

CHILDREN'S LAW CENTRE
ANNUAL LECTURE
2007

*“The impact of conflict on children:
healing the past and securing the future”*



Thomas Hammarberg
Council of Europe Commissioner for Human Rights

Chair
Her Honour Judge Gemma Loughran

Belfast, 8th February 2007



CELEBRATING 10 YEARS

ANNUAL LECTURE WELCOME

Paddy Kelly
Director, Children's Law Centre

May I on behalf of all the staff, young people and the management committee of the Children's Law Centre welcome you to the Centre's Annual Lecture 2007. I am Paddy Kelly and I am Director of the Children's Law Centre.

May I extend a special welcome to our speaker this afternoon the Commissioner for Human Rights of the Council of Europe, Thomas Hammarberg. It is a huge honour for the Children's Law Centre that he has agreed to deliver this year's Annual Lecture and we are very appreciative. I would also like to welcome today's Chair, Judge Gemma Loughran, who before and since her elevation to the Bench has been a great friend to the Centre. Yet again Judge Loughran we are in your debt. Welcome also to those Members of Belfast City Council who are with us this afternoon. May I thank the Council for making this splendid room available to us for today's lecture and for their generous hospitality and to the Council staff for all their help in organising today's event.

This is our second Annual Lecture and you have in your packs a copy of the first excellent lecture delivered by Baroness Hale last June and wonderfully chaired by Judge Gillen who I am delighted to see is with us today.

Most of you will I hope at this stage be aware of the range of service provided by the Children's Law Centre including specialist legal advice, information and representation, advocacy and policy and legislative commentary on children's rights. I would refer you to our, if I can say it, excellent website www.childrenslawcentre.org, for further information about our work.

Today is a very special day for the Children's Law Centre because of Commissioner Hammarberg's presence and also because we are taking the opportunity of today's lecture to mark the beginning of a series of events we will be organising to celebrate our 10th Anniversary year. I can't personally believe

that it is 10 years since I and a now former colleague walked into a bare sub-let single room in University Street and not to put too fine a point on it, panicked. I want to pay tribute to the amazing group of dedicated and professional staff, children, young people, volunteers, management committee members, members and supporters who have in a short 10 years grown the Children's Law Centre into a force for children's rights to be reckoned with.

Personally I cannot think of anyone more appropriate not only to deliver today's lecture but to begin our 10th Birthday celebrations than Thomas Hammarberg. Judge Loughran will formally introduce Thomas but if you don't mind I would like to make a few comments.

I first met Commissioner Hammarberg when I had the privilege of organising, on behalf of Save the Children, Thomas's visit to Belfast almost 12 years ago to the day in 1995. This visit was in advance of the UK government's first examination by the UN Committee on the Rights of the Child of which Commissioner Hammarberg was then Vice-Chair. At that time I facilitated a visit to the Monagh Bypass Traveller site, a site we revisited today. Thomas's later reflections in Geneva on his experiences in Belfast were a powerful testimony to the voices of the children and young people he met during that visit. I have often quoted Thomas's comments at the UK's examination in Geneva when he likened the conditions on the Monagh Bypass Traveller Site to some of the worst he had seen in the developing world. Monagh Bypass Traveller Site was and sadly remains a benchmark as to how we as a society protect and respect the rights of all our children without discrimination.

I also remember very clearly in Geneva with the UK examination in full session, during a short break Thomas taking time to come over and give me a written message to bring back to the children and young people he had met in Belfast. It was a lesson I never forgot, our work is about real children and their rights, it is essential that their voices are heard in all we do. We must never lose sight of the child.

Thomas returned to Belfast a year later in 1996 when as part of the Machel Study into the Impact of Armed Conflict on Children he spoke at a conference organised by Save the Children. The journey that we started on then, ensuring that children's rights are protected in post conflict societies, the Children's Law

Centre continues today through our work, alongside Save the Children, in trying to secure the maximum protection for children's rights in the proposed Bill of Rights for Northern Ireland.

The Children's Law Centre has come a long way in 10 years and I am very honoured and proud to have been on that journey with the amazing group of people, children and adults who are the Children's Law Centre. We have come a long way but unfortunately have many challenges ahead of us not least of which is ensuring that children enjoy equal protection from assault under the law. I have no doubt that today Commissioner Hammarberg will help us chart the next stage of our journey to make children's rights a reality.

Commissioner Hammarberg thank you for honouring the Children's Law Centre by delivering our 2nd Annual Lecture in this our 10th Anniversary year.

Paddy Kelly

*“The impact of conflict on children:
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the future”*

Thomas Hammarberg
Council of Europe Commissioner for Human Rights

I have had a poster on my wall for eleven years. It announces a conference here in Belfast about the impact of armed conflict on children – it was a consultation for a special United Nations study. We analyzed experiences from Central America, South Africa, Palestine and, of course, Northern Ireland and tried to draw conclusions.

