



Australian Children's Rights News

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The UN Committee on the Rights of the Child - Concluding Observations on Australia's CROC Compliance

The July 2005 edition of Australian Children's Rights News (No. 39) featured the content and development process of the Non-Government (Alternative) Report to the United Nations Committee on the Rights of the Child, a document submitted as part of the process for considering Australia's combined Second and Third Reports under the Convention on the Rights of the Child. The Australian Government appeared in Geneva before the Committee 13 September 2005 and Dr Judy Cashmore (President DCI -Australia) and Megan Davis travelled to Geneva again with the support of UNICEF and UNIFAM to observe the proceedings on behalf of the non-government sector. Here, Judy summarises the outcomes of the Committee's deliberations.

On 30 September 2005, the Committee released its Concluding Observations on Australia's compliance with the Convention. The Concluding Observations outline the Committee's conclusions on how well Australia is complying with the Convention and recommend ways in which Australia could and should improve its performance.

The Committee's views reflected the major issues and concerns outlined in the alternative report prepared by the non-government sector, a collaborative process that was carried through to Geneva by DCI-Australia and the National Children's and Youth Law Centre.

The Committee was positive about various initiatives, such as the proposed new legislation outlined by the Australian Government in relation to children and families, changes in Australian Government policy on asylum seekers led by several Liberal back-benchers (Petro Georgiou, Judi Moylan and Bruce Baird) and various moves to prevent the trafficking of children. The release of all children from immigration detention centres by July was a very welcome and marked change. In June 2005, when the non-government delegation presented the joint

Continued on page 4

Features:

Concluding Observations on Australia's CROC Compliance - p 1

The Moral Self - p 6

Learning from America on Bills of Rights - p 18

Submission on a Charter of Rights for Children in Care in Victoria - p 20

Children's Freedoms Reduced out of Fear - p 25

Child Health Honour - p 26

International Parental Child Abduction Service Established - p 28

The Anti - Terrorism Scheme: Hide and Seek with Human Rights - p 30

The Death Penalty - What manner of men and women are we? - p 35

Litigating for Juvenile Justice in the South African Courts - p 37

COLUMNS

President's Column
State Developments
New Resources
Upcoming Events
Websites

President's comments:

Year in Review – The President's Report to the 24 November 2005 Annual General Meeting

DCI-A has contributed over the last year to the debate on a number of national issues and some international issues in relation to the rights of children and young people via the submissions it has prepared for state and federal inquiries, letters, the articles in *Australian Children's Rights News* ("ACRN"), and its role in international congresses and forums relating to juvenile justice and the UN process in relation to the Convention on the Rights of the Child ("the Convention"). The main issues on which DCI-A has informed the debate and advocated for children's rights include:

- Child abuse, child pornography and the internet
- The treatment of children and young people seeking asylum
- Access to assisted reproductive technologies
- Children of prisoners
- Child protection
- Juvenile justice
- Australia's compliance with the Convention on the Rights of the Child.

Prominent DCI-A members Past-president Danny Sandor, former Chief Justice of the Family Court, Alastair Nicholson and Dr John Tobin have prepared a number of submissions on areas such as the terrorism legislation [see www.dci-au.org/news], and the Suspended Sentences Interim Report in Victoria [see http://www.criminology.unimelb.edu.au/staff/alastair_nicholson].

The major work that DCI-A was involved in during 2004-5 was the preparation and presentation of the second Alternative Report to the UN Committee on the Rights of the Child concerning Australia's compliance with the Convention.

DCI-A collaborated with the National Children's and Youth Law Centre (NCYLC) and a National Steering Group and National Advisory Group to consult on and prepare the Non-Government Report. A consultation paper and a background paper were prepared and consultations were held in collaboration with the community legal centres network in most states. The final report was drafted, reviewed and edited by a number of people across Australia with expertise in specific areas. A number of DCI members including Richard Chisholm, Moira Rayner, Simon Quilty, Barbara Rogalla, Danny Sandor and Judy Cashmore made very substantial contributions to writing and editing sections of the report, and DCI-A is very appreciative of their contribution. The report was printed and is available in hard copy and on both DCI-A's website at <http://www.dci-au.org/html/news.html#croc> and the NCYLC's website <http://www.ncylc.org.au/croc/consultpaper.html>.

Contributions by DCI-A members also were very helpful in helping to pay for the costs of preparing and printing the report, and in supporting the five-strong delegation who presented the report and participated in the pre-session working session in Geneva in June 2005 before the UN Committee on the Rights of the Child. Support from UNICEF and Oxfam and several other donors were also much appreciated. Megan Davis and Judy Cashmore also returned to Geneva again in September 2005 with support from UNICEF and Oxfam to observe the Australian Government's presentation to the Committee.

The thoroughness and thoughtfulness of the UN Committee's Concluding Observations provide some indication of the value of the non-government contribution.

Again on the international scene, DCI-A was fortunate that Helen Bayes was invited to address the DCI International Conference, Bethlehem June, 2005 to overview the work of Defence for Children International in protecting the rights of "Kids Behind Bars". Helen founded Defence for Children

International in Australia in 1993 and was awarded the Human Rights Medal in 1999 by the Human Rights and Equal Opportunity Commission in recognition of her outstanding contribution. Her paper was reprinted in ACRN in July 2005.

Acknowledgments

DCI-A is very appreciative of the accommodation and office assistance at very minimal cost that the Youth Affairs Council of Victoria (YACVic) provided over a number of years. DCI-A has now moved to the NCYLC office at the University of New South Wales, and again we are very appreciative of their offer and assistance.

Again particular thanks are due to several people who continue to keep the wheels of the organization turning:

- First, to Helen Mattick, a long-standing and loyal volunteer based in Canberra who continues to keep our books in order and deals with the correspondence and membership subscriptions etc. I am very grateful for her wonderful work and cheerful willing assistance.
- Second, to our webmaster, Mr. Chris Cody of Webenter, for maintaining and updating our website [www.dci-au.org]. Chris has also continued to provide the electronic formatting for the ACRN beginning with the September 2001 issue. He has done this cheerfully for a number of issues on an honorary basis but we now pay him a small honorarium at rates that accommodate our limited resources.
- Danny Sandor who has again taken up much of the work of preparing and editing ACRN. We will need to set up a small subgroup to work on it in the future.

Finally, I would like to thank the members of the National Committee. All of us are “time- challenged” because of our other work and family commitments so I know it has been difficult at various times to commit the time and energy to another avenue but your contribution is much appreciated. [See the back page of this edition of ACRN for 2005-2005 Committee Members]

We are instituting a wider consultation process with members of DCI-A through electronic means so will endeavour to include people on email exchange and draw on the skills and interests of the broader membership group. We will need to be alert to the impact of legislative and policy reforms at the federal level in relation to industrial relations, welfare to work changes and the anti-terrorism and will need all our resources in the coming year.

Judy Cashmore 2004-2005 President DCI-A.



[Editor's note: I know I speak for all of us in thanking Judy for what has been an extremely time and travel demanding presidential role this year and her continued availability to lead our organisation in the coming year.]

As always at this time of year, DCI-A tries to bring membership and subscription renewals to finalisation. If you have overlooked yours, you'll find a convenient reminder form enclosed. We would be most appreciative if you could return this before the new year break.

alternative report to the Committee, there were 65 children in immigration detention centres, some of whom had been born in detention and had never lived elsewhere. By September, when the Australian Government appeared before the Committee, there were no children in immigration detention.

Serious concerns about asylum-seeking children

However, the Committee was still quite rightly “seriously concerned” (para 62) that, despite the recent softening of immigration detention policies, children were still automatically detained if they were found to be in the country illegally. In particular, it was seriously concerned that:

- a) *administrative detention is not always used as a measure of last resort and it is not applied for the shortest appropriate period of time;*
- b) *conditions of immigration detention have been so far very poor, with harmful consequences on children’s mental and physical health and overall development;*
- c) *there is a lack of a regular system of independent monitoring of detention conditions.*

Widespread and acknowledged problems for Indigenous children

The UN Committee also expressed constant concerns throughout the Concluding Observations about the plight of Indigenous children in Australia, and in particular the large discrepancies in health, education, housing, employment and the standard of living between Indigenous and non-Indigenous children. In particular, there were concerns about malnutrition and under-nutrition in Indigenous children compared with over-nutrition, overweight and obesity at a national level. Indigenous children were over-represented in the juvenile justice system and were



more likely to drop out of school and have “serious difficulties” with education.

Megan Davis, from Jumbunna Indigenous House of Learning, went to Geneva in June with Judy Cashmore, President of DCI-Australia, as a member of the non-government delegation presenting the alternative report to the Committee, and returned in September to observe the Australian Government’s presentation and response to questioning.¹ Megan commented that the living conditions of many Indigenous children remains Australia’s greatest shame. This includes many Indigenous children living in metropolitan centres, not just in rural and remote areas. She said: “*the Reconciliation process in Australia has stalled. Together with the abolition of the Aboriginal and Torres Strait Islander Commission, Indigenous peoples are becoming increasingly dislocated from the Australian nation.*”

Other concerns

The Committee was also concerned about issues such as the new anti-terror measures and their possible effects on children, discrimination against children with disabilities and from different backgrounds, corporal punishment, and juvenile justice, including Australia’s reservation to Article 37, which relates to children who have offended being separated in detention from adults across Australia.

Children’s standard of living and children living in poverty

Australia’s inability to provide disaggregated data, especially in relation to special protection and vulnerable groups, as well as the failure to respond to the question about children living in poverty in Australia, also drew criticism. The Australian Government has resisted the use of a poverty line and responded to the Committee’s question on support for children living in poverty as follows:

Australia has never had an official poverty line, so the Australian Government would be unable to indicate the number of children living in families below any such measurement.

The Committee noted that “*the State party has not defined an official poverty line and is concerned that the impact of poor living conditions on the well-being and development of children is not adequately considered*” (para 56). The Committee went on to recommend that:

In light of article 27 of the Convention, the Committee recommends that the State party increase its efforts to provide affordable housing options and take all possible measures to raise the standard of living of indigenous children and children living in rural and remote areas.

The Committee further recommends that the State party address and systematically investigate the consequences of economic hardship on children, with a view to developing measures aimed at reducing its negative impact on children’s healthy development.

Next steps

The Committee’s consideration of the Australian Government report and presentation as well as the non-government contribution is reflected in a very comprehensive, quite detailed and thoughtful set of Concluding Observations.

The Concluding Observations are intended to be used as a tool for monitoring the compliance of State parties with the Convention on the Rights of the Child and for advocating for measures to promote the rights of children.

These most recent Concluding Observations provide a comprehensive and useful tool for the Australian Government and the non-government sector. They pinpoint the areas that the international experts on the Committee have indicated are in need of careful attention to improve the rights and conditions of children in Australia. It is a balanced and considered document that highlights the positive advances but

also draws attention to the areas where the Australian Government can make a genuine commitment to improving conditions for children in Australia. It spotlights the areas where there is considerable room for improvement. These include:

- systemic disadvantage and discrimination suffered by Indigenous children
- the need for improved access and coordination in service provision in key areas such as mental health, child care and education
- lack of genuine participation by children in legal and administrative processes that affect their lives.

The challenge now will be for the non-government sector to muster its forces and to use the alternative report and the Concluding Observations as the basis for further advocacy work. Examples of how other countries have used the Concluding Observations are available at the Child Rights Information Network (CRIN) website:

http://www.crin.org/docs/resources/publications/ngocrc/CRIN-NGOCRC_WP2_en.pdf

There are also further challenges ahead in analysing the likely impact and monitoring the effect of further proposed Commonwealth Government policy and legislation on children, including the welfare-to-work legislation, and the proposed industrial relations changes. These are likely to put further focus on the need for a systematic investigation of “*the consequences of economic hardship on children, with a view to developing measures aimed at reducing its negative impact on children’s healthy development*”, as recommended by the Committee in para 58 of the Concluding Observations.

DCI-Australia and National Children’s and Youth Law Centre very much appreciate the funding for the delegation provided by Oxfam, UNICEF and several anonymous donors.

Footnotes

1 Their notes on the Government’s presentation and other relevant documents are available on the DCI-Australia website www.dci-au.org/news and the website for the National Children’s and Youth Law Centre <http://www.ncylc.org.au/croc/latestnews.html>, the two Australian NGO agencies that coordinated the Australian NGO engagement with the Convention’s reporting process.

The Moral Self

This is an edited version of a lecture delivered by Moira Rayner, DCI-Australia Advisory Panel Member, National Committee Member, at RMIT University Melbourne on 17 and 18 August 2005

Overview

In this lecture about the moral self I will draw on my own experiences as a lawyer, an advocate of human rights, especially the human rights of children, and someone whose childhood gave her the lifelong weight of what I call a sense of justice, on a good day, and a burden of ineradicable guilt on a bad one. I will emphasise the ways that children learn about right and wrong, making ethical judgments and rules for getting along in life – that is, developing (or not developing) an ethical sense or a moral code.

Ethics and Morality

What is ethics? A dictionary definition would be a branch of philosophy that concerns itself about what human behaviour is acceptable ideally – that is, what acts or omissions would put a person outside the pale of human society. Ethics is the study of the ideal – what, *in theory*, is right or appropriate; the systematic study of reasoning about how we ought to act. Sometimes it also means a set of personal values about what is right.

One example of ethics is in Leftwich's (2002) essay 'I gave the names,' a story of a young human rights activist dedicated to the overthrow of apartheid, committed to justice and equity and other moral absolutes including a prohibition on the taking of human life in the anti-apartheid campaign. He was arrested, incriminating information was found on him; he was shaken up, left isolated, threatened with severe consequences for 'what he had done', and under pressure, manipulated by experienced interrogators, this twenty-four-year-old man gave up the names of his co-activists, betrayed his friends, and even gave evidence against them at their trials, to save himself. Twenty years on he is unstinting in self-blame.

His story tells us that moral codes:

- are not necessarily immutable or stable
- are based on strongly held personal beliefs that we use to guide our actions, and when those standards are breached, instil personal guilt as well as social disapprobation. This begs the question of which is the more important, the loss of friends, or self respect.
- are personal *and* external, and may co-exist or conflict. This man had risked his life and safety because of his code of beliefs about justice and equality, which did not fit within the social and legal system of his nation.
- are ways of judging what we have done after the event and do not necessarily drive decision making
- are fragile and may not withstand being subjected to personal threat. In times of emergency, our need for personal survival may well corrupt the moral code.

This lesson is that, outside of a supportive social context, his code of values could not stand up. Morality is about our dealings with others, and may depend on their approval or sharing of those values.

Law and Ethics

The term *ethics* refers to principles or ways of thinking that guide or claim the authority to guide our actions, decision-making processes and the ways we resolve conflicting responsibilities.

Professional groups adopting both ethical rules and professional codes of conduct have blurred the line between ethics and law in recent years. The former are ‘oughts’: the latter are ‘musts’ or ‘must nots’, with penalties for non-compliance, including exclusion from the professional group. The two are or ought to be quite different. For example, one must obey a law: this is a legal rule. But ethically one may disobey an unjust law, such as that all blue-eyed babies should be killed at birth. Disobedience to a grossly immoral law, according to our personal values, is an ethical precept, though one that may have nasty legal consequences.

There may be conflicting codes of ethical conduct in a particular situation, perhaps one professional and one personal. This may arise, for instance, when lawyers with child abuse or family law expertise feel uncomfortable accepting instructions to act for perpetrators of domestic violence or incest. Legal professional ethics (as well as the rule of law) require that lawyers not prejudge their clients or refuse to act in a field in which they are competent, even when the clients are unpopular people or may have committed horrendous crimes.

So the question of what morals are and morality is, is not simple. Morality is clearly about managing relationships and avoiding harm. But how do we define ‘harm’?

Universal Moral Precepts

What, if any, are the universal moral precepts in secular, multicultural societies?

It is reasonable to assume there is no universal code of morality. Each society, each religion and philosophical and political ethos develops its own rules about right behaviour. The closest we have to universal moral codes these days are the international treaties protecting human rights, which governments ratify and then unfortunately often fail to implement in domestic laws and practices.

Understanding How Morality Develops

Our sense of morality depends on what we have learned to value and think important during our lives, because of rules set or because of our thinking arising out of our experiences and our culture, or both.

How does the self develop a set of values, ethics and codes of morality? During the 1960s and 1970s, theorists tended to emphasise a developmental process that was common to all human beings. As Lenova Fulani discusses in her essay, *Moving Beyond Morality and Identity* (1998), Lawrence Kohlberg, the avatar of the 1970s, based his moral development theories on Piaget’s six stages of intellectual development. In his longitudinal study of men and boys, hypothetical moral dilemmas were presented – for example, is it right or wrong to steal a drug for your wife if she would have died without it? Their responses were then analysed to determine their reasoning.

