the Charter states that "these rules shall also apply to children in situations of internal armed conflicts, tensions and strife."[9]

e) The Rome Treaty, which states that the recruitment of children as soldiers is subject to international criminal law.[10]

3. The problems

One should believe that all these international instruments would be sufficient to stop the terrible practice of the use of child soldiers, if correctly implemented. This was not the case.

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2. *Convention on the Rights of the Child,* 20 November 1989 (entered into force 2 September 1990).

3. *Ibid.*

4. *Worst Forms of Child Labour Convention,* 17 June 1999 (entered into force 19 November 2000).

5. *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts,* 25 May 2000 (entered into force 12 February 2002).

6. *Ibid.*

7. *African Charter on the Rights and Welfare of the Child,* July 1990 (entered into force 29 November 1999)

8. *Ibid.*

9. *Ibid.*

10. *Rome Statute of the International Criminal Court*, 17 July 1998 (entered into force 23 May 2001).

First of all, many armed fractions, rebel groups, etc., did not feel bound at all by any convention or treaty, claiming that these instruments were compulsory only State bodies.

Furthermore, it was said that the Geneva Conventions, which regulate international humanitarian law, do not apply to internal conflicts. New development in international law asserts now, that given the multiple internal conflicts everywhere and the changes in warfare, where conflict parties on purpose aim at civilians, humanitarian law is to be applied in internal or international armed conflicts alike.

At the other side, States claimed that they did not have to observe legal instruments not ratified by them; therefore, they were not bound to respect them. International criminal law, as laid upon in international courts, does not accept such reasoning. If the use of child soldiers is a crime against humanity, then nobody involved in armed conflicts can believe that not ratifying a convention would prevent liability.

Finally, during a trial at the Special Court in Sierra Leone, it was argued that international conventions and treaties do bind State Bodies and perhaps armed groups, but not individuals, especially not before the entering into force of the Rome Treaty, as there was no legislation in place to forbid recruitment of children. It was argued that a guilty verdict would violate the principle of nullum crimen sine lege for every such crime committed before, at least, the Rome treaty entered into force.[11]

The Special Courts Appeals Chamber provided a majority decision, where it held, after carefully having examined the legislation of 138 States worldwide, that the overwhelming majority of them did not practice recruitment of children under the age of 15 according to their national laws since long before the Rome Treaty whether through criminal or administrative law, and criminalized such behaviour.[12] The decision furthermore could prove that all legal system, common law, civil law and Islamic law, were part of this majority. The Court was able, therefore, to state that the criminalization of the recruitment of child soldiers had became customary law. In addition, the Court's decision stated that international humanitarian law permits the prosecution of individuals for the commission of serious violations of the laws of war, evaluating the development of jurisprudence since the Nuremberg trials until recent judgements of the international twin Courts, the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda. Finally, the Court addressed the principle of *nulla poena sine lege*, as the argument was brought forward that no punishment could be measured out if the penalty for a given crime was not explicitly stated in the law. In this regard, the Court cited Prof. Cassese's opinion that the principle of laying down a tariff is not applicable at the international level and mentioned as well penalties foreseen in national legislations for breaching the prohibition on the recruitment of child soldiers.[13] To conclude its reasoning, the Court rejected the argument that the accused persons have acted in good faith while recruiting children, as persons in leadership roles ought to know that recruiting children as soldiers was a criminal act that violated international humanitarian law in accordance with their own national legislation (in the case of Sierra Leone specifically, such acts were criminalized; in most of other countries worldwide the same argumentation would apply as demonstrated above).

The Special Court for Sierra Leone Trial Chamber II's decision allowed, for the first time ever in the history of justice, conviction for the recruitment of children as soldiers. This decision identified the elements of the crime of recruitment of children as soldiers, taking into consideration the Rome Statute, as follows:

1) The perpetrator conscripted or enlisted one or more persons into an armed force or group or used one or more persons to participate actively in hostilities;

2) Such person or persons were under the age of 15 years;

3) The perpetrator knew or should know that such person or persons were under the age of 15 years;

4) The conduct took place in the context of and was associated with an armed conflict,

5) The perpetrator was aware of factual circumstances that established the existence of an armed conflict.[14]

The Trial Chamber will soon render its sentencing and it remains to be seen if appeals will be addressing this matter.

4. The needs

It is said very often that justice hampers reconciliation. Citizens of concerned countries and NGOs as well put forward that the money spent for international courts would be better spent on victim's assistance.

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11. *Prosecutor v. Alex Tamba Brima, Brima Bazzy Kamara, and Santigie Borbor Kanu* (2007), Case No. SCSL-04-16-T (Special Court for Sierra Leone, Trial Chamber II).

12. *Prosecutor v. Sam Hinga Norman* (2004), Case No. SCSL-2004-14-AR72 (E) (Special Court for Sierra Leone, Appeals Chamber).

13. A. Cassese, *International Criminal Law,* Oxford, Oxford University, 2003, p. 157.

14. *Supra,* note 11.

The issue of child soldiers now is one that might show that justice is necessary as a basis for lasting peace. How to deal with child soldiers if some people, victims first of all, say that these children are victims as well and should be assisted while others say that these children are perpetrators and should be punished?

The Special Court for Sierra Leone is the only international court that has the mandate to try children above the age of 15 years old. The Court chose not to try these children involved in criminal acts, even if those acts were abhorrent. There are three good arguments for it: first, that it is very difficult to draw the line of age in countries, where birth certificates are not in the possession of everyone, especially not during war times; second, that it might become quite difficult to establish when exactly a child above the age of 15 year old committed such atrocities during a long lasting civil war, considering that children far below the age of 15 have been used as child soldiers; and third, that child soldiers usually do not bear the greatest responsibility for the crimes as set out in the Statutes of International Criminal Courts. As to national legislation, most countries have special legislation for children (as has Sierra Leone) considering rehabilitation and educational measures more appropriate for children than punishment.

However, international law rather supports the child victims approach and put forward that child soldiers have to respond for their acts only in an appropriate judicial system and according to criminal procedures in line with the Convention on the Rights of the Child and other legal protection instruments.

The very first step to be taken, therefore, should be to do everything possible to convince parties involved in armed conflicts that child soldiers have to be demobilized; the second one is to put in place a re-socialization strategy involving every possible means for reconciliation between the child soldier in question and his/her victims available in the tradition of the state /region in question. There are many ways to do so, many programmes have proved to be successful, and much has been achieved by several Truth and Reconciliation Commissions. But there is one thing all these projects, programmes, and measures have in common: they have a difficult, painful task to fulfil that takes much patience, much understanding and much time. Education is the key word for changes to be made in the concepts of young people as well as for the individual child soldier to get a chance for his/her future life.

The International Committee of the Red Cross has created 'communication programs' in which the principles of international human rights law are set out in school manuals for children ages 10 to 17 year old. The "Exploration Humanitarian Law" program trains teachers and provides training material for getting a degree in humanitarian law, while the "Exploitation of Violence" program shows a video on child soldiers including an explanatory brochure for teachers.[15] Many legal as well as educational systems in post war countries have adopted a new approach, focusing at the same time on education and peace for all children on the one hand side, and adequate treatment and re-socialisation of child soldiers on the other hand.

5. Conclusion

What do we want to achieve? We do not want to have children involved in armed conflicts any more. We want, furthermore, to reintegrate those child soldiers that have already been involved in such conflicts into their communities.

