



CONFERENCE

INTERNATIONAL JUSTICE FOR CHILDREN

STRASBOURG, 17-18 SEPTEMBER 2007

Conference report
prepared by the Secretariat

The purpose of this high level conference was threefold: to examine the functioning of international monitoring mechanisms dealing with children rights, to examine children's access to these mechanisms, identifying obstacles and ways to remove them, and to discuss the principles of child friendly justice at international level. Around 90 participants attended the conference, including representatives from governments, NGOs and international organisations as well as judges, lawyers, researchers and ombudspersons. This report presents their findings and recommendations.

I. FINDINGS

1. International standards and children's rights

Since the Universal Declaration of Human Rights was adopted in 1948, over 60 United Nations treaties addressing concerns such as slavery, the administration of justice, genocide, the status of refugees and minorities, and human rights have been elaborated. Each treaty is grounded in concepts of non-discrimination, equality and recognition of the dignity of each and every individual. It is clear from these principles that the rights and protection measures they contain apply to all, including children. Children are therefore entitled to the rights and protections set out in the UN Convention on the Rights of the Child (CRC) as well as the eight other UN human rights treaties.

At regional level, children's rights are also protected by regional human rights treaties, specific treaties addressing children's rights in general and/or treaties protecting children from some forms of violence. In Europe, the Council of Europe has developed an impressive and efficient arsenal of standards, which include the European

Convention on Human Rights, the European Social Charter, the European Convention on the Exercise of Children's Rights and, most recently, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

The administration of justice is inherently linked with the implementation of human rights standards, and the UN Convention on the Rights of the Child has set up an important platform for the advancement of children's rights. The convention is a comprehensive international charter of children's rights that addresses issues related to critical areas of children's lives: child survival and development; education and health; family life; leisure and cultural activities; protection from abuse, violence and exploitation; and participation in decision-making in the family, in schools and in the community as a whole. The progress that has been made over the last few years in standard setting has been largely due to the entry into force of the CRC. Its principles and provisions are increasingly taken into account by international and regional human rights mechanisms and bodies. In most cases, these positive changes have had an impact on children's legal standing vis-à-vis national justice systems.

The CRC also addresses justice related questions. Very often the tendency is to perceive this dimension as reduced to criminal justice issues. However, the legal protection of children in the justice system, together with children's right to participate in proceedings, has a scope that reaches far beyond the criminal sphere. The justice system is, in fact, instrumental to safeguard inter alia, a child's right to: have an identity; not be separated from his or her parents; maintain personal and regular contacts with both parents, even when they or the child live in different countries; have a say in cases of adoption; have requests to enter or leave a country for purposes of family reunification dealt with in a positive, humane and expeditious manner; be protected against unlawful or arbitrary interferences with the child's privacy, family, home and correspondence; be protected from all forms of violence, abuse and exploitation, as well as from discrimination, including in the context of the enjoyment of economic, social and cultural rights. With this far-reaching approach, the justice system and, more broadly, the legal protection of the child, mirrors and reaffirms the inter-relationship of children's rights, and is inherently linked with their effective safeguard.

In Europe, the European Convention on the Exercise of Children's Rights contributes to the implementation of the CRC in the context of family proceedings. The Council of Europe convention grants procedural rights to children and facilitates the exercise of these rights by ensuring that children are, themselves or through other persons or bodies, informed and allowed to participate in proceedings affecting them before a judicial authority.

2. Children's access to international justice

If universal and regional standards are to be meaningful for children, they must first be accepted and implemented by the different countries. All major human rights treaties have set up monitoring mechanisms to assess implementation in individual countries. Monitoring can take different forms. It can be based on government reports and/or allow for individual and/or collective complaints, petitions, enquires or communications.

An assessment of how the various monitoring systems function can identify the advantages and disadvantages of each. For example, report-based monitoring can lead to an in-depth review of the situation in a given country and foster dialogue amongst stakeholders. However, the conference participants felt that the results of this kind of monitoring rarely reached the public and consequently governments were less pressured to ensure proper follow-up.

Monitoring based on individual complaints such as established by the European Convention on Human Rights has the advantage of referring to a specific situation which is, in principle, easier to remedy and more likely to receive media coverage and be understood by the general public. However, the complainant must be a direct victim of a human rights violation and have exhausted all domestic remedies. The monitoring system allowing for collective complaints, such as that established by the Protocol to the European Social Charter, was found to be particularly interesting for the promotion of children's rights, in that it presented all the advantages of the individual complaints mechanisms and none of its disadvantages. Several participants regretted the absence of a complaints mechanism for the CRC and referred to a proposal presented by a group of international NGOs to elaborate an optional protocol to the CRC allowing for such complaints.

Children's rights have gained in global visibility through the almost universal ratification of the CRC and through the commitment of governments and civil society to its reporting process, which makes states internationally accountable for their response to the full range of children's rights.