He then categorised children’s responses into three stages:

1. *Pre-conventional*: Something is right if you can avoid punishment or obtain benefits from it.
2. *Conventional*: Awareness of society’s rules means that something is wrong if the rules would demand punishment; decisions are made based on avoiding disapproval from others. In these cases some effort

may be made to reason what the proper outcome should be – for example, a hope that, even though the thief who stole to save his wife must be punished, justice can be tempered with mercy and the judge may give a light sentence.

3. *Post-conventional morality*: When we are mature, our moral judgements are based on the complexity of each set of circumstances, and on abstract principles such as human rights, or fairness. This is the highest standard of ethical decision making in his hierarchy.

All his original research subjects were male. Later, he sought to apply the research model to women. His results indicated that men reached a higher level of moral development than women. This caused consternation and he has been critiqued for forty years.

Kohlberg's categories were based on a notion that was attractively neat, linear, predictable, and based on the values he thought underpinned morality: justice and fairness. As Fulani points out, these assumptions were later challenged by Carol Gilligan, who said that Kohlberg's stages of moral development were based on a male-biased view of morality and a male bias in his research method. Presenting people with hypothetical situations places a high premium on abstract thinking, which is assumed to be the best way to make decisions. It may be for men, who make the rules in a patriarchal society, but is it appropriate for women?

Gilligan researched women making difficult moral choices, using open-ended questions about their own moral conflicts. She asked questions of women who were considering abortions, students who were sorting out identity and codes of morality for themselves and other women making difficult choices, analysing the language and views expressed by women discussing *their own* experience with moral problems.

She found that, whereas men tended to employ a justice ethic, women tended to place a higher value on relationships and to have an ethic of caring for others. Women's discussions emphasised the degree or likelihood of hurting others. She argued that this was due to the differences between women and men, which related to their different attachment to and identification with their mothers. Boys tended to respond to Kohlberg dilemmas by suggesting that sometimes you have to act alone to do the right thing. Girls tried to solve moral conundrums through discussion and considering relationships, that is, considering others.

The abortion study, part of Gilligan's work, showed this most clearly: decisions of these pregnant women were based on an assessment of the degree of hurt likely to be caused to others, weighed along with responsibilities for their care. In other words, Gilligan said, women's ethical code came from a different values base than men's.

Fulani suggests that Carol Gilligan got it wrong too: she didn't go far enough! In her view Kohlberg was right in that, using his terms of reference, men *are* more 'moral' than women, if we accept that morality is merely the systematisation of ethical beliefs and practices which reflect authoritarianism, that is, whether or not people conform to a particular code. In Western morality codes, she says, men are always going to be moral and women immoral, because women are less impartial, less utilitarian, and are less likely to make decisions based on abstract principles. Fulani suggests that the whole idea of morality itself comes from patriarchy. She asserts that Gilligan accepted patriarchy as a given fact and argued that within it women should have a voice of their own. From Fulani's point of view, Gilligan was wrong to accept such a definition of morality, defined by men and applied disadvantageously to women.

Fulani's argument seems to suggest that morality is always relative and always about using power to oppress or exclude groups that do not fit into a dominant group's way of thinking and reasoning. This view connects morality to the culture we live in. However, morality is about individual responsibility. Fulani suggests that there should be a collectivist way of thinking about values and resolving issues, instead of a

moral code being imposed. But others would argue that we need agreed processes and mechanisms to work these issues out. We can't leave it to the group, or there will simply be a new, dominant voice that is much harder to identify or deal with because it is diffused – the imposition of 'groupthink'.

There is a real problem in any approach based on developmental stages. This assumes that human beings change and develop in the same way over time. Gilligan, too, suggested developmental stages for morality awareness: initially, caring only for yourself, then caring for others, then caring for truth. But we know from child abuse and child witness studies that trauma disrupts the 'stages' – and memory, and competence – dramatically. Development is not necessarily linear anyway. Defining stages is simply a satisfying structured way of seeking to make sense of hugely important but complex philosophical issues.

Children's Development of 'Fairness' Ideas

Some quite recent research into children's attitudes to fairness and truth, good and bad laws and responsibilities has demonstrated that children get a sense of fairness or justice, the values that Kohlberg asserted were at the core of morality, in much more complicated ways than maturation and cognitive development or (as Piaget assumed) through appeals to authority.

There may be said to be three kinds of fairness:

- *Equality*: Every participant receives the same reward.
- *Equity*: Reward is proportionate to input. The person who contributed the most or scored the highest receives the greatest reward.
- *Need*: Those who have the greatest need receive the greatest reward

Although children demonstrate a general developmental progression from consideration of *equality* to *equity* to *need*, their beliefs about the fairness of specific events are also influenced by other factors such as social relationships, which affect reasoning about fairness, irrespective of gender. For example, most of us may perceive a consequence as fair for a friend but not for a stranger, as McGillicuddy-De Lisi, Watkins, and Vinchur found in their 1994 research.

Children's general developmental stages in understanding fairness are supposed to be:

- The person who wants something the most should get it.
- Decisions are based on external circumstances: it is fair to give something to for example the tallest person or the oldest person.
- Everyone should get the same amount.
- The person who works harder should receive more.
- The person who needs more should receive more.
- Children realise the importance of both effort and need and seek a compromise between the two.

Helwig's 'good laws' project

A look at whether or not these assumptions stand up in practice begins with a study about children's reasoning about socially beneficial and unjust laws, by Charles Helwig (1996). He asked children at six, eight and ten years of age whether particular laws were good or bad, should or should not have been made, and whether or not it was acceptable to break the law. He focused on *socially beneficial laws* in general (for example, a traffic law, a law requiring vaccination, and a law requiring compulsory education for children under 16) and *unjust laws* (for example, denying education to a class of people, refusing medical care for the poor, and age discrimination). The children were asked to evaluate the application of

these laws in situations where a socially benevolent law infringed on individual freedoms.

All the children were found to take into account the justice of the law, the socially beneficial purposes of the law, and the potential for harm by infringing on individual rights and freedoms. They were able to distinguish between different types of rules: moral rules about harm and justice were seen as universal and unalterable, but the applicability of rules about social behaviour, customs and organization were seen to depend on culture, social context and what other people believed about them.

The researcher found that children did not necessarily look for guidance from an authority, as Piaget suggested, but took into account the status of the authority figure, their knowledge, and what they were ordering them to do.

For example, children aged between six and eleven years rejected authoritative instructions from teachers when they were seen to lead to harm, such as the teacher ordering children to keep fighting. The children also distinguished between the importance of the authority when the domain in which the instruction was given was seen to be within their own domain of personal autonomy. Such matters as choice of friends, haircuts or leisure activities were likely to be seen as outside the authority's legitimate realm. They were more inclined to comply with instructions in broader domains such as traffic regulation.

This study suggested that children are quite sophisticated in their analysis of such problems, depending on the context and domain in which they were made. This does not fit the traditional stages of reasoning that Kohlberg and Piaget suggested. Even six year olds considered what the law actually said and were inclined to judge socially benevolent laws as more legitimate than unjust or discriminatory ones. Most children also said it was acceptable to break unjust laws, taking into account the likely harm to an individual or beneficial effects on their welfare, and rejected unjust laws because they were unfair.

Not surprisingly perhaps, they distinguished among unjust laws in deciding which ones might be rightly disobeyed. The older children, for example, said that it would be acceptable to break a law about having to go to school if it conflicted with the requirements of their religion. They viewed this as a matter of religious freedom and their parents' higher authority to determine their religious education rather than governments or schools. All age groups recognised exceptions to the duty to obey a law in life-threatening circumstances (for example, refusal of medical treatment for poor people) and discrimination, even when the consequences (for example, children having to stand up on buses) were much less serious.

In other words, their obedience depended on whether or not they thought the rule was just, even if they couldn't spell this out. There was an increasing willingness to refer to abstract principles of justice as the children got older.

Chandler's research into children's beliefs about truth and about 'right' and 'wrong'

Michael Chandler (2000) examined the relationships between children's ideas about truth and its relationship to rightness. Preschoolers and older children were asked to make judgments about the merits and demerits of the behaviour of story characters whose actions were based on beliefs they did not share. For example, they were asked how bad it is for parents to beat their children with sticks or a teacher to tell a child she is dumb. They were asked if their judgment would vary if they were told that the parents or teachers honestly believed that they had to act like this in order to help children learn.

The study found there was a developmental element in their judgments. For example, children up to age seven were more likely to forgive a teacher who gave bigger snacks to girls because he genuinely believed girls needed more food. None of them were tolerant where they were told that the teacher happened to

think it was all right to be nicer to girls than to boys. They distinguished between acts based on informational beliefs, which might differ from person to person, and moral values, which would not.

He concluded that children's ideas of what is truth and what is right are shown to be deeply inter-related. In other words, 'is' and 'ought' are inter-related.

Janusz Korczak

Without the ideals of morality, justice and fairness towards children promoted by Janusz Korczak, there would have been no United Nations Convention on the Rights of the Child.

Janusz Korczak was a Polish paediatrician, writer and educator whose life and example deserves to be far better known. He was born in Warsaw in 1879, graduated in medicine in 1904, and worked with slum families and street children and in Warsaw's fashionable society. He decided to specialise in paediatrics. Twice, in 1905 and 1914, he was drafted into the Russian army and served as a doctor, witnessing the atrocities that all war visits on children. After the Russian-Japanese war he studied child psychology in Berlin, Paris and London, then came back to his native Poland to run the Company of Children's Camps in Poland for destitute Warsaw children.

Korczak began to teach medical students from a deeply humanist perspective, which was somewhat at odds with the heroic scientific experimentalism of the time. In 1912 he decided to devote himself to orphans and neglected children. He became the director of a new orphanage and spent the rest of his life working in the orphanage for no salary, living in its attic.

He also continued to write and lecture about children and became greatly admired and loved throughout Europe. His most important work, which he wrote while serving in the second world war, was titled *How to Love a Child*, and is a profound yet practical book about nurturing children.

His most productive years came between the first and second world wars. His orphanage for Jewish children was an oasis of happiness for the children who lived in it, and in 1922 he was able set up another orphanage, for Catholic children. However, Poland became deeply anti-Semitic during the 1930s and Korczak's weekly radio broadcasts and newspaper columns suffered as a result. He continued to work with the Jewish orphans, when bigotry made it politically necessary for a non-Jew to be responsible for the orphanage for 'Polish', that is, Catholic (non-Jewish) children.

Korczak taught that it is necessary to respect the child, to learn from children and to teach children by example that they can trust and rely on adults for respect, love and care. A child's life, he wrote, has an importance of its own: it is not a preparation for 'real life' later. Children must be appreciated for what they are now, not what they will become. Adults must respect and understand the child's way of thinking rather than interpreting it from an adult perspective.

He showcased his theories on child psychology and education in these orphanages. Surviving children remember that he gave them love, respect and healing, and thousands of unwanted children benefited from the consistent and comprehensive code of ethics and values he gave them, which was meant to serve them throughout their lives. Most extraordinarily, his orphanages were democratic, managed in accordance with laws that the children made and voted for and subject to the jurisdiction of a court of regularly elected child judges who could determine complaints and grievances by and against both adults and children, including Korczak himself. This, he taught, was what would really teach children respect for the law and individual rights.

In 1940 occupying Nazi forces forced Korczak to relocate his orphanage to the Warsaw ghetto where he begged for food and medicines for his children every day. He took over responsibility for the ghetto's Orphans' Refuge and cared for dying children, although he could not do any more than try to comfort them.

Although he was repeatedly given the opportunity to escape by his admirers and supporters, including Germans and non-Jewish people with influence and real power, he refused, saying that it was unthinkable to leave children at such a time. He was urged to allow the children who still had families or relatives to flee from the Ghetto, but would not permit it, because he believed that they would be afraid and alone. He could not believe, despite clear evidence, that there were plans to deport or kill the children he cared for. He simply had too great a belief in the fundamental decency of people. Once, when he was asked how to respond to inhumanity, he said that, 'One must act even more humanely.'

During the whole of his life he wrote, even in the Ghetto. He developed his own version of the Convention on the Rights of the Child. Presciently it included 'the right to a premature death'. On August 6 1942, Korczak and his orphanage staff led a procession of 200 children to the railway station, all holding a favourite toy and singing the 'picnic' song, walking behind the orphanage flag: green and white blossoms on one side, Star of David on the other. They boarded the cattle trucks to Treblinka, and disappeared.

He wrote:

Children are not the people of tomorrow, but people today. They are entitled to be taken seriously. They have a right to be treated by adults with tenderness and respect, as equals. They should be allowed to grow into whoever they were meant to be – the unknown person inside each of them is the hope for the future.

After the end of the War the Polish government urged the United Nations to proclaim and dedicate the International Year of the Child to the example of Janusz Korczak, and to implement his lifelong championship of a children's charter. He is why we have the United Nations Convention on the Rights of the Child and why his moral code is reflected in its Preamble:

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding;

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity;

And in Article 5:

States Parties shall respect the responsibilities, rights and duties of parents or . . . other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacity of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Conclusion

The study of the development of the moral self is tremendously important in a modern, democratic, pluralist and secular society which is explicitly in search of codes of agreed conduct that go beyond the law and do not depend on faith or authoritative pronouncements.

Moral codes are internalised sets of values which depend for their strength on the individual's attachment to others – mothers and fathers, larger social groups, including communities of culture and faith – and their sense of self, interacting with and distinct from the other.

A way to consider the development of the moral self is to look beyond the developmental stages approach that prevailed in the 1960s to more recent evidence of the ways that children develop their sense of relationships, affection and trust; learn to distinguish between right and wrong, justice and truth, good and bad laws and when they must be obeyed or may rightly be disobeyed; and the value children place on responsibility.

References and additional reading

Chandler, M.J., Sokol B.W. and Wainryb C. 2000, Beliefs about truth and beliefs about rightness, *Child Development*, vol. 71, no.1, 91-97.

Fulani, L. Moving Beyond Morality and Identity, in *Deconstructing Feminist Psychology*, edited by Burman, E . Sage Publications pp141-158

Gilligan C, 1982. *In a Different Voice: psychological theory and women's development*. Cambridge MA: Harvard University Press.

Helwig, C.C., 1998, Children's conceptions of fair government and freedom of speech, *Child Development*, vol. 69, no.2, 518-531.

Helwig, C.C. and Jasiobedzka U., 2001, The relationship between law and morality: Children's reasoning about socially beneficial and unjust laws, *Child Development*, vol.72, no.5, 1382-1393.

Joseph, S. (Ed.), 1999, *A Voice for the Child: the Inspirational Words of Janusz Korczak*, Thorsons (Harper Collins), London.

Kohlberg, Lawrence. *The Meaning and Measurement of Moral Development*. 1979 Heinz Werne Lecture Series. See www.psy.pdx.edu/PSICafe/Keytheorists/Kohlberg.htm#eval

Leftwich, A. 2002. I gave the names, in *Granta. Bad Company*, 78 pp 9-31

Lifton, B.J., 1988, *The King of Children. The Life and Death of Janusz Korczak*, St. Martin's Griffith, New York.

McGillicuddy-De Lisi, Watkins, and Vinchur, 1994. The effect of relationship on children's distributive justice reasoning. *Child Development* 1994 Dec; 65(6); 1694-1700.

McKibben, B., 2005, The Christian paradox: How a faithful nation gets Jesus wrong, *Harpers Magazine*, August, 31.

Newton, M., 2002, *Savage Girls and Wild Boys. A History of Feral Children*, Faber & Faber, London.

Such, E. and Walker R. 2003, Being responsible and responsible beings: Children's understanding of responsibility, *Children & Society*, published online in Wiley InterScience (www.interscience.wiley.com)

The Victorian Law Reform Commission has released the third in a series of Position Papers in its assisted reproduction and adoption reference. Position Paper Three contains interim recommendations about certain aspects of surrogacy. The paper is now available on our website at the following address: www.lawreform.vic.gov.au. It is now seeking public feedback in relation to its interim recommendations. The deadline for making a submission is Monday 9 January 2006. Details of how to make a submission are set out in the paper, and on the website. The Commission will take all submissions into account when developing its final recommendations to Government. This Position Paper and also Position Paper One on access to ART and Position Paper Two on legal parentage are available on the Commission's website, or by phone (03) 8619 8619; email law.reform@lawreform.vic.gov.au.

