CHRONICLE CHRONIQUE CRÓNICA

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Editorial — Avril Calder

Combating the exploitation of children

As we all know, child trafficking is a world-wide problem. Preventing it and catching and punishing the perpetrators are huge challenges. This edition demonstrates how cross-border cooperation and internationally established rights underpin these difficult operations.

Edo Korljan, Secretary of the Family Law Committee, Council of Europe, writes about the international legal framework while **Nadja Pollaert,** Director General of the International Bureau for Children's Rights in Montreal, tells us how Canadian legislation has created new trafficking offences and brings out the importance of coordination and cooperation with other nations' authorities. **Superintendent Bernie Gravett** of London's Metropolitan Police reports on a successful joint operation between the United Kingdom and Romania to counter trafficking in Romanian children to the United Kingdom, which led to prison sentences for the perpetrators.

Unaccompanied children may be exploited in various ways too. Barrister **Nadine Finch** sets out the problems encountered by such children entering the UK and the support available to them.

Child labour is a specific form of exploitation that can lead to severe longer-term disadvantage. **Yoshie Noguchi,** Senior Legal Officer, International Labour Office, Geneva, reminds us that children who live or work on the street are at particular risk and explains what can be done to help them. And Dr **Archana Mehendale** illustrates the problems and tells us about legislation in India that aims to protect children from child labour and to provide education for all.

Family matters

As people increasingly move between countries and continents, cross-border cooperation is also becoming more important in civil matters. **Lord Justice Thorpe** looks at how the judicial relationship between the United Kingdom and Poland has developed in recent years and its value in dealing effectively and fairly with family cases.

The field of human rights is under constant development, both to be more effective in meeting existing abuses such as the exploitation of children, but also in dealing with newer challenges posed, for example, by changes in social structures and advances in medicine. **Professor Alain Roy** of the University of Montreal considers children who have been conceived artificially and their particular needs, especially the fundamental one that can affect the whole of their lives—of knowing about their origins.

Youth Justice

You will remember that the last Chronicle carried articles on mental health. The authors had spoken at the International Juvenile Justice Observatory conference in Rome in November 2010. I indicated then that more speakers would be contributing to this issue. **Professor Frieder Dünkel** and his colleague **Dr Ineke Pruin** of Germany summarise a study across 33 European countries examining the widely differing treatment of young offenders who have been sent to mental health institutions.

Lorraine Khan of the Centre for Mental Health in England and Wales looks in depth at research into the situation of young people with mental health problems in the justice system in England and makes proposals for improvement. You will recall that Lorraine wrote on the need for early intervention in the July 2009 Chronicle.

The next two articles look from two rather different perspectives—both of which have strong advocates—at how youth justice systems might develop. **Professors Ton Liefaard** and **Ido Weijers** and **Stephanie Rap** of Utrecht University report on research in developmental psychology and its implications for the conduct of cases involving young people; while in a speech he gave to the Association of French Judges in Paris in March, **Antoine Garapon**—a former youth court judge and journalist—analyses the impact of the current neo-liberal ideology on youth justice and families.

The July 2008 Chronicle carried an article on the new children laws in Guernsey. **Karen Brady,** the island's Children's Convenor, brings us up to date with a review of the first year of the Child, Youth and Community Tribunal which was put in place by those laws.

Breaking the Cycle, the UK Government's consultation paper proposing reform of the Youth Justice system in England and Wales (see Chronicle January 2011) is further examined by **Professor Kathryn Hollingsworth**, a noted commentator on parenting and the law, who *inter alia* fleshes out the paper's proposals on prevention and parenting.

The sentencing of young offenders increasingly reflects the UN Convention on the Rights of the Child. **Linda McIver** of the New Zealand Youth Court reports a case where it was held on appeal that the age of an offender is always a factor to be weighed, even when the offence is so serious that adult sentencing powers come into play.

How old are we?

You might think that this would be an easy question to answer, but as our Vice-President, retired **Judge Oscar d'Amours**, explains—it is not! Our Association may be 100 years old; on the other hand we may be a mere youngster of 83……but in any event, as Oscar shows, we have had an influential history in the shaping of youth justice and children's rights. Indeed, as you read this edition you will see that both these topics feature as strongly as they ever have, demonstrating the continuing core values and beliefs of our Association and of our members past and present.

Congratulations

In this vein, I am delighted to offer our sincere congratulations to **Jean Zermatten**, past President of our Association, who was elected **Chair** of the UN Committee on the Rights of the Child in May 2011.

Once again may I say thank you to all contributors? This publication depends on you. Please keep sending me articles, especially on **detention** (loss of liberty in any of its forms) for the January 2012 edition and **parenting** for the July 2012 edition.

Avril

chronicle@aimjf.org

International Legal Framework for the fight against trafficking in children

Edo Korljan

I. United Nations Instruments

The ***Convention on the Rights of the Child's*** Article 3 provides that the best interests of the child shall be a primary consideration in all actions undertaken by public or private institutions.

The implementation of this instrument is supplemented by the ***Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*** which addresses a wide variety of trafficking-related activities. It applies to both intra-state and cross-border trafficking activities.

The first global, legally binding instrument that sets out a definition of trafficking in persons is the ***Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*** (the Protocol). It complements the ***Convention against Transnational Organized Crime***. It should be stressed that the Protocol applies only to cross-border trafficking which is conducted by organised networks. In addition, intra-state trafficking is excluded from the scope of the Protocol, as well as trafficking not connected with organized crime. The Protocol defines human trafficking as follows:

"the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."[1]

To strengthen its safeguards, the Protocol adds that the consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth above have been used.[2]

The Protocol further elaborates on the issue of child trafficking setting a higher threshold of protection. Article 3(a) indicates that even if the alleged criminal offender has not used any of the above-mentioned forms of threat, the receipt of a child for the purpose of exploitation shall still be considered as trafficking in persons. The special protection contained within the Protocol covers every person under eighteen, regarded as a child.[3]

The Protocol also lays down provisions to facilitate co-operation between States Parties in order to simplify the process of return of victims of trafficking.

Child trafficking is closely linked with the various forms of child labour. In 1999, the International Labour Organisation[4], a specialized agency of the United Nations, adopted a ***Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*** *(Convention C182)*. This Convention identifies the four worst forms of child labour, namely:

a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children and forced labour including forced or compulsory recruitment of children for use in armed conflict;
b) the commercial sexual exploitation of children;
c) the use, procuring or offering of children for illicit activities, in particular for the production and trafficking of drugs, and
d) work which is likely to harm the health, safety or morals of children.[5]

There are other universal instruments that have contributed in fighting trafficking in human beings and protecting its victims. Among them, the ***Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,*** of 2 December 1949, should be particularly mentioned.

1 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000, Article 3 (a).

2 Ibid, Article 3 (b).

3 Ibid, Article 3 (d).

4 Established in 1919, as part of the Treaty of Versailles.

5, Article 3.

II. Council of Europe

At European level, two conventions of the Council of Europe contribute to the European fight against trafficking in human beings, and in particular against child trafficking. These are the ***Council of Europe Convention on Action against Trafficking in Human Beings*** (*CETS No. 197, 2005*), and the ***Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*** *(CETS No. 201, 2007)*.

The ***Council of Europe*** *Convention on Action against Trafficking in Human Beings* has been ratified by 43 (out of 47) member states of the Council of Europe. The Convention establishes a Group of Experts on Action against Trafficking in Human Beings (GRETA) which monitors the implementation of the Convention through country reports.

The Convention grants special protection to child victims by obliging each Party to take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.[6] It also provides simplified procedures for child victims when granting residence permits or travel documents, in appropriate cases.[7]

Furthermore, Article 10 (3) indicates that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she, shall be presumed to be a child and shall be accorded special protection measures.

After having identified a child as a victim, states are under an obligation to:

a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
b) take the necessary steps to establish his or her identity and nationality;
c) make every effort to locate his or her family when this is in the best interests of the child.[8]

Committing an offence against a child falls under the list of aggravating circumstances.[9]

According to the ***Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse*** (the so-called ***Lanzarote Convention,*** named after the Spanish city where it was opened for signature*)*, each State Party must ensure that the following offences are criminalised:

(a) recruiting a child into prostitution or causing a child to participate in prostitution;
(b) coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes; and
(c) having recourse to child prostitution as well as engaging in sexual activities with a child.

It is the first international treaty addressing all forms of sexual violence against children. In order to protect children victims of abuses, the Convention requests child-friendly reporting mechanisms, as well as judicial procedures and assistance (medical, including psychological, legal etc.) for the victims and their families. The Convention also foresees:

- the definition and criminalisation of all forums of sexual violence, including those committed with the help of internet ;
- the extension of the limitation period beyond the age of majority;
- the possibility to prosecute for offences committed in another country (even if the act is not an offence in that country) and measures to ensure corporate liability and avoid impunity by legal persons[10].

The Convention does not set any standards as regards the gravity of the penalties that may be imposed, but penalties need to be effective, proportionate and dissuasive, taking into account the seriousness of the offences committed. These sanctions may include the deprivation of liberty which can give rise to extradition, but also monitoring or supervision of convicted persons.

These Conventions have been preceded by another Council of Europe legal instrument, dealing with trafficking in human beings for sexual exploitation, namely ***Recommendation No.R(2000)11 of the Committee of Ministers on action against trafficking in human beings for the purpose of sexual exploitation*** which follows the line of the ***Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*** when defining human trafficking. States are recommended to organise information campaigns in order to increase public awareness, especially within vulnerable groups such as children, and to introduce sex education programmes in schools.

The only drawback of this instrument is that it is a soft-law instrument (non-binding instrument). However, even these recommendations, different from binding conventions, could still be interpreted as a "common European standard" by the European Court of Human Rights.[11]

6 Article 4.
7 Ibid, Article 10.
8 Ibid, Article 10 (4).
9 Ibid, Article 24 (b) .

10 Speech by Maud de Boer-Buquicchio, Deputy Secretary General of the Council of Europe, to be consulted on http://www.coe.int/t/secretarygeneral/sga/speeches/2011/20110228_new_york.asp

11 *Shtukaturov v. Russia*, Application No. 44009/05, Judgment of the European Court of Human Rights of 28 March 2008, para 95.

III. Standards of the European Union

The two main legal instruments on child trafficking produced within the European Union are the 2002 ***Council Framework Decision on combating trafficking in human beings*** and the 2003 ***Council Framework Decision on combating the sexual exploitation of children and child pornography***. Both instruments aim to introduce at EU level common framework provisions in order to address certain issues such as criminalisation, penalties and other sanctions, aggravating circumstances, jurisdiction and extradition.

The F*ramework Decision on combating the sexual exploitation of children and child pornography* lists a number of behaviours which are to be considered illegal: coercing a child into prostitution or profiting from or otherwise exploiting a child for such purposes, as well as engaging in sexual activities with a child, abusing his or her vulnerable condition. Each of 27 member states is obliged to take the necessary measures to ensure that the instigation of one of the aforementioned offences and any attempt to commit the prohibited conduct is punishable.

In 2002, the then Council of Justice and Home Affairs adopted the ***Comprehensive Plan to combat illegal immigration and trafficking of human beings*** in the European Union. This Plan recognises the distinction between smuggling and trafficking in human beings.[12]

IV. Relevant case-law of the European Court of Human Rights

The case of *Siliadin v. France* arises from an alleged incident of trafficking of a child for the purpose of forced labour. The decision marks the first recognition by the Strasbourg Court that Article 4 of the European Convention on Human Rights (ECHR), concerning slavery, servitude and forced labor, imposes positive obligations on states. The applicant, Ms Siwa-Akofa Siliadin, is a Togolese national. At the age of fifteen, she moved to France with another Togolese national who confiscated her passport. Consequently, the applicant became an unpaid maid.

As there were no previous judgments recognizing positive obligations under Article 4 of the ECHR, the applicant argued by analogy with case-law under other provisions, particularly Articles 3 and 8.[13] The French Government argued, on the contrary, that given the states' margin of appreciation, it was open to France to implement Article 4 by means of civil remedies rather than criminal sanctions.[14]

To establish positive obligations under Article 4, the Court referred to other relevant provisions of international treaties, particularly Article 4 of the International Labour Organisation's Forced Labour Convention 1930.[9] The Court decided that it would be inconsistent with the relevant international instruments to limit state responsibilities to a negative obligation upon the state to refrain from a direct violation of Article 4 itself. The Court concluded that Article 4 must include positive obligations for states, particularly to adopt effective criminal law measures to punish both private and public actors.[15]

The Court also held that the criminal law legislation in force at the time in question did not afford the applicant, a minor, practical and effective protection against the actions of which she was a victim. Therefore, a breach of Article 4 of the ECHR was established.[16]

Another case*, Rantsev v. Cyprus and Russia,* is a recent case dealing with both positive and negative obligations of member states under Article 4 of the ECHR. The applicant, Mr Nikolay Rantsev, is a Russian national who lodged an application on behalf of his daughter Ms Oxana Rantseva, who died in strange circumstances in Cyprus, when working in a cabaret. The Court found that Cyprus, the state of the victim's destination, had not only failed to protect her from being trafficked or from being unlawfully detained prior to her death, but it had also failed to adequately investigate her death. Russia, the state of origin, was found by the Court to have failed to adequately investigate the way in which Ms Rantseva had been trafficked from its borders.[17]

As a relatively modern phenomenon, human trafficking of children is not elaborated by the ECHR, dating from 1950. However, the Court concluded that it nevertheless fell within the scope of Article 4 of the Convention (prohibiting slavery, servitude, and forced or compulsory labour). The Court underlined the positive obligations of states in the context of Article 4 with respect to trafficking, holding that there is a positive obligation on states to adopt appropriate and effective legal and administrative frameworks, to take protective measures and to investigate trafficking where it has already occurred.[18]

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12 "*The expressions 'smuggling' and 'trafficking' are often used synonymously, although a clear distinction should be drawn as they are substantially different (..) smuggling means helping with an illegal border crossing and illegal entry. Smuggling, therefore, always has a transnational element. This is not necessarily the case with trafficking, where the key element is the exploitative purpose. Trafficking involves the intent to exploit a person, in principle irrespective of how the victim comes to the location where the exploitation takes place.* "

13 *Siliadin v. France*, Application No. 73316/01, Judgment of the European Court of Human Rights of 26 October 2005**,** paras 66-67.

14 Ibid, paras 73-76.

15 Ibid, para 89.

16 Ibid, para 148.

17 *Rantsev v. Cyprus and Russia*, Application No. 25965/04, Judgment of the European Court of Human Rights of 10 May 2010, paras 283-304.

18 Ibid, para 309.

V. Organization for Security and Co-operation in Europe (OSCE)

On its side, the Organization for Security and Co-operation in Europe (OSCE) also fights "this modern form of slavery as an affront to human dignity". It does that through the institution of the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. ***The Maastricht Ministerial Council Decision No 2 of 2003 on Combating Trafficking in Human Beings*** endorsed the ambitious OSCE Action Plan, which provides a framework for the OSCE anti-trafficking strategy. The role of the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings is more of a co-ordinating and advising than of a standard-setting character.

VI. Conclusion

It can reasonably be concluded that the various international instruments in the field of trafficking complement each other and that a proliferation of similar or contradicting texts has been avoided. The major principle in all these texts is the best interests of the child which remains the standard baseline for all of them.

The European Union's 2002 clarification of the difference between the terms "smuggling" and "trafficking" makes a clear distinction between those two notions. Consequently, it is clear that the conduct does not have to be cross-border in order to be regarded as trafficking.

The case-law of the European Court of Human Rights is indeed helpful in that regard, reiterating that Article 4 of the Convention covers all forms of slavery and imposing positive and negative obligations on member states. Consequently, states are obliged to undertake further preventive measures in order to comply with the international standards and avoid trafficking of children.

Conclusion

To sum up, international instruments in the area of child trafficking are providing clear and consistent definitions, serving the purpose of avoiding possible gaps or misinterpretations. They establish a legal framework where legally binding instruments are complemented by soft law instruments.

Edo Korljan is Secretary of the Family Law Committee, Council of Europe

Trafficking of children—the case of Canada

Nadja Pollaert

According to the United Nations Office against Drugs and Crime, trafficking in persons is among the criminal activities that have grown most rapidly in recent years. The International Labour Organisation provides a conservative estimate that states that at least 2.45 million people worldwide are subjected to domestic or international trafficking, which may include forced labour and sexual exploitation. Children are trafficked in a variety of ways for purposes of sexual exploitation or forced labour. In many countries a child or family's precarious situation is manipulated through 'traditional' forms of child placement with a more fortunate family member. Furthermore, the low rate of birth registration makes it impossible to determine the identity of children who are regularly engulfed in megalopolis around the world.

It is within this context that on November 15, 2000, the UN General Assembly adopted the United Nations Convention against Transnational Organized Crime, along with two additional protocols: the Protocol against the Smuggling of Migrants by Land, sea and air, and the Palermo Protocol *to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. Having become law in 2003, this international Convention is exceptional in that it is a most comprehensive document on trafficking in persons, and is the culmination of over two centuries of often very difficult international debates.

It must be stated, however, that the protection of children was already ensured in a more general way by the Convention on the Rights of the Child, adopted by the United Nations in 1989. Furthermore, on May 25, 2000, the United Nations General Assembly adopted two Optional Protocols to the Convention, including the Optional Protocol to the Convention on the Sale of Children, Child Prostitution and Child Pornography.

This Optional Protocol came into force on January 18, 2002. It pays particular attention to the criminalisation of all these particular violations of children's rights, and stresses the importance of public awareness and international cooperation in the effort to combat human trafficking. The Protocol defines offences that constitute the "sale of children", "child prostitution" and "child pornography". It states that sanctions should be taken not only against those who provide or deliver children for sexual exploitation, organ transplant or economic exploitation, but also against any person who accepts the child within the framework of these human rights violations.

Given its geographic situation, Canada is not affected by this phenomenon to the same extent as other countries, but it is nonetheless considered a source country and a country of transit. The fact that Canada borders solely on one country, the United States, explains why trafficking from outside the country is less widespread than elsewhere.

The Canadian situation

This, however, does not mean that Canada is unaffected by trafficking. According to the State Department of the United States in its report on human trafficking (2010) Canada is not only a country of destination and transit, but it is also a country of origin for victims of trafficking. In 2002, the Canadian government undertook the fight against trafficking by ratifying the Palermo Protocol. In line with this commitment, in 2002, Canada promulgated a new law on immigration and refugee protection, which explicitly prohibits trafficking in persons. In addition, the Act Amending the Criminal Code (trafficking in persons), came into effect on November 25, 2005. This Act has created three new offences punishable by indictments which are specifically designed to punish trafficking in persons and allow law enforcement agencies to act upon these violations.

Since the Act has come into effect, two men have been found guilty of trafficking in persons in Ontario in 2008. For the first time a Canadian was accused of human trafficking and sentenced to 36 months in prison. The victim, a 20 year old from Montreal, had been recruited to work in a strip club. In early February 2009, another man was charged with trafficking. Montreal police arrested the individual who appeared in court the following day with three counts of trafficking in persons, thirteen counts of procuring, and two counts of assault causing bodily harm.

Beyond these scattered cases, however, it is difficult to establish the extent of trafficking (domestic and cross border), since the vast majority of available data are unreliable, as the US Department of State reports. Several factors make the compilation of data difficult: the

clandestine nature of the act, the reluctance of victims to seek help and lodge an official complaint, the lack of training of some government officials as well as nongovernmental organisations (NGOs) who are not always equipped to identify victims of trafficking. Furthermore, few studies on trafficking of persons distinguish between the exploitation of adults and children. Consequently, accurate data on the breadth of the problem, especially as it pertains to children in Canada, is not available. For this reason, the Royal Canadian Mounted Police (RCMP) is hesitant to publish statistics.

The Committee on the Rights of the Child

The Government of Canada submitted its first report (ratified September 14, 2005) on the implementation of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography in 2009. This report, produced by various government departments, provides a detailed description of the legislative reforms developed to incorporate Canada's international commitments domestically. To date, the Committee on the Rights of the Child has yet to comment on this first report on implementation of the Protocol by Canada. However, even if the Canadian legal framework to deter sexual exploitation of children is generally strong, considering recent progress in protecting children against child pornography and exploitation related to new technologies, legislation to combat trafficking and increasing to 16 the age of consent, certain challenges remain regarding the enforcement of these laws.

The issues related to prevention and the protection of children against real or possible sexual exploitation remains unresolved due to limited application of the criminal code. The reasons for this include: a lack of resources; the requirement to preserve the rights of the accused which sometimes leads to the need for multiple testimonies of the child victim / witness; the overrepresentation of native children (on and off reserve), as well as the lack of a holistic, Canadian strategy that aligns federal, provincial and municipal policies to address sexual exploitation and child trafficking. Finally, one cannot overlook the impact of having low participation of children and youth in the development and implementation of policies and programmes that address sexual exploitation and trafficking.

First nations children in Canada

Currently no Pan Canadian study exists on the trafficking of aboriginal women and children. According to a review of the journal First Peoples Child & Family review[ii], which includes a variety of interviews done with native women's groups and organisations working to combat the sexual exploitation of native children, the lack of statistical data can be explained by the fact that many children are forced into prostitution and then subsequently become victims of domestic trafficking at a national level, rather than locally.

In other cases, the criminal trafficking networks involving children are run by organised crime groups. Thus, it is estimated that native peoples are disproportionately represented among victims of trafficking. This fact has been reported by stakeholders in a study commissioned by the Department of Justice Canada.

The majority of victims of trafficking are native women aged between 20 to 40, even though several victims were under 18 years. In fact, some of these victims could be as young as 7 years. This situation is seen in various types of urban environments, including rural off and on reserve. One can ascertain that the phenomenon of domestic trafficking affects a larger proportion of native people living on reserves in northern British Columbia, the Prairies and Quebec. The extremely high rate of native children who suffer sexual abuse and neglect and the high number of native children placed in foster care contribute to their vulnerability to becoming victims of trafficking. Moreover, in domestic trafficking, native girls can sometimes be pushed into a trafficking network by their own families in exchange for goods or money[1]. A study in fact states that native girls who move to urban areas are often marginalised and experience a cultural and personal uprooting, which reinforces their vulnerability to traffickers[1].

An example of an initiative developed between two levels of government is the Jordan[iii] principle, unanimously adopted December 12, 2007 in the House of Commons in order to resolve the conflict of jurisdiction regarding health care for native children.

Having become versed in the factors that lead to human trafficking, one cannot remain indifferent to the statistics that demonstrate the extreme vulnerability of young aboriginals of becoming victims of trafficking.

Cross-border trafficking: Canada-US and international cooperation

Given that trafficking is a problem shared by all three countries of North America, initiatives have been developed jointly to counter child trafficking. It is therefore appropriate to list some of the initiatives that attempt to eradicate trafficking in persons, particularly trafficking of children.

In terms of North American initiatives, Canada and the United States have established an integrated team of border police, to assess and identify activities linked to organized crime at the border between Canada the United States. In addition, several regional conferences and consultations aimed at identifying issues surrounding the trafficking of children and finding solutions, were organised in these three countries. While preparing for the 2nd World Congress against Sexual Exploitation of Children, held in Yokohama in 2001, these three countries met to discuss the sexual exploitation of children for

commercial purposes and to implement a regional action plan.

Moreover, during the organization of the 3rd World Congress held in Rio de Janeiro in December 2008, a regional preparatory meeting was held in Arlington (Virginia, USA) in October 2008[ii]. Representatives of nongovernmental organisations and government of the United States and Canada were able to review the necessary actions to be undertaken to improve the protection of children against sexual exploitation but also against human trafficking. Many recommendations were made to increase awareness of these issues, but also to strengthen law enforcement. It was recognized, inter alia that native peoples, both in the U.S. and Canada, are overrepresented among victims of trafficking.

Canada and the United States had already met a month earlier in Winnipeg as part of a thematic meeting for the 3rd Congress (co-organized by the International Bureau for Children's Rights). This meeting highlighted the role and responsibility of the private sector in protecting children against sexual exploitation and trafficking.

It was not until February 2008[ii] that the various members of the governments of Canada, Mexico and the United States met for the first time to deal specifically with the subject of human trafficking. This meeting was organised by the Office of the State Department the United States, which is responsible for countering human trafficking.

These meetings also serve to assess evaluations of human trafficking, including trafficking of children, which are conducted by Canada and the United States. These meetings allow us to appreciate the extent to which cooperation between these countries is rooted in prevention. In this light, Canada has either developed or subsidised various prevention programmes implemented by nongovernmental organisations.

Information on cases of trafficking is frequently exchanged between the three North American countries[ii] and the Canadian government has provided financial support, through the Organisation of American States (OAS), to develop a brigade of officers trained to recognize and contribute to the prevention of trafficking in Mexico[ii]. Finally, it is important to note that since 2003 Canada has participated in the study of several draft resolutions to fight against trafficking in persons. Moreover, since June 2004, the North Atlantic Treaty Organisation (NATO) adopted a zero tolerance policy in the fight against human trafficking by its forces and its civilian staff[ii].

Every year, more than 150 officials, representing some fifty departments and agencies, meet at the Cross Border Crime Forum Canada-United States. The Forum aims to develop common solutions against this type of crime, including trafficking in persons. Established in 1996, Integrated Border Police (IBET) ensures the integrity and border security, including the fight against transnational crime. There are also integrated teams of cross-border intelligence (EIRF), which support IBET through data collection and information sharing. The coordination committee of the Agreement between Canada and the United States on their common border meets four times a year to discuss key issues concerning border security, including trafficking in persons. The Smart Border Declaration and the Partnership Security and Prosperity Partnership (SPP) include initiatives related to the fight against human trafficking. The PSP also includes Mexico. The three countries are also working through the North American Agreement on cooperation in the framework (NAALC). The Mutual Legal Assistance Treaty signed in 1985 facilitates investigation and prosecution related to trafficking, through the exchange of information, person identification and sharing of evidence. Finally, Canada and the United States are conducting joint operations against trafficking in persons. The National Coordination Centre against Sexual Exploitation of Children (CNCC) which is part of the Royal Canadian Mounted Police (RCMP) has a mandate to coordinate the implementation of strategies to fight against the online sexual exploitation of children around the world. As such, the NCECC is in constant contact with Interpol and other international partners. In addition, the RCMP provides training to foreign police with the tools of investigation in cases of trafficking in persons.

Measures adopted by Canada

The Law on Immigration and Refugee Protection Act (IRPA) passed in 2001 includes provisions that address external trafficking. The Criminal Code of Canada was amended in 2005 to criminalise all types of trafficking. Anyone who "recruits, transports, transfers, receives, possesses, or harbors a person, or exercises control, direction or influence over the movements of a person, with a view to exploiting them or facilitating their exploitation "[ii] commits an offense, trafficking in persons. Exploitation is defined as follows:

[A] person exploits another person if [he/she]:

a) Causes them to provide or offer to provide labour or services, by engaging in conduct that would reasonably be expected, given the context, to make them believe that their refusal would endanger their safety or that of someone they know;

b) Causes them, by deception or threat or use of force or any other form of coercion, to donate an organ or tissue.[ii]

In Canada, the Interdepartmental Working Group on Trafficking in Persons (IWGTIP) is mandated "to coordinate federal efforts to address the problem of trafficking in persons, including developing a comprehensive strategy to fight against this problem in accordance with Canada's international commitments". The Ministry of

Foreign Affairs and International Trade and the Department of Justice Canada co-chair this working group. The Department of Public Safety and Emergency Preparedness, Citizenship and Immigration Canada (CIC) and the Royal Canadian Mounted Police (RCMP) are also mandated to intervene in cases of trafficking.

This approach tends to emphasise prevention. Thus, in 2006, the IWGTIP focused its efforts on prevention, based on the idea that if potential victims of trafficking are properly informed, they will not be recruited. This federal government initiative was supported by the Government of the Province of Quebec, which has established a sub-interdepartmental committee chaired by the Ministry of Justice of Quebec. Its primary mandate is to make recommendations to government regarding the provision of services to migrant women victims of trafficking in Quebec. However, the protective measures for victims remain inadequate and under-developed and there is no provision for legal assistance. Furthermore, the treatment of the intercepted victim is left to the discretion of the police (federal or otherwise) and immigration officials.

In terms of protection, Canada has implemented a system of temporary resident permit (TRP) for victims of trafficking. The permit is valid for 180 days and is renewable and should allow victims to apply for permanent residency. Victims can also receive a work permit. The fees for obtaining such permits, respectively $ 200 and $ 150, were eliminated in June 2007. The temporary permit also provides for health care under the Interim Federal Health Program, however, few permits have been issued since the implementation of this system.

In so far as it related to the prosecution of traffickers, the Criminal Code was revised in 2005 by an *Act to amend the Criminal Code (trafficking in persons)* making trafficking a criminal offence (relevant sections are 279.01 to 279.04). In the case of aggravated assault, sexual assault or death, the trafficker is liable to life in prison. In other cases, the maximum penalty is fourteen years. Gaining material benefit from trafficking is punishable by ten years in prison, while the retention and destruction of travel or identification documents may lead to a maximum penalty of five years in prison. The Law on Immigration and Refugee Protection Act (IRPA) criminalises the "entry into Canada of one or more persons by fraud, deception, kidnapping or use or threat of force or other forms of coercion "(art. 118). This offence is punishable by life imprisonment and a fine of one million dollars. Five individuals were convicted of offences related to trafficking in 2006, yet the most severe sentence imposed was eight years imprisonment.