The legal instruments to prevent children from being recruited and taking part in hostilities are in place. Jurisprudence exists now as well to deal with the issue. Effective programmes, projects, and traditions for trying healing victims' and child soldiers' wounds and traumas are available as well. There are mechanisms to provide education and vocational training to demobilized children for enabling them to find a way of living without the use of force or arms, and without resorting to crime for getting paid. Material has been prepared for teachers to discuss the value of peace instead of conflict with children at an already early age.

What else do we need? Everything is there, is it not? It is not. Our societies do need the will to achieve the goals set out, to invest in education, re-socialisation, and reconciliation. We need patience for reconciling victims with offenders, long term programmes for tackling traumatisation, long term investment for creating jobs for child victims and child offenders alike.

We do not need arguments that all that takes too much time and has no political value to be "sold" to voters and costs too much money, as the expectations that these re- integrated persons would become tax payers are too uncertain for investing a lot. The next war would cost quite a lot more for any given society than all of these programmes, projects, and measures would do together. If one is interested in the welfare of society…

Renate Winter*, a UN Judge, was President of IAYFJM from 2006 to 2010.

15. International Committee for the Red Cross, [online]: http://www.icrc.org/eng , (visited on July 19, 2007).

Congress closing speech—Tunisia — Judge Michel Lachat

Jean Zermatten—the Director of the International Institute for the Rights of the Child—has handed the torch over to me to deliver the closing speech of this Congress. If no one can replace Jean, it is at least possible to follow him! Given my late arrival at the Congress, I am grateful to Jean Zermatten for allowing me the honour of addressing these closing remarks to you in my roles as the Vice-President of the International Institute for the Rights of the Child, a past Treasurer of the IAYFJM and as a member of the African Group on Children's Rights.

Madame President,

Members of the Association,

Dear Friends,

Professor Kotrane has just completed the summary of the work of the XVIIIth World Congress of our Association to which we are all devoted—as demonstrated by the determination of one and all to get to Tunisia—a country which is rich in history and culture and a bridge between continents—despite the eruptions of our planet Earth and the revolt of a son of the god Vulcan, the volcano with the impossible name (but I will attempt it, all the same) Eyjafjallajõkull

We have just heard what will be known from now on as 'The Declaration of Tunis'—the result of four days of intensive work, interaction, discussion and argument (in the best sense of the word) four days of friendship too and four days of improvisation and responding to events in order to put on a Congress of high quality despite major threats to its existence.

So I would like to thank our Tunisian hosts and particularly ATUDE, for their unshakeable faith in this Congress, to President Nadhir Hamada and the loyalty of Ridha Khemakhem; and to express my admiration for our dear President, Renate Winter, for her organising ability, determination and powers of persuasion in getting participants to take on roles that they had not expected to play. Thank you, dear Renate!

'United in Diversity—the title is a real challenge. How can we bring together different legal systems, find answers that meet children's best interests, reconcile different cultures, systems, traditions and kinds of law (legislation, customary and sometimes religious law) and achieve a consistent, fair and considered judicial approach?

I believe that the Declaration of Tunis will endure because it draws its inspiration to a great extent from the CRC, which is now twenty years old and, as a universal document, provides our common language and is the unifying bond between us. And it is, of course, the lodestone for our Association, for our everyday legal activities, for our judgements and our beliefs.

But we must not hide from reality. Without being critical of States, we have to admit that the majority of signatories to the CRC have still not understood **all** the implications of ratification. Even those countries that have made substantial effort to give effect to the individual rights set out in the Convention have not yet given enough thought to the new perspective on rights that the Convention promotes. Why is this?

We have to be clear that this is where the Convention poses its greatest problem and challenge. How should we give reality to the concept of the best interests of the child with the **direct involvement** of children? These two ideas are central to the members of our Association:

- to take decisions in the interest of the child (article 3);
- to listen to the child or, at least, ensure the child's right to be heard (article 12).

That leads us to a question that has been implicit in all the discussions of the last four days. Are the interests of the child and his or her right to be heard in opposition to each other?

I am happy to share some thoughts with you that I think can help all of us in carrying out our judicial duties.

Is there inconsistency or agreement between articles 3 and 12 of the CRC?

It is certainly the case that article 3 can be looked at from the point of view of 'protection' in the sense that the decision-taker should carry out more investigations into the well-being of the child. This is an idea that accords with the 'protectionist' viewpoint that has been in the ascendant for several decades. However, you cannot read article 3 only in that way. To do so would be to ignore the need to consult children about all the decisions that affect them.

The link between articles 3 and 12 is clear. How can the person taking the decision decide what is in the child's best interests without knowing what the child's view is on a matter (be it civil, criminal or administrative) that affects him/her and will have an important bearing on his or her future?

Obviously, the determination of what is in the child's best interest should be primarily based on consulting him/her ; and—provided that the child is able to express their views properly—this consultation should be taken into account in an appropriate way.

We should also remember that article 3 says that children (plural) are also to give their views on any matter that affects them. That goes further than a literal interpretation of article 12, which only refers to the child in the singular. Putting articles 3 and 12 together points to the need to consult children (and not just those involved in legal or administrative proceedings) about everything that affects them. The fact that article 3 says that the **legislature** should consider the best interest of the child shows that consultation (as a positive right) should involve all children on all topics. This is an important point, because it means that States should consult children about legislative proposals. How many countries honour that obligation?

In my view, there is no disparity between article 3, seen as the Convention's concern for protection, and article 12, seen as involving children in decision-taking processes and based on the new status of children as holders of rights. While paragraphs 2 and 3 of article 3 appear purely protectionist, paragraph 1 in conjunction with article 12 leaves this traditional protectionist way of thinking behind and supports the idea that the child is more than just a child to be helped, but is a child to be engaged with. The two articles can really be considered to be complementary.

Article 3 describes an ideal to be sought—the well-being of the child; article 12 provides a simple way of finding it—allowing a child to express his or her views on it. In practice, following the principle of individualisation, there will be no contradiction because the person taking the decision will very often be of the same mind and be concerned, when coming to a decision:

- firstly, to listen to the child on the matter in hand and on possible ways forward;
- then, taking account of the child's views, to look into his or her best interests, which is what the decision is aiming to produce; and
- finally to take a decision, having given careful consideration both to what the child has said and to his or her best interests.

These are the steps in coming to each decision.

Applying articles 3 and 12 in tandem will ensure that in all our proceedings we have an approach based on rights.

So this is the fundamental question at the heart of the new view of children, which appeared twenty years ago with the CRC and which has led us to rethink our relationships with them completely. We leave behind intervention plans based on a narrow protectionist view and instead adopt an integrated approach. That requires us to abandon traditional ways of thought and to think holistically.

Let us give children the new position that the CRC requires—above all, it is the one to which they are entitled. That is the duty of the State and of every one of us—as adults, as people and as professionals.

The main message that I take from this Congress is that, despite our differences, we do speak a common language—that of the Rights of the Child.

Thank you for listening.

Michel Lachat* is a juvenile judge in Fribourg, Switzerland

An overview of the XVIIIth World Congress — Judy Cloete

Hammamet, the tourist hub, is situated approximately 70km outside the capital, Tunis. The hotel in which almost all of the speakers and delegates stayed, the Diar Le Mendina, is designed in such a way that guests feel as if they are living in a mediterranean village, complete with paved, cobbled walkways, restaurants, and shops in which the locals (rather enthusiastically!) sell their wares. Meals are served in the hotel restaurant and comprised of a large buffet offering a wide selection of foods with a distinctly North African flavour. The staff in the restaurant and the rest of the hotel were attentive, friendly and helpful, and seemed to go out of their way to ensure that those attending the congress felt welcome.