State Developments Update

SOUTH AUSTRALIA

Guidelines for Lawyers Acting for Children - Workshop

The Children and the Law Committee of the Law Society of South Australia held a workshop in August this year to further develop guidelines for lawyers representing children in state courts. The Committee has been working on the guidelines as a work in progress drawing upon principles and guidelines adopted in other states.

The key speaker at the workshop was Associate Professor Geoff Monahan, from the Faculty of Law, University of Technology Sydney. Associate Professor Monahan provided a great insight into the process of developing principles and some of the key areas to address in the guidelines in his paper "Professional Guidelines for Lawyers Representing Children in the Civil and Criminal Jurisdiction: A matter of Principles?"

Some of the areas addressed were: Who is the client? – The role of the practitioner. – Capacity to give instructions. - Interaction with third parties. There was a lot of discussion in the audience about the representation models – direct, best-interests, and guardian ad litem/ next friend.

There was also a presentation on feedback received from young people and their experiences with lawyers and the legal system. A discussion panel followed, including a presentation from psychologist Alison Tucker, who provided valuable insight on child development and how to engage with children, and presentations from lawyers who represent young people in civil and criminal matters.

A diverse group of people from various professions attended the workshop and provided recommendations concerning key areas for further

development of the guidelines. The Children and the Law Committee will review the guidelines in light of the outcomes of the workshop and present the completed guidelines to the Law Society for approval. For further information, contact David.Ferraro@ucwesleyadelaide.org.au.

Children's Protection Legislation before Parliament

The South Australian Parliament currently has the Children's Protection (Keeping Them Safe) Amendment Bill 2005 ("the Bill") on its agenda for debate during the current parliamentary sittings. The Bill seeks to amend the *Children's Protection Act* 1993 ("the Act") and the *Family and Community Services Act* 1997, and is part of the 'Keeping Them Safe' reform agenda of the Government initiated in response to the 2002 Layton Child Protection Review.¹

In light of the growing awareness of community and government responsibility to understand and help prevent opportunities for child abuse and neglect, it could be argued that the Bill does not go far enough in reforming the Act. Provisions within the Bill raise concerns as to the degree to which government instrumentalities, local government and non-government agencies will be resourced to meet their legislative obligations.

According to the Act, "a child is at risk if the child is under 15 years of age and is of no fixed address".² The Bill, in not amending this section, has overlooked the risks faced by children aged over 15 years who are unable to maintain stable and secure accommodation. A 16 year old who is sleeping rough or couch surfing is at no less risk of abuse or neglect than a 14 year old who seeks to access crisis accommodation services having left home due to substance abuse (by the young person or their parents) or having experienced physical, sexual and/or emotional abuse at home.

Being of no fixed address accords with the cultural definition of homelessness,³ yet the Act deems homeless young people aged over 15 years to not be “at risk” of abuse and neglect. According to the 2001 Census of the 99,900 people who were counted as being homeless, 10% were under the age of 12 years and 26% were young people aged 12 and 18 years. A significant number of young people within our community are thus at grave risk of harm.⁴

The focus of the Bill on creating child safe environments (Part 2 Div 3) is to be applauded, yet the process involved in becoming a ‘child safe environment’ is not defined. As such, there is concern about the level of resources which may be required of government instrumentalities, non government and local government agencies that provide health, welfare, educational, sporting or recreation, religion or spiritual, child care or residential services.

In reading s8B of the Bill together with s8C, designated local government and non-government agencies may be required in due course to screen, consider and store National Police Certificates for any current or potential employees, volunteers or student placements.

Concern is raised as to the level of resources required by designated agencies to implement this proposed change. In this instance the approach of QLD and NSW in establishing a central screening unit is commended.

This brief summary illustrates that the Bill, while being a step in the right direction, does not travel far enough. In addition the Bill causes concern as to whether sufficient resources have been allocated to assist government and non-government agencies to travel the distance being asked.

Understanding and Responding to Youth Offending

The Office of Crime Statistics and Research along with the Australian Institute of Criminology hosted a one day conference on the 27th of October 2005 entitled “Understanding and responding to chronic youth offending”.

Research presented gave some interesting insights as to who the chronic offenders are and what some of the ‘risk factors’ are for young people. Factors such as drug use in family members, physical abuse, ‘wagging’ school and offending at a young age were all identified as increasing risk.

There were also some disturbing statistics including: 96% of young people in detention have been under a child protection order at some stage and the continuing disgrace that an Indigenous young person is 19 times more likely to be detained than a non-Indigenous young person.

There was some discussion as to what works in helping young people desist from offending, but a paucity of concrete answers. The work continues. For more information, or access to statistics, see www.oscar.sa.gov.au

NEW SOUTH WALES

Lack of Donor Conception Laws

The Donor Conception Support Group has called upon the NSW government to enact draft legislation protecting the rights of donor conceived individuals to their genetic identity.

“It is of grave concern that an individual’s identity is held by a third party, with no security as to what will happen to those records. We hear of clinics changing hands, doctors retiring and even practitioners fighting it out in court as to who owns records, without any real appreciation that these pieces of paper are the only clues a donor conceived person may have as to their genetic origins.

Although the Fertility Society may argue that they have stringent self regulation, where clinics achieve accreditation by compliance with guidelines, non-compliance will only result in loss of drug subsidies. Women and couples desperate to have a child are very vulnerable, and need the protection that can only be provided by the law to ensure that once they have a child, its genetic identity is preserved.

Draft legislation addressing the issues of donor

conception was drawn up after an exhaustive process of consultation in NSW, in 2002 when the Hon Craig Knowles was Health Minister. After a further two Health Ministers, it has yet to be presented to Parliament.”

For further information contact dcsg@optushome.com.au

Children and the Built Environment

The NSW Parliament’s Children and Young People Committee is conducting an Inquiry into Children and the Built Environment. Its terms of reference are to inquire into and report on:

- “1. trends, changes and issues for children and young people in the development, implementation and coordination of policy, design and planning for the built environment;
2. the mechanisms available for monitoring and reporting on planning processes and decisions concerning the built environment, as they relate to and impact upon children and young people;
3. strategies to ensure that built environment issues affecting children and young people are readily identified and receive coordinated attention across portfolios and different levels of government;
4. the role of the Commission for Children and Young People in giving input to the Government and non-Government sectors on inclusive and integrated planning and policy-making for children and young people in the built environment;
5. any other matter considered relevant to the inquiry by the Committee.

30 December 2005 is the closing date for public submissions. Hearing dates will be set in the new year and no reporting dates have yet been set. Three issues papers have been released: *Issues Paper 1: Introduction and Overview*; *Issues Paper 2: The ‘Child-Friendly Cities Movement’*; *Issues Paper 3: Related Developments in New South Wales*. To obtain these and contact officer details, see: <http://www.parliament.nsw.gov.au/prod/parliament/Committee.nsf/0/7E4DA544CFA8382DCA2570260020C057>

VICTORIA

Child Protection Bills

The Children Youth and Families Bill 2005 reformulates Victoria’s legal and systemic response to alleged and proven abuse and neglect of children and young people. It was passed without amendment in the Legislative Assembly on 27 October 2005 and as we go to press is before the Legislative Council.⁵

A number of positive and concerning features of the Bill as introduced into the Victorian Parliament were discussed by DCI-A member The Hon. Alastair Nicholson AO RFD QC in a recent address: http://www.criminology.unimelb.edu.au/staff/alastair_nicholson/tweddle_25_october_2005.pdf. The Bill’s characterisation of the so-called Charter of Rights for Children in Care is especially disappointing:

“...there is only a passing reference in clause 16 to a Children’s Charter which sets out the powers and duties of the Secretary as follows:

- (f) to publish and promote a Charter for children in out of home care to provide a framework of principles to promote the well-being of those children;

It is significant and I think concerning to note the absence of the word “rights” in comparison with the consultation work that has been undertaken on this topic by the Department’s Advocate for Children in Care.⁶

The Bill’s reference to the protection of children’s rights concerns children and young people in Victoria in particular circumstances, rather than generally. For all our young to benefit from a specific recognition of rights, it would be a positive development if the State Government were to respond to the long-standing call for the appointment of an independent Children and Young People’s Commission with a broad mandate.⁷ As I have argued elsewhere, the Government should also directly import the relevant provisions of the United Nations Convention on the Rights of the Child into the

Victorian Bill of Rights which is currently subject to consultation.”⁸ (footnotes in the original)

A subsequent posting on the website of the Advocate, Mr Toby O’Connor comments:⁹

“In introducing the Children, Youth and Families Bill, the Government renamed the Charter of Rights for Children in Care to the ‘Charter for Children in Out of Home Care’. The Charter will be referred to in the new Act at section 16.

It will be the responsibility of the DHS Secretary to publish and promote the Charter for Children in Out of Home Care. The Charter for Children in Out of Home Care will provide a framework to promote the wellbeing of children in care.

I am disappointed that the word ‘rights’ has been dropped from the Charter’s title. While the definition of a ‘charter’ is a written statement of rights, there is, I believe, a symbolic value in the use of the word ‘rights’ that will now be unrealised. However, I am pleased to see a direct reference to the Charter has been included in the new legislation. I am also very pleased that the principles contained within the final charter will be a major point of reference for the operation of the whole service system. The charter will continue to be child-focused by explaining to children and young people what services and support they can expect to receive when they come into the care of the state.”

DCI-A shares the Advocate’s disappointment about the erasure of an express reference to “rights” in the Charter title. As will be obvious from the submissions we put to the consultation (see elsewhere this issue of ACRN), the force and value of what is ultimately produced will depend on how the Charter’s provisions are framed and can be meaningfully enforced. The Government’s dilution of a rights promise in the Bill does not bode well.

Interestingly, the topic of an independent Victorian Commission for Children and Young People peppered parliamentary debate over the accompanying Victorian Child Wellbeing and Safety Bill 2005 sparked by Liberal Party representatives.¹⁰ On 25 October in the Legislative Assembly, Mrs Helen

Shardey, Shadow Minister for Community Services, unsuccessfully moved the following motion, that:

‘...this house refuses to read this bill a second time until consultation has been undertaken with the community in relation to the need to appoint an independent commissioner for children and youth, and the need for a report on the deaths of children in state care to be tabled in Parliament each year’.

That call was repeated on 22 November in the Legislative Council, again unsuccessfully, by The Hon Wendy Lovell, North Eastern Province. Each chamber split along party lines to proceed to deal with the Bill.

New Disability Self Advocacy Agency for Young People

The Youth Affairs Council of Victoria, in partnership with Youthlaw and the Disability Discrimination Legal Service has received funding from the Department of Human Services to work with young people who have a disability to create a new self advocacy agency for young people. Young people who have a disability will be directly involved in the planning, operation and ongoing management and sustainability of the project.

As this project progresses, further information will be shared on the YACVic website, together with further opportunities to be part of this exciting new venture – www.yacvic.org.au. If you wish to be further involved please e-mail Maria Nechwatal, Project Worker, at mnechwatal@yacvic.org.au or telephone (03) 9267 3799.

A Bill of Rights for Victoria?

The Victorian Government will finish a consultation on this question when a committee inquiring into this question reports to the Attorney-General. DCI-A’s submission echoed discontent with the Government’s “statement of intent” concerning the proposed Bill – in particular, a position opposing rights that can form the basis of a court action, a belief that equal opportunity legislation provides sufficient protection, and an approach which avoids specific attention to segments of the community such

as children and young people. See <http://www.dci-au.org/submission.doc> and the submission by DCI-A members The Hon. Alastair Nicholson, Danny Sandor and John Tobin to which the DCI-A submission refers <http://www.dci-au.org/victorianbill.doc>.

Footnotes

¹ Department for Families and Communities, <http://www.familiesandcommunities.sa.gov.au/Default.aspx?tabid=120>

² Section 6(2)(e) *Children's Protection Act* 1993 (SA)

³ See Chris Chamberlain & David MacKenzie (1992) 'Understanding Contemporary Homelessness: Issues of Definition and Meaning' 27(4) *Australian Journal of Social Issues* 274

⁴ Australian Census Analytic Program. 'Counting The Homeless 2001', ABS Catalogue Number 2050.0, [http://www.ausstats.abs.gov.au/ausstats/free.nsf/Lookup/5AD852F13620FFDCCA256DE2007D81FE/\\$File/20500_2001.pdf](http://www.ausstats.abs.gov.au/ausstats/free.nsf/Lookup/5AD852F13620FFDCCA256DE2007D81FE/$File/20500_2001.pdf), viewed 28 Oct 2005.

⁵ To track debate on Victorian Bills go to <http://text.parliament.vic.gov.au/bin/texthtml?form=VicHansard.adv> and insert the name of the Bill in the "debate text" box.

⁶ The Advocate's website as accessed in October still spoke in charter of rights terms: www.dhs.vic.gov.au/advocate

⁷ Youth Affairs Council of Victoria (2001), *Are You Listening To Us? – The Case For A Victorian Children and Young People's Commission*, <http://www.yacvic.org.au/pages/policy/cypc/contents.htm>

⁸ See A. Nicholson, D. Sandor and J. Tobin (August 2005) *The Proposed Treatment of Children and Young People in the Bill of Rights Proposed for Victoria, Submission to The Human Rights Consultation Committee*, www.dci-au.org/victorianbill.doc

⁹ http://www.dhs.vic.gov.au/advocate/docs/sector_update_oct2005.pdf

¹⁰ For more information, see footnote 5 above.

Call for Paper Abstracts: 31 January 2006

"Investment and Citizenship: Towards Transdisciplinary Dialogue in Child and Youth", 18-21 July 2006, Brock University, Ontario, Canada. The focus is on two dominant rights-based discourses: investment and citizenship. Through these themes, the conference will examine: children's and young peoples' human rights within and through applied contexts; how rights are being conceptualised and operationalised within domestic legislation, social policies, institutional settings and promotion, monitoring and evaluation of CROC. Emails: dzinga@brocku.ca; richard.mitchell@brocku.ca; toneill@brocku.ca Website: <http://www.childsrightrights.ca>
[From CRINMAIL www.crin.org]

Learning from America

In the *The Australian* newspaper,¹ Janet Albrechtsen has argued that overseas experience demonstrated that adopting a Bill of Rights for Australia would be unwise. Simon Evans, Director of the Centre for Comparative Constitutional Studies at the University of Melbourne, responds to the errors in her analysis of the overseas experience.

Janet Albrechtsen is right about one thing. Just about the worst argument for an Australian Bill of Rights is that every other Western democracy has one. But she misunderstands some key points about how modern Bills of Rights, like the British Human Rights Act and the Canadian Charter of Rights, actually work.

As a result, her jeremiad against an Australian Bill of Rights is built on shaky foundations. An Australian Bill of Rights might not be a good idea, but not for the reasons that Albrechtsen gives.

Old-fashioned Bills of Rights, like the United States Bill, give the final say about rights to the courts. If the Supreme Court says that a law or some government action violates the Bill of Rights then that's the end of the story. The law or government action is invalid. There's nothing Congress can do except try to amend the Constitution.

Modern Bills of Rights are different. Their framers have learnt the lessons of the United States experience. As Albrechtsen points out, when interpreting the Bill of Rights, US judges make policy decisions that should properly be made in congress. Not only do they make policy decisions, they get the final word.

In Canada and the UK, the courts don't get the final word. The Canadian Charter of Rights has a specific mechanism that allows parliament to legislate 'notwithstanding' the rights contained in the Charter.

The Canadian courts can strike down laws that in their view are inconsistent with the charter. But parliament can respond and take a different view what the rights contained in the Charter mean or what limits need to be placed on them in a democratic society.

In the UK, the courts can't even strike down laws that in their view are inconsistent with the Human Rights Act. They can declare that in their view that laws are inconsistent with the act. But that doesn't affect the validity or operation of the law.

In both countries, the courts will try to interpret laws so that they are consistent with human rights. Our own courts do that already. Sometimes that means that courts interpret laws more narrowly than governments may wish.

But in Canada and the UK, just as in Australia, governments have the means to respond if they disagree. They can say to the courts that their interpretation of what human rights require is wrong. Or they can amend their laws to respond to some of the criticisms made by the courts.

That's what's happening in the UK at the moment in relation to deportation of 'preachers of hate', although Tony Blair does seem to want to wind back the Human Rights Act rather than legislate within its framework. Equally, Canadian legislatures may respond to the private health insurance ruling by reinstating the existing system or (more likely and perhaps better policy) improving it in light of the problems brought out by the Supreme Court's ruling.

It might be convenient for politicians to describe this as a battle for supremacy with the courts. But it's nothing of the sort. It's the natural operation of a system, fundamentally different from the United States system, in which parliaments and courts have distinct and complementary contributions to make in relation to rights.

