

World Congress on Family Law and Children's Rights

Cape Town March 2005

David Hodson

In March 2005 in Cape Town, South Africa, approximately 700 lawyers, judges, social policy advisers and administrators, charity workers and other professionals committed to the rights of children and family members gathered at the 4th World Congress on Family Law and Children's Rights. It marked the 15th anniversary of the most widely ratified human rights convention of all time, the United Nations Convention of the Rights of the Child (UNCROC).

Although real progress has been made since the Convention was adopted, children are still dying in appalling numbers from preventable diseases such as malaria. There are some 300,000 child soldiers, many of whom have been trafficked. Over 1 million children are exploited each year in the global sex industry. Children are bought and sold by organised crime rings and moved around the world as slaves. More than 14 million are now orphaned by HIV/AIDS; many act as family heads and carry the disease themselves. Girls make up 65% of the 121 million children in the world who are not in school. Many million children live in poverty and hunger.

These were the issues brought starkly to the attention of delegates at the opening session. There was good representation from around the world but a particularly good turn out from the African nations, for which the relative cost of attendance was very high. Sadly there was a noticeably low number of US delegates, especially given the number of lawyers in that country and their wealth in terms of ability to travel, and especially given the influence of, and judgemental stance adopted by, the US government on other nations.

Madam Graca Machel, wife of Nelson Mandela and who has worked in Mozambique and across Africa for the UN on the impact of armed conflict on children, gave the opening address. Her message was a simple one. Don't hesitate to do what you can as an individual to protect the rights of children no matter how small that act might seem. Do it now. Don't get overwhelmed by the vastness of the task – everyone can make a difference where they are and by the attitudes they exhibit in their work and life.

She echoed the words of Nelson Mandela the previous evening who said: "We are all affected by the Aids pandemic. But more than others this epidemic carries the face of women. For it is women who bear the most significant burden of HIV and Aids. For every woman and girl violently attacked, we reduce our humanity. For every woman forced into unprotected sex because men demand this, we destroy dignity and pride. Every woman who has to sell her life for sex we condemn to a lifetime in prison. For every moment we remain silent, we conspire against our women. For every woman infected by HIV, we destroy a generation. We must be honest and open about the power relationships between men and women in our society, and we must help build a more enabling and supportive environment that puts the role of women centre stage in this struggle. Each one of us - sister and brother, mother and father, teacher and student, priest and parishioner, manager and worker, Presidents and Prime Ministers, must add a voice to this call for action. Not tomorrow, or the next week - but now. You can help break the silence. Talk about HIV and Aids. You can urge your leaders to do more and act now. You can show more care and compassion. You can protect our women and the next generation."

Mary Robinson, Chair of The Ethical Globalisation Initiative and former UN High Commissioner for Human Rights, delivered the first Peter Nygh memorial lecture entitled

Harnessing Energies to Make Children's Rights a Reality. She said the message to governments must be clear and unambiguous: Keep the commitments you have made to children. The Convention on the Rights of the Child doesn't provide all the answers, but it does provide an invaluable legal and normative framework that can help direct legislation, policies and programs with the wellbeing of children at the forefront. We must continue to use every tool available to hold governments accountable for the commitments they have made to child rights. But we must also be ready to support governments in need of help who have shown a genuine willingness to make progress. Children's rights can't wait, she urged.

Another keynote speaker was Carol Bellamy, former Executive Director of UNICEF. Under her leadership, UNICEF encouraged global investment in children, arguing that efforts to reduce poverty and build a more secure world can only be successful if they ensure that children have an opportunity to grow to adulthood in health, peace and dignity. She challenged leaders from all walks of life to recognize their moral, social, and economic responsibility to invest in children - and to shift national resources accordingly.