Judge Renate Winter, together with her team of organisers, did a sterling job in circumstances which could only have been extremely difficult for them. The volcanic cloud passing across Europe as a result of the volcano in Iceland had the effect that almost 50% of delegates and speakers were unable to attend due to flight cancellations. Undaunted, Judge Winter managed to effectively reorganise the congress program with the assistance of volunteers who stepped into the breach, hosting workshops, presenting papers, and reading the papers of those speakers who were unable to attend. The result was that the congress programme flowed smoothly, and the content was of an extremely high standard. Translators were on hand to attend to translations from French, Arabic, English and Spanish.

The congress program was divided into three themes, namely, the child and the family, the child and society, and the child in difficult circumstances. Papers presented under theme 1 included those relating to parental responsibilities and the position of children during and after divorce. Papers presented under theme 2 included the child between participation and discrimination, the child and the media, the child and new forms of criminality, and the protection of children by or despite society. Those presented under theme 3 included specialised courts for children in conflict with the law, new alternatives to punishment, children and institutions and special training for the judiciary in dealing with children.

Plenary sessions took place in the mornings (followed by discussion) and workshops in the afternoons. Attendees at the workshops were requested to formulate recommendations arising out of topical debate and these recommendations were then fed back to the congress organisers, making each workshop interactive and providing a forum for fruitful, interactive discussion coupled with the sharing of expertise and experiences of the delegates concerned. Approximately 47 countries were represented at the congress, and the general feeling was that much had been learnt and many opportunities created for the delegates to take home ideas for improvement in the field of child law in their home countries.

Poland joined the Association eighteen months ago and Croatia has also now made application for membership.

Delegates were treated to a formal lunch on the first day, hosted by the Minister of Justice, Tunisia. On the first evening, a dinner was held at one of the restaurants in the complex, with a fine show of local music and dancing. The gala dinner (held on the Friday evening) was spectacular. It was hosted in a huge tent, again with local music and dancing and a stunning performance by a troupe of entertainers (complete with Arabian horse) who had apparently travelled from the south of Tunisia for this purpose.

After the conclusion of the congress on Saturday, 24 April 2010, delegates were taken on an excursion to Carthage on the outskirts of Tunis, bordering the Mediterranean Sea, which was fascinating. Thereafter, the excursion continued to Sidi Bou Said, a mediterranean village set on the slopes of a steep hill overlooking the city where the local merchants displayed interesting souvenirs and artefacts, such as ceramic bowls with hand beaten silver and camel bone inlays. The local people were warm and friendly and the excursion was thoroughly enjoyed by all who attended.

At the general meeting of the members of the IAYFJM, Honorary Judge Joseph Moyersoen of Italy was elected as the new president of the Association. Oscar D'Amours was elected as deputy president, Eduardo Melo as secretary general, Ridha Khemakhem as deputy secretary general and Avril Calder as treasurer. 15 council members and 22 members of the general committee were elected, representing countries from across the world.

Honorary memberships were bestowed on Dr Willie McCarney (Northern Ireland) and Judge Michel Lachat (Switzerland) and Judge Christian Maes (Belgium) in recognition of their service to the Association.

Special thanks should go to Judge Renate Winter and her team and to the Tunisian Association of the Child's Rights (ATUDE), in particular, Mr Nadhir Hamada, who went to great lengths to ensure that the congress was a true learning experience, and provided many opportunities for delegates to forge new friendships and to exchange ideas. Gratitude must also be expressed to the outgoing members of the executive of the Association who, as it became apparent during the course of the congress, have worked tirelessly over the past four years to promote the work of the Association and to ensure its strengthened existence going forward.

Judy Cloete*is an Attorney in Cape Town South Africa

Photographs from the XVIIIth World Congress

M. Nadhir Hamada, President of ATUDE, in conversation with Renate Winter and Ridha Khemakhem

M. Hamada welcomes distinguished guests

M.Hamada delivering his welcoming address

Congress delegates

Children welcoming delegates

Jean Zermatten delivering his opening speech

Professor Kotrane delivering his thematic speech

Renate Winter

M. Ridha Khemakhem, Deputy Secretary General IAYFJM

Delegates

Plenary speech

Michel Lachat giving the closing speech

Our President with speakers and delegates

Group photograph

Group photograph

Avril Calder, Treasurer, and Oscar d'Amours, Deputy President, (right) with delegate

With thanks to the Congress organisers for these scenes from our XVIIIth World Congress.

Principles of Judicial Ethics

Jean Trépanier

A Committee was mandated by the Council of the International Association of Youth and Family Judges[1] and Magistrates (IAYFJM) to prepare a proposal of Principles of Judicial Ethics that could serve as a source of inspiration for its members as well as for other judges and magistrates involved in youth and family matters.

The following members were appointed:

Muhammad Imman ALI (Bangladesh)

Lucien BEAULIEU (Canada)

Andrew BECROFT (New Zealand)

Nick CRICHTON (United Kingdom)

Luigi FADIGA (Italy)

Maria FONTEMACHI (Argentina)

Bankole THOMPSON (Sierra Leone)

Jean TRÉPANIER (Canada, chair)

As the Committee membership was drawn from several continents and no budget was available to finance working sessions, communications between Committee members had to rely on email exclusively. Email has its limits when exchanges and discussions are required. That is why the Committee was assisted by a local working group, based in Montreal (Canada), whose members were able to meet and discuss directly, in order to do some groundwork and prepare proposals for the Committee. The membership of the local working group was as follows:

Oscar D'AMOURS (Vice-President of the IAYFJM)

Pierre NOREAU (Professor of law at the Université de Montréal and specialist in judicial ethics issues)

Huguette ST-LOUIS (former Chief Judge of the Quebec Court)

Jean TRÉPANIER (chair).

The local working group prepared initial proposals that were examined by the members of the Committee. This was followed with a series of exchanges between the members of the Committee and the local working group, until a final version could be established. This report presents the proposal of the Committee. It is the result of exchanges and discussions that helped to clarify a good number of issues, some of which were quite complex. The spirit of cooperation in which Committee members proceeded to their task did not mean that unanimity could be reached on all issues. It is only normal that judges and magistrates who come from very diverse backgrounds and draw their inspiration from different cultural and legal traditions may hold different views as to how principles of judicial ethics ought to be approached.

The intention was to have a committee that would reflect the diversity that exists within the IAYFJM, in order to design principles that could be widely accepted by members of the Association. The Committee has aimed at designing principles that are clear and meaningful and, at the same time, adapted to diverse countries.

The Report is divided in two parts. First, the proposed principles of judicial ethics are enunciated. The second part includes some observations and explanations that may shed some light on the principles themselves.

Proposal for Principles of Judicial Ethics for Youth and Family Judges and Magistrates

WHEREAS the *Bangalore Principles of Judicial Conduct*[2] have a universal aim and were conceived, adopted and supported in a manner which conferred upon them a unique international legitimacy[3];

WHEREAS these *Bangalore Principles* are aimed at judges and magistrates as a whole, including those who work in the area of child or youth and family matters;

WHEREAS judicial practice in youth and family matters entails its own characteristic dimensions and emphases, as appears, amongst others, from the *International Convention on the Rights of the Child;*

WHEREAS there is reason to reaffirm the values expressed in the *Bangalore Principles* by placing them in the particular context of the exercise of the judicial functions in child or youth and family matters;

IT IS PROPOSED that the following principles be adopted:

1. The role of a judge is to dispense justice within the rule of law, including conventions, international and regional declarations and rules regarding children, youth[4] and families.