Parliaments have democratic legitimacy and policy making expertise. But they can't predict the future and every possible ramification of the laws they enact. Courts look backwards and see how laws have affected the human rights of particular individuals. This dynamic relationship between parliaments and courts in the UK and Canadian models – sometimes but

controversially described as a dialogue – draws on the strengths of both institutions to protect human rights, enhancing and not undermining democracy.

If any more Australian jurisdictions do adopt Bills of Rights, it is almost inevitable that they will follow the UK or perhaps the Canadian model. They will not give Australian courts the unbridled power or the direct political role of the United States courts. Parliaments will retain the final say.

They will continue the existing practice of Australian courts in interpreting laws consistently with human rights. But they will give them an explicit and democratically established framework for doing so.

And they will provide a framework for parliaments and courts together to develop an understanding of what human rights require in the Australian context.

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Footnotes

¹ 'Bill of Rights Full of Risks' 10 August 2005 http://www.theaustralian.news.com.au/common/story_page/0,5744,16204848%255E32522,00.html

Crimes (Abolition of Force as Justification for Child Discipline) Amendment Bill. New Zealand Parliamentarian Sue Bradford has had a private members bill selected and the NZ Government is allowing it to go to Select Committee. This follows the clear recommendation of The UN Committee on the Rights of the Child that New Zealand repeal s 59 of the *Crimes Act*. In a recent Timaru court case a mother beat her 12 year old son with a horse whip and cane. The jury found that she had acted reasonably.

Response to the May 2005 Department of Human Services (Victoria) Discussion Paper on A Charter of Rights for Children in Care

This joint response, endorsed by DCI-Australia, was prepared by DCI members: former President Danny Sandor; The Honourable Alastair Nicholson, AO RFD QC, Honorary Professorial Fellow, Department of Criminology, University of Melbourne and former Chief Justice, Family Court of Australia; and Mr. John Tobin, Senior Lecturer in Law, Faculty of Law, University of Melbourne. The Advocate is due to release a report on the consultations and a further draft of the Charter in December.

Introductory Comments

The signatories to this submission approach the subject-matter with long-standing professional and personal concern for the rights and best interests of children and young people generally, and in particular, those who encounter the child protection system.

We commend the interest that is being shown by the Office of the Advocate in this vital topic and we welcome the opportunity to comment upon the Discussion Paper¹ which raises issues about the framework for the proposed Charter of Rights for Children in Care.

To the extent that it is not expressly stated in the Discussion Paper, we would make it clear that our response assumes that the proposed Charter is to include coverage of children and young people in out of home care and under child protection orders in favour of the Department of Human Services that are made prior to the making of a final disposition by the Children's Court.

How Would the Proposed Charter Benefit Children and Young People in Care?

The potential benefit of the proposed Charter is intrinsically dependent upon its content and how it is given practical effect. The mere creation of a charter document is window-dressing. To make a meaningful difference, the proposed Charter of rights must achieve a number of ambitions and be distinguishable from other ways of setting expectations for how children will/should be cared for.

The proposed Charter must be a fundamental content consideration in both the norms for decision-making and problem solving, and also the making and resolution of complaints. Beyond being a new source for the establishment and review of standing "rules", the rights therein must become an automatic consideration to guide thinking and acting in respect of children and young people in care.

As the range of situations in which Charter rights will arise cannot be fully anticipated, it is essential that personnel involved with children and young people in care understand Charter rights as tools for analysing situations and that they have the skill to work out responses that are consistent with Charter rights. Achieving this requires a diverse package of organisational strategies comparable to those which are necessary when a new legislative framework is introduced.

The legal status of the proposed Charter will be a key determinant of its benefit. In our opinion, the

forensic context of child protection results in a decision-making/service provision system where workers are focussed upon legal obligations and encouraged to do so organisationally. We consider that the effectiveness of the proposed Charter will be maximised in a proactive way if the rights therein have legal force and are understood as such.

Apart from its proactive effects, such legal force must extend to the proposed Charter of rights having 'teeth' when its expectations have not been complied with. The proposed Charter of rights must be more than a statement of standards, policy or good practice:

For rights to have meaning, effective remedies must be available to redress violations.² (emphasis added)

Access to a remedy is an essential distinguishing feature of a right. The denial or violation of rights in a Charter should therefore found a legal cause of action which, as is increasingly the norm in civil matters, initially becomes a trigger for dispute resolution processes.

Accordingly, we submit that the duty to fulfill the proposed Charter's obligations should be contained in legislation. It should confer a legally enforceable statutory duty upon the Secretary to ensure as far as practicable, compliance with Charter rights with the duty also applying to the heads of out of home care agencies (however described). We would observe that the exposure draft of the Children's Bill³ does not reflect such duties and submit that it should (see further below).

While the individual case situation is the most apparent application of the proposed Charter, we submit it must also visibly underpin and also be applied to the planning, evaluation and implementation of services, the development of policies and the identification of funding priorities. In other words, it should be expected that these activities by government and non-government agencies should expressly include an explanation of how they reflect application of the Charter (or would limit Charter rights).⁴

A Charter of Children's Responsibilities as well as Rights?

We submit that the proposed Charter should be confined to children's rights and, as discussed under the next heading, service system responsibilities.

The impetus for the Charter arises from the need to improve the protection, promotion and advancement of the rights of children and young people as a means to better meeting their rights and best interests. It is not a response to a systemic problem concerning children and young people's fulfilment of their responsibilities. To achieve the maximum cultural and organisational momentum necessary to give any text meaningful application, the focus, language and framework should be as clear and rights-focussed as possible.

Explicit reference should be made in the proposed Charter to the United Nations Convention on the Rights of the Child and all discourse concerning the proposed Charter should consistently remind that all of the rights contained in that Covenant apply to those in care, not only the rights associated with their legal status or protective needs.

Should the Charter include Service System Responsibilities?

It is essential that the proposed Charter identify how identified rights are given effect by the service system. There are practical challenges associated with striking a balance that achieves sufficient clarity without overwhelming detail in a way that is targeted to the adult/child and consumer/service-provider audiences.

In respect of the service system, we suggest a layered model – comparable to the pyramid of content with increasing specificity often seen in organisational mission/vision statements. As we have said earlier, at the legislative level, we suggest a clear statement of the legally enforceable statutory duty of the Secretary and agency heads to give practical effect to the settled list of overarching and particular rights. We further submit these should be either listed in the same section as the duty or as a schedule to the Act comparable to that found in Schedule 1 of *Child Protection Act 1999 (QLD)*. Increasing levels of specificity as to how rights are to be given practical effect would then take the form of binding guidance emanating from this statutory base contained in regulatory documents issued by the Secretary.

What Rights Should be Included in the Charter?

We note chapter 5 of the Discussion Paper. We agree with the inclusion of all of the content identified in the draft outline of the proposed Charter set out in 5.2 with the following two significant objections to the approach therein.

A. The “right to hold opinions and views and to have these respected” and the right to “age-appropriate involvement in decision-making” appears only under the category of “Treatment in Care”. This limitation is unwarranted. It is contrary to paragraph of Article 12 of the Convention:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely **in all matters affecting the child**, the views of the child being given due weight in accordance with the age and maturity of the child. (emphasis added)

It is also contrary to government policy as expressed in the foreword to *Taking Young People Seriously; Consulting Young People about their Ideas and Opinions*.⁵ The Hon. Jacinta Allen MP, Minister for Employment and Youth Affairs there states:

Including young people in decision-making that affects their lives, or simply interest them, is a vital ingredient in the creation of strong and caring communities. It is essential that young people – who account for nineteen percent of our population – have an effective voice in our social, cultural, economic and political lives.

The Victorian Government values young people’s contributions and is committed to listening to their views. We aim to foster the celebration of our cultural diversity and provide genuine opportunities for a broad range of young people’s involvement in decision-making processes.⁶

Looking to the federal family law domain, we would also draw attention to the positive manner in which the *Family Law Act 1975 (Cth)* and the Family Court of Australia’s *Guidelines for Child Representatives*,⁷ recognise the participation rights of children and young people comparable to those covered by the Discussion Paper. In addition to express principled recognition, the *Guidelines* identify concrete expectations of practice.

We therefore submit that the right to respect for opinions and views and the right to decision-making involvement be included as overarching ones within the proposed Charter. In doing so, the proposed Charter should clearly state that these related rights comprise an element of due process in decision-making. The specific rights set out within the proposed Charter may then be more specific about the particular ways in which it is expected that these rights will be applied.

B. We also submit that the Discussion Paper is incorrect to assert that it is “unrealistic and not achievable” to include a right that “Workers and carers have to explain why they won’t do as you want” (at 5.1.5). We

are unaware of any support for the proposition that explaining the basis for a decision refusing to act in accordance with a child's wishes "goes against better child rearing practices".

We also fail to understand why it "will not be reasonable to explain all actions". The fact that "[s]ome rules will be non-negotiable" is not a reason to deny an explanation of why that is the case. As with all conflicts of views, it will be a question of the circumstances as to what is a reasonably sufficient explanation. The expectation that a carer or worker be able to state a basis for acting contrary to a child's wishes is not setting an onerous standard. Indeed, to encourage the "*cos I said so*" approach is poor adult modeling.

Overarching Charter Rights

The proposed Charter should include the right to have its content and how it works explained, with a corresponding responsibility on the service system to do so. We would draw attention to s10(a) *Children and Young Persons (Care and Protection) Act* 1998 (NSW) which, in discussing the principle of participation under that Act, anticipates the need for a range of developmentally appropriate methods, and also the inclusion of young children.⁸ The formulation in s10(a) speaks of providing:

adequate information, in a manner and language that he or she can understand...

We also submit that the proposed Charter should commence with recognition of the general applicability of the United Nations Convention on the Rights of the Child as stated by the currently binding *Teoh* decision.⁹ In addition, the proposed Charter should contain a statement as to its status, local force and enforceability. This is consistent with sound public policy concerning regulatory documents and no less required in a document that concerns and is expected to be read and understood by children and young people.

Specific Charter Rights

As presently stated in 5.2., the rights are not fully expressed as one would expect at this consultative stage. We would await their final language before seeking to critique them. We do, however suggest some additional content matters, similarly at an unrefined stage, (using the headings set out in 5.2):

Identity and sense of self

- The right to receive support and assistance in the maintenance of heritage languages (including but not confined to Indigenous languages).
- The right to protection against discrimination associated with sex, sexual preference, race, disability etc.
- The right to be informed about the limits of confidentiality that affect workers (so that children and young people can make informed decisions about what they will and will not divulge).¹⁰

Treatment in Care

- The right to meaningful capacity to participate in the evaluation of services and propose improvements to them.¹¹
- The right to departmental and service agency compliance with statutory and individual case requirements for regular review of case and placement plans.¹²

Quality of Placement

- Protection against bullying.¹³
- The right to due process where there is a proposed change in placement (i.e. that no decision is made unless the child has been heard on the issue with the opportunity of assistance from an advocate; this

includes proposed decisions to place the child in a secure welfare service).

- The right to participate in the selection of an appropriate alternative placement option where it is decided that the current placement is to terminate.
- The right not to be rendered homeless without alternative accommodation where it decided that the current placement is to terminate.

Support and the provision of services

- The right to receive access to and support with employment and training opportunities (as well as education).
- The right to receive access to and support with legal and other sources of advice and advocacy to challenge decisions/resolve disputes (in areas of life including but not limited to out of home care or protective services).

Footnotes

1 <<http://www.dhs.vic.gov.au/advocate/>>

2 Committee on the Rights of the Child, *General Comment No 3 (2003) General Measures of Implementation of the Convention on the Rights of the Child* CRC/GC/2003/5 (27 November 2003) at para 21 <[http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.5.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.5.En?OpenDocument)>. Para 21 continues:

“This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties. Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.”

3 <<http://www.office-for-children.vic.gov.au/commcare/ccdnav.nsf/childdocs/-92D2CA65E00EADD6CA25704C0013234B-26107E773BE01C87CA25704C0017B507?open>>

4 This submission adapts to the care context of the Discussion Paper, the Committee on the Rights of the Child, General Comment, at para 45, *Ibid*, concerning the need to have processes for “child impact assessments” and “child impact evaluations”.

5 Office for Youth, Department of Victorian Communities (2004 Government of Victoria) available at <www.youth.vic.gov.au/pdfs/TYPSbook1.pdf>

6 *Ibid*

7 <http://www.familycourt.gov.au/presence/connect/www/home/directions/guidelines_for_child_representatives/>/

8 In this regard, see Shirley Wyver, (2000) ‘Young children’s participation in decision-making’ No. 27 *Australian Children’s Rights News*.

6 <<http://www.dci-au.org/acrn/ACRNNovember2000.pdf>>

9 183 CLR 273. The Discussion Paper’s prediction of a future different approach to the treatment of the Convention on the basis of comments made in *Lam* [2003] HCA 6 is irrelevant to the current obligations upon decision-makers and should not be repeated in further documents relating to the proposed Charter. To promote the prediction is to invite confusion and contravention of the binding legal position.

¹⁰ See the discussion of young people’s understanding of confidentiality in Sandor, D. and Bondy J. *Family Violence – Young People and Youth Sector Workers Informing Government about the Implementation of Mandatory Reporting in Victoria* (October 1995) available at <<http://www.aic.gov.au/crc/reports/199394-15/>>

¹¹ This mirrors the parallel theme seen in respect of student participation in shaping school environments – see the work of Roger Holdsworth of the Youth Research Centre, University of Melbourne.

¹² *The Non-Government Report on the Implementation of the Convention on the Rights of the Child in Australia* prepared by Defence for Children International – Australia and The National Children’s and Youth Law Centre (May 2005) for the United Nations Committee on the Rights of the Child <www.dci-au.org/news> notes at 61-62:

“There are no statistics available on the extent to which Australian states meet their obligation to regularly review the circumstances of children in care or even to ensure that all children in care have a current documented case plan. Although the number of children and young people in out-of-home care with a current case plan is one of the indicators of the effectiveness of out-of-home care services for reporting on government service delivery, at this stage no Australian state or territory government has reported on this indicator (Productivity Commission, 2005).

Children's freedoms reduced out of fear

Australian children enjoy less freedom to roam independently than children in German, English and New Zealand cities, research has found. A comparison reveals Australian children are less likely to be allowed to walk to school alone, cross main roads and go out after dark, said Paul Tranter, from the University of NSW. "What the data suggests is that the Australian children have very, very low levels of freedom compared to children in other developed countries," said Dr Tranter, who compared Australian and New Zealand data with research from Germany and England.

He found 80 per cent of 10-year-old German children were allowed to travel alone to places other than school compared with 37 per cent of Australian children. "Australian parents tend to be much more likely to drive their children places, including school," said Dr Tranter, who presented his research at the Creating Child-Friendly Cities conference in Melbourne yesterday. He said that in the past 20 years there had been a significant decline in children's freedom to explore their surroundings, an experience that is vital for their social and emotional development.

Data from 1974 showed 25 per cent of children living in Essendon were driven to school compared with 89 per cent this year. "The children are missing out on a sense of joy and wonder and contact with their natural environment," Dr Tranter said. He said there were many signs to suggest Australian cities were not catering for children, such as the increase in childhood obesity, type two diabetes, psychological problems and suicide.

"They're all quite alarming but I think the major concern is what's going to happen when our current generation of children become adults ... If those problems continue into adulthood, we're going to have a massive health burden," he said. Dr Tranter said parents and the environment were also affected by the enormous amount of time and money spent driving

children around, which also adds to traffic congestion and pollution.

Another researcher at the conference, Associate Professor Karen Malone, said while more than 800 cities had registered on a United Nation's database of child-friendly cities, not one Australian city had. Joining the register commits the city to auditing how it caters for children. Professor Malone, the Asia-Pacific director of UNESCO's Growing Up In Cities project, said concerns about traffic danger and "stranger danger" had led to increasing numbers of parents not allowing their children out alone. "What we're doing is taking away their capacity to develop the sorts of skills that would help them assess the dangers," Professor Malone said.

