

CHILDREN'S LAW CENTRE  
ANNUAL LECTURE  
2008

*"The Convention on the Rights of the Child -  
from Geneva to Northern Ireland,  
Bringing Children's Rights Home."*



Professor Yanghee Lee  
Chairperson, UN Committee on the Rights of the Child

Belfast, 13th March 2008



# ANNUAL LECTURE WELCOME

**Paddy Kelly**  
Director, Children's Law Centre

May I on behalf of everyone at the Children's Law Centre (hereafter referred to as CLC) - staff, young people, management committee and volunteers welcome you to our third Annual Lecture.

When we had our Inaugural Lecture in this theatre Judge Gillen, who kindly chaired that lecture and who is with us here today, suggested to me that in our speaker on that occasion, Baroness Hale, we had set the bar very high for future lectures. Judge Gillen's words sent a chill through me as we did indeed set the bar very high, but I am delighted to say that as with last year's lecturer the Commissioner for Human Rights at the Council of Europe, today's guest speaker scales that high bar.

CLC is absolutely delighted, and we recognise the great honour for the Centre, to have the leading international children's rights champion Professor Yanghee Lee, Chair of the UN Committee on the Rights of the Child, with us today to deliver the Children's Law Centre's third Annual Lecture. Professor Lee, you are very welcome.

CLC is founded on the UNCRC and we have consistently advocated in all areas of our work for full realisation of the rights of children enshrined in the UNCRC. We have also had a long association with the UN Committee on the Rights of the Child. A former Chair of the Committee, Sandra Mason, officially launched the Centre and since then we have organised visits of and hosted Professor Lee's immediate predecessor Professor Jaap Doek on several occasions and facilitated the visit of the Committee's Rapporteur Judith Karp, in advance of the 2002 examination of the UK government by the UN Committee on the Rights of the Child. CLC's annual lecture last year was delivered by a former Vice Chair of the Committee and Rapporteur for the UK's examination in 1995.

The UK government is again due to be examined against its delivery of the rights

enshrined in the UNCRC by the UN Committee on the Rights of the Child in September this year.

Along with our partners Save the Children we lead on behalf of NGOs in Northern Ireland in reporting to the UN Committee. After widespread consultation CLC and Save the Children are submitting an NGO alternative report to the Committee on Monday 17th March 2008. This report, which will be available next week on CLC's web site and which we hope you will download, will highlight a wide number of NGO's ongoing concerns re the UK government's continuing failure to deliver on some of its obligations under the UNCRC.

The Centre has also consistently advocated that through the 10 year children's strategy and the proposed Bill of Rights for Northern Ireland, that the UK government should give effect to its international obligations which it committed itself to in signing the UNCRC in 1990. On a positive note, at the Centre we are encouraged by the increased citing of the UNCRC in legal arguments and by its increased recognition in case law relating to children.

As an organisation so firmly bedded in the UNCRC and with such strong links to the UN Committee on the Rights of the Child in the year that the government is scheduled to be examined by the Committee it is, we believe particularly appropriate, and we are very honoured, to have the Chair of the Committee, Professor Yanghee Lee, deliver this our third Annual Lecture.

Before I finish can I offer a very special word of thanks on behalf of the Children's Law Centre to the Deputy Lord Mayor of Belfast, Councillor Bernie Kelly for not only hosting today's event but also for her unstinting and long standing support for the Children's Law Centre of which she is a founding member. Can I also thank Dr Willie McCarney, a long term champion of children's rights, for his invaluable help in organising Professor Lee's visit and for agreeing to chair today's lecture.

