

The Public Committee on Children and the Law



**STATE OF ISRAEL
MINISTRY OF JUSTICE**

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Distinguished participants,

Eight years ago I was given the task of chairing a multi-disciplinary committee, appointed in order to recommend the implementation of the UN Convention on the Rights of the Child (CRC) in Israel. The committee submitted its detailed recommendations last year, after seven years of work. In this presentation I would like to describe, in the short time that I have, the highlights of the committee's work – its objectives, methods and conclusions. Regrettably, the committee's full report spans 6 heavy volumes, all written in Hebrew and our budget did not allow for translation, so I cannot share the full extent of this work with you.

I have been a Judge in Israel for 27 years, of which 15 years were in the Juvenile Court, and the rest in a higher court where I still serve. During those years I have dealt with all aspects of children's lives that touch on the judicial system. This includes juvenile delinquents; Children in distress; Custody, abduction, adoption and foster care proceedings; Children as victims of crime, and as witnesses in adult proceedings.

My expertise regarding children led the Minister of Justice to appoint me as Chairperson of the Public Committee on Children and the Law on June 27, 1997.

The Committee was initiated in accordance with the State of Israel's obligation to comply with the provisions of the CRC, ratified by Israel in 1991.

The appointment of the Committee created an historic opportunity to change the future of Israel's children in the coming millennium, thereby making an important contribution to the grounding of democratic principles, from the perspective of children's rights in Israel.

The primary goals of the Committee, as stated in its nomination letter were:

- To evaluate the compliance of existing Israeli law with the principles of the CRC and recommend new legislation as required in light of the CRC
- To examine the need for enacting a Children's law in resemblance to the Children Acts of England and Scotland, since Israel's Children legislation is spread over many laws.
- To draft new legislation.
- To recommend on the establishment of co-ordination and enforcement mechanisms whose purpose will be to apply, coordinate and enforce all that is related to children's rights as mandated by the Convention

The committee was faced with a great challenge – the formulation of legislative principles that would influence children's rights in Israel for generations to come. This required making difficult choice on moral, social and legal grounds.

This was particularly challenging given the broad multi-cultural spectrum of Israeli society, which encompasses diverse populations: Secular and religious, Jews and Arabs, native born Israelis as well as immigrants. All that in the context of ongoing political uncertainty.

Structure of the Committee

The Committee worked through a plenum, nominated by the Minister of Justice, composed of 20 professionals from various disciplines.

After a year of working together, the Committee formed 6 sub-committees to which additional professionals were appointed, each designated to evaluate a specific field of children's lives as follows:

- The Child in the Family
- Child Protection
- Out of Home Placement (these three were part of the Child and the Family sub-committee)
- Legal Representation of Children in Civil Proceedings
- The Criminal Process: Minors as suspects, detainees, defendants, prisoners, victims and witnesses
- Education

Unfortunately, due to budgetary constraints we were not able to cover additional areas that merited our attention, such as labor, health social security and the environment.

Plenum Members Classification

The Committee included well-known professionals from a wide variety of disciplines, including law, social work, mental health, criminology, education and psychology.

All together the Committee's Plenum and sub-committees included about 70 members, all on a voluntary basis with the exception of sub-committee coordinators who were paid lawyers.

Guidelines were set for the work of the Sub Committees to ensure that each sub committee would be exposed to relevant views and information from Government Academia, NGO's and others. The composition of the sub-committees reflected a good mix of practitioners and academics. It was crucial to maintain coordination and consistency between the various sub-committees to ensure that their methods and conclusions would be based on the same holistic approach, and reflect the same over-arching principles. To that end, the report of each sub-committee was submitted to the committee's plenum for review and approval.

The Committee was assisted by many experts who submitted position papers, as a basis for deliberation. We were also assisted in our work by several NGO's, including the National Council for the Child, Ashalim Organization, the Brookdale Institute, the Israeli Institute for Democracy, Minerva Center for Human Rights, "Elem" Youth in Distress, and by the Center for Child and Youth Studies (Tel-Aviv University).