By Liz Gooch - (Published with permission. This article first appeared November 15, 2005 in The Sydney Morning Herald)

Churchill Fellowships 2006

Each year a number of Australian Citizens are awarded a Churchill Fellowship by the Winston Churchill Memorial Trust. A Churchill Fellowship is an award of an opportunity, through the provision of financial support, to enable Australian citizens from all walks of life to travel overseas to undertake an analysis, study or investigation of a project or issue that cannot be readily undertaken in Australia. Currently the average Fellowship value is \$25,000. Within the community services industry, previous Churchill Fellowships have been awarded to people who have wanted to study new developments in aged care, children's services, mental health, substance abuse, homelessness, working with young people and many other important issues. The experience of many Fellows has strongly influenced the development of new services and policy directions. The Churchill Fellowship offers a really unique opportunity for individuals to undertake significant overseas study to improve the Australian community. For more info: contact Netty Horton on 0419 501 302 or visit www.churchilltrust.com.au The closing date for Applications February 28th 2006. [from YACVic Annouce]

Child Health Honour



Sue Packer, a long-standing member of DCI-A and a member of the National Committee, was recognised for her commitment to children's health, welfare, and well-being and for her advocacy on their behalf by being given a special award in the ACT as part of Children's Week. The award was specifically "For making an extraordinary and longstanding contribution to children in the community, significantly improving their opportunities to learn and grow." The following article is a summary of her talk on that occasion. Congratulations to Sue both for the award and for her talk.

I was recently interviewed regarding my thoughts about children after having worked as community paediatrician for the ACT for so many years. My work has been predominantly with stressed and troubled families and with children who have been abused and neglected. This has also meant court work and all that this entails. I have also been a member of committees formed with the intention of improving outcomes for our children.

When asked about the major differences in raising children in Australia in the 21st century, I consider that the biggest challenge is the way we now use our time- and our children are the ones who have been most affected by this.

We expect to live a frenetic lifestyle. Relaxation has become something we need to justify.

Aided and abetted by increasingly powerful and diverse media, we believe that having more, and owning more, and experiencing more, is our ultimate aim and desire and our right.

Children do not fit well into this society we are creating. They need us. They get sick and need us at inopportune times, so we adults need to take time off work and miss out on opportunities which we believe are important to us. Even in a child-friendly

work environment there can be an undercurrent of resentment, consciously suppressed, when others have to step in and take on more work because of family crises.

All the new and exciting research on infant brain development emphasises the need for babies and young children to experience predictable, stable relationships with their parents and other critical people in their lives. Yet a recent OECD report on young children in Australia revealed that there are, on average, twenty people involved in the caring during a child's first year of life

Babies need trusted carers who are there when *they* need them- to interpret the world for them and provide both the reassurance and encouragement to help them develop confidently. Older children can build on these early lessons, but infants need finely tuned, devoted carers there to help them get the messages right at the appropriate time for them.

The increasing pressures related to our jobs and our lifestyles are now often in direct conflict with our own recognised family needs. Babies need us to support them in their critical stage of brain development. Our older children need us to assist them in the tricky transition to adult life and responsibilities- and in a world which is so very different from even the youngest of parents' adolescent experiences.

Divorce and separation are expected. The impact of this from a child's perspective is so often overlooked. A concern I have is that these children are more likely to be in situations where they have to make decisions, independently of their parents, at an early age.

Our society promotes our children's independence, but at the same time we worry over the uncertain influence of their peers.

And a major determinant of all this is the increasingly pervasive influence of all forms of media, which intrude into the most private aspects of all our lives. How can we help our children manage this appropriately when we are so often struggling to do so ourselves?

Are parents different in the 21st century?

We are less likely to see children as possessions than our ancestors did, but I think children are still often seen as being of very limited use as children, other than to perhaps boost our egos a little, or challenge us occasionally, or be there for us to love. Our focus is so often on their future, not their present.

The future society where I would choose to live would be one where all people, whether parents themselves or not, are committed to the wellbeing of all children. Any harm suffered by a child needs to be seen as an indictment of the whole community, not as an individual failure. The first small step would be to acknowledge all children as full members of our society.

A step forward within the ACT has been the development of the Children's Plan. This emphasises the need to ensure that the different needs of children and their families are sought and considered in all new initiatives planned for ACT. The plan also emphasises that the views of children should be sought. Another development, which fits well with the Plan, is the intention to appoint a Commissioner for Children. This person will be expected to consult widely with children and advise government about the contemporary needs of children in ACT.



Families will always be pivotal for children's welfare. We need to develop a community responsibility which vigorously support this in our rapidly changing world- and shares the responsibility for keeping all children safe

The Editorial Board of the "Human Rights Law Commentary", affiliated to the Human Rights Law Centre at the University of Nottingham is calling for the submission of academic papers from postgraduates, practitioners and other qualified candidates on human rights related issues from all disciplines. The "Human Rights Law Commentary" is an annual online journal produced and edited by postgraduate students at the School of Law, University of Nottingham. The Commentary is legally oriented and informed by human rights practice. Papers must be between 5,000 and 10,000 words, written in English and in 12 point type. They must be submitted electronically. Final decisions for the papers to be included in the journal will take place in mid-January 2006 and successful applicants will be notified accordingly. Submission deadline: 9 January 2006

For more information, contact: Human Rights Law Centre, University of Nottingham University Park, NG7 2RD United Kingdom Tel: + 44 (0)115 84 66309; Fax: + 44 (0)115 84 66579 Email: hrlaw_commentary@nottingham.ac.uk For format and style requirements, visit: http://www.nottingham.ac.uk/law/hrlc/hrlc_activities.htm [from CRINMAIL www.crin.org]

Social Development Issues (SDI) is an international journal published three times a year. It is a forum for linking multiple academic disciplines, nations, and cultures. Its purpose is to promote consideration of issues that affect social justice as well as the development and well being of individuals and communities, to advance social, political, and economic theories and policy and practice within a global context. SDI editors are calling for submissions for the next issue of the journal. Manuscripts addressing social and economic development are welcome. Developmental perspectives and research on international issues might include - but are not limited to - lifespan, gender, and racial issues; the impact of policies, practices, and service delivery on urban and rural communities; comparative health, mental health, education, and employment strategies; and movements such as human rights and peace.

For more information, email: sdijournal@wustl.edu Social Development Issues is the journal of the Inter-University Consortium for International Social Development (IUCISD): <http://www.iucisd.org> [from CRINMAIL www.crin.org]

International Parental Child Abduction Service Established in Melbourne

Anne Tuohey, the training and development worker with the International Parental Child Abduction Service, explains how the newly launched response will assist.

The release of 170 balloons marked the official launch of the International Parental Child Abduction (IPCA) Service. Based at International Social Service (ISS) Australia, the Service was launched by the Chief Justice of the Family Court of Australia, the Hon. Diana Bryant. In opening the service the Hon Diana Bryant said, 'I can say without hesitation that, from the perspective of a family lawyer and Head of Jurisdiction, a service like that which is being launched today has been desperately needed'.

The newly appointed patron of the Service, the Hon. Alastair Nicholson also expressed his support for the service. In his speech he said, 'I consider that this service meets a long felt need by the parties and by those dealing with these difficult international child abduction cases. Many family law cases are difficult but these remain the most difficult of all'.

The balloons acknowledged the official number of children taken to and out of Australia each year without the consent of a parent. We know that the actual number of cases is higher because statistics are only kept on cases with countries which have signed the Hague Convention on the Civil Aspects of International Child Abduction. Statistics from the Attorney-General's Department show that in 2003-04 there were 174 officially recorded cases of international child abduction. Of these 97 were abductions of children out of Australia. New Zealand consistently has the highest rate of abduction, followed by the UK and then the USA.

The Federal Attorney General's Department has provided modest funding for one year to ISS to establish the service. ISS is ideally placed to auspice the service given the international nature of all its work.

Research supporting the service

Prior to receiving the funding to establish the service, ISS undertook a research project to better understand the scope of this issue. A report, *Living in Limbo: The Experience of International Parental Child Abduction* was launched by Chief Justice Bryant in April this year. This report provided a picture of international child abduction and called for the establishment of a support service, with references to services already established overseas. The report is available on www.iss.org.au

Defining abduction

Abduction is a confronting term, particularly when used in the context of parents and their children. It connotes "child snatching", but in fact, the unlawful removal is usually well planned. There also seems to be a common scenario: a failed relationship, usually involving parents who come from different cultural backgrounds with the removing parent returning to his or her country of origin

Current profile of abductors

Compared with thirty years ago, it is now more likely that the abductor is a mother. The research undertaken by ISS showed that in 70% of cases the abductor is the mother. The most common reason for abduction is to escape family violence. Other reasons include:

- extensive hostility between the former or estranged parents
- a deep sense of unfairness felt by one parent in relation to Family Court residence and contact arrangements
- fear of and inability to communicate between former partners
- the proprietorial nature of some parents' relationships with their children
- inability to tolerate the religious or cultural beliefs of one parent.

Strong focus on prevention as well as support

The newly established service is a national telephone and advisory support service. The service also intends to have a strong preventative focus, providing community education and training across various cultural groups and other agencies.

The service works from a key premise of focusing on the welfare or the best interests of the child while alleviating the stress on parents and others experiencing the consequences of IPCA. While the parent left behind is likely to be the most common user of the service, the aim is to work with all parties, including the abducting parent, to attempt to bring about a better outcome.

We hope over time to develop a national recognised voice on IPCA matters and as such, intend undertaking research and advocacy on related matters.

The Hague Convention on Parental Abduction

Australia is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. The legal remedy available through the Hague Convention of seeking to have the child returned to the country where he or she lived habitually prior to the abduction aims to achieve a fair process.

There is also an underlying premise in the Convention that matters relating to the custody of the children are rightly the responsibility of the national jurisdiction where the child habitually lived. This “best interests” principle contained in the Commonwealth *Family*

Law Act 1975 is displaced in decision-making under the domestic law which implements the Convention.

In Australia, the Federal Attorney General’s Department operates as the central authority administering any claims under the Hague Convention in association with State-based central authorities.

There has been acknowledgement however that although administration of cases arising from the Convention is handled by these

Government departments, the emotional fallout and trauma for all affected and attempts to prevent further abductions are not being addressed adequately. Many countries in our region are not signatories to the Convention. This means that it is usually harder to arrange the return of a child. Also, the outcome of each case is a private matter and aggregated information data about cases is not compiled.. The service is hoping to collect data on these cases (known as non-Hague cases) to better inform relevant policy and planning issues.

Conclusion

The national service is promoting its existence throughout Australia. Given the rise in the number of bi-national or multicultural marriages over the past 20 years and the high rate of marriage breakdown overall, ISS believes the service will make an important contribution to supporting cases involving international family law conflict. Legal options are a usual response to the abduction of a child. The service will be exploring other avenues to facilitate a less adversarial outcomes, this may include international mediation, in appropriate situations. For information on the service, call 03 9614 8755 or toll free 1300 657 843



The Commonwealth Anti-Terrorism Bill (No. 2) - Hide and Seek on Human Rights

About 300 documentary submissions and two and a half scheduled public hearing days informed a Senate Legal and Constitutional Legislation Committee Inquiry report on the Bill by the 28 November 2005 deadline. Victorian DCI-Australia Committee representative and submission co-author, Danny Sandor, laments both the Government's indifference to our compliance with binding international treaties and the lack of controversy over its censorship of the subject.

Cocky Vague and Secretive

That's been the Federal Government's approach to the far-reaching question of whether the radical national legislative scheme would meet Australia's ratified international human rights obligations. A good example is the following exchange on this topic between reporters and the Attorney General on ABC radio's *The World Today*:²

REPORTER: ... Do they breach some of the treaties that Australia is signatory to?

PHILIP RUDDOCK: Let me just make it very clear. We have examined each and every one of these measures against our international obligations. And they do not breach our international obligations.

There are some people who have a wish list in relation to international obligations as to what they'd like them to include, and the point I make in relation to international obligations that we're party to, is that they have to be seen as a whole package.

One of the first and primary international obligations that we're party to is to the protection of the right to life - safety and security. Other rights in international instruments are not absolute.

And I make the point, and I've made it time and time again, in relation to freedom of movement, that freedom of movement is restricted in order to preserve people's right to life.

You have no right to choose on which side of the road you will drive on. And you know and you understand that, you accept it, but it constrains your freedom of movement. And equally, in relation to the sedition laws, freedom of speech - people say, you know, we can say anything.

Well, you're journalists, you know that what you can say is constrained by defamation laws. Nobody's arguing out there that they're in breach of our fundamental human rights obligations.

You have to in relation to each of these matters recognise that in the international instruments that we have signed, that there is provision for issues relating to safety and security to be taken into account in getting that balance right. These measures do. And they do not breach our international obligations.

One would expect that such a confident spiel (but flawed reasoning) would be matched with a readiness to proffer the detail of the legal advice underlying it. Wrong. Attempts by submission writers to see the international law reasoning were knocked-back with the bland response: "*It is not the Government's practice to disclose whether it has received legal advice, nor to disclose the content of any such advice.*"

Trust alone is expected to supplant the perils of an informed and precise debate. No need for inconvenient public discussion about citizen abiding by the rule of international law just as much as the individual is subject to domestic regimen. That's law and order too. But under this Government, ignorance is not an excuse, it's a cultivated strategy of the chamber masters in the Canberra duplex.

More affronting still for a so-called parliamentary democracy has been the bureaucracy's refusal to give the Senate Committee "*comprehensive advice*", remarking that is something "[they] *do not do*".³

It's not that the law is on the side of the Sir Humphreys

and the political lords who direct them. The convenient convention of embargo has no inherent legal protection against a parliamentary inquiry fully empowered to make a fuss and demand production of the international legal analysis. But only if it wants to.

Why it Matters

Our initial submission said of the Government's obstructive approach:⁴

It is not sufficient that the determination of whether Australia is in compliance with its international obligations can rest solely with an unsubstantiated assertion by the Attorney General. Indeed such an approach, which allows the Government to be the sole arbiter as to the legality of its actions, is likely to breed deep cynicism in the minds of not only the Australian public but also the international community. It does nothing to foster transparency, accountability and respect for Government processes. Thus, in the absence of any judicial process to test the Attorney's assertions, it is critical that the Senate Committee engage in a thorough and detailed examination of the nature of the Bill's provisions and their impact on the international treaties to which Australia is a party.

Contrary to the Attorney's radio reasoning, there is a clear duty to ensure that no aspect of the terms of domestic legislation or its practical effects results in a breach. It continues in the context of terrorism. United Nations Security Council Resolution 1456 adopted 20 January 2003, par 6, specifically called for the following: "*States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international*

human rights, refugee and humanitarian law." Pursuant to Article 25 of the United Nations Charter: "*The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.*"

The importance of the Senate Inquiry being able to properly assess compliance in relation to children was recently underlined by the 30 September 2005 Concluding Observations of the Committee on the Rights of the Child in respect of Australia's second and third periodic reports on implementation of the Convention on the Rights of the Child ("CROC"):⁵

In accordance with article 2 of the Convention, the [CROC] Committee recommends that the State party regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities. It also recommends that the State party strengthen its administrative and judicial measures in a time-bound manner to prevent and eliminate de facto discrimination and discriminatory attitudes towards especially vulnerable groups of children and ensure, while enforcing its Anti-Terrorism legislation, a full respect of the rights enshrined in the Convention.

It would be a mistake to treat human rights as though there were a trade off to be made between human rights and such goals as security... We only weaken our hand in fighting the horrors of ... terrorism, if, in our efforts to do so we deny the very human rights that these scourges take away from citizens. Strategies based on the protection of human rights are vital for both our moral understanding and the practical effectiveness of our actions.¹

Wasted words. The over-arching criticism of the Commonwealth scheme is that it contains no reference and mechanisms to give effect to the principle that restrictions on rights should be read in accordance with Australia's treaty obligations. In order to conform with those obligations, when Australia has no

enveloping and enforceable bill or charter of human rights, the anti-terrorism legislation must be framed and be interpreted as subject to minimum human rights norms.

The second main structural failure is that none of the proposed factors and criteria to guide the exercise of power or decision-making are specific to children even though preventative detention, prohibited contact, and control orders order can be made against 16 and 17 year olds. They are treated the same as adults even though generally applicable international obligations demand a different approach that should be spelt out in the legislation, and further, they are entitled to the additional rights guarantees contained in the CROC (see particularly articles 3, 37 and 40).⁶

In the Senate Inquiry

Ruddock's representatives in their written and oral evidence purported to explain the compliance claim but did no more than regurgitate the provisions of the Bill together with monotonous assurances of the Government's satisfaction that all was in conformity. There was however an acknowledgment of the likely authorship of the hidden advice - the Office of International Law. This hardly makes one relaxed and comfortable and prompted Democrat Senator Murray to remark:⁷ *"Are they the same people who have been telling me in committee hearings like this year after year that our Migration Act does not breach international law in detaining children for years?"*

It strains credulity to imagine that a legal advice about meeting human rights obligations could compromise national security. The Government's secretiveness therefore deserved deep suspicion and challenge, particularly when a bevy of submissions by experts, left able to only "shadow-box" the controversy, had precisely identified critical flaws and points of likely treaties contravention.