Conclusion

Child trafficking in Canada is essentially the sexual exploitation of children as detailed in the report of the Royal Canadian Mounted Police on Trafficking in Canada (March 2010). The most recent convictions demonstrate that domestic trafficking for sexual exploitation is the most common form of trafficking. Those suspected of trafficking are usually associated with other crimes including the production and sale of drugs and conspiracy to commit murder. In addition, the RCMP notes that traffickers usually have the same ethnicity as their victims. An evaluation of the phenomenon of trafficking in Canada shows a strong link between neglect and sexual abuse of children and their vulnerability to being recruited for the purpose of trafficking. As summarized by Anastasia Kusyk, advocate and member of the Sex Work Alliance of Toronto, in her testimony before the subcommittee review on Solicitation Laws of the Standing Committee on Justice and Human Rights (House of Commons House, 2005): "*Many children come from homes where there was a lot of violence, and believe me, I've spoken to them. I have worked with them through outreach for 14 years. They were better off on the street than if they had been placed in the custody of social services, in foster homes or anywhere else but on the street.* "

Nadja Pollaert is Director General of the International Bureau for Children's Rights, Montreal (Canada)
E-mail : n.pollaert@ibcr.org url: www.ibcr.org

References[1] Jackie Lynne *Colonialism and the Sexual Exploitation of Canada's First Nations women*. This document can be consulted at: http://www.prostitutionresearch.com/colonialism.html

[2] For more information consult the document of the Native Women's Association of Canada from June 2007: http://www.nwac-hq.org/en/documents/nwac-gangs.pdf

[i] http://www.state.gov/g/tip/rls/tiprpt/2007/.

[ii] First Peoples Child&Family Review, Volume 3, Number 3, 2001, Domestic Sex Trafficking of Aboriginal Girls in Canada : Issues and Implications, Anupriya Sethi, p. 57-71

[iii] «Jordan's Principle is a child first principle named in memory of Jordan River Anderson and calls on the government of first contact to pay for services for the child and then seek reimbursement later so the child does not get tragically caught in the middle of government red tape. Jordan's Principle applies to ALL government services and must be adopted, and fully implemented by the Government of Canada and all provinces and territories. Jordan left a legacy of equity for all other children – now it is our turn to make sure it is implemented » (http://www.fncfcs.com/jordans-principle)

[iv] The Unesco Courier: http://unesdoc.unesco.org/images/0012/001227/122747e.pdf

[v] http://www.ecpat.net/WorldCongressIII/PDF/RegionalMTGs/canada_us_consult_report_final.pdf

[vi] Office to Monitor and Combat Trafficking in Persons, *Photo: U.S.-Canada-Mexico Trilateral Conference on Fighting Human Trafficking*, 29th of February 2008 : http://www.state.gov/r/pa/ei/pix/b/103928.htm

[vii] Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2008*, 4th of June 2008.: http://www.state.gov/g/tip/rls/tiprpt/2008/105387.htm ; Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2007*, 12th of June 2007: http://www.publiclegaled.bc.ca/snapfiles/Publications/2007_Human_Trafficking.pdf

[viii] Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2008*, 4th of June 2008: http://www.state.gov/g/tip/rls/tiprpt/2008/105387.htm

[ix] North Atlantic Treaty Organisation: : http://www.nato.int/issues/trafficking/index.html

[x] *Criminel Code*, L.R.C. (1985), c. C-46, art. 279.01.

Operation Golf—a joint investigation by UK and Romania tackling Romanian organised crime and child trafficking

Superintendent Bernie Gravett

It is a sad fact that children are bought and sold around the world, trafficked into and around the UK for the profit of others. It is a complex but hidden crime that is largely unseen by broader society and unrecognised by frontline services.

Operation Golf is a Joint Investigation between the Metropolitan Police (MPS) and the Romanian National Police (RNP) tackling a specific Romanian Roma organised crime group (OCG) that are trafficking and exploiting children from the Romanian Roma community, one of the poorest and most disadvantaged communities in Europe.

This OCG has increased its activity since accession and are now trafficking entire families to be exploited through forced criminality and benefit fraud.

The MPS 'Operation Golf' was commissioned in 2007 by Commander Steve Allen following a 786% increase in Romanian sanction detections in the first 3 months of 2007 across the MPS.

Background

CASE STUDY: Girl A DOB: 01/01/1986 - now 24 years old

Girl A is one of 1107 children taken from Romania pre accession. She was driven out of Romania by the gang in a car with 5 other children. Her journey took her into Hungary and across Europe. She first came to notice in the UK in 2002 when she was 16 years old. She was arrested for theft within Westminster Borough. She received a juvenile reprimand for this offence. Since then she has acquired a total of 17 convictions and 3 cautions, with offences of shoplifting, distraction thefts and failing to answer court bail. She was arrested a further 6 times but the offences were not proceeded with. She has served a prison sentence in Holloway women's prison.

She has total of 8 alias names and 9 dates of birth. There are 43 intelligence reports on her in London. She has been arrested predominately in Westminster but also Enfield, Camden, Hammersmith and Kensington. She is also known to commit offences in Surrey, the City of London and within the area covered by BTP.

In 2006 she was moved by the gang to Spain but returned to the UK in 2007 following accession of Romania into the EU.

She has numerous associates all of whom have convictions on PNC and are well known to Police within the Metropolitan Police District. She continues to live in poverty gaining no benefit from her criminality.

The first indication of trafficking

In late 2006 a Czech Roma national by the name of Anna PUZOVA was stopped by UK Immigration entering the UK at Stansted Airport. Anna was travelling with three children who she claimed were three of her children. Anna was the mother of 8 children; however the children she was with could not communicate with her as they only spoke Romanian. Anna was arrested, the children placed into care and an investigation was commenced by the UK Serious Organised Crime Agency (SOCA). This operation was called 'Operation Girder'. SOCA quickly identified that Anna had on a number of occasions entered the UK with a total of 18 other children. The 3 recovered children were identified as coming from a town in South East Romania called 'Tandarei'.

The investigation revealed a Roma based criminal network operating in the UK where the trafficked children were believed being used for committing volume crime. The gangs UK leader was identified as a Romanian Roma male by the name of Remus KVEC. While KVEC was based in the north west of England there were many links to addresses in London.

Ana PUZOVA is a Czech national with 8 natural children of her own. The link was that she is Roma. She was paid £1,000 per trip. At this time the gang charged the Roma families £1,000 per child for them to be trafficked. The children were taken to Italy by the gang and from there flown with Ana to the UK before being passed back to the gang and distributed across the UK.

She pleaded guilty at Chelmsford Crown Court in 2006 to six charges of facilitating the unlawful entry of children into Britain and was jailed for three years.

Of the 21 children trafficked into the UK by KVEC & PUSOVA only the last three were ever recovered and identified. The SOCA investigation led to the successful prosecution of 8 adults for facilitating the unlawful entry of children into the UK. Remus KVEC was sentenced to 8 years imprisonment. Anna PUSOVA pleaded guilty at Chelmsford Crown Court to six charges and was jailed for three years.

However this was only the tip of the iceberg.

Operation Girder led the Romanian National Police (RNP) to open an investigation into the trafficking from Romania of the 3 children. This quickly revealed the huge scale of the trafficking. This investigation identified that KVEC was responsible for only the final stage of the trafficking - there was a whole organised criminal gang (OCG) operating across Europe. Both the OCG and the children all originate from a single town – Tandarei, in South East Romania. All the victims and the gang are from the Romanian Roma community. The RNP identified that over a 4 year period the gang had trafficked 1107 identified children, all from Tandarei, out of Romania and into Western Europe. The evidence is that the majority of these children have been, or are being exploited by being made to beg and steal in a number of European countries.

The RNP investigation have identified the trafficking routes and method used and that the OCN are operating across Europe primarily in UK, Italy, Spain and France. However their challenge was that the exploitation takes place outside Romania and what they see are the gangs getting richer on the proceeds. The most visible aspects are the building of large houses, the purchase of expensive vehicles and the possession of large amounts of disposable cash.

In January 2007 Romania joined the EU. Within 3 months crime in London committed by Romanian nationals went up 786%[1]. Analysis showed the offences to be predominantly theft committed by children from within the Romanian Roma community. The Borough of Westminster was particularly affected by this rise in crime.

Operation Golf

In April 2007 Commander Steve Allen, Commander for Westminster commissioned a small team, led by Superintendent Gravett and Chief Inspector Carswell to examine the causes behind this rise in crime. This was again given the name 'Operation Golf'.

Basic analysis revealed that many of the Romanian children found committing crime and begging in London, were Roma and were from the same town of Tandarei. Through established international contacts Superintendent Gravett & Chief Inspector Carswell, soon discovered that many of these children were in fact many of those same children identified by the Romanian Police as having been moved out of Romania by the gang. It was these children that were driving the huge increase in pick pocketing and theft being experienced in London.

Research showed that 200 of the 1107 victims identified by the RNP were criminally active in London in the summer of 2007 and also they had convictions in 32 other UK Police Force areas. Traditionally child offenders in the UK operated locally; they certainly did not usually travel the length and breadth of the country. There were obviously adults controlling the children. The investigation revealed that it was the same gang as identified by the Romanian Police taking the children out of Romania.

The first MPS operation to combat the gang was 'Operation Caddy'. This focussed on Slough. Each day up to 50 Romanian Roma, predominantly women and children, would travel by train to central London. From there they would split up and move across London committing crime.

On the 28th January 2008 the MPS team executed search warrants at 16 addresses in Slough. This resulted in the arrest of 34 people for a variety of crimes including child trafficking, child neglect, money laundering, theft and benefit fraud. Over 200 items of stolen property recovered.

The most important aspect was that within the 16 small terraced 3 bedroom houses police found 211 people. Half of these were children. 10 children we recovered when it was found that their parents were not present. Some houses were occupied by 3 families with children sleeping on the floor on sheets and in one case a child had her bed in the bath. The operation was conducted with the full support of Slough Borough Council and Thames Valley Police. We were shocked to discover 60 children under the age of 10 that local social services had no knowledge of. Only 3 children were attending school and these were the sons of the gang leader in the town. No girls were in education.

Operation Caddy analysis

16 addresses	211 people encountered
103 adults	60% with criminal records
33 Juveniles	78% criminal records
74 minors (u10)	47% on MPS intelligence for committing crime in London

Prevalence in under age pregnancy some as young as 13 yrs old
Only 3 children in education
60 minors not known to Slough Borough Council
54% reduction in pick pocket offences in Westminster for the following 6 months

[1] MPS Nationality Index reports 2007

The days following the operation saw the parents of the 10 children placed into Police protection arriving from Romania and Spain. The parents had a variety of accounts as to how their children were left with families that were exploiting them. 9 of the children were returned to their parents with care procedures placed around them.

One child spoke out!

Maria was a 13 year old girl from Tandarei. Both her and her sister were taken from Romania to the UK by the gang. Maria was placed with a family in Slough and exploited. Her sister has yet to be found.

Maria gave an account of her trafficking and exploitation. This was corroborated by the police investigation. The account given by her Father was proved to be lies. The investigation team quickly identified those responsible for the trafficking and exploitation of Maria and within 4 days 5 adults were arrested and charged with trafficking and exploiting Maria.

In September 2008 4 adults, including Maria's own Father, were convicted of her trafficking and child neglect. These were the first ever convictions in the UK for trafficking a child for non-sexual exploitation.

Maria's story

- Her father paid 200 Euro to the OCN to have her trafficked to the UK
- She was flown to Stansted by Busioc Vasile with the flights pain for on a corrupted USA credit card
- Placed with an OCN family in Slough and controlled and exploited by Claudia Stoica & Marin Vasile.
- She was told to call them Uncle and Auntie
- She became the house slave in domestic servitude & forced labour
- She was driven to Surrey each day and left for 12 hours to beg, sell the 'Big Issue' illegally and steal.
- She kept nothing, was beaten and searched at the end of her day.
- Her father cloned Maria's identity to exploit children in Valencia Spain
- 4 people were convicted for her trafficking into and around the UK for forced exploitation
- They were sentenced to a total of 24 years imprisonment for trafficking, child neglect and perjury.
- The urgent need for a JIT with Romania was recognised

This investigation highlighted the complicity of parents in the trafficking of their own children. While debt slavery is one aspect of how the gang controls the families, greed also plays a part.

In addition to the criminal prosecution there was a parallel care case running concerning Maria's welfare. This was taken to the High Court with the outcome being that UK courts have to rely on Brussels II decision that a trafficked child must be returned to their country of origin for the authorities to manage their welfare. Subsequently Maria was repatriated to Romania and she passed into the care of Romanian Social Services. She was later reunited with her mother. While she has not been re-trafficked she is now pregnant at age 14.

Brussels II - Jurisdiction in relation to parental responsibility

Article 66 applies in children's cases. This is the article that relates to member states where there are two or more systems of law. Any reference to habitual residence in the member state "shall refer to habitual residence in a territorial unit". This implies that jurisdiction lies with the courts of the territorial unit in which the child is habitually resident. Such an interpretation would be consistent with the provisions relating to divorce. On this view, Brussels II governs the distribution of cases within the United Kingdom, as well as distribution between EU member states.

As a victim of trafficking who had only been in the UK for a few months the court decided that Maria was 'habitually resident' in Romania and that Romania had jurisdiction in matters of her welfare. This applied despite police presenting a case that she would be at risk of retribution, harm and further exploitation.

The court's decision was that it had to abide by Brussels II and Maria's safety and welfare was a matter for Romania.

1st September 2008 The formation of the Joint Investigation Team (JIT)

The international nature of the OCG, the fact that the exploitation is occurring in the UK but the profits are realised in Romania required a coordinated, focused, efficient partnership between the MPS and Romanian Law enforcement. It was agreed that an official Joint Investigation Team (JIT) was required to combat the gang. This is the first EU JIT tackling human trafficking. In addition we are the first UK police force to set up and conduct a JIT with another EU state[2].

The JIT is currently 70% funded by a grant successfully obtained from the European Commission. The MPS Territorial Policing Command covers the remaining 30%.

[2] The only other case of a UK JIT was between the NCIS and the Dutch police in 2006 it lasted only 3 months and targeted drug trafficking.

What is a JIT?
Article 13 of the European Convention on Mutual Legal Assistance in Criminal Matters of 29 May 2000 and/or of the Council Framework Decision of 13 June 2002 on Joint Investigation Teams (JITs) provides the legal basis of the arrangements for the conduct of JITs in EU member states.

Operation Golf is a Joint Investigation Team (JIT) between the MPS and the Romanian National Police. The full JIT partnership is Operation Golf (MPS), Romanian National Police, D.I.I.C.O.T. (Romanian Prosecutors Office), the United Kingdom Human Trafficking Centre (UKHTC), Crown prosecution Service, Europol and Eurojust.
The Strategic objectives of the JIT are to successfully:

- Investigate & prosecute OCN members both in the UK and Romania
- Disrupt their activities
- Identify, restrain and confiscate criminal assets
- Reduce criminality
- Minimise the exploitation of victims
- Improve victim identification and response to child trafficking by police and partners

Support to Romanian Investigation
One of the main advantages of a JIT is the ability to exchange evidence and make investigative requests without the need for a Commission Rogitoire (Letter of Request)
The UK Op Golf team has supplied the Romanian Team with a full and extensive evidential package to prove the exploitation of the children and families in the UK. This has included, in an evidential format, the full offending history and surrounding circumstances of all the children identified as criminally active in the UK.

Operation Longship - a test of the JIT framework
A significant problem for Romania is that the exploited children are in other jurisdictions. Because of the JIT we were able to deal with this issue by flying the Romanian investigation team to the UK for Operation Longship. The UK team identified and recovered 27 children and provided them to the Romanian team for a 'Witness Hearing' under Romanian law on UK soil. A challenge for the team was that in Romania child witness must be represented by a Romanian lawyer. To deal with this the Romanian party included 4 independent Romanian lawyers to oversee the process and ensure the children's rights were upheld. This was the first such action of its kind in JIT history.

This substantial piece of work has now directly resulted in the Romanian authorities arresting and charging 18 Romanian nationals, all part of the gang, with trafficking children to the UK.

The first phase of the Romanian arrest operation took place on the 8th April 2010. This involved the execution of search warrants at 34 addresses in Tandarei and the arrest of 18 persons for child trafficking, money laundering and being members of a criminal gang. The Romanian operation was supported by 26 members of the Metropolitan Police whose roles included command & control, fast time intelligence analysis and 11 investigation teams to accompany RNP officers on the searches.In addition to the arrests the Romanian authorities seized 4 AK47 rifles, 12 hunting rifles, 12 shotguns including military grade weapons and 6 handguns. Other items seized included 25,000 Euros, £25,000 and 40,000 Romanian Lei, 13 high value cars, 6 houses and a substantial amount of evidence linking the gang to the UK and other EU countries.
The investigation continues through 2010 and further arrests can be expected in the UK and Romania.
Operation Golf, with the support of specialist MPS units, are in the process of identifying, recovering and safeguarding the 272 victims trafficked by the gang and exploited in the UK.

Strategic achievements

- Primary in the set up of the Home Office inter agency working party on trafficking of children
- Advising the 'London Child Safety Board' and writing contributions to their 'Toolkit for identifying trafficked children'.
- Achieving the first UK conviction of child trafficking
- Achieving the second conviction of an offence in the UK of 'internal trafficking'
- Advising UKHTC and SOCA on Roma organised crime
- Advising NPIA and contributing to the revised ACPO 'Child Abuse Manual' and revised 'Guidance for International Investigations'
- Operation Golf currently has a seat on the ACPO Child Trafficking Working Party
- Superintendent Gravett & Chief Inspector Carswell acknowledged by SOCA, Europol and EU as the only UK Police JIT experts and have been involved in training SOCA, Europol and UNODC staff.

In the course of the investigation Operation Golf has, to date, conducted over 20 separate operations against the gang and arrested over 100 individuals.

For further information please contact:
Bernie.Gravett@met.police.uk or Colin.Carswell@met.police.uk

Unaccompanied minors—the United Kingdom

Nadine Finch

"Unaccompanied children" (also called unaccompanied minors) are children, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so[1].

In international law, children are those who are under eighteen years of age[2] and no distinction is made between those who are under or over 12, 14 or 16 as is the case in some legal jurisdictions within the UK.

In domestic law, these children will be entitled to accommodation under Section 20 of the Children Act 1989[3] as there will be no-one in the United Kingdom who has parental responsibility for them.

The decision to flee

The reasons why such children arrive in the United Kingdom are varied. They may be escaping from wars and conflicts, poverty or natural catastrophes, discrimination or persecution. In other cases they may have been sent by their family in the expectation of a better life or in order to access better opportunities to study or obtain employment or even just access welfare benefits and a higher standard of health provision. Some may be coming to join older members of the family and in a growing number of instances they may be victims of child trafficking[4].

The children themselves may well not be aware of the precise reasons for leaving their country of origin. A recent report[5] by the UNHCR concluded that "it is quite likely that a boy's perceived reason for leaving might not necessarily correspond to whatever made his parents reach this decision".

The report, which was on the movement of Afghan boys to Europe stressed that "as in all migratory movements, the decision for an Afghan child to leave for Europe had two elements: a context and a trigger". It noted that "the general context in Afghanistan is well known: widespread poverty, economic hardship, political instability, physical insecurity, poor educational prospects and rapidly declining hope for a brighter future". This is a context which broadly speaking exists in most countries from which unaccompanied minors flee. However, it is important to note, as the UNHCR did, that there will usually also be a "trigger" which causes the individual child's own flight. Examples given in the study on Afghan boys included a father's fear that his son would be forcibly conscripted by the Taliban or a boy being abandoned with other relatives in a third country. It is these triggers, which entitle unaccompanied minors to international protection.

The numbers involved

There are no statistics for the total number of unaccompanied minors arriving in the United Kingdom as there are no reliable records of those being trafficked here or have entered clandestinely and have not applied for leave to remain. The children who have been identified are those who have applied for asylum here on arrival or who have later been rescued from a variety of situations of exploitation[6].

1,595 unaccompanied children applied for asylum in the United Kingdom in 2010[7]. This was a lower number than the previous few years. For example, there were 4,285 applications in 2008 and 3,175 in 2009. In addition, there will also have been further individuals who will have applied for asylum but had their age disputed and who will not have been recorded in these statistics.

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1 United Nations Committee on the Rights of the Child *General Comment No. 6 Treatment of Unaccompanied and Separated Children Outside their Country of Origin,* para 1

2 *General Comment No. 6* para 9

3 Accommodating a child under Section 20 does not confer partental responsibility on the relevant children's services department

4 See the Introduction to the Action Plan on Unaccompanied Minors (2010 – 2014) Communication from the Commission to the European Parliament and the Council SEC(2010)534

5 *Trees only move in the wind : A study of unaccompanied Afghan children in Europe* Christine Mougne, UNHCR June 2010

6 These may include domestic slavery, use for benefit fraud, forced labour in cannabis farms or other in other criminal activities or sexual exploitation

7 Home Office Research, Development and Statistics Directorate

For example, there were 1,300 such applications in 2009. Research findings[8] indicate that about half of these individuals are in fact minors who have been wrongly age disputed. Therefore the available statistics are initially an under-estimate.

The vast majority of unaccompanied children applying for asylum are male. For example, in 2009 only 360 of the 3,175 children who applied were girls and in 2010 only 290 of the 1,595 were girls. This is a lower percentage than 2003- 2004 when 33% of asylum applications were from girls[9]. When the statistics for those years were given further analysis the girls were predominantly fleeing from Africa and the suggestion was that they were victims of child trafficking. One reason for there being a far higher percentage of boys in the past few years has been the very high percentage of children fleeing from Afghanistan and the fact that these are boys not girls. At the same time the modus operandi of child trafficking gangs has changed and fewer girls appear to be instructed to claim asylum on arrival.

The situation in Europe

Significant numbers of unaccompanied minors have also been arriving in other European Union countries. For instance in 2008 there were 11,292 applications from such children in the 22[10] Member States surveyed by the European Migration Network[11]. This was a 40.6% increase on the numbers of applications in these states in 2007, which totalled 8,030.

In response to this increase the European Council endorsed the Stockholm Programme[12] on 10th – 11th December 2009[13] and welcomed the proposed development of an Action Plan on Unaccompanied Minors which would address issues of prevention, protection and assisted return. The Stockholm Programme expressly asked the European Commission to "examine practical measures to facilitate the return of the high number of unaccompanied minors that do not require international protection".

However the Action Plan on Unaccompanied Minors noted that "the solution cannot be limited to return – that is only one of the options – because the issue is much more complex and multidimensional and there are clear boundaries to the Member States' freedom of action when dealing with unaccompanied minors".

The Action Plan goes on to note that the correct approach to provision for unaccompanied minors is the respect for the rights of the child contained in Article 3 of the United Nations Convention on the Rights of the Child and Article 24 of the EU Charter of Fundamental Rights[14]. In both conventions it is stated that a child's best interests must be a primary consideration in any decision making process about that child.

The role of the family

In both its Universal Declaration of Human Rights[15] and its Convention on the Rights of the Child[16] the United Nations recognised that children are entitled to special care and assistance. However it was assumed that the family was the natural and fundamental unit of every society and that this unit was entitled to protection by society and the State[17].

This is a reasonable and useful proposition where a child has been separated from a parent by war, natural disaster or civil disturbance. In such instances where an unaccompanied child arrives in a foreign country it will only be necessary for that State to offer the child temporary protection until he or she can be reunited with his or her family. Therefore the imperatives will be to offer the child shelter and meet his or her basic needs for food, healthcare and education until family members can be traced and re-united with the child.

However, even in these cases family tracing is under-developed and is very difficult to complete[18].

Even if family tracing is successful, re-unification will not necessarily be in a child's best interests. Article 9.1 of the United Nations Convention on the Rights of the Child places a duty on states who are party to the Convention to take steps to ensure that a child is not separated from a parent against his or her will. However, Article 9.1 also recognises that it would not be in a child's best interests to be re-united where there had been a history of abuse or neglect.

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8 *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.K.* Bhabha J & Finch N, Harvard University Committee on Human Rights Studies, November 2006 p 56

9 *Seeking Asylum Alone: Unaccompanied and Separated Children and Refugee Protection in the U.K.* Bhabha J & Finch N, Harvard University Committee on Human Rights Studies, November 2006 pp 23 - 25

10 That is states other than Bulgaria, Cyprus, Denmark, Luxembourg and Romania

11 A network developed and co-ordinated by the European Commission

12 adopted within the area of Justice and Home Affairs

13 17024/09, p. 68

14 2000/C 364/01

15 Adopted and proclaimed by the General Assembly on 10 December 1948 – Article 25(2)

16 Adopted by General Assembly resolution 44/25 of 20 November 1989 - Preamble

17 Universal Declaration of Human Rights Article 16(3) & Preamble to the Convention on the Rights of the Child

18 Action Plan on Unaccompanied Children (2010 – 2014) European Commission para 4.2

When considering what is in a child's best interests it will also be necessary to take into account the different concepts of childhood which may prevail in countries of origin. The model in which the family exists in part to protect children and protect them from the responsibilities and risks of adulthood until they reach 18 or have completed their education and training is not a universal one. In many countries a child is predominantly regarded as an economic asset for the family. Therefore a child may be "sold" into domestic slavery or a forced marriage in order to finance other family expenses, such as the education of other children in the family or support for elderly relatives. The child is also likely not be seen as a "rights' bearer" but expected to defer to the wider family interests and traditions.

International protection

Therefore in such situations it may well not be in a child's best interests to be returned to the care of their family. Instead it may be possible to argue that if a child is at risk of a forced marriage, female genital mutilation[19] or re-trafficking[20] he or she is a member of a particular social group and is entitled to protection under the Refugee Convention on this basis.

Paragraph 81 of the United Nations Committee on the Rights of the Child's General Comment No. 6 on *Treatment of Unaccompanied or Separated Children Outside their Country of Origin* goes further and states that best interests considerations can also provide an obstacle to reunification in specific locations. It then explains in paragraph 82 that family reunification should not be pursued where there is a "reasonable risk" that such a return would lead to the violation of fundamental human rights of the child and recalls that the survival of the child is of paramount importance and a precondition for the enjoyment of any other rights.

In the United Kingdom a similar view is taken at the moment. The UK Border Agency policy is not to remove an unaccompanied child from the United Kingdom unless the Secretary of State for the Home Department is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be removed[21].

Returns

However, the reference to "adequate reception arrangements" does not necessarily equate to return to the family home. The UK Border Agency now wishes to remove children from the United Kingdom where it is safe to do so and reception arrangements are in place once a decision has been made to refuse any application for international protection and any appeal rights have been exhausted[22].

In pursuance of this policy the United Kingdom issued a tender document[23] in March 2010 inviting bids from the provision of reintegration assistance in Kabul for up to 12 Afghan boys of 16 and 17 each month. At the time of writing, the results of this tender are not known.

Best interests of the child

At the same time the United Kingdom is a party to the United Nations Convention on the Rights of the Child. In the recent case of *ZH (Tanzania) v Secretary of State for the Home Department* [01.02.2011] UKSC 4[24], Lady Hale, Justice of the Supreme Court, noted that Article 3 of this Convention was a binding obligation in international law. The Supreme Court then went on to consider what the phrase "a primary consideration" actually meant and decided that it should be interpreted as imposing a duty to consider a child's interests first.

Therefore if a decision is to be made to remove a child, consideration will firstly have to be given to that particular child's needs and interests. As yet no methodology for doing so has yet to be perfected. Difficulties include the difficulties inherent in family tracing, referred to above, and the lack of objective evidence on services and treatment of children in many countries of origin.

Section 55 of the borders, citizenship and immigration Act 2009

Section 55 of the Borders, Citizenship and Immigration Act[25] places a duty on the Secretary of State for the Home Department to make arrangements for ensuring that immigration, nationality and asylum functions are discharged having regard to the need to safeguard and promote the welfare of children[26] in the United Kingdom.

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19 *Fornah v Secretary of State for the Home Department* [2006] UKHL 46

20 *SB (PSG – Protection Regulations – Reg 6) Moldova v Secretary of State for the Home Department* [2008] UKAIT 00002

21 *Processing an Asylum Application from a Child* UK Border Agency para 17.7

22 *Better Outcomes: The Way Forward: Improving the Care of Unaccompanied Asylum Seeking Children* Home Office Border & Immigration Agency January 2008

23 Http://webarchive.nationarchives.gov.uk/20100503160445/http://ukba.homeoffice.gov.uk/sitecontent/ddocuments/aboutus/reports/unhcrreports

24 at paragraph 23

25 Which came into force on 2 November 2009-

26 A similar duty had already been placed on other authorities who deal with children by Section 11 of the Children Act 2004 but at that time the Home Office had resisted its inclusion in such a duty

In the case of *ZH (Tanzania)* Lady Hale also held that Section 55 embodied the spirit, if not the precise, language of Article 3 of the United Nations Convention on the Rights of the Child. Therefore this Section applied to the decision to remove a child even though the consequences of removal will impact on the child in his or her country of origin. This had already been made clear in the case of *R (TS) v Secretary of State for the Home Department & Anor* [2010] EWHC 2614 (Admin) where it had been applied in a case involving the return of an unaccompanied child to Belgium as he had previously applied for asylum there.

The need for a guardian

However, Article 3 of the United Nations Convention on the Rights of the Child and Section 55 have only recently been applied in the cases of unaccompanied minors and in many cases the outcomes have not been as positive[27]. Therefore it is very important that unaccompanied children have access to experienced and skilled immigration solicitors and counsel. This is now much more difficult in the wake of the recent restrictions on public legal representations, which has led to many well-known and respected firms closing. In this context it is even more important for unaccompanied children to have adults who will steer them through the complexities of applications for international protection, appeals and any arguments against removal on humanitarian grounds.

Unaccompanied minors being looked after in the United Kingdom are not provided with guardians. This does not accord with paragraph 33 of the United Nations Committee on the Rights of the Child's *General Comment No. 6 (2005) Treatment of Unaccompanied and Separated Children outside their Country of Origin,* which says that:

"States are required to create the underlying legal framework and to take necessary measures to secure proper representation of an unaccompanied or separated child's best interests. Therefore, States should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State….The guardian should be consulted and informed regarding all actions taken in relation to the child. The guardian should have the authority to be present in all planning and decision-making processes, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution".

Conclusion

The failure to appoint guardians for unaccompanied minors and the development of a returns policy, which may not accord with a child's best interests, are lacunae in what is otherwise a fairly robust system for the protection of unaccompanied minors in the United Kingdom. To date successive governments have provided these children with adequate accommodation, support, education and health care up until the age of 18. The same rigour has yet to be applied to decisions to remove unaccompanied minors from the United Kingdom whilst they are still children.