Paddy Kelly  
DIRECTOR

*“The Convention on the Rights of the Child -  
from Geneva to Northern Ireland, Bringing  
Children’s Rights Home.”*

**Professor Yanghee Lee**  
Sungkyunkwan University  
Chairperson, United Nations Committee  
on the Rights of the Child

**T**he Convention on the Rights of the Child just celebrated 18 years. Many would say that the Convention has now ‘come of age’. I would say the ‘coming of age’ notion actually is ‘child-friendly’. It dates back to the long non-recognition of ‘childhood’. A French historian, Philippe Aries, made his famous observation that childhood was not recognized as a distinct phase of life before the seventeenth century. Children were regarded as small adults from the moment they were weaned. People were not interested in childhood because it was viewed as a brief period that passed quickly for those who survived. Childhood was regarded as a period to pass through as quickly as possible. For a very long time, there existed the implicit binarism of the psychological model that viewed children as ‘immature, irrational, incompetent, asocial and acultural’. On the other hand, adults were viewed as ‘mature, rational, competent, social, and autonomous’. So you see, ‘of age’ signified, and still continues to mean, to a certain degree, entry into a period that is worthy of recognition.

The major accomplishment of the first 18 years of the Convention is that children have become more visible. Now there seems to be a certain degree of consensus that children are indeed bearers of rights. Unfortunately, there still exist many children who suffer from major violations of their rights, living in very harsh conditions, systematically discriminated, abused, and denied participation in decision making processes. Many would agree that the twentieth century was the century of the child. In my view, with eighteen years into the existence of the Convention on the Rights of the Child, the twenty-first century should be the century of accountability among all actors involved in the lives of all children.

The Convention on the Rights of the Child was adopted and ratified by the U.N. General Assembly on November 20, 1989 and entered into force on September 2, 1990. The Convention on the Rights of the Child (hereafter referred to as CRC) is the first binding instrument in international law to deal with the rights of children. It provides the highest level of international standards and guidelines for regional and national implementation.

The Convention on the Rights of the Child is the most comprehensive treaty that contains 42 detailed provisions enshrining the rights of children in all areas of their lives. It is the first international instrument that covers the economic, social, cultural, civil and political rights, including special protection measures for all persons under the age of 18 years of age. The CRC is the only international human rights treaty that has almost universal ratification.

To date, still with the exception of the United States of America and Somalia, there are 193 ratifications. The Convention has been supplemented with two Optional Protocols. The Optional Protocol on the involvement of children in armed conflict, raising the minimum age for involvement in armed conflict to 18, entered into force on 12 February 2002. The Optional Protocol on the sale of children, child prostitution and child pornography strengthens the Convention's protection in these areas and entered into force on 18 January 2002. Today 118 States are party to the Optional Protocol on the involvement of children in armed conflict and 124 States are party to the Optional Protocol on the sale of children, child prostitution and child pornography. The two Optional Protocols have been ratified by the United States of America and will be considered during our May Session.

## Key features of the Convention

- Definition of the child: everyone below the age of 18 years unless under the law applicable to the child, majority is attained earlier
- Non-discrimination
- Best interests of the child
- Right to Life: appropriate health care, access to health care, hygiene, nutrition, environmental sanitation, prevention of accidents
- Right to Development: appropriate child care, education, play, cultural activities
- Right to Protection: from economic, sexual exploitation, torture, etc.

- Right to Participation: freedom to express, access to information, assemble
- Training and dissemination of CRC

The Convention consists of four general principles which should be considered together with all the other rights enshrined under the Convention. Among the four principles of the CRC (non-discrimination, Article 2; right to life and survival, Article 6; best interests of the child, Article 3; and respect for the views of the child, Article 12), the "best interests of the child" (Article 3) and "respect for the views of the child" (Article 12) are least understood and even ignored. I would like to add the concept of "evolving capacities of the child" (Article 5) to this list.

Article 3 stipulates that, "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." It goes on to state that it is the responsibility of the State to ensure the child such protection and care and to take "all appropriate legislative and administrative measures", while taking into account the rights and duties of all persons legally responsible for the child. The duties of all stakeholders are underlined in this article. This article puts the child to the forefront as an entity with rights that need to be protected and respected.