[1] In the present text, the word "judge" shall be construed as including "magistrate

[2] *The Bangalore Principles of Judicial Conduct*, 2002 (The Bangalore Draft Code of Judicial Conduct). 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002).

[3] See The Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct*, March 2007. http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment.PDF.

[4] In these principles, the expression "child or youth" or its equivalent refers to the same notion as that of the "child" in the *International Convention on the Rights of the Child*.

2. A judge shall exercise the judicial function so as to maintain his or her personal independence and the independence of the judiciary.

3. A judge shall be manifestly impartial, which must not be construed as being in contradiction with his or her statutory or legislative obligation to take into account the best interest of the child or youth or, should such be the case, to harmonize the latter's interest with those of society and the victim.

4. In performing his or her judicial duties, a judge shall act with integrity.

5. A judge shall ensure that the process allows for the views of all those affected by the process to be heard, including the views of the child or youth, his or her family and, as the case may be, the defendant and the victim.

6. A judge shall strive to explain clearly the reasons of his or her decisions and to ensure that his or her decisions are understood by the child or youth and the adults into whose charge the child or youth is entrusted.

7. A judge shall manifest sensitivity and shall communicate with the child or youth and other persons involved in a manner adapted to their levels of understanding.

8. A judge shall respect the confidential character of information acquired in his or her judicial capacity and the disclosure or use of which could infringe the private life of the child or youth, of his or her family or of other persons concerned in a judicial proceeding.

9. In court and in public, a judge shall conduct himself or herself in a manner consistent with his or her judicial office and shall at all times manifest appropriate restraint.

10. A judge shall ensure that everyone before the court is treated equally and with respect, taking into account the specific characteristics of every person, particularly age, gender, social condition, or other relevant circumstances.

11. A judge shall maintain his or her professional competence, both in law and in other disciplines relevant to the performance of his or her judicial duties.

12. A judge shall act with promptness and diligence that are suited to the particular perceptions of the child or youth with regard to time.

OBSERVATIONS AND EXPLANATIONS

Preamble

WHEREAS the Bangalore Principles of Judicial Conduct[5] *have a universal aim and were conceived, adopted and supported in a manner which conferred upon them a unique international legitimacy*[6]*.*

WHEREAS these Bangalore Principles *are aimed at judges and magistrates as a whole, including those who work in the area of youth and family matters.*

WHEREAS judicial practice in youth and family matters entails its own characteristic dimensions and emphases, as appears, amongst others, from the International Convention on the Rights of the Child;

WHEREAS there is reason to reaffirm the values expressed in the Bangalore Principles *by placing them in the particular context of the exercise of the judicial functions in youth and family matters;*

IT IS PROPOSED that the following principles be adopted:

The Preamble refers to the *Bangalore Principles of Judicial Conduct*. These principles were adopted in their current form in 2002, following extensive consultations. They have received international endorsement or recognition from such bodies as the UN Social and Economic Council, the UN Office on Drugs and Crime, the International Commission of Jurists and the American Bar Association. They have a legitimacy that is unique. They are aimed at judges and magistrates of all jurisdictions, including those who deal with youth and family matters. They cover much of the ground that had to be covered. Referring to them in the Preamble involves an acknowledgement of their relevance for youth and family judges and magistrates.

Yet, youth and family judges and magistrates work in a fairly specialized environment, which has its specificities. Consequently, specific principles of ethics may be desirable. Adding such complementary elements may serve several purposes. Values that underpin the *Bangalore Principles* may be reaffirmed in a way that places more emphasis on dimensions that are particularly relevant to youth and family matters. It may bring about a stronger allegiance to the principles among youth and family judges and

5 *The Bangalore Principles of Judicial Conduct*, 2002 (The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002).

6 See The Judicial Integrity Group, *Commentary on the Bangalore Principles of Judicial Conduct*, March 2007. http://www.coe.int/t/dghl/cooperation/ccje/textes/BangalorePrinciplesComment.PDF.

magistrates. It may also foster a better understanding of the role and work of those who sit in youth and family jurisdictions, thus helping to promote the understanding of judicial ethics for such specialized jurisdictions with third parties (such as States, persons who are in contact with youth and family courts and the public in general).If such complementary principles are adopted, it may be important to ensure that they include a reference to all of the essential values of the *Bangalore Principles*, even if this may involve occasional repetitions: many judges and magistrates may not be familiar with the *Bangalore Principles* and are likely to find it helpful to have a document that essentially stands on its own, despite its reference to the *Bangalore Principles*.

Consequently, complementary principles should aim primarily at reaffirming values or principles that may be already present in the *Bangalore Principles* but that may have the advantage of being rephrased so as to be closer to the specific role of youth and family jurisdictions. As a secondary consideration, one may also find it appropriate to refer to some of the values underpinning the *Bangalore Principles*, even in terms that are not specific to youth and family matters, if the presence of such references is deemed important to provide a minimal degree of autonomy to the proposed body of principles.

Principle 1:

The role of a judge is to dispense justice within the rule of law, including conventions, international and regional declarations and rules regarding children, youth[7] *and families.*

This principle does not have its equivalent in the *Bangalore Principles*. Still, it is clearly in line with the values that underpin the *Bangalore Principles*. This is highlighted by the reference that is made in the fifth paragraph of the Preamble of the *Bangalore Principles* to the fact that the judiciary must uphold the rule of law. It was felt desirable to include a statement to that effect and to ensure that it be specifically adapted to youth and family jurisdictions. The expression "children and youth" that is used in this principle as well as in some others refers to the same notion as that of the "child" in the *Convention on the Rights of the Child*. Thus, from a purely international law standpoint, the addition of "youth" does not enlarge the concept subsumed under "children". This addition has been felt desirable in view of the fact that, in usual vocabulary as well as in the laws of some countries, children and youth may be viewed as referring to different age categories—children being the younger group and youth referring to adolescents, the latter group forming a most important share of those who come into contact with children, youth and family courts.

Principle 2:

A judge shall exercise the judicial function so as to maintain his or her personal independence and the independence of the judiciary.

Principle 1 of the *Bangalore Principles* refers to various aspects of judicial independence. Still it was thought fit to include this principle here, even if its formulation does not carry any specific reference to the work of youth and family judges. Our principles refer to some aspects of most other values of the *Bangalore Principles* (impartiality; integrity; propriety; equality; competence and diligence). In view of its importance, it was felt appropriate to include a reference to independence as well, were it only to avoid creating the impression that it might be viewed as less important than the other values and to ensure that the most important values are embodied in the our principles.

Principle 3:

A judge shall be manifestly impartial, which must not be construed as being in contradiction with his or her statutory or legislative obligation to take into account the best interest of the child or youth or, should such be the case, to harmonize the latter's interest with those of society and the victim.

The central element of the principle is impartiality: a judge has to be manifestly impartial.

A specific issue may arise in youth and family matters concerning this value: some might think that the obligation to take into account the best interest of the child or youth might carry some form of partiality. The second part of the principle is there to affirm that this obligation must not be construed as introducing a form of partiality. The principle is not there to affirm the place of the best interest of the child in judicial decisions – which may be viewed as a matter of substantive law rather than judicial conduct – but to qualify the meaning of impartiality in youth and family cases.

Conflicting views exist as to the weight of the best interest of the child or youth in criminal cases. In order to make the formulation of the second part of the principle acceptable in diverse legal traditions, the principle is phrased so as to acknowledge that, in some cases, the interest of the child or youth may have to be harmonized with those of society and the victim (without going into the issue of their relative weights in the decisions). This is in line with the spirit of the *Beijing Rules* (see particularly Rules 5 and 17).