But leaving aside for a moment the rational notion that accurate analysis should underpin legislative action, Jane Stratton from the Public Interest Advocacy Center posed the crucial practical question that should have but didn't lock the international conventions within the Bill. If as claimed by the Government, the Bill indeed complies with our treaty obligations, why not attach them and direct that the new law is read pursuant to them?⁸ Forget disclosure of the reasoning – reflect it. As the principal witness for the Attorney General's Department said in another context:⁹

MR MCDONALD-It comes back to this: at the end of the day, it is what is in your legislation that matters.

But the absence of baseline international standards and having them apply seems to have mattered little to the most of the Inquiry members.

The Committee is used to dealing with the need to assess whether bills comply with international law. Indeed, the Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 was significantly concerned with whether existing laws in Western Australia and the Northern Territory were in breach.¹⁰ In that Inquiry, senators through majority and minority reports gave their answers to these questions.

No such substance now. The majority Coalition and Labor senators did no more than say in cosy unison:¹¹ *"The Department explained that legal advice to the Government was that the Bill would withstand any constitutional challenge and was consistent with international law."* With Labor sharing the pen on the principal Inquiry report, the issue was put to bed by simply recording the Government's "she'll be right" say-so. Full stop. No comment. No protest over being stonewalled

In contrast, Greens Senators Brown and Nettle rejected the credibility of the Government's superficial reassurances:¹³

Numerous submissions to the committee outlined how the legislation would violate Australia's commitments to the International Covenant on Civil and Political Rights (ICCPR). In response, assertions by the Attorney-General's Department that the bill did not breach the ICCPR rested entirely on a general claim that confidential legal advice to government that this was the case were not convincing.¹⁴

Coalition numbers on the Committee formally explains why there was no majority push for the assessment but it's also plain that Hansard does not reveal an Opposition championing for such candour and transparency even though compliance with the ICCPR was a public government promise.¹² Word probably got around that a call for the detailed

disclosure might distract from the frontmen jostling to join the big picture of fear and urgency. Less photo-op time-share of the superhero cloak is Labor bad press.

The Outcome

The homeland security attack on the Senate was heralded by gags and the guillotine. The Greens and the Democrats resisted, pressing to put the anti-terrorism laws within a human rights framework. Each proposed that the powers and decisions exercised under the legislation should be interpreted in light of the Convention Against Torture, the Covenant on Civil and Political Rights and the Convention on the Rights of the Child – treaties that Australia has already promised the world to honour and implement.¹⁵

The amendments they moved on December 5 are now disintegrating like Australia's reputation and leverage in the human rights arena. By refusing to allow the bill to include the minimum guarantees that Australia once took pride in crafting, the Coalition has rebuffed the importance of demonstrating that it acts in conformity with international law.

Combined with an increasingly equivocal approach to a bright line issue like capital punishment, this deliberate recoil from implementing human rights at home will further diminish our credibility abroad.¹⁶

Paratroopers of parliamentary supremacy will hold no mournful vigil at the tomb of the shunned treaties. Global norms are dangerous incursions on the supremacy and legitimacy of standard setting by ballot box for the national sovereignty glee club. They are staunch and at the ready to spruik the unique competency of our system as a bulwark against calls for platform human rights protections such as entrenched bills of rights which judges actually consider.

Of course not all binding international agreements are on their repellent radar. Enforceable W.T.O deals, worldwide travel insurance conventions and other solemn economic commitments are, well, different. They depend on compliance, consistency and interpretation no less than fundamental protection treaties. But they are laws for the "us" not the "them".

It was therefore eerie that when Ruddock's representatives politely sidelined the Senate Inquiry the "parliament uber alles patrol" was nowhere to be found. There was a deafening silence as the progress of the anti-terrorism Bill exemplified how the homegrown democratic structures they pedestal as proof of the irrelevance of international law for local standard setting utterly failed to compel the Government to provide Parliament with the detailed explanation it needed to get. On our behalf.

Yes, pragmatically, the outcome was going to be odds on futile. Even if there had been the will and the numbers to play a game of chicken and confront the withholding, the snakes and ladders of process would have inevitably brought the tussle back to Howard's Senate amidst orchestrated premonitions that the sky will fall during the haggling. But there was a wildcard worth a gamble.

Notable backbench figures are morphing tenuously into spaces of opposition void. Judging by recent gumption concerning asylum seekers and the welfare to work injustices, further impatience with the veil of ministerial arrogance and paternalism might have bubbled up to reveal some more examples of putting fact and analysis above dynastic team identity within the Coalition.

Leaving the crystal ball aside, the greater shame is that there were high stakes in play.

The easy concealment of the treaty advice without visible challenge stands as a memorable blow to the opponents of incorporating international conventions who claim that parliamentary architecture is enough to resist a white ant Executive and properly ensure the local observance of human rights under changing pressures and circumstances.

For those of us already convinced that key standards need to apply domestically, the episode was a cutting edge opportunity to portray a national identity and image that is genuine about the importance of transparency and accuracy in aiming for compliance, even when political heavyweights collude to undermine the task. Australia could have shown that it is serious about principled safeguards not just at home but elsewhere too and that we deserve to be treated as credible.

Canberra shamefully sent the opposite message as the Prime Minister toasted the success of progress.

Footnotes

1 Report of the Secretary General, *In Larger Freedom: Towards Development, Security and Human Rights For All*, A/59/2005, 21 March 2005, chapter 4, par 140 <<http://www.un.org/largerfreedom/contents.htm>>.

2 See <<http://www.abc.net.au/worldtoday/content/2005/s1497863.htm>>, broadcast 4 November 2005.

3 *Committee Hansard*, 14 November 2005, p. 12, <<http://www.aph.gov.au/hansard/senate/committee/S8921.pdf>>.

4 Registered as submission 237. For our submissions see <www.dci-au.org/news> and as to other submissions posted on the Senate website see <http://www.aph.gov.au/Senate/committee/legcon_ctte/terrorism/index.htm>.

5 Available at <<http://www.ohchr.org/english/bodies/crc/docs/co/CRC.C.15.Add.268.pdf>>.

6 The rights of children of all ages are potentially infringed by orders made against adults in their lives: see Professor The Hon. Alastair Nicholson AO RFD QC, 'The Role of the Constitution, Justice, the Law, the Courts and the Legislature in the context of Crime, Terrorism, Human Rights and Civil Liberties', An Address to The Post-Graduate Student Conference Transgressions – Intersections of Culture, Crime and Social Control, for Mens Rea: The Post-Graduate Criminology Society, 4 November 2005 available at <http://www.criminology.unimelb.edu.au/staff/alastair_nicholson/transgressions_conference_unimelb_2005.pdf>.

7 *Committee Hansard*, 14 November 2005, p. 27, op. cit., footnote 3.

8 See PIAC's evidence in *Committee Hansard*, Monday 14 November 2005, op. cit., footnote 3 and the similar suggestions for incorporation by other witnesses.

9 *Committee Hansard*, 18 November 2005, p. 29, <<http://www.aph.gov.au/hansard/senate/committee/S8923.pdf>>.

10 Available at <http://www.aph.gov.au/Senate/committee/legcon_ctte/completed_inquiries/1999-02/mandatory/report/index.htm>, date completed 13 March 2000.

11 See par 2.48 of the majority report available at <http://www.aph.gov.au/Senate/committee/legcon_ctte/terrorism/report/report.pdf>.

12 See Kirk McKenzie, 'How To Say 'Yes' When You Want To Say 'No'', *New Matilda*, 7 December 2005 <<http://www.newmatilda.com/home/articledetailmagazine.asp?ArticleID=1197&HomepageID=117>>

13 See par 1.3 of their report available at <http://www.aph.gov.au/Senate/committee/legcon_ctte/terrorism/report/report.pdf>.

14 We subsequently suggested to the Greens that any amendments involving the ICCPR alone is insufficient to safeguard the additional rights to which children are entitled under the CROC and to this end, it is imperative that the CROC receive an identical legal status to that given to the ICCPR.

15 The Greens' amendments further provided for invalidating parts of the Bill in conflict with international law by proposing that:

"If in any proceedings regarding any matter in relation to this Act a court is satisfied that a provision of the Act is inconsistent with a right arising under the International Covenant on Civil and Political Rights or the Convention on the Rights of the Child or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the court may make a declaration of that inconsistency and the provision of the Act shall be of no effect to the extent of that inconsistency."

16 See Pia Di Mattina (2005) 'What manner of men and women are we?' No. 40 *Australian Children's Rights News*, 35.

Tender for New NYARS Project

The National Youth Affairs Research Scheme (NYARS) is a co-operative funding programme between the Australian, State and Territory Governments that facilitates nationally based research into factors affecting young people in Australia. The purpose of NYARS research is to inform the development and implementation of government policies and programmes for young people in Australia. The Australian Government Department of Family and Community Services (FaCS) is inviting tenders for a NYARS research project entitled 'Diversity in Young People's Participation in Government and Community Decision-making'. The FaCS Request for Tender (RFT) number is FACS/05/T480.

The research project has a specific focus on the issues and outcomes for the following diverse groups of young people: Indigenous young people; Young people with a disability; Young people from lower socio-economic backgrounds; Culturally and linguistically diverse young people, including emerging communities; and Young people under the guardianship of the Minister. The research project will culminate with the production of a major research report (of up to 60,000 words). This report may, at the discretion of NYARS, be published in the NYARS series. The budget allocation for the research project is \$165,000 (GST inclusive). Tenders close at 2:00 pm Canberra Local Time on 13 January 2006. Documentation for RFT No. FACS/05/T480 can be obtained by contacting the NYARS Unit at email: nyars@facs.gov.au or phone: (02) 6212 9582. [from YACVic Annouce]

What Manner of Men and Women Are We?

Barry Jones confessed in 2002 that he felt a terrible sense of personal responsibility for Ronald Ryan's death. The Secretary of the Victorian Anti-Hanging Council at the time of Ryan's execution in 1967, Jones could only recently bring himself to speak publicly about the experience, revealing how personally traumatised he was by that brutal hanging.

As a member of the Victorian Parliament in 1975, Jones gave a passionate second reading speech to the House on the *Crimes (Capital Offences) Bill*, which would ultimately abolish the death penalty in Victoria. Observing that it gave MPs an opportunity to declare just what manner of men and women we were, he said then that in casting his vote for abolition, he was essentially taking a stand against darkness and pessimism, and voting for man's capacity for moral regeneration. Now, that's leadership.

The execution of Ngyuen Tuong Van in Singapore posed another such opportunity for our leaders – and they botched it. If John Howard, Alexander Downer and Philip Ruddock had taken a more consistent, principled stand against the death penalty when it loomed as an issue in our region over recent years, Singapore's President S. R. Nathan and Prime Minister Lee Hsien Loong may have been forced to pay more serious heed to their appeals for clemency.

Who remembers the firm stance Downer took in 2002, when a sentence of death by stoning for a young mother was upheld by a Sharia Court of Appeal in Nigeria?

The Australian Government is universally and consistently opposed to the use of capital punishment in any circumstances. The death penalty is an inhumane form of punishment which violates the most fundamental human right: the right to life. If this sentence were to be carried out, it would be received with outrage in Australia and in the wider international community.

But this resolute and absolute position has withered since then. Following bomb attacks in Indonesia where Australian lives were lost, there was no similar

condemnation by our leaders of the death penalty imposed on the 'smiling' Bali Bomber, Amrozi bin Nurhasyim. Indeed, Howard had foreshadowed that if he were to get the death penalty "*There won't be any protest from Australia*". No qualms either for the sentence passed on Iwan Darmawan, recently found guilty of the bombing of the Australian Embassy in Jakarta. And of course, Howard is on record as having positively supported the death penalty for Saddam Hussein, if he is ultimately convicted of war crimes in Iraq.

It seems the policy position now is that capital punishment is actually acceptable if it's the law of the foreign land and the victim is not an Australian.

With our government professing that some people are more worthy of saving from state execution than others, how can we claim to be leaders in our region, moral or otherwise? We are rightly open to scorn for lacking a consistent position. Do we believe that a human right as fundamental as the right to life should be protected from state execution regardless of colour, creed or geography, or don't we?

We don't know what was said behind closed doors when Howard argued Van's case. But I'd be willing to bet that our moral inconsistency was high on the Singaporeans' list of discussion points. Our Prime Minister should have maintained a consistent, unwavering opposition to the death penalty in all its forms whenever the opportunity arose. He should have provided strong moral leadership on this issue. If he had, the Singaporean authorities may have listened to him with more respect, solicitude and responsiveness when he belatedly came calling in the last days of Van's life. Van is a victim of politics as much as he is a victim of the noose.

The Australian Government must unequivocally voice its opposition to the death penalty, in all its guises and in all places for all people. This must occur before the next case, perhaps that of the Bali 9, shines a deathly glow on Australia's untenable current position.

By Pia Di Mattina, a Melbourne lawyer on the Executive of the human rights group, ReprieveAustralia.
www.reprieve.org.au



ReprieveAustralia

Melbourne human rights group, *ReprieveAustralia*, was launched in May 2001 by a group of Melbourne lawyers. The organisation provides legal and humanitarian assistance to impoverished people facing the death penalty at the hands of the state, primarily through a volunteer intern program. Recruited largely from universities, volunteers are placed with capital defence offices in the southern states of the US for a few months of often challenging but always inspiring work.

Reprieve interns tend to be law or criminology students, or practising lawyers. They give at least 3 months of their time, self-funded, to work as para-legals, researchers and general 'helpers' in seriously under-funded capital defence offices.

Since 2001, Reprieve has sent 33 volunteer interns (4 of whom have done more than one 'tour of duty') to work in Louisiana, Texas, Mississippi and Georgia. In that time, over 111 months of full-time work has been donated by these volunteers. In this sense, Reprieve has contributed the equivalent of one person working for over 9 years to help save lives, and work towards the abolition of the death penalty on the ground, in the US justice system. Ten more volunteers are about to spend their summer holidays in North Carolina, Texas, and Louisiana, where they will work among the chaos wrought by the recent hurricanes.

Reprieve is funded solely by memberships and donations, and, save for employing a part-time Executive Officer (who also volunteers half her time), its work is done by volunteers. For more information on the intern program, go to www.reprieve.org.au. Or, something far easier – support Reprieve by becoming a member...

Reprieve Membership Form

Name: _____ E-mail (important!): _____

Mailing Address: _____

Telephone – BH: _____ Telephone – AH/mob _____

I wish to become a member of ReprieveAustralia for an annual fee of **AUD \$40 full / \$20 unwaged/concession**
I wish to make a donation to ReprieveAustralia in the sum of: AUD \$ _____

I enclose my cheque [] or money order [] in the total sum of: AUD \$ _____

Signature _____ Date _____

Please return with your cheque or money order to:
ReprieveAustralia, GPO Box 4296, Melbourne, 3001.

Litigation for Juvenile Justice in the South African Courts

Ann Skelton is Co-Ordinator of the Children's Litigation Project at the Centre for Child Law, University of Pretoria, South Africa. Here are two current examples of its juvenile justice advocacy.

Sentencing of young children to imprisonment

The centre is involved with a case in which a 12 year old girl has been convicted of murdering her grandmother (by instructing two adult men to kill the deceased, and paying them by allowing them to steal whatever they wanted from the house). The State made a decision to try her in the High Court, thereby creating the likelihood that this case would set a precedent.

The trial ran for 10 days in August 2004. The defence was a combination of *doli incapax* (lack of criminal capacity) and the claim by the accused that she was acting under the influence of an adult. These arguments were rejected by the High Court, and our client was convicted of murder in October 2004.

In December 2004 the matter resumed for sentencing, and the defence led three expert witnesses in support of the contention that the child should not be imprisoned. We were pleased with the outcome when on 17 December 2004 the client was sentenced to an effective three years of correctional supervision (linked to a postponed sentence). This outcome allows her to continue to live at home, attend her school and take part in school-related activities, but otherwise she must be at home under supervision.

The State gave notice that they intend to apply to the trial court for leave to appeal against the sentence. We opposed the application, and leave to appeal was refused by the trial judge. The State then petitioned to Supreme Court of Appeal, and were

granted leave to appeal. The matter will be heard on 9 November 2005. We have briefed a senior silk, Gilbert Marcus SC, and Ann Skelton will be sitting with him as his junior. We are aiming to establish a good set of principles relating to sentencing of children, in the light of the South African constitution and the United Nations Convention on the Rights of the Child (UNCRC).