Article 5 further emphasizes that the State should respect the "responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights." This article, again, emphasizes the role of the State in ensuring full realization of the rights of the child. It again highlights the duties and responsibilities of the parents and all persons responsible for the child. Yes, there is a mention of the "rights" of these persons. However, this does not mean that the rights of the parents and others, per se, supersede the rights of the child. The Convention has already stipulated that the best interests of the child shall be the foremost concern. The Convention is often misunderstood as giving up the rights of parents or those who are responsible for the child. Quite the contrary, it should be understood to mean that the State should be responsible in providing the means to ensure that the family, etc., can assist the child in exercising her/his rights. Childhood is a period of constant change. This means that the child is in a state of

change, or development, with capacities commensurate to the different developmental stages. Recognizing the capacities of the child in different periods of life is imperative in decisions that are made for the child.

Article 12 emphasizes that the State “shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.” This article should be understood together with the aforementioned two articles. The best interests of the child shall be of utmost priority and that the child, recognizing the nature of the evolving capacities, shall be given the right to participate in all matters concerning her/him. This translates into all matters, small or large, family or school, community or national, and personal or legal.

In what ways has the child become more visible, as a result of the CRC? This can be witnessed in the domestic law reforms and administrative measures that States have taken to comply with the Convention. In recent research conducted by the Innocenti Research Center (2007), the CRC has the same value as the constitution, or the same legal value as other legislation in some countries. The Constitution of Poland, which was adopted in 1997 recognizes the right of the child to be heard (Article 72).

Of course, direct incorporation in common law countries is rare, however, parliaments of these countries can adopt laws to incorporate human rights treaties into national law. The United Kingdom, through its Human Rights Act of 1998 made the European Convention for the Protection of Human Rights and Fundamental Freedoms enforceable. In some of the Latin American countries (Argentina, Chile, Mexico, etc.) the Convention forms part of national law. Some countries (Central and Eastern Europe and sub-Saharan Africa) that have adopted new constitutions since 1989, included important provisions on the rights of the child.

A couple of recent developments that warrant mentioning are the following: although the United States of America is not party to the Convention, the CRC has been cited in support for abolishing capital punishment for juveniles. In May 2007 the New Zealand Parliament voted for a law banning the use of force for correction of children, becoming the first English speaking country in the world and the first country in the South East Asia and Pacific region to accomplish this.



Most States now have some type of a coordinating mechanism that enables different sectors of the government to address children's affairs in an effective manner. Monitoring mechanisms have been set up in many States. They come in various forms. Some States have established Child Commissioners as a separate office or within the organ of Human Rights Institutions. Others have in place a system of 'Child Ombudsperson'.

Over the years, the issue of violence emerged as a concern for the Committee. The Committee held two days (2000 and 2001) of general discussion on violence against children and recommended the conduct of an in-depth study on the issue of violence against children. In 2001, in its resolution 56/138, the General Assembly requested the Secretary-General to commission this study and in 2003, an Independent Expert (Professor Pinheiro) was appointed. The global picture of violence against children which emerged was rather disturbing, in that it existed in all societies. The Study identified five settings in which violence against children persisted and to a certain degree was accepted and permitted.

The Study was concluded in 2006 and a report was made to the General Assembly (A/61/299). Nine regional consultations, several subregional and national consultations were held between 2003 and 2005. The study was instrumental in bringing justification of violence against children, whether in the form of traditional practices or disguised as disciplining methods, to the awareness of the public. It emphasized that 'no violence against children is justifiable', and 'all violence against children is preventable'. To address, and prevent violence against children, 12 overarching recommendations have been made by the Independent Expert, including strengthening national and local commitment and action, which requires establishing a national focal point on violence against children by the end of 2007; prohibition of all forms of violence in all settings to be included in legal reforms; prioritizing prevention; ensuring accountability and ending impunity; creating child-friendly and accessible reporting systems and services, etc., (A/61/299).