[7] In these principles, the expression "children and youth" refers to the same notion as that of the "child" in the *International Convention on the Rights of the Child*.

Principle 4:
In performing his or her judicial duties, a judge shall act with integrity.

The issue of integrity is covered in the *Bangalore Principles* (see Principle 3). It was, nonetheless, deemed appropriate to include it among the present principles for the same reasons as those stated for Principle 2.

Principle 5:
A judge shall ensure that the process allows for the views of all those affected by the process to be heard, including the views of the child or youth, his or her family and, as the case may be, the defendant and the victim.

This principle has no equivalent in the *Bangalore Principles*. Although it bears some relationship with procedural law, it may be viewed from a judicial conduct standpoint. It is central in conducting child, youth and family court cases.

Principle 6:
A judge shall strive to explain clearly the reasons of his or her decisions and to ensure that his or her decisions are understood by the child or youth and the adults into whose charge the child or youth is entrusted.

A favourable impact of a judicial decision on a child, a youth or a family is less likely to occur if that decision is not understood by them. Those who appear before youth and family jurisdictions are very often people with poor backgrounds; they are unfamiliar with the courts and may not understand what is happening in the proceedings in which they are involved. Particular attention is required to ensure that sufficient explanations are provided to them so that they understand the decisions that concern them and the reasons on which they are based.

Principle 7:
A judge shall manifest sensitivity and shall communicate with the child or youth and other persons involved in a manner adapted to their levels of understanding.

This principle is particularly important in relation with youth and family matters, because of the issues in question and the people who are involved in the cases. It does not have its equivalent in the *Bangalore Principles*.

Principle 8:
A judge shall respect the confidential character of information acquired in his or her judicial capacity and the disclosure or use of which could infringe the private life of the child or youth, of his or her family or of other persons concerned in a judicial proceeding.

This principle adapts to the circumstances of youth and family matters the principle of confidentiality that is affirmed in *Bangalore Principle* 4.10.

Principle 9:
In court and in public, a judge shall conduct himself or herself in a manner consistent with his or her judicial office and shall at all times manifest appropriate restraint.

Several paragraphs (4.1 et seq.) of the *Bangalore Principles* deal with specific aspects of "propriety". It was felt appropriate to summarize in one brief principle the essential of what may be relevant for youth and family judges, even if the formulation is not specific to the latter.

Principle 10:
A judge shall ensure that everyone before the court is treated equally and with respect, taking into account the specific characteristics of every person, particularly age, gender, social condition, or other relevant circumstances.

This principle deals with two values: equality and respect.

The issue of equality is dealt with in several paragraphs (5.1 et seq.) of the *Bangalore Principles*. Principle 10 adds to the *Bangalore Principles* by stating that the judge ought to take into account some specific characteristics of every person, which appears particularly relevant in youth and family matters.

The issue of respect is not dealt with as such in the *Bangalore Principles*, although it is implied in Principle 6.6. It is relevant to mention it clearly for youth and family matters, particularly in view of the vulnerability of children.

Principle 11:
A judge shall maintain his or her professional competence, both in law and in other disciplines relevant to the performance of his or her judicial duties.

The *Bangalore Principles* deal with the issue of competence (Principles 6.3 et seq.). However they do not address the need for maintaining a competence in disciplines other than law. Yet this need appears particularly relevant for youth and family judicial practice, where there is a constant interaction with professionals such as psychologists, psychiatrists, social workers, criminologists and so on. Hence the need for an adapted version of the principle.

Principle 12:
A judge shall act with promptness and diligence that are suited to the particular perceptions of the child or youth with regard to time.

The issue of promptness and diligence is only minimally addressed in the *Bangalore Principles* (Principle 6.5). It is a key concern in youth and family matters, in view of the perception of children and youth with regard to time. Hence the need to have a principle adapted to youth and family work.

Ethics Committee **March 17th 2010**

Treasurer's Report for 2006 to 2009 — Avril Calder

Table 1 below contains the income and expenditure accounts for the Association from 2006 to 2009. There are two columns for each year, showing transactions in Swiss Francs (CHF) and sterling (£ or GBP). Until the end of 2006 the Association's assets were held in Swiss Francs at UBS Geneva. During 2007 they were transferred to the UK and about CHF 20,000 was converted into sterling (£8,100). The Association's assets are now held in both sterling and Swiss Franc accounts at Barclays Bank plc Kingston upon Thames.

Income

The Association's income arises almost entirely from subscriptions from individual members and national associations. Since 2006 annual income in sterling terms has been steady at around £7,000.

A method which allows members to pay subscriptions through PayPal was introduced in 2007. This cuts down substantially the charges levied by banks for international money transfers.

Expenditure

Apart from small subscriptions to other organisations and minor administrative expenses, the Association's expenditure is devoted to the production of the Chronicle. From the beginning of 2007 the Chronicle has been entirely electronic, sent directly to members with e-mail addresses and also to national associations for onward distribution to their members. This change has eliminated the large postage costs associated with sending out a printed version. The costs of translation to provide copy in all three languages are, however, significant and have been increasing because of the greater volume of material in recent Chronicles, a growth in the number of articles submitted in only one language and the weakening of the sterling exchange rate. An important contribution to the Chronicle is the generous and voluntary help in proof-reading undertaken by a small number of our members. This not only saves cost, but greatly improves the quality of the finished journals.

Operating surplus

In all four years there has been a (sometimes small) surplus of income over expenditure. This has led to a significant increase in the Association's assets.

Growth in assets (balance sheet)

Table 2 below shows the Association's assets at 31 December each year from 2005 to 2009. In sterling terms, our assets have more than doubled over this four-year period and now stand at a little over £20,000. However, some of this growth is a reflection of the weakening of the sterling exchange rate, referred to earlier. In terms of the Swiss Franc, for example, our assets would show a growth of about 55% over the same period. The increase in our assets reverses the trend of the period 2002 to 2005.

Table 1: Income and Expenditure Accounts for 2006 to 2009

	2006	.....	2007	.....	2008	.....	2009	.....
	CHF	£	CHF	£	CHF	£	CHF	£
Receipts								
National subscriptions	9,279.77	----	932.02	5,174.71	1,396.99	2,938.73	----	4,958.88
Individual subscriptions	3,444.00	962.89	686.09	1,416.66	1,780.23	3,167.22	622.80	1,858.54
Bank interest	58.20	----	29.13	233.98	----	360.39	----	76.06
Other	307.63	----	----	----	----	----	----	----
TOTAL Receipts	**13,089.60**	**962.89**	**1,647.24**	**6,825.35**	**3,177.22**	**6,466.34**	**622.80**	**6,893.48**
Expenditure								
Chronicle	13,547.35	----	----	2,177.90	---	3,512.71	----	5,923.77
Secretariat	804.65	----	----	167.86	5.00	23.53	----	45.05
Donations / subscriptions	300.00	----	300.00	----	150.00	160.36	---[1]	----
Bank charges	205.95	----	14.94	31.08	---	24.00	----	26.00
TOTAL Expenditure	**14,857.95**	**0.00**	**314.94**	**2,376.84**	**155.00**	**3,720.60**	**0.00**	**5,994.82**
Gain (+) / Loss (-)	-1,750.35	+962.89	+1,332.30	+4,448.51	+3,022.22	+2,745.74	+622.80	+898.66
Transfer from CHF to £			-20,054.79	+8,100.00				
Balance 31 December CHF	20,355.29		1,632.80		4,655.02		5,277.82	
Balance 31 December £		962.89		13,511.40		16,257.16		17,155.82

[1] The 2009 subscription to the Veillard-Cybulski Foundation (CHF 300) will be paid in April 2010.