The National Council for the Child was involved in initiating the establishment of the Committee and participated actively in the work of the Committee as a partner.

Children Participation in the Committee's work

From the outset, the Committee attached great importance to the participation of children in the process in accordance with Article 12 of

the CRC, and tried to include as many children as possible in its work. This was achieved in several ways:

- Two children were permanent members of the sub-committee on education.
- Children served as consultants to the sub-committee on education, on the subject of pupils' rights.
- Sessions were held with the National Pupils' Council.
- Focus groups and interviews were conducted with children from different ages, genders and from different societal, religious, economic and cultural backgrounds.

The participation of children was invaluable to the Committee's work: The children helped us understand their views, concerns, needs, and special perspectives relating to their experiences as children living in Israel. The participation was also rewarding and empowering to the children themselves.

The Committees' Proposals

There were two starting points for the Committee's work. The first was existing Israeli legislation and practice, and the second was the CRC and its interpretations. Our objective was to review the existing legislation in light of the CRC principles, and to identify the needs for change in Israeli legislation in this context. Change could manifest itself through the need for re-formulation of existing laws (due to some redundancy or deficiency in those laws); through requirement for new legislation in areas that have not previously been covered by legislation.

Of foremost importance to the Committee was the instillation of new thought as relates to children, whereby they are accepted and recognized as human beings, entitled to rights in their own capacity.

Our main recommendations were as follows:

It should be noted that the role of our Committee was to make legislative proposals. These proposals are now being reviewed by teams from various ministries, including Justice, Education and Welfare. Once approved, they will hopefully be submitted by the Government as bills for legislation in parliament (the Knesset). In Israel, MPs are also entitled to submit their own bills to parliament, and some of the committee's recommendations are already in that process.

A CRC Bill

Model Codes: One of the most important recommendations by the Committee was the proposal for a CRC Implementation Bill which seeks to codify the four basic principles of the CRC as a model code. This would result in a clear obligation of the government to establish the appropriate mechanisms for the enforcement of the right of children as they appear in the CRC.

These recommendations included the appointment of a special public officer within each Ministry in charge of the promotion of children's rights and interests;
the obligation of each ministry to collect relevant data regarding children's status, rights and well-being;
the obligation to form a child-friendly complaint mechanism in each ministry.

The bill also aims at the establishment of a central authority to be responsible for the promotion of children's rights.

One of the main innovations of this bill is the inclusion of four model codes, referring to the implementation of the four CRC principles. These model codes were formulated after a thorough inspection of the CRC principles, their interpretation and their adaptation to Israeli legal and social contexts.

The Committee deemed it necessary to include the models within a general bill, in order to ensure their implementation in all subsequent legislation, but also their application to all current decisions and actions involving children.

These models were used by the sub-committees as a basis for their own recommendations, with the needed adaptation to the specific subject matter. For example, the model of children's participation was manifested in several separate bills proposed by the committee, such as participation in the Family Court, in the education system, in the welfare system. Naturally, the character of participation must be modified to the context of the area, so that the nature of participation of children in juvenile correctional institutions differs from the participation of children in the mainstream education system.

Due to time limitations I cannot dwell on each of the models and will only introduce one of the models – the model referring to the Best Interests of the Child.

In this model we tried to structure this abstract, subjective concept of "the best interest of the child" into a more objective definition. In doing so, we were aiming at realizing three objectives:

First, a structuring of the discretion given to decision makers, thus achieving greater consistency for each decision maker (person or body).

Second, the creation of a more egalitarian system that treats different cases under equal and uniform parameters. This also implements the principle of equality, in Article 2 of the CRC.

Third, influencing any future legislation that pertains to or relies on the concept of “the best interest of the child”.