Treaty bodies for international and regional instruments, which cover the rights of "everyone", including children, have paid increasing attention to children's rights. And human rights mechanisms, including regional ones such as the European Court of Human Rights and the Inter-American Commission and Court, have become more sensitive to children's rights, often using the CRC as a reference point.

The *United Nations Secretary-General's study on violence against children* underlines that children in every country of the world suffer widespread and often severe breaches of the full range of their rights – both civil and political, and economic, social and cultural.

In many cases, children do not have adequate or realistic remedies for breaches of their rights at national level. So seeking remedies through the use of international and regional human rights mechanisms is certainly growing, but it is not yet common or well-developed.

Few of the complaints dealt with by international and regional human rights mechanisms were initiated by children. It seems likely that most if not all of the cases in which children are named as applicants were in fact initiated and pursued by adults and that the named children had very little or no involvement in the procedure.

Many of the applications have been submitted by parents and children together. Parents are often their children's strongest advocates – but given children's initially dependent status and traditional attitudes which tend to see children as property rather than as individual people and rights holders, parents can also breach, directly or indirectly, children's rights. Parents' and children's rights can be in direct conflict. And parents – for example those involved in separation or divorce – may seek to interpret their children's rights to pursue their own interests, rather than their children's. Monitoring is needed to ensure that applications apparently submitted by or on behalf of children are in fact pursuing their best interests.

Few children know of the existence of human rights mechanisms, let alone how to use them to pursue a remedy for breaches of their rights, and it goes without saying that babies and very young children will not on their own initiative submit applications to them, however accessible and child-friendly they become.

In some cases, NGOs and human rights institutions or individuals such as human rights activists or lawyers have identified particular widespread breaches of children's rights and also identified mechanisms that could be used strategically to pursue remedies. They then need to find individual child victims who are willing to have an application pursued on their behalf, and seek their consent.

It should be emphasised that it is not only cases initiated by children, or on their behalf, that are relevant to children's rights. Many others submitted by adults to the monitoring mechanisms described in this paper and the decisions or judgments which have followed are about the interpretation and implementation of universal rights, which may also be equally relevant to children.

3. The principles of a child friendly justice

In the area of justice administration, as in all other areas, the general principles of the Convention on the Rights of the Child provide a decisive, normative and ethical approach to deal with children and ensure the safeguard of their rights:

- Non-discrimination is instrumental to avoid the marginalisation, stigmatisation or punishment of any child for reasons of birth, gender, economic status, race or any other grounds;
- the best interests of the child remains a primary consideration to guide any legislative, administrative or judicial decisions and to help in addressing any conflict of interests concerning the child;
- the right of children to life, survival and development should be clearly stated in legislation and become a primary concern for all policies affecting children ;
- child participation and the respect for the views of the child are a requirement in all decisions affecting the child, and also a corollary of the consideration of the child as a subject of rights.

The general principles of the CRC constitute core indicators with which to assess the extent that a justice system (whether national or international) is child-friendly and effective in the safeguard and fulfilment of children's rights. These general principles are relevant in civil and criminal matters, in immigration and refugee law when fundamental freedoms or economic or social rights are at stake, and they are valid for both national and international justice systems. Their growing influence reflects the incremental changes that are taking place in Europe and beyond, but they also remind us of how far we still have to go before we attain the ideals set forth in the convention.

In other regions, and indeed in Europe, as a recent Unicef study in the CEE/CIS region also confirms, children are still criminalised for being homeless, for running away or living on the streets. Vulnerable and marginalised children face added stigmatisation and violence during interrogation by police and while in detention. Children at risk are taken into custody and placed in institutional care. The conference participants expressed significant concern over the amount of children held in detention centres and the non-respect of international standards of juvenile justice. They therefore welcomed the Council of Europe work on a draft recommendation on European rules for juvenile offenders deprived of their liberty or subject to community sanctions or measures.

There is a great deal of inconsistency in the weight accorded to children's views. With regard to proceedings affecting children, we continue to be confronted with contrasting legal and procedural solutions in the same country. On the one hand, we find proceedings where the views of a child may be *unnecessary* to establish that child's identity – name, nationality or access to origins – and on the other, we find certain criminal proceedings where a child's participation may be seen as instrumental and a "must". Further, neglecting children's opinions in asylum-seeking decisions and failing

to provide child-friendly procedures and mechanisms that enable children to challenge any violation of their rights runs counter to children's best interests.

Child-friendly procedures are also lacking in international and regional human rights complaints mechanisms. As not much effort has been made to inform professionals working with and for children how these mechanisms function, they are of little help to children seeking remedy. Developing child-friendly materials and procedures would certainly contribute to improving children's access to international justice.

The participants agreed that, even in those countries with a considerable body of procedural law, enforcement of legislation has often remained weak.

II. Recommendations

The conference participants drew up recommendations that were addressed mainly to governments and international organisations.