Table 2: Total Assets at 31 December each year converted to sterling (£):

31 Dec	CHF	£	€[2]	Exchange £1=CHF	Exchange £1= €	Total (£)	Year-on-Year Change (£)
2005	22,123.66	----	----	2.26	----	**9,789**	----
2006	20,355.29	962.89	----	2.39	----	**9,480**	-309
2007	1,632.80	13,511.40	----	2.25	----	**14,237**	+4,757
2008	4,655.02	16,257.16	150.00	1.62	1.06	**19,272**	+5,035
2009	5,277.82	17,155.82	328.00	1.68	1.14	**20,585**	+1,313

[2] Individual subscriptions of €150 in 2008 and €195 less €17 postage and stationery in 2009 not included in table 1.

AIMJF / IAMFJM 2010 General Assembly
Treasurer's Analysis

Subscriptions

1. Individual subscriptions
   - 1.1. Collecting individual subscriptions is difficult to achieve against a background of high bank charges and the effort involved on the part of the member—visiting a bank and filling in forms. As a result, many members do not pay and eventually are lost to IAYFJM.
   - 1.2. Individual subscriptions collected in a country by one person who then sends the money to me is by far more successful. It has been demonstrated in the last four years that when a person in a country ceases to collect monies in this way, the total receipts from that country fall and members are lost.
   - 1.3. PayPal offers a way for individual members to pay annually at very little cost. It helps the Treasurer because the subscription is automatically renewed every year and is simple for the member. I do not send out requests to members who pay by PayPal, but I always send out a thank you e-mail when the annual subscription reaches IAYFJM's PayPal account. Thus the member knows that his/her bank account has been debited.
2. National Subscriptions
   - 2.1. National subscriptions are generally paid through the banking system except for the National Council of Family and Juvenile Court Judges of the USA which uses PayPal.

Expenditure

3. Chronicle
   - 3.1. The income of the Association is spent on the Chronicle. The cost of the Chronicle is affected by its length, the increase in translation costs per word (up 20%) and, in addition, the weakened pound.

Proposal

4. Increase and realignment of subscriptions (art.19 point 5 of the Statute)
   - 4.1. The table below shows the subscription levels agreed at the General Assembly in 2006. When valued in GBP, there is now a large difference between the value of a subscription paid in CHF and one paid in US $.

Currency	2006 subscription	2006 valued in GBP(*)	2010 proposed	2010 valued in GBP(*)
GBP	20	£20.00	30	£30.00
CHF	45	£28.14	50	£31.25
Euro	30	£26.57	35	£31.00
US$	30	£19.63	45	£29.44

(*) at 3 April 2010

The pound has weakened considerably against the Euro and other currencies in the last two years. It makes sense to bring individual subscriptions in line again and so I suggest that the sterling subscription should be GBP 30.00 and the subscriptions in the other currencies be aligned with it. This implies modest increases in CHF and Euro subscription rates and significant increases in GBP and US$ rates.

Avril Calder, Treasurer, April 2010

PS The increase and realignment of subscriptions proposal was agreed by the General Assembly and will take effect from January 1st 2011

Treasurer's column — Avril Calder

Subscriptions 2010

In the early months of 2010 I sent out e-mail requests for subscriptions to individual members (GBP 20; Euros 30; CHF 45 for the year 2010) 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, 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.iayfjm@btinternet.com; or

3. if under **Euros 70**, by **cheque** (either in GBP or euros) made payable to the International Association of Youth and Family Judges and Magistrates and sent to me.

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

Avril Calder

Chronicle—Report to the General Assembly, Tunisia 2010 Avril Calder

Production and distribution
The Chronicle has been produced in electronic format since 2007 with distribution to members and national associations by e-mail. This has eliminated printing and postage costs and has enabled me to extend the range of articles and make greater use of colour and pictures. However, distribution depends crucially on maintaining an up-to-date list of members' and national associations' e-mail addresses.

The costs of producing the Chronicle in our three languages are now almost entirely translation costs. We use an excellent translation service based in Buenos Aires that provides good value for money. Translation costs have been increasing for three reasons—

- there are more articles in each issue of the Chronicle;
- many articles are submitted in only one of our languages and so have to be translated twice; and
- the £ sterling has weakened.

The hard work of our small team of volunteer proof-readers makes a vital contribution to the Chronicle. Not only do their freely provided efforts keep costs down, they greatly improve the quality of the finished product for members. We owe them a substantial debt of gratitude.

Editorial policy and content
I have aimed to produce a journal that is readable, rigorous but not too academic that will keep our members informed of important developments in family and juvenile justice in other countries and in international organisations.

Various themes have been developed during the last three years—

- outlines of juvenile justice systems in different countries in a format that makes comparisons between countries easy to make;
- significant proposals for changes in member countries (eg New Zealand, Argentina);
- important conceptual developments, such as restorative justice; and
- improvements in our understanding of children's psychological development.

I have had no difficulty in obtaining a good flow of articles, but I would like to put in place a more systematic way of deciding on topics for each edition and obtaining articles to cover those topics. The Editorial Board could play a greater role in this process.

The future
I propose to keep the Chronicle at its current size, published six-monthly by our present electronic methods.

I would like to establish a theme for each issue, set out in advance in a rolling programme to be discussed and agreed by the Editorial Board. Board Members with expertise on a particular theme would then be able to invite suitable authors to contribute an article.

I would also welcome greater involvement by the Editorial Board in shaping and promoting the Chronicle.

I propose to step down as Editor-in-Chief towards the end of the next four year period. To maintain continuity, it would be helpful to appoint a successor and arrange an orderly hand-over.

Avril Calder* Editor-in-Chief Chronicle Chronique Crónica

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
Twelfth United Nations Congress on Crime Prevention and Criminal Justice	Draft Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World	http://www.un.org/en/conf/crimecongress2010/documents.shtml
United Nations UNODC Handbook	Justice in Matters Involving Child Victims and Witnesses of Crime NB This handbook is available in Arabic	http://www.unodc.org/documents/justice-and-prison-reform/Justice_in_matters...pdf
Bernard Boeton* Fondation Terre des Hommes (TdH)	Children on the move vs. child trafficking	http://www.tdh-childprotection.org/documents/children-on-the-move-vs-child-trafficking-and-what-do-we-prevent
European Union	Global Movement for Children announced that the new dates of the conference on children on the move are October 5-7 in Barcelona Justice and Home Affairs Council releases its conclusions on Foreign unaccompanied minors	http://www.tdh-childprotection.org/news/international-conference-on-children-on-the-move ttp://www.tdh-childprotection.org/news/jha-council-releases-its-conclusions-on-foreign-unaccompanied-minors
Interagency Panel on Juvenile Justice (IPJJ)	Newsletter	newsletter@juvenilejusticepanel.org
UNICEF	Good practices and promising initiatives in juvenile justice	www.**unicef**.org/**ceecis/UNICEF**__JJGood_Practices_WEB.pdf
Jean Zermatten* Institut international des Droits de l'Enfant **(IDE),** Vice Chair UN Committee on Rights of Child	"Les mutilations génitales féminines" Didactic handbook on MGF for Professionalsin Switzerland One hundred and thirty million women involved! (Fr) Book available from IDE website	www.childsrights.org
IDE	Publication: 'Enfants et adolescents migrants, une perspective de santé et de droits ?' - Working Report	www.childsrights.org
The Child Rights Information Network **(CRIN)**	CRIN's website offers child rights resources which include information in four languages (Arabic, English, French and Spanish).	Email: info@crin.org www.crin.org
European Parliament	Seminar on trafficking	http://www.tdh-childprotection.org/news/european-parliament-seminar-on-combating-and-preventing-trafficking-in-human-beings-the-joint-statement-and-recommendations-from-7-ngos