Life imprisonment for children

Another case we are working on relating to juvenile justice issues is a case in which we aim to challenge the constitutionality of life imprisonment for children in South Africa. The Centre is working on the cases of 40 young people who were younger than 18 years at the time of being sentenced to life imprisonment. The case has two aspects to it.

Some of the children were sentenced to life in terms of a minimum sentencing law.¹ Minimum sentences were introduced in 1997, and were supposed to be a temporary measure. However, parliament has repeatedly extended the operation of minimum sentences, and they did so again in April 2005. The Act provided from the outset that children below the age of 16 years should not fall under the ambit of minimum sentences.

The situation of 16 and 17 year olds as provided for in the Act led to much dispute in the courts until the matter was settled in a Supreme Court of Appeal decision that was handed down in December 2004.² The court held that minimum sentences do not apply, that judges have a discretion when it comes to the sentencing of 16 and 17 year olds on offences for which minimum sentences are prescribed for adults. Part of our legal challenge will be ask the courts to consider effect of this ruling on those 16 and 17 year olds who were sentenced under minimum sentencing laws.

The other aspect of the case is a broader one relating to the interpretation of the South African constitution within the broader ambit of international law.³ According to international law as provided for in the United Nations Convention on the Rights of the Child (which South Africa ratified in 1995), no person below the age of 18 years should be sentenced to life imprisonment without the possibility of parole. In

New Resources

South Africa, life sentences are subject to parole, but in terms of the new Correctional Services Act,⁴ which came into operation in July 2004, a person (including a person who was a child when sentenced) must serve 25 years before he or she can be considered for parole.

South Africa's constitution provides that detention of persons under the age of 18 years must be a measure of last resort, and for the shortest possible period of time.⁵ This principle is also part of international law and the Centre is examining international legal precedents to determine how the courts have viewed life imprisonment against this principle.

It is a big case and we are currently visiting and consulting with the young people (all males) who are spread out in various prisons in the country. Interestingly, one of the nine provinces⁶ has more than half of the total number, suggesting an arbitrariness in the use of the sentence. We are obtaining and studying the court records and will develop our detailed litigation strategy once we have all the information.

You can visit the Centre's website to read more about our cases: www.childlawsa.com. research. The Project would appreciate offers of volunteer assistance from people who can undertake research, on an international level, of case law and journal articles on the issue of children being sentenced to life imprisonment. If you can help, please email Ann at ann.skelton@up.ac.za.

Footnotes

¹ *Criminal Laws Amendment Act* 105 of 1997.

² *Brandt v S* [2005] 2 All SA 1 (SCA).

³ Although international instruments are not automatically binding, the South African Constitution provides, at s 39, that when interpreting the Bill of Rights a court must consider international law and may consider foreign law.

⁴ *Correctional Services Act* 111 of 1998.

⁵ At the time of the abolition of the death penalty by the Constitutional Court judgment of *S v Makwanyane and Another* 1995 (2) SACR 1 (CC), the death penalty was at that stage not applicable to children below 18 years, but life imprisonment was. The effect of the Makwanyane judgment was to put adults and children on the same footing when it comes to the most severe sentence available to the courts.

⁶ Kwa-Zulu Natal.

Participation

UNICEF's Adolescent Development and Participation Unit and the Commonwealth Youth Programme have produced a series of four booklets and an interactive CD-ROM, which contain practical models and tools for achieving meaningful participation of adolescents in the research, planning, implementation and monitoring of a development project. The series is designed for programme staff of development agencies, teachers, policy-makers, adolescents and young people. The booklets can be downloaded from:

<http://www.thecommonwealth.org/Templates/CYPInternal.asp?NodeID=38420> Hard copies can be obtained from: vkaranan@unicef.org

Voices of Hope: Adolescents and the Tsunami

The UNICEF Adolescent Development and Participation Unit has produced an advocacy document on adolescent participation in Tsunami long-term reconstruction and development. The purpose of this publication is to raise awareness among decision-makers of the issues and concerns facing adolescent tsunami survivors and others, and keep this focus alive in the recovery phase and long-term reconstruction. [from CRINMAIL www.crin.org]

The advanced unedited version of the Secretary-General's report **Making Commitments Matter - Young People's inputs to the ten-year review of the World Programme of Action for Youth** is available on the website of the UN Programme on Youth. It provides a summary based on the reports of youth organizations around the world on the implementation of the World Programme of Action for Youth in their country. This report should be read in conjunction with the Secretary General's World Youth Report 2005 (A/60/61). Both documents will be submitted to the sixtieth session of the General Assembly. The full reports of the youth organizations

that gave permission to publicly share their submissions are available on the website as well. Please visit: <http://www.un.org/esa/socdev/unyin/youthspeak.htm> [from CRINMAIL www.crin.org]

Children as Partners: Child Participation Promoting Social Change by Cook, P.; Blanchet-Cohen, N.; Hart, S.; The International Institute for Child Rights and Development Produced by: Canadian International Development Agency (CIDA / ACIDI) (2005) This report was commissioned to examine current literature and examples of good practice programming supporting child and adolescent meaningful participation in the context of children's rights, focusing on a key aspect of participation: partnership.

The report triangulates background information from the following three sources to produce a participation-partnership framework in synthesising key findings which include:

- successful partnerships with children need to be viewed in terms of their impact on children's personal lives as well as in the context of social programming;
- meaningful child participation through partnership with competent, caring, and critical adults strengthens individual capacity for self-efficacy, communication skills, and self protective behaviours;
- identifying and building on assets and protective factors in a child's social ecology is more effective in fostering connectedness leading to productive partnership than focusing solely on problems and deficits;
- understand the socio-cultural context of participation in relation to partnership with key persons in children's lives;
- child participation projects often provide a foundation for greater adult involvement in local decision-making
- discrimination and social hierarchies impact on the realisation of child-child and child-adult participation through partnership;
- given the appropriate support from key adults children can often negotiate these social barriers;
- greater social inclusion and representation through participatory partnerships with children supports more informed and sustainable program

and policy outcomes;

- holistic partnership programs supporting children's interdependent and indivisible needs result in more meaningful, developmentally appropriate interventions.

Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC20037> [from www.eldis.org]

Fact sheet on Adolescent girls affected by violent conflict. On the occasion of the International Day Against Violence Against Women, the Women's Commission for Refugee Women and Children, and the Gender and Peacebuilding Working Group of the Canadian Peacebuilding Co-ordinating Committee have produced

Through this document, both organisations seek to raise awareness about the specific situations of adolescent girls affected by violent conflict and increase support for adolescent girls' participation in conflict prevention, peacebuilding, and community development. In armed conflict situations, adolescent girls have distinctive experiences that are often different from those of older women, younger children and adolescent boys. Yet, adolescent girls tend to fall through the cracks of programming, in part because they are not women, and not children.

In producing this fact sheet, the Women's Commission for Refugee Women and Children, and the Gender and Peacebuilding Working Group of the Canadian Peacebuilding Co-ordinating Committee, urge the international community to recognise the roles and capacities of adolescent girls and to give them increased policy and programme attention. Doing so will help to protect girls from violence and its effects, and foster their participation in conflict prevention, peacebuilding, reconstruction and development processes.

For more information, contact: Surendrini Wijeyaratne, Working Group Co-ordinator Gender and Peacebuilding Working Group Canadian Peacebuilding Co-ordinating Committee 1 Nicholas St. Suite 1216, Ottawa, Ontario, CA K1N 7B7 Tel: + 1 613 241 3446; Fax: + 1 613 241 4846 Email: surendrini@peacebuild.ca Website: <http://www.peacebuild.ca> [from CRINMAIL www.crin.org]

Practice Standards in Children's Participation by Save the Children (2005) This briefing document outlines Save the Children's practice standards in children's participation and discusses how to meet those standards. Their interpretation is based on the context of the general principles derived from the UN Convention on the Rights of the Child. In summary, the practice standards are: an ethical approach: transparency, honesty and accountability; children's participation is relevant and voluntary; a child-friendly, enabling environment; equality of opportunity; staff are effective and confident; participation promotes the safety and protection of children; ensuring follow-up and evaluation.

Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC17941> [from www.eldis.org]

Protection/Exploitation

The Australian Institute of Criminology has recently released: **Trends & issues in crime and criminal justice, No. 301 - Queensland Police Stings in Online Chat Rooms**, <http://www.aic.gov.au/publications/tandi2/tandi301.html>; **Trends & issues in crime and criminal justice, No 299 - Does thinking make it so? Defining online child pornography possession offences** <http://www.aic.gov.au/publications/tandi2/tandi299.html> **Trends & issues in crime and criminal justice, no 296 – International police operations against online child pornography** <http://www.aic.gov.au/publications/tandi2/tandi296.html>

Police Training on Child Rights and Child Protection by Wernham, M.; Geerinckx, S.; Jackson, E. Produced by: Consortium for Street Children (CSC) (2005) This manual provides information to enable trainers to design, implement, monitor and evaluate effective and practical police training courses in relation to child rights and child protection. It aims to:

- develop the knowledge, understanding, attitudes and skills of police officers;
- give police a better understanding of national and international laws that relate to children and how they should be applied;
- bridge the gap between theory and practice relevant to policing and child rights/child protection so that police are able to act in the best interests of

children;

- enable police to distinguish between a child in need of care and protection and a child who is in conflict with the law;
- motivate the police to take an active part in bringing about positive changes in the lives of children in difficult circumstances.

The resource also aims to gather and disseminate lessons learned in relation to police training on child rights and child protection from around the world; promote policy recommendations for governments and police; and compile a list of resources and contacts working internationally in the field of police training on child rights and child protection. [adapted from author] Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC19256> [from www.eldis.org]

Following its inquiry into Children in Institutional Care, the Senate Community Affairs References Committee produced two reports: **Forgotten Australians** and **Protecting Vulnerable Children: A national challenge**. The Australian Government's response to these reports was tabled in the Senate on 10 November 2005. See: [http://www.facs.gov.au/internet/facsinternet.nsf/vIA/childrens_policy/\\$File/australian_government_response.pdf](http://www.facs.gov.au/internet/facsinternet.nsf/vIA/childrens_policy/$File/australian_government_response.pdf)

Unaccompanied asylum seeking children - The response of social work services by Jim Wade, Fiona Mitchell and Graeme Baylis. The displacement of unaccompanied young people to countries far from home happens for many reasons, but what unites them all is the experience of being separated from their families, culture and all that is familiar. How do social work services in the UK respond to young asylum seekers? For the first time this groundbreaking study examines some of the key questions including:

- are asylum seeking children entitled to the same service as looked after children and, if so, do they receive it?;
- how are young people's needs defined and assessed?; and
- how do the services provided affect their progress and welfare? To find out more visit: http://www.baaf.org.uk/res/pubs/books/book_uaseeking.shtml

In best or vested interests?: an exploration of the concept and practice of family reunification for street children by Feeny, T. produced by: Consortium for Street Children (2005)

This study examines the concept and practice of family reunification for street children - programmes which are rapidly taking off in many countries around the world, in spite of, as the author argues, the inherent methodological uncertainty. The author contends that family reunification programmes have been full of problems of ungrounded methodologies as well as a lack of response to the growth of urbanisation, and an understanding of the complex and diverse urban context.

The study aims to examine family reunification programmes from a number of perspectives. Part one looks at the conceptual theory that underpins this intervention, and examines how constructions of the “family” and the “child” have influenced policy making in this field. It then reconsiders these in light of contemporary research material on the social realities of street children’s lives.

Part two explores the practical issues relating to the entire process of reunification itself, also offering advice and recommendations through the five following stages: raising the issue of reunification; accessing information for reunification; assessing the potential for reunification; the act of reunification; and follow-up monitoring for reunified families.

Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC20146> [from www.eldis.org]

Recent EU policy developments on children’s rights The October issue of the Save the Children Brussels Office Newsletter has been published. It provides information on the activities of the Brussels office as well as on the latest EU policy developments on children’s rights:

- New Save the Children report on sexual abuse of children on the internet;
- European Parliament Child Rights Alliance meeting;
- Commission presents a strategy for Africa;
- Directive on family reunification for immigrants;

- Plan D for Democracy;
- Consultation on co-operation with third countries;
- 2008 - Year of Intercultural dialogue;
- Communication on human trafficking;
- Save the Children Spain profile.

For more information, contact: Sophie Bassi: savechildbru@skynet.be

Structures and Environments

The Child Friendly Community Action Kit provides information to help make communities child friendly. Along with background information on child abuse and neglect, this kit also offers step-by-step advice on forming Child Friendly Community Action Groups and planning child friendly initiatives. Lists of further resources and examples of existing child friendly initiatives are also included. It can be downloaded from the NAPCAN website <<http://www.napcan.org.au/communitykit.htm>>.

First Introduction to Working for Child Rights from a Budget Perspective Save the Children Sweden recently published a booklet on article 4 of the Convention on the Rights of the Child: “With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.” In addition, one of the key messages of the G8 Conference this year was the importance of following-up on how aid is used and what the results of aid are. This publication demonstrates how different countries are monitoring the implementation of children’s rights from a budget perspective and how this information can be used. NGOs are the best organisations to follow-up if States are actually allocating resources to meet the goals of the Convention. The results of the analysis of budgets can and should be the basis for advocacy work. In this way the premise of the book ties-in with the G8 statement. This kind of analysis will also be important when the UN Study on Violence against Children is completed. Visit: <http://www.crin.org/resources/infoDetail.asp?ID=6633> For other publications on the same issue, go to: <http://se-web-01.rb.se/Shop/Products/ProductCategory.aspx?menu=1&ionId=994> [from CRINMAIL www.crin.org]

Making A Difference: Training Materials to Promote Diversity and Tackle Discrimination

This manual covers diversity awareness; assessment and analysis; action planning and gathering information and is designed to all staff, including those with little or no experience of diversity programming. These materials should help programme staff analyse how discrimination impacts on the lives of children, in order to plan effective programming responses. They have been designed to be used within organisational systems in the International Save the Children Alliance (such as country and thematic planning and review processes and global impact monitoring), but also more widely by colleagues in other organisations wishing to explore issues of diversity and discrimination. The materials have been piloted by Save the Children UK's Angola, Bangladesh and Wales country programmes. The Manual is available to download at the link below.

For more information, contact: Katherine Chambers
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K.Chambers2@savethechildren.org.uk Website:
<http://www.savethechildren.org.uk>

Building assets for safe, productive lives: a report on a workshop on adolescent girls' livelihoods Authors: Population Council, Inc. Produced by: Population Council, USA (2005)

This report summarises the proceedings of a workshop on adolescent girls' livelihoods that brought together stakeholders from all over the globe to interpret the word "livelihoods" in light of the needs of adolescents, and to review recent findings from field-based interventions and the research methods necessary to bring to light the distinctive adolescent experience.

The report begins by reviewing progress made on work on adolescent girls' livelihoods. It finds that there is a dearth of information regarding adolescents' work, livelihoods, and time use upon which policies and interventions were based.

An examination of how popular livelihoods strategies (such as vocational training, financial literacy, and microfinance) fit into the theoretical map of economic

development and correspond with adolescents' evolving capacities, rapid transitions, and vulnerabilities is then presented. In addition, the relationship between livelihoods and two other major elements in adolescents' lives - school and marriage - are explored in depth. The paper also looks at the social dimensions of livelihoods programming for adolescent girls.

The report concludes by making five propositions for discussion in developing a second generation of livelihoods programmes for adolescents:

- livelihoods programmes developed initially for adults need careful adaptation to benefit adolescents
- interventions should be staged, taking into account an adolescent's age, personal characteristics, and degree of poverty
- experiment to learn what content, be it literacy, sports, livelihoods training, savings, or reproductive health, is engaging to girls, is acceptable to and even creates demand among parents, and encourages sustained and regular participation
- learn how programme content and group formation and social support interact to increase acceptance and participation; increase the effective acquisition of skills; and increase the probability that participants can apply new skills
- develop different ways of studying and evaluating experimental and more mature second- and third-generation interventions for adolescents, including the criteria used to determine "success."

Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC18653> [from www.eldis.org]

Babies and Small Children Residing in Prisons by: Alejos, M. Produced by: Quaker United Nations Office (QUNO) (2005) This paper examines the situation of babies and small children residing in prisons with their carers. The paper:

- reviews the international and some regional human rights protection frameworks applicable to all children, paying particular attention to specific issues that are relevant to small children residing in prisons;

- discusses written directives, regulations and programmes issued by executive bodies or prison authorities to provide guidance to prison directors and staff on the management of adult parents, mainly imprisoned pregnant women and mothers with babies/small children residing in prisons, in four countries - Australia, Cambodia, Canada and France;

- makes some concluding observations regarding the application of relevant international human rights norms, in particular the Convention on the Rights of the Child, in the context of small children residing in prisons;

- presents a draft proposal of ‘Suggested guidelines for drafting policies and regulations regarding babies and small children residing in prisons’ mainly intended for prison authorities and prison staff to engage them actively in the promotion and protection of the human rights of small children residing in prisons with an imprisoned parent.

