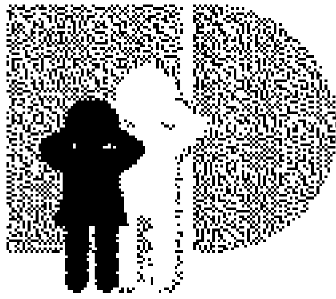

Australian
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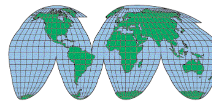
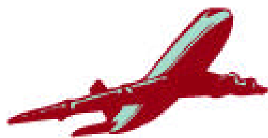
The Hague Convention on the Civil Aspects of International Child Abduction





International child abduction is motivated by numerous factors. Krista M. Bowie looks at some reasons and explains how the Convention has been implemented in Australia.

INTRODUCTION

The *Convention on the Civil Aspects of International Child Abduction* ("the Convention") was adopted at The Hague on 25 October, 1980. Since January 1, 1987, Regulations made under the *Family Law Act* 1975 (Cth) have enabled the performance of Australia's obligations under the Convention.

Where the Convention operates, the courts of the land are required to return the child unless certain exceptions are established. Where it does not, the nation to which the child has been taken is less likely to order the return of the child.

Whilst the Convention has enjoyed increasing ratification and accessions since its inception, by countries from all continents, the most notable absence of support emanates from Asia.

However, notwithstanding the global support that the Convention has attracted over the years, international child abduction seems to remain an imminent problem.

THE OBJECTIVE AND RATIONALE OF THE CONVENTION

In the formal language of the Convention, its overarching policy is:

> "...to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access."

Thus, the purpose of the Convention is to protect children from the harmful consequences of abduction which arise when they are wrongfully removed from their country of habitual residence, or wrongfully retained in a country other than that of their habitual residence, through the establishment of procedures which ensure their expeditious and safe return.

The Convention does not facilitate extradition and Article 19 specifically states that the instrument does not seek to adjudicate the merits of any

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President's comment:

With the end of the financial year drawing near, I am sorry to report that DCI-A was unsuccessful in its bid to obtain gift deductible status from the Australian Taxation Office. It seems that our advocacy, policy analysis and advice services in respect of children's rights are not seen to deserve this significant benefit.

That makes your continued support all the more critical to the survival of our organisation. Please help us start the new financial year on a confident footing by promptl;y renewing your association with DCI-A using the enclosed form.

At our May National Committee meeting, we canvassed the question of increasing our subscription/membership/affiliation rates to meet rising costs but decided we should not. Instead, we resolved to appeal to ***each of you*** to try to increase our support base by inviting at least one colleague to join DCI-A.

Please make that commitment and act on it.

To help you use your powers of persuasion, we have put together in this edition of *Australian Children's Rights News* is a showcase of our commitment to provide both depth and breadth of news coverage on children's rights issues and reports of our work on a host of topics.

As promised, we have compiled a special selection of pieces about missing and abducted children, a subject of significant local and international importance and complexity, which the authors' contributions illustrate. We have also put together feature updates on two "hot topics" we have been actively pursuing: juvenile justice and the plight of asylum seekers.

If you would like extra copies of this edition to entice colleagues to join, please feel free to contact me (0409 311 510).

Please note too that I have a new e-mail address: dannysan@uunet.com.au.

Finally, if you have a fund raising idea, our Treasurer Sophia Cason would love to hear from you. Contact her by e-mail: sophia.cason@dfat.gov.au or 0412 843 594.

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residence dispute that may also be simultaneously occurring. The gravamen of the Convention is to deter international abduction whilst preserving the child's rights to regular contact with both parents.

Decisions of the High Court of Australia and the United States Court of Appeal, have emphasised that, save for the most exceptional cases, the fundamental objective of the Convention is to facilitate the restoration of the pre-abduction status quo. Subsequently, this would have the desired "dual effect" of enabling disputes concerning residence and contact to be resolved in the appropriate jurisdiction, whilst simultaneously depriving the abducting parent of the fruits of their conduct.

REASONS FOR INCREASE IN ABDUCTIONS

Since 1989, the number of children abducted per year from Australia, the USA and the UK, has steadily increased despite the operation of the Convention. In the first three months of 1998-99, as many as 113 such cases had been reported in Australia alone.

Two major reasons contribute to this continuous increase in international child abductions.

- **Proliferation of Inter-cultural Marriages**:

As a result of contemporary phenomena such as globalisation, in conjunction with advances made in the telecommunications and travel industries, the world is becoming an increasingly smaller place. One of the consequences that arises as a result of this change, is an increase in the number of bi-national/multicultural marriages.

According to the Australian Bureau of Statistics, 28% of marriages registered in Australia in 1998 consisted of couples from different countries. This is a substantial rise when one considers the minimal percentage associated with the same category 20 years ago, when different nations were not as closely connected.

Bi-national marriages can be based on different, even opposing, cultural norms and religions. Consequently, when these types of marriages breakdown there is an increased risk of abduction occurring for two reasons:

1) one party may abduct the child to their homeland in order to ensure that they are raised in accordance with the religion and/or cultural norms that conform with their own; and
2) following the failure of the marriage, one party may be left in a foreign environment without any support.

Furthermore, given that frequently the children of bi-national couples have dual citizenship, they can be taken from one country and gain entry to another quite easily.

The abduction of children to countries where family law is governed by Islamic traditions, which are generally regarded as patriarchal and oppressive when compared with Western practices and beliefs, is illustrative of the problems that may arise by virtue of the chasm potentially generated by multi-cultural marriages. So enormous is the divide that in countries where Islamic law dominates society, the Convention has not been adopted, essentially leaving the deprived parent, which is usually the mother, with no legal recourse.

Often for the mother, obtaining custody of the child pursuant to the law of the Islamic country to which the child has been abducted is also virtually impossible given that:

1) regardless of the mixed heritage of the child, at law, the child is considered to be a Muslim and a citizen of the father's country; and
2) Muslim fathers always have ultimate custody of the children, whereas the mother's right of custody dissipates when the child reaches the age of independence, which is seven for a son and nine for a daughter.

- **Consequence of Domestic Violence:**

Studies have indicated that there is a high correlation between incidents of child abduction and marriages plagued with domestic violence.

To many batterers, abducting the child of the marriage is a further way of abusing their spouse, notwithstanding the fact that physical violence may have ceased. In the United States of America as many as 25% of batterers abduct their children.

However, whilst this alternative manifestation of domestic violence contributes to an increase in the occurrences of child abduction, according to English barrister Marilyn Freeman, domestic violence further contributes to the problem in another way. Her studies conclude that more and more frequently it is the battered wife who, in the absence of a supportive environment following separation, abducts the children so that she can escape to a place where familial and emotional support is available.

Furthermore, Freeman cites the gender-bias evident in the language of the Convention and the principles applied in family law proceedings with respect to both the division of property and the battered wife syndrome, as factors which contribute to women needing to seek a more compassionate environment.

continued next page

LEGAL ELEMENTS OF THE CONVENTION

In order to activate the Convention and secure an order for the return of an abducted child, the following elements must be established in Australian courts:

1) there must be a wrongful removal or retention of a child;
2) the child is under 16 years of age;
3) the child was habitually resident in a Contracting State immediately prior to the removal to or retention in another Contracting State.

Assuming a deprived parent is successful in establishing a case for the return of the child, notwithstanding the overall policy of the instrument regarding mandatory return, the Convention makes provision for a couple of narrow exceptions and situations which, when proven on the evidence, give the Court a discretion as to whether the return of the child should be ordered or not.

The discretion, unfettered by the "mandatory return" principle, seldom arises and is often difficult to invoke. However, the discretion arises if one of the following is established on the evidence:

- one year has elapsed between the date on which the child was removed or retained and the date on which an application was lodged under the Convention;
- the child was removed or retained when custody rights were not actually being exercised; or alternatively the removal or retention was consented to or subsequently acquiesced to by the deprived parent;
- should the child be returned there is a grave risk of exposure to either physical or psychological harm; or the child would otherwise be placed in an intolerable situation;
- the child objects to being returned and has reached an age and possess a degree of maturity which warrants the Court taking into account his/her wishes;
- the return of the child would be abhorrent to the fundamental principles of the Requested State with respect to the protection of human rights and fundamental freedoms.

However, it is important to remember that even if one of the exceptions or defences to the presumption of mandatory return is made out, the Court merely has a **discretion** as to whether to order the return of the child or not. The next section of this article focuses on the situation where a child objects to being returned.

THE OBJECTION AND WISHES OF THE CHILD

Justice Kay of the Family Court of Australia has delineated that the accurate approach to adopt when considering this exception involves the application of a two-fold test which proposes the following questions:

1) Does the child object to being returned to his or her place of habitual residence? and
2) Is the child at an age and does he or she possess such a degree of maturity that it is appropriate to take his or her wishes into account?

Contrasting positions have been espoused by different Courts around the globe with respect to, firstly, the interpretation of the word "objects" and, secondly, the age at which a child is regarded as being sufficiently mature for their views to be considered.

In the Australian decision *De L v Director General, NSW Department of Community Services,* the High Court concluded that the word "objects" should not be construed narrowly. Later decisions have emphasised that the objection should be directed to the child not wanting to be returned. Therefore, if a child's objection to returning to their place of habitual residence is motivated by a desire to avoid being placed in the care/custody of a particular parent, the exception will not be made out.

Whilst it can be gleaned from Australian caselaw that, as a general rule of thumb, a child aged twelve possess the appropriate degree of maturity to warrant the Court considering their wishes, there is no authoritative, binding principle to this effect. However, the Courts in both Australia and England have refused to return a younger sibling, whose objections would not otherwise have been a relevant consideration, where the objections of an older sibling enlivened the jurisdiction of the exception. The Australian Court specifically stated that to order the return of a six year old child, when his/her thirteen year old sibling was permitted to remain in Australia in accordance with their wishes, would be intolerable.

The Australian Parliament has recently legislated to counter the principle in the High Court decision *De L,* which effectively provided that where a child expresses an objection to return under the Convention, that child should ordinarily be separately represented in the proceedings. Relevantly, the legislation now reads:

> ***- SECT 68L Court orders for separate representation …***
>
> *(2A) However, if the proceedings arise under regulations made for the purposes of section 111B* [the Convention]*, the court may order that*

the child be separately represented only if the court considers there are exceptional circumstances that justify doing so, and must specify those circumstances in making the order.

The Explanatory Memorandum pointed out that the pre-abduction status quo should be expeditiously restored in the absence of any consideration of the best interests of the child in the particular case. Accordingly, the separate representation of children who object to being returned should only be confined to exceptional cases which warrant such representation, with such circumstances to be specified by the Judge when such an order was made.

One must critically evaluate the soundness of such a reform, particularly given that when a defence or exception is raised, the Court requires evidence to assess whether the requisite elements are established. These assessments are most effectively made by a separate, independent representative who is focused on the interests of the child.

CONCLUSION

Given Australia's rich and diverse multi-cultural society, appropriate remedies for abductions to countries with dissimilar religious and societal practices to mainstream Anglo-Saxon traditions, should be pursued in order to facilitate peaceful resolutions to international child abductions. International mediation which endeavours to encourage solutions through co-operation between the parties involved, their lawyers and the Central Authorities that handle Convention applications, is one such avenue that should be explored in order to stem the proliferation of international abductions.

Krista M. Bowie is the Legal Associate to the Honourable Justice Lindenmayer of the Appeal Division of the Family Court of Australia. This article is an edited version of a fuller paper (with references) available at:
www.familycourt.gov.au/papers/html/bowie.html

The Australian Missing Children Website

Australia is part of an international network designed to reunite missing children with their families. The Australian Missing Children Web Site (http://au.missingkids.com) carries prevention messages as well as photographs and information about children reported missing in Australia. Special age progression technology will allow identification from photographs, even years after a child's disappearance.

When launching the site on 29 November 2000, Senator Amanda Vanstone (then Minister for Justice and Customs) said "While approximately 99.5% of our 20,000 missing children are located, most within hours, the effect on family and friends, waiting to learn what has happened, can be devastating. I congratulate those involved with this initiative which supports Australia's families."

The new site is managed by the National Missing Persons Unit (NMPU) at the Australian Bureau of Criminal Intelligence in Canberra, under the umbrella of the International Center for Missing and Exploited Children (ICMEC, http://icmec.missingkids.com). The NMPU represents a partnership with police, non-government tracing organisations, community agencies, the business community and families and friends of missing people. Through this partnership, the NMPU co-ordinates and promotes a national integrated approach to reduce the incidence and impact of missing persons in Australia. The NMPU brings together two national committees:

- ~ The Police Consultative Group on Missing Persons involves Officers in Charge of the jurisdictional police Missing Persons Units and works to improve police response to reported missing persons.
- ~ The National Advisory Committee on Missing Persons includes representatives from police, the Salvation Army, The Australian Red Cross, International Social Service, Kids Help Line, the Victorian and NSW Missing Persons Committees.

The NMPU has three main objectives:

- ~ to assist police and non-government tracing organisations in locating missing persons
- ~ to facilitate a coordinated approach to addressing the social and economic impacts of missing persons
- ~ to develop effective preventative action.

The website is linked to and supported by the Family Court of Australia. The Court's website lists children where a judicial officer has made an order permitting names and photographs to be released to the public in an effort to help find the child (see http://www.familycourt.gov.au/missing/). There is also information about what steps someone should take if they fear a child has or may be abducted (see also http://law.gov.au/childabduction/, the Australian web site on International Child Abduction of the Attorney-General's Department).

Protecting an Accompanying Parent upon Return

DCI-A National President Danny Sandor reports on recent developments arising from a review of the Hague Convention which he attended as part of the Australian Delegation.

Special Commissions are held every four years to review the operation of The Hague Convention on the Civil Aspects of International Child Abduction. They examine both the interpretation of the Convention and the activities of the Central Authorities that have carriage of seeking the return of children.

At the 1997 Special Commission, the meeting adopted a resolution that Article 7(h) imposed an obligation on Central Authorities to protect the welfare of the returning child (subject to certain qualifications relating to the powers of Central Authorities under the legal and welfare systems of each country). Article 7(h) states:

> *"Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.*
>
> *In particular, either directly or through any intermediary, they shall take all appropriate measures – ….*
>
> *(h) to provide such administrative arrangements as may be necessary and appropriate to **secure** the **safe** return of the child." (emphasis added)*

Neither Article 7(h) nor the resolution addresses the responsibility of Central Authorities to protect the person (usually the mother) who had unlawfully taken the child out of the country. This is especially significant in cases where the person who unlawfully removed the child alleges that she was the victim of family violence and that this was (at least partly) why she fled with the child.[1]

Such allegations are prevalent and the operation of the Convention has been critcised for failing to adequately meet the safety of returning parents.

The Special Commission met again in March 2001 and the Australian Delegation successfully pressed for recognition of this issue. Paragraph 1.13 of the resulting Conclusions and Recommendations of the Meeting states:

"It is recognised that the protection of the child may also sometimes require steps to be taken to protect an accompanying parent."[2]

It is noteworthy that the statement identifies the accompanying parent's entitlement to protection as a derivative one. It is plainly anchored in the obvious damage that would accrue to the child if his or her parent were harmed upon return.

Why is the statement framed in this way? The Special Committee meeting highlighted a concern among some Contracting States to the Convention about the potential for "abductors" to return to a "better" position than before they left and a desire to ensure that the deterrence features of the Convention were not compromised. The "realpolitik" of achieving consensus therefore required the child to be the basis of any obligations upon the Central Authorities to provide service to the parent who unlawfully took the child..