The 3rd World Congress in Bath 2001 had expressed a wish to create a new non-governmental organisation, a network to advocate human rights on behalf on the world's children. This was put into effect in Cape Town with the launch of Children's Rights International (CRI) of which details are at www.childjustice.org

The conference was presented with a depressing array of statistics at various sessions, of which space here limits most. Inevitably given the issues facing Africa, there was an orientation to African problems. There are 250 million children of age 5- 14 in some kind of labour, of which about 150 million are in bad conditions and 8 million in labour which is in effect slavery. Although Sub Sahara (SS) Africa accounts for 10% of the world's population, it has two thirds of the world's AIDS/HIV victims. There are 11 million AIDS orphans in SS Africa. There are 5.6 million South Africans with AIDS, with 800 deaths a day. AIDS victims occupy most of the hospital beds especially in children's hospitals. 75% of street children contract the virus. Many children especially young teenage girls are now heads of household, responsible for younger children.

But as Africa is at last moving from a position of refusal to accept how serious is the epidemic and how it is affecting its children, other problems are now hitting the ability to assess the extent of the problem. Medical experts explained at the Congress that people don't die of AIDS but of related illnesses. So AIDS rarely appears on death certificates, so the true death toll is unknown. Moreover with many not having birth certificates, they don't have death certificates either. Many die outside of hospitals or other community health clinics etc. They go unregistered. The scale of the problem is statistically unknown. One speaker speculated that perhaps it may be deliberate in that the AIDS/HIV deaths are lost amongst other deaths so the problem does not (officially at least) seem so great.

Other plenary sessions covered child trafficking where similar horrific figures showed the millions of children being moved from country to country; for reasons of sex trade, labour and armed conflict. Sessions (and papers presented) showed some of the international co-operation being undertaken but the task is massive and it can only be reduced on a combination of global action, of government support and by individual, local initiatives.

Outside of the plenary sessions there were about forty other seminars or workshops with over a hundred speakers from many countries presenting papers and engaging in debate on diverse topics. Some were macro issues such as the above issues. Yet others were micro, affecting individual lawyers' case work. It is invidious to pick out speakers but certain topics of especial interest and quality were the move against corporal punishment in England, steps to

combat child trafficking in Italy, co-operation against forced marriages from Pakistan, Islamic approach to financial provision law in Malaysia, and meeting father's needs in the Australian courts. But with so many sessions at the same time, it was impossible for a reporter to cover them all.

A theme picked up in the opening sessions and raised several times was the role of the US in refusing to ratify UNROC. Only two countries have failed to sign the Convention; Somalia, which is in the process of doing so, and the US. There was strong condemnation by many delegates of the failure of the US to do so, especially given their perceived preaching to the rest of the world of what others should be doing. Coupled with the fact that they have only recently (Supreme Court in Roper on 1 March 2005, then only a 5-4 majority!) abolished the death penalty for children, the last country in the world to do, there was much condemnation by many delegates of the seemingly isolationist approach of the US government to what is happening now across the world in the increased rights for children. Many of the US delegates in attendance were vocal in their disapproval of their government's stance. Some of the comments found a focus in the dissenting judgements of the Supreme Court in Roper especially Scalia J who was totally scathing about the US needing to consider any laws or legal trends or conventions of any foreigners or foreign nations, claiming this was the view of most Americans. It was contrary to the whole direction of the Congress, with its emphasis on international co-operation to help children.

Several awards were given in the opening session. Two were of especial note.

Levis Strauss was presented with a Leadership in Corporate Responsibility Award in recognition of their work in leading the way corporately to combat child labour. The head of Levis in Africa spoke of their stringent standards of ensuring that the work done by them and their suppliers does not breach Art 32 of UNROC which states: "State Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.". He said they inspected all suppliers and were now confident of the acceptable conditions (and ages) of the workers across the world. He challenged delegates to make themselves aware of how the clothes they wore had been made. His short speech highlighted how to make an impact on the lives of children by the choices made in our daily lives, as to what to buy and not to buy. It was clear that Levis, and other companies, do respond to consumer pressure such as on unacceptability of child labour.