In March 2007, the Committee on the Rights of the Child issued its eighth General Comment, "The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, para. 2; and 37 inter alia)". General Comment No. 8 builds on the foundation provided by previous international human rights law, notably the Universal Declaration and the two International Covenants (Civil and Political Rights, and Economic, Social and



Cultural Rights) and the Convention on the Rights of the Child, with special focus on Articles 19, 28 (2), and 37. The first General Comment of the Committee (General Comment No. 1, Aims of Education), also stipulates that corporal punishment is incompatible with the Convention. Furthermore, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 13, Right to Education, also states "corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles of the Universal Declaration and both Covenants...".

Although a General Comment is not binding in and of itself, the Committee has systematically included General Comments in the concluding observations following consideration of States party reports. General Comments are the Committee's interpretation of specific articles or thematic areas of the Convention, which serve to provide guidance to States parties so that they can better implement provisions enshrined in the Convention. The focus on corporal punishment and other cruel and degrading forms of punishment was due to the fact that these behaviors are "widely practiced forms of violence against children" (CRC/C/GC/8). The Committee has recommended to more than 130 States to prohibit corporal punishment in the home and other settings. More than 100 States have prohibited corporal punishment in the schools and penal systems for children. However, prohibition of corporal punishment in the home is slowly being accomplished, as well as in all forms of alternative care.

Over the years, the Committee noted that in many States, there existed legal provisions that provided a defence of "reasonable" chastisement for parents and other carers. In cases where there is no explicit defence for corporal punishment in the legislation, traditional attitudes about children permitted its use for disciplining children.

Some may argue that the Convention on the Rights of the Child does not have any provision for complete abolition of corporal punishment and that the Committee is going beyond its jurisprudence by insisting on it. However, I join my voice with the Committee, and many others, that the Convention is a living document. The Committee stands by the Convention's requirement that the best interests of the child should be the primary consideration, and that it should be the parents' basic concern as well. Physical punishment, degrading treatment, torture and other cruel and degrading forms of punishment cannot be seen as being in the best interests of

the child. Last December, the United Nations General Assembly adopted the Resolution on the Rights of the Child. (A.C.3/62/L.24/Rev.1). All forms of violence against children were condemned. The United Kingdom of Great Britain and Northern Ireland were among the many States that agreed on this resolution.

The use of tasers and plastic bullets are clear examples of cruel, degrading, and inhumane treatment of children. Growing numbers of research provide evidence of the immediate negative effects of these forms of treatment. There is proof that plastic bullets cause deaths in people, which would be the ultimate violation of the right to life and survival. Use of electric shocks contributes to numerous health-related problems, as well as psychological problems. I would like to warn that it may have serious effects on children with convulsive disorders, cardiac problems, learning disorders, and children on medication. The most serious effect would be death, but there can be long-term effects as well. Experiencing electric shocks in and of itself can be quite traumatic, and could lead to severe distress. Physical and behavioral problems may manifest in different ways and at a much later time after the experience. Use of tasers, or electric shocks, really denotes the society's attitude toward children. Children are considered as objects, or creatures, that need to be controlled by using cruel and inhumane means, ultimately degrading them. Cruel treatment of pets is not accepted, and yet cruel treatment of children is accepted and even promoted. This is a grave violation of the Convention on the Rights of the Child, and clearly contradicts any human rights standards.

Another example of the negative attitude towards children can be witnessed in orders such as the Anti-Social Behaviour Order. The behaviors defined as antisocial are clearly arbitrary and subjective. There is an abundance of research demonstrating precursors to antisocial behavior. Antisocial behavior is not a phenomenon that exists without a cause. It is not something that children choose to exhibit. Many variables contribute to the cause of antisocial behaviors. Family violence, lack of access to proper pre, peri, and postnatal care, lack of access to quality education, poverty, environmental toxins, poor parenting, multiple placement in care settings, etc. are some of the variables that have been empirically proven to be precursors to antisocial behavior. The application of ASBO's is putting the blame of system failure onto the child. In other words, children are being blamed and criminalized for behaviors that are the result of many things gone awry during the course of their lives.