The model comprises four tenets:

1. The responsibility of all decision makers to place the best interest of the child as a primary consideration in every decision concerning a child or children. (Though the model does not specify this, the consideration may be *paramount* under specific laws)
2. The best interest of the child is defined as including all of the *rights, needs and interests* of the child.
3. A checklist of factors to be taken into consideration while determining the best interest of the child, such as the wishes, feelings, views and opinion of the child him/herself; the physical and mental well-being of the child; the age and the evolving capacities of the child, and so on.
4. A decision based on the best interest of the child shall be reasoned in writing, and specify the aspects actually considered as well as the weight attributed to the different aspects.
(The full proposal is attache as an appendix to my presentation).

Education

In the field of **Education** - In Israel the right of children to education and other rights of children within the educational system are regulated **by the Pupils Rights law (2000)**.

After evaluating this law in light of the CRC, the Committee decided to upgrade the law by *adding emphasis to civil rights and freedoms* such as the freedoms of expression, thought, conscience, religion, and the rights to information, privacy, association, identity, due process in disciplinary proceedings; the right to participate in the School's Complaints Committee, and in writing the school's code. In Israel education is free up to the age of 18 and obligatory until the age of 15. Yet, due to substantive gaps in the ability to enjoy equal opportunities in acquiring education, the Committee gave special emphasis to the right to equality in education and to the right to enjoy quality education.

The Committee defined in a law proposal these rights, based on the UN recommendations on this matter¹.

The right to quality education was defined by four factors: Acceptability, accessibility, availability, adaptability.

In defining the quality of education, the Committee assumed that it would be possible to achieve greater equality among children in Israel, in addition to specific wording relating to affirmative action.

¹ CESCR General Comment 13 8/12/1999/10.

Criminal Law

In the field of **Criminal Law** – We proposed comprehensive amendments to laws relating to children as suspects, detainees, defendants, prisoners, victims and witnesses, providing their rights according to the CRC and the Beijing Rules.

The existing law is rather advanced in terms of incorporating the principles of the CRC and the Beijing rules. The Committee recommended to amend the law by adding a new chapter titled “Goals and principles in penal proceedings against minors”, which reflects the principles of the CRC.

The law should also be amended to incorporate civil rights, adapted to the particularities of the criminal procedure. Additionally, we drafted a chapter on alternative procedure (to allow as many minors as possible to be processed outside the penal system), as well as a chapter on the right to development of children deprived of their liberty.

Regarding the rights of child victims - the proposed amendments included provisions for special rights of children – the right to participation, the right to be accompanied by an adult throughout the proceedings, the right to rehabilitation, and the right to receive all of the different services under one roof.

Family Law

In the field of the **Family** – The Committee composed a new concept and mechanism for the participation of children in legal proceedings in family courts, an issue not yet regulated by Israeli Law.

The Committee also proposed a new concept of parental

responsibility, regulating the legal relationship between children and their parents or other care takers.

Within this proposal we also included the child's right to be protected from corporal punishment and other degrading disciplinary measures.

Out of home placement

In the field of **out of home placement** – we proposed a bill on out of home placement, which establishes basic principles for placement in residential care and foster care, incorporates children's rights and freedoms, and regulates biological-foster parents' relations. At the moment, there is a legal lacuna in this field.

Separate Legal Representation in Civil Proceedings

In the field of **Representation** of children the Committee proposed a Law for separate legal representation of children in civil proceedings. This Law defined the goals and terms of the representation, and established a Governmental mechanism for representation.

This concludes the high-level overview of the main recommendation made by the Committee.

I would now like to discuss the influence the Committee's work had on Israeli society as a whole and on current public discourse.

While initially, the main objective of the Committee was to produce written recommendations regarding laws affecting children, we were very pleased that, in the end, the result of the work of the Committee appeared to be much broader than that. It appears that the work of the Committee has filtered down to many levels of society, raising

awareness of the issue of children's rights far beyond the scope initially thought possible within such a relatively short period of time.