The main conclusions include:

- while there might be positive and negative aspects for children to accompany their mothers, the principle of the best interests of the child should guide all decisions in this regard;

- the application of the principle of the best interests of the child seems, however, seems to be far from being incorporated in the decision-making process regarding children of persons deprived of their liberty;

- the frequent dilemma between the rights of adults and children, in particular between the rights of women and the rights of the child, seems often to remain unaddressed and unresolved;

- better conditions of detention for imprisoned mothers and children residing in prison, including special facilities, trained staff, and access to basic social services, educational and recreational activities, need to be secured;

- even in countries where policies have been adopted and programmes are implemented, the

situation of children residing in prisons is not up to the established standards. Prison officials and all those directly responsible for the administration of prisons need to be sensitised about children’s rights.

Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC19056> [from www.eldis.org

Laying the Foundations for Children’s Rights: An Independent Study of Some Key Legal and Institutional Aspects of the Impact of the Convention on the Rights of the Child by Alston, P., Tobin, J. and Darrow, M. produced by: UNICEF Innocenti Research Centre (2005) This study seeks to evaluate the extent to which States and the international community have succeeded in putting in place the foundations of legal and political accountability, set out in the Convention on the Rights of the Child, which are an essential component of efforts to make a reality of children’s rights.

The paper puts the Convention into historical perspective by reviewing the different phases that the movement for children’s rights has undergone since the beginning of the twentieth century. It then reviews the ways in which the Convention has come to be reflected in the law and institutions at various levels and specifically examines: the challenge of attaining universal ratification; the extent to which children’s rights have been reflected in the regional human rights arrangements in Africa, the Americas and Europe; and the extent to which national-level constitutional arrangements have been adapted to acknowledge and entrench respect for children’s rights.

The principle and practice of accountability in relation to children’s rights is examined, paying particular attention to the role of the UN Commission on Human Rights, national institutions for the promotion and protection of human rights, and civil society. A case study of the role played by the World Bank and the International Monetary Fund is presented, specifically looking at the roles and responses of these IFIs in the context of the impact of the Asian financial crisis of the late 1990s on Indonesia. Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC19885> [from www.eldis.org

How young people are faring 2005 While many young people today are better educated and better skilled than previous generations, an estimated 560,000 15-24-year-olds are not in full-time learning or work. Those growing up in stressed socio-economic circumstances, rural Australia, Indigenous communities and young women not in education are particularly susceptible. The Dusseldorp Skills forum seventh annual report paints a picture of 'insiders' and 'outsiders'.

As Dr John Spierings DSF's Research Strategist highlighted in releasing this year's report, "more than 330,000 of the young Australians not engaged full-time in learning or work are female. The difference between the sexes is the largest since 1989 and is markedly higher than in previous years."

While the data on young women is striking, this year's report lays out a great deal of information on youth participation generally with a particularly telling exposition on part-time employment and young people in the labour market.

This isn't to say that there isn't good news in this year's report. For there most certainly is: a substantial increase in the number of teenagers taking up trade apprenticeships; continuing improvement in the educational attainment of young people; and a notable drop in youth unemployment.

For more info download the report by going to 'what's new' on the DSF homepage: www.dsf.org.au [from YACVic Annouce

Health

From 1 to 3 June 2005, young leaders working on issues related to HIV/AIDS from around the world participated in the **Roundtable Review of the 'United Nations General Assembly Special Session Declaration of Commitment on HIV/AIDS'**, adopted in 2001. Participants spoke with delegates, ambassadors, ministers of health, and high level UN staff about the need to drastically scale up HIV/AIDS interventions for young people, who make up over 50 per cent of people infected with HIV each year. Also, the Global Youth Coalition on

HIV/AIDS and the Global Youth Partners launched their new report, published with the support of UNFPA, entitled **Our Voice, Our Future: Young People Report on Progress Made on the UNGASS Declaration of Commitment on HIV/AIDS**.

For more info or to download the report, please visit: <http://www.unfpa.org/news/news.cfm?ID=623>, or contact joya@youthaidscoalition.org [from CRINMAIL www.crin.org]

Module 1: A profile of street children: a training package on substance use, sexual and reproductive health including HIV/AIDS and STDS by WHO Street Children Project produced by: World Health Organization (WHO) (2000). This training module presents features of street children, with the aim to understand who they are, what they need, what they do and how they can be identified, in order to design targeted interventions that meet the needs of these children.

At the end of the module, participants should be able to:

- define street children in the context of their own culture
 - describe the typical age and gender of a street child and the importance of identifying street girls
 - explain why there are fewer street girls than street boys in their area
 - describe reasons why street children live or spend time on the street
 - describe the problems, basic needs and daily activities of street children in their community
 - explain how street children survive on the street
 - describe the strengths that street children have.
- Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC20237> [from www.eldis.org]

Prevention, ecstasy and related drugs The Australian Drug Foundation has released this thought-provoking read about ecstasy and drug education in schools, discussion of supply reduction, emergency service response to ecstasy, and updates on the latest drug prevention research. There is also information about newsletters, e-search evaluation reports, fact

sheets on party drugs, changes in ecstasy use in Australia and harm reduction and ecstasy. For the complete suite of resource materials on 'Prevention, ecstasy and related drugs' go to http://www.druginfo.adf.org.au/newsletter.asp?ContainerID=prevention_ecstasy or visit our homepage at www.druginfo.adf.org.au and click through on the banner at the top of the page. [from YACVic Annouce

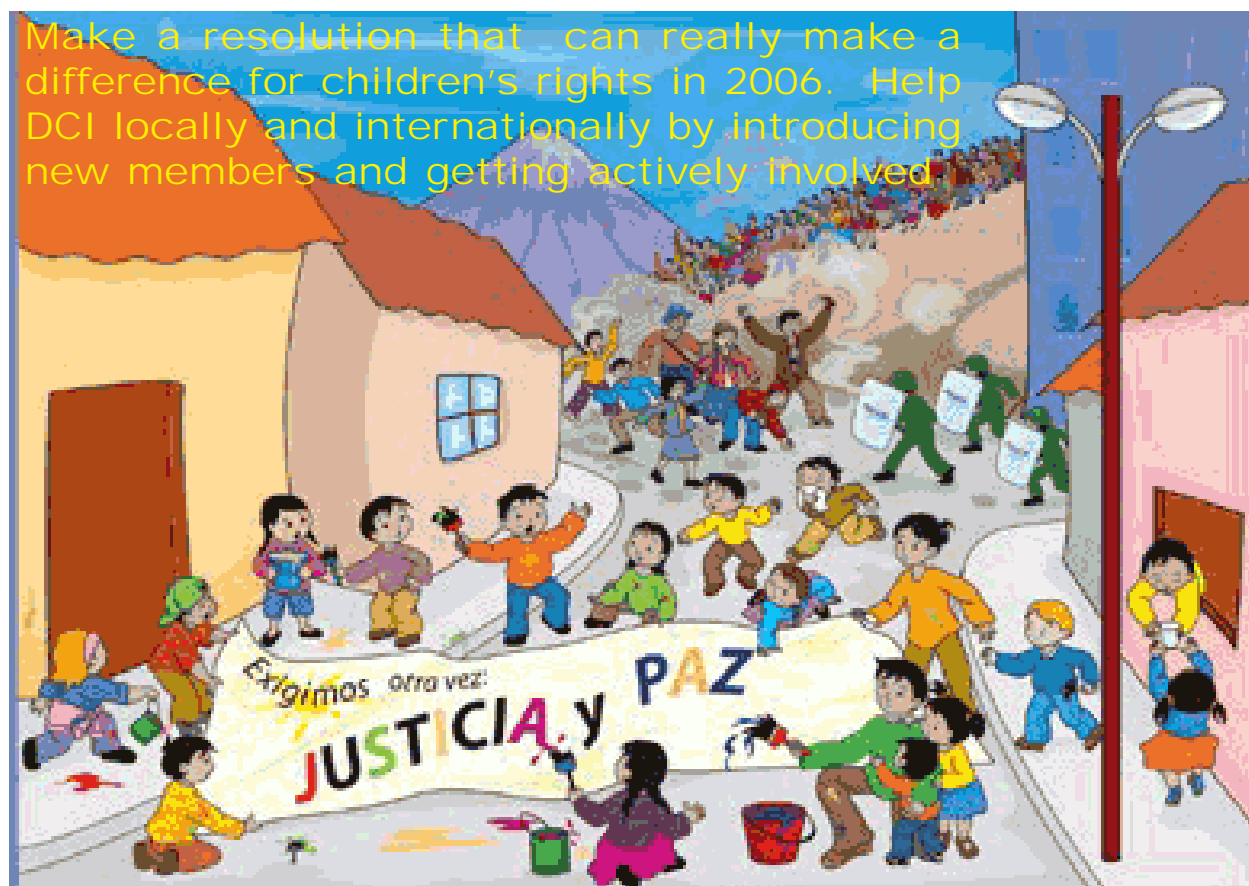
Young Children and HIV/AIDS: Mapping the Field by Sherr, L., produced by: Bernard van Leer Foundation (2005) This paper presents an overview of the literature on children and HIV/AIDS from a psychological perspective. It summarises the complexity of who the children are, examines emerging orphan and vulnerability issues, explores HIV/AIDS treatment interventions and how they affect the emerging scenario in terms of child and parent infection, and focuses on the widespread psychological effects of HIV/AIDS on the young child.

The study looks at the effects of infection, for example, at the family level, care arrangements, emotional and

mental health considerations, development implications and gender. Concluding comments from the paper include:

- stigma abounds: children are often denied a voice at policy or redress levels and as such can only be represented when they are advocated for;
- even when findings are established, causal pathways are poorly understood. Provision is rarely evaluated and this results in haphazard resources rather than evidence-base provision;
- the medical focus may have blurred the psychosocial issues. Yet these coexist. The presence as well as the absence of treatment brings these into sharp contrast;
- in relation to early child development there is a literature on the beginning and end of life issues for children affected by HIV/AIDS - but the middle is missing.

Available online at: <http://www.eldis.org/cf/rdr/rdr.cfm?doc=DOC19878> [from www.eldis.org



Upcoming Events

14- 16 February 2006 - Tenth Australasian Conference on Child Abuse and Neglect

This conference will be held in Wellington with the theme *Puawai Nga Tamariki, Blossoming of Our Children- Resilience, Rights, Responsibilities*. There will be a wide range of professional and community participation and young people. More information is available at www.nzfvc.org.nz/acan

27 Feb - 1 March 2006 - Children 2006, USA

Organised by the Child Welfare League of America the theme for this Washington DC event is Securing brighter futures for children. See <http://www.cwla.org/conferences/2006nationalrfrp.htm>

7 - 10 March 2006 - 7th ISPCAN Asian Regional Conference on Child Abuse and Neglect, New Zealand For information about this Auckland conference contact either the New Zealand Department of Child, Youth and Family Services, or the New Zealand Children's Commissioner. See <http://www.occ.org.nz/>

23 - 26 March 2006 - Society for Research on Adolescence 11th Biennial Meeting, USA This event promotes the dissemination of research on adolescents and serves as a network and forum for its members.

Call for papers: http://www.s-r-a.org/sra_2006/documents/2006_Call.pdf. Venue: Hilton San Francisco Hotel, California, USA **Contact:** Lorah Dorn 2005 program co-chair, SRA, 3131 S. State Street, Suite 302

Ann Arbor, Michigan MI 48108-1623, USA Website: <http://www.s-r-a.org> E-mail: lorah.dorn@cchmc.org

18-19 May 2006 - International Interdisciplinary Conference on Children's Rights - An Appraisal of the Children's Rights Convention: Theory meets practice This conference in Ghent Belgium aims at evaluating the achievements of the UN Convention on the Rights of the Child, and at exploring the challenges ahead in realising children's rights. It will in particular do so by creating an open forum where academics can meet and exchange views with other professionals, dealing with children's rights in a more practical way. For further information see www.law.ugent.be/pub/iuap/c_welcome.html

24 - 25 May 2006 - Learning Choices Expo, Maroochydore, Queensland The Learning Choices Expo is a Dusseldorp Skills Forum initiative that has been designed to raise the profile of innovative learning choices in education across Australia. More than 20 schools and programs from across the country and abroad will be invited to showcase a range of learning programs to an audience of other program coordinators and students, educators and influential bodies. It will include a focus on Indigenous success stories. Venue: Novotel Twin Waters Resort, Maroochydore, Queensland. Contact: Dusseldorp Skills Forum (DSF) 1 Glebe St, Glebe NSW 2037, Australia Phone: (02) 9571 8347 fax: (02) 9571 9703 Website: <http://www.dsf.org.au>

23 - 29 July 2006 - International Sociological Association: Research Committee on Sociology of Youth, Durban, South Africa The 2006 ISA World Congress of Sociology is hosted by the South African Sociological Association, the SANKOFA Centre for the African Renaissance and the African Renaissance Trust (who comprise the Local Organising Committee of XVI ISA World Congress of Sociology). Venue: Durban, South Africa. Contact: David Everatt, Research Committee on Sociology of Youth in South Africa Website: <http://www.ucm.es/info/isa/congress2006/> E-mail: bigmouth@iafrica.com

Websites

DCI-Australia's website www.dci-au.org has had lots of updates recently – check it out.

The United Nations Millennium Campaign has launched in collaboration with Nickelodeon, a website for kids on the Millennium Development Goals in 13 different languages. Visit:” <http://www.Nick2015.com>

The Human Security Centre, a research centre based at the University of British Columbia in Vancouver, Canada, publishes the annual Human Security Report, which tracks and analyses trends in political violence around the world. Funded by five governments, the Report maps the incidence, intensity, causes and consequences of global violence and policy responses to that violence. The 2005 Report was launched on October 17th, and has received world-wide media attention. The Human Security Report is complemented by the Human Security Gateway, a rapidly expanding searchable online database of human security-related resources including reports, journal articles, news items and fact sheets. The Gateway was developed in collaboration with the Canadian Consortium on Human Security (CCHS). It includes a section on Children and Armed Conflict. Abstract submission deadline: 6 January 2006 Paper submission deadline: June 2006 Visit: <http://www.crin.org/resources/infoDetail.asp?ID=6616> To read the Human Security Report 2005, visit: <http://www.crin.org/resources/infoDetail.asp?ID=6444>

Eldis currently includes descriptions and links to over 4,500 organisations and over 16,000 full-text online documents covering development and environmental issues. It can be searched or browsed without charge over the Internet. See its Children and Young People Resource Guide for a complete list of new additions at: <http://www.eldis.org/children>

CRIN (Child Rights Information Network) is currently developing a new website to be launched next year. It will include a new section for children, with listings of organisations that can help them, and child friendly resources on child rights. We are therefore gathering information on such organisations and resources as well as educational materials for parents and teachers. The types of resources we are looking for include books, brochures, leaflets, posters, websites, games,

videos, etc on children's rights. We would be grateful if you could forward details of your resources to info@crin.org, or direct us to your favourites ones.

New Zealand Parentline hosted a conference on children called “Child Summit – Leading the Nation” on 29 – 30 June 2005 in Hamilton. Speakers on the first day included Patmalar Ambikapathy, the first Commissioner for Children in Tasmania, and Ian Hassall, the first Commissioner for Children in New Zealand) and a panel of politicians. The second day looked at several issues around sexual abuse of children. For an update of post conference information go to <http://www.parentline.org.nz/> and choose “Parentline”.

Call for Articles

Australian Children's Rights News depends on the input of members affiliates and subscribers to keep providing you with a wide-ranging and informative update on children's rights issues. Others with a viewpoint on children and young people's rights are also invited to submit.



We are now seeking articles to be considered for the first edition of 2006. Contributions of between 700 and 2000 words are preferred and should be e-mailed with full author details to judycash@nsw.bigpond.net.au

Suggested graphics or photos to accompany the article are most welcome. The closing date for receipt of material is 31 March 2006 but please advise the editors as soon as possible if you are planning to submit.

If you have an idea which you would like to discuss, please email Judy Cashmore judycash@bigpond.net.au

Articles published in Australian Children's Rights News may also be placed on the DCI-Australia Website: www.dci-au.org/

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