While the recent acknowledgment of the need to sometimes protect a returning parent is an important principled advance in the scope of Central Authority obligations under the Convention, it remains to be seen how the new understanding translates into practice. There is no minimum standard of services, systems or resources that can be assumed among existing Contracting States or those which may seek to join.

Further Reading:

S. Bourke, M. Green, J. Kay and D. Sandor "Issues Surrounding Safe Return of the Child (and the Custodial Parent)", paper presented to International Child Custody – A Common Law Judicial Conference, 18 – 21 September 2000, Washington DC U.S.A, sourced from http://members.dynamite.com.au/dci-aust/html/safe1.html and http://travel.state.gov/safe_return_issues.html

J. Kay "The Hague Convention – Order or Chaos? An update on a paper first delivered to a Family Law Conference in Adelaide in 1994", paper presented at New York University U.S.A, September 1999, sourced from: http://www.familycourt.gov.au/papers/html/kay.html.

The Family Court of Australia website includes a page of selected judgments relating to the Convention at: http://www.familycourt.gov.au/judge/index/html/child_abduction.html and links to Australian legislation.

D. Sandor (2001) "Review of the Hague Abduction Convention: Protecting Both Children and Adults Until and Upon Return" Vol 15 No 2 *Australian Journal of Family Law* forthcoming.

Footnotes:

[1] M. Kaye (1999) "The Hague Convention and the Flight From Domestic Violence: How Women and Children are Being Returned By Coach and Four" Vol 13 *International Journal of Law, Policy and the Family* 191. M. Weiner (2000) "International Child Abduction and the Escape from Domestic Violence" 69 *Fordham Law Review* 593.

[2] Sourced from http://www.hcch.net

In Whose Interest?

DCI-A Secretary Michael Beresford-Smith, Co-ordinator of Frontyard Youth Services, offers some practice tips for workers who come across missing children and young people.

Many thousands of children/young people go missing from their legal care providers every year. Only a minute number of these cases involve the dramatic circumstances of "abduction", and international intrigue concerning the whereabouts of the child/ren. Fortunately, the vast majority of children/young people reported to police authorities as "missing" return home within a comparatively short period of time and a significant proportion of them appear to return home of their own volition.

Adolescent maturation is, in part, about testing adult norms and the creation of an individuality distinct from those who have reared or cared for the child/young person. Children/young people leaving home, however temporary, is nothing new. In the past, running away to sneakily join the armed forces offered an institutional option for young males to explore their individuality or to seek refuge from inappropriate family circumstances.

Today we have a range of laws that both prohibit the liberty of children/young people and which require parents/carers to be proactive when their youngster goes "missing". These laws are, generally, viewed by the community as protecting children/young people in order to ensure their well-being.

They do, however, often raise considerable dilemmas for social welfare workers who encounter "missing" children/young people, and the context in which they are found often determines, not always appropriately, our response. The dilemmas often revolve around the child/young person's rights to privacy and immediate physical protection versus the rights of parents/carers to know that their young one is safe and being appropriately cared for.

Overlaying complexities concern the capacity of a worker without formal legal authority to 'place' a child/young person without the approval of the legal guardian/custodian, and any liability which might accrue to the placing worker should the child/young person be hurt or involved in other activities whilst in the placement.

There is also the question of the worker's role and the professional paradigm within which they work. Are they solely there for the child/young person or do they operate within a context of family reconciliation and mediation? If the latter, their relationship with the child/young person might be different and to some eyes might not be seen to be "acting for the young person".

Despite these issues, practice experience suggest that there are some basic principles that should guide social welfare professionals' practice with "missing children/young people". These principles particularly apply when there appear to be no overt protective issues and when a missing child/young person is located outside of usual working hours.

1. Accept at face value the child/young person's reason for leaving home and if appropriate secure their immediate safety/accommodation;
2. Contextualise the events for the child/young person as an outcome of normal adolescent/parental conflict and advise the child/young person that contact will be made with their legal guardian/custodian advising them that their 'charge' is safe but that their whereabouts will not be immediately disclosed if the child/young person does not agree;
3. Advise the guardian/custodian that their child/young person is safe,outline the reasons stated by the youngster for their leaving home and invite parental/carer comment on their perceptions of the "crisis". Contextualise the outcome of the conflict as not that unusual and establish a time to meet (within 24 hours) to discuss in greater detail issues surrounding the conflict;
4. For the majority of cases it is imperative for the worker to convey to all parties an expectation that the issues can be resolved and within a short period of time;
5. Plan for some short-term intensive work and then withdraw completely.

Practice experience suggests that the sooner a missing child/young person is found and reunited with their family/carers the more successful the reunification is. On the other hand, the longer the separation or the extensive involvement of external parties, the less successful the reunification and the greater probability that the issues leading up to the running away are indicative of more fundamental issues within the care arrangements.

Statement to the 57th Human Rights Commission

On 10 April 2001, Else Weijsenfeld presented the following statement by DCI in consultation with the International Network on Juvenile Justice during the Commission's Session on *The Rights Of The Child.*

On April 19, 2000, the Commission on Human Rights issued its resolutions as to agenda item 13 - "the Rights of the Child". In section 31, the resolution calls upon the States to avoid penal sanctions involving children whenever possible, to take steps to ensure that depriving a child of its liberty is a measure of last resort and that children are separated from adult offenders if necessary to detain them.

In spite of the Commission's clear and decisive call, the partners of the International Network on Juvenile Justice and DCI wish to report that the situation of children deprived of their liberty has deteriorated significantly in many UN Member States. We ask you to make that call again.

The 100th anniversary of that noble experiment in 1899, which created the first Juvenile Court was celebrated or mourned, depending how one looks at the outcomes. The pioneering work of the founders of the first children's court can be seen as creating a wall to protect children from the retributive policies of the adult system. A child was acknowledged different and needing rehabilitation to assume a constructive role in society.

Since 1899, specialized courts and juvenile justice programs for children have been established in many countries. The UN has played its part by addressing these issues at the first UN Congress on the Prevention and Treatment of Crime, in Geneva in 1955, and adopting important rules and guidelines adopted in 1985 and 1990.[1] All of these policies made the "wall" around Children's Rights and accountability measures stronger and higher in many countries.

During the 90s there has been on the one hand, little progress in several Member States to bring their juvenile justice system into line with the international standards. On the other hand, in Member States where systems had been improved in the past, we have seen an increase of attitudes of "nothing works", "get tough on crime" and the "one/two/or three 'strikes' and you're out" sentencing policies, which improperly curtail judicial discretion, often with racially discriminatory effects.

In many UN Member States, the line between the child and the adult is disappearing. Young offenders are treated as adults, without regard to their rights under the Convention on the Rights of the Child. Today we know that ratification of a treaty does not mean commitment to its implementation.

The most recent research on "get tough" measures clearly demonstrates these practices have a negative impact on children, making them more -not less - prone to criminal activity.[2] Other research confirms the importance of prevention to the reduction of youth violence.[3]

Adequate prevention programs are fundamental to an effective juvenile justice strategy, and are more cost effective than enforcement and criminal justice on their own.

DCI and the Partners of the International Network on Juvenile Justice propose a worldwide campaign on Child Rights, promoting prevention and focusing on the abuses of children and adolescents in adult jails and juvenile detention centers. Failure to comply with provisions of the CRC for children in conflict with the law *must* be exposed.[4]

Therefore, DCI and the INJJ request the Commission to:

- **Call upon the UN Member States to stop giving lip service to the international standards and support a worldwide campaign on children's rights in Juvenile Justice;**
- **Expose the growing abuses of children in prisons and detention centres;**
- **Condemn domestic laws obliging courts to impose detention or to impose other punitive sanctions on children as if they were adults; and**
- **Oppose the use of life imprisonment and of the death penalty for offenders under the age of 18.**

Focusing upon these abuses and infringements of human rights standards while drawing attention to the prevention strategies that work, will demonstrate the urgent need for a serious reform and will help to mobilize public opinion and the financial resources necessary to carry it out.

The Commission has been a pioneer in advancing justice for all. We urge a hard-line and strongly worded approach. Notwithstanding the efforts of the Commission, there is a clear and desperate need to address children's rights - especially for children in conflict with the law.

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1 First, a declaration on the Rights of the Child was adopted by the League of Nations in 1924, after which the UN Beijing Rules followed in 1985, the Convention in 1989 and the Riyadh Guidelines and the UN Rules for the Protection of Juveniles Deprived of their Liberty in 1990. In fact, the UN addressed these issues at the first UN Congress on the Prevention and Treatment of Crime, which was held in Geneva in 1955.

2 Scott, Risso, The Symposium on The Future of the Juvenile Court, N.W. University School of Law, Vol. 88/ Fall 1997

3 The report of the US Surgeon General (2001): Youth Violence, www.surgeongeneral.gov

4 Like the UN Commission on Crime Prevention and Criminal Justice stated in the Vienna Declaration in April 2000, there are many more effective alternatives that are ignored: "We recognize that comprehensive crime prevention strategies at the international, national, regional and local levels must address the root causes and risk factors related to crime and victimization through social, economic, health, educational and justice policies. We urge the development of such strategies, aware of the proven success of prevention initiatives in numerous States and confident that crime can be reduced through applying and sharing our collective expertise."

Complaint against the Commonwealth

Australia is the currently the subject of a complaint to the United Nations Human Rights Committee by "R", an Indigenous young person sentenced to twelve months imprisonment under the Northern Territory's notorious mandatory detention laws. The complaint alleges that his sentence put Australia in breach of its obligations under International Covenant in Civil and Political Rights. On 15 March 2001, the Attorney-General, Daryl Williams announced that Australia had lodged its Response but refused to release it.[1] On 20 March 2001, Vice-President of DCI-A, Dr Judy Cashmore, wrote to the Attorney in the following terms.

The Commonwealth should publish the Response

DCI Australia is dismayed at the decision not to publish the Response, and urge you to release it immediately.

It is both unnecessary and harmful to keep the Response secret. While there may be information in the Response personal to R which it would not be appropriate to publish, having regard to his wishes and the Committee's Rules, it should be a simple matter to edit any such information from a published version of the Response.

We note your assertion on 15 March 2001 that it is 'normal practice' not to make Commonwealth submissions public but it is misleading to refer to 'normal practice' when the incidence of Communications originating from Australia pursuant to Article 1 of the ICCPR Optional Protocol is very low.

Whether such a practice is normal or otherwise, however, it is wrong in principle. The proceedings initiated by R's Communication are quasi-judicial in nature. Substantively, they arise directly from proceedings litigated in a Court exercising criminal jurisdiction in Australia. Procedurally, they resemble judicial proceedings. Transparency and publicity are hallmarks of the judicial system. In the absence of well-established exceptional circumstances, such proceedings should be conducted in public. No such exceptional circumstances apply in this case.

Furthermore, the matters the subject of R's Communication and the Response are of momentous public interest and concern, raising as they do fundamental questions about the administration of the criminal justice system, the independence of the judiciary, the Australian Federal system, and, in particular, Australia's compliance with our international human rights obligations.

Our nation has voluntarily assumed those obligations, including the obligation to subject ourselves to the scrutiny of the international community through the Committee when, as in this case, the occasion arises. Australia has thereby declared itself accountable to the world in relation to our human rights record, as indeed we should. Accordingly, when that record is questioned, we should give an open and candid account of ourselves, to the complainant, to the Australian people, and to the global community.

Concealment of the Response is contrary to the spirit of the system of accountability established by the Optional Protocol. It invites the inference that the Commonwealth has something to hide. It raises suspicion at home, and is embarrassing abroad. It also stifles debate.

The following comments on the content of the Response are necessarily tentative and restricted, because they are made without having had an opportunity to read the Response.

The Commonwealth should state its view on the mandatory detention laws

You stated on 15 March 2001 that '[t]he question is not whether the Federal Government or the Committee agrees with mandatory detention laws as a matter of policy.' While we acknowledge that strictly and technically speaking, this statement is correct, we nevertheless deplore the Commonwealth's decision to shrink from clearly and candidly expressing its policy position with respect to the Northern Territory mandatory detention laws which are the subject of the Communication ('the mandatory detention laws').

You and other members of your Government, including the Prime Minister, have on various occasions informally articulated the Commonwealth's position on this issue. As we understand it, that position appears to be along the lines of 'we don't particularly like these laws, and wouldn't pass them ourselves, but it's not up to us'.

If that indeed is the position of the Commonwealth on this matter, then the Commonwealth should now formally say so to the international community. In refusing to address squarely the fundamental issues of policy and principle raised by the Communication, Australia appears as a nation too squeamish to express its own point of view, and too insecure to risk the consequences of doing so.

The Commonwealth should accept the admissibility of the Complaint

The principal argument advanced in the Response against the admissibility of the complaint appears to be that domestic remedies have not been exhausted. With respect, we submit that this argument is disingenuously specious. As Attorney-General, you are well aware that

continued next page

a challenge to the validity of the mandatory detention laws was rejected by the High Court in refusing special leave to appeal a decision of the Northern Territory Court of Criminal Appeal: *Wynbyne v Marshall* D174/1997 (21 May 1997).

If the Commonwealth is currently of the view that the decision in *Wynbyne* was misconceived, or that there is some other reasonably arguable basis on which to challenge the mandatory detention laws, then it should say so in the Response. The tenor of the Commonwealth's submissions on the merits of the Communication strongly suggests that the Commonwealth does not currently hold such a view.

Alternatively, if the Commonwealth is of the view that *Wynbyne* is good authority for the proposition that the mandatory detention laws are valid in Australian law, then it should not seek to rely on the empty assertion that R has not appealed his sentence. As you would be well aware, such a step would be an expensive and time-consuming exercise in futility.

The Merits of the Communication

The Response Summary is not sufficiently detailed for us to properly comment on the section dealing with the merit (or lack thereof) of the Communication. Your refusal to publish the Response, as pointed out above, is a serious matter which we urge you to reconsider.

The Attorney's Reply

The Attorney-General's reply of 17 May 2001 did not satisfactorily address DCI-A's concerns. It restated that "the Government's normal practice is not to release publicly the text of its submissions to the Committee." The Attorney added that "[t]he Committee procedure is transparent, however, insofar as the Government has made a candid submission to the Committee and that submission is provided to R's representatives. This is not different to the treatment of written submissions by, for example domestic tribunals."

The reply also advised "[i]t is a matter of public record that the Government considers that the administration of the general criminal law is a matter for the States and Territories. It is therefore not relevant for the purposes of the communication to the Human Rights Committee whether the Government agrees with the policy of mandatory sentencing."

[1] 'Australia Lodges Response to Mandatory Detention Laws Complaint to the United Nations', *Press Release*, 15 March 2001.

The Long Arm of the Law

DCI-A Advisory Panel Member Moira Rayner who is currently Director of the London Children's Rights Commissioner's Office, brings us up to date with the fate of two U.K. children convicted of murdering another child.

Jon Venables and Robert Thompson were 10 when they led away, tortured and killed two year old James Bulger in February 1993. After the biggest circus of a trial that the U.K. has seen since Myra Hindley's, they were convicted and have ever since been detained in separate secure institutions. The European Court of Human Rights subsequently found that they had not had a fair trial (they couldn't understand it) and that they had been denied justice when the Home Secretary, reacting to public pressure, decided to order a longer detention than the judge had recommended.