Another award went to the Nyankongo Behaviour Change Group. Despite meagre resources, it campaigns against AIDS/HIV and Female Genital Mutilation (FGM) in an area of poverty and low employment. Aware of the importance of love, dignity and respect in dying, as in life, they started a project, with the assistance of skilled carpenters, in making quality coffins. Whilst some may consider it a macabre social project, it brought home to delegates how close death was to the many in Africa living with the daily impact of AIDS/HIV, disease and poverty. And in death, dignity is as important as in life. They try to educate the local communities but lack funds for audiovisual aids and public address system. They confront hostile senior community members who claim they are teaching their young girls to disobey them by not accepting FGM. They are doing an extraordinary job, combining education and real action, and creating employment and resources to further their work. More details can be obtained through CRI.

A number of us went on an organised tour to visit the township communities. Most did so in trepidation; wealthy white lawyers peeping on poor blacks! But we learned such tours are positively encouraged by the township communities. It turned into a revelation of what are

South Africa's problems of its historical, apartheid heritage and what is being done to change things. About a million still live in townships around Cape Town. Some areas were still very basic but most homes had electricity, water and sanitation. The houseproud elements found everywhere across the world were seen, distinguishing one home from another. The blocks in which the migrant single men were housed, bussed in for the week from the countryside during apartheid, have been largely demolished and better accommodation built. There are schools and other community services. The South African government has made massive strides since the end of apartheid and getting rid of the townships overnight would have been impossible given the need for accommodation for the very many poor people. However until other accommodation can be put in place, much has been done to improve the standards. We went on a walkabout, and were openly and genuinely greeted by many men and women as well as children in a crèche set up for local mothers in a craft product centre nearby.

We visited one township school, Christel House. Set up by an American philanthropist, Christel DeHann, it takes children from the very poor families in the townships and, with a holistic approach, teaches to a high standard and helps break the cycle of poverty by addressing the community needs of the children's families and helping them become self sufficient. We visited the classrooms and spoke with some of the children during the class break. It was very impressive. More details are at www.christelhouse.org

Several constructive comments about the Congress were made by delegates. As with previous years, there was no delegate list. I am told it is due to data protection and privacy laws but this is one of the most valuable items from a conference and I hope this can be overcome for the next Congress. After great pressure on speakers to produce our paper before the conference, there were no papers in the delegate pack. Certainly they are available on the web but as a speaker and as a delegate, it is incredibly valuable to have the papers in hard form at a conference, especially as there were so many sessions in parallel. Surely some kindly commercial publisher could produce them for the conference. Finally the sessions were excellent, but there were too many! One consequence was that presentations were limited in time, especially given distances travelled by speakers and the time taken preparing papers. So perhaps fewer sessions, and longer for each speaker. However these are minor comments compared to the incredible organisation and excellent conference.

The Congress had a helpful summing up in reports by Tom Altobelli, followed by agreed resolutions at the final plenary session, set out below. Reaching agreement between hundreds of delegates (especially as many were lawyers!) is a monumental feat, but to have done so and on so many diverse and quite sensitive topics merely shows again the strength and unity of feeling on the issues by those present. Especial thanks due to Justice Rod Burr AM, Stuart Fowler AM and Professor John Dewar.

Papers will be published in a hard copy next October but can be found on the World Congress web site at www.lawrights.asn.au

The next World Congress is in Canada in 2009. It is to be hoped that the US government will have joined in with the rest of the world in the march to secure better rights for children and more can attend the conference. Despite the major problems facing South Africa, the conference was exceptional. The local Cape Town lawyers and mediators acted as superb hosts and incredible ambassadors of working in a family law regime under massive change and pressures yet holding onto all the best elements of family law resolution.

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paper examined the world wide trends in making domestic abuse a factor in financial aspects on relationship breakdown. He can be contacted on dh@davidhodson.com. He has gratefully used parts of the official report of the World Congress set out on their web site (www.lawrights.asn.au) and he acknowledges the assistance of Professor Penelope Booth of Stafford University, England.