Nadine Finch is a Barrister at
Garden Court Chambers
57–60 Lincoln's Inn Fields
London WC2A 3LS

[27] *The Queen on the application of T v Secretary of State for the Home Department* CO/1858/2010, which is now being appealed

Accelerating action against child labour for children working and/or living on the street

Yoshie Noguchi

Summary

- Street children are most often ***involved in or extremely vulnerable to child labour and especially its worst forms***: they can be victims of child trafficking or used in forced begging, prostitution, drug trafficking or other illicit activities, as well as in hazardous work on the street.
- The international legal framework on child labour is set by the CRC and the ILO Minimum Age Convention No. 138 (1973) and the Worst Forms of Child Labour Convention No.182 (1999). To date 173 ILO Member States have ratified Convention No.182, and 158 States are parties to Convention No.138.
- Clear commitments have been made by States to ***accelerate action against child labour***, with urgent priority given to its worst forms, including the confirmed goal of ***eliminating the worst forms of child labour (WFCL) by 2016.*** This goal calls for addressing the situations faced by children living and/or working on the street.
- Those children need ***particular attention and specific measures*** to be prevented or rescued from WFCL. Due to their situation on the street, they would ***easily slip into gaps*** in coverage of any social protection. They may even be ***difficult to identify*** and reach out to.
- The International Labour Organization (ILO), through its International Programme on the Elimination of Child Labour (IPEC), seeks to mobilize ***sustainable action to address the root causes of child labour*** especially its worst forms with the following responses and strategies:
  - Development of national action plans
  - Updating and enforcement of legislation
  - Strengthening the capacity of key players at policy, planning and implementation levels
  - Prevention, withdrawal from child labour, rehabilitation of former child labourers.
- Each of these responses needs to pay ***special attention to the situations of children living and/or working on the street.***

Introduction

The UN Human Rights Council chose for this year's annual full-day meeting on the rights of the child, the theme of "Holistic approach for the protection and promotion of the rights of children working and/or living on the street." The relevant Panel discussion took place at Palais des Nations, Geneva on 9th March 2011. The present article is based on the contribution that the International Labour Organization made on this occasion, highlighting the child labour aspects of the situation faced by these children on the street.

This group of so-called "street children" may seem to live in a world cut off from the family. The reality, however, is that while some of those children indeed live on the street, some others have family to go back to after working or carrying out other activities during the day on the street. The family may be not just failing to protect children from exploitation on the street, but sometimes even be accomplice (e.g. sending out children to beg). Furthermore, for those children who ran away from home, often a root cause of the problem lies in the dysfunctional family. As we will see, some street children are involved in illicit or criminal activities and thus brought to juvenile justice as perpetrators, rather than as victims of exploitation to be rehabilitated. Thus, the topic of children working and/or living on the street should be of interest to IAYFJM members in more than one way.

When we say that children are "working on the street", our concern should not be limited to children engaged in the narrow sense of "***economic activities***" such as selling small objects, shoe-shining, or portering. Even though certain tasks may seem relatively benign, they are likely to hinder education, to be outside any protective framework and to involve a risk of various hazards for children[1].

[1] An ILO Convention on the minimum age for non-industrial employment in 1932 (No.33) called for a higher age than the general minimum working age to be fixed for admission of young persons and adolescents to "*employment for purposes*

Furthermore, they are often engaged in or used by adults for a wide range of activities on the street, from scavenging, begging – which may be classified as ***illicit*** if not illegal – to drug dealing, pick-pocketing or other ***criminal acts***. These children may themselves be victims of crime, such as child trafficking or commercial sexual exploitation. All these are issues of child labour and its worst forms. Street children are thus most often ***extremely vulnerable to child labour and especially its worst forms.***

Children's rights, child labour and its worst forms – general principles

All children have ***the right to be protected from economic exploitation*** under the United Nations Convention on the Rights of the Child (***CRC***). Furthermore, the ILO Minimum Age Convention No. 138 (1973), and ILO Worst Forms of Child Labour Convention No. 182 (1999) together provide the parameters for determining the legal line between acceptable work carried out by children and economic exploitation or child labour which should be abolished. These instruments have been ratified – which means a legal commitment, reporting and supervision – by a great majority of the States (173 ratifications out of 183 Member States for Convention No. 182, and 158 ratifications for Convention No. 138.). The UN-wide understanding is: "Any work carried out by children in conditions below those established by the United Nations Convention or by ILO standards should be considered as economic exploitation."[2]

Briefly, ***what is child labour and its worst forms***? The UN Secretary-General's report states the following: "Not all work done by children is considered as 'child labour' which should be targeted for elimination. Child labour concerns ***work for which the child is either too young*** — work done below the required minimum age — ***or work which***, because of its detrimental nature or conditions, ***is altogether considered unacceptable for children*** and is prohibited."[3] As to the latter, all girls and boys under the age of 18 years must be protected.

In the auspices of the ILO, clear commitments have recently been renewed by States to ***accelerate action against child labour***[4], with urgent priority given to its worst forms. This includes the confirmed goal of ***eliminating the worst forms of child labour (WFCL) by 2016.*** The Global Child Labour Conference in The Hague in May 2010 adopted the Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016. This forms part of the Global Action Plan adopted by the ILO Governing Body in November 2010. This ambitious goal – linked also with the Millennium Development Goals (MDGs), particularly the reduction of poverty and ensuring education for all by 2015 – would not be achieved without addressing the situations faced by children living and/or working on the street.

Child labour and its worst forms on the street

Working on the street is not, as such, classified as child labour, let alone its worst form, under international standards. Nevertheless, ***the worst forms of child labour*** covered by the ILO Convention No. 182 (1999) include many types of ***situations faced by children on the street***: being victim of child trafficking or other forms of forced labour, used in forced begging, prostitution, drug trade or other illicit activities, as well as in work on the street that is likely to harm the health, safety or morals of children. The following contains some concrete examples by category of WFCL.

(1) Forced labour including forced begging and child trafficking

Regarding *begging*, the issue here is not about whether begging as such should be criminalized or not. It is the act of 'using' children or 'trafficking' them for the purpose of begging that must be prohibited and punished, and the children involved should be treated as victims and not as offenders.

of itinerant trading in the streets or in places to which the public have access," among others (Article 6 – *emphasis added*).

[2] Report of the Secretary-General to the General Assembly, *Status of the Convention on the Rights of the Child*, A/64/127 (27 July 2009), paragraph 9.

[3] *Ibid,* paragraph 13.

[4] ILO: *Accelerate action against child labour,* ILO Global Report on Child Labour – Report I (B) of the Director-General to the International Labour Conference. Geneva,, 2010.
According to this 2010 Report, there are still 215 million child labourers world wide (i.e. too young to work or engaged in unacceptable work), and 115 million of them are in particularly hazardous work. Child labour continued to decline, but more modestly than previously (3% decline between 2004-2008 compared to 10% decrease between 2000-2004). While the trend was positive for the younger children (5-14 years) showing 10% reduction in child labour and 31% reduction in hazardous work, there was a worrying trend among older boys (15-17) who showed 20% increase in hazardous work. As a whole fewer girls are now in child labour. As to economic sectors, agriculture counts most child labourers (60%) followed by services (26%) and industry (7%). It was revealed that 2/3 of child labourers work as unpaid family help, and only 1 in 5 works under employment relationship.
For this Global Report and other information, please visit www.ilo.org/ipec

The use of children in begging has also been examined by the ILO supervisory bodies[5] as a situation of forced or compulsory labour of children, when it occurred in the context of traditional and so-called 'religious' exercises[6].

Exploitation that results from child trafficking is, of course, not limited to their use in begging. Forms of exploitation vary considerably. Some child victims of trafficking may escape from exploitation at the destination, e.g. as child domestic workers, or subjected to sexual exploitation, and end up on the street. At the same time, children living on the street are extremely vulnerable to trafficking.

(2) Sexual exploitation

The UN Study on Violence against Children underlined that "girls and boys living on the street are vulnerable to sexual abuse" and "also risk being recruited by pimps and traffickers for sexual and economic exploitation." Even where they have to resort to 'survival sex' (sex in exchange for food or shelter), it falls within the definition of child prostitution under the Optional Protocol to the CRC,[7] and is therefore an issue of the worst forms of child labour – requiring an immediate and effective measures to rescue them.

(3) The use of children in illicit activities

The use of children in illicit activities, including but not limited to drug trafficking, is explicitly defined among the WFCL under Convention No. 182. It is a relatively new category of issues among child labour. The use of children in illicit activities is not only an issue for criminal or juvenile justice; it must also be tackled from different approaches which reach the root causes of the problem. The issues cannot be solved solely by strengthening law enforcement against offenders who use children in illicit activities, and even less so by only punishing those children for the act itself.[8]

(4) Hazardous work

International standards mandate national legislation to list up the details for hazardous work ("work likely to jeopardize/harm a child's health, safety or morals"). Some States have included certain street-based activities, such as street vending or begging, in their list of hazardous work prohibited for children under 18 years of age. It is important for the national actors involved in the determination of the hazardous work list (government, employers and workers) to give consideration to the activities by children on the street. Not only the nature of work but also the circumstances in which it is carried out have to be taken into account: for instance, selling flowers together with parents on a street market on weekends is very different from selling flowers alone at night on the street in the vicinity of clubs and restaurants.

Even where there is a legal prohibition, however, the enforcement would require special measures which differ from habitual labour inspection practices, since as a rule street children do not have formal employment relationship with those who use them.

Challenges and lessons learned

Children who work and live on the street need ***particular attention and specific measures*** to be prevented or rescued from WFCL. Due to their situation on the street, they would ***easily slip into gaps*** in coverage of any social protection. For instance, they would not be liable to benefit from measures to support household incomes or to encourage families to send their children to school. Particular difficulty may be added, if they are migrant children or discriminated minority, and especially if they lack legal status. It may be ***difficult to identify these children*** and reach out to them although Convention No. 182 urges States to take immediate and effective measures against WFCL, including for children at special risk.

Gathering data and information

Child labour statistics have made enormous progress since 1990s. ILO-IPEC has a statistical component called SIMPOC[9] (Statistical Information and Monitoring Programme on Child Labour). It also collaborates with UNICEF and the World Bank through an inter-agency project "Understanding Children's Work (UCW)".

In the context of the ILO's Global Estimates[10] on child labour, occupations such as street vendors, shoe cleaning and other street services are counted as "hazardous work." There are particular challenges in gathering data on street-based child labour. For instance, household-based surveys – which is one of the main methods for collecting child labour statistics – are not useful to obtain information on children living in the street. Likewise, the absence of formal employers of the children working on the street makes it difficult to capture them through enterprise-based labour force surveys.

Innovative ways[11] are needed in order to gather information on the types of child labour, and

[5] Namely, the Committee of Experts on the Application of Conventions and Recommendations (CEACR). Please see www.ilo.org/normes for more information.

[6] For instance, the practice of "talibé" in Senegal has been commented by the CEACR, and also was subject of a UCW study (Please see below for the interagency project UCW – Understanding Children's Work).

[7] Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, Article 2(b).

[8] Noguchi, Y.: "The Use of Children in Illicit Activities as a Worst Form of Child Labour: A Comment on Article 3(c) of ILO Convention 182", in *Child Labour in a Globalized World*, ed. Nesi et al, Ashgate, 2008.

[9] SIMPOC website: http://www.ilo.org/ipec/ChildlabourstatisticsSIMPOC/lang--en/index.htm

[10] IPEC, Diallo et al.: *Global child labour developments: Measures trends from 2004 to 2008.* Geneva, ILO, 2010, table 13. This document is also linked from www.ilo.org/ipec

[11] For instance, structured and semi-structured interviews and focus group discussions; and "capture-recapture" method, which was used *inter alia* in the 2002 estimation of the so-called "unconditional" worst forms of child labour and also by UCW survey on begging in Dakar.

especially its worst forms, which are linked to acts of criminal nature generally, and regarding children living and/or working on the street especially. Rapid assessment methodology – developed jointly by ILO and UNICEF – is an important tool for obtaining qualitative information about some children's situation (e.g. WFCL) and background elements, but does not offer quantitative information that can be extrapolated to estimate the extent of the problem. Ethical consideration for the carrying out of surveys is also important, especially for ensuring the safety of children who are being exploited by organize crime.

Measures to tackle child labour

The International Labour Organization (ILO), through its International Programme on the Elimination of Child Labour (IPEC)[12], seeks to mobilize ***sustainable action to address the root causes of child labour*** especially its worst forms with the following responses and strategies:

- Development of national action plans
- Up-dating and enforcement of legislation
- Strengthening the capacity of key players at policy, planning and implementation levels
- Prevention, withdrawal from child labour, rehabilitation of former child labourers, including direct assistance to the children involved.

Each of the above responses and strategies need to pay ***special attention*** to the situations of children living and/or working in the street. The experience of ILO-IPEC regarding street children include programmes in a number of countries[13]. To mention just one example, an IPEC project in St. Petersburg, Russia,[14] was launched in 1999 aimed to provide direct support to working street children in order to improve their living and working conditions in the short term, and to withdraw them from the streets and to provide alternatives in the long term[15].

The project made use of the experience gained by the Centre for Children Working on the Streets of Ankara, Turkey[16].

There are also a number of thematic or geographic projects against child labour that touched upon street children, although not necessarily as an exclusive target group or one separate issue. Various methodologies have been used: such as, enhancing conditional cash transfer programme for prevention; direct support, material aid, psychological services, and career counselling; provision of education and vocational training for rescued children or for the purpose of prevention; training of relevant officials (e.g. police and local bodies) on prevention and rehabilitation of child labour; awareness raising campaign; establishment of permanent framework against street-based child labour in the community, and of child labour free zone; establishment and coordination of street monitoring mechanisms.

Some interesting examples from IPEC experience include: soap opera for awareness about the threats of human trafficking in Cambodia; mobile schools in Romania to reach out to children on the street so as to establish contact with them; and the SCREAM[17] project activities in Paraguay which aim at empowering children to raise public awareness and mainstreaming the issues of WFCL in educational institutions. While using various innovative approaches to reach out to children on the street, it is also important to take measures to address the root causes of children's engagement in child labour and its worst forms on the street, such as dysfunctional family background and poverty. The holistic approach, protecting and promoting the children's rights as a whole, is indispensable for a durable solution.

[12] Please visit www.ilo.org/ipec for more information.

[13] For example, Indonesia (Jakarta), Kenya (Nairobi and Kisumu), Niger (Dosso and Kirkissoye), Russian Federation (St. Petersburg and Leningrad Region), Turkey (Ankara, Diyarbakir) and Yemen (Sanaa).

[14] ILO/IPEC: Working street children in St. Petersburg – from exploitation to education
2000 – 2004 (first phase). Available within ILO/IPEC.

[15] By early 2004 2,503 working street children had been withdrawn and 1,666 potential child labourers had been prevented from exploitative work. It was estimated that between 10,000 and 16,000 children were on the streets of St. Petersburg, Russia's second city. The project focused on the worst forms of child labour.

[16] The centre was established by the Municipality of Greater Ankara with the support of IPEC with the aim of improving working conditions of children in the short term and preventing child labour in the long term. Although the financial involvement of IPEC terminated in 1997, the Municipality continued the activity and sought to improve the methods employed.

[17] SCREAM stands for 'Supporting Children's Rights through Education, the Arts and the Media.' Please see www.ilo.org/SCREAM

Concluding remarks

Children are involved in or exposed to many of the worst forms of child labour on the street, even though working on the street as such is not defined as a worst form of child labour. To achieve the international goal of eliminating the worst forms of child labour by 2016, it is imperative to accelerate action regarding the children who work and live on the street. This is not only a question of the prohibition of child labour by law and law enforcement. It has to address the root causes of children living or working on the street and offer direct assistance, including rehabilitation and alternatives to rescued children.

Children living and/or working on the street are at special risk[18] and we must identify these risks and the children concerned and reach out to them. In this challenging task, there is a lot that can be done by youth and family law judges and related professionals, both in prevention of exploitation on the street – which may start in the family – as well as rescue and rehabilitation of the children involved, not limited in "economic" work but also in illicit or even criminal activities, in a way that respects and promotes their rights as a whole.

Yoshie Noguchi is a Senior Legal Officer, International Programme on the Elimination of Child Labour (IPEC), International Labour Office, Geneva

[18] ILO C182 Article 7(2)(d).

Legal framework on child labour & education— India

Archana Mehendale

Official census data collected in 2001 indicates that 12,666,377 children were engaged in child labour in India[1]. The school survey data collected in 2001 indicates that 35,360,017 children were 'out of school'[2], implying that they were engaged either in employment or were likely to get into employment. There are no official figures available about children who combine schooling and employment. Practitioners working with child labourers and 'out of school' children assert that universalisation of elementary education and abolition of child labour are two sides of the same coin. Researchers like Myron Weiner have argued that child labour was not eradicated in India because of weak legislation on free and compulsory education which remained unimplemented by state governments. One of the key theses of his book is that child labour can be more effectively abolished if free and compulsory education legislation is implemented instead of relying on the implementation of child labour legislation alone[3]. Studies have shown that child labour occurs not only because of poor education system and its dysfunctionality in terms of access and quality but also due to economic and cultural factors such as loss of livelihood opportunities, poor access to credit facilities, lack of child care facilities and gender inequalities. Yet, universalisation of elementary education is the key strategy to address the problem of child labour. In this article, I will present the legal framework that governs both these issues, viz. universalisation of elementary education and child labour. The first section presents the constitutional and statutory provisions, the second section discusses the landmark judgments that have shaped the response to these issues and the last section raises some questions emerging from the status of implementation of these legal provisions.

Constitutional and Statutory Provisions

The Constitution of India is remarkable because the two articles dealing directly with child labour and universalisation of education appear under Part III on Fundamental Rights. Fundamental Rights are justiciable rights and an aggrieved person can move the Court to get remedies from the State. Article 24 states: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The open ended reference to 'any other hazardous employment' has been used by advocates to claim blanket coverage of occupations where child labour should be legally disallowed. Further, Article 23 prohibits trafficking in human beings and forced labour. This provision is significant because a large number of children work under conditions of forced labour and bondage. In fact, the judiciary has interpreted bondage as any work carried out where the remuneration received is less than the statutory minimum wages[4]. This has enabled social activists to claim relief for child labourers under provisions related to bonded labour.

Constitutional provision related to universalisation of education was originally the Article 45 under Part IV on Directive Principles of State Policy which said that the state shall endeavour to provide free and compulsory education to children below the age of 14 years within ten years of the commencement of the Constitution. This was one of the rare provisions because it had imposed a time frame within which this non-justiciable provision had to be fulfilled. Although Article 37 states that the provisions under this Part shall not be enforced by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws, the original Article 45 remained unimplemented. In 2002, the Parliament amended the Indian Constitution by The Constitution (Eighty sixth Amendment) Act, 2002. This amendment brought three important changes. Firstly, a new Article 21A got inserted under Fundamental Rights. It stated "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine".

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1 Extracted from the Ministry of Labour website http://labour.nic.in/cwl/ChildLabour.htm, accessed on 11 March 2011

2 Extracted from reply given to Rajya Sabha Unstarred question No. 1908, dated 10.3.2003

3 Myron Weiner (1991) The Child and the State in India: child labour and education policy in comparative perspective. New Jersey: Princeton University Press

4 *People's Union for Democratic Rights and others v Union of India and others* (AIR 1982 SC 1473) and *Bandhua Mukti Morcha v. Union of India* ([1984] 3 SCC 161)

Secondly, Article 45 was revised as "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years". Thirdly, Article 51A (k) was inserted under Fundamental Duties which placed a duty on "who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years". With this amendment, the Constitutional provisions on universalisation of elementary education and prohibition of child labour have become stronger, justiciable and binding.

The two important fundamental rights mentioned above are supported with several statutes, both at the central and state level. In this article, I will highlight some of the key provisions and limitations of two central statutes viz. The Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter CLA) and The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter RTE). The CLA is primarily a labour legislation and its provisions govern the functioning of labour establishments. As its title suggests the approach adopted by the statute is to prohibit the employment of children below the age of 14 years in scheduled occupations and processes and regulate their working conditions in all other sectors. The Child Labour Technical Advisory Committee established by the CLA periodically reviews and suggests additions to the schedule of occupations and processes where child labour should be prohibited. At present 18 occupations and 65 processes are included in this schedule. However, one of the biggest limitations of the CLA is that children who work in 'any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government'[5] are exempted from the clause that prohibits their engagement in the scheduled sectors. Thus, children can work with their families in occupations and processes where child labour is otherwise prohibited and their protection is beyond the scope of the CLA. The regulation of working conditions involves restriction of working hours to six hours per day with one hour rest break after three hours, no night work, no double employment, no overtime and provision of a weekly holiday. Although any person can report violation of CLA, the enforcement figures are not encouraging. According to official data, between 1997-98 to 2004-05 inspections were carried out in 2,353,098 cases, number of violations recorded were 143,804 of which 59,026 resulted in prosecution, 21,481 in convictions and 5,505 in acquittals[6].

One of the biggest problems of the CLA is that the basic premise and exemptions therein have not been revised since their formulation twenty-five years ago. The amendment to CLA is now a non-negotiable because its provisions are inconsistent with the provisions of the RTE which came into force in April 2010.

The RTE was adopted in order to give effect to Article 21A of the Indian Constitution. It covers children between the age of 6 and 14 years and includes education from Grade 1 to 8. Although the phrase 'free and compulsory education' in RTE was also used in the older education legislation that were modelled on the truancy law, there is one major difference. The RTE recognizes compulsion on the government (at central, state and local levels) to provide free education, establish schools, provide infrastructure, teachers, and allocate financial resources. Although it imposes a duty on the parents to ensure that the children are admitted in a neighbourhood school, no penalties are prescribed for defaulting parents. The RTE recognizes duties of teachers to maintain regularity and punctuality, to complete the prescribed curriculum within prescribed time, to monitor the learning levels of all children and provide them additional supplementary instruction. The RTE abolishes admission tests, imposes a 'no detention and no expulsion' policy and prohibits physical punishment and mental harassment of students. The obligation imposed on all private unaided schools to admit at least 25% of children from disadvantaged and weaker sections from the neighbourhood is currently being challenged in the courts with private schools questioning state interference in the workings of private institutions.

It may be noted that the CLA and RTE exist as parallel instruments. The RTE makes no reference to working children and the realities that may prevent the children from asserting their right and the CLA does not provide for education of children even as part of 'regulated' sectors. In fact, the CLA may now have to be re-written because children cannot be in schools and be allowed to work for six hours at the same time. The two statutes are administered and implemented by separate executive Ministries and departments and this contributes to the incoherence in responses on the ground.

Role of the Judiciary

As per Article 141 of the Indian Constitution, the law declared by the Supreme Court shall be binding on all courts within the territory of India. Some of the landmark judgments from the Honourable Supreme Court have paved way for key changes in policy and action on issues of education and child labour.

[5] As per proviso of Section 3 of The Child Labour (Prohibition and Regulation) Act, 1986

[6] Extracted from the Ministry of Labour website http://labour.nic.in/cwl/ChildLabour.htm, accessed on 11 March 2011

The turning point in the recognition of fundamental right to education came on account of the judgment delivered by a five-member bench of the Supreme Court in 1993. In *Unnikrishnan J.P. v State of Andhra Pradesh*[7], the Court held that 'though right to education is not stated expressly as a fundamental right, it is implicit in and flows from the right to life guaranteed under Article 21… (and) must be construed in the light of the Directive Principles of the Constitution'. Thus, 'right to education, understood in the context of Article 45 and 41 means: (a) every child/citizen of this country has a right to free education until he completes the age of fourteen years and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development'. This was subsequently upheld by the Courts in various judgments and this interpretation set the ball rolling to get the Constitution amended with an insertion of Article 21A on fundamental right to elementary education sequentially inserted after Article 21 on right to life.

In *M.C. Mehta v State of Tamil Nadu*[8], the Court took suo moto cognizance of an accident reported in one of the fire cracker factories in Sivakasi. It held that the offending employer must be asked to pay a sum of Rs.20,000 as compensation for every child employed in contravention of the provisions of the Act. The inspectors appointed under Section 17 of CLA would have to ensure that the concerned employer pays this amount and it is deposited in a fund to be known as Child Labour Rehabilitation-cum-Welfare Fund. The Court also held that the liability of the employer would not cease even if he would desire to disengage the child presently employed. Further, it observed that the State owes a duty to come forward to discharge its obligation of ensuring alternative employment for parent/s where children are removed from work. Although the Court did not issue any direction, it held that the appropriate Government would, as its contribution/grant, deposit in the aforesaid Fund a sum of Rs.5,000 for each child employed.

The Court directed the state governments to carry out a survey of child labour within six months. It also directed the labour inspectors to ensure that the children are placed in educational institutions. In the case of regulated sector, the Court stated that it would be the duty of the Inspectors to see that the children do not work for more than four to six hours a day and that they receive education for at least for two hours each day at the cost of the employer.

Bandhua Mukti Morcha v Union of India[9] was a writ petition under Article 32 of the Constitution filed by way of public interest litigation seeking issue of a writ of mandamus directing the Government to take steps to stop employment of children in the carpet industry in the State of Uttar Pradesh; to appoint a Committee to investigate their conditions of employment; and to issue such welfare directives as are appropriate for total prohibition of employment of children below 14 years and directing the Government to provide them facilities like education, health, sanitation, nutritious food, leisure, etc. The Court held that child labour must be eradicated through well-planned, poverty alleviation and development as 'imposition of trade action in employment may drive the children into destitution and other mischievous environment, making them vagrant, hard criminals and social risk, etc'. Therefore it held, 'while exploitation of the child must be progressively banned, other simultaneous alternatives to the child should be evolved including providing education, health care, nutrient food, shelter and other means of livelihood with self-respect and dignity of person. Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must begin with most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like'. It also held that compulsory education to these children is one of the principal means and primary duty of the State for stability of the democracy, social integration and to eliminate social tensions. The Court gave directions to the Government of India to convene a meeting of the concerned Ministers of the respective State Governments to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all employments. It held that the steps should be consistent with the scheme laid down in *M.C. Mehta's* case and periodical reports of the progress made in that behalf should be submitted to the Court.

One of the reasons why these judgments are considered landmark is because they paved way for specific response from the Government. *Unnikrishnan* judgement triggered advocacy for recognition of elementary education as a fundamental right flowing from right to life. In the *MC Mehta* case, the Court not only interpreted the existing law progressively but it recommended a policy framework within which child labour could be dealt with by state governments. While doing so, it created new obligations such as compensation to be paid by employers, alternative employment to be given to parents by the state, education to be provided by employers in regulated sectors and so on. Although this may be viewed as judicial activism, it pushed the state governments into action.

[7] (1993) 1 SCC 645

[8] (1996) 6 SCC 756

[9] AIR 1997 SC 2218

In the *Bandhua Mukti Morcha* case, by asking the Government to focus on the most exploitative forms of child labour, the Court directive reflected the basic premise of the ILO Convention on Worst Forms of Child Labour (C182) although India has not ratified this Convention.

Concluding remarks

India made the following declaration while ratifying the United Nations Convention on Rights of the Child: 'While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; nothing that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India, the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party.' This approach of 'progressive implementation' would need to be reviewed in the light of the newly recognized fundamental right to education. Child labour in all forms and manifestations would require a legal response which goes beyond the RTE.

Families are often economically dependent on the employers and in the absence of alternate means of livelihood do not wish to get into any adversarial relationship with them. Therefore implementation of child labour legislation would have to be undertaken alongside implementation of other statutes such as National Rural Employment Guarantee Act, 2005 and the proposed bill on right to food. Furthermore, the assumption that employment of children within families is not harmful needs to be revisited. How can the families guarantee safety of the child when the occupation/process itself is harmful and when the families are themselves equally exposed to the risks? However, imposing penalties on parents may not be an answer as the child may be better placed with his family instead of being in a state run institution. The poor conviction rate in child labour cases is on account of several loopholes in the CLA and highly overworked enforcement machinery which is often unable to collect and record full evidence. The official figures need to be also examined with caution. The school enrolment figures are likely to be bloated because there is an incentive to show that more children are in schools while the child labour figures are likely to be underestimated because there is a disincentive to reveal the working status of children. This gap in data can distort the official understanding and in turn adversely affect the legal and developmental responses from the government. The issue of children who try to combine schooling and employment needs further attention as the existing law in India does not recognise this reality. The Indian experience indicates that statutes addressing social problems must be dynamic and responsive to changes within law itself (especially when there is a progressive judiciary) as well as changes within the broader socio-economic and political environment.

Archana Mehendale Ph.D. is an independent researcher who has been studying children's issues, particularly child labour, education, rights of girls and children with disabilities for 15 years.

Judicial Collaboration in Cross Border Family Proceedings

The Rt. Hon.Lord JusticeThorpe

Cases that originate in a cross border removal or retention of a child generally require the application of international and not domestic family law. However the application of international family law is dependent upon the domestic family courts in the two jurisdictions invoked by the cross border movement.

Successful outcome depends upon a two stage process. The first is the administrative process undertaken by the Central Authorities of the two jurisdictions involved. The second is the judicial process conducted by the judges in the courts of the two states involved.

Over recent years we have fortunately seen most countries restrict jurisdiction in cross border cases to a limited number of courts and thus to a limited number of judges who can thereby acquire specialist expertise.

However manifest expertise in itself is not enough. The two judges bearing the responsibility for the judicial proceedings need to collaborate and by direct communication limit the risks of misunderstanding, conflict and waste.

The evolution of judicial collaboration is easily traced. In 1998 The Hague Conference convened an historic gathering in the Netherlands to which, for the first time, specialist judges from all the countries then operating the 1980 Hague Abduction Convention were invited. At that Conference I proposed the creation of a network of judges with enhanced expertise and responsibility in the field of cross border child abduction.

From that first beginning the Network has grown steadily to its present strength encompassing the majority of the States party to the Convention.

At the Special Commission into the operation of the 1980 Convention held in The Hague in 2001 unanimous support was registered for the expansion of direct judicial communication in specific cases, subject to safeguards which were discussed and recorded.

In the regional context of Europe the advent of Brussels II bis was preceded by the launch of a European Network to support the case load that the Regulation would generate. Obviously for cases proceeding under Article 11 of the Regulation the function of the judge within The Hague Network and the European Network would be one and the same. The Good Practice Guide published in 2005 to aid the implementation of the Regulation strongly supported the concept and practice of direct judicial collaboration.