They are young adults now. By the time you read this, they will have been released, but no-one but the authorities will know where they are.

In late 2000, controversially, the Chief Justice reviewed their detention and recommended that the boys should not be transferred to 'youth offending' institutions (youth jails) whose 'toxic' environment, he said, would destroy the tremendous progress towards rehabilitation they had made, and very quickly. He recommended that the boys should be prepared for release in the first half of 2001 and, given their notoriety and vulnerability, with new identities. Speculation abounded that they might be sent abroad - Australia or New Zealand were mentioned, though each country promptly indicated that they wouldn't be welcome – but it isn't going to happen.

Some time in June these two boys will be living in separate hostels somewhere in England or Wales. They will be under strict supervision. Their licence conditions will be stringent, and they will go back to detention if they break the rules – including close contact with social services, police and probation officers – or commit an offence. Their cases will be reviewed frequently, and if they're doing well enough, they will earn greater freedom. Both boys already have new names and identities, but their future is precarious. The media have hounded these children pitilessly.

Late last year the tittle-tattle of a young arsonist made front-page news. The sneak, who said he was one of Venable's friends, claimed Venables had boasted about his notoriety, revelled in cruel fantasies, had written sexually explicit letters and attacked other boys. (The informant couldn't establish authorship of the notes he produced, and authorities said Venables had defended himself appropriately in face of severe provocation and an assault by the other boy).

In May an 'outraged' employee of the unit where Venables is held told journalists that the youth had special privileges, including going to watch Manchester United with his dad, playing five-a-side football with schoolboys who don't know what an evil little rat he is, and getting a Playstation for Christmas.

Intensive efforts to rehabilitate Thompson and Venables have apparently been successful (authorities learned from their failure to provide any treatment for 11 year old Mary Bell, and then transferring her to an adult prison at 18, in the 1950s). But there is little media sympathy for Thompson and Venables' documented remorse, the mitigating circumstances (abuse and neglect), or for the fact that for the rest of their lives both will be fearful and apprehensive. They will be: reviewed, observed and reported upon; could at any time have their cover blown; vulnerable to threats, blackmail, assaults (or worse); and live with their memories and their consciences.

After self-appointed vigilantes and James Bulger's father threatened to 'hunt them down' when the boys were released, Thompson and Venables' identities were protected by a High Court injunction for the rest of their lives. Their 'unique notoriety' had made each of them a perpetual target.

Yet, many observers expect that one or both boys will be exposed, sooner or later. Our preoccupation with the terrible crime they committed when they were children has never been matched with an understanding of the abused and neglected children they were then, and the survivors they have become today. Their crime has put them beyond the pale of childhood: outlaws for life.

James Bulger's mother is, understandably, bitter about the 'rewards' these boys have received for killing her son. Her solicitor said that their new identities were problematic: 'he could be playing football or drinking next to you in a pub,' he said.

There is, statistically, a greater likelihood that there is a child abuser, a wife-basher, a thief or a rapist in your bus queue.

We will have matured as a society when we accept, fully, that no child is responsible for their acts in the way an adult is, because they are children. When they do dreadful acts, they can be redeemed. We must understand and work within their developmental and emotional needs with respect for their special rights and extra chances which are due to all children, and all victims.

Major Reforms in Australia's Treatment of Asylum Seekers Needed

A forum held on 12 April 2001 by the National Council of Churches and Uniting Church's Hotham Mission, attracted over 100 participants representing over 50 church and community groups.

Tarima is a 28 year old asylum seeker who arrived in Melbourne from the Horn of Africa. She has disabilities, uses a walking frame, and is 8 months pregnant. She arrived here with her sister who also has disabilities and uses a wheelchair.

As asylum seekers living lawfully in the community, neither has work rights or is entitled to any welfare benefit. Not entitled to Medicare, Tarima has not seen a doctor during her pregnancy.

The sisters are homeless and without any income or benefit. They have been staying at a crisis refuge that is inappropriate for people with disabilities. They can no longer stay there and have no where else to go. There is no government funding for this group of asylum seekers and struggling agencies are unable to assist. No one knows what will happen to Tarima and her sister when the baby is born or how she will look after the baby.

This is just one of the cases highlighted in a recent public hearing on Australia's treatment of asylum seekers that has urged the government to address what was described as "Australia's appalling treatment of asylum seekers".

The panelists at the Hearing were:

- **Peter Mares**, Presenter, ABC Radio National's 'Asia-Pacific'
- **Reverend David Pargeter**, Director for Justice and World Mission, Uniting Church Victorian Synod and Chairperson of Justice for Asylum Seekers Coalition;
- **Martin Clutterbuck**, Director of the Refugee and Immigration Legal Centre;
- **Sandra De Silva**, Refugee Settlement Unit, Springvale Citizens Advice Bureau; and
- **Alan Matheson**, International Officer, ACTU.

The Forum aimed to address the imbalance of a system which spends large amounts of money on keeping asylum seekers in detention, and almost nothing on asylum seekers living in the community. According to Panelist Alan Matheson, "almost 85% of current Department of Immigration funding is allocated to detention and compliance practices", a figure which outraged all present.

Recommendations from the Forum are at pages 13–14 of this issue of *Australian Children's Rights News*. They include the following:

- Detention should be limited to initial health, security and identify checks for unauthorised arrivals for a maximum of two months.

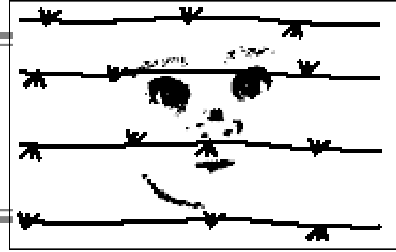
- All children and families should be released from detention as quickly as possible. Unaccompanied minors should be released into the care of child protection agencies.

- That the basic social and psychological needs of asylum seekers are addressed as these will have impact on the long-term social harmony in this country.

- A call on the Australian government to honour the current quotas without linking onshore with offshore quotas, thus removing the potential for division amongst the refugee communities.

For further information contact Grant Mitchell of the Hotham Mission Asylum Seeker Project grantmitch@yahoo.com.

Department of Intimidation?



D.I.M.A. At Work

DCI-A Member Trish Highfield is a Mothercraft Nurse and experienced Child Care Worker. She is also a member of the Social Justice in Early Childhood Group, ANCORW, OMEP-Australia and the St Kieran's Parish Social Justice Group. In the previous edition of *Australian Children's Rights News* she wrote of the appalling state of children's facilities in Immigration Detention Centres. Her home was recently "visited" by officers of the Department of Immigration and Multicultural Affairs with a warrant. She wasn't the only one.

They came at lunchtime. A dozen nondescript men and women. Five came stalking up the driveway of my suburban home like a group of council surveyors checking a right-of-way. Their leader rapped the front door. As I responded to this intrusion into my quiet day at home alone, they moved forward in unison, hands flashing identity badges and informing me they were from the Immigration Department.

Their leader waved a piece of paper which he said was a warrant to search for a group of people who had escaped from the Villawood Detention Centre. If I did not cooperate he could get the police to enforce right of entry. My remonstration that this was confronting and very intimidating brought nothing more than the response that he was "just a public servant doing his job". He said the houses of people who've visited the Detention Centre were being searched.

When I expressed horror that the young boy and his father that I'd been visiting for the past six months may have been harmed going through the razor wire he told me none had been injured. My incredulity that anyone could escape through the high security and alarmed fences elicited a response to the effect that they hadn't gone over the razor wire. Still perplexed, I moved out on to my verandah to see more people on the driveway and in the street. My queries as to why there were so many to search my home was answered: "a lot had escaped".

The leader said he knew nothing of my advocacy work for children caged behind razor wire in D.I.M.A. centres, nor that I had made a submission to the Human Rights Sub-Committee of the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade on the plight of children incarcerated without proper care for their well being and development.

It became clear that this Compliance Team was not used to being confronted and questioned. When I told the leader that I was ringing Minister Phillip Ruddock's Chief of Staff and also my husband, a journalist with the ABC, there was a quick change in demeanour. He sent his junior accomplices back to the street. He agreed to enter our residence on his own and not to touch anything. His inspection was swift and perfunctory.

Which is all very well. But what of the 50 other homes across Sydney which were searched? I know of one refugee family with young children which was raided in darkness. You can only speculate what memories of horror may have been revisited by people whose experience of the midnight knock on the door could mean disappearances or torture by agents of the state.

Which brings me to Section 251 of the *Migration Act*, 1958. Discovering subsections 4 to 8 makes you wonder if we're actually living in democratic Australia. A public servant (the Secretary) is authorised to issue a warrant to search *any* premises, vehicles or place for a period up to 90 days with no Judicial oversight. Superficially trained junior officers of D.I.M.A. are even given the right ... "to use such reasonable force as is necessary for the exercise or his or her powers under this section".

It is curious that the houses of several other people in social justice work whom I'd encouraged to make visits to the same young man and his son were not subject to search. I conclude that this was a selective act of intimidation against an advocate who has been very active in recent months putting the children's cause before State and Federal authorities, politicians and N.G.O.s.

It's an experience which left me both shaken and saddened. That human rights and Australian values have become so devalued demands an explanation from those we elect to represent us.

There was a better time. A time when a young Vietnamese asylum seeker, an amputee, gazed down from the Quarantine Station at North Head to a beautiful, glistening Sydney Harbour. " I am sad to have to leave my country " - he told me - " but very happy to finally feel safe in your country".

Public Hearing of Asylum Seekers
12 April 2001, North Melbourne

1 ASYLUM SEEKERS IN THE COMMUNITY

1.1 Extend the right to work to all asylum seekers who are here lawfully for the duration of the determination process. This touches on

1.1.1 The dual importance of allowing for self sufficiency and access to Medicare.

1.1.2 The need to address the 45-day rule, which determines their right to work

1.1.3 The need to get support from the ACTU and other bodies in extending the right to work.

1.1.4 Extending access to the Job Seeker Network.

1.2 Allocate additional funding for essential services to work specifically with asylum seekers.

1.2.1 It should be acknowledged that the issue of homelessness of asylum seekers is a major concern.

1.2.2 Permanent residency should be lifted as a bar to eligibility to public housing, health, education, etc.

1.2.3 Department of Immigration funding should be available for settlement services, addressing the imbalance of the enormous amount spent on asylum seekers in detention and the extremely little spent on asylum seekers in the community.

1.3 Expand the right to basic income support to all asylum seekers who are here lawfully for the duration of the determination process.

1.3.1 It is important to address the essential welfare needs of asylum seekers in the community who are without work rights, medicare or welfare entitlements.

2 AUSTRALIA'S DETENTION PRACTICES AND RIGHTS OFASYLUM SEEKERS

2.1 Detention should be limited to initial health, security and identity checks for unauthorised arrivals for a maximum of two months.

2.2 Greater resources should be provided by government, not just for security but also to provide detainee care, access to health, legal advice, and recreation.

2.3 All children and families should be released from detention as quickly as possible. Unaccompanied minors should be released into the care of child protection agencies.

2.4 DIMA should not have the discretionary power to determine a person's release from detention for health, psychological, and torture and trauma issues. An independent mental health board should be responsible, e.g., the Victorian Foundation for Survivors of Torture. This includes access by non-governmental organisations and promotion of a more transparent management of immigration detention centres.

3 MENTAL HEALTH EXPERIENCE OFASYLUM SEEKERS

3.1 It is urgent that the basic social and psychological needs of asylum seekers are addressed. These impact on the long-term social harmony in this country.

3.2 Expedite the processing of visa time so that asylum seekers are not further traumatised by lengthy delays.

3.3 The climate should be changed wherein asylum seekers are not believed when they provide the reasons for their applications.

3.4 Better training is needed for Australasian Correctional Management officers, eg cultural background, basic mental issues of asylum seekers.

4 THE MORALITY OFAUSTRALIA'S POLICY ON ASYLUM SEEKERS

4.1 The Forum calls upon the Australian Government to cease undermining its own Living in Harmony program through its vilification of asylum seekers.

4.2 The Forum calls upon the Australian media, in the interests of social harmony, to adopt a less xenophobic and more tolerant approach to its coverage of asylum seekers and refugees.

4.3 Calls upon the Australian Government to de-link the on-shore/off-shore quotas, thus removing the potential for division among the refugee communities and to honour the current quotas.

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4.4 Calls for adequate staffing of overseas posts dealing with protection visa applications, a more speedier processing time, and a system of enquiry on-shore and off-shore applications.

4.5 Calls for cessation of discrimination towards refugees with disabilities.

4.6 Calls for the inclusion of the whole family in all refugee protection visa applications.

4.7 Calls upon the ALP and other political parties to roll back the Temporary Protection Visa legislation.

5 ASYLUM SEEKERS AND AUSTRALIA'S INTERNATIONAL OBLIGATIONS

5.1 The ALP should be lobbied to firm up on public statements/policy, eg, splitting on-shore and off-shore components of the Humanitarian Program.

5.2 Seek the support of UNHCR regarding international responses.

5.3 Call on the Australian Government to hold to international agreements, eg, UNHCR statements regarding on-shore/off-shore in light of the Convention on the Rights of the Child (detention of children a fundamental step) and Australia's recourse.

5.4 Continue to press the Australian Government to ratify the International Criminal Court, the Convention on Migrant Workers, and other ILO agreements.

Teoh and Human Rights in Australia

Des Hogan of Amnesty International Australia examines the recently rekindled outcry over a Bill that would further diminish the relevance of international human rights treaties in Australia.

Human rights protection in Australia

Many in Australia would be surprised to learn that the Australian Government could legislate tomorrow to remove the right of prisoners not to be tortured for information or a confession. Many would be surprised to learn that international conventions such as the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is not part of Australian law now and that you cannot claim rights under it in a court, despite Australia having ratified the treaty in 1989. So if a government official violates any of your treaty rights, including under the Torture Convention, you cannot challenge it in an Australian court on the basis of the treaty, only under domestic law which may not provide you with proper redress.

Human rights treaties, like the Torture Convention have no place in Australia law, a sad fact which is compounded by the Government decision last August to severely limit appeals from here to UN committees which monitor these treaties (saying it would ignore "unwarranted" UN requests of Australia).

So when the Government attempted to pass the Administrative Decisions (Effect of International Instruments) ("Teoh") Bill 1999, in the Senate in late March this year, human rights and community groups reacted with disbelief and anger. Why?

The "Teoh" Bill

The Teoh Bill was initially introduced in 1995, in response to the High Court decision in the Teoh case, which concerned the question of whether children born in Australia to a Malaysian national facing deportation had the right to a father under the Convention on the Rights of the Child. A majority of the High Court held that

> "if a decision maker proposes to make a decision inconsistent with a legitimate expectation [based on the Convention on the Rights of the Child], procedural fairness requires that the persons affected should be given notice and an adequate opportunity of presenting a case against the taking of such a course".[1]

The case did not say that the Convention had become a part of Australia law, merely that decision makers should take it into account. The then-Labor Government, however, sensing the threat of human rights to Australia, considered the case would interfere with the workings of Parliament and introduced the Teoh Bill which would remove any obligation on administrative decision-makers (including state agents) to take international human rights conventions into account in their decisions.

The Bill was revived by the Coalition Government in 1997 and again in 1999. In July 2000, the UN Human Rights Committee in Geneva, in examining Australia's Third and Fourth Reports under the International Covenant on Civil and Political Rights, specifically and unusually requested in paragraph 15 of its Concluding Observations, that the Bill be withdrawn as it would breach Article 2 of the Covenant.