1. Recommendations to governments

The participants agreed that governments had the primary responsibility of promoting respect for children's rights and children's access to justice. Governments should:

- speedily ratify and effectively implement universal and regional human rights standards relevant to the realisation of children's rights;
- provide children with child-friendly information and with education on their rights, including existing national and international remedies;
- ensure that children have access to legal advice and free legal aid;
- ensure that information and training on children's rights is available to all those involved in their care and welfare, including social workers, foster-parents, teachers, and the police;
- provide for specific training of lawyers, judges and law enforcement officials in contact with children. On the job training could be undertaken, and become a component of more specialised accreditation schemes. Any training must include the essential elements of child development and family dynamics;

- recognise and support the efforts of ombudspersons, professional networks and NGOs in their task of delivering information to children about their rights and how to uphold them;
- guarantee children unrestricted access to human rights mechanisms. This involves looking at issues such as the need for parental consent and the legal capacity and representation of children in proceedings. When others act on behalf of children, there should be a mechanism to ensure that the application is being pursued in the child's best interests and, where the child has capacity, with his or her consent. It should also be possible for groups of children, and child- and youth-led organisations, to make complaints;
- develop and apply the principles of child friendly justice, adapting both civil and criminal procedure to accommodate the needs of children, either as applicants, perpetrators, witnesses or victims;
- take urgent steps to find alternatives to detaining juveniles whenever possible, using detention only as a last resort and for the shortest possible time for older children involved in the most serious cases. In event that detention is necessary, states must apply existing and forthcoming international standards and offer appropriate conditions of detention, including being separate from adults.

The participants discussed a set of detailed and concrete measures to be taken by states if they have not already done so. They pointed out that some individual states had already taken significant steps to improve children's access to justice, and recommended an exchange of information on this topic. Participants felt there was a need for a **comprehensive set of guidelines for child friendly justice** applicable to administrative, criminal and civil proceedings and encouraged the Council of Europe to work on this issue.

2. Recommendations addressed to international organisations and monitoring bodies

Many international organisations (such as the Council of Europe and the Office of the High Commissioner for Human Rights) provide secretariat services to existing monitoring bodies and/or are instrumental in the development of international standards and co-operation. Monitoring bodies, through the development of internal rules and the interpretation of treaties, can make a crucial contribution to the effective protection of children's rights.

International organisations and/or monitoring bodies should:

- use relevant international standards, in particular the Convention on the Rights of the Child as a reference;

- ensure that monitoring mechanisms are genuinely accessible to children. Each mechanism should review all aspects of their procedures to ensure that this is the case. In particular:
 - information about the mechanism should be disseminated in child-friendly language;
 - any “hurdles” in applying should be carefully reviewed from a children’s perspective. For example, the common condition that applicants must have exhausted domestic remedies should be applied in a flexible way in the case of children: mechanisms should be very careful not to reject applications unless they are fully confident that domestic remedies are effective and genuinely available to children. Similarly, time limits on making an application should be treated flexibly in the case of child applicants who might not have had access to information on the mechanism;
 - if the procedure includes a hearing, review all aspects of it to ensure it is child-sensitive;
- consider fast tracking applications from or on behalf of children. Decisions should be arrived at as rapidly as possible. Any process for enforcement of the decision should also be speedy;
- consider appointing a rapporteur for children’s affairs, with the responsibility of monitoring children’s cases, ensuring that best practice is applied to them and producing an annual report;
- establish a special unit within the secretariat likely to advise colleagues and members of the monitoring bodies dealing with children’s rights-related cases. This unit should also be able to assist in directing children in need of legal advice and assistance to national instances having experience and expertise in dealing with litigation involving children and their rights;
- make sure that those involved in the mechanisms, such as decision-makers or judges and secretariat or support staff, receive special training. Training should also be available for lawyers and others representing children before the mechanism;
- improve access of professionals, the general public and children to information concerning the monitoring bodies and notably their decisions;
- continue promoting and developing standards for a child friendly justice.

As concerns the European Convention on Human Rights, the participants suggested the following measures:

- the publication and wide dissemination of a child-friendly version of the European Convention on Human Rights;
- the appointment of a judge rapporteur on children's rights, responsible for monitoring children's cases, advising colleagues on international standards and ensuring that best practice is applied to the cases before the Court;
- the appointment of a focal point for child-related cases within the Court registry, responsible for fast tracking such cases, gathering documentation, advising colleagues and assisting the judge rapporteur;
- the maintenance of a data base of Court cases concerning children's rights.

The conference participants welcomed this opportunity to discuss the issue of children's access to international justice and congratulated the Council of Europe for the initiative. They agreed on the need to increase collaboration amongst international human rights bodies and mechanisms with a view to enhancing synergies between their mandates and enabling a regular exchange of information to advance children's rights. More particularly, the Council of Europe should continue to act as the regional forum in Europe to support and implement global action in favour of children's rights, including implementation of the recommendations contained in the *United Nations Secretary-General's study on violence against children*.

The participants welcomed the Council of Europe's intention to suggest concrete activities as a follow-up to the conference and asked that the conclusions be brought to the attention of the next Conference of European Ministers of Justice (Lanzarote, 25-26 October 2007).

Strasbourg, 10 October 2007