At the 5th Special Commission on the operation of the 1980 Hague Convention convened in The Hague in November 2006 a resolution was adopted to recruit an Expert Group to formulate Good Practice and Safeguards in direct judicial collaboration. shall record the work of that group later in this paper.

The importance of burgeoning direct judicial collaboration was emphasised by the judicial conference hosted by the European Commission and The Hague Conference in Brussels in January 2009. Over fifty jurisdictions were represented at the Conference. This was a landmark event in the establishment of cross border judicial collaboration.

Finally I must record the excellent meeting of the European Judicial Network in Brussels on 2nd March 2010 when all Central Authorities and judges present united in a ringing endorsement of the gains achieved, and the potential future gains, that result when judges work together to solve a common problem.

We can see that this emerging force has its supporting structures. First in time comes the Global Network launched and thereafter maintained by the Hague Conference. Second we have the European Judicial Network which the European Commission strongly encourages. However, as yet the Commission has not been able to administer the Network, there being no direct power so to do within the Regulations.

The recommendations of the Conference of January 2009 are very explicit: the Network Judge should be (a) a sitting judge and (b) officially designated by the Member State. This strong recommendation has been accepted and followed by the majority of the European Member States and the states of wider Europe. The United Kingdom has nominated three judges, one for each of its separate jurisdictions. Likewise Germany has nominated several judges to cover its extensive territory. We do however need to encourage and persuade those jurisdictions that have yet to make an official nomination to do so. My office experiences richly the advantages of the officially nominated Network Judge in its dealings with the Czech Republic. By contrast my office experiences considerable difficulty arising from the fact that Poland has nominated the head of its Central Authority as the Network Judge. Even if the head of a Central Authority may be a qualified magistrate it is self evident that he cannot ride two horses at the same time.

The United Kingdom has a high volume of cross border cases with Poland as a result of the substantial Polish immigration since Poland joined the European Union. We are significantly handicapped in delivering the high standards of judicial control that cross border cases demand as a result of the absence of an officially nominated sitting judge within the Polish jurisdiction.

The Expert Group recruited following the resolution of the 5th Special Commission met in The Hague in July 2008 and their draft proposals were fully debated at the Conference in Brussels in January 2009. It is the intention of the Permanent Bureau that the Group's final draft will be submitted to the Special Commission in summer 2011 for approval and adoption.

The Rt. Hon. Lord Justice Thorpe* is Head of International Family Justice and a senior Judge in the Court of Appeal, England and Wales

Where do I come from?—or the unanswered question for children conceived artificially

Professor Alain Roy

The author gratefully acknowledges the valuable collaboration of his research assistant, Johanne Clouet, a doctoral student at the University of Montreal.

Where do I come from? Most of us know the answer to this existential question. To uncover our life story from the day of our conception, all we have to do is look to our parents. They embody our first beginnings and often help us understand better who we were and who we will become. But there are some people who do not have this good fortune. Even if they have grown up with parents who love them, a part of them is missing. That is so for most adopted children; and it is also the case for children conceived artificially with medical help using genetic input from a third party. This is the subject of the present article.

Unlike adoption, artificial conception is a relatively recent phenomenon. Historically, of course, many children were born naturally thanks to the contribution of another man who came to the aid of an infertile, but accepting husband. We had to wait until the 1970s to see the first *in vitro*[1] conception. Since then there have been so many advances in medicine that it is difficult to predict what the future has in store.

The foundations of secrecy and anonymity

In the beginning, legislation on artificial conception established the anonymity of the donor as a fundamental principle. This principle—which was an integral part of the secrecy that it was agreed should cloak the procedure—maintained the privacy of the well-intentioned third party, while blocking any attempt to investigate the child's paternity. At the same time this protected the unborn child's[2] nuclear family from the threat to their peace of mind that a third party might pose[3].

Not only did the donor have to stay hidden, he also had to be reduced to the simplest terms possible. Here the involvement of medicine was crucial—not only ensuring secrecy, but also taking upon itself to restrict the donor's role to the simple provision of genetic material, similar to blood samples taken in the course of donating blood. This is the "see nothing, know nothing" model, described by the sociologist, Irène Théry[4].

The adoption of the principle of donor anonymity was therefore in the interests of the parties involved—the donor and the intended family. No thought was given to the interests of the child, except in so far as they coincided with those of the intended parents. In the adult-centred view of the time, the child would benefit most from growing up in a 'normal' family.

The child's emergence as a party to the procedure

In the last two decades the use of artificial conception has gradually widened. In parallel with new family structures, its use has spread across many western countries. As well as being a treatment for infertility, artificial conception has become a method of conception in its own right—to the benefit of lesbian couples and women who, although they have chosen to live single lives, nevertheless wish to have children. Female donors of eggs have been added to male donors of sperm. From now on artificial conception will be a counterweight to female infertility. A child can be born from male and female gametes that have both been provided from elsewhere.

[1] The first 'test tube baby', Louise Brown, was born in England in 1978.

[2] To make the set-up even more plausible, a donor might be sought having characteristics in common with the intended father.

[3] Geneviève Delaisi de Parseval and Valérie Depadt-Sebag, *Accès à la parenté : procréation assistée et adoption*, Fondation Terra Nova, March 2010, pp. 43 et 44, at: <http://www.tnova.fr/sites/default/files/bioethique_0.pdf>.

[4] Irène Théry, *Des humains comme les autres. Bioéthique, anonymat et genre du don*, Paris, Éditions EHESS, 2010. In French the principle is referred to as: « ni vu ni connu ».

The possibilities are endless—giving birth after the menopause, getting pregnant when old enough to be a grandmother, making good defects in a parent's genetic make-up, optimising the genetic potential of the unborn child by using donors with ideal physical and mental profiles. We are protected from the risk of eugenics only by the ethical norms which human beings are willing to accept.

The most striking changes always happen when we are not looking. While science has been progressing and the ethics debated, the first artificially conceived babies have grown up… They have reached adulthood and have their own aspirations. Their presence makes us realise that they have been completely overlooked in this process[5]. From now on we must recognise that there are not two parties to artificial conception, but three. As well as third party donors and the intended parents, there is the child itself—a young person with rights of its own, as laid out in the *Convention on the Rights of the Child*[6].

These grown-up children want to know. They want to know no more and no less than to whom they owe the fact of their birth. They feel cheated by the official ban denying them access to the files about them. Their files are there in a filing cabinet that is open to medical administrators but is for ever closed to them. Their investigation into their identity will get no further than the reception desk of the clinic or the institution responsible for maintaining files on artificial conception.

But why do they want to investigate? How is it that children who were so much wished-for and enveloped in parental love feel the need to put a name and a face to a simple spermatozoon. Perhaps it is just a whim or idle curiosity that will fade away as time goes on. That is what many people strongly believe. They think that the young people will quickly come to realise that they are asking questions that are invalid, that will upset them unnecessarily and also disturb their 'real' parents who do not deserve to be insulted like that. More liberal people understand the need of adopted children—borne by, and perhaps desired by, a woman other than their adoptive mother—to seek out their identity, but they refuse to extend that to artificially conceived children whose existence and life could have had no reason or beginning without their intended parents.

From needs to rights

These simplistic and patronising arguments do not stand up to scrutiny. Artificially conceived children feel a need for identity just as much as anybody else ; and this is no trivial matter. Théry writes

"Gametes are unlike other bodily elements, because they always have meaning. The official line justifying anonymisation would have it that there is nothing beyond the gametes. 'they are in the nature of a gift'. But behind the gift there is the human being who made it."[7]

A unique human being with a face and a name who is the origin of the conception that led to the child.

Of course, not everyone feels the need to know their origins with the same intensity or shows it in the same way. Some children want to know in adolescence while others wait to undertake their quest until they are adults or even approaching retirement[8]. Yet others never feel the force of the question. The need for identity, as a concept, is nonetheless basic. A number of specialists today acknowledge the decisive role for people in this situation that knowledge of their origins plays in the process of establishing their identity.

As always, recognising a need is not enough to ensure that it will be satisfied. Some day the need will have to be met by a real right to discover one's origins. Such a right would not only finally mark society's acceptance of artificial conception—by leaving behind the hush-hush culture of secrecy that has always been at its heart—but would also establish the child as a person with rights whose interests may differ from those of the other players.

Although the transition from need to right has been achieved smoothly in some countries, in others it still evokes incomprehension and fear.

5 ibid pp 46-48.

6 Passed on 20 November 1989 by the United Nations, it came into effect on 2 September 1990.

7 *op. cit*. note 4 above pp 127 and 128.

8 In *Jaggi v Switzerland* No. 58757/00 European Court of Human Rights (ECHR) 2006-3 para 40, the 67 year old applicant wished to obtain a DNA sample from a dead man he thought was his biological father—not because of an inheritance, but in order to discover his origins. The ECHR found: "Even if it were true that the applicant […] who is now 67 years old could have developed his personality without being sure of the identity of his biological father, it must be allowed that the interest a person may have in knowing his ancestry certainly does not disappear with age, rather the reverse. Moreover the applicant has shown a genuine interest in discovering his father's identity, because he has been trying for the whole of his life to achieve certainty about it. Behaviour of this kind suggests mental and physical pain, even if they do not appear in the medical record."

The right to knowledge of one's origins around the world

Since 1985 Sweden has given children born through artificial conception the right to know the identity of the sperm donor who led to their conception[9]. Later the Swedish Act was amended to allow, if necessary, the identity of a female egg donor to be revealed[10]. Swedish children can exercise their right once they have come of age, unless they can show that they are mature enough before that. In Switzerland from 1992 under the federal constitution "All [adult] persons have access to information relating to their ancestry"[11] In the United Kingdom the principle of anonymity for the donor of gametes was abandoned in 2005[12]. Once they have come of age, children who have been artificially conceived may obtain details of the male or female donor who was party to their birth. Arrangements ensuring that the process is transparent have also been adopted in Austria[13], Australia (in the State of Victoria[14]), Norway[15], the Netherlands[16], New Zealand[17] and Finland[18].

Some countries, like Iceland and Belgium, have decided instead to install a "twin track" system, allowing the donor to choose between anonymity and openness. In these countries children who have been conceived artificially have a right to details of the donor only if the donor has agreed to that at the time of the donation.

On the other hand, some countries have kept the principle of donor anonymity[19], sometimes after lively debate. This is especially so in France[20], where the issue has been argued around for some twelve years. Several proposals for legislation have been tabled aiming to open the door at least half way to greater openness, but to no avail[21]. The wall of secrecy appears unbreachable for reasons which, according to Théry, reveal a profound lack of understanding[22].

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9 *Swedish Insemination Act*, (SFS 1984:1140).

10 In 2006 the legislation and regulations about artificial conception and genetic integrity were consolidated into a single law, *The Genetic Integrity Act,* (SFS 2006:351), see: http://www.smer.se/Bazment/266.aspx. The right of a child born from donated sperm or egg to obtain information on the donor is set out in Chapters 6 and 7.

11 Federal Constitution of the Swiss Confederation of 29 May 1874 art 24 9) g). This right is currently set out in article 119 2) g) of the *Constitution fédérale de la Confédération suisse of 18 April 1999.* The texts *of* the various constitutions may be found on-line at*:* http://www.heinonline.org/HOL/COWShow?collection=cow&cow_id=402 In 2001 Swiss legislators confirmed the application of this constitutional right to cases involving artificial conception. *Loi fédérale du 18 décembre 1998 sur la PMA (LPMA)*, RS 810.11: http://www.admin.ch/ch/f/rs/c810_11.html.

12 *Human Fertilisation and Embryology Act* (UK), 1990, c. 37, at: http://www.bailii.org/uk/legis/num_act/1990/ukpga_19900037_en_1.html amended in 2004 by the *Human fertilisation and Embryology Authority (Disclosure of Donor Information) Regulations 2004*, see: http://www.legislation.gov.uk/uksi/2004/1511/pdfs/uksi_20041511_en.pdf.

13 *Medically Assisted Procreation Act,* (Law No. 275, 1992).

14 *Infertility Treatment Act 1995* (Vic.), see: http://www.austlii.edu.au/au/legis/vic/hist_act/ita1995264/

15 *Act of 5 December 2003 No. 100 relating to the application of biotechnology in human medicine,* see: http://www.ub.uio.no/ujur/ulovdata/lov-20031205-100-eng.pdf

16 *Law of 25 April 2002 on rules relating to the setting up, management and communication of data about artificial insemination by donor* (Loi relative aux données concernant l'insémination artificielle par donneur), See World Health Organisation report <http://apps.who.int/idhlrils/results.cfm?language=french&type=ByVolume&intDigestVolume=53&strTopicCode=VII> (original title: *Staatsblad van het Koninkrijk der Nederlanden*). On reaching age 16, children can obtain the identity of the donor. Note that the donor can object but must show good cause. See: « L'anonymat du don de gamètes », Documents de travail du Sénat, Série législation comparée, no LC 186, Paris, September 2008, p. 22,at: http://www.senat.fr/lc/lc186/lc186.pdf.

17 *Human Assisted Reproduction Technology Act 2004* (NZ), 2004/92. at:http://www.legislation.govt.nz/act/public/2004/0092/latest/DLM319241.html.

18 *Act on Assisted Fertility Treatments*, 2006/1237, at: http://www.finlex.fi/en/laki/kaannokset/2006/en20061237.pdf.

19 In particular Spain (Law n° 14 of 26 May 2006. In Spanish: *LEY 14/2006, de 26 de mayo, sobre técnicas de reproducción humana asistida,* see :http://www.institutobernabeu.com/upload/ficheros/ley_de_reproduccion_asistida_2007.pdf and Denmark (except in cases of reproduction assisted by midwives): *Act on Medically Assisted Reproduction* (10.6.1997:460), amended by law no. 427 of 10 June 2003 and law no.923 of 4 September 2006.See: *«L'anonymat du don de gamètes»*, Les documents de travail du Sénat, Série législation comparée, n° LC 186, Paris, September 2008, pp 15 and 17, as well as the data compiled on the WHO website: http://unesdoc.unesco.org/images/0018/001832/183235f.pdf .

20 Donor anonymity in France results from law no. 94-653 of 29 July 1994, relating to respect for the human body, and from law no. 94-654 also of 29 July 1994, relating to the donation and use of parts and products of the human body and to medical assistance in reproduction and prenatal diagnostics. It is embodied in article 16-8 of the *Code civil* and in article L1211-5 of the Public Health Code—*Code de la santé publique.*

21 For a summary of these proposals see Théry *op. cit*. note 4 above pp76-79.

22 *ibid.* p 69.

Opponents of the proposed reforms first raised the spectre of the "biologicalisation" of filiation. The wish to lift anonymity, they maintained, would draw France away from its judicial traditions by enshrining the triumph of blood over goodwill and commitment, which have traditionally been the basis of filial ties. But it has never been a question of attributing a filial tie to the donor. In the countries that recognise the right of children to discover their origins (as well as in those that do not) the donor remains and will always remain a donor with no attribution of a filial tie to the child either directly or indirectly[23]. The donation of gametes at the start of life is one thing, filial ties and parenthood are something else. Moreover, children looking into their origins are not seeking parents:

> On the contrary [they] constantly repeat that they already have parents whom they love, that they have never questioned any of that and that they are doing something different—looking for their history and how their personal identity was formed.[24]

Opponents also raise the denial of rights and the injustice that would follow from the retrospective application of a law allowing anonymity to be lifted. However, there is no question of subjecting past donations to different rules from those that were in force at the time the donation was made. Donors who made donations before any change was brought in would be able to keep their "privilege" of anonymity, although they could give it up voluntarily if they wished[25]. Non-retrospection forms part of the legislation in all countries that have lifted donor anonymity.

A final point that has been raised is the deep disquiet that openness would inflict on children who—for one reason or another—do not want to know. But there has never been any question of forcing whatever it might be upon them. Those who wanted to could access the information; the others would simply not make use of the newly created right[26]. Here again, the legislative experience of the countries in the vanguard is instructive. They all show great respect for the wide range of experience in the lives of the children concerned.

Even though this series of misunderstandings has killed off the hope that might sustain the supporters of a right to identity, at least the French people have had the chance to debate the issues in the political arena. It is a definite advance, compared to the silence that characterises some societies, like Quebec. On this side of the Atlantic, the principle of donor anonymity lives on without any public discussion of its basis or relevance[27]. However, an opportunity did arise recently. In 2010 the Quebec legislature passed a new law to regulate the activities of clinics and research connected to artificial conception and to allow for public funding under certain conditions[28]. Without any interest being shown in the matter[29], the legislation reaffirmed donor anonymity by forbidding fertility clinics to divulge to the parties concerned—particularly to the child—any information that might reveal the identity of the donor, even if the donor had previously consented[30]. Among other things, clinics are required to keep the relevant files on a permanent basis, although as yet no standards for maintaining them have been established. Moreover, given that the right to identity excites interest around the world, Quebec is showing what may turn out to be considerable temerity or great lack of conscience in entrusting these files to private businesses exposed to the risk of theft, rather than to an agency of the state.

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23 Germany is an exception. Filiation there has always been based on biological origin. See article 1591 of the German Civil Code http://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html which declares that the child's mother is the woman who has given birth to him or her. See also article 1600(1)4 which allows an artificially conceived child to contest the paternity of his mother's husband (under article 1592(1) the father is deemed to be the man who is married to the mother at the time of the birth). An investigation into paternity can subsequently allow a filial tie to be established between donor and child. This derives from the general right to legal personality set out in articles 1(1) and 2(1) of the *Basic Law of the Federal Republic of Germany*. On this, see Frank Rainer, « La signification différente attachée à la filiation par le sang en droit allemand et français de la famille », (1993) 45:3 *Revue internationale de droit comparé* 635.

24 Théry *op.cit.* note 4 above, p.20.

25 ibid. p 80 and G Delaisi de Parseval and V. Depadt-Sebag, op.cit. note 3, p. 51.

26 Théry *op. cit.* note 4 above, p. 28.

27 Some commentators and organisations have deplored the absence of public discussion on the issue, but without success. See particularly: Québec, Assemblée nationale, *Journal des débats de la Commission des affaires sociales*, 2e sess. 37e légis., 29 March 2006, « Consultations particulières sur le projet de loi n°89 – Loi sur les activités cliniques et de recherche en matière de procréation assistée et modifiant d'autres dispositions législatives. Interventions du Conseil du statut de la femme », at: http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/cas-37-2/journal-debats/CAS-060329.html.

28 *Loi sur les activités cliniques et de recherche en matière de procréation assistée*, L.R.Q., c. A-5.01.

29 *ibid.*, art. 44 al. 2. See also article 542 C.c.Q.

30 Note that the Quebec legislation came into force during the time when the provisions of the [Federal] *Law on Assisted Reproduction* (L.C. 2004, c.2), setting up a national register of data relating to assisted reproduction, were being challenged before the Supreme Court of Canada. According to the depositions before the Court, where the donor had given consent the child would have been able to have access to information held on the register about the donor's identity. Several months later the Supreme Court declared these provisions to be *ultra vires* the Federal Parliament. *Renvoi relatif à la Loi sur la procréation assistée*, 2010 CSC 61.

The judicial basis for the right to identity

What are the main principles or fundamental bases to which the right to identity can lay claim in those countries that still refuse to sanction its existence? There are two distinct, but parallel, routes. The first is specific to children, while the second relies more generally on fundamental rights and liberties.

The Convention on the Rights of the Child

Ratified by all member states of the United Nations apart from the USA and Somalia, the *Convention on the Rights of the Child* recognises the importance of the child's origins in articles 7 and 8.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

These articles demonstrate the care that the international community now takes over issues to do with children's origins. Whether they have been adopted or conceived artificially, this can provide support to children in searching for their origins. That said, articles 7 and 8 are subject to interpretation and contain reservations that may affect their bearing on the issue. Article 7 recognises the child's right to know its parents, but which parents exactly? In cases of adoption are they the biological or the adoptive parents? In cases of artificial conception, can the donor be included within the terms of the article even though no filial bond can be made with the child? Article 8 requires states to protect the child's identity, "as recognised by law".

In countries that maintain donor anonymity or where biological parents have given up their child for adoption, does the reference to "national law" restrict the significance of the protection of the child's identity? These questions, which have divided commentators for several years, mean that we have to look elsewhere for the basis of an effective right to know one's origins[31].

Fundamental rights and liberties

Fundamental rights and liberties definitely provide a more secure foundation. First of all, consider the right to equality that is guaranteed in several constitutions across the world, notably in the *Canadian Charter of Rights and Freedoms*[32]. How can there be equality if some people are denied basic information that is available to others? The rights to dignity and to a private life could also have a bearing. Is it not an attack on these fundamental rights if an individual cannot have access to a fact as intimate and personal as his or her origins?

The European Court of Human Rights has already had to take a view on these issues, in the light of Article 8 of the Convention[33]which covers the right to a private and a family life:

"Respect for private life requires that everyone should be able to establish the details of his or her identity as a human being and every individual's right to this information plays an essential part in the development of their personality."[34]

That is not to say that every ban on access to a personal file would be held invalid. Every state has some room for manoeuvre to ensure a fair balance between the different interests involved[35].

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31 For a summary of possible interpretations, see Michelle Giroux, « Le droit fondamental de connaître ses origines biologiques », in Tara Collins, Rachel Grondin et al. (dir.), *Rights of the Child. Proceedings of the International Conference / Ottawa 2007*, coll. « Bleue », Montréal, Wilson & Lafleur, 2008, pp. 353-383.

32 Part I of the Constitutional Law of 1982 (*Loi constitutionnelle de 1982)* [annex B of the UK *Canada Act*, 1982, c. 11 art. 15(1)].

33 European Convention on Human Rights, 4 November 1950, 213 R.T.N.U. 221, S.T.E. 5 [Convention européenne des droits de l'Homme].

34 *Mikulic v. Croatia,* no, 53176/99, ECHR 2002-I, no 54. See also *Gaskin* v. *The United Kingdom*, no, 10454/83, ECHR 1989, no. 49; *Jäggi* v. *Switzerland*, op. cit., note 8 above and *Odièvre* v. *France*, [GC] n° 42326/98, ECHR 2003-III, §§ 28, 29 et 44.

35 *ibid.*

Thus in the *Odièvre* case[36] the Court was asked to pronounce on the validity of the French practice of "anonymous birth", also known as *accouchement « sous X »* which allows the mother to conceal her identity and so deprive her child of a maternal link. By 10 votes to 7, the Court rejected the application because of the provisions of a French law which, since 2002, has allowed the release of identifiable information to the extent that the mother has given her prior consent[37]. The majority view was that that gave a fair balance between the rights of the mother and of the child to a private life. For the dissenting minority, the fact that the mother could maintain her refusal gave her a preferential position in relation to her child. In their view, the imbalance would remain until an independent body existed that could arbitrate or resolve conflicts of interest in cases concerning rights[38].

Conclusion

The debate on access to knowledge of one's origins is now an important aspect of family rights. Both in matters of adoption and artificial conception, the rights of the child justify a recasting of the rules which have historically barred individuals from information about their identity that is held in their files. Their basic rights should be respected.

The battle is far from won in those countries that have kept to the *status quo*. In support of the tradition of secrecy that the new realities of family life have rendered obsolete, fresh arguments are being advanced about the operation and sustainability of artificial conception. Without the principle of donor anonymity, a big reduction is predicted in stocks of sperm. Without anonymity, it is maintained, no donor would be willing to contribute so that other people could become parents. But experience has shown that this argument does not stand up. In practice, those countries that lifted donor anonymity did see a fall in stocks, but only a temporary one. After a few years, stocks are being progressively replenished.

More fundamentally, the lifting of anonymity has allowed a new kind of donor to emerge, more aware of the consequences of his actions and more alive to the importance that his role might play in the personal development of the child's sense of identity. In fact, removing anonymity has led to a conceptual rethinking of artificial conception, with Théry's model of "see nothing, know nothing" being replaced by a model of "responsibility" where each individual recognises the particular nature of their contribution and respects the contributions of the others—to the great benefit of the child[39].

This article has been translated from the original French.

Professor Alain Roy is a Doctor of Law and tenured Professor in the Law Faculty of the University of Montreal, Canada. He focuses on research and teaching in the fields of law concerning children, young people and the family. He is the author of «Droit de l'adoption» published by Éditions Thémis, Montreal in 2010.

36. *Odièvre v. France,* note 36 above.

37 Law no. *2002-93 of 22 January 2002*, J.O., 23 janvier 2002, 1519. The Court considered that, in the absence of EU–wide standards on the subject, States should have a degree of freedom in setting up mechanisms to reconcile the conflicting rights of different parties. In *Odièvre* the Court concluded that « France has not gone beyond the margins that should be allowed by reason of the complex and delicate nature of the issues surrounding origins, given each person's right to a personal history, the choices made by the biological parents, existing ties with the family and the adoptive parents." *Odièvre* v. *France*, note 36, above, § 49.

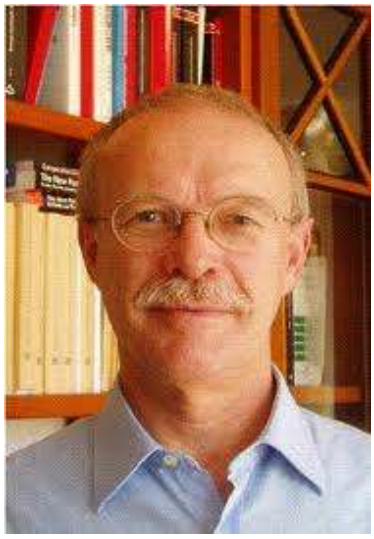
38 *Odièvre v. France* note 36 above, §§ 7 and 18 of the dissenting judgement. Note that under the Law of 22 January 2002, note 39 above, a state agency that can intervene in the process does exist "*Le Conseil national pour l'accès aux origines personnelles (CNAOP)*". However, this body cannot override a refusal by the mother to allow access to data about her, whatever reason she gives for her decision. Note also that the need for an independent body was discussed several years earlier in the decicion in *Gaskin* v. *The United Kingdom*, n° 10454/83, ECHR 1989, § 49.

39 Théry, note 4 above, p.131

Young offenders in mental health institutions—a European perspective

Dr. Frieder Dünkel & Dr. Ineke Pruin

Dr. Ineke Pruin



Dr. Frieder Dünkel

1. Introduction

It is well known that a significant proportion of young offenders in custody suffer from mental disorder or mental illness[1]. The corresponding problems are often neglected or underestimated. These high prevalence rates of prisoners with mental disorders indicate the importance of providing diagnosis and psychiatric or psychological therapy within prisons.

However, our focus in this article is not on the prison system, but on the living conditions and human rights of young offenders who have been sentenced to psychiatric treatment and placed in forensic institutions within the mental health system. Knowledge about these offenders is limited and we often do not have exact figures for young offenders who have been sent to mental hospitals or institutions for treatment instead of being held criminally responsible.

Our article draws on a comprehensive questionnaire sent to all 46 of the member states of the Council of Europe in 2006 / 2007 at the time when the Council was drafting its European Rules for Juvenile Offenders Subject to Sanctions or Measures (ERJOSSM), Recommendation (2008) 11. Since human rights standards should be the same in juvenile welfare, justice (pre-trial and sentenced offenders) and psychiatric institutions, the general approach of the Recommendation—taking a holistic approach to all juvenile offenders within the various institutions—deserves full support.

Following this approach, the general part of the Recommendation concerning deprivation of liberty contains 145 rules (Rules 49.1-107.2), while the specific part on psychiatric institutions adds only three more (Rules 117-119).

The rehabilitative aim and principles—such as establishing an overall plan providing a variety of meaningful activities, regimes with individualized interventions, contacts with the outside world, and preparation for release and continuous (through) care, including aftercare by services which should already be involved during the institutional treatment—apply across the board to custodial (prison-like), welfare, psychiatric and mental health institutions alike. The specific rules for mental health institutions are that "*treatment for mental health problems … shall be determined on medical grounds only*" and that "*safety and security standards shall be determined primarily on medical grounds*" (Rules 118. and 119.).

A Recommendation of 2003 from the Council of Europe also deserves attention, stating that "*to address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender*" [2]. This rule also refers to juvenile offenders with psychological disturbances and psychiatric problems.

2. The questionnaire

Replies to the questionnaire were received from 33 of the 46 Member States.[3] However, many countries did not reply to the entire questionnaire. There were several reasons for that. The questionnaire was very ambitious with about 200 questions.

[1] In their systematic review of 62 studies in 12 countries *Fazel* and *Danesh* (2002) found that about 15% of prison inmates (adult and juvenile) could be classified as seriously mentally ill according to traditional psychiatric disease patterns such as schizophrenia, serious depression etc. In a later review of 25 surveys focusing on juvenile and adolescent offenders even higher prevalence rates were found—*Fazel/Doll/Långstrom* (2008).

[2] "New ways of dealing with juvenile offenders and the role of juvenile justice", CoE Rec (2003) 20 (Rule 8)

[3] In this case we count England and Wales together with Scotland, as they are part of one member state. The following member states did not reply: Albania, Azerbaijan, Bosnia and Herzegovina, Croatia, Iceland, Liechtenstein, Luxembourg, Moldova, Poland, Romania, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia. Montenegro became a Member State only on 1 July 2007, when our inquiry had already largely been completed.

The questions covered areas for which different ministries were responsible, so a complicated procedure had to take place within Member States and different branches or departments were not always able to deliver information in good time.

Particular problems were experienced in providing information about the numbers of young offenders in mental health institutions.[4] This may partly be explained by the fact that in many of these institutions juveniles and adults are not strictly separated and therefore differentiated statistics are not readily available even for the national authorities themselves. Thus there is not enough statistical data available to compare variations in the number of detainees between the respective institutions and countries or to analyse special groups of offenders.

Our summary analysis of the replies to the whole questionnaire[5] was published by the Council of Europe in 2009.

3. Legal aspects of placements in mental health institutions

Only 18 out of the 33 responding countries provided information on the *relevant legislation*.[6]

The answers indicated that the *grounds for placing* juvenile offenders in a mental hospital are very similar across member states and that such deprivation of liberty is used only as a last resort. It is used particularly when there are indications of mental illness that might be relevant to the question of responsibility under criminal law. It is not the seriousness of the offence, but the seriousness of the mental illness that determines placement in a psychiatric institution.[7] The Scandinavian countries emphasised this aspect, as did Latvia, Austria and Germany.