Most people had thought it had gone away. Certainly the fears expressed in 1995 of a paralysis of government had never been realised. When Amnesty International learnt in late March 2001, that the Bill was to be debated and voted on in the Senate that week, we decided to take action.

Community response

When Amnesty International learned of the Bill's imminent debate, our researcher on Australia at the International Secretariat in London was interviewed on ABC Radio's AM program. As this interview – which called on Australians to contact their local Senator to prevent the Bill becoming law - was being aired in the early morning of Wednesday 28 March, Amnesty International Australia was alerted to the situation and immediately organised a rapid response lobbying action across our offices in each State and Territory. Amnesty International members and supporters, other community groups and concerned individuals telephoned, faxed and emailed their local Senator to seek their opposition to the Bill.

Coalition Senators argued the Bill was necessary to preserve Australia's sovereignty, Labor Senators criticised the government and argued that amendments they had tabled would preserve human rights, while the Democrats and minor parties indicated their outright opposition to the Bill as an assault on human rights protection.

Throughout the day, Amnesty International conducted interviews with commercial radio stations, ABC Radio News, Radio National and SBS Radio News. By early afternoon, it became clear that the Labor amendments were minimal and would only allow human rights be considered through the 'back door' of the common law, which would hardly make a difference. Further community pressure saw Labor issue a press release reiterating the value of their amendments. The Democrats promised they would do all they could to fight the Bill.

The Bill was not debated until the following week, by which time hundreds of petitions and phone calls had winged their way to Senate offices. A wide range of community groups had come out criticising the Bill and calling for it to be dumped.

The Senate debates – in which the Democrats managed to postpone a vote on the Bill - are instructive to read,[2] in particular, Senator Woodley's reference to the substantial number of petitions he had received from groups throughout Queensland. Clearly, the huge public response had a big impact, with the parties hoping the controversy would go away.

The use of email, websites, telephone and media interviews allowed the moral argument for the abandonment of the Bill to be made swiftly in a clear and forthright manner which politicians could not ignore. At the time of writing, however, the Bill is still scheduled for further debate and voting in the Senate, with both major parties still committed to supporting it in its present form, or with amendments.

The Senate sits for three days at the end of May and then for three weeks in June, at which time the government may try to pass the Bill again. It is therefore incumbent on all of us to be vigilant on this Bill. For updates, watch the Amnesty International website at www.amnesty.org.au.

The future

The future for human rights in Australia is unclear. At present, while Australian law does protect human rights quite well, there are gaps.

Firstly, international human rights conventions like the Convention on the Rights of the Child, are not a part of Australian law, although Australia has signed and ratified these Conventions. For this reason, juvenile mandatory sentencing laws which violate the Children's Convention, are still in force. Unlike other common law countries like the United Kingdom, Canada, New Zealand and South Africa, Australia has no Bill of Rights introducing these Convention rights into local law.

Secondly, when UN human rights committees correctly criticise abuses in Australia – particularly on juvenile justice, Indigenous Australians, refugees and asylum-seekers, the Government says Australia's sovereignty is being threatened and announces severe restrictions to the right of individuals to petition these UN Committees.

Thirdly, the threatened introduction of the Teoh Bill means that decision makers and state agents can act without regard to human rights. So the spectre of torture for interrogation or other purposes being used in Australia in a "war" against drugs or crime, or on grounds of national security, is not as remote as might be thought. And if the government decides to legislate for this, or to overlook practices of torture that may exist today, who is there to turn to?

Human rights belong to people, not to governments. They are not inevitable, do not happen incidentally; but need to be actively supported and promoted. They can be taken away at a moment's notice. Let us ensure this does not happen in Australia.

Des Hogan is Campaign Coordinator at Amnesty International Australia. A solicitor, he previously worked for Amnesty International in Ireland and later at its International Secretariat. For more information about Amnesty International please call 1300 300 920 or email: campaign@amnesty.org.au

[1] (1994-95) 183 CLR 273, see Mason CJ and Deane J at 291 and 292.

[2] The Senate debates 2-5 April 2001 can be found at: http://www.aph.gov.au/hansard/hanssen.htm

Momentum for a Children's Commission in Victoria

Following up on her article in the last edition of *Australian Children's Rights News*, Sarah Nicholson, Children and Youth Legal Worker at North Melbourne Legal Service, reports on the outcomes of a recent conference.

On 2 March 2001, the Federation of Community Legal Centres Victoria hosted a Working Conference on the Rights of Children and Young People at the Melbourne Town Hall. The conference was attended by 180 people from a diverse range of backgrounds. Lawyers, youth workers, health professionals, bureaucrats, educators, drug and alcohol specialists and youth housing workers were amongst the participants.

The Honourable Justin Madden the Victorian Minister for Youth Affairs opened the conference, followed by a short welcome from the Honourable Justice Marilyn Warren of the Victoria Law Foundation. Moira Rayner, the Director of the Office of the Children's Rights Commissioner, London gave the key note address.

The issues raised by Moira were built upon throughout the day by participants who attended two sets of workshops, designed to develop strategies for the better implementation of the UN Convention on the Rights of the Child.

The conference was wrapped up by Danny Sandor, President of DCI-A and Board Member of the National Children's and Youth Law Centre, who discussed different models and ideas for a Commission in Victoria.

The workshop participants were asked to develop strategies that they could implement in their workplaces, as well as recommendations for what our governments need to do. Moira provided inspirational and constructive ideas about how to improve the way we work with children in our agencies. She said:

> "We have to put our composure and ease on the line, if we are to promote and protect the rights of children. There is no one right way to put children's rights at the heart of what we do, and there is no guarantee that we will not mess it up. There are plenty of precedents, about how to change a culture that does <u>not</u> respect the rights of vulnerable people.
>
> As we know from our eradication of discrimination against women, and developing Action Plans to comply with the Disability Discrimination Act, the only way is to commit to a strategy to change organisational culture and assumptions, and operationalising our values.
>
> That takes <u>commitment</u>: we must change the ways we think and make decisions, and we must hear what children have to say. It must be commitment from operational management, not merely the specialists, nor even merely the chief executive.
>
> It takes <u>staying power</u>, because cultural change will not come in a two-day session with a whiteboard: it takes time, interaction between different parts of an agency and other agencies interacting with it.
>
> Change on this scale requires <u>information</u> (everyone needs to have a clear understanding about what it means to have a child-centred approach - not child focused - in decision-making and working).
>
> It takes <u>knowledge</u> - we need to know about children's experiences and lives, about child development and local conditions, and what is happening in other parts of children's lives that might affect what we can do.
>
> It requires <u>a clear understanding of terms</u>, such as 'participation', and 'best interests': we use this term in so many emotion-charged ways. Justice Brennan of the High Court once famously described the [latter] term as 'an unexaminable discretion' depending on the state of a judge's prejudices. I have, less famously, dismissed 'best interests' as the expression of a pious hope that such will be the outcome of our adult judgment.
>
> We also need to define what we mean by 'neglect', 'abuse', 'maltreatment', 'prevention' of the above, and 'child perspective': what do we mean by 'child centred', or taking an 'holistic' view of a child, or co-operation, multi-agency collaboration, or (in the UK) a 'joined up' approach? We need, in other words, a common language and framework."

Workshops built upon this theme of developing an operational strategy to implement the Convention within agencies in policy development, service

delivery and program evaluation. One of the more difficult but fundamental aspects to such a policy is involving young people in decision making. Some recommendations about how to do this were :

- Avoid tokenism – participation must be real and integrated. Acknowledge that real participation is hard.
- Involve young people in decisions – let young people decide what they want to discuss and make decisions about. Do not make decisions before asking young people. Accept that young people may not want to participate – they may have other priorities.
- Give young people control over the decision-making process and systems – change processes and systems to fit young people, develop new ways of doing things.
- Follow through with young people's decisions, opinions and ideas.
- Provide adequate support, education, training and resources for young people to be involved in decision making.
- Recognise that not all young people are the same – different groups of young people may need to be treated differently.
- Undertake an audit/evaluation of the agency against the Convention including feedback from young people who are and are not accessing the service using rigorous methods – survey/ questionnaire – and not just anecdotal evidence.
- Allocate sufficient resources (staff and other resources) to work with young people.

Some key recommendations from the conference to government about improving implementation of the Convention were to:

- Reaffirm commitment at all levels of government to the Convention on the Rights of the Child.
- Incorporate the opinions of young people in policy and decision-making using a number of strategies that recognise that young people are not a homogenous group of people.
- Establish a Children and Young People's Commission for Victoria as an Independent Statutory Authority. The roles of the Commission would be education, investigation and complaints (not necessarily individual complaints), with the Convention scheduled as part of the enabling Statute. Include a Charter of Rights in the legislation.
- Raise public awareness through an awareness raising and education campaign in the general population about the Convention, young people's rights and rights mechanisms, towards a shared vision within the community. Challenge the adversarial concept of rights: it is not a matter of parents versus kids, but a matter of enhancing human and civil rights for all. Maybe articulate this in terms of "entitlements" to basic needs (education, food, health, housing) and fundamental freedoms.
- Incorporate into all Government policy and tenders for public contracts, commercial or otherwise, a requirement of compliance with Convention principles as part of specified performance criteria and reporting on achievement of criteria. For example, architectural design for public buildings must include a minimum requirement for effective consultation with young people, even if the space is not specifically designed for young people. Failure to demonstrate implementation of strategies to comply should preclude any further contracting with the company unless change is demonstrated.
- Schedule the Convention to the *Equal Opportunity Act (Vic)* (EO Act). Amend the EO Act to repeal exceptions and certain exemptions relating to young people. Require specific reporting to EO Commission on compliance with the Convention (as part of the EO Commission Plans and Reports).
- Provide additional resources for youth advocates, in areas other than juvenile justice, protection or separate representation under Family Law Act.
- Provide adequate resources for a community based, statewide Young People's Legal Service in Victoria.
- Schools/Department of Education: Require schools to empower student councils and student council representatives with real decision making powers, not just tokenism.
- Incorporate into the school curriculum an annual class project whereby young people provide a submission to Government about Convention rights and how they are working for young people, thereby providing regular two way communication.
- Create a Convention tram that can advertise key Convention principles!

The full report of the conference, including Moira's address, the pre-conference research and conference outcomes is available from North Melbourne Legal Service on nmls@vicnet.net.au or 03 9328 1885. Also, the Youth Affairs Council of Victoria will release a discussion paper on a Victorian model in early July. Contact info@yacvic.org.au.

Young People and P

The Drugs and Crime Prevention Committ undertaking an Inquiry into Public Drun Committee to give specific consideration to

Services need to deal with both the immediate health circumstances of the young person who has come to notice and be able to connect young people with services that can address the reasons for their serious misuse of alcohol and other drugs.

A Protective And Educative Rather Than Punitive Approach

An approach based on the protection and health enhancement of young people rather than their punishment is consistent with and supportive of the CROC provisions. It also accords with an appreciation of adolescent experimentation with alcohol and other drugs in a community which promotes substance use, and also with contemporary approaches to substance abuse based on a harm minimisation model. We understand that harm minimisation is an express policy principle of the current Government and support its application to the issue of public drunkenness.

DCI-A acknowledges that alcohol and other drug misuse by young people is a concern to policy makers and the community alike. However, we believe that in order to address both the presenting and potentially underlying problems for such misuse, a broader approach is required by Government.

To this end, we have suggested that the Committee examine how the Victorian Office for Youth can be given an enhanced role, and status within government, to develop and implement an intra-government strategy to overcome young people's misuse of alcohol and other drugs.

Such a strategy would need to appreciate that the serious misuse of alcohol and other drugs can be a response to diverse social impacts (such as unemployment, poverty) and also to painful personal circumstances (such as a history of family violence or the presence of disabilities) especially but not exclusively, among young people.

Young People Who Are Homeless

It is common to find that homeless young people are suffering from the consequences of both social and personal problems.[1] We ask the Committee to give their needs particular attention.

DCI-A believes that considerable enhancement of the existing youth accommodation and support service system in Victoria is required in order to meet the needs of homeless young people who are misusing alcohol and other drugs. In particular, DCI-A is disappointed in the recently released interim report of the Victorian Government's Ministerial Advisory Committee on Homelessness Task Group which provides minimal commentary on the needs of homeless young people - especially those with alcohol and other drug misuse problems.

We strongly support the decriminalisation of public drunkenness in conjunction with the enhanced provision of appropriate health and welfare services for people with substance abuse problems

In order to address the particular needs of this age group, we would strongly suggest the Committee that they hold discussions with the Ministerial Advisory Committee with a view to improving the number and accessibility of emergency beds to young people who are homeless due to their misuse of alcohol or other drugs.

Public Drunkeness

tee of the Parliament of Victoria has been
kenness. DCI-A's submission asked the
the particular needs of under 18 year olds.

DCI-A supports the abolition of the offence of public drunkenness. We oppose the creation of any new offence against public order. There are already in existence numerous offence categories which are adequate to ensure that behaviour which should attract criminal sanctions does so.

Minimising Police Involvement

Young people are an obvious target for those sections of the community who seek easy answers to complex social problems, common symptoms of which might be minor public misconduct. The criminalisation of such behaviour effectively delegates to police the task of removing the symptoms. It does nothing to address the underlying causes, and in many cases only exacerbates the problem.

Within the context of adolescent experimentation with alcohol, the Committee is requested to consider the broader impact on police/young people relations and the issue of public drunkenness. Police involvement for the purpose of securing criminal charges, may precipitate circumstances where young people are charged in respect of their alleged behaviour as a response to police intervention or lead to allegations of police violence toward the affected young person/people.[2] Fundamentally, "public drunkenness" laws can be used by policing authorities as a general public order response against any community minority causing a perceived concern to the local interests. These interests are not always residential members of the alleged affected community.

A punitive approach to the problem of public drunkenness is inconsistent with the principle enunciated in Article 3(1) of CROC that the best interests of the child should be a primary consideration and with Article 37(b) that arrest, detention or imprisonment should only be a measure of last resort.

DCI-A is also concerned that it is a short step from the criminalisation of the behaviour to the criminalisation of the young person who exhibits that behaviour. This in turn can result in harm and stigmatisation. It also results in associated cost to the community (including the costs of criminal justice processing and detention) which are far in excess of the harm caused by the initial minor misconduct. In this regard we refer to the Ministerial Statement on Juvenile Justice issued last year by the Minister for Community Services, which reflects the current government's policy of maximising appropriate diversion strategies.

DCI-A supports the increased provision of appropriate services such as sobering-up shelters (which should separate under 18 year olds from adults where practicable) until a responsible adult that is acceptable to the young person can collect the young person. For the reasons pointed out above, those shelters should be resourced to provide young people with appropriate and accessible referrals and should be auspiced by health not police services.

Conclusion

DCI-A is convinced that criminal sanctions for young people's public misuse of alcohol *per se* is neither within the spirit of CROC nor an appropriate response to young people who seriously misuse alcohol and other drugs. We therefore urge the government to adopt policies, develop services and encourage practices that support and assist young people rather than criminalise them.

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[1] Human Rights and Equal Opportunity Commission (1989) *Our Homeless Children*, HREOC, Sydney.

[2] See generally: Alder et al (1992) *Perceptions of the treatment of juveniles in the legal system*, National Clearinghouse for Youth Studies, University of Tasmania at Hobart; Blagg and Wilkie (1995) *Young People and Police Powers*, Australian Youth Foundation, Sydney.