The picture on the poster shows a girl staring at what seems to be a military watch tower - one can see the threatening silhouette of it reflected in her big glasses. And on top of the poster there is the message: “We all fall down”.

Yes, we do. The question is if we manage to stand up again. The conference was about how children could be healed and secured for the future.

What was said then and has been proven over and over again in these and other trouble areas is that violent conflicts always hurt children badly. They are the most vulnerable and tend to be the least protected. The psychological scars could run deep into their minds.

Some of them may never recover; some of them may be easy recruits for the next generation of violent groups.

Children in these “troubles” experience in many respects the same agony as those in full scale war. During such conflicts that we had here in Northern Ireland or now in Gaza, for instance, children can never feel fully secure - the violence is penetrating

their daily lives. They may lose adults they love and depend on. Or they may see relatives injured, physically or mentally. They may one day be targeted themselves.

The atmosphere of violence and the tension tend to affect children deeply. To be stopped in the street and body searched by a soldier can leave an imprint for years. Younger human beings have less ability to see the context and understand why people behave as they do and, certainly, their time perspective is different. All this makes them so much more vulnerable.

Some lessons were drawn at the Belfast conference in February 1996 and in the report from the UN Study on the Impact of Armed Conflict on Children. One was the importance of bringing as much stability as possible to the child's every day life. When families begin to be dysfunctional it becomes particularly important that the schools and day care centres function well. This may require additional political and budgetary decisions.

The need for "stability" includes also getting honest answers on what is going on. It is not helpful for children that they are "protected" from talks about the acute issues. This is true also long after the violent crisis. The school has an enormously important role in giving children a chance to discuss their own history.

Another lesson which was drawn in the UN Study was the need to protect children as much as possible from direct contact with violence. We used the phrase of children being a "zone of peace". This is of course more complicated when militias, insurgent groups and terrorists are active – they are seldom caring for child rights. However, also official counter-insurgency measures have sometimes violated the principle that children should be spared.

Teenagers do take part in protest actions and sometimes confront the army or the police. Again, this has to be handled in a manner which protects their basic rights, including their right to life. We discussed rubber bullets at the conference in 1996 and said that such ammunition should not be used because of the risk for severe damage.

I am aware that new variations of plastic bullets or "baton rounds" have been designed but I am still concerned that the use of such riot control measures may be harmful, even lethal in the worst of cases. The burden of proof is here on those who approve the use of such bullets – can they guarantee for sure that they may never

have a harmful effect on a child? If that cannot be shown, such ammunition should be withdrawn. The same argument would go for the use of tasers ("stun" guns with high voltage).

The third lesson relates to the need for genuine support to children who have been traumatized. It is true that children normally have an astonishing capacity to heal and that they often can take bad experiences, if they have some support. But there is a limit, especially if the family situation is damaged. The more violent society has been or still is, the more one needs to invest in mental health services for children and adolescents.

A sad relationship has been shown in several countries – within communities struck by violent conflict there is a higher risk of domestic violence. What happens in the streets tends to have chain effects in the homes.

Domestic violence is always negative for the children even if they are not the direct target. To see one's mother beaten up is painful for every child. We also know that corporal punishment of children still is a problem in spite of all efforts to make reality of the rights of the child.

We are taking an absolute stand against corporal punishment of children. We do not accept the idea of "reasonable chastisement". Why should a child have to suffer being beaten up while the same treatment of adults is seen as intolerable?

International and European standards are clear on this. The Convention on the Rights of the Child, the case-law of the European Court of Human Rights and the European Committee of Social Rights, clearly prohibits the use of corporal punishment in schools, community as well as at home.

Further international documents such as declarations, recommendations or the recent UN study on violence insist on the necessity to make the world free of any kind of violence against children. The Council of Europe aims at establishing by 2009 Europe as an area free of violence as it previously did with the death penalty.

The objective of a ban is not to put a police officer or a social worker behind every adult. The intention is to alter public attitudes towards violence against children and establish a clear framework for parent education and support. This would also

facilitate earlier and less intrusive interventions in cases where children are at risk.

The adoption of a law clearly banning corporal punishment is a first step to prove the willingness of society to stop violence against children. A law sends an important signal but should be supplemented by educational and other means to secure a safe upbringing.

Parenting should be supported - in the best interest of the child. It is significant that the Convention on the Rights of the Child has replaced the concept of parents' rights with parental *responsibilities*. The perspective of assisting parents with problems is a key one. Unfortunately, those parents who are most in need of support tend to be the ones who never ask for help. This requires a spirit within social, health and school authorities which defend the rights of children at risk in a sensitive but effective manner.

Using violence against children only leads to an escalation of violence. Non-violent conflict resolution, tolerance and respect for others should be taught through setting good examples. How can we expect children to take human rights seriously and to help build a culture of human rights, while we adults not only persist in slapping, spanking, smacking and beating them, but actually defend doing so as being 'for their own good'? Smacking children is not just a lesson in bad behaviour; it is a potent demonstration of contempt for the human rights of smaller, weaker people.