Criminal law systems based on the twin-track approach (eg. Austria and Germany)—with penalties for criminally responsible offenders and penal measures to rehabilitate the offender and protect the public from mentally ill "dangerous" offenders—typically contain these sanctions within their criminal codes, although the implementation and execution of the measures may be regulated within mental health care legislation.

Grounds for placement are typically mental health needs, crisis intervention and (also for diagnostic purposes) the gravity of a criminal offence in connection with (serious) mental health disorders.[8] The placement of juvenile offenders is not always made by compulsory order but may occur with the consent of the juvenile and his parents or legal guardians, particularly in the field of child welfare or civil law family legislation.[9]

Where there is a court referral order, in most cases it is a *criminal trial court* that places a juvenile offender in a mental health institution. But there are different models in Scandinavia where, for example, in Finland the referral is prepared by several medical experts and decided on by an *administrative court* according to the Mental Health Act (sec. 9-11).

As mental health orders for juvenile offenders are typically of indeterminate length, the question of *who decides on release* is crucial. In Austria and Germany a special branch of the court (3 judges) is responsible for the release decision, in Sweden an administrative court is involved and in Finland the National Authority for Medico-Legal Affairs. In Norway the mental health professional at the institution has the power to order the release of a transferred person. In addition the mental health professional can make a request to the court to transfer the person from compulsory mental health care to a prison service facility. In general the renewal, transfer and release from compulsory mental health treatment is ordered by a court on the basis of the recommendation or expert opinion of medical staff, normally the doctors involved in the treatment, but sometimes—as required in Germany—also from external psychiatric experts.

All nine countries answering the relevant question emphasised that only *public (and not private) services* are involved in dealing with juvenile mentally ill offenders.[10]

Only five countries reported on *daily net costs,* with figures ranging from lows of €22 in Latvia and €38 in Estonia through €268 in Germany to €537 in Austria with Sweden reporting a range of €400-1,200. Even given different levels of income and costs for basic needs, it appears that the level and quality of services varies significantly.

In general the *age limits* for assigning a juvenile offender to a psychiatric institution are the same as for criminal sanctions.[11] However, civil law decisions may result in mentally ill children below the age of criminal responsibility being placed in a psychiatric institution.

As measures applied to mentally ill juvenile offenders are of an *indeterminate nature* there is usually no fixed *minimum* or *maximum* period. In Estonia, however, there is a fixed minimum of 6 months for placement in a psychiatric institution.

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4 For example, statistical data published by the Council of Europe (SPACE) indicate only the total numbers of mentally ill offenders held in psychiatric institutions with no differentiation by age.

5 Dünkel, F., Pruin, I. (2009):

6 Five countries—Belgium, Estonia, Finland, Germany and Sweden—indicated that English versions of the relevant legislation are available.

7 The gravity of the offence may be included among other factors indicating the need for compulsory psychiatric treatment. So, for example, Art. 94 of the Ukrainian Criminal Code stipulates that "*compulsory medical measures may be imposed depending on the seriousness of a mental condition, the gravity of an action committed, and the degree to which the offender is dangerous to himself or others.*"

8 In Finland a minor can be legally required to receive treatment in a psychiatric hospital against his/her will, if a) the person needs treatment for a serious mental disorder which, if left untreated, would deteriorate or severely endanger his/her health or safety or the safety of others, and if all other mental health services are inappropriate. (Mental Health Act, section 8), b) a mental examination of a suspect is required (Mental Health Act, sections 15 and 16) or c) an assessment for psychiatric hospital treatment and/or a subsequent treatment is needed for a person who has not been sentenced on grounds of his/her insanity (Mental Health Act, sections 21 and 22).

9 Belgium reported an interesting pilot project within the Public Health Service which established special units for juveniles with an indication of mental health disorders. Staffing is interdisciplinary, the placement by judicial order, but a welfare order aims to provide the necessary therapeutic and treatment arrangements. The measure can last only 6 months and be renewed only once for up to 6 months.

10 Except that within the scope of the Belgian pilot projects mentioned above some private hospitals may be involved.

11 Dünkel *et al* (2010).

In general the *principle of proportionality* also applies to the imposition and implementation of a placement in a psychiatric institution. So, for example, in Austria such a placement is possible only if the crime committed would be punishable with more than one year of imprisonment. In Germany compulsory drug and alcohol treatment in an institution of the health care system can last for a maximum of only two years. In many countries a review is necessary if treatment is to be extended (in Sweden every six months, in Austria and Germany after one year, in Greece every three years). As stated above, it is not the seriousness of the offence, but the *seriousness of mental illness* that determines the placement in a psychiatric institution[12].

Special regulations exist in some countries for those offenders who are sent to psychiatric institutions for *observation and diagnosis*. In Finland in order to extend the stay for further examination or treatment an expert opinion must be given within four days. Compulsory treatment may not last longer than three months. A further extension of up to six months needs the approval of the Administrative Court and any longer compulsory treatment needs a decision by the National Authority for Medico-legal Affairs.

4. Legal and administrative framework of mental health institutions

In this section we report on sixteen aspects of the organisation of mental health institutions. However, the number of countries responding to this part of the questionnaire was low.

- **responsible Ministry (9 countries)**

The responsibility for organization and living conditions in psychiatric institutions for offenders generally lies with the Ministries of Social Affairs and/or Health Care.[13] This leads to a different approach from that of the Ministry of Justice responsible for prisons—much more treatment-oriented and with staff in psychiatric institutions being primarily medical staff.

- **guiding principles (7 countries)**

The answer from the Finnish questionnaire—based on the Finnish Mental Health Act and other administrative legislation—best explains the key principles of organising the placement in a psychiatric institution:

- *respect for human dignity and human rights (e.g. right of self-determination);*
- *respect for the rights of the child, the priority of the child's best interest;*
- *promotion of psychiatric health and development, well-being and the ability to function;*
- *prevention and treatment of psychiatric illnesses and disorders;*
- *medical, social and professional rehabilitation; and*
- *the prioritisation of non-institutional care."*[14]
- These principles are probably similar in most countries.

- **geographical location (7 countries)**

Finland reported that

Institutions for care and treatment are situated almost without exception (just like other hospitals and health care facilities) in population centres, or in their close vicinity, so that patients can be sent in the first instance to a hospital of his/her hometown or area of residence.

The principle of being allocated to an institution close to homes or places of social rehabilitation seems to be widely recognised and is probably normal practice in many countries because units for juvenile offenders are usually situated within a larger psychiatric care complex.

- **accommodation standards (7 countries)**

A very high standard is indicated for Belgium, where juvenile offenders in psychiatric institutions are accommodated in separate living units of 8 single rooms. These units have rooms for therapeutic treatment, recreational facilities (for example for group activities) and may include guest rooms if the presence of a family member is considered beneficial. If shared sleeping rooms are provided, the maximum is four beds. Belgian law lays down strict rules for the *minimum space* for juveniles in psychiatric institutions: A single room must provide at least 8 m^2, a shared room for juveniles above ten years 6 m^2, for those below ten years 5 m^2 and for those below three years 3m^2 per individual.[15]

In Estonia, a general hospital room provides 7 m^2 per person, single rooms 8 m^2 and special rooms for surveillance 9 m^2.

The standard in the German state of Bavaria is for two-bedded rooms each with a toilet/shower set in small living units with a standard occupancy of 14 patients per unit, designed to be as close as possible to normal living conditions at home.

In Greece all patients live in rooms with 2-4 beds. There is also a room for social activities and a special room for visits.

Finland and Sweden reported that standards for accommodation are not prescribed in their legislation.

- **differentiation, classification and separation (7 countries)**

Some countries provide separate facilities for boys and girls, young mothers, and specific offender and age groups. The small numbers of juveniles in psychiatric institutions may make this difficult. In Finland there is a differentiation in accommodating children below age seven from those of school age, but the living units are mixed (boys and girls). Sometimes special units are created for special treatment (e.g. a unit for patients with eating disorders, a unit for families), or depending on the severity of the disease or difficulty of treatment. In Germany, boys and girls live in the same unit, but sleep in separate rooms at night. In Latvia 14-15 year old juveniles are accommodated in psychiatric institutions for children (where boys and girls are mixed), those over 15 in adult institutions, where the accommodation is mixed only when the juveniles are specially guarded.

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12 See note 7 above.

13 The Estonian report revealed that there is joint responsibility between the Ministry of Justice and Ministry of Social Affairs. The Latvian authorities reported that the Ministry of Education is responsible for education in psychiatric departments for juvenile offenders which are run by the Ministry of Health.

14 Very similar statements were given in the Swedish response with regard to the Swedish Health and Medical Services Act.

15 Furthermore, there are specific regulations for the architecture of sanitary facilities in Belgium. There must be one wash basin with running water for every two patients, one bathroom (with shower) for every 10 patients and one toilet for every 5 patients. It is even stipulated that a garden, terraces and/or yards should be available to patients for walking outside.

- **educational and rehabilitative programmes (7 countries)**

Programmes are generally prescribed by law—school work, psychological and other treatment, meaningful leisure time activities etc. But only a few countries reported how these programmes are structured and who is responsible for delivering adequate programmes. Belgium reported an interesting network of internal institutional programmes and activities and services organised from outside by local communities and various state and private organisations. The programmes have to be organised on a temporary basis as, according to the law, they can last only six months with the possibility of one extension for an additional six months.

In Finland the general approach includes various therapies, supervised recreational activities, and if possible, practical training, etc. These therapies are not specified in the legislation. School attendance by children of compulsory school age (usually between 7 and 17) is stipulated in the Basic Education Act and, depending on their condition and ability, these children and juveniles attend school in hospital. In most cases, they attend the hospital school but, if necessary, private tutors are arranged for them.

In Germany multi-professional teams prepare patients for the Lower Secondary School-leaving Certificate or the Intermediate Secondary School-leaving Certificate. German language courses, vocational training measures—such as apprenticeships during home leave—and meaningful leisure-time activities are also offered.

Similarly, in Latvia an integrated approach of therapeutic, educational and vocational programmes is provided.

- **compulsory treatment (8 countries)**

The responses were not always explicit, but those countries that provide special measures for alcohol and/or drug treatment—such as Germany and Sweden—evidently provide such treatment under compulsion if appropriate.[16]

The *Finnish* response was the most comprehensive and shows a sensitive and exemplary consideration of the human rights aspects:

If a child under the age of 18 severely endangers his/her own health or development by misuse of substances, the Child Welfare Act (section 16) stipulates that, where necessary, the child shall be taken into custody and substitute care shall be provided for him/her. During this period in institutional care, a child may be subject to the restrictions stipulated under the Child Welfare Act, but only to the extent that is required to fulfil the purpose of the custody, and to safeguard the child's or any other person's health or safety, as stipulated in the Act. The procedures shall be implemented with utmost care and safety and the child's human dignity shall be respected (section 30a).

It would be desirable for legislation in other countries to follow this approach.

- **outside contacts (6 countries)**

In Belgium c*ontact* of juveniles *with the outside world* (visits, long-term visits by the family, leave, etc.) is possible only with the permission of the juvenile judge.

In Germany, *"From the very beginning of the therapy, juveniles are able to receive visitors on a regular basis; later on, excursions with staff members are provided; then home leave—for hours at a time during the day at first and, finally, also at weekends. In addition there is also the possibility of 'home leave' and of work outside the facility*."

In Greece "*all patients are allowed to have visits three times a week, subject to the doctor's approval and depending to the condition of their health*."

These statements from Germany and Greece are remarkable in that the opportunities for contact with the outside world are much more developed than in the custodial settings of youth prisons etc, even though psychiatric patients are usually deemed to be a 'danger' to the public (or themselves).

In Sweden, under provisions in the Forensic Mental Care Act, patients may get permission to go outside the bounds of the medical institution for a certain period of time. Other forms of contact are not regulated by this law.

In Latvia only visits to the institution—particularly from the family (and legal guardian)—are permitted. Leave for the patient outside the institution is not allowed.

- **involvement of parents (7 countries)**

The emphasis given to this aspect varies considerably. Belgium provides for parents to ask for the juvenile to be transferred to the family if the kind of mental illness and options for treatment allow for family care. In Finland "*a child's contact with his/her parents or guardians, and co-operation with them during a child's psychiatric care, is of utmost importance*".[17] However, in neighbouring Estonia, authorities show some reluctance, stating "*if needed, then it is possible to involve parents.*" Sweden said that, according to the Forensic Mental Care Act, relatives are involved unless it is deemed inappropriate.[18]

- **ending the placement and aftercare (7 countries)**

In Sweden, procedures to end the placement can be initiated by the juvenile himself or any other interested person (eg. parents), but it will usually be the medical director who makes the recommendation for release. The public prosecutor will then be involved and possibly formal (and independent) psychiatric assessments will be needed. As with the decision on placement, it will be a judge who decides on release.

16 Only Latvia explicitly denied the possibility of such compulsory treatment.

17 The response from Germany was similar: "*Early establishment of contact with parents and relatives and discussions with relatives is an inherent part of the therapy programme. In the course of treatment, home leave together with relatives and weekend leave to visit relatives also become possible. Preparation for release is carried out with the involvement of the social setting into which the patient is to be released*." Also the Latvian authorities emphasised the "*important role*" of integrating parents, "*especially in period of preparation for release*."

18 This is in line with the ERJOSSM which express this reservation in Basic Principle No. 14 (…"*except if it is not in the best interests of the juvenile*")

Similarly, in Finland the decision to terminate treatment is made primarily by the doctor in charge of the child's treatment. But there is also access to administrative judicial authorities if release is being refused.

In preparation for release, outside services—for example, the probation service, private welfare agencies—are usually involved, and sometimes their involvement is obligatory.

Belgium referred to a model project[19] where the psychiatric institutions and (private) after-care services of the communities work closely together in order to ease the process of social reintegration.
Again, the Finnish response demonstrated good practice:

In practice, any necessary follow-up treatment of and other support measures for a minor, after hospital treatment, are always carefully planned, bearing in mind the individual needs of the child, and in co-operation with all the parties involved, including basic health care authorities, school and child welfare authorities. In addition, it is possible to arrange for the child to make follow-up visits to the outpatients' clinic of the hospital where he/she was treated.

However, some of the few respondents demonstrated the problems that national systems still experience. Greece stated that "*no structured procedure*" is provided and Latvia notes that the state probation service deals only with persons in prisons. There seem to be structural problems with after-care services being unavailable, particularly in central and eastern, but also in southern European countries and possibly also elsewhere. On the other hand, the Scandinavian countries seem to have developed much more comprehensive ways of supporting the transition from psychiatric detention to liberty. Sweden, for example, stated:

The preparation for discharge generally includes numerous permissions to leave the bounds of the medical institution for a certain time, according to the provisions in the Forensic Mental Care Act. Cooperation with social agencies is an integral part of this process.

- **transfer to other institutions (7 countries)**

Belgium reported that with the consent of the director of the medical institution a transfer may be made to another institution that provides more appropriate treatment. The young person and his representatives must be informed and can object to the proposal in writing within eight days. The juvenile judge and the prosecutor must also be informed.

The Finnish response emphasised that substance addiction can be treated in juvenile psychiatric institutions as part of the patient's general psychiatric treatment:

If after the psychiatric hospital treatment a juvenile needs follow-up treatment in an institution specialising in substance abuse, the transfer shall be planned and implemented (just as with any other follow-up treatments and procedures) according to a treatment plan and in co-operation with the young person, his/her parents, and those in charge of the follow-up treatment.

Most of the few other countries that replied indicated some problems as there is no structured or regulated procedure for such further treatment.

maintaining good order (7 countries)

Measures to maintain order—security measures, disciplinary measures, use of force etc—are provided for in every jurisdiction, so it is surprising that the few replies on this aspect were rather thin and vague. Only the Finnish response merits quoting:

Section 4a of the Mental Health Act stipulates that the right of self-determination and other basic rights of a patient subject to involuntary psychiatric examinations or treatment, may be restricted only to the extent that is required by the treatment of his/her illness, his/her safety, or the safety of any other person, or any other interest as stipulated in the act. Procedures shall observe the patient's safety and respect his/her human dignity. The legislation has detailed regulations on how these procedures should be implemented, recorded and monitored. Such procedures are: restriction of the right of movement and/or contact; isolation; detention; involuntary medication; involuntary treatment of physical illness; binding; inspection and confiscation of the patient's personal things, and body search."[20]

- **access to legal aid (5 countries)**

All five respondents said that access to legal aid is guaranteed. Research in greater depth could explore how effective such procedures are in practice.

- **complaint procedures (7 countries)**

Answers about complaint procedures were somewhat unsatisfactory as it was not always clear how far the decisions of the psychiatric institution were subject to formal judicial complaint. It was wise to emphasise these issues in Parts IV and V of the ERJOSSM on legal advice and complaints procedures (Rules 120-124).

The more concrete question on "*access, if any, by juveniles to a court and/or other body to review administrative decisions relating to disciplinary measures, the regime to which they are subject or other aspects of the implementation of detention*" remained to a large extent unanswered. In some countries it seems not to be possible, but in general there are some procedures that guarantee at least some protection, even if it is not always a formal court, but institutions like ombudsmen or supervisory bodies of the mental health system (e.g. Sweden, Greece).

- **Inspections (7 countries)**

Regular *inspections* by *government and independent bodies* are becoming increasingly standard in Europe. The few replies to our questionnaire indicated that both state and independent inspections take place quite regularly. In Estonia and Finland an ombudsperson is involved. In Greece, a Committee for the Protection of the Rights of Persons with Mental Disorders and the Ombudsman are responsible; in Latvia the Latvian State Human Rights Bureau, Treatment Quality Control Inspection (MADEKKI) and an Ombudsman (created in 2007); in Sweden the National Board of Health and Welfare (and the general ombudsman).

[19] See note 9 above.

[20] Similarly, the Swedish response: Measures to maintain good order are "*regulated in the Forensic Mental Care Act. There is a general requirement for good security at the institutions and more specific demands on staff, premises and equipment to obtain good security. The regulation permits the measures needed to prevent patients from absconding and to maintain order at the institution*."

- **differences from adult institutions (7 countries)**

In the majority of countries it seems likely that there are no differences—as juveniles are in the same institution, and are not always strictly separated, and so on. And, indeed, only a few countries indicated differences. Again the Finnish and German comments deserve special attention. The Finnish answers confirmed some special requirements when considering juvenile offenders in psychiatric institutions:

Anyone providing psychiatric care to minors is required to have adequate professional qualifications. The examination and treatment of children and juveniles (as distinct from the treatment of adults) require knowledge of the special developmental characteristics of children and juveniles. It is also more important with children than with adults, to work inclusively with the families and other parties in the child's life (e.g. the school and school authorities). In child and juvenile units, there is usually proportionately more staff than in the adult units. ... The Public Health Act (Section 41) and the Specialised Medical Care Act (section 10) oblige the proper authorities to provide training to keep health care personnel up to date.

Similarly the German comment pointed out the differences:

The differences lie, above all, in the following areas: additional educational work, schooling, more intensive training work, greater role-model function of therapists, other legal competences and jurisdictions such as the jurisdiction of the juvenile judge, the greater significance, for example, of encouraging young offenders to pursue meaningful leisure time activities.

Another aspect was given by the Swedish authorities:

The units are smaller and more homelike.

Although the scale of the questionnaire might have had a somewhat "deterrent" effect—with the result that many countries did not reply to this part of the questionnaire—the exercise was of value. We have identified good practice (see the Scandinavian countries) and also problems in several countries. The results could form a starting point for the further in-depth research that is evidently needed in this area.

5. Juveniles in mental health institutions in practice—the case of Germany

Normally, Germany is a country which provides a lot of statistical data on criminal issues, but in the case of juvenile offenders in mental health institutions, the state of data is very limited—as it is in other countries. However, there are a few studies available for Germany that give some evidence about the placement and living conditions of juvenile offenders in mental health institutions.

In the year 2006 the Ministries of Justice and the Ministries of Social Affairs of the federal states (Länder) responsible for the organization of mental health institutions were asked about the numbers of young people placed in mental health institutions and their living conditions. Thirteen out of 16 states responded[21]. The answers allow for the following (still limited) comparisons.

On a given day in 2006, 282 young offenders aged 14-21 were in mental health institutions. 36 of them were aged between 14 and 17, 175 were young adults between 18 and 20 and for 71 no further age indication was given. In two federal states (Rhineland Palatinate and Hesse) data were available only for those who had been detained before their 18th birthday. This means that any offenders who were aged 18 or older at the time of their offence are not included into the data, although the majority of young people in mental health institutions belong to the age group of young adults.[22] In the past ten years the researchers observed an increase in the placement rates of young adult offenders aged 18 to 20. Such an increase has been observed for adult offenders as well.

If one looks at the placement rates, significant differences can be observed between the different federal states: According to a study from the year 2000[23], in Saxony-Anhalt 9 young offenders per 100,000 inhabitants were in mental health institutions, whereas in Rhineland Palatinate the rate was only 1 young offender per 100,000. According to the study, strict separation of adult and juvenile offenders was practised in 5 out of 16 federal states. The estimated average length of stay varied between 2 years in Hesse or Saxony and 4½ years in Bavaria.

In the year 2007 another research project collected and analysed data from six special juvenile mental hospitals.[24] On a given day, 100 young people[25] were undergoing treatment within these six institutions. The living conditions were quite satisfactory with (mostly single) accommodation at night and daily school and leisure time activities. On the other hand, there were almost no working facilities for the older young offenders. Moreover, the situation was under some pressure, as an increase in the number of young adults and adults over 21 years of age was causing problems of overcrowding. Schooling was mostly organised within the unit, with some allowed to leave it to attend the hospital school. Every patient could be offered a schooling place. This is noteworthy, because juveniles in youth prisons cannot always be offered a schooling place—for example in Berlin.

Regarding the young offenders who were released in the years 2006 and 2007, the average length of stay was 42 months.[26] This is also noteworthy, because the average length of youth prison sentences in Germany is only between one and two years. So it seems that juveniles stay a comparatively long time in mental health institutions compared with youth prison inmates.

After their 18th birthday young adults are usually transferred to an institution for adults. This transfer of young adults to adult mental health institutions at or shortly after their 18th birthday is highly criticized by some researchers and practitioners.[27] An especial criticism is that the transfer is only due to lack of capacity or for administrative convenience and has adverse effects on the development and treatment of the young person, who must make a fresh start under new conditions and after the loss of personal

21 Stöver *et al.* 2008, p. 256.

22 In the German criminal system, young adult offenders aged 18–21 are generally included in the juvenile justice system, see Dünkel (2010), p. 587 ff.

23 Stöver *et al.* 2008, p. 256.

24 ibid, p. 257 f.

25 Again the data relate only to juveniles who were placed before their 18th birthday.

26 ibid, p. 259.

27 Stöver *et al.* 2008, p. 261.

relationships with other inmates or staff. In only two institutions which took part in the study could the juvenile patient stay as long in the juvenile mental hospital as he needed in order to finish school or vocational training. An early transfer to institutions for adults carries the risk that the juvenile, now the young adult, will experience adults as negative role models.

Another issue of criticism is the indeterminate nature of the juvenile mental hospital order. The Netherlands, for example, have introduced time limits for the placement of juveniles in mental hospitals. Of course, such time limits only make sense if there is an opportunity for treatment outside the hospital after release if the offender needs it and it contributes to the protection of the general public. Such aftercare treatment is provided in Germany and in 2007 forensic ambulances[28] were introduced nationwide. Due to the small number of psychiatric experts experienced in matters of juvenile justice, treatment programmes and services are often delivered by non-specialized psychiatrists unfamiliar with the specific needs of juveniles, and psychiatric court-reports are often delivered by psychiatrists who are not specialized in juvenile matters. According to one juvenile psychiatrist, this leads to a broad "pathologisation" of certain juvenile behaviour,[29] and to a comparatively poor understanding of the preconditions for admission to institutions.

6. Summary and outlook

The situation of juvenile offenders in mental health institutions varies considerably across Europe. The prevailing impression of the present study is that our knowledge is particularly limited in this area. We know much more about juvenile offenders in institutions of the Ministries of Justice than we do about those in mental health care. We could term the latter a "forgotten minority" for which further research is urgently needed. An effort similar to the one that has been conducted on "normal" juvenile offenders and the functioning of juvenile justice systems[30] should be undertaken with regard to mentally disordered juvenile offenders.

It seems that the legal rules for the implementation of orders placing juvenile offenders with mental disorders are less developed than for juvenile imprisonment under the regimes of Ministries of Justice. On the other hand, the regimes for mentally disordered juveniles are orientated more towards treatment and education. Although secure detention for "dangerous" offenders plays an important role, the medical and health issues prevail. The ERJOSSM are important guidelines for further developing mental health care and treatment in specialised institutions for juvenile (and young adult) offenders.

More attention should be given to the problems of mental disorder within custodial institutions and more intensive co-operation and flexibility between justice and health care institutions are necessary. The conference organised by the International Juvenile Justice Observatory in Rome in November 2010 demonstrated that there are examples of "good practice" which could be disseminated, while respecting national and cultural traditions.

References

Dünkel, F. (2010): Germany. In: Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (Eds.): *Juvenile Justice Systems in Europe – Current Situation, and Reform Developments*. Mönchengladbach: Forum Verlag Godesberg, p. 547-621.

Dünkel, F., Grzywa, J., Horsfield, P., Pruin, I. (2010) (Eds.): *Juvenile Justice Systems in Europe – Current Situation and Reform Developments*. Mönchengladbach: Forum Verlag Godesberg.

Dünkel, F., Pruin, I. (2009): Summary analysis of the national replies to the questionnaire related to the treatment of juvenile offenders. In: Council of Europe: *European Rules for juvenile offenders subject to sanctions or measures.* Strasbourg: Council of Europe Publishing 2009, p. 109-213.

Fazel, S., Danesh, J. (2002): Serious mental disorders in 23000 prisoners: a systematic review of 62 surveys. *The Lancet* 359, p. 545-548.

Fazel, S., Doll, H., Långstrom, N. (2008): Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and metaregression analysis of 25 surveys. *Journal of the American Academy of Child and Adolescent Psychiatry* 47, p. 1010-1019.

Lader, D., Singleton, N., Meltzer, H. (2000): *Psychiatric morbidity amongst young offenders in England and Wales*. London: Office for National Statistics.

Lammel, M. (2010): Kritische Anmerkungen zur Einweisung von Jugendlichen und Heranwachsenden in den Maßregelvollzug. *Forensische Psychiatrie, Psychologie, Kriminologie* 4, p. 248-257.

Stöver, A., Weissbeck, W., Wendt, F. (2008): Wo steht der Jugendmaßregelvollzug in Deutschland aktuell? *Forensische Psychiatrie, Psychologie, Kriminologie* 2, p. 255-262.

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Dr. Frieder Dünkel* is a Professor in the Law Faculty of the University of Greifswald/Germany. He is Head of the Department of Criminology and a former member of the Executive Council of the AIMJF. His main research interests are international juvenile justice and penology.

Dr. Ineke Pruin is a Professor in the Law Faculty of the University of Greifswald/Germany. She is Head of the Department of Criminology and a former member of the Executive Council of the AIMJF. Her main research interests are international juvenile justice and penology.

E-mail: duenkel@uni-greifswald.de
inipruin@yahoo.de
Internet: http://jura.uni-greifswald.de/duenkel

[28] State run aftercare institutions for offenders released from mental health institutions. They are the offices of psychiatrists or psychologists (comparable to the probation service) working outside (closed) forensic institutions. Often the offices of the probation service and of such psychiatrists etc. are in the same building.

[29] Lammel 2010, p. 253.

[30] Dünkel *et al.* 2010.

Getting in Early: the youth justice system and mental health—England & Wales

Lorraine Khan

Centre for Mental Health is an independent charity that aims to help create a society in which people with mental health problems enjoy equal chances in life to those without. We believe that people with mental health problems should not experience unfair barriers to a fulfilling life. We find practical and effective ways of overcoming those barriers so that people with mental health problems can make their own lives better with good quality support from the services they need to achieve their aspirations.

This article aims to give an overview of:

- policy and practice trends in mental health and substance misuse in the youth justice system
- the key challenges faced by England and to an extent Wales who share our youth justice system but not our health system.
- research messages surrounding this area of work
- what the Centre sees as future priorities, opportunities and challenges in supporting young people with recovery from mental health and substance misuse in the youth justice system in England and Wales

Youth Justice practice in England and Wales has very much reflected ongoing tensions and debates about whether we should punish children who offend, safeguard them or both. Political responses to youth crime have often been criticised for being unhelpful, treating youth crime as a convenient football to score political points with voters.

In 1998, Criminal Justice legislation created a separate youth justice system to deal with those under the age of 18 years placing an executive body, the Youth Justice Board, in place with overall responsibility for developing practice. Multi agency Youth Offending Teams were also put in place to deal with the whole range of factors which put young people at risk of re-offending. The main aim of the Criminal Justice System was seen to be reducing re-offending (and, through later legislation, preventing offending).

For young people with high levels of vulnerability, the Children Act 1989 can in theory still be used to safeguard children's well being. However, increasingly Local Authority resources have been diverted away from protecting the welfare of older children at risk in favour of enhancing child protection for younger children.

For those with mental health difficulties, mental health legislation can also be used to safeguard and manage mental health crises but young people's mental illness at this younger age is rarely clear cut enough to warrant use of this legislation and there are concerns about labelling young people at this early age.

In the last decade therefore we have had a system in place which has been focused predominantly on offending behaviour (rather than broader safeguarding) and which waits for children to reach high levels of crisis before safeguarding or mental health support and treatment can be accessed.

In 2007 we witnessed a number of crises in Youth Justice:

- there had been an incremental and unprecedented rise in the number of young people in custody in spite of a generally falling crime rate.
- Rates of children in custody tripled between 1991 and 2006
- Our youth custody rates for under-14s were among the highest in western Europe

Furthermore, by 2008, there was mounting international criticism of our failure to use custody and remand as a measure of last resort, of our use of restraint in custody and of the high levels of suicide or 'near misses' among those in custody in England and Wales...children in custody for example were found to be 18 times more likely to commit suicide than those outside the system.