Official Launch of the World Education Fellowship International Youth Group

In the last week of April, the World Education Fellowship (WEF) held its 41st International Biennial Conference at Sun City in South Africa. WEF is a UNESCO non-governmental organisation and is open to educators, members of associated professions and all members of the public who have an interest in education at all levels. DCI-Australia member Laura Cusack is the Australian representative for the WEF.

The theme of the conference was “Education Linking the Planet” and part of the conference was dedicated to a youth forum. The main goal of the youth forum exemplified this theme as the youth delegates aimed to exchange visions and ideas on education with fellow youth from across the world including Kenya, Nigeria, Japan, Australia, the United States, the Netherlands, and our host country South Africa. The forum ran for a week and could have continued for long after.

Our first day together was spent getting to know each other and discussing the vision we have for the forum and the educational issues that affect youth in our respective countries. One of the main issues raised by the South African delegates was regarding the effectiveness of current HIV and AIDS education. Sub Saharan Africa has the greatest reported cases of HIV infection in the world.

Issues that had a common theme across many countries including Australia related to access to education, particularly in relation to high school students who live in rural and remote areas who wish to pursue higher education. Many delegates stated that choices in tertiary education are limited unless students are willing and/or able to relocate to metropolitan areas.

One of the aims of the forum was to officially launch the youth group as a section of the World Education Fellowship. The youth group is international and will use the internet as our main means of communication.

Youth from Kenya and the Netherlands are already working together to promote equity and access to education for youth living in the Mathare Valley slum in Kenya. The Mathare Valley slum is home to more than half a million people of whom 60% are youths. Youth living in the Valley are often denied access to education due to cost. It is international projects such as these that the youth group proposes to use as our main platform for realising the aims of the group.

If you would like more information about the WEF youth group, please contact Laura Cusack at laura.cusack@facs.gov.au or visit www.wef.com.au.

NCYLC Wins International Award for Lawstuff

The National Children’s & Youth Law Centre website *Lawstuff* (www.lawstuff.org.au) has received a major international internet award. The award was presented to the NCYLC Director, Louis Schetzer in Washington DC in April. *Lawstuff* won second prize in the “Not for Profit” category.

Sponsored by *Cable & Wireless*, the *Childnet Awards* are an international initiative which rewards children and those working with them, who are developing outstanding Internet projects which benefit other children.

This year the Awards attracted a record number of entries - over 200 from 47 countries, worldwide. This year’s ten short-listed projects came from Australia, Canada, Finland, Germany, The Netherlands, USA and the UK, and included projects by individuals, schools and not-for-profit groups and governments.

Established in 1997, Lawstuff provides advice and legal information to all young Australians as well as their parents and advocates and the wider community. It was one of the first legal websites for children and young people and uses cartoons and short stories to encourage young people to ask questions about the law, aiming to empower young people to help themselves with legal issues and make informed decisions.

Childnet were particularly impressed with Lawstuff’s commitment to “self advocacy”, as children and young people have the freedom to access the relevant information personally, rather than rely on the assistance of an adult. They described Lawstuff as “an outstanding example of how a non-profit organisation can make a real impact by exploiting the power of the net.”

The full list of categories and winning sites can be seen at:
www.childnet-int.org/awards/press/index.html

Whacking Children – a cautionary tale

EPOCH AUSTRALIA is a non-government organisation committed to the abolition of all forms of physical punishment of children. This article critically evaluates recent changes in New South Wales law.

When Alan Corbett was elected to the New South Wales Legislative Council under the banner *A Better Future for our Children,* his motivation was to enhance the rights and interests of children.

One of Alan's burning ambitions was to protect children from physical violence and he very soon set about drafting a private member's Bill to abolish corporal punishment in both government and independent schools. This was eventually supported by the NSW Government and came into force on 21 December 1996.

He then turned his attention to corporal punishment in the home, but was persuaded that any Bill would have a greater chance of success if it restricted, rather than totally banned, the use of corporal punishment.

He first introduced his *Crimes Amendment (Child Protection – Excessive Physical Punishment) Bill* in 1997. The Bill was loosely modelled on the Report of the Model Criminal Code Officers Committee which in turn had been influenced by the recommendations of the Scottish Law Reform Commission.

The Corbett Bill preserved the right of parents and carers to smack their children with their open hand but banned:

- any physical punishment using a stick, belt or other object
- any punishment administered with other than an open hand
- any punishment involving a blow to a child's head or neck, and
- any punishment likely to cause harm to the child for more than a short period.

Even those who favoured total abolition of corporal punishment gave their support to the Bill as they saw it as an advance upon the status quo. By replacing the vague common law defence of 'reasonable chastisement' with clear and specific rules about what is and is not permitted, it would protect children from the most harsh and dangerous forms of physical punishment.

The Government expressed guarded support for the principles behind the Bill but suggested it needed redrafting. This was the start of a process whereby the specific prohibitions in the Bill were progressively watered down.

First, it was suggested that an exception should be made in the case where the force of the blow to the child was 'trivial or negligible'. The example was given of a child's ear being tweaked or the child being tapped with a rolled-up newspaper. Alan agreed to amendments to keep his Bill alive. It was also suggested that there be a lead in period of one year before the Bill became law so there would be an opportunity for parents and carers to be educated about the changes in the law before it came into force.

A Parliamentary Committee in 2000 gave its support to the Bill but proposed further amendments. One of these further weakened the Bill by removing the prohibition on under-18s (other than parents) from using force against a sibling, relative or child in their care. This allows children to use physical punishment against other children.

On the positive side, the Parliamentary Committee proposed that the NSW government launch a major community education campaign before and after the Act comes into force to inform parents what is acceptable punishment and suggest alternative discipline strategies.

As the Bill was about to be debated in the lower house, other groups suggested further amendments to the Bill. There was pressure to allow foster parents to use physical punishment against children in their care, even though that is already prohibited by Regulation in New South Wales. Corbett resisted that amendment. He did agree to a change which would allow neighbours, babysitters and others to use physical punishment if they had implied authorisation from a parent. The original Bill required express authorisation. A babysitter or neighbour who had seen a parent hitting a child could argue that s/he was impliedly authorised to do the same.

The clear rules laid down in the Bill were being watered down. The final blow came at the eleventh hour when the Government announced that it would only support the Bill if the prohibition on the use of sticks, straps, belts and other objects and the prohibition on hitting children with a closed fist or a kick delivered to the child's leg or backside were removed. This effectively tears the heart out of the Bill and weakens the argument that the Bill would replace the uncertainties of the common law with clear guidance as to what forms of punishment are and are not acceptable.

So what is left? On the positive side, the prohibition on hitting children around the head or neck remains (subject to the trivial and negligible force exception). An important advance is that in deciding whether punishment is reasonable, the courts must take into account 'the alleged nature of the misbehaviour'.

continued next page

Under the common law, the courts have refused to look into the issue whether the punishment was merited by the child's behaviour, taking the view that it is a parent's prerogative to decide when punishment should be given. The Bill also sets clearer rules as to the categories of people who can use physical punishment.

On the negative side, the vague common law rule by which parents and carers must use no more than 'reasonable force' has been replaced by a new rule that they must not hit the child in a way that is likely to cause 'harm that lasts for more than a short period'. With the common law rule, the emphasis is on the *force* of the blow; with the new rule, the emphasis is on the *results* of the blow. Judges and juries will have to decide what is 'harm' to a child (does a reddening of the skin, a slight bruise or an abrasion constitute 'harm'? Is intense but fleeting pain 'harm'? What about nervous shock, anxiety and psychological trauma? Should the expression 'likely to cause harm' be interpreted subjectively (the intention of the punisher) or objectively (the result of the punishment)?

Injuries to children are often caused by their instinctive reaction in seeking to avoid or escape from the blow. Then there is the uncertainty around the meaning of 'harm that lasts for more than a short period'. If the marks of the punishment are visible an hour, 3 hours or a day later is this 'more than a short period'? What about the child who is distressed and tearful several hours later or who continues to have nightmares for days after the punishment?

What the Bill will do is to replace one set of uncertainties with another more complex set of uncertainties. Much of the case law developed over the centuries as to 'reasonable force' will no longer be relevant.

While the one year moratorium to allow for community education made sense when sticks, belts, punches and kicks were banned, it makes little sense now that these are permitted. How can the public be educated about a new law which is itself vague and creates new difficulties of interpretation?

The muddle that has resulted from Alan Corbett's brave attempt to protect children from the worst aspects of corporal punishment points up the basic absurdity of the law which treats children as an underprivileged sub-class and denies them the right of bodily integrity that is one of the basic tenets of our law. If you try to modify a law which is fundamentally discriminatory and oppressive, you merely spawn a new set of anomalies. That is precisely what has happened to the Corbett Bill.

The only principled and effective law reform is to remove the 'reasonable chastisement' defence so that children are assured of the same protection from physical violence as adults. One of the clearest and simplest rules of our society is 'hitting people is wrong'. It is patently ridiculous that only children may be hit with impunity: they are the physically smallest and emotionally most vulnerable group in society. Teaching children that it is all right to hit people if you are angry with them perpetuates an inter-generational cycle of violence.

Half measures such as the Corbett Bill reinforce the notion that it is acceptable to hit children if they annoy you or disobey your commands.

> 'It is patently ridiculous that only children may be hit with impunity: they are the physically smallest and emotionally most vulnerable group in society.'

In its disembowelled form, the Corbett Bill will do little to reduce the alarming number of cases of non-accidental injuries to children. Dr Kim Oates, the CEO of Westmead Children's Hospital, gave evidence to the Parliamentary Committee that most of the very serious injuries seen by his hospital's child protection unit are a result of physical discipline gone wrong rather than premeditated or systematic abuse.

All corporal punishment of children is now banned in all Scandinavian countries and in Austria (1989), Cyprus (1994), Latvia (1998), Croatia (1999) Germany (1999) and Bulgaria (1999). Recent Court decisions in Italy (1996) and Israel (1999) have effectively removed the right of parents to use corporal punishment in those countries and in Canada a constitutional challenge is to be heard by the Ontario Court of Appeal later this year. A National Commission in Belgium (1999) and a Parliamentary Committee in the Republic of Ireland (1997) have recently recommended full prohibition of corporal punishment. Britain and New Zealand are currently reviewing the reasonable chastisement defence in the light of a decision of the European Court and obligations under the UN Convention on the Rights of the Child respectively. Australia's laws permitting physical punishment of children breach the Convention on the Rights of the Child to which Australia is a party. Most Australians

themselves experienced physical punishment in childhood and tend to support it as a necessary part of child rearing. They do not see smacking children as violence. The promised education campaign may be effective in changing attitudes to physical punishment but the law is an important symbol and it is disappointing that the NSWGovernment has not given full support to the unanimous recommendations of the Parliamentary Committee that considered the Bill.

As Professor Michael Freeman has said: 'Nothing is a clearer statement of the position that children occupy in society, a clearer badge of the status of childhood, than the fact that children alone of all people in society can be hit with impunity. There is probably no more significant or symbolic step that could be taken to advance both the status and protection of children than to outlaw the practice of physical punishment. Much child abuse, we know, is punishment gone awfully wrong'.

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NGO Consultation on Human Rights Issues

DCI-AAdvisory Board Member Sid Spindler reports on the March Meeting with Minister Alexander Downer and DFAT officials in which he represented both our organisation and the Anti Slavery Society.

The meeting was informative and generally positive, with some areas continuing to cause concern. The following are some of the more urgent issues discussed:

UN World Conference against Racism (Aug/Sept) - The Minister for Immigration Mr Philip Ruddock and the Attorney General Mr Daryl Williams have carriage of preparations, including consultations with NGOs. DFAT officials stated that efforts would be made for the attendance of Asylum Seekers at the Conference, in answer to the request made after Mr Downer left the meeting.

Draft Declaration on Racism - Amnesty International suggested that Administration of Justice should be added to it with particular emphasis on the rule of law. Mr Downer did not agree with the ACOSS request that international financial institutions eg the World Trade Organisation be included in the list of organisations to be monitored under the Racism Declaration.

International Criminal Court - The Australian Government is committed to its establishment, but needs more public/media support by NGOs.

Global Compact - The ACTU suggested that this Human Rights campaign by Business and Unions should receive stronger Government support eg through AusAid. Mr Downer noted this request and, most significantly, also held out some hope that the Government would consider a Code of Conduct for Australian companies operating abroad.

UN Treaty System Reform - NGOs expressed concern that the Australian Government may try to reduce the type of adverse comment it received on the Convention on the Elimination of Racial Discrimination (CERD) and CROC by making it harder for NGOs to have access to UN Committees (the recent Government Statement has not allayed these fears).

UN Special Session on Children - The Mission statement is to be redrafted to put more emphasis on how improvements can be achieved, in particular through a rights based approach.

Draft Declaration on the Rights of Indigenous Peoples - The Working Group is making slow progress, particularly in the areas of land and resources and it is expected to take another four years.

Child Soldiers - Australia is likely to adopt the age limit of 17 for voluntary recruitment, 18 for conscription. NGOs argued strongly for a general limit of 18, including on the grounds that the International Law on Armed Conflict requires that all parties to a conflict be treated 'in like manner'.

ILO Convention on the worst forms of Child Labour - The Australian Government position should be available by end of 2001.

Commonwealth Heads of Government Meeting, Brisbane, 6 - 9 October, 2001 - There will be a concurrent People's Festival 'Connecting Communities'. One of the key themes will be "Poverty is a Violation of Human Rights" Contact: Organising Team, Commonwealth Foundation, PO Box 185, Brisbane-Albert Street, QLD 4002.

Altogether a mixed bag, but nevertheless a useful meeting with information to generate further action!

Daddy - Who did I come from?

Lawyer Tim Mulvany considers the issue of surrogacy arrangements in light of the United Nations Convention on the Rights of the Child.

> "Now this is most alarming, when she was young and charming - as some of you may know, she practised baby farming"
> HMS Pinafore. (Gilbert & Sullivan)

Current attitudes in relation to surrogacy, infertility assistance and adoption might herald a return to the social concerns that caused W.S. Gilbert to coin the expression "baby farming". In a recent article in the daily Melbourne press I informed the reporter that I receive on average two enquiries a week in relation to the possibility of surrogacy arrangements.

The short answer in the State of Victoria is easy. Section 59 of the *Infertility Treatment Act* 1995 clearly makes it an offence for a person who makes, gives or receives, or agrees to make, give or receive a payment or reward in relation to or under a surrogacy arrangement, or the arrangement of a surrogacy agreement or an arrangements to act as a surrogate mother.

Section 60 of the same Act creates offences in relation to advertising and section 61 declares that a surrogacy agreement is void whether made before or after the commencement of the Section. However, it is my understanding that other jurisdictions within the Commonwealth of Australia sanction altruistic as distinct from commercial surrogacy, giving rise to Victorians seeking assistance interstate or overseas.

It is not beyond expectation that in the not too distant future, arrangements for altruistic surrogacy might be condoned. Further, whilst surrogacy *per se* is illegal within the State of Victoria, arrangements for children born as a consequence of surrogacy arrangements entered into outside the State of Victoria may well come before Victorian Courts. Courts may be presented with applications e.g. for adoption, wherein two persons party to a surrogacy agreement outside of the State or outside the Commonwealth, may seek to have the obtaining of a child sanctioned, creating dilemmas in relation to public policy, the paramount interests of a child and observation of the United Nations Convention on the Rights of the Child ("CROC").