COMMUNIQUE FROM THE 4TH WORLD CONGRESS ON FAMILY LAW & CHILDREN'S RIGHTS

We, representatives of 60 nations gathered for the 4th World Congress on Family Law and Children's Rights at Cape Town, South Africa from 20 – 23 March 2005,

FOCUSING

On the progress of the implementation of the Convention of the Rights of the Child after 15 years,

BELIEVING

That the health and education of the children of the world is the greatest guarantee available for the peace and prosperity of the world to come,

And believing that armed conflict is an almost insuperable obstacle to the health and education of children within the area,

Believing that the continued existence of child pornography, especially on the internet, trafficking in women and children, child soldiers, and children unable to receive an education by reason of having to work, and the plight of child refugees is a shame to the world and deserving of the strongest condemnation,

And, as to delegates from the United States of America believing that all nations should accede to the UN Convention on the Rights of the Child and noting that to date only the USA and Somalia have failed to accede to the Convention and that representatives of the Somalian Government have indicated an intention to accede to the Convention in the near future. Noting that the Supreme Court of the United States of America in the recent case of Roper declared unconstitutional the death penalty for children in the United States of America, CALL UPON the lawmakers of the USA to accede to the Convention as soon as possible,

The rights of indigenous children warrant robust protection in all dimensions of their lives,

That religious freedom is an important part of a child's rights.

AND NOTING

That many States have made substantial progress in adopting and putting into effect the Convention on the Rights of the Child, but there are still some nations which by reason of poverty, internal strife, or other reasons still have a long way to go in implementing the Convention,

And that significant progress has been made in many countries by direct judicial action in implementing the Convention,

And that direct contact between judges and courts of different nations has been an effective mechanism in some cases for implementing some clauses of the Convention,

And noting the scourge of HIV/AIDS which in South Africa alone appears to affect 5.6 million people,

And that the extensive work is being undertaken globally for women in understanding, educating and challenging their attitudes and actions in matters such as health, sexual behaviours, parenting, status rights and in relationships,

That in some jurisdictions commissioners for children's rights and children's ombudsman have been able to play a notable part in the protection of children,

That Children's Rights International has provided beneficial advocacy and representation in many jurisdictions for the protection of children.

THE CONGRESS HAS RESOLVED:

IMPLEMENTATION OF THE CRC

1 That State Parties take their commitment to post-ratification more seriously to incorporate the Convention on the Rights of the Child into its domestic law and particularly that pursuant to Article 43 of the CRC State Parties make the principles and provisions of the CRC widely known to adults and children alike by ongoing programmes,

2 This Congress calls upon all governments to give full legislative effect to the Convention on Children's Rights in order to give full effect to and enforce the constitutional and international obligations towards vulnerable children,

3 That bar societies and organisations representing advocates develop ethical rules / standards of practice and advocacy in Family Law that are consistent with Article 3 and 12 of the UN Convention on the Rights of the Child; and that these rules/standards establish clear expectations for interdisciplinary continuing education,

4 That the UN adopts accessible and meaningful international standards for the protection of children without parental care,

5 That governments who have ratified the convention on the rights of the child should be encouraged to allocate sufficient resources to enable courts to implement to the fullest extent the conventions principles,

6 States and international agencies when formulating and implementing measures and structures to prevent and (when it occurs) ameliorate the consequences of forced marriage must have the protection and rehabilitation of the victim as the primary focus and purpose of such measures and must not, to the detriment of the interests of the victim, be governed by issues of state/public policy or immigration/migration concerns

7 That the CRC in its entirety, including especially the right of participation, the right to continuity of care, and the right to cultural and ethnic identity, shall be protected in child welfare proceedings involving indigenous children,

8 There is a need for interdisciplinary collaboration and dialogue in defining a child's best interests and such collaboration should be encouraged,

9 That where possible courts and the legal system should provide for the financial security of children as an aid to their development health and education,

HIV / AIDS

10 The Congress calls upon the all governments where HIV/AIDS is a significant problem to recognise and urgently address the issue of child sexual abuse in the context of HIV/AIDS through strengthening abuse prevention mechanisms ensuring timely access to post-exposure prophylaxis and counselling for child rape survivors and strengthening the justice system to:

- Put in place a comprehensive package of services and support for children and their caregivers including but not limited to food security and the provision of financial support
- Ensure access to effective and accessible ARV treatment for all HIV positive children and adults who need it
- Improve access to sufficient resources for NGO's and community-based organisations involved in the care and support of HIV infected families and communities
- Provide local support which is appropriate to the needs of vulnerable children, in line with national priorities, sustained and properly coordinated.