It seems that awareness of rights under the Convention has spread to children through the involvement of their peers as members of the sub-committee on education, and their participation in various forums and symposiums regarding their rights. This information is passed on among children.

It appears also that members of the judiciary also felt the impact of the Committee's work, and this has already impacted their rulings. Addiotnally, the Advanced Studies for Judges Training Institute has given a course for Judges on Children's Rights in its 2005 curriculum under my management. Similar training is also given to state attorneys.

Since the Committee consists of representatives from a variety of different professions and institutions, their work in the Committee inevitably found its way to their respective fields of practice. We already see that, to a certain degree, the academics teach the principles of the Convention at universities, the social workers implement it in their work and government officials incorporate the principles in their respective ministries. In this way many more people are exposed to children's rights, and thus are able to more readily embrace them.

The Committee has published a manual, which includes detailed guidelines for the legislature when initiating either new bills dealing with an issue which relates directly to children and their rights, or a general bill which may impact children. The manual contains a summary of the concepts and principles underlying the Convention, and

provides operative steps to be taken in order to incorporate these principles in the drafting of new laws.

To summarize:

The Committee was given the official task of recommending a comprehensive plan of systematic implementation of the Convention in our law. It has taken upon itself however a bigger role - which is to bring about a change in the status of children in Israeli society and to ensure that the government recognizes its responsibility with respect to children.

We aspire not only to incorporate the rightful status of children in statutes, but also to bring about a universal acceptance of children as autonomous rights holders. Our goal is to achieve a society that is not only adult-oriented but also child-oriented.

By recognizing children as rights holders, their ability to actively participate in determining their own destiny is actualized and they can develop into active citizens in a democratic society.

We aspire to a society in which children are treated in a manner that affords them dignity, where they can participate on an informed basis according to their evolving capacities; where children are not taken advantage of or abused by adults, and where children are not subject to discrimination.

Children growing up in such a society will not only benefit themselves, but also hopefully be more aware of the rights of others, and be able to respect them on the basis of dignity and equality.

In a multi-cultural society such as Israel, wide social changes are not easily achieved. The change however is extremely important and worthy of all efforts it requires.

I would like your permission to conclude on a personal note:

When I was appointed to chair the Public Committee on Children and Law eight years ago, the situation of children in Israel was far more promising against the backdrop of the Oslo peace process. An atmosphere of cooperation prevailed which promised collaboration between Jews and Arabs in all spheres of life, including the rights of children. In the reality of horror and terrorism in which we unfortunately live today, many children on both sides have been victims. I can only end this presentation with conveying a great personal sorrow over the plight of the children, and hope that this situation will change quickly and that the children in our region will grow up in an atmosphere of peace and prosperity, and where their rights, in all countries and areas of this region, will be realized and protected.

Appendix: The Best Interests of the Child

- A. In every action or decision concerning a child or children the best interests of the child shall be a primary consideration.
- B. When determining the best interests of the child the entirety of the rights, needs and interests of the child, will be taken into consideration.

When determining the best interests of a specific child, his or hers rights, needs and interests will be taken into consideration, *inter alia*, in light of the following factors:

1. The wishes, feelings, views and the opinion of the child in respect of the matter in question;
2. The physical and mental well being of the child;
3. The age and the evolving capacities of the child;
4. The dimension of time in the life of the child;
5. The gender and relevant characteristics and attributes of the child relevant to the matter in question;
6. The influence on the life of the child in present and future as a result of the decision or action;
7. The child's connection and relationship with his or her parents and other significant persons in his or her life;
8. The opinion of the child's parents and other significant persons in the life of the child on the matter in question;
9. The relevant professional information on the matter in question;
10. Any other factor existing in law, pertinent for the decision of the child's best interest in the decision or action in question, or any such factor found by the decision making authority.

A decision on the best interests of a child shall state reasons in writing, specifying C. the aspects actually considered at the time of making the decision with reference to the provisions of subsection (b) above, and the weight attributed to such aspects in the particular context.