One issue which is of considerable interest is the assessment as to whether applicants seeking to adopt or obtain other parenting orders in relation to a child, born of a surrogacy arrangement outside of the State, are declared to be fit and proper persons to be the recipient of Court ordered responsibilities.

The "fitness" of such persons may be satisfied by assessment of criteria relating to health, education, financial status, general ability etc. One queries whether such persons are "proper" within a ***legal*** definition if they have resorted to conduct which although legal outside of the jurisdiction is clearly illegal within the jurisdiction in which they reside and seek their order be effective.

There are no easy answers to the potential contradiction save that each case must be judged on its individual merits as fortunately statute and common law clearly state the paramountcy principle.

What is to be done with the child as an alternative in such circumstances?

Concern is expressed that such arrangements are prima facie for the benefit of the adults seeking to become parents through indirect biological means as distinct from benefit to the child or potential child. This is a very sensitive area and no criticism is intended of persons motivated to have recourse to a variety of processes available.

Article 5 of CROC refers to the role of parents and parental guidance, Article 9 covers separation from parents and Article 10 refers to rights of reunion. However, in surrogacy, as in adoption (particularly

Article 8

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

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

inter-country adoption arrangements) Article 8 warrants particular focus. Article 8 is to the effect that the state has an obligation to protect, and if necessary, re-establish basic aspects of the child's identity. This includes name, nationality and family ties.

Vigilance must be exercised so that those charged with various responsibilities give particular consideration to this Article, whether they be:

- the persons seeking to parent the child;
- those advocating the rights of the child or representing the child in proceedings;
- government instrumentalities furnishing reports to assist the Court; or
- the Court itself.

The present adoption legislation in Victoria permits applications to be made for discharge of previous adoption orders in circumstances where a discharge order is in the best interest of the child even if the child has become an adult. Often persons seek to investigate their own identity and seek to regularise what they might have been seen to be incorrect approaches to parenting in the past.

Given the existence of Article 8 and the tendency to comply with a young person being acquainted with the threads (faded, bright, thick or thin) which make up that child's tapestry, it is submitted that all those concerned with exercising parental responsibility pay particular attention to biological factors.

In extreme circumstances, medical science, particularly medical treatment, is frequently based on biological material. Access to the initial biological donor or donors, be they sperm donors, surrogate mothers, partners of same, siblings of same etc. might well be required to assist a child in relation to his or her medical situation and general development. All professionals have a responsibility to ensure that processes are available to facilitate the accessing of such information or material.

Notwithstanding that those who enter surrogacy and like arrangements to become parents have the highest motives and in most circumstances are able to create a comfortable and vibrant world for the child, the basic factor enshrined in Article 8 remains - emphasis and priority must primarily be on the child and thereafter, on those who enter the arrangement.

For those at the coal face furnishing medical, legal and psychological advice it is essential that they draw the responsibilities of parenting, including those summarised in Article 8, to the persons who intend to take on parenting responsibilities.

With cultural and social changes in the concept of "family", it is timely that we bear in mind that in many instances, discussion with a child about his or her family might also include subtle and discreet references to those who have assisted in the existence of the child by medical or like procedures. This approach to parenting will, in my view, add to the wholeness of the child's development into adulthood and minimise the possibility for outbursts flowing from the child when the child is suddenly appraised of unusual circumstances or extremes giving rise to his or her existence.

No parent let alone a child ought be left to the dilemma, (to conclude with a reference to Pinafore) - "Poor Wandering one"!

Tim Mulvany, a Melbourne Practitioner of 30 years practice who undertakes a considerable volume of advocacy on behalf of children in different jurisdictions. His practice includes applications for adoption and like parenting orders. Email: mulvany@netspace.net.au

Victorian Relationships Recognition - (Unpublished) Letter to the Editor

The Australian Section of Defence for Children International, was one of a number of broad-based community groups that advised in the development of the Statute Law Amendment (Relationships) Bill.

Our interest was grounded in Article 2 of the Convention on the Rights of the Child. That requires children to be protected from "discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members."

Having watched the proceedings, we pay our compliments to the quality of the debate in the Victorian Legislative Assembly. Most speeches were thoughtful, respectful, and free of the prejudice and irrationality seen in other parliaments on similar law reform proposals.

The exceptions to this high standard made unsubstantiated claims that children's rights and interests would be damaged by the Bill. To the contrary, children benefit from the law recognising that parents of all sexual orientations can have a committed relationship, and the reality that children have emotional and economic bonds with their parent's partner. By extending the legal protections that children deserve, the Bill strengthens the Victorian community.

We would hate to think that party politics will delay the Bill becoming law and see no need for the amendments which the Liberal Party is proposing to press in the Upper House. The reforms in the Bill are as significant as those passed a quarter of a century ago which put children born out of wedlock on the same footing as children born within a marriage for many purposes.

STOP PRESS!!

The Bill passed the Upper House with minor amendments late on the evening of 5 June 2001 and will soon become law. Full details in the next edition of *Australian Children's Rights News.*

Who cares?
The poser for parents

Chloe Saltau, Social Policy Reporter for *The Age* newspaper, casts a critical eye on data fuelling current debate over childcare.

"Smart but nasty". That's the line that sparked the child care debate this time - a three-word description of the type of children, it is claimed, that can be churned out by long hours in creches.

The line came from Jay Belsky, an American researcher who says he has evidence that 17 per cent of children in day care for more than 30 hours a week show aggressive, disobedient or explosive tendencies, compared with 6 per cent of those in care for less than 10 hours a week.

Within hours it was everywhere - on talk-back radio, on newspaper opinion pages, at school gates and around water coolers.

As the experts in the pro and anti-child care camps fling themselves into another round of ferocious ideological debate, new parents struggle to find the core information they crave to make one of the most important decisions of their lives, a choice which just might - according to Professor Belsky - turn their little darling into a little monster.

In this emotion-charged landscape, statistics and conclusions are always grist for one cause or another. In the case of the latest research, funded by the US National Institute of Child Health and Development, even the co-authors could not agree on what they had found.

What is acknowledged is that the report is one of the most exhaustive, definitive research endeavors ever undertaken on child care. It involves 1300 American children and covers 10 years.

But what lessons can Australian parents learn? And what other information should parents struggling with the child care versus home care quandary consider?

According to some social policy analysts, Professor Belsky is renowned for his prejudice against centre-based day care. Apparently accustomed to being shunned by his colleagues at scientific meetings, Professor Belsky again fielded accusations from co-authors that his conclusions were flawed. One of them, the University of California's Alison Clarke-Stewart, told the Los Angeles Times: "If the results showed that 50 per cent of children in child care were more aggressive, I would agree that's something we need to be concerned about. But 17 per cent is what the test predicts in the general population."

Only a year ago, Professor Belsky himself told London's Guardian newspaper, after earlier results were released: "It would be a mistake to conclude that a lot of time in child care, especially started early in life, is creating psychopaths."

According to Deborah Brennan, a social policy analyst from the University of Sydney and the author of a book, The Politics of Australian Child Care, parents can cut through the hysteria and draw three conclusions from the mountain of research.

First, quality matters, and Australian centres, though under pressure because of federal funding cuts, are "on another planet" from American ones. (Professor Belsky maintained the higher rate of explosive behavior held true regardless of the type or quality of care.)

Second, even if, as the Belsky study suggests, long hours in any kind of child care can breed aggression and disobedience, the number of children in full-time care in Australia is extremely small. Four per cent spend 50 hours or more in care each week and the vast majority, 80 per cent, are there for less than 30 hours.

Even then, neither Dr Brennan nor Sarah Wise, a research fellow at the Australian Institute of Family Studies, could say for sure that 50 hours of child care a week was too much. "It would be irresponsible of me to say that this is damaging. Parents overwhelmingly want to be with their kids," Dr Brennan said.

Third, "bad care is bad for children no matter who delivers it". So, she contended, Professor Belsky's obsession with centre-based care when there are "unhappy, dismal, abusive" domestic situations for children is unfair.

[DCI-A National Committee Member] June Wangmann, an associate professor of early childhood education and director of the NSW Office of Child Care, said the debate should accept that child care was a reality for an increasing number of Australian families, and work at improving rather than attacking it.

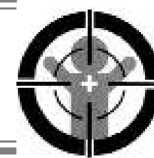
Dr Wangmann says parents paralysed with fear and anxiety about the impact of child care should be reassured that "the bulk of kids show some significant gains, particularly when they come from disadvantaged backgrounds".

Worried parents, anxious to avoid full-time day care, might instead resort to multiple settings or "patchwork care". A recent study commissioned by Dr Wangmann's office found some families used as many as eight different settings in a week. "That is not good for children," she said.

Said Sarah Wise: "We know that children need some degree of predictability in their environment, and they need to know what is expected of them by different carers."

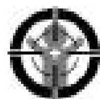
Reprinted with permission

Child soldiers update



ANDORRA: FOURTH COUNTRY TO RATIFYAN INTERNATIONAL INSTRUMENT BANNING CHILD SOLDIERS

The Principalty of Andorra is the fourth country to ratify the Optional Protocol on the involvement of children in armed conflict. Andorra has stated firmly that all forms of recruitment — even voluntary — of children under 18 are unacceptable. Such a statement clearly demonstrates that the position taken by certain governments, including the United Kingdom, to allow under-18 volunteers in their armed forces runs against growing international consensus on this issue. The Optional Protocol has been signed by 79 countries and ratified by three others (Bangladesh, Canada and Sri Lanka). The Optional Protocol requires 10 ratifications to come into force.



COALITION UPDATE

Amman Conference on the Use of Child Soldiers in the Middle East and North Africa

This, the fifth in the Coalition's series of regional conferences, took place in Amman, Jordan from 8-10 April 2001. It was organised jointly by the Coalition, the Jordan Institute of Diplomacy and the UNICEF Regional Office for the Middle East and North Africa under the patronage of HM Queen Rania al-Abdullah.

At the conference, the Coalition presented a report on the use of Child Soldiers in the Middle East and North Africa, an analysis of 22 countries (Algeria, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, Turkey, UAE and Yemen). Delegates heard how children continue to serve with government forces. In addition, in many countries children are given military drill and indoctrination in regular school programs and military life features prominently in the general curricula.

"In a region that knows at first hand the long-term scars participation in conflict leaves for children and their communities, the challenge now is to ensure such exploitation and abuse is prevented for future generations," said Rory Mungoven, Coordinator of the Coalition to Stop the Use of Child Soldiers.

The conflict in Sudan is one of the worst child soldier problems anywhere in the world. Thousands of children, as young as 12, have been forcibly recruited into the armed forces and opposition groups.

Children have been actively engaged in fighting with armed opposition groups in Algeria, Egypt, Iran, Iraq, Israel, Lebanon, the Palestine Authority, Turkey and Yemen although there is no evidence to date of children being recruited or used systematically by the Palestinian Authority or armed groups. It is estimated that less than 1% of the total Palestinian adolescent population have taken an active part in the clashes with the Israeli Defense Forces.

Support for conflicts outside the region

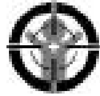
Over the past decades there has been extensive political and material support from countries in the region to governments and armed groups that have exploited children as soldiers. The Sudanese Government has provided support and protection to the Lord's Resistance Army that has been responsible for the abduction and brutal treatment of more than ten thousand children from northern Uganda. Saudi Arabia and the United Arab Emirates are among only three states world wide to recognise the Taliban movement as the Government of Afghanistan.

Positive developments

The Governments of Bahrain, Kuwait, Lebanon, Morocco Oman, Tunisia and Turkey have set at least 18 as the minimum age for all forms of military recruitment. Jordan, Morocco and Turkey became the first countries in the region to sign the Optional Protocol on the involvement of children in armed conflict.

Highlights from the report

a. Food rations and school examinations have been reportedly withheld from Iraqi youths refusing to join "Saddam's Youth".
b. Boys and girls between the ages of 8 and 16 have been trained in combat in the PLO refugee camps in southern Lebanon.
c. Iranian boys as young as nine were reportedly recruited for human wave attacks and to serve as mine sweepers in the war with Iraq Their indoctrination to participate in combat included being given "keys to paradise" and promises that they would directly enter heaven if they died as martyrs against the Iraqi enemy.
d. Tens of thousands of child soldiers, some as young as 12, fought with Iraqi troops during the Gulf War.



GLOBAL REPORT ON CHILD SOLDIERS

The Coalition Secretariat has updated and consolidated all of their research for publication as the first ever global report on child soldiers. The report will contain entries on 175 plus countries. It is hoped to launch the report globally on 25 May, with activities in every region. For further information, please contact the Coalition Secretariat.

Thousands of children used in conflicts throughout Asia

More than 75,000 children including girls fighting wars in Asia. And the number is increasing as new conflicts erupt yearly.

According to a report by Rory Mungoven, coordinator of the London-based Coalition to Stop the Use of Child Soldiers (CSUCS), child soldiers are fighting in governmental armed forces, paramilitary groups or militia and nongovernmental armed groups. The Coalition says the countries in Southeast Asia, in particular, should declare itself a "child soldier free zone", as it urged Asean foreign ministers and their dialogue partners in Thailand recently.

"Tens of thousands of children have been recruited, sometimes forcibly, into governmental armed forces, paramilitaries and non-governmental armed groups across the region," said Mungoven. "The worst affected countries in Southeast Asia have been Myanmar and Cambodia, but there are clear warning signs of escalating problems in Indonesia, the Philippines and Laos."

He added, "ASEAN and its dialogue partners have come to recognise that these armed conflicts have an impact on the security of the entire region and require a concerted response. Preventing the use of child soldiers, ensuring their demobilization, rehabilitation and reintegration into society must be an integral part of regional peacebuilding efforts."

The Coalition argued that ASEAN was well placed to take the international lead in addressing this problem.

"Most ASEAN members already prohibit the military recruitment and deployment of children under 18," Mungoven said. "Only Myanmar and Singapore routinely recruits under 18s."

Cambodia, Indonesia, the Philippines, Vietnam and Thailand all have national legislation which sets 18 as the minimum age for military recruitment. Malaysia accepts officer cadets at 17 years and six months, but otherwise fixes 18 as the minimum age for recruitment. The situation in Brunei and Laos is unclear. Singapore recruits from 16 and six months and Myanmar as young as twelve, often forcibly.

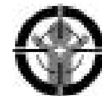
The Coalition called on ASEAN to endorse the new Optional Protocol to the Convention on the Rights of the Child that prohibits the use of children in conflict. Cambodia became the first Asian state to sign the new Optional Protocol in June this year—other ASEAN members should follow suit and work together to implement this ban, says the Coalition report.

The Coalition called on those ASEAN members recruiting children to immediately demobilize any under 18s currently in training or serving within their armed forces.

Many of the child soldiers have been recruited forcibly, most in horrendous manner. The children are also required to perform many functions in conflict, ranging from preparation and serving of meals for their seniors, to fighting in front-line encounters. Some are singled out for intelligence work and others are ordered to kills civilians.

Mungoven observed that the factors behind the recruitment of children as soldiers are very complex. Often, poverty, disadvantage, discrimination and the lack of economic alternatives are the major causes. Some children are drawn into conflicts also because of their ethnic or tribal identity many also join armed groups because of their experince of abuse at the hands of the state, says the Coalition.