In 2007, the Committee on the Rights of the Child adopted its tenth General Comment, Children's Rights in Juvenile Justice. It reminds that CRC requires States parties to develop and implement a comprehensive juvenile justice policy. It should not be limited to the implementation of the specific provisions contained in Articles 37 and 40 of CRC, but should also take into account the general principles enshrined in Articles 2, 3, 6 and 12, and in all other relevant Articles of CRC, such as Articles 4 and 39. (See General Comment No. 10). References are made to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines").

Much has been debated about the minimum age of criminal responsibility (MACR) before and after the adoption of this General Comment. What age can we put children accountable for their actions, notably 'criminal actions'? I would like to quote paragraph 32 of our General Comment No.10. "Rule 4 of the Beijing Rules recommends that the beginning of MACR shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule the Committee has recommended States parties not to set a MACR at a too low level and to increase the existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level." Paragraph 33 of the General Comment also warns not to lower the minimum age to 12 in cases where it is higher. So you see, the Committee clearly expressed the importance of raising it to 12, with a view to eventually raising it even further, and at the same time, not to lower it.

Let me present the background to the Committee's decision on the age of 12. In considering State Party reports, the Committee discovered that there existed many countries that continued to set 7 years and 8 years as the minimum age of criminal responsibility. And of course there were countries that had a much higher age, such as 16 as the MACR. In order to persuade States parties to seriously consider raising the age of criminal responsibility to an age that would be considered as not being too drastic of a change, 12 was decided as the absolute minimum age by the Committee. What was important was to have countries that still had MACR set at 7 and 8 years

to effectively reset the age in a rather speedy manner. It must not be forgotten that the Committee also emphasized raising the age even further. Furthermore, it was the general understanding of the Committee that industrialized, democratic societies would go even further as to raising it to even a higher age, such as 14 or 16.

Over the years, the Committee has become increasingly concerned with adolescent health issues. In many societies, rates of teenage suicide, pregnancy, substance abuse, obesity, eating disorders, and psychological disorders are on the rise. Societies must approach these issues in a holistic manner, with the emphasis on prevention and intervention.

Children with disabilities, including ethnic minorities, the Roma, and Travellers, are the most vulnerable and marginalized children. The most important principle that must be applied is the principle of non-discrimination. This principle must be the guiding principle for the realization of economic, social, cultural, civil, political rights, and the right to be protected from all forms of abuse and exploitation.

## Conclusion

The title of my lecture is "The Convention on the Rights of the Child : From Geneva to Northern Ireland - Bringing Children's Rights Home". There is a saying in America that says that 'everything that happened in Las Vegas stays in Las Vegas. However, in the case of Geneva, it is, and should be, quite the contrary. Everything that happens in Geneva must go all over the world! I hope I have been able to assist in bringing Geneva to Northern Ireland.

## References

Committee on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education (Art. 13), E/C.12/1999/10.

Committee on the Rights of the Child, General Comment No. 1, The Aims of Education, 17 April 2001, CRC/GC/2001/1.

Committee on the Rights of the Child, General Comment No. 8, The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts.19, 28, para. 2; and 37, inter alia), 2006, CRC/C/GC/8.

Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, 25 April, 2007, CRC/C/CG/10.

General Assembly Resolution A/C.3/62/L.24/Rev.1 (November, 2007).  
Innocenti Research Center (2007). Law reform and implementation of the Convention on the Rights of the Child.

The Global Initiative to End All Corporal Punishment of Children,  
[www.endcorporalpunishment.org](http://www.endcorporalpunishment.org).

United Nations Secretary-General's Study on Violence against Children,  
Report to the General Assembly, A/61/299 (August, 2006).



Children's Law Centre  
3rd Floor Philip House  
123 - 137 York Street  
Belfast BT15 1AB

Tel: 028 9024 5704 Fax: 028 9024 5679

Email: [info@childrenslawcentre.org](mailto:info@childrenslawcentre.org)

[www.childrenslawcentre.org](http://www.childrenslawcentre.org)