NGOs

11 The Congress urges all governments to give full support to NGOs in delivery of social services,

CHILDREN'S VILLAGES

12 Under Review

THE CHILD'S VOICE

13 & 14 inclusive Children have a voice. What they say is important. Governments should encourage the promotion and development of the participation of the child in the process since his rights are being examined and decided – making sure his voice is heard,

15 The Congress calls upon States to include in their national legislation / plans of action:

- education strategies
- training of lawyers , judges, social workers and other stake holders affecting children
- and other supportive measures to give children a voice in proceedings that affect them

16 States should develop child inclusive processes which promote self esteem in children without burdening them with a sense of the responsibility of decision-making,

DOMESTIC ABUSE

17 That family courts should present a consistent message of its condemnation of domestic abuse (DA); and for DA to be reduced and so the home to become a safer place for children and all family members; and for society's unacceptability and intolerance of DA to reach those who seek assistance from the family court on financial matters; and for the family court to hand down fair, just and socially acceptable outcomes,

18 This Congress calls on all jurisdictions to make Domestic Abuse a factor and consideration in quantum on financial matters on relationship breakdown, wherever possible, and/or provide methods for the family justice system to compensate for the affect of DA on victims from the abusive family member, and for a report on progress at the next Congress,

19 All States should make adequate financial, social and emotional provision to enable and support victims who wish/need to live away from their family and for community so to do,

RE-INTGRATION

20 That Children's Rights International commit to look for development of community care systems for successful reintegration and repatriation of vulnerable children who are bonded slaves or are in slavery-like practices in all countries,

TRANSSEXUALISM

21a That legal and medical institutions throughout the world be called upon to recognise children with transsexualism as experiencing an intersexual condition derived by way of a natural biological variation in human sexual formation rather than a mental disorder,

21b That legal and medical institutions throughout the world be called upon to recognise the legitimacy of the sexual identity affirmed by a child (male or female) and the rights of that child to have a consistent legal identity (in the absence of that affirmation being derived from a diagnosed delusional disorder) rather than have that sexual identity imposed and not withstanding that such affirmed sexual identity is different from that indicated by one or more of the sexual characteristics of the children,

CHILD MIGRANTS

22 The UN is requested to adopt and proclaim an International Child Migrants Day on the UN Calendar,

ABDUCTION OF CHILDREN

23 There is a need to explore the potential benefits of the Hague Children's Conventions for a much wider range of States - including in particular the States in sub-Saharan Africa. With appropriate measures of implementation (which respect culture which take account of issues of capacity and in particular the problem of access to legal services and procedures), the Hague Children's Conventions offer a structure for improving inter-State co-operation in the region to protect children at risk in cross-frontier contexts, and they provide access to a rapidly developing global network of judges and other professionals who are devoted to the common protection of children.

RELOCATION

24 Create a framework to make uniform standards to determine a child's best interests (as opposed to forum selection) in international relocation cases,

ALTERNATIVE DISPUTE RESOLUTION

25 Make mediation and ADR the primary forum for dispute resolution concerning children and families,

ADOPTION

While noting the tension between CRC and some aspects of international adoption, international adoption has a place, even as last resort and providing it is properly regulated for the protection of orphaned and refugee children,

FUTURE PLANS

That the next World Congress have a program that examines legal education programs (Law Schools) that focus upon Articles 3 and 12 of the UN Convention on the Rights of Children, and interdisciplinary studies related to children in family law,

That the next World Congress have a program that considers:

- Judicial roles
- Changes in judicial roles
- Judicial education and their relation to and promotion of Articles 3 and 12 of the UN Convention

This Congress calls for commitment globally to understand, educate and challenge attitudes and actions of men to sexual behaviour and relationships and children, and for reports on this work and progress made to be presented at the next Congress.