Research also began to pull together what we knew about the needs of young people in the YJS (but particularly those in custody) raising further questions:

- These children were three time more likely to have a diagnosable mental health difficulty (Hagell A, 2002) -with rates of diagnosis rising even higher in older custodial populations - and more than half are likely to be risky drug and alcohol users with linked mental health needs (Galahad SMS Ltd, 2009).
- 1 in 5 had a learning disability (Harrington R and Bailey S, 2006) and nearly three quarters

had significant speech and communication deficits (Bryan et al, 2007) which hampered their understanding of court processes, instructions and orders.

- They are more likely to have experienced past trauma (with 1 in 3 girls in custody disclosing sexual abuse) (Social Exclusion Unit, 2002), multiple losses, exclusion from school (Parke, S., 2009), to have been in Local Authority care (Prison Reform Trust, 2010) and to have a whole range of multiple co-existing needs together rather than single problems.
- These children were significantly more likely to have risk factors for some of the poorest outcomes as adults. For example, we know from longitudinal research that children presenting with early behavioural difficulties are 70 times more likely to enter prison, to commit suicide, to die early, to have mental health difficulties and substance misuse difficulties as adults (Fergusson D, 2005).

So what do we know about how services have tended to respond to the needs of young people at risk of offending?

The Centre for Mental Health completed two research studies looking at how the youth justice system and other community services respond to these children (Centre for Mental Health, 2010a). (Centre for Mental Health, 2010b). We found an 'escalator' effect in the Youth Justice System: which means that once young people get in contact with the criminal justice system they rise inexorably up this escalator. The drivers for this drift are complex but include the following:

- Prompted by legislative and policy changes we saw a shift in culture away from seeing children in the youth justice system as being troubled rather than just in trouble.
- Our youth justice system became less flexible with issues such as breaches and we overinvested financially in custodial settings rather than in preventative activity.
- We had the police being set targets incentivising them to push young people into the youth justice system for low level offences so more young people were pushed onto the escalator even though crime rates were generally falling.
- And as youth offending teams took on more responsibility for young people in local areas, so those services outside that system stepped back and took less ownership of their mental health and well being. Indeed, some critics have pointed to perverse budgetary incentives in the system which meant that Local Authorities saved money by allowing young people to drift into custody on remand or as a sentence.

This escalator has exacerbated longstanding barriers to identifying the health and wellbeing needs of people in the youth justice system, including:

- Young people at risk of offending had hidden, unclear and emerging mental health problems which were not easily recognised by the police, children's services, schools and YOTs. Problems were often left until they reached a crisis point in terms of children's behaviour or illness and they rise up the escalator.
- These children tended to have multiple needs rather than single problems. Community services, on the other hand, were generally designed to focus on single problems. Furthermore, mental health services were particularly poorly designed to engage hard-to-reach young people and had rigid office based appointments and systems and a non persistent approach if young people disengaged from treatment. This led to young people slipping between the cracks of services.
- Our research also told us that these young people with mental health and learning disabilities were being picked up late in the Youth Justice pathway (not at the point that they first offended).

So in summary, we allowed young people to penetrate significantly into the system rather than identifying need and supporting at the very first point that concerns arose. This flies in the face of research from mental health, substance misuse and learning disability fields which reinforces the importance of intervening at the earliest possible point:

- To improve the life chances and quality of life of vulnerable children
- To maximise the chances of change
- To make longer term cross government cost savings.

In the last 18 months in England and Wales, there has been a recognition and acceptance that the system needed to change. Concerted effort by government departments, by third sector organisations, multi agency partners and service providers has begun to raise awareness and change practices addressing some of the drivers for our high custodial rates. This has resulted in reductions of around a third in our custodial population.

There is still room for further improvement to ensure that progress continues and to support improved outcomes both for children and young people, their families and broader communities.

At present, with our new government, we have a system which is very much in transition. So how do we need our system to change to support our young people's emotional well being, mental health and recovery?

We need a system which does not just react to offending and mental health crises. Rather, we need to adopt a public health approach to crime and deal with emerging crises as children grow up rather than waiting for these crises to occur. We

need more focus on risk factors and vulnerability and less focus on diagnostic labels in mental health services particularly. We need more of a focus on the early building of resilience and children's assets. So what does all this mean in terms of services? We need to take action on three different levels: in prevention during early years; in diversion to avert unnecessary entry into the youth justice system and also the use of custody where possible; and in rehabilitation for those in contact with youth justice services or who go into custody.

1. Early years

The foundation stone for improving outcomes for vulnerable children and for effective youth justice diversion and intervention has to start with evidence based primary and secondary prevention. So this includes interventions such as:

- Investing in Family Nurse Partnerships; detached outreach nurses who engage with teenage parents at the conception stage to support them and to promote positive parenting. We know that these interventions are cost effective and, although voluntary, have a 90% engagement record.
- Also, without stigmatising children, we need to be alert to the significance of behavioural difficulties which start early on in a child's life. We know from research that these children have the poorest predicted outcomes. They are 70 times more likely to end up in custody, more likely to have mental health and substance misuse difficulties, more likely to commit suicide, to be unemployed, to be in debt, to die early etc. And yet we also know that assertive outreach evidence based parenting interventions delivered as early as possible can significantly improve outcomes for these children.
- When children start school teachers need to be hyper vigilant to the flags for poor outcomes, whether this is academic under achievement or behavioural problems; teachers need to be supported through good access to engaging speech and language and parenting support. We already have some school programmes in place that boost the assets and resilience of children and which are showing positive interim results emotional well being and on behaviour in schools.

2. Diversion

For the last two years we have had Family Intervention Projects in place, introduced in England in 2008 as part of the Youth Crime Action Plan introduced by our previous government. These projects work with families reported to the authorities for anti social behaviour in their communities. The best of these projects has potential to reach those children most at risk of poor outcomes placing a strong emphasis on engagement and using proven parenting interventions. But schemes vary markedly in approach; some have been criticised for allowing young people to drift into the Youth Justice System as they breach their anti social behaviour orders. There is a need to ensure that we stick to what we know works with early behavioural problems and we would welcome a well designed and robust evaluation of Family Interventions Projects so that this important work can contribute to the international wrap around evidence base and key learning points on effectiveness can be distilled.

To slow down the youth justice escalator, a number of other initiatives have been put in place such as point of arrest screening schemes which 'triage' and divert young people with low level offences either away from the youth justice system or towards support. Young people are dealt with either through restorative justice interventions instead of cautions or, if needs are identified, to support services for mental health, substance difficulties or learning disabilities to help provide early support. Often a package of support is put in place to meet multiple needs.

The Youth Justice Board has also introduced a new scaled approach which aims to match the intensity and duration of community sentences with their risk of committing further crimes and their level of need. A new Youth Rehabilitation Order was designed in part to stop young people rising up the escalator as they commit new offences; instead of moving up the sentencing tariff new offences are expected to lead to new conditions being attached to the Order. The impact of this new Order has yet to be evaluated.

Finally, around 20% of young people are in custody for breach of their community orders. There are concerns that young people with learning disabilities and speech and communication needs are particularly vulnerable to breaching their orders and at present breaches do not prompt screening to rule out any disability neither is there any post mortem to look at how YOT workers could improve their strategies to keep young people engaged. This area needs ongoing attention.

Finally, a number of evidence based intensive interventions are now being piloted in England, Scotland and Ireland showing promising results. We have Multi systemic therapeutic (MST) pilots in place; MST provides intensive support to families and children usually over 6 months. They problem solve with families barriers to progress. The jury is out on the extent to which this therapeutic intensive wrap around approach consistently reproduces positive outcomes in terms of reducing young people's offending. However, it still appears more cost effective than custody or a children's home placement and the interim results from the randomised control trial in England appear promising. Functional Family Therapy shows some promise for young people at risk of offending and Brighton Youth Offending Team is part of pilot to test out and evaluate this

intervention with children who end up in the Youth Justice System.

More action is currently needed to address the over use of remands into custody for children, 1000 of whom are imprisoned every year but later found innocent at trial. There is a particular need to make Local Authorities in England, who have not had to pay for such remands in recent years, more responsible for the costs of remands to avoid prison places being used as a default for managing vulnerable young people.

Similarly we need to extend our use of multi dimensional treatment fostering pilots which have a very good record for effectiveness and cost effectiveness in comparison with custody in reviews completed in the United States. This approach provides an important alternative for young people facing remand or going into custody.

3. Rehabilitation

For those very few young people who must be contained in custody, we need high quality evidence of what model, what regimes, what size of unit, etc are most conducive to supporting change. There are a lot of emerging and innovative models internationally but these initiatives have not been comprehensively evaluated. At the moment, decisions about the secure estate and the de-commissioning of beds in our estate are being made on the basis of short term convenience and cost savings rather than on the basis of what has the best chance of supporting young people's progress and needs.

Of the greatest importance, there is a need to capitalise on gains made in custody through effective resettlement. In spite of numerous attempts to improve how this help is provided in England, if you listen to young people's experiences of their return home, resettlement remains a holy grail often made more difficult because they are moved so far from their homes and essential family work and liaison can't be completed. There is a strong evidence base emerging in the United States for those with dual substance misuse and mental health needs for intensive family work beginning in custody and continuing after use. In Spain we know that local units are able to follow young people back outside and link them up with local educational and employers. The remoteness of our custody units from children's home areas makes this linkage highly challenging and near impossible at present.

Concluding remarks

As a final note, there is no doubt that we face a number of significant challenges as we move forward from what has happened over the last decade. Although there are plans for more balance between prevention and reacting to offending crises, without doubt we face a number of continuing barriers

We still struggle, after a lot of experimentation with different models (the idea of Team around the child, having a Lead Professional, having an expert team around the worker etc), to support young people in a meaningful way with multiple vulnerabilities including mental health and substance misuse. Some organisations such as Kid's Company have cracked this problem providing a surrogate, attractive and persistent support to very vulnerable young people. We need to understand how to replicate this type of wrap around support so that we can help children develop recover from years of distorted attachments with families and with support agencies.

We need to work in partnership with children in coming up with meaningful solutions to support their progress and recovery.

Perhaps the biggest challenges are to do with money and change. We are in the midst of one of the worst recessions for over 70 years and many services face significant cuts. With our new Government we also face a huge amount of change in the way services will be funded, commissioned and organised and it is unclear what the net effect will be at the end of the day for families and for the young person who experiences our services on the ground. We have testing times ahead, there is a lot of work to do, we need to learn from our mistakes, learn from innovation and creativity in other countries, stick to the best available evidence of what we know works and keep our eyes firmly focused on working creatively with young people to help them improve their life chances.

Lorraine Khan is the Youth Justice Lead, Centre for Mental Health. This is a transcription of a presentation given in Rome at the International Juvenile Justice Observatory in November 2010.

Bibliography

Bryan et al. (2007). Language and communication difficulties in juvenile offenders. *International Journal of Language and Communication Disorders* , 42, 505-520.

Centre for Mental Health. (2010a). *Reaching out: reaching in: promoting mental health and well being in secure settings.* London: Centre for Mental Health.

Centre for Mental Health. (2010b). *You Just Get on and Do it: healthcare provision in Youth Offending Teams.* London: Centre for Mental Health.

Fergusson D, H. J. (2005). Show me the child at seven: the consequences of conduct problems in childhood for psychosocial functioning in adulthood. . *Journal of Child Pschol psychiatry 4:* , 837-849.

Galahad SMS Ltd. (2009). *Evaluation of the substance misuse project in the Young Person's Secure Estate.* London: Youth Justice Board.

Hagell A. (2002). *The mental health of young offenders. Bright Futures: Working with vulnerable young people.* London: Mental Health Foundation.

Harrington R and Bailey S. (2006). *Mental Health Needs and Effectiveness of provision for young people in the Youth Justice System.* London: Youth Justice Board.

Parke, S. (2009). *HM Inspector of Prisons and Youth Justice Board, Children and Young People in Custody 2006-2008, an analysis of the experiences of 15-18-year-olds in prison.* London: HM Inspectorate of Prisons .

Prison Reform Trust. (2010). *Punishing Disadvantage: a profile of children in custody.* London: Prison Reform Trust.

Social Exclusion Unit. (2002). *Reducing re-offending by ex-prisoners, .* London.: Social Exclusion Unit.

Procedural justice for juveniles— a human rights and developmental psychology perspective

Ton Liefaard
Stephanie Rap
& Ido Weijers

Ton Liefaard

Stephanie Rap

Ido Weijers

Over the past ten years an interesting, new perspective has emerged in the field of children's rights. Besides a human rights perspective, a developmental psychology perspective has gained importance. Research following the latter perspective has yielded interesting findings and new insights into the notion of the best interest of the child. This developmental psychology trend has been marked by key publications such as *Youth on Trial* (2000), *Rethinking Juvenile Justice* (2008) and *The Law and Child Development* (2010).[1] The present study aims to reflect on both perspectives. We link insights from developmental psychology with a consideration of the legal status of juvenile suspects in the juvenile justice process, as formulated in international human rights treaties, especially the UN Convention on the Rights of the Child (CRC).

Basic assumptions of the human rights perspective

Article 40 CRC gives juvenile suspects the right to receive specific treatment, as part of separate juvenile criminal proceedings. Article 40 CRC is based on two fundamental principles. On the one hand, it recognizes the right to a fair trial for minor suspects in line with the principles and rights that also apply to adult suspects, such as the principle of legality; the presumption of innocence (para. 2b (i)); not being compelled to give testimony or to confess guilt (para. 2b (iv)); the right to be prosecuted before a competent, independent and impartial authority (para. 2b (iii)); and the principle of proportionality (para. 4). On the other hand, article 40 CRC calls upon states to guarantee special treatment for young persons in conflict with the law. In this context the article demands that authorities take into consideration a young person's age when he or she is prosecuted in court.[2]

General Comment No. 10 – UN Committee on the Rights of the Child

The UN Committee on the Rights of the Child considers it of utmost importance to safeguard the rights of juvenile suspects in order to attain an effective juvenile justice system. In General Comment No. 10[3], the UN Committee gives recommendations on how to implement article 40 CRC. Respecting the rights of young offenders implies that article 40 CRC operates in conjunction with other rights included in the CRC. Naturally, article 37 CRC, which prohibits torture or other cruel, inhuman or degrading treatment and punishment, should be considered and this article also regulates the use of deprivation of liberty.[4]

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1 T. Grisso & R.G. Schwartz (Eds.). *Youth on Trial. Developmental Perspectives on Juvenile Justice*. Chicago: University of Chicago Press; E.S. Scott & L. Steinberg (2008). *Rethinking Juvenile Justice.* Cambridge*:* Harvard University Press; E. Buss & M. Maclean (2010). *The Law and Child Development.* Farnham: Ashgate. Compare also I. Weijers & T. Grisso (2009). Criminal responsibility of adolescents. Youth as junior citizenship. In J. Junger-Tas & F. Dünkel (Eds.). *Reforming Juvenile Justice* (pp. 45-67). Dordrecht: Springer.

2 See also Bueren, G., van (2006). *Article 40: Child Criminal Justice*. Leiden/Boston, Martinus Nijhoff Publishers.

3 General Comment No. 10, *Children's rights in juvenile justice*, UN Doc. CRC/C/GC/10, 25 April 2007 (in the following: General Comment No. 10).

4 See also Liefaard, T. (2008). *Deprivation of Liberty of Children in Light of International Human Rights Law and Standards*. Antwerp/Oxford/Portland: Intersentia Publishing.

However, the general principles distinguished by the UN Committee are also of great importance: the non-discrimination principle (art. 2 CRC); the right to life and development (art. 6 CRC); the right to participate (art. 12 CRC); and 'the best interest of the child' principle (art. 3, para. 1 CRC).[5]

The value of the non-discrimination principle for juvenile justice lies in the prevention of unequal treatment of young offenders, for example on the basis of age, gender or ethnicity. According to the UN Committee, this principle also provides grounds for attempting to prevent the stigmatizing effects of contact with the juvenile justice system as far as possible, and the long-term negative effects this can have on young offenders. Contact with the formal juvenile justice system should, therefore, be prevented as much as possible.[6] The right to life and development implies that every judicial act should promote the development of the child in a positive sense, based on the premise that delinquent behaviour negatively influences the development of adolescents.[7] To treat young people in accordance with this principle implies that diversionary measures or alternative (therapeutic or educative) measures and sanctions can be applied.

Article 6 CRC

Article 6 CRC has important consequences for the treatment of juvenile suspects in the juvenile justice system. For instance, the development of the child is not promoted when the child's right to participate is neglected, when he is not actively engaged in the juvenile justice process, but rather perceived as a passive object (see also below). In this case article 3, para. 1 CRC is also of importance. This article states that the best interest of the child should always be a first consideration when subjecting a child to judicial or other measures. One must acknowledge the differences between children and adults, for example because children are physically and psychologically immature compared to adults. Moreover, the special emotional and educational needs of the child should also be acknowledged. Their immaturity means that juveniles are less responsible for their behaviour. By implication juvenile criminal law should not focus exclusively on repression and retribution, but mainly on resocialization and reintegration rehabilitation (compare art. 40, para. 1 CRC).

Article 12 CRC

The right to be heard, and more broadly the right to participate,[8] is especially important when considering the treatment of young people in the juvenile justice system. The right to participate can be seen as one of the most crucial aspects of the CRC. Article 12 CRC encompasses the right of the child to have his voice heard in cases concerning him. Para. 2 guarantees that young people should be heard in all legal cases that concern them. The young person can be heard directly or through a representative or other appropriate body that is legally competent to support the young person. The UN Committee states that the child should preferably be heard directly 'and not only through a representative of an appropriate body if it is in her/his best interests'.[9] The opinion of the young person should be taken seriously and should be judged on its merit, taking into account the age and maturity of the young person.[10]

The premise that the young person has the right to freely express his opinion in all matters affecting him has implications for the treatment of the juvenile suspect throughout the juvenile justice process.[11] On the one hand, the right to participate must be seen as part of the right to a fair trial and the right to effectively participate in the criminal justice proceedings.[12] On the other hand, hearing the voice of the young person is vital for effective treatment of young offenders and to substantiate the goals of juvenile criminal law. It is after all important that the young person is reached by the professionals (as will be elaborated upon below). However, it is also vital to be able to make some kind of estimate of the extent to which the young person commits himself to the sanction or measure and whether it would be wise to impose a particular sanction or measure at all.

The UN Committee assumes that when the juvenile suspect can be held accountable for having committed an alleged crime (and therefore can be prosecuted), he is also capable of participating in the criminal proceedings. His procedural capability is implied by this assumption.

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5 General Comment No. 5, *General Measures of Implementation for the Convention on the Rights of the Child*, UN Doc. CRC/GC/2003/5, 27 November 2003.

6 General Comment No. 10, par. 6-8.

7 General Comment No. 10, par. 11.

8 See further L. Krappmann, 'The weight of the child's view (Article 12 of the Convention on the Rights of the Child), *International Journal of Children's Rights* 18 (2010), p. 501-513.

9 General Comment No. 10, par. 44.

10 See for more details on the right to participate the UN Committee on the Rights of the Child document General Comment No. 12, The right of the child to be heard, UN Doc. CRC/C/GC/12, 20 July 2009, (in the following: General Comment No. 12).

11 General Comment No. 10, par. 12 en 44.

12 Art. 40, para. 2b (iv) CRC.

This means, among other things, that the juvenile suspect should be given the opportunity to give his opinion on the possible sanctions or measures and that he should be able to express a preference. According to the UN Committee, the judge that takes the decision in this case has a special responsibility. It is very important to hear the voice of the child to increase the chance that the judicial response to his delinquent behaviour will succeed. Or, as the UN Committee puts it: 'to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behaviour'.[13]

Understanding

It is also vitally important that the juvenile suspect understands what is happening. This aspect, according to the UN Committee, is one of the fundamental assumptions underpinning the right to a fair trial and the right to participate effectively.[14] The charge, for example, must be drawn up in language that the young person understands, requiring adjustments to the way the information is formulated and communicated to the young person.[15] The information should be communicated to the young person as directly as possible. The provision of information to parents or legal guardians should not therefore be seen as an alternative to communicating this information to the young person directly.[16] Moreover, there should be special acknowledgement by juvenile justice professionals of young people who have difficulty processing information and/or voicing their opinion.[17]

During the youth court trial it is important that the young person is able to determine his own position in the process and to be defended by a lawyer or other appropriate legal aid worker. The young person should be well informed about the evidence being brought before the court, so he can make considered decisions about making additional statements and about the questioning of witnesses.

Article 14 of the Beijing Rules[18] adds that the proceedings should be held in an 'atmosphere of understanding to allow the child to participate and to express himself/herself freely'. Extrapolating from this, we can say that age and maturity should be taken in to account, which implies that proceedings in court should be adapted to the emotional and cognitive abilities of the young person. In the more recent General Comment No. 12, the UN Committee added that it is important that the youth court hearing takes place behind closed doors (in camera rule).[19]

Finally, the young person should also be informed about the content and consequences of the potential sanctions and measures, so that he can share a well-informed opinion with the judge, the prosecutor and other legal actors. [20]

Article 6 - European Convention for the Protection of Human Rights and Fundamental Freedoms

The CRC is obviously not the only international treaty of relevance to the position of the juvenile suspect. The right to a fair trial can also be found in general human rights conventions, such as in article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Although this specific article does not refer to the special position of *juvenile* suspects, the jurisprudence of the European Court of Human Rights does cover this. Moreover, the European Court of Human Rights increasingly tend to refer to the CRC and other similar relevant sources of international law in cases concerning minors.[21]

The European Court of Human Rights is of the opinion that the right to a fair trial, as stated in article 6 ECHR, implies that national authorities must ensure that juvenile suspects understand and can participate in their trial. In the case of two eleven year old English boys (the Bulger case) the European Court of Human Rights decided that 'a child charged with an offence (must be) dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings'.[22]

13 General Comment No. 10, par. 45.

14 General Comment No. 10, par. 46.

15 See also General Comment No. 10, par. 48

16 General Comment No. 10, par. 48

17 See General Comment No. 12, par. 21.

18 UN Standard Minimum Rules for the Administration of Juvenile Justice (1985), GA Res. 40/33, 29 November 1985.

19 General Comment No. 12, par. 61.

20 It goes without saying that the right to legal or other appropriate assistance is vital to the realization of the right to participate (art. 40, para. 2b (ii) and (iii) CRC; compare General Comment No. 10, par. 49-50). At the same time it is evident that legal aid workers must be sensitive to the importance of providing the young person with adequate information and ensuring that their clients understand it.

21 See e.g. the court's case law under articles 3, 5, 6 and 8 ECHR.

22 ECHR, 16 December 1999, Appl. No. 24724/94 (T. v. United Kingdom), par. 84.

The juvenile justice procedures must be adapted to the intellectual abilities and the developmental stage of the young person. The European Court of Human Rights has explained that article 6 ECHR does not imply that the young person should understand every legal detail during the criminal trial, but the young person should be able to form a general understanding of the nature of the process and the consequences a sanction could have.[23] This aspect is also emphasized by the UN Committee, which in para. 21 of General Comment No. 12 states that 'it is not necessary that the child has comprehensive knowledge of all aspects of the matter affecting her or him, but that she or he has sufficient understanding to be capable of appropriately forming her or his own views on the matter'.

Basic assumptions of the developmental psychology perspective

Acting in the best interests of the child means that one must acknowledge the fact that a young person has a limited understanding of the meaning of the juvenile justice process and of the attitude that is expected of him during the youth court hearing. For example, children aged 12 to 13 do not fully understand what exactly happens during a youth court trial, let alone how to act in court. Children between 12 and 13 years of age do not see themselves as citizens who can be called to account for their behaviour by the 'state'.[24] They are barely able to think in abstract terms and still see themselves as children who are accountable to their immediate environment: their parents, grandparents, teachers and sometimes neighbours. Their understanding of notions such as law, state and citizenship need to mature, because they have hardly any experience with the law and the government.[25]

Generally, young people around 14 years of age are able to form an adequate conception of what it means to appear before a judge in court.[26] However, many young people between the ages of 14 and 16 who have to appear in court are hardly capable of forming accurate ideas about what they can expect or what is expected from them.

As a matter of fact, most young people who appear in court are behind rather than ahead in their development and this implies a double task for the court and the other actors involved in the youth court hearing.[27] We can conclude that young people need assistance to be able to participate fully in the juvenile justice process. As we saw earlier, on the basis of the CRC this can be seen as a special responsibility of the state. Young people must be enabled to effectuate their legal rights. This implies that juvenile suspects have the right to assistance and adequate information.

In order to help juvenile suspects to participate fully in the juvenile justice process, they must assisted in at least two respects: first, to actively participate as much as they can and second, to understand as much of what is being discussed as possible and what is at stake for them.

Participation

When examining participation of juvenile suspects more closely, it becomes apparent that a notable but necessary tension exists between the intimidating setting of the court and the task of helping the young person to participate in the proceedings as much as possible . The stern and aloof ambiance of the court buildings are anything but easy to combine with direct and smooth contact with the juvenile suspect and his family, who usually are awed by the building as they step into the courtroom. At this junction lies the pedagogical challenge of making professional contact with the young person (and his parents). From a pedagogical and a children's rights perspective, the contextual setting within which the prosecutor and the judge operate, should be stern but accessible.

The first task is to invite the young person to tell his side of the story. Showing interest in the story and the observations of the young person, by not merely taking note of it but by always asking one or more questions and going into details, is at least as important.[28] From acknowledging the story of the young person it is a small step to consider a third, more 'technical' point. When the judge and the prosecutor ask the juvenile suspect questions it is of utmost importance that these questions are short, direct and preferably semi-open, and that they ask for an explanation and clarification. It is advisable to ask as few closed questions as possible, questions to which the suspect can only answer with a 'yes' or a 'no'. In addition, economic use of words by the judge is important.

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23 ECHR, 15 June 2004, Appl. No. 60958/00 (S.C. v. United Kingdom), par. 29.

24 Grisso, T. (2000). What we know about youth's capacities as trial defendants. In T. Grisso & R.G. Schwartz (Eds.). *Youth on Trial. Developmental Perspectives on Juvenile Justice*, (pp.139-171). Chicago: University of Chicago Press.

25 Helwig, C.C. & Jasiobedzka, U. (2001). The relation between law and morality: Children's reasoning about socially beneficial and unjust laws. *Child Development, 72*, 1382-1393.

26 Ruck, M.D., Abramovitch, R. & Keating, D.P. (1998). Children's and adolescent's understanding of rights: Balancing nurturance and self-determination. *Child Development, 69*, 2, 404-417.

27 Grisso, T. (2000). What we know about youth's capacities as trial defendants. In T. Grisso & R.G. Schwartz (Eds.). *Youth on Trial. Developmental Perspectives on Juvenile Justice*, (pp.139-171). Chicago: University of Chicago Press.

28 Compare Tyler, T. (1990). *Why people obey the law*. New Haven: Yale.

Making contact with the young person to enable him to participate actively means that the judge himself must not talk much, but should ask short and clear questions so the young person is enabled to speak in court.

Finally, making contact with the young person does not only involve taking practical steps to get him to participate as much as possible, but also involving him indirectly in everything that is being discussed through his parents. Actively engaging the parents in the juvenile justice process increases the level of participation of the young person. Increased participation reinforces his feeling that his story matters and that he (and his primary care takers) are being taken seriously by the critical judge. Crucial to the process is that parents should not find themselves lost in the anonymity of the courtroom. They should have a place near the front of the courtroom, clearly within sight of the judge. For the parents and their child it is of utmost importance that they feel that they are in the picture from the start and that the judge is addressing them directly.

Understanding

Constantly making sure that the young person understands what is being discussed is the first requirement for assisting him on a cognitive level. This requires that the judge tries to avoid using legal jargon as much as possible, and if this is unavoidable, he should explain the terms used. Legal jargon is a barrier to constructive communication in the youth court hearing. The more legal terminology is used, the less chance the young person will be able to take a full and active part in the process. His attention will waiver and he will give up.

Active involvement of the young person in the process also demands that the judge be constantly alert to whether the young suspect understands what is being said. Finally, the judge should explain his judgment and sentence in explicit terms that are comprehensible to both the young person and his parent(s). It is advisable to allow extra time to explain the grounds of the sentence, because this is very important in the light of the extent to which the young person is aware of the consequences of his behaviour and the desirability and need for a criminal law.

Conclusion

In this article we focus on the position of the juvenile suspect in the juvenile justice process, in particular on what this position looks like from the perspective of international human rights and subsequently how this position can be defined in concrete terms based on insights from development psychology. Special attention is paid to two key points: the right of the child to actively participate in the juvenile justice process and the right of the child to understand the principal issues that are being discussed in court. Clearly these two points require certain tasks to be fulfilled by the youth court judge and other professionals. To actively involve the young person in the juvenile justice process and to make him understand what is taking place are fundamental issues that should receive more attention in the training of judges, prosecutors and lawyers in the youth justice system.

Dr Ton Liefaard is assistant law professor and researcher at the Willem Pompe Institute of Criminal Law and Criminology of the Utrecht University. He also is a deputy juvenile judge at the District Court of Amsterdam.

Prof Dr Ido Weijers holds a Special Chair on Juvenile Justice at the Willem Pompe Institute of Criminal Law and Criminology, Utrecht University.

Stephanie Rap MSc/MA is a junior lecturer and PhD student specialising in 'juvenile delinquency' at the Willem Pompe Institute of Criminal Law and Criminology, Utrecht University.

Youth Justice in the grip of neo-liberalism

Antoine Garapon

Minimum penalties for young people, the option for the prosecutor to refer young people directly to the youth court, fines for parents whose children have broken their personal curfew—these are proposals (together with a reduction in the age of criminal responsibility, which often gets dragged into the discussion) that, even if they have for the most part been rejected by the Constitutional Council, nevertheless carry with them a pervasive feeling of ill-ease. If they could be looked on as just a spasm of authoritarianism it would be straightforward. But things are more complicated than that because these ideas have their roots in a new Zeitgeist. The educational theories on which youth justice is based are currently under attack, not only for being too soft and naïve, but also for being slow and ineffective. There are two new criteria—speed and a demand for results—which form the yardstick against which every organisation must now be measured; and youth justice is no exception. These two criteria reflect a new relationship with time—acceleration—and a new view of reality—one based on economics.