I asked the youth advisory group at the Children's Law Centre over lunch today what they thought about physical punishment. Their response was very clear. They find such behaviour wrong for four reasons:

- that it is against kids' rights;
- that it can damage them physically;
- that it could get worse – parents do not always know when to stop; and
- that it makes kids themselves violent.

Corporal punishment is a very personal problem. Most adults were hit as children and may have hit their own children. It is difficult for many to recognise that we, adults, can also make some mistakes. Politicians find this an unpopular issue; it is easier to focus only on extreme forms of violence to children and on violence by children, against which there is already a popular consensus. Also, many politicians are particularly wary of interference in the traditionally 'private' arena of the family.

Accepting to ban corporal punishment therefore means that we could have been wrong in the way we raised our child and our parents too. It is a difficult recognition that we, adults, can also make some mistakes.

Ending violence against children requires a strategy combining short-term measures including legal reform to clearly prohibit all forms of corporal punishment and longer-term measures to influence social attitude and promote positive alternative methods of relating and communicating. Any such strategy should include the following steps:

- review of existing legislation to ensure effective prohibition of all corporal punishment;
- orientation of parents and child professionals about the rationale for abandoning corporal punishment as a form of discipline in the home and in institutions - this could include information on legal reform against corporal punishment in other countries and its positive effects;
- information to children about their rights including the right to be treated with respect. This should be part of the school curricula but also be disseminated through the mass media;
- clear guidance to teachers and pre-school staff, health personnel, social workers and other key professionals on their role in preventing such violations and how to respond in concrete situations when there are indications that a child may suffer abuse and need help;
- research in order to develop a better understanding of the magnitude and nature of the practice and to identify groups of children at particular risk, and
- parent education courses and discussions – involving children – on child-rearing practices and positive, non-violent forms of discipline in homes, schools and institutions.

We define children as individuals between birth and 18 and we are aware that not all of them are innocent angels. They may disturb and even break the law. Still they should enjoy their human rights as children. The Polish doctor, writer and child

rights advocate Janusz Korczak summarized the point in one simple sentence: "The delinquent child is still a child".

The treatment of young law offenders has become one of the urgent challenges in the work to make reality of the rights of the child. We are upset about youth criminality and this has encouraged the trend in several European countries towards locking up more adolescents, at an earlier age, for an increasing number of offences. This is not in the spirit of child rights. More punishment for individuals who essentially are victims of social problems and family shortcomings is not a good solution.

Children who misbehave should be told so but there are other means than criminalizing them. The Convention on the Rights of the Child makes clear that depriving a minor of their liberty must be the very last resort and used only in extreme cases and for the shortest possible period of time when the security of the child or other individuals is at risk. The formal age of criminal responsibility should not be set too low – 10 or 12 years of age is clearly too low.

I have been surprised by reports about the Anti-Social Behaviour Order (ASBO) which authorizes a magistrate to prohibit a person from entering a specific geographic area if he or she has behaved in an anti-social manner. While this behaviour may not have been criminal, the breach of conditions set out by the magistrate is a criminal offence. Hearsay evidence and anonymous testimony are admissible as evidence in the proceedings.

My predecessor reacted against this provision in a report and my reaction is the same. I hope other means can be developed of coping with children who misbehave. It is possible to make clear to young people that certain activities are unacceptable without "naming and shaming" them and without detaining them when they have ignored such orders.

The UN Convention on the Rights of the Child introduced an important concept: "the best interest of the child". The idea is that when decisions are taken which affect children their best interests should be a primary consideration. This requires that we seriously try to define what in different situations really is the best for the child and this, in turn, makes it necessary that decision makers develop a capacity to *listen* to children. In this area, much remains to be done – not least among politicians.

Child rights are not about *laissez-faire*, not about denying children their responsibility - but corrective measures should be humane and commensurate to the age of the child.

Child rights are about *respect* for the child. Not least, it is a question of listening to him and her. Let me conclude with a quote of the Polish writer, doctor and educationalist Janusz Korczak who worked with some 200 orphans in the Warsaw ghetto during the Nazi occupation until the day in August 1942 when he, his colleagues and all the children were marched to a train taking them to Treblinka. Until then he had strived to give the children – in spite of the grim reality outside their common home – both love and dignity.

Korczak has more clearly than anyone else formulated what the rights of the child really are about. One of his key messages was precisely the value of respecting children:

“The first and undisputable right of the child is the right to express his or her thoughts, to take active part in assessments and judgements concerning themselves. When we mature and start respecting and trusting children, when they find trust in us adults and do express what they think themselves about their rights – then the problems will be reduced and the mistakes will be fewer.”

This is the way to move when we have fallen down.



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