General Assembly Hammamet, Tunisia 24th April 2010

Joseph Moyersoen, Renate Winter, Oscar d'Amours, Ridha Khemakhem, Avril Calder

Bureau/Executive/Consejo Ejecutivo 2010-2014

President	Honorary Judge Joseph Moyersoen	Italy	moyersoen@tiscali.it
Vice President	Judge Oscar d'Amours	Canada	odamours@sympatico.ca
Secretary General	Judge Eduardo Melo	Brazil	eduardomelo@oul.com.br
Deputy Secretary General	Judge Ridha Khemakhem	Tunisia	cdh.justice@email.ati.tn
Treasurer	Avril Calder, Magistrate	England	ac.iayfjm@btinternet.com

Council—2010-2014

President—Joseph Moyersoen (Italy)
Vice-president—Oscar d'Amours (Canada)
Secretary General—Eduardo Melo (Brazil))
Dep. Sec Gen—Ridha Khemakhem (Tunisia)
Treasurer—Avril Calder (England)
Elbio Ramos (Argentina)
Imman Ali (Bangladesh)
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Antonio A. G. Souza (Brazil)
Guaraci de Campos Vianna (Brazil)
Gabriela Ureta (Chile))
Hervé Hamon (France)
Daniel Pical (France)
Sophie Ballestrem (Germany)
Petra Guder (Germany)
Sonja de Pauw Gerlings Döhrn (Netherlands)
Andrew Becroft (New-Zealand)
Judy de Cloete (South Africa)
Anne-Catherine Hatt (Switzerland)
Len Edwards (USA)

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

Chronicle Chronique Crónica — Voice of the Association

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

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

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

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

Contributions from all readers are welcome. Articles for publication must be submitted in English, French or Spanish. The Editorial Board undertakes to have articles translated into all three languages—it would obviously be a great help if contributors could supply translations. Articles should, preferably, be 2000 - 3000 words in length. 'Items of Interest', including news items, should be up to 800 words in length. Comments on those articles already published are also welcome. Articles and comments should be sent directly to the Editor-in-Chief. However, if this is not convenient, articles may be sent to any member of the editorial board at the addresses listed below.

Articles for the Chronicle should be sent directly to:

Avril Calder, Editor-in-Chief,

e-mail : acchronicleiayfjm@btinternet.com

Copies in our three working languages (English, French and Spanish) would be appreciated.

Alternatively, articles may be directed to any member of the Editorial Panel. Names and email addresses are given below

Dr Atilio J. Alvarez	infanciayjuventud@yahoo.com.ar
Judge Oscar d'Amours	odamours@sympatico.ca
Cynthia Floud	cynthia.floud@btinternet.com
Prof. Jean Trépanier	jean.trepanier.2@umontreal.ce
Dra Gabriela Ureta	gureta@vtr.net

Report of the Jury for Veillard Cybulski Prize, 2010 edition.

The Jury has received, read and analysed seven submissions nominated for the Veillard Cybulski Award, six of them presented in a first dispatch, and one added later.

Considering that the objective is reward deserving works, particularly those which make a new contribution towards perfecting methods of treatment for children and adolescents in difficulties, and their families, all works are interesting and worthy of consideration and applause.

Of all submissions, the broader, deeper and more effective contribution that achieves this objective of innovation is the one entitled

- ***"Implementation of Restorative Juvenile Justice—experience in Peru"*, by Terre des Hommes Foundation of Lausanne.**

This presentation is appreciated not only for the time of constant work, but for the impact on governmental levels. Furthermore, it is important to consider the projection of the experience in the 1st World Congress on Restorative Juvenile Justice celebrated in Lima, in November 2009, and also through publications, including the specialized magazine "Justice for Growth".

The Jury proposes, as well, to award two special mentions "ex aequo" to the following submissions:

- "*A multi-modal systemically oriented programme of individual and group work with mothers of emotionally and behaviourally disturbed adolescents*", by Gerda Eastwood.

- *"Les droits de l'homme sont-ils sexistes ?"*, by Zoe Moody.

Both works are original, innovative and very well structured.

Françoise Tulkens
Willie McCarney
Atilio Álvarez

Harmful Practices and Human Rights

International Seminar
Organized by
The International Institute for the Rights of the Child (IDE)
In collaboration with UNICEF

Programme

Course Director:	**Ms Justice Renate Winter**, Judge, former President of the UN Appeal Chamber and of the Special Court for Sierra Leone
Dates:	From October 10th to 13th 2010
Location:	**Institut international des Droits de l'Enfant** c/o Institut Universitaire Kurt Bösch Chemin de l'Institut 18 – 1967 Bramois - Switzerland Tel. ++41-27-205.73.03 - Fax ++41-27-205.73.02 E-mail: ide@childsrights.org: Website: www.childsrights.org
Languages:	French and English with simultaneous translation throughout the plenary sessions

Under the patronage of

International Association of Youth and Family Judges and Magistrates
With the support of the
Swiss Agency for Development and Cooperation (Swiss Confederation) Sion Municipality

ARGUMENT

Every year, millions of children are victims of so-called "Harmful Traditional Practices" (HTPs) which have different consequences, in the fields of health, education, survival and development, which are often violent, and which may cause severe injuries, and sometimes death.

What is the definition of "Harmful Traditional Practices"? There is no clear and comprehensive definition in the international instruments, although these instruments explicitly mention the HTPs. The two main Treaty bodies concerned by this phenomenon are the CRC and the CEDAW Committees; and both have a consistent practice to address the issue of HTPs, and a "jurisprudence". The CEDAW has issued: the General recommendation No. 14 on female circumcision, and the General Recommendation No. 19 on Violence against Women, which sets out Female Genital Mutilations (FGM) and child/early and forced marriage as human rights violations and forms of violence against women; as for the CRC, it principally addresses HTPs under art. 24 (3) "… traditional practices prejudicial to the health…" and made a reference in its General Comment no 7 on early childhood (para 10, litt b, i), related to the discrimination suffered by young girls, including through HTPs, such as FGM or child marriages.

For both Committees, as for international law in general, there are no justification of such practices, that are clear human rights violations and hence State parties have a corresponding obligation. But the fact is that there are many forms of HTPS in the world, and a high prevalence of certain forms. We can mention: female genital mutilations (FGM), early or child marriages, forced marriages, honor killings, children's witchcraft, scarification, infants giraffes, lip plates, force-feeding… Some people also do consider corporal punishment as a harmful traditional practice.

In order to answer the numerous questions regarding the HTPs, the IDE, in collaboration with UNICEF and UNFPA, organizes an international seminar on these issues.

What are the common elements of these HTPs? A very strong belief in the value of tradition, a cultural attachment to the practice and the persistent social pressure on the family (social expectations); or religious and customary rules?

How to put an end to these violations? It seems clear that legislation has a key role to play in eradicating HTPs; but is criminalization alone sufficient? Experiences show that in countries having prohibited HTPS, the law is not fully or not at all implemented. How to gain a strong support from the population?

Training, information and awareness-raising of individuals and communities on the negative aspects of the practice are needed, not only for concerned communities but for host countries, as well. As a matter of fact, due to migration, HTPS are an issue in asylum countries, which hesitate about actions to take, due to ignorance and lack of knowledge. Yet, as important as the programs based on these pillars

are, we can be in doubt about the potential of improvement of such initiatives, unless they are anchored in a participative and culturally respective method.