[Source: Michael A. Bengwayan, Earth Times News Service]



Child soldiers put on death sentence in the Congo

In a meeting with the foreign minister of the Democratic Republic of Congo on 2nd May 2001, She Okitundu of Human Rights Watch urged the Government to spare the lives of four children aged between 14 and 16 years of age at the time of their arrest and death sentence. The execution of individuals for crimes committed below age eighteen violates the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child - both international human rights treaties to which Congo is a party. Despite a call for demobilisation of child soldiers and their reintegration into civil society in June 2000, Congo still has approximately 12,000 child soldiers according to the United Nations Children' Fund.

Source: Human Rights Watch
http://www.hrw.org/press/2001/05/congo0502.htm

Child labour update

GLOBAL CAMPAIGN TO STOP CHILD LABOUR

As part of its new global campaign to eliminate child labour, the Brussels-based International Confederation of Free Trade Unions (ICFTU) and International Trade Secretariats (ITS) has pledged to pursue activities and urge multinational enterprises (MNE) to assume responsibility to stop child labour. The two-year campaign involves the trade union movement and like-minded non-governmental organisations. In a globally-circulated petition, employers (including MNEs) are urged to stop hiring children and to take the children who are presently working out of work, rehabilitate them and bring them to school. The petition will be presented during the UN Special Session on the Rights of the Child in September 2001.

The international trade union movement is seeking to make the elimination of child labour a part of the wider effort to promote corporate social responsibility among MNEs and to link the elimination of child labour to the observance of fundamental rights at work.

"The only guarantee to end the use of child labour is if workers themselves can ensure through trade union organisations that proper practices and conditions prevail day in and day out" says Bill Jordan, ICFTU General Secretary, "and this requires recognition of the fundamental right to organise and engage in collective bargaining".

There are now nine pioneering framework agreements between International Trade Secretariats and multinational enterprises. All of these agreements include provisions to ban the use of child labour linked with the observance of other fundamental workers' rights, including freedom of association and the right to collective bargaining. In the coming months, the ICFTU in close co-operation with the International Trade Union Secretariats, will launch more specific action plans at national, regional and international level.

More information about the Global Campaign including a direct link to the petition, is available on the ICFTU web-site at: **http://www.icftu.org** (Click on child labour).

FIJI: INSTABILITY DRIVING CHILDREN TO DRUG TRADE, PROSTITUTION

According to the Save the Children Fund in Fiji, the continuing political and economic instability in the country has led to a lot more children working as drug-traffickers or prostitutes. Concern over the increasing number of children involved in drug trafficking was sparked by a recent bust of three schoolchildren caught selling drugs in an amusement centre in Labasa. Early this month the Fiji Women's Crisis Centre reported an increase in young Indo-Fijian girls working as prostitutes in urban centres. Irshad Ali, the national manager for the Save the Children Fund in Fiji, says there is a growing trend among families caught in the poverty trap to send their families out onto the streets. Given the instability in Fiji, he expects a steady increase in the exploitation of children.

550,000 CHILDREN VICTIMS OF TRAFFICKERS IN CAMEROON: UNICEF

An estimated 550,000 children fall prey to trafficking rings or are subjected to hard labour in Cameroon alone, Jean Michel Ndiagne, a UNICEF official in Yaounde, said highlighting the problem of child slavery in west Africa. The figures are based on an ILO study carried out last year. Children become victims after their desperately poor parents forsake them for payments ranging from 10,000 CFA francs ($13.5) to 15,000 CFA francs, to agents who promise to educate them and get them jobs to earn a livelihood. These children eventually end up working for exploitative farmers in Gabon, Cameroon, Nigeria and Ivory Coast. Sometimes, they start out by being given paltry sums of money, then end up as slaves, forced to pay for their food and lodging or going totally unpaid.

'SHIKSHA YATRA' (PILGRIMAGE FOR EDUCATION)

According to UNICEF, India has from 75 to 90 million child workers under the age of 14, though other estimates put the figure at 100 million. A 'Shiksha Yatra' (Pilgrimage for Education) started from the southern state of Kerala, India on January 21, 2001, and is now winding its way up through the central part of the sub-continent with the aim of reaching the Indian capital on June 19 2001. The pilgrimage aims to generate public awareness in support of making education free and compulsory. The 'Shiksha Yatra' has been organised by the South Asia Coalition Against Child Servitude (SACCS) and the marchers comprise young people and children, some of whom were child labourers or

continued next page

street children, who have left their daily routines to show their support of this important issue.

The young marchers' message for those watching their progress is 'Roti, Khel, Padai, Pyar - Har Bacche Ka Adhikar' -'Food, Play, Learning and Love — Every Child's Right'. In the quest to raise public awareness, the pilgrimage is poised to cover the northern states of Uttar Pradesh and Rajasthan, where literacy levels and school attendance are particularly low.

Source:

http://www.learningchannel.org/cgi-bin/babel/showdoc.cgi?root=1470 and

http://www.oneworld.org/ips2/apr01/13_57_053.html

SOUTH AFRICA: SADC
Moves to Eliminate Child Labour

The quest to stop the most abusive forms of child exploitation has entered a new era with the implementation of the International Convention to Eliminate Child Labour after a speedy ratification by more than 40 countries, seven of them Southern African Development Community (SADC) member states.

Botswana, Malawi, Mauritius, Namibia, Seychelles, South Africa and Zimbabwe had ratified the convention by 16 January.

SADC Executive Secretary, Prega Ramsamy said the region was committed to the elimination of all forms of child labour. "Our member states are continuing to take various measures, including ratification of relevant conventions and the establishment of data banks to address the matter."

According to the ILO, 250 million children between the ages of five and 14 work in developing countries, and about 80 million of these are in Africa.

For more detailed information, contact:

Southern African Research and Documentation Centre, Phone and Fax: +263 4 73 8694
E-mail: sardc@sardc.net

http://www.sardc.net/editorial/sanf/2001/Iss6/Nf1.html

CHILD-SLAVE SHIP GOES HOME

A ship carrying 250 children believed to have been sold into slavery returned to Benin after Cameroon and Gabon refused to let the vessel dock. The children were probably taken from their families with false promises of cash. The MV Etireno, whose 10-day voyage around Africa's Gulf of Guinea was closely scrutinised, docked in the coastal city of Cotonou early last week, but the mystery surrounding it only deepened.

Puzzled authorities were trying to determine whether there ever were child slaves on the vessel or whether it was a case of mistaken identity. The 31 children who disembarked the Etireno in the company of 117 adults are being interviewed to determine whether they are victims of West Africa's booming child-slave trade.

The Nigerian-registered ship left Cotonou for Gabon at the end of March with a manifest that said it was carrying 139 passengers. It was refused entry at Gabon and at Cameroon because authorities in those countries believed the plan was to sell the children thought to be on board as unpaid domestic or plantation workers. Ramatou Baba Moussa, Benin's Social Protection Minister, said the Etireno had been confused with a second ship whose name and current location were unknown.

UNICEF workers in Benin, who drew international attention to the plight of the children they thought were on board fear that more than 200 others might have either been dumped overboard or offloaded secretly at one of the numerous small ports in neighbouring Nigeria. Only one child taken from the Nigerian-registered MV Etireno has been collected after it docked in the West African State of Benin. Thirty of the minors are still being cared for by relief agencies.

Despite international efforts, minors sold by their families and forced to work on plantations or as domestic servants are part of a lucrative modern slave trade business in West and Central Africa. In countries such as Benin, Togo and Mali, children are bought from poor families for as little as $14. They may be resold to plantations in Gabon and Cote d'Ivoire for as much as $340. Police in Benin say 86 children were stopped from leaving the country this year.

Regardless of how the drama unfolds, the Etireno voyage has focused attention on the flourishing trade in child labour in West Africa. According to UNICEF, each year, at least 200,000 children are entrapped by traffickers in West and Central Africa. Boys are typically sold to cotton and cocoa plantations for as much as $340 in countries such as Gabon and Ivory Coast. Girls often end up as domestic workers or prostitutes.

The next edition of Australian Children's Rights News will have a special focus on child labour both in Australia and overseas. Please contact DCI-A Vice President Judy Cashmore if you would like to make a contribution

UN Calls for Release of Abducted Children

The United Nations (UN) appealed on 8 May 2001 for the immediate release of 60 children abducted during an attack by suspected rebels near the Angolan capital Luanda, expressing shock and sadness at the mass kidnapping. The UN Children's Fund and UN Humanitarian Coordinator in Angola also condemned the killing of four humanitarian workers, as well as a number of civilians in the same attack near the town of Caxito at the weekend.
State television reported on Monday that Unita rebels killed about 100 people, mainly civilians, in an attack on Saturday in Caxito, just 60 kilometres (35 miles) north of Luanda, with another 100 people missing. The kidnapped children, aged 10 to 18, were taken from "Children's Town", a home for more than 100 children run by an NGO outside the town. One Angolan teacher was also abducted, according to the UN.

UNICEF and the Office for the Co-ordination of Humanitarian Affairs stated that currently there is no information about the welfare or whereabouts of the children and their teacher. Source: http://allafrica.com/stories/200105090112.html

Publications

A new report published by the **UNICEF's Innocenti Research Centre** says millions of children, mostly girls, suffer from the practice of child marriage. The report discusses why early marriage continues, and may even be on the rise among extremely poor populations.

For more information:
Angela Hawke - (39 055) 203 3238, e-mail: ahawke@unicef.org
Shima Islam - (212) 824 6949, e-mail: sislam@unicef.org
Mitchie Topper - (212) 303 7910, e-mail: mtopper@unicef.org. Or visit: **www.unicef-icdc.org/presscentre/newsroom**

Learning to Live: Monitoring and Evaluating HIV/AIDS Programmes for Young People

This is a practical guide to developing, monitoring and evaluating practice in HIV/AIDS-related programmes for young people, based on the experiences of projects around the world.

Available from:
Save the Children Publications
C/o Plymbridge Distributors Ltd
Estover Road, Estover, Plymouth, PL6 7PY. UK
Tel:+ 44 01752 202301
Email: orders@plymbridge.com
Price: £12.95 plus p&p
Ref: 220pp 2000 ISBN 1 84187 035 8

Friends are Forever

By FORWARD (Foundation for Women's Health Research and Development).

This book discusses the issues surrounding Female Genital Mutilation (FGM) and young girls in the United Kingdom. It explores how teenagers react as the issues surrounding FGM confront them and aims to create awareness of the rights of young women to their bodily integrity, and the right to choose whether they wish to retain FGM as a part of their culture. Price: £8
For more details contact:
Faith Mwangi-Powell, FORWARD
6th Floor, 50 Eastbourne Terrace
London, W2 6LX England
Tel: + 44 20 7725 2606; Fax: +44 20 7725 2796
Email: forward@dircon.co.uk
http://www.forward.dircon.co.uk/

Do you know about the new ILO Worst Forms of Child Labour Convention?

A 24 page publication that provides an introduction to the ILO Worst Forms of Child Labour Convention no 182, and explains its significance for Civil Society Organisations, in terms of the new opportunities it creates. Hard copies are available from Pins Brown at: p.brown@antislavery.org
or by mail or fax from:
Anti-Slavery International
Thomas Clarkson House, The Stableyard
Bloomsgrove Road, London SW9 9TL.
fax: +44 (0) 20 7738 4110
tel: 00 44 (0)20 7501 8928
website: **www.antislavery.org**

The **Children's Issues Centre** of New Zealand offers a range of publications including their *Article Collections* which are collections of papers on children's issues divided into several themes, including:

Children's Rights (1999 3rd Child and Family Policy Conference, *Children's Rights: National and International Perspectives* Collection) ($30)
Children's Voices Collection ($30)
Divorce & Separation Collection ($25)
Family Collection ($30)
Health Collection ($25)
Contact: Children's Issues Centre
Manawa Rangahau Tamariki
University of Otago
P.O. Box 56, Dunedin, New Zealand
Phone: +64 3 479 5038
Fax: +64 3 479 5039
Email: cic@otago.ac.nz
Website: **http://www.otago.ac.nz/CIC/CIC.html**

'Children's Voice', March 2001
Child Welfare League of America, Child Maltreatment and Juvenile Delinquency Edition. To obtain the magazine:
PMDS, PO Box 2019, Annapolis Junction MD 20701-2019,
Phone: 1-800-407-6273 or 1-301-617-7825, Fax: 1-301-206-9789, E-mail: cwla@pmds.com, Website: **www.cwla.org/pubs.**
Overseas subscriptions: $55 institutional, $40 individual* Single copies: $13. (US funds) US
*Individual subscriptions must be paid for with a personal cheque or credit card.

Children Bereaved by Suicide: Information for parents and other caregivers.
By Alana Douglas and Kerrie Noonan.
Written as part of the Children Bereaved by Suicide Project and developed with the help of children and families bereaved by suicide, the booklet uses practical and easy to understand language, and emphasises the importance of talking with children about suicide and including them in rituals such as the viewing and funeral. It also provides suggestions about how to do this.

The booklet is free to individuals and costs $10.00 for 5 and $18.00 for 10 copies for organisations. For a free copy and/or further information about the project, contact: Kerrie Noonan
Grief Counsellor- Psychologist
Liverpool Community Health Centre
PO Box 3084, Liverpool NSW 2170
ph + 61 2 98284844; fax + 61 2 98284800
email: kerrie.noonan@swsahs.nsw.gov.au

Youth Justice - The National Association for Youth Justice (UK) in partnership with Russell House Publishing, are about to launch a major new journal entitled 'Youth Justice' which will be of interest to all those interested in youth justice law, policy and practice. Three issues per year will be published and the first issue is due in July 2001.

The Editorial Board welcomes contributions from across the international youth justice community.

For subscription details visit the NAYJ website at **www.nayj.org.uk** or email Russell House Publishing at help@russellhouse.co.uk
Contact: Barry Goldson, Editor - *Youth Justice*
Department of Sociology, Social Policy and Social Work Studies,The University of Liverpool
Eleanor Rathbone Building, Bedford Street South
Liverpool L69 7ZA
Direct tel and voicemail: + 44 0151 794 2977
Email:

USA: Keeping Children Safe - OJJDP's Child Protection Division
This Bulletin describes the Child Protection Division (CPD) and its efforts to safeguard children by supporting research and programs on child victimization and exposure to violence; providing information, training, and technical assistance to State, local, and community-based agencies;and developing and demonstrating effective child protection initiatives. The Bulletin also discusses the rationale for OJJDP's work in the areas of missing and exploited children and child maltreatment and describes the scope of the division's activities.
See the full report at
http://www.ncjrs.org/html/ojjdp/jjbul2001_3_2/contents.html

KABISSA-FAHAMU NEWSLETTER 19 (May 1, 2001): Features include:
- DRC: Children Condemned to Death Penalty.
- National Survey of Human Rights Education in USA - Preliminary Findings
- Girls for Sale: Building a Coalition to Fight Trafficking in Nigeria
To subscribe to this list visit -
http://www.kabissa.org/kfn/subscribe.php

Choose With Care- Building Child Safe Organisations information and training programme
Recently launched by ECPAT Australia this comprehensive handbook and video package provide organisations with a wide range of practical strategies to make their organisations safer for children in their care. The main focus is to prevent child sexual abuse in organisations, but it also looks at strategies to minimise other abuse and harm to children. In addition, ECPAT Australia are conducting a range of 'Choose with Care' workshops for building child safe organisations.
Contact: ECPAT Australia at **ecpat@ecpat.org**
Tel: +61 3 96458911; Fax: +61 3 9645 8922

Hague Appeal for Peace booklet
Focuses on the campaigns, peace and justice issues that are most relevant to young people today, including youth in conflict, child soldiers, disarmament, education for peace, international law, human rights and economic justice.
For more information and to order a copy ($5/booklet) contact:Olivia Martin -Olivia@ipb.org.