The proposals or reforms are unrelenting in their wish to speed things up—to accelerate them[1]—as if speed was a measure of effectiveness. They oppose the view that youth justice needs to take time to observe in order to understand each situation better. Isn't time the best remedy for the ills of youth? But the modern age has become impatient—not the professionals engaged with young people, but public opinion which has muscled into this field, hitherto the preserve of specialists. The public want—or at least politicians believe they want—clear, immediate and tangible results. That leads us to the second development.

Every system of government—by which I mean a particular way of ordering human affairs—is based upon what Michel Foucault called a 'theory of reality'[2]—in other words an intellectual system recognised at the time as determining the truth of things and, in so doing, giving direction to organisations, particularly penal ones. A theology which took a moral view of crime and of redemption through suffering and formed the basis of the disciplinary model was supplanted by theories of medicine, hygiene and general social science. This therapeutic view provided the theoretical underpinning to the legislation of 1945 and 1958 which has shaped youth justice [in France]. But in the last few years a different view, neo-liberalism[3], has emerged which looks for truth not in an understanding of human beings but through an economic view of the world. From now on economics will decide ultimate truths, not only in social affairs—which even non-Marxists have begun to accept—but in our private lives, as neo-liberalism extends economic thinking into all aspects of life.

So at present youth justice is pulled between two views of reality that point in opposite directions. This tension exists not simply between professionals on one side and politicians on the other—that would oversimplify matters. The 'new penology'[4], if that is the right name for it, is gaining ground among criminologists; and not all politicians are enthusiastic about new systems of public management. For this reason it is necessary to look in detail at the tensions brought into the youth justice model by, on the one hand, the speeding up of time and, on the other, by the neo-liberal direction of post-modernism.

Individualised treatment *versus* management of juvenile delinquency

The new theory of truth is characterised by changes of sense sometimes so subtle that they are in danger of passing unnoticed. Recall the title of that highly controversial 'Law to direct and plan the *performance* of internal security'[5]. Doesn't that reference to performance speak volumes about the intentions of the legislators? Doesn't it risk stripping the law of any symbolic aspects in order to reduce it to a blunt instrument?

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1 Hartmut Rosa, *Accélération. Une critique sociale du temps*, translated from German by Didier Renault, Paris, La Découverte, 2010.

2 Un discours de vérité

3 I reflect on this point in my most recent book: *La Raison du moindre État. Le néolibéralisme et la justice*, Odile Jacob, 2010.

4 See the synthesis put forward in the '*note de veille'* of the Centre d'analyse stratégique, n°106, « Quelles évolutions des politiques de traitement du crime à l'ère de la 'nouvelle pénologie' », July 2008.

5: « Loi d'orientation et de programmation pour la *performance* de la sécurité intérieure ». LOPSSI

The effectiveness in question here is certainly not economic, although this strand was not entirely absent from the debate on youth justice. Consider the introduction to the second Benisti report[6] which estimated the global level of delinquency at 115 million (by means of an unclear and indeed questionable calculation) as if this fact formed the basis of all the proposals that followed.

Currently one can detect a change in the 'reference group'—ie in the implicit focus of the youth justice system. The therapeutic view focuses on the young person and his family and, whenever it considers the victim, does so only in relation to the specific incident. This contrasts with neo-liberal theories which aim to empower the public. It is source of a current misunderstanding. Youth judges deal with young people and their families, victims and professional youth workers and take no account of public opinion, which they consider should not influence the case. But the new penology does consider public opinion, not the opinion of the victim of the offence in question but of **all** victims—ie anyone who might potentially be affected by an act of delinquency. Unable to change what has happened, justice undertakes to prevent a recurrence.

This change of focus has important implications for research into causes of delinquency. The therapeutic model looked for them in the history of the individual, believing that delinquency was a symptom to be considered while attempting to treat these causes within an educational framework. That explains why French law confers education and penal functions on the same judge—*le juge pour enfants*—who tends to think that the educational support and penal programmes are not so very different, as they both involve long-term treatment. Neo-liberalism questions this assumption, blaming the dissociation between 'the child-victim' and 'the aggressive-adolescent'. This dissociation—in psycho-analytic terms a radical separation and repression of a threatening relationship—reveals neo-liberalism's conception of social linkages. Margaret Thatcher's celebrated remark: "There is no such thing as society" was later taken up by Ronald Regan. In the neo-liberal world view there are only individuals and government should consider their interests and their interests alone—thus denying any societal dimension. Out of this developed what David Garland termed the 'criminology of the other'[7] which denies any social causes (and ignores the fact that a number of aggressors have themselves been victims).

In contrast to the therapeutic approach which seeks solutions by aiming to get as close to individuals and their social problems as possible, neo-liberalism prefers to view these things from on high. The Benisti report, for example, seeks "to develop a strong culture of evaluation in national policy for the general prevention of delinquency in all its complexity, with the development of analytical tools so that the causes of crime will eventually become undeniable, uncontested and standardised."[8] Here the term 'prevention' seems to seek consensus, despite having a completely different meaning from before—the report does not deal with the root causes of social maladjustment, but approaches delinquency from the outside, using statistical techniques to inform risk analyses. Delinquency is tackled collectively as a social or indeed a natural phenomenon, susceptible to being understood through statistics. Once you have standardised the causes of something, you can draw up a protocol to treat it and eventually compare everyone's effectiveness. For evaluation purposes, you need to be able to compare and hence standardise, which is possible only if you have agreed criteria. Hence the importance of getting consensus on the causes of delinquency (which in the therapeutic approach is found in case conferences). Neo-liberalism shuns discussion of theory, which it considers futile, and prefers to focus on action plans. There is no point in endless discussion of the causes of delinquency, it should be considered in a non-political, ethical and scientific way.

A young person at risk *or* a rational responsible agent?

Neo-liberalism will not rest until it has replaced flesh and blood beings each with their individual histories by *generic rational agents.* This is not because it denies that many delinquents suffer from behavioural problems, but because it believes that it is not possible to do anything about them—indeed, there is a risk of making the problems worse if they are given too much attention. It is better to treat each individual—even if they are young—as a rational being and, by considering his or her interest, discover what will provide the most leverage (a keyword of the neo-liberals) for the public good. This is not to dispute that educational science can understand the psychological motivation underlying an action, but simply to note that it is ineffective in preventing recidivism. So neo-liberalism looks at matters objectively with a deliberately more pragmatic gaze, or at least it purports to. That helps to explain the repeated attempts to lower the age of criminal responsibility to 16.

Under this new theory of reality, the control mechanism is the market. So a new policy to counter drug addiction—rather than getting

6 French Parliamentary Commission on the prevention of delinquency among juveniles and young adults. Report by Jacques-Alain Benisti, Assemblée Nationale, March 2011.

7 David Garland, « Contradictions of the 'punitive society': the British case», *Actes de la recherche en sciences sociale*, 1998, pp, 49-67.

8 Benisti *op cit*

bogged down in costly and difficult care arrangements—proposes to legalise the sale of drugs in a way that will allow drug addicts to behave like economic agents. It is possible to detect an echo of this new approach in the belief underlying a number of current reforms that money can be used to influence relations between parents and their children, just as between parents and the judicial authorities. The later project—which was eventually put a stop to by the Constitutional Council—featured an approach which levied fines on parents who did not attend the youth court. Looking more closely, the intention behind the fine had subtly changed, in this way—the sum of money was intended less to punish parents than to put pressure on them by forcing them to make an economic choice. Isn't that a characteristic of all fines, you might say. Of course, by nature money is neutral[9], but that doesn't stop its having less effect as a punishment than as an incentive. Rather than lecture irresponsible parents, it is better to attack them through their wallets because, in the end, that language is more universal than moral values. The sum of money converts a moral problem into an economic choice—is it more in my interest to attend the youth court than to stay away?

The meaning of 'responsibility' is also changing. One is struck by the number of measures that are to do with parental responsibility: developing schools for parents, parenting and literacy courses, department-wide committees on parenthood, parental briefings, stages of parenthood, etc. Like the suspension of the family allowance, the introduction of parental fines reveals a new attitude towards parents. Under the therapeutic model the youth judge does aim to give parents responsibility, not by economic pressure, but by educational support; the wish being to help and even to back requests for increased financial support.

The new importance accorded to individual responsibility has justified a new division of duties between the administration and the judiciary: the courts must be places which encourage the taking of responsibility; a too direct a link to support or help—going back to the old model—would risk confusing that message. What about the current trend in a number of countries to remove youth protection from the judiciary and to bring all breaches within its scope? How can we explain the post-modern attraction towards punishment? It can, of course, be seen as a consequence of the importance given by today's politicians to security, but it is really a response to two other, deeper reasons. Civil justice doesn't find it easy to put an end to disputes involving conflicting accounts that cannot be reconciled. After all, isn't it a tenet of post-modernism that there are only narratives running alongside each other which no one individual can oversee? Criminal justice, however, has the virtue of authenticating facts and so it is reassuring. In family justice, for example, just as the concept of fault has been disappearing from divorce and the judicial system no longer controls the causes of separation, criminalisation of domestic violence has been on the increase. Is there not a link between these two developments?

The lowering of the age of criminal majority no longer appears as just a desire to repress, perhaps it betrays a deeper uncertainty about the education process, which has been made more difficult by the growing estrangement of the adolescent and adult worlds. The speeding up of time has led to fears of a loss of our common world—the feeling of a growing difficulty in sharing experience. If adolescence upsets the whole of society (even if not everyone experiences full-blown adolescence) by being an age where social codes have not been taken on board, it becomes more threatening when everything is speeded up, including the stages of life themselves—for example, the more rapid onset of puberty. Do young people become adults sooner? No, but they become adolescents sooner, launched into that intermediate stage that children reach earlier and earlier and leave ever later. "The continuing compression of the present implies [that] relations between generations will not mesh together (no simultaneity) and lead to a problem of social desynchronization. The experience, practices and wisdom of the parents' generation will become more and more out of date and meaningless, even incomprehensible—and vice versa."[10] Are we seeing the gloomy prediction of the sociologist Gerhard de Haan who thought we are witnessing "the end of the education of the younger generation by the earlier one"[11]?

Adolescence constitutes a linkage, not just between generations, but also between childhood innocence and adult freedom, between being care-free and having responsibility. Neo-liberalism tries to resolve the problem of adolescence by removing it, cutting two years off the age of criminal responsibility and propelling adolescents into the universal language of profit and punishment.

The suspension of time in the court hearing *versus* the real time of the penal chain

Within the therapeutic model, judicial time is adjusted to the progress of the young person. There needs to be time to analyse, to give 'time to time'. The judicial system tries to escape from adolescent time, which is made up of eruptions, impulses and an intensification of the here and now.

9 Simmel, Georg Simmel, *Philosophie de l'argent*, translated from German by Sabine Corneille and Philippe Vierne, Paris, PUF, 1999, coll. « Quadrige », p. 49.

10 Hartmut Rosa, *op. cit.*, p. 145/6.

11 Gerhard De Haan, *Die Zeit in der Pädagogik. Vermittlungen zwischen der Fülle der Welt und der Kürze des Lebens*, Beltz, Weinheim, 1996, referred to in Hartmut Rosa, *op. cit.*, p. 146.

For adolescents everything is urgent and all the educational work done with them consists of responding to that without falling into its snares.

The managerial approach, on the contrary, looks favourably on real time—it "brings urgency into every situation"[12]. Idle time must be hunted down and the actions of the judiciary must be transparent to the public. Hence the expression 'penal chain'[13] which has come into use without anyone giving it much thought. The 'penal chain' idea points to the vision of a continuous time standing apart, of a concentrated flow of time which never pauses, of a closed-off time—the complete opposite of the open time of education which, when it starts, does not know when it will end.

For the new penology, time has to make sense to an offended public waiting for an effective response from the authorities. This is the well-known 'real time' in criminal affairs. This explains the importance given to the last reform rejected by the Constitutional Council—the option for the prosecutor to arrange an immediate hearing in cases involving young people. The anger that arises from an act of violence puts us under the sway of our emotions. What is seen as important is the impression given to the public, not the effect on the mind of the young person.

Time is a prisoner of this 'penal chain' and that deprives the justice action of one of its principal resources—nothing more nor less than time itself.

But shouldn't the judicial system get away from this adolescent version of time, which is too reactive and not reflective enough? A knee-jerk reaction risks closing off all possibility of change. Isn't the final aim of educational support precisely to make time available—to provide the young person and his family with a free space or time, whereas when they were driven into a corner they were only able to react or even over-react? It is, above all, time that has to be freed from the chains of procedure which have imprisoned it. The judicial system should see itself as providing an opportunity for a slowing down to leave behind this over-concentrated time, this too intense here and now, which ends up weighing down the adolescent's future.

One might say, following Bernanos, that it is not time that protects us, but we who protect time. The justice system really must safeguard that precious moment of the hearing and wait patiently for a speech, a confession or an explanation, which may often be saddening—but maybe that is the price of getting it right—listen to silences, grasp the background and give proper attention—and so appreciate—the judge's precious words.

The hearing suspends time in the same way that it suspends the normal relationships of domination. That is why the accused is symbolically unshackled during his court appearance—no pressure should be applied. When he gives a protective sentence, the judge is starting off a special time—both a testing time and a second chance. This pause allows a young person in custody facing an increasingly daunting situation to draw breath. By means of this very special time, youth justice tries to pluck young people from their fate and to open up time so that it can be shaped by freedom—an act of bravery by institutions standing out against the pull of reactionary forces. Neo-liberalism takes us from rehabilitative action to punishment.

All rehabilitation is an attempt, however forlorn, to change the pre-ordained course of events. That is its glory. The lack of certainty—in the methods as well as results—is another complaint made against educational support. Its unknown quantities do not send as clear a message as can the automatic responses of a regime of punishment. A measure of education is not showy. It cannot compare with the drama of a conviction. The speeding up of time has made us all impatient. We need to be reassured by seeing people being punished (which is a pretty cynical, given that the same politicians who fill up the prisons with their right hands, empty them with their left!) Would we be more convinced by crime statistics? Compared to punishment, education has an uncertain aim and is, above all, long-term. Nowadays we are anxious to get indicators we think we can rely on—in other words figures—because what can't be expressed numerically is simply not considered relevant; and, moreover, it cannot be checked.

Action *versus* reaction

Each of these theories—rehabilitation and neo-liberalism—defines the kind of action the justice system should take. For the former, education needs a long-term outlook which deals with the real causes of the young person's difficulties. First of all, the intervention tries to get away from the provocation that led to the offence. It is meant to be on a different plane, "constructed deliberately after careful thought without getting bogged down in an escalating series of setbacks mirroring those of the young person."[14] The aim of an educational programme is to talk, to talk to one another and to listen. This can sometimes be a rather rash undertaking, but it is the great value of the educational process. Too compressed a time risks rupturing or, worse, stifling the relationship without which education cannot happen. Managerialism limits the judicial relationship to a simple exchange of information. A video-conference—antiseptic and electronic—is the perfect example of this new relationship. Education cannot be carried on by video-conference. However, it could possibly be used

[12] Hartmut Rosa, *op. cit.*, chapter 3.

[13] "chaîne pénale" in the original

[14] from a statement by the Association of French Magistrates and Judges.

for procedural matters. Managerialism, in order to force the pace even more, would reduce contact with the judge to formal issues of procedure, losing the benefit of a proper meeting with justice.

Although the legal process makes something of a virtue of delay—because it introduces a gap in time between offence and trial, helping to calm public emotions and shield the judge from the pressure of events, the impatient multitude wants the opposite, demanding immediate results. Dealing in real time sees a speeding up, which will not rest until there has been a reduction in gaps and periods of inactivity, heralding "a concentration of activity"[15]. This response is at one with the speeding up of time: action must be met with reaction. In the language of zero tolerance, it is inconceivable not to react and the rate of punishment for young people is particularly high—93% against 87% for adults. Neo-liberalism holds that human beings do not act, they respond to signals they receive from information systems they are wired into. They don't talk to each other, they communicate by means of these systems. So we see "a progression from action to reaction"[16].

This new approach to youth justice is a combination of budget cuts, managerialism and justice-as-theatre. It no longer has to bring forth the tortured body as in the age of the wounded monarch, described by Foucault at the beginning of *Observe and Punish,* nor the submissive spirit willing to accept re-education as in the disciplinary model; rather it must demonstrate a responsive institution whose effectiveness is to be seen in its statistics. The sovereign must be able to show that "something has been done".

Legislators too have started to react, because for them action is to react to anything that has stirred public opinion. They react impulsively, sometimes angrily. Politicians have to show their commitment by framing laws, but the law is no longer of use in real political action. "Nowadays", says Hartmut Rosa, "politicians do not act, they have to be content to react to events."[17] Rather than operating within their proper political ambit, governments see themselves as judges, sometimes even taking on that role, believing that the job of judging is to respond, to react in an almost automatic way to the young person—a view completely at odds with the educational approach which, does not occupy the same ground as the young person, in order not to react to his provocation.

In this light, it is possible to understand the reform that would have given the prosecutor the option of an immediate hearing before the youth court [*le tribunal pour enfants*] as well as the extension to young people of minimum punishments—both proposals have been declared unconstitutional—as a reflex action of the law through the mouths of the judiciary. It has the flavour of an automatic response, part and parcel of thinking in terms of prices and tariffs, and, beyond that, the market, which for Foucault characterised the neo-liberal mindset.

The idea of a penal response suggests an automatic reaction on the part of the institution. It is at one with the new penal philosophy which posits rational beings or, better still, "embeds the issue in rational economic form"[18]. The response is intended to make people aware of the risks they run in carrying on with their present behaviour. That is why it is so important for the punishment to be certain. For Foucault *enforcement* was the key. Certainty is needed so that each individual can assess the risk of his actions, taking account of the penalty he is risking but also the probability that it will be imposed. The uncertainty and non-transparency of the youth court judge create obstacles to making such information plain. An offence might now be seen as arising, not from ill-will or as an act of revolt, but as a miscalculation—a serious misunderstanding of the risks. Punishment is the price of the offence and no longer retribution. The price paradigm is consistent with the importing of the market into justice and with it a vision of zero time—the instantaneity of a transaction.

Conclusion

I have tried to describe a new model applicable to youth justice, but which could never be implemented in a completely "pure" form. What might be done about it? Implement it completely? That is an illusion. Oppose it root and branch? That would be childish and counter-productive. Such an approach overlooks the fact that in the real world no model is ever "in a pure form" and that it always appears in combination with others. The educational model itself uses retributive aspects of the earlier theological model which maintains repression and it would be able to accommodate the better aspects of this new neo-liberal approach. So actuarial criminology need not be rejected out of hand. It brings with it precious knowledge of delinquency and the careers of delinquents, even if this knowledge is not enough to inform the actions of a professional educator. The trick is not to reject neo-liberalism but to see it as a rational expression of the public good and a better understanding of delinquency, so that our desire for a truly humane justice will ultimately prevail.

Antoine Garapon is a journalist and former youth court judge. This article is a translation of a talk given to the French Judges' Association (AFMJ) in Paris on 19 March 2011.

15 « une 'densification' des épisodes d'action » Hartmut Rosa, *op. cit.*, p. 103.

16 Alain Supiot, *L'Esprit de Philadelphie. La justice sociale face au marché total*, Paris, Seuil, 2010, p. 131.

17 Hartmut, *op. cit.*, p. 326.

18 Michaël Fœssel, *Etat de vigilance. Critique de la banalité sécuritaire*, Lormont, Le bord de l'eau, 2010, p. 50

Child, Youth and Community Tribunal— Guernsey

Karen Brady

On 4th January 2010 two major pieces of legislation[1] came into force in the Bailiwick of Guernsey resulting in far reaching changes in the fields of juvenile justice, child protection, children's rights and private family law. In the July 2008 edition of this Journal Ruth Bowen (then a legal consultant to the States of Guernsey) set out the main provisions of the legislation and the context within which they will operate.

The most significant change introduced by the Children (Guernsey & Alderney) Law 2008 (the Law) was the introduction of the Child, Youth and Community Tribunal (CYCT). Based on the Scottish Children's Hearing System the CYCT deals with most cases of juvenile offending and child protection. The philosophy underpinning the new system is that children's needs and deeds cannot be considered separately. By taking a holistic approach children and young people can be successfully helped to overcome their problems and become successful adults within their community.

This article will summarise the developments of the CYCT since 2008 and reflect on the first year of operation.

Key Feature of the CYCT system

- The Law applies to children from birth to their eighteenth birthday.
- Those who are considered to be in need of care and protection or whose behaviour is causing concern can be referred to the Children's Convenor (the independent public officer who is responsible for deciding which children are referred to the CYCT).
- Following investigation by the Children's Convenor they can be referred to the CYCT if the legal grounds are met and it is assessed that there may be a need for compulsory State intervention.
- Tribunal members are volunteers from the local community who have received specific training for the role. A hearing of the CYCT is comprised of three Tribunal members.
- Decision making is focused on whether the child or young person is in need of compulsory intervention to ensure they receive adequate care, protection, guidance and control. The welfare of the child is the paramount consideration in decision making.
- The approach of the Tribunal is much less formal than a court. It is geared towards discussion with both the child and family and aimed at getting to the root of the child's problems and finding ways to address them within the family where possible.
- A range of professionals attend a hearing of the Tribunal. Reports are prepared covering the child's education, health and social background.
- A legal order (care requirement) can only be made where the Tribunal is satisfied that voluntary measures have not been sufficient or are unlikely to be sufficient to bring about the necessary change.
- Reasons for referral to the Tribunal include the following
- The child has suffered or is likely to suffer significant impairment to health or development
- The child has suffered or is likely to suffer sexual or physical abuse
- The child has misused drugs or alcohol or inhaled a volatile substance
- The child is exposed or is likely to be exposed to moral danger
- The child has displayed violent or destructive behaviour and is likely to become a danger to himself or is otherwise beyond parental control
- The child is 12 or over and has committed a criminal offence
- The child is failing to attend school without good reason.

[1] The Children (Guernsey and Alderney) Law, 2008—The Criminal Justice (Children and Juvenile Reform) (Bailiwick of Guernsey) Law, 2008

Developments since 2008

In 2008, the Children's Convenor and Tribunal Board was established. The Board has a number of functions which are set out in the Law. It also has strategic oversight of the delivery of the CYCT system. There are presently seven members of the Board who bring experience from a range of backgrounds. The Board has representation from Guernsey, Scotland and England reflecting the unique mix of the new Guernsey and Alderney Law.

In 2008, thirty members of the Tribunal were recruited. There was an overwhelming response to the recruitment advert reflecting the strong tradition within Guernsey and Alderney of community involvement. During 2009 the new members underwent intensive training to equip them with the knowledge and skills required to perform their role. There are presently 28 members ranging in age from 26 to 68. Many are in employment and all give their time voluntarily to provide this vital role. During 2010 there were 71 hearings of the Tribunal. These hearings related to 32 children and in 15 cases a care requirement was made.

In February 2009 I travelled from Scotland to Guernsey to take up post as Children's Convenor. Having worked within the Children's Hearing System for a number of years I had a good understanding of the overall objectives of the new Children Law.

Key differences from the Scottish Children's Hearing System

Although based in principal on the Scottish system there are a number of key distinctions. The most noteworthy of which are as follows;

- The Law creates a number of welfare principles that must be taken into consideration when the Law is applied.
- The upper age limit of referral to the Tribunal is 18. In Scotland this is 16.
- The legal reasons for referral to the tribunal are considered at an administrative meeting (Children's Convenor meeting) held in advance of the Tribunal.
- The standard of proof on all reasons for referral (including commission of an offence) is the balance of probabilities.
- The age of criminal responsibility is 12. At present in Scotland this is 8.
- The commission of a criminal offence does not carry additional consequences. In Scotland the Rehabilitation of Offenders Act 1974 applies.
- The decision to detain a child or young person in secure accommodation is reserved to the Court. In Scotland a children's hearing can authorise the use of secure accommodation.
- Where longer term or permanent compulsory intervention is required an order can be obtained from the Court.

These differences in my view extend and improve the welfare principles of the Scottish system and enable the Tribunal to concentrate on shorter, focused outcomes, with more intrusive and longer term decision-making being retained by the Court.

Observations to date

It has been recognised from the outset that the success of the CYCT system is dependent on the cooperation of a number of other agencies whose support is vital in the implementation and continuing development of the system. Since taking up post I have been overwhelmed with the level of support for the new system and the commitment of both professionals and volunteers to make the theory embodied within the Law a reality in practice. I have been impressed by the levels of interagency working and already we have seen some creative solutions and good outcomes for individual children and young people.

The Convenor's meeting held in advance of the Tribunal has, in my view, proved to be a key innovation. As well as serving its intended purpose of removing from the Tribunal the often complex process of determining whether the facts in support of the reasons for referral are accepted or not, it has proved to be equally useful in supporting effective engagement at the tribunal. It provides an opportunity for the young person and their parents to visit the Tribunal premises in advance of the hearing and allows them to ask any questions that they might have. This appears to have enabled families to feel less anxious about the process and better able to engage directly with the Tribunal members on the day of the hearing.

It is still very early days and it is likely to take a few years of operation before the new system is fully embedded within the culture and practice of Guernsey and Alderney. The early signs are however very positive. The next steps in the development of the system include gathering information and data and working with key partner agencies to develop outcome focused performance measures. I would predict that in the not too distant future Guernsey and Alderney will have a much admired system of care and justice that meets the needs of children, their families and their community. I look forward to providing future updates.

Karen Brady is enrolled as a solicitor in Scotland. She is Children's Convenor for the Bailiwick of Guernsey.

karen.brady@gov.gg.

Breaking the Cycle—future reform of the Youth Justice System in England & Wales

Prof. Kathryn Hollingsworth

In December 2010, the Coalition Government published a consultation paper on its proposals for future developments within the criminal justice system. The Green Paper, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders,* sets out and seeks to address the three priorities of the Government's criminal justice agenda: to punish offenders; protect the public; and reduce offending. The purported focus of the Green Paper is to set out 'how an intelligent sentencing framework, coupled with more effective rehabilitation, will enable us to break the cycle of crime and prison which creates new victims every day'. The Green Paper includes proposals for changes to both the adult criminal justice system and the youth justice system: It is the latter which is the focus of this short article.

The consultation questions set forth in the Green Paper do not indicate a radical overhaul of the youth justice system, unlike that undertaken by the Labour Government when it was elected in 1997. Rather, *Breaking the Cycle* appears, prima facie, to propose only incremental change to the procedural aspects of the youth justice system; for example, there are no proposals to introduce new sentences; the principal community and custodial sentences – the Youth Rehabilitation Order and the Detention and Training Order - will be retained. However, more significant changes are proposed for the governance and accountability structures within the youth justice system. All of the proposals are subject to change; this is, after all, a consultation document. Nonetheless, the broad thrust of the Government's youth justice agenda can be ascertained, and the proposals for reform will be explained briefly here.

Breaking the Cycle: The Proposals

As noted above, the aims of the Coalition Government with regards to criminal justice are to prevent offending and to punish and rehabilitate offenders. *Breaking the Cycle* thus has echoes of the 'new youth justice' as envisaged and implemented by the Labour Government when it came to power in 1997. The Crime and Disorder Act 1998 – the most significant piece of legislation in Labour's reform to the youth justice system - made prevention the principal aim of the youth justice system (see section 37 of the Crime and Disorder Act 1998, and section 9 of the Criminal Justice and Immigration Act 2008, as applied to sentencing) and increased 'responsibilisation' by lowering the age at which full criminal responsibility is imposed (through the abolition of the presumption of *doli incapax* for 10-13 year olds), altering who is responsible (by extending responsibility to parents), and amending how responsibility is achieved (for example, through the introduction of quasi-restorative justice in the form of the referral order). Although the last couple of years have seen a drop in the numbers of children entering the youth justice system and a downward trend in those being sentenced to imprisonment,[1] the re-offending rates for young people remain high.[2] *Breaking the Cycle* seeks to address this by building on the 'new youth justice' – with an emphasis on prevention and responsibilisation – whilst making proposals which have the potential to be positive for both children and the public purse alike.

Prevention

The coalition government's focus on prevention has two principal elements: first, a concern with parenting and the role of families in reducing the risk of children engaging in criminal activity; and secondly, the response by criminal justice institutions when children engage in low-level offending.

With regards to the first aspect, the coalition's proposals mirror the approach taken by the previous Government, with an emphasis on early-intervention, multi-agency support for chaotic families, and the use of coercive orders where 'parents refuse to face up to their responsibilities'. Therefore, the new Government will 'encourage' Youth Offending Teams (YOTs – the teams responsible for delivering youth justice services within local authorities) to make full use of parenting orders. Parenting orders were first

[1] See the YJB workload data: http://www.justice.gov.uk/publications/docs/yjb-annual-workload-data-0910.pdf

[2] 75% of those sentenced to custody reoffend within a year, and 68% of those on community sentences. See *Breaking the Cycle,* p. 67.

introduced by the Labour Government in 1998 and are arguably the mechanism most explicitly aimed at instilling parental responsibility in the youth justice context.[3] Section 8 of the Crime and Disorder Act 1998 empowers courts to make an order for up to 12 months compelling a parent to comply with the requirements of the order. These requirements can include exercising specific functions relating to the child (such as school attendance, or imposition of a curfew), but the primary purpose of parenting orders is to compel parents to attend a 'counselling or guidance programme' – parenting classes. The use of parenting orders in England and Wales has been expanded since they were first introduced, and they can now be used in a variety of circumstances, including where a child is convicted of a criminal offence, is the recipient of an Anti-Social Behaviour Order (ASBO)[4], a Child Safety Order, or a Sex Offender Order; or the child is truanting from school or misbehaving at school, or has been referred to a YOT (even if not convicted of an offence). However, parenting orders – the breach of which is a criminal offence – are supposed to be used only as a last resort, where parents have failed to accept voluntarily help with their parenting skills, or where a parenting contract has failed to secure the desired results.[5]

The link between parenting and offending is one that has long been made,[6] but it was only when the Labour Government were elected that the idea of compulsory training to 'improve' parenting and thus address youth offending took hold.[7] However, it is questionable whether parenting orders are effective in reducing offending and whether they are an appropriate tool to do so. In terms of effectiveness, although there is much evidence that early intervention in children's lives can improve a child's behaviour,[8] it is likely that at the point when parenting orders are used – once a young person has begun to offend – the imposition of parenting classes is too late, especially for those young people who are at risk of engaging in the most serious offending.[9] Additionally, the evidence to support the use of coerced parental training as a tool to improve children's behaviour remains scarce.[10] There are also principled, as well as practical, objections to using criminal law mechanisms to coerce 'good parenting': the increase in the likelihood of family conflict between child and parent; the targeting of particular social groups for increased social control; the gendered nature of parenting orders (they are mostly imposed on mothers for the offending behaviour of their sons); the displacement of the state's responsibility towards children; and the (mis)use of the law as part of a normative project to remoralize the family and mould an image of 'good' parenting.[11] Despite these criticisms, the reliance on parenting orders has continued: the Labour Government's 2008 *Youth Crime Action Plan* placed renewed emphasis on their use and this is continued in *Breaking the Cycle*. Thus, the Coalition Government's approach to parenting orders replicates that of the previous Government and fails to challenge the presumption that parenting orders are a useful tool for preventing offending. Here we see a clear continuation of the policies of one Government to the next.