Might we need another approach, more based on ***promoting abandonment,*** rather than engaging in a fight to eradicate a practice? Different models exist. Are they effective?

These are some of the questions the seminar will tackle. Others will be raised by the experts, participants and human rights advocates.

The seminar will also offer the opportunity for the CRC and CEDAW Committees' Members to confront their experience and knowledge with other experts and to think along with the participants in a joint General Comment on HTPs.

OBJECTIVES
By confronting theory/practice, legal frame/field reality, the Seminar aims at:

- *giving a clear view on the problems:* definition of HTPs and their content, knowledge of main international standards, respectively of treaty provisions and treaty body jurisprudence notably the General Recommendations and General Comment, presentation of the reality experienced by children victims of HTPs, especially girls,
- *bringing up* especially blatant situations and identifying causes;
- *singling out best practices*, by exchanges of experiences between international organizations, NGOs, professionals concerned, State officials, field workers…;
- *identifying possible synergies* and partnerships between the various stakeholders ;
- *reaching a conclusion allowing for strong and concerted international action;*
- *preparing* the material for a joint General Comment / Recommendation for the CRC and CEDAW Committees.

TARGET AUDIENCE
Members of both CRC and CEDAW Committees, members of NGOs active in the field, professionals in charge of HTPs issues, doctors, lawyers, teachers (any level), heads of institutions, psychologists, sociologists, traditional and religious leaders, social workers, the media, and politicians; researchers and final-year students are also welcome. And anyone else concerned.

PROGRAMME

Sunday October 10th 2010		
*Session chairperson: **Mr Jean Zermatten** (IDE Director)*		
05:30 p.m.	Registration and distribution of documents at the IDE	
06:00 p.m.	Opening Ceremony **Ms Micheline Calmy-Rey,** Federal Minister of Foreign Affairs, Switzerland Presentation of three short films: ***Mutilated Women, Never More*** (French and English) ***Forced Marriage: Never More*** (French) and */ or **from NGO Tostan*** General discussion	
08:00 p.m.	Welcome Cocktail	
Monday October 11th 2010		
*Session chairperson**: Mr Jean Zermatten** (IDE Director)*		
09:00 a.m.	Opening Speeches **Mr Christophe Darbellay**, Member of Parliament, IDE Foundation President, Sion **Ms Yanghee Lee,** Chairperson of the CRC Committee **NN,** Chairperson of the CEDAW Committee **Ms Elizabeth Gibbons**, Associate Director, Division of Policy and Practice (DPP), UNICEF	
09:45 a.m.	Evolution and Definition of the Concept of harmful traditional practices, (HTPs)	**Ms Rashida Manjoo** (South Africa) Special Reporter on violence against women
10:30 a.m.	*Break*	
11:00 a.m.	Reality experienced by CRC (approach, practice and jurisprudence of the Committee)	**NN,** Member of the CRC Committee
11:30 a.m.	Reality experienced by CEDAW (approach, practice, jurisprudence and individual complaint of the Committee)	**NN,** Member of the CEDAW Committee
12:00 a.m.	HTPs and justiciability	**Ms Françoise Tulkens,** Judge, CEDH, Strasbourg
12:30 p.m.	Discussion in plenary	
01:00 p.m	*Lunch on the spot*	
02:15 p.m.	Workshops (5) in parallel	
05:30 p.m.	End of the day	
08:00 p.m.	*Valaisan Evening*	

Tuesday October 12th 2010

Session chairperson: Ms Elizabeth Gibbons **Identifying and understanding HTPS**

09.00 am Panel introduced and animated by

- **Ms Prof. Pierrette Herzberger-Fofana**, University of Erlangen-Nüremberg

With the inputs and interaction of:

- **Ms Berhane Ras-Work**, IAC Executive Director, Inter-African Committee (IAC) on Traditional Practices affecting the Health of Women and Children
- **Ms Hina Jilani**, Advocate at the Supreme Court of Pakistan
- **Prof. Abdoulaye Doro Sow,** Research teacher in social sciences, University of Nouakchott, Mauritania
- **Ms Marta Santos Païs,** SRGS UN, Violence against children, New York
- **Prof. Gerry Mackie,** University of California – San Diego (UCSD)

11.00 a.m.	*Break*	
11:30 a.m.	Latest understanding on HTPs and the social change approach	UNICEF/UNFPA**, Ms Francesca Moneti,** Senior Child Protection, Specialist (UNICEF)
12:30 a.m.	Discussion in plenary	
01:00 p.m	*Lunch on the spot*	
02:15 p.m.	Workshops (5) in parallel	
06:00 p.m.	End of the day	

Wednesday October 13th 2010

Session chairperson: OHCHR **How to abandon HTPS?**

09:00 a.m. Panel introduced and animated by:

- **Ms Archana Mahendale,** Bangalore University, India

With the inputs and interaction of:

- **Ms Silvia Lopez- Ekra**, IOM, Gender Officer
- **Mr El Hadji Gorgui Wade Ndoye,** Publication Director, Continent Premier Magazine
- **Ms Joanne Sandler**, Deputy Director, UNIFEM
- **Mr Mustafa Hassan,** Program Advisor, Terre des Hommes – child relief, Sri-Lanka
- **Dr Richard Beddock,** Gynecologist, Gynécologues sans frontières

11.00 a.m.	*Break*	
11:30 a.m.	Current programmatic experience across 12 African countries	**Ms Nafissatou Diop**, Coordinator of the UNFPA-UNICEF Joint Programme (UNFPA)
12:15 a.m.	*Lunch on the spot*	
01:30 p.m.	Summary, discussion and preparation of recommendations	
	Session chairperson: UNFPA/ UNICEF	
03:00 p.m.	Reports and recommendations from Workshops (10 minutes each); comments and discussion.	**Reporters of each group**
04:00 pm	Plenary closing	**Ms Renate Winter**, Course Director

Workshops

Monday October 11th 2010 - 02:15 p.m. to 05:30 p.m. *(discussion):* ***Tuessday October 12th 2010 - 02:15p.m. to 06:00 p.m.****(discussion)*

Wednesday October 13th 2010 - 01:45 p.m. to 03:00 p.m. *(summary & recommendations)*

Workshop 1: How to end HTPS?

- **NN**, CEDAW: **Prof. Gerry Mackie**, University of California – San Diego (UCSD): UNICEF and UNFPA

Workshop 2: Migration and Harmful Practices

- **Ms Silvia Lopez-Ekra**, Gender Officer, OIM: **NN** from NGO : **Ms Elsbeth Müller**, Director, Swiss National Committee for UNICEF

Workshop 3: Changing the mentality; raising awareness, educating: the role of the media

- **Mr El Hadji Gorgui Wade Ndoye**, Journalist and Publication Director, Continent Premier Magazine, **Ms Fabienne Bugnon**, Director, Head of the Human Rights Office, Geneva: **Ms Cristiana Scoppa**, Associazione Italiana Donne per lo Sviluppo (AIDOS)

Workshop 4: Building partnerships and social network

- **Ms Molly Melching**, Executive Director, Tostan: **Ms Berhane Ras-Work**, Executive Director, IAC: **NN,** CRC

Workshop 5: Health

- **Dr Richard Beddock**, Gynecologist, Gynécologue sans frontières : **Dr. Prof. Pierre-André Michaud**, Head of the Adolescent Health Multidisciplinary Unit, Lausanne University Institute: **Ms Elise Johansen,** WHO