Making the Most of the Media: Tools for Human Rights Groups Worldwide
Published by the Center for Sustainable Human Rights Action (CeSHRA)
Based on the experiences of human rights activists and journalists from around the world, this guide addresses strategies for building and maintaining long-term, productive relationships with the mass media. Price: $20.00 (although discounts are available). To order, visit CeSHRA's website at **http://www.ceshra.org**

More than Bums on Seats: Making Schools Responsive to Children's Needs
The factors that structure educational disadvantage and how can they be overcome through international agencies working with governments, non-government organisations and communities, are the central concerns of this review which synthesises the findings of a series of education projects by Save the Children UK.
Contact: Shireen Miller or Marion Molteno, Save the Children UK,
17 Grove Lane, London SE5 8RD, UK.
Tel:00 44 (0)207 703 5400; Fax: 00 44(0)207 793 7626.
Email: s.miller@scfuk.org.uk or m.molteno@scfuk.org.uk, or see **http://www.id21.org/education/e2mm1g1.html**

The Sterilisation of Girls and Young Women: Issues and Progress
by Susan Brady, John Briton and Sonia Grover.
This report, published by the Human Rights and Equal Opportunity Commission, assesses progress since the 1997 report on the same issue, reviews statistical and anecdotal data on unlawful sterilisations, the support available to girls and young women and their parents concerned about menstruation and fertility, and discusses simplifying the legal process to make it more accessible and less adversarial. For further information: HREOC (02) 9284 9880
The report is available on the Commission's website at: **www.humanrights.gov.au/disability_rights/sterilisation/index.html**

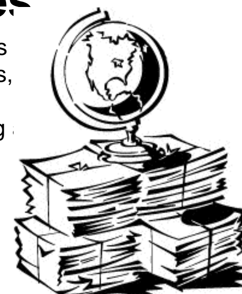
Face the Facts
Revised edition published by the Human Rights and Equal Opportunity Commission

A plain language set of questions and answers on immigration, refugees and Indigenous people, the revised publication now covers the removal of Indigenous children from their families, the amended Native Title Act and other recent developments in native title as well as up-to-date information on 'boat-people' and the immigration program. The re-launch coincides with the preparations for the UN World Conference Against Racism, to be held in South Africa from August 31 to September 7. Available at: **www.humanrights.gov.au/social_justice/face_the_facts.pdf** Or call **(02) 9284 9880**

UNICEF's Innocenti Research Centre has recently published several research papers which would be of interest to child protection organisations and others in Australia. They are:
Child Deaths by Injury in Rich Nations [ISSN 1605-7317 ISBN 8885401716]
Child Poverty Dynamics in Seven Nations Working Paper 78 [ISSN 1014-7837] which is also published under the same title as Social Policy Research Centre Discussion Paper No 108 University of NSW, Sydney. It is linked with: **How Effective is the British Government's Attempt to Reduce Child Poverty** Working Paper 77 [ISSN 1014-7837].
From Security to Uncertainty: The Impact of Economic Change on Child Welfare in Central Asia Working Paper 76 [ISSN 1014-7837].
Integrating Economic and Social Policy: Good Practices from High-Achieving Countries Working Paper 80 [ISSN 1014-7837].
What is the effect of child labour on learning achievement? Evidence from Ghana Working Paper 79 [ISSN 1014-7837].
In addition, the Innocenti Research Centre has published its annual review 1999-2000 and its Publications Catalogue 2000-2001
For more information, and some texts, access **www.unicef-icdc.org** For how to order, e-mail: **orders.florence@unicef.org**
For general information, **fax: + 39 055 244 817** e-mail: florence@unicef.org
[Source UNITY No. 247 23rd march, 2001]

Materials for the Study of Childhood
This guide, published by Princeton University integrates existing perspectives on childhood, and concentrates on childhood as a social phenomenon in its own right. This document should appeal to students and non-specialists who want to learn what recent social-scientifically oriented work in North America and elsewhere on children and childhood has to offer them; advocates and policy-makers in child-oriented fields; teachers; and researchers.
Available at **http://www.princeton.edu/~children**
For more information, contact Princeton University, Sociology Department. Email: crcw@opr.princeton.edu.

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 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 third edition of 2001. Contributions of between 700 and 1500 words are preferred and should be e-mailed with full author details to: judycash@nsw.bigpond.net.au

The next edition will contain a special focus on child labour.

Suggested graphics or photos to accompany the article are most welcome.

The closing date for receipt of material is 1 August 2001 however authors should advise the editors as soon as possible if they are planning to submit.

If you have an idea which you would like to discuss, please phone Judy Cashmore 02 9880 2286

Articles published in Australian Children's Rights News may also be placed on the DCI-Australia website: http://members.dynamite.com.au/dci-aust/.

Conferences

18-22 August 2001
2nd International Conference on Children's Rights in Education: Creating a Culture of Human Rights, Democracy and Peace in the New Millenium
The Institute for Child Rights and Development (ICRD), Centre for Global Studies, University of Victoria and Child Rights Education-International. Victoria, British Columbia, Canada

The Conference will provide a structured exchange by international and national experts of information and perspectives on theory, research and practices relating to education and children's rights. 6 major themes have been selected for emphasis: creating human rights respecting learning communities; education and child protection (e.g., sexual exploitation, armed conflict, HIV/AIDS, school and domestic violence, child labor); alternative meanings and forms of education; the electronic information age; education and culture (economic, social, legislative, and values dimensions), and child participation. Education and children's rights conditions in emerging nations will be given special attention.

An international faculty of child rights experts will present a 3 day pre-conference course from August 15 to 18 for those who wish to develop a basic foundation of knowledge about children's rights and its relevance for their present or future professional life. It may be possible to take this course for graduate college credit if so desired.

Further information and registration procedures:
www.childrightseducation.org.

Or contact: Natasha Blanchet-Cohen, Coordinator, ICRD, Centre for Global Studies, University of Victoria, B.C., Canada V8W 2Y2;
tel. (250) 472-4762; email: indcrc@uvic.ca

24-27 August 2001

ISPCAN European Conference on Child Abuse & Neglect
Istanbul, Turkey
Theme: improve child protection policies and practices.
Contact: zeytinoglu@superonline.com or congress@magister.com.tr

28 August – 1 September 2001
World Conference against Racism
Durban, South Africa
Contact: Laurie Wiseberg lwiseberg.hchr@unog.ch

8-11 September, 2001

Children's Environmental Health II: A Global Forum forAction ("The Global Forum")
Washington, DC
The major event on environmental health in the year 2001, attracting public health specialists, medical practitioners, scientific researchers, government officials, policy makers, industry, advocacy groups and community-based organizations world-wide. The central focus of the Global Forum is the special vulnerability of children and how they are impacted by the environments in which they live, learn, work, and play. With over 700 delegates expected to attend, plus electronic satellites, the Global Forum will reach thousands of interested people around the world. A target had been set to have 50% of the delegates from developing nations, and every attempt will be made to ensure high-risk groups (e.g. minorities, indigenous people living in poverty) are well represented through the development of a scholarship fund.
For more information contact:
Elaine Ritchie at (613) 230-8838 ext 0 or via e-mail at eritchie@cich.
Website: **www.cich.ca/global.htm**

13-17 September 2001
ECPAT European Youth Meeting
Stockholm, Sweden
This meeting is a follow-up to the youth conference in Manila, Philippines
Contact: Jennie Nordin info@ecpatsweden.org

24-30 September 2001
ENYA Seminar: Combating Trafficking, Sexual Exploitation and Abuse of Children, Youth & Women
Romania or Poland (to be confirmed)
Contact: Cath Moss, ENYA cejenya@mbox.vol.cz

23-25 October 2001
Child Labour in South Asia Seminar
Jawaharlal Nehru University, New Delhi, India
Subject: extend the analytical, empirical & policy understanding and establish a region-wide framework for understanding & dealing with child labour.
Contact: G. K. Lieten, Ravi Srivastava & S.K. Thorat irewoc@pscw.uva.nl with a copy to lieten@pscw.uva.nl

19-22 November 2001
ISPCAN Regional Asia Pacific Conference on Child Abuse & Neglect
Bangkok, Thailand
Contact: ncyd@dordek.org

At the 4th National Infant, Child, Adolescent and Family Mental Health Association Conference, **AICAFMHA** announced that it would be co-sponsoring the 3rd International Conference on Child and Adolescent Mental Health to be held in Brisbane in June 2002.

Further preliminary information is available at:
http://www.aicafmha.net.au/conferences/brisbane2002/index.htm where you can also register your interest online to receive further information about the Conference. If you recently attended the 4th National Conference and didn't fill in your Evaluation Form you can complete it online at:
http://www.aicafmha.net.au/conferences/brisbane2001/conference_eval.htm.

27 November-2 December 2001
Children, Torture and Other Forms of Violence
Tampere, Finland
The World Organisation Against Torture (OMCT), in partnership with the Mannerheim League for Child Welfare, is organising this conference and would be very pleased to receive relevant papers which would contribute to the debate and could become background documents of the conference. We are particularly interested in receiving papers analysing the three main themes of the conference, viz.:

1. Definition of torture within the framework of the rights of the child
2. Absence of a specific UN mechanism to address violence against children.
3. International UN Study on Violence against Children

In addition to the three main themes, we would also welcome papers on specific subjects which we consider to be linked to our understanding of torture, which will be addressed in workshops:

- Prevention of torture and violence against children
- Juvenile justice system and child institutions
- The right to redress, reparation and compensation.
- Rehabilitation and reintegration of child victims
- Domestic violence, sexual violence and child trafficking related to it
- Child bonded labour, slavery and child trafficking related to it

Please note that the papers should be either in English, French or Spanish and should be e-mailed, posted or faxed by 31 August to: Roberta Cecchetti
Children's Rights Programme Manager
8, Rue du Vieux-Billiard - P.O. Box 21
1211 Geneva 8, Switzerland
Tel. +41-22-809 49 39; Fax +41-22-809 49 29
e-mail: rc@omct.org

Websites

MANY USEFUL LINKS ARE GIVEN IN THE DCI-AUSTRALIA WEBSITE - CHECK IT OUT!

http://ippfnet.ippf.org/pub/IPPF_YouthManifesto/sign1.asp

IPPF Youth Manifesto on Young People's Rights to Sexual and Reproductive Health Information Services.

In 1998 a group of young people under the age of 25 from around the world, wrote the IPPF Youth Manifesto which promotes young people's rights to sexual and reproductive health information and services, to participate and to feel good about themselves, their bodies and their sexuality. The International Planned Parenthood Federation (IPPF) is now launching a campaign to promote the Youth Manifesto and ensure that its messages are taken on board by policy makers, communities, parents and young people themselves. For further information contact: **youthmanifesto@ippf.org**

www.child-soldiers.org

The latest update from the Coalition to Stop the Use of Child Soldiers is now available on their website in the News and Updates section.
For more information: Rory Mungoven - Coordinator
Coalition to Stop the Use of Child Soldiers
Unit 20, Leroy House, 436 Essex Road, London N1 3QP
Tel: 44 20 7226 0606; Fax: 44 20 7226 0208
Email: info@child-soldiers.org

www.sn.apc.org/users/clc/children/index.htm

Information on the South African Children's Rights Project and selected articles that appear in Article 40, the quarterly newsletter of the Children's Rights Project of the Community Law Centre in South Africa. For those interested in the emerging juvenile justice system in South Africa, it aims to be an informative, local and current chronicle of legal developments, pilot projects and research.

www.defence-for-children.org

In recent months, Defence for Children International's Documentation Centre has been working on the creation and constant updating of a bibliographical database on Juvenile Justice material contained in the DCI Documentation Centre in Geneva. The database contains approximately 1100 entries.

www.enyaorg.cz/pstreetkids/streetkids.html

The e-mail discussion-list STREETKIDS has 600 members and provides regular information on juvenile justice issues. The list is an international ecumenical discussion forum and resources centre, open to current and former street children/youth; and those interested in promoting awareness of the harsh realities of street children/adolescents and other young people at risk. STREETKIDS is managed by the Ecumenical Network for Youth Action (ENYA). To subscribe, send a blank message to STREETKIDS. subscribe@yahoogroups.com.

www.focalpointngo.org

Details on objectives, background themes and selection criteria for NGOs and youth at the Yokohama Second World Congress have been placed on the NGO Group/Focal Point website. The site also contains documents which may be useful in preparing for Yokohama.The official Congress website is hosted by the NGO Group Focal Point.
www.focalpointngo.org/yokohama contains all official Congress documents such as: General Congress information; background theme papers; reference/links to the Stockholm Agenda for Action; the Convention on the Rights of the Child (CRC); the Optional Protocol to the CRC on sale of children child prostitution and child pornography Inter-governmental agencies queries: UNICEF: **gbalagopal@unicef.org**

Private sector and civil society queries to: NGO Group for the CRC: **info@focalpointngo.org** or ECPAT: **ecpatbkk@ksc15th.com**

http://www.diplomaticnet.com

A useful site with details of Foreign Offices, Embassies, Governments addresses, and International Politics.

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DCI members and affiliates add to the action!

More Websites!

http://www.gmfc.org

The Action Matrix of the Global Movement for Children is Save the Children's primary contribution to the Global Movement for Children - an effort to build an enlarged and energised global constituency for children. It is intended to be a participatory tool which frames the process of developing the demands of the Global Movement for Children. However, for the first few weeks of its existence, it will not be promoted to the general public. There is a need to ensure that by the time the public arrives at the Matrix there is a solid foundation of contributions from people who are more familiar with the issues. This content should, in addition to its value in its own right, act as guidance for the public when they do arrive.

In order to be to be one of the early contributors to the Action Matrix process, go to the website listed above. There you will find background on the Global Movement in general. If you have difficulty in getting in - or comments on ways in which the Action Matrix could be made clearer or improved, we would like to hear them - please mail them to **actionmatrix@hotmail.com**.

http://www.crin.org

CRIN Special Session on Children Themedesk. This has a special section devoted to information sharing regarding the preparations in the run-up to and during the Special Session on Children, where you will find the latest news, updates, events, documentation and any other information.

http://www.crin.org/NGOGroupforCRC/index.asp

The Liaison Unit of the NGO Group for the Commitee on the Rights of the Child has completed a checklist for national child rights coalitions in the lead up to the third Preparatory Committee meeting. This includes suggestions for lobbying the government, raising public awareness, and working at an international level. This checklist is available in English, French and Spanish. For more information contact Denise Allen at **dallen@pingnet.ch**

www.endcorporalpunishment.org

Global Initiative to End Corporal Punishment

Children have the same basic human right as adults to be protected from any form of violence, including being hit and humiliated: this is the key message of the new global initiative which aims to speed up prohibition of all corporal punishment of children.

http://www.crin.org/resources/infoDetail.asp?ID=1610&flag=report

The South Asia Regional consultation on Sexual Exploitation of Children was held in March, the context the burgeoning world wide problem of commercial exploitation of children, child trafficking and child pornography and its attendant complex issues that societies in every nation, region and sub-region have to engage to deal effectively and appropriately with them. This is their report.