However, where the Coalition departs from the previous administration with regards to prevention is in how low-level and first offending is to be responded to by criminal justice agencies. Sections 65 and 66 of the Crime and Disorder Act 1998 introduced a structured system of reprimands and warnings to replace cautions for young people; the effect of which was to limit the use of diversion to two occasions (first a reprimand, secondly a final warning) after which the child is subject to prosecution. One of the criticisms of this system of diversion is that it curtails the discretion of the police and results in more children being brought into the youth justice system at a younger age and for more minor offences; thus catapulting them through the criminal justice system at a faster pace, regardless of the severity or circumstances of the subsequent offending.[12] Additionally, the use of reprimands and warnings can have important consequences for the young person because it is part of a more interventionist approach to youth justice, designed to 'nip offending in the bud'. Accordingly, the child subject to a final warning may find that he is expected to meet regularly with

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[3] On the history of parental responsibility in the youth justice system see Arthur, R (2005) 'Punishing Parents for the Crimes of their Children' *Howard Journal of Criminal Justice* p 233.

[4] ASBOs are to be scraped by the current Government.

[5] See further Hollingsworth, K (2007) 'Responsibility and Rights: Children and their Parents in the Youth Justice System' *International Journal of Law, Policy and Family* p. 190.

[6] For example, see Farrington (2007) 'Childhood Risk Factors and risk focused prevention' in Maguire, M; Morgan, R; Reiner, R (eds) *The Oxford Handbook of Criminology* (4th edition, OUP)

[7] Gelsthorpe, L. and Burney, E. 'Do we Need a Naughty Step: Rethinking Parenting Orders after Ten Years' *Howard Journal of Criminal Justice* p 470 at 473.

[8] Farrington (2007) 'Childhood Risk Factors and risk focused prevention' in Maguire, M; Morgan, r; reiner, R (eds) *The Oxford Handbook of Criminology* (4th edition, OUP)

[9] See Walsh, C (2011) 'Youth Justice and Neuroscience: A Dual-Use Dilemma' *British Journal of Criminology* p. 21. However, it is here that other initiatives – such as the Department of education's Early Intervention grant can be useful.

[10] Gelsthorpe and Burney (2008) at p. 477.

[11] For further references, see Hollingsworth (2007), above.

[12] So-called net-widening. See Evans, R. and Puech, K. "Reprimands and Warnings: Populist Punitiveness or Restorative Justice?" *Criminal Law Review p.* 794 and para 2.34 of *Breaking the Cycle*.

a YOT worker or partake in a YOT intervention, or he may find himself on the sex offender's register for example.[13] The advantages of diversion – the prevention of negative labelling, a proportionate response to minor and first offending, and the saving of resources - are therefore lost. The proposals in the 2010 Green Paper potentially address these factors by using instead 'informal interventions' which could be 'more effective in making the young person face up to the consequences of their crime, provide reparation for victims, and prevent further offending'. Thus, a more simplified system is proposed, conferring upon the police and the prosecution service greater levels of discretion. On the one hand, such a move is positive if it prevents the escalation of children through the youth justice system. However, there is research evidence that even within the current structured system the police are able to exercise considerable discretion, and divert informally children who are engaged only in low level offending.[14] Any *further* increase in police and prosecutorial discretion must be accompanied by clear procedures to ensure this additional discretion is not abused, particularly if the diversion techniques continue to involve interventions or reparation. Court processes may be overly formal and risk sucking the child further into the system, but they do provide important procedural safeguards and give primacy to the rights of the child in a way that administrative justice does not. As ever, the devil will be in the detail and significant scrutiny should be applied to any changes to the system of reprimands and warnings.

Linked to the proposals for more simplified system of diversion is a proposal that referral orders be made more 'flexible' for first time offenders. Referral orders are currently compulsory for young people pleading guilty to their first offence, and require that the young person and a parent attend a youth offender panel where the young person will be asked to discuss his offending behaviour, potentially meet the victim, and be asked to sign a 'contract' which sets out how the young person will repair the harm caused by the offence. The proposals in *Breaking the Cycle* do not explain what increased flexibility means in this regard, but the proposals go on to suggest that the panels should have a strengthened restorative approach.

Youth offender panels currently only come into play once a child has pleaded guilty in court; so perhaps a strengthened role in *pre-court* restorative procedures is envisaged. This would mirror more closely the system of Family Group Conferences in New Zealand. However, the success of increased restorative processes is likely to turn on the willingness and availability of victims to attend the panel meetings. In the current system, take up by victims has been low.[15]

Sentencing and Remand

The sentencing proposals included in the Green Paper focus primarily on the use of custody and less on community sentences. The Government are happy for the time-being to see how the Youth Rehabilitation Order (introduced in November 2009) will pan out, and are currently assessing the impact of the order.[16] Significantly, the Green Paper notes that custody for young people represents a last resort and should be used only sparingly, for the good of the child and for the good of the public purse. This is an important statement by the Government, though whether it will be followed in practice is a different issue. One particularly welcome and specific proposal in *Breaking the Cycle* which may help to reduce the use of custody is in relation to remand. The Green Paper notes that 57% of young people on remand do not go on to receive a custodial sentence, and that young people on remand make up 28% of the custodial population in England and Wales. Accordingly, proposals are made to amend the Bail Act so that children cannot be placed on remand if they are unlikely to receive a custodial sentence. This would not remove entirely the 57% of children remanded who do not go on to receive a custodial sentence but it should help significantly to reduce this figure.

Currently, there are two remand orders. The first order is remand to local authority care pursuant to section 23 of the Children and Young Person's Act 1969. This order places the child in a secure training centre or a local authority secure home and is used for all boys under 14 and all girls under 17. The second order is remand to custody, where a child is placed in a young offender's institution. This is used for boys aged 15-16 *unless* the child is vulnerable *and* a place is available in local authority care in which case the first order will be used. This means that two children aged 15 can be subject to different remand orders and very different types of accommodation purely on the basis of their gender.

[13] *R (R) v Durham Constabulary and another*. [2005] UKHL 21; [2005] 1 WLR 1184.

[14] See Field, S (2008) 'Early Intervention and the 'New' Youth Justice: A Study of Initial Decision-Making' *Criminal Law Review* 177.

[15] Crawford, A and Newburn, R (2003) *Youth Offending and Restorative Justice: Implementing Reform in Youth Justice* (Devon: Willan).

[16] Para 2.41

This apparent sex discrimination has not been held to breach the European Convention on Human Rights.[17] However, the choice of order has important legal consequences. Children remanded to local authority care acquire the status of 'looked after' children under section 22 of the Children Act 1989 whilst they are on remand, but children remanded to custody do not. Being 'looked after' is significant because it places specific duties on local authorities for that child during the time he is looked after, and in some cases (if certain thresholds are met), when the child leaves state care.[18] Thus, duties are owed to children remanded on the first type of order but not those remanded pursuant to the second. *Breaking the Cycle* proposes to introduce *one* remand order for *all* children. This is to be welcomed provided that the single order to be used is remand to local authority care (even if the child is placed within a Young Offenders Institution), and *not* remand to custody. This would mean that *all* children on remand would fall within the definition of 'looked after' child and thus be entitled to additional support from the local authority. However, it is unclear from the Green Paper what the new remand order will look like, only that it will extend to 17 year olds. Currently, 17 year olds are dealt with in the same way as adults for the purposes of remand, something which is a breach of the UN Convention on the Rights of the Child. The inclusion of 17 year olds within the remand provision for children is therefore a move in the right direction.

Financial Incentives

One way in which the Government proposes to reduce offending whilst also minimising the numbers of young people being sentenced to custody is to financially 'incentivise' local authorities. Currently, local authorities receive a central grant which covers all costs of the delivery of youth justice services in the local authority *except* the cost of custodial places; the funding for custody is borne instead by the Ministry of Justice. The Government propose to devolve the cost of custody onto local authorities in order that local authorities 'share both the financial risk of young people entering custody, and the financial rewards if fewer young people require a custodial sentence'. A pilot scheme is to be run with a consortium of local authorities with whom the Government will agree a target reduction in the use of custody. If the agreed target is not met some or all of the reinvestment grant will be recouped by the Government. This proposal appears sensible since currently there is no financial incentive on local authorities to keep children out of custody, and it is in line with proposals made by Rob Allen in 2006.[19] However, presumably the reinvestment grant will be used to increase the number of preventative programmes targeted at 'at risk' groups rather than generally used to improve universal services for children (since the provision of universal services comes from the children's services budget, not the YOT budget). Therefore, the problems associated with identifying children 'at risk' or families at risk, including possible stigmatisation and resistance by these families and children to engage with prevention-based programmes, are likely to remain. Further, the scheme is being introduced at a time when YOTs are facing huge cuts as a result of the economic crisis; some London YOTs report a funding cut of 30% and more. Existing services, including preventative programmes, will necessarily be culled. Potentially then, the money devolved to YOTs under this scheme may simply go towards plugging those financial holes. If so, it will be extremely challenging for YOTs to achieve further reductions in custody figures. Therefore it is crucial that realistic targets are set that take account of the overall reduction in funding, so that YOTs are not unfairly financially penalised and their work with vulnerable young people impeded.

Structural changes

Perhaps of most significance are the proposals for reform to the governance of the youth justice system in England and Wales. Part of the Labour Government's reforms in 1998 were institutional: an executive non-departmental governmental board, the Youth Justice Board (YJB), was established under the umbrella of the Home Office (and later the Ministry of Justice and the Department for Children, Schools and Families) to (inter alia) monitor performance in the youth justice system, advise the Home Secretary on the operation of the Youth Justice System, disseminate good practice, allocate children to custodial institutions, and carry out research. In addition, multi-agency youth offending teams (YOTs) were established in every local authority area to deliver youth justice services. The current Government considers that YOTs are now 'firmly established in delivering youth justice services on the ground' and that there is no longer a need to have central oversight from a separate organisation. As such, the YJB is to be scrapped as part of the abolition and reform of public bodies set out in the Public Bodies Bill.

[17] *R (on the application of SR) v Nottingham Magistrate's Court* [2001] EWHC Admin 802

[18] See further Driscoll, J and Hollingsworth, K (2008) 'Accommodating Children in Need: *R (on the application of M) v Hammersmith and Fulham LBC' Child and Family Law Quarterly* p. 522.

[19] Allen, R (2006) *From Punishment to Problem Solving* (London: Centre for Crime and Justice Studies).

These structural changes to the governance of youth justice are in line with the Government's broader ideological ideals, where the focus is on the 'Big Society' and the role of local communities and the third sector in the delivery of services rather than on 'big Government'. This is in contrast to the managerialism and centralised control that was evident in the Labour Government's reforms to the 'new youth justice' in 1998. *Breaking the Cycle* clearly indicates a move towards greater professional discretion, more local accountability and a 'lighter touch' central performance monitoring (from the Ministry of Justice) consisting of risk-based inspections. There will be a specific focus on the oversight of three main outcomes: reducing the number of first time entrants into the youth justice system; reducing reoffending; and reducing offending.

It is clear that the reforms will have significant financial and resource implications and can be seen as part of the wider money-saving drive of the Government as it attempts to address the economic crisis. Of particular concern might be the effect on YOTs of the increase in the level and complexity of their workload. However, if against this background of reduced resources, the aims – to reduce offending, custody, and recidivism while bearing in mind the welfare of a young offender - *are* achieved they will also be good for children and in line with some of the standards set out in the UN Convention on the Rights of the Child, the Beijing Rules and the UN Committee on the Rights of the Child's General Comment No 10.

Professor Kathryn Hollingsworth, Newcastle Law School, Newcastle University, Newcastle upon Tyne, England

The application of UNCROC to sentencing youth offenders in New Zealand

Linda McIver

In its decision of July 2010 in *Pouwhare v R* 24 CRNZ 868, the New Zealand Court of Appeal specified some clear principles on the extent of a sentencing judge's duty to uphold the rights of a child or youth offender under the United Nations Convention on the Rights of the Child (UNCROC).

The facts

Pouwhare, a young woman aged 16, pleaded guilty in the Youth Court to charges of robbery, aggravated robbery and possession of cannabis. The charges were in respect of a robbery of a local shop. Pouwhare and her friend were armed with knives. Several months earlier Pouwhare had also assaulted and robbed a woman on a train station platform.

The sentencing Youth Court Judge imposed the most serious penalty the Youth Court can make – a conviction and transfer to the District Court (adult court) for sentence.

The legal question

The District Court was faced with a dilemma as to whether it must take youth justice principles into account when imposing sentence on a young person. "Youth justice principles" mean the principles in the Children, Young Persons and Their Families Act 1989 which must be considered by the Youth Court when sentencing a child or young person, such as –

- Measures for dealing with offending by a child or young person should be designed to strengthen the family and family groups and to foster the ability of families to develop their own means of dealing with offending by their children and young people (s208(c));
- A child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public (s208(d));
- Sanctions imposed on a child or young person who commits an offence should take the form most likely to maintain and promote the development of the child or young person within his or her family and take the least restrictive form that is appropriate in the circumstances (s208(f)).

As an aside, since the Pouwhare decision, the New Zealand government has added one more principle applicable to sentencing, namely - measures for dealing with offending by a child or young person should so far as it is practicable to do so, address the causes underlying the child's or young person's offending (s208(fa)).

In sentencing in the Youth Court there is less emphasis on deterrence, denunciation, punishment and the need for exact parity between offenders. Sentencing in the Youth Court must balance both the need for accountability, and the need to address the underlying causes of offending by the child or young person.

The District Court was faced with conflicting High Court authorities as to whether it must take "youth justice principles" into account. The difference between the two approaches would have produced very different results for Pouwhare. If youth justice principles were to be taken into account, a sentence of home detention would have been likely. The Judge determined that on balance youth justice principles should not be considered and imposed a term of imprisonment of two and a half years. He arrived at that term by starting at a point of four and a half years imprisonment to reflect the seriousness of the offending. He gave a discount of 25% to reflect Pouwhare's young age, and a further 33% discount to reflect her early guilty plea.

The decision was appealed to the High Court which upheld the sentence, and then further appealed to the Court of Appeal.

The Court of Appeal decision

The Court of Appeal held that the Children, Young Persons and Their Families Act 1989 caters for young offenders whose offending is not of the most serious order. It does not cater for young offenders, especially those approaching the age of 17, whose offending is so serious that it is tantamount to adult offending.

When the Youth Court orders that the young person is to be convicted and transferred to the adult court for sentencing that order is to be treated literally. In making that order the Youth Court has determined that the offending is so serious, the special principles in the Children Young Persons and Their Families Act should not apply. In that case it is only the adult sentencing regime in the Sentencing Act 2002 that applies.

Nonetheless, the age of the offender is still a relevant consideration under that Act.

The Court considered a sentencing Judge's obligation in respect of UNCROC and held that a Judge should act in accordance with that Convention to the extent that is consistent with the Sentencing Act. In particular, -

- the young person's best interests should be a primary consideration;
- The Judge must treat the young person in a way that promotes his or her sense of dignity and worth;
- The Judge must reinforce the young person's respect for the human rights and fundamental freedoms of others;
- The Judge must impose a sentence which takes into account the child's age and the desirability of promoting the child's reintegration and the child assuming a constructive role in society.

That obligation means that a Judge must always weigh the young person's age, and the reasons why he or she offended, against the objective seriousness of his or her offending and prospects of rehabilitation. In particular it held that there is no top limit to the sentencing discount for youth. Sometimes the offender's age will be a mitigating factor of high or decisive significance even where offending is serious. But there is no warrant for saying that youth alone must always prevail as the paramount value on sentence, or that it can justify radically reducing a sentence which would otherwise be proper.

Linda McIver is Research Counsel to the Principal Youth Court Judge, New Zealand Youth Court.

How old are we?—a brief history of IAYFJM

Oscar d'Amours

Oscar d'Amours

Edouard JULHIET, 1870-1931
©Photo Collections Ecole polytechnique

In 2010 during our 18th World Congress in Hammamet—where we celebrated the 80th anniversary of our first World Congress—our President Renate Winter rounded off her address by declaring, "One day I hope to be invited to celebrate the hundredth birthday of our 'Old Lady' (IAYFJM)."

If we want to deck the halls and send out invitations to the hundredth birthday party in good time, we need to look into the question of how we began.

What several members are wondering is whether the Association reached 100 in 2011 or were we only 83?

Let us look at what happened, at the context, the aims and at some facts.

Context

At the beginning of the twentieth century society was deeply concerned about young people in risky situations. By 1899 tribunals for young people had been set up in the USA with the aim of encouraging judges and social organizations to help young people in difficulty, both in Europe and America. From 1906 onwards, Hubert Julhiet began to promote the idea of youth justice, distinct from adult justice. He was supported in this by MM Deschanel and Ferdinand-Dreyfus[1]

Édouard Hubert Julhiet organised the first International Congress of Youth Courts in Paris between 29 June and 1 July 1911. As well as chairing the organizing committee, he was the guiding light for the Congress. More than three hundred delegates took part[2]. During the Congress an International Commission was set up *"to pull together the emerging principles…and to make preparations for a second Congress*." Sadly, the Commission was unable to organize a second Congress. Almost twenty years had to pass before the wish expressed in 1911 could be realized.

It was in Paris in July 1928 at the Congress on Child Protection that pioneer judges who were "*rather drowning in the extent of all the problems*" felt the need to combine their forces[3]. A provisional executive was established with six members in addition to the President :Henri Rollet (France)—Vice President : Paul Wets (Belgium), Secretary: M. Franck (Germany) and l L. Clostermann (Germany),:Pierre de Németh (Hungary), Enrico de Y de la Llave (Spain) and Antoni Komoroski (Poland)[4].

As Mme Henryka Veillard-Cybulska said in her history of the IAYFJM[5] :

Wishing to pay tribute to Belgium because of the particularly active and pioneering role that had been played in the field of youth protection by the country in general and by Judge Wets in particular, the participants proposed that the

[1] JULHIET, Hubert,Édouard , http://annales.org/archives/x/julhiet.html

[2] McCARNEY, Willie, History of the International Association of Youth and Family Judges and Magistrates (Part 1), Chronicle No.2, Vol.11, December 2002, page 30.

[3] International Congresses (1930-1970), page 2, published by the International Association of Youth and Family Judges and Magistrates, Tribunal de la Jeunesse, Rue des Quatre-Bras, 13,1000 Brussels.

[4] Ibid

[5] ibid

headquarters of the Association should be in Brussels and that its first Congress should be held there.

So the IAYFJM was legally established in 1928 in Paris "*in the spirit of the community of nations and to contribute to the work of that community*."[6]

The first, founding Congress of the International Association of Children's Judges (nowadays known as the IAYFJM) was held in Brussels from 26 to 29 July 1930.[7]

Objectives

The aims of the Association when it was set up in 1928 were recorded as follows by Mme Henryka Veillard-Cybulska, Assistant General Secretary (1966-1974), in her history of the Association's Congresses:

« According to the statutes, the aims of the Association were:

1. To act as a link between all judges and magistrates in different countries who are part of a jurisdiction dealing with children; to form an association for members to strengthen international brotherhood between magistrates dealing with children and to contribute to notions of good fellowship, conciliation and justice.
2. To take an interest in all issues and problems which affect these jurisdictions from an international perspective; to defend the principles which have led to their establishment and to publicise them in order to equip countries which have not yet set up such jurisdictions.
3. To study laws protecting children and the organization of the various systems of children's courts with the aim of improving and perfecting national institutions.
4. By setting up relationships between members, to facilitate solutions of interest to foreign justices from countries that encourage family and social surveys, providing documentation about the work and methods, in order to ensure and speed up adequate solutions in different situations.
5. To ensure that research is done in every country into criminal behaviour of young people and its causes in order to combat its effects and particularly to establish or spread permanent prevention programmes using all methods of prevention or re-education and to be concerned for the moral and material improvement of young people, especially those who have suffered misfortune or have been morally cast aside[8].

Although the expression of our aims in the 2011 statutes has a contemporary ring, the spirit of the original lives on and should continue to be a source of inspiration in our work

One other aim has been added over the course of the years to take account of the setting up of international bodies concerned with young people: «To work in conjunction with international associations concerned with the protection of young people and the family.»

To summarise, our main aims have always been to maintain links between magistrates in different countries and also with other international associations concerned with the protection of children and families; to encourage research and studies at an international level into problems to do with the operation of legal systems for young people while supporting collaboration between countries and authorities with regard to the situation of young people and their families[9].

Congresses

To further its aims, the Association organizes or sponsors seminars on related subjects. However, from the outset the Association's main activity has, without doubt, been the holding of a World Congress every four years. And, having consultative status with the United Nations and Council of Europe, the Association has taken part in developing regional and international instruments in the field of Children's Rights.

In planning the Congresses, the Association did not adopt a general theme until the fifth Congress held in Brussels in 1958. However various themes were taken up in part[10].

Below are the dates and locations of the 18 Congresses that have been held from 1930 to 2010, together with the themes that were discussed at these international meetings[11].

6 Ibid Note 3 page 8

7 Ibid Note 2, page 31

8 Note 3, page 8

9 Informations sociales, *La justice pour mineurs*, CNAF, December 1974

10 SEGUIN, Agnès, *Association française et Internationale des magistrats de la jeunesse et de la famille,* AFMJF/AIMJF, Fonds 2005033, répertoire numérique détaillé, page 3 :….. www.cnahes.org/uploads/_cnaches/fonds/afmjf_aimjf_répertoire.pdf

11 Ibid

Brussels	Children before the courts
26-29 July 1930	National and international perspectives on youth courts v. youth protection
Brussels	Effects of the economic crisis and unemployment on children and adolescents.
15-17 July1935	Scope for a police force specializing in children.
	Looking after children from abroad
	Supporting services for children's courts.
Liège	Organisations aiming to understand the conflicts between children and society and between children and their environment.
17-20 July 1950	
	Main aspects of the problem of socially mal-adapted children
	Youth justice: Training and specialization of youth court judges; working with the court's auxiliary services
Brussel	Child law (general problems)
16-19 July 1954	Interventions justified by relations between parent and child
	Children and society
	Youth protection
Brussels	General theme : Social and educational action by the courts for young people
14-18 July 1958	
Naples, 26-29 Sept. 1962	General theme Training and support for youth magistrates
Paris, 18-23 July 1966	Judicial protection of young people across the world
Brussels, July 1970	The magistrate, the child, the family and the community
Oxford, England	Youth justice in a changing world.
15 to 20 July 1974	
Montreal	Judges and environmental pressures on young people and families.
17 to 22 July 1978	
Amsterdam, August 1982	Youth justice and families in a social context
Rio de Janeiro	Young people separated from their families.
24 to 29 August 1986	
Turin	New kinds of families.
16 to 21 Sept. 1990	
Bremen, Germany	Young offenders and their families—the human rights issues
August 1994	
Buenos Aires	Young people and social change—new challenges for justice, politics and society
November 1998	
Melbourne	Forging the links
26 to 31 October 2002	
Belfast, N. Ireland	Putting the pieces together again
27 August to	
1 September 2006	
Hammamet, Tunisia	United in Diversity
21 to 26 April 2010	

Conclusion

As Dr Willie McCarney[1] has emphasised, it must be recognized that the Association has roots that have allowed it to grow from 1911 thanks to the work of Edouard Hubert Julhiet. It must also be recognized that, emphasizing the work of Judge Wets of Belgium, the Association was legally founded in 1928 in the first flush of international organizations, such as the League of Nations in 1919.

So do we need to choose a single date for our anniversary celebrations?

Should we give pride of place to 1911, 1928 or 1930 to draw attention to the work and spirit of the people who were active at those particular dates?

In a similar vein, I would suggest that we do what lots of families do. Each one of these dates should be celebrated to mark out the road that has been followed to promote the rights of children in danger.

In the field of the rights of the child, any progress or improvement should be made much of so that we do not forget the road we have travelled and that the day after we will remember that gaining respect for children's rights across the whole world will always be a work in progress.

We hope to put out the flags as often as possible to celebrate historic achievements and to support our work over the years to come.

Oscar d'Amours*, Vice President IAYFJM

[1] Note 2 page 30

Treasurer's column — Avril Calder

Subscriptions 2011

In February 2011 I will send out e-mail requests for subscriptions to individual members (GBP 30; Euros 35; CHF 55 for the year 2011 as agreed at the General Assembly in Tunis in April 2010) and to National Associations.

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) or Euros. My e-mail address is treasurer@aimjf.org .

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 at 31, Uxbridge Road, Kingston-upon-Thames, Surrey KT1 2LL, England.

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

IDE Information

Master interdisciplinaire en droits de l'enfant (MIDE),
This full-time Master programme on children's rights is offered in French and is designed for students with a BA degree in law, sociology, psychology or social work who seek to complete their studies in the field of children's rights. The MIDE addresses children's changing position in society and their rights at local, national and international levels. Students are expected to acquire a sound background in children's rights, develop analytical and interdisciplinary skills while specializing in specific fields through research projects, an internship and group works. The MIDE is organised by the Institut Universitaire Kurt Bösch (IUKB) in partnership with the University of Fribourg, Switzerland. The studies take place at IUKB in Sion, Switzerland over a period of three semesters (one year and a half) and count for 90 ECTS Credits. The next cycle will start on 19 September 2011. Late application possible until 31 August 2011.

For more information, see the website: www.iukb.ch/mide

Veillard –Cybulkski Award 2012

Every two years, the **Veillard-Cybulski** Association Award pays tribute to a ground-breaking contribution tackling methods of treating children, adolescents and their families.
Today we are announcing that applications for the **2012 Veillard-Cybulski Award** can be handed in by the **Veillard-Cybulski** Association. More details on the following link:
http://www.childsrights.org/html/site_en/index.php?c=ins_vei_prix.

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
European Commission	Towards an EU strategy on the Rights of the Child Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.	http://ec.europa.eu/justice/policies/children/policies_children_intro_en.htm http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32011L0036
United Nations Human Rights Council	Rights of the child: a holistic approach to the protection and promotion of the rights of children working and/or living on the street Adopted 24/3/2011 by Human Rights Council (16th session)	http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/126/92/PDF/G1112692.pdf?OpenElement
Bernard Boeton* Fondation Terre des Hommes (TdH)	Website Child trafficking	http://www.tdh.org/ http://tdh-childprotection.org/
Jean Zermatten* Institut international des Droits de l'Enfant **(IDE), Chair** UN Committee on Rights of Child	A Complaints Mechanism for the CRC is Vital for Enforcement of Rights for all Children An Optional Protocol to the Convention on the Rights of the Child to provide a communications procedure for complaints was adopted by the Human Rights Council in June 2011.	http://www.childsrights.org/html/site_en/index.php?subaction=showfull&id=1295608841 http://www.crin.org/NGOGroup/childrightsissues/ComplaintsMechanism/
IDE Seminar	"Climate Change and Its Impact on Children's Rights" October 25th to 28th, 2011, Sion – Switzerland	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). Report on children's rights to child friendly justice.	Email: info@crin.org www.crin.org http://www.crin.org/docs/Child-Friendly%20Justice%20and%20Children%27s%20Rights.pdf
Interagency Panel on Juvenile Justice **(IPJJ)**	Newsletter	newsletter@juvenilejusticepanel.org
International Labour Organisation **(ILO)**	June 2011—ILO states adopted a new treaty to fight child labour. See Text of the Convention Concerning Decent Work for Domestic Workers (30% are children)	http://www.ilo.org/ilc/ILCSessions/100thSession/lang--en/index.htm#a1 and follow PR No 15A
Mario Project	On 26.05.2011 child rights violations were discussed at the European Parliament in the conference "European Migrant Children: What Protection?" hosted by MEP Mariya Nedelcheva.	http://www.tdh-childprotection.org/news/mario-project-partners-raise-awareness-of-eu-institutions
International Juvenile Justice Observatory **(IJJO)**	Website	http://www.ijjo.org

Meeting in Paris, March 2011

Back row: Daniel Pical, Joseph Moyersoen, Anne-Catherine Hatt, Hervé Hamon

Front row: Eduardo Rezende Melo, Oscar d'Amours Margareeth Dam Ewa Waszkiewicz, Avril Calder, Francine Biron, Beatrice Borges Gabriela Thoma-Twaroch

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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 e-mail addresses listed below.

Articles for the Chronicle should be sent directly to:

Avril Calder, Editor-in-Chief,

e-mail : acchroniclelayfjm@btinternet.com

or : chronicle@aimjf.org

Editorial Board

Climate Change: Impacts on Children and on their Rights

International Seminar

Organized by

The International Institute for the Rights of the Child (IDE)

In collaboration with

The University Institute Kurt Bösch (IUKB)
Terre des hommes – child relief, Lausanne

Preliminary Program

Course Director: **Prof. Christophe Clivaz**, Interdisciplinary Master in Tourism Studies MIT (IUKB)

Dates: From October 25th to 28th, 2011

Languages: French and English with simultaneous translation throughout the plenary sessions

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