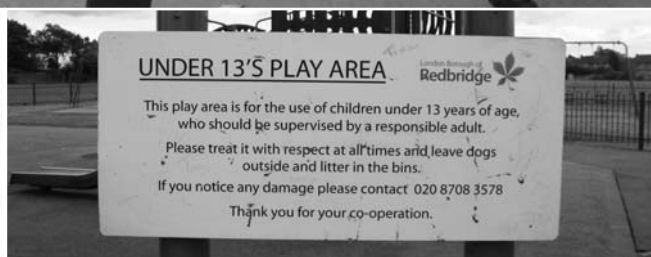




**CRIN**

Child Rights Information Network

review



## Measuring Maturity: Understanding children's 'evolving capacities'

### Featuring:

■ Religion or belief: when can children decide for themselves?

■ A personal experience of age, responsibility and the justice system

■ Consenting children? The right to access healthcare

**The Child Rights Information Network (CRIN)** is a global network promoting information sharing and action on child rights. We press for rights, not charity, and are guided by a passion for putting children's rights at the top of the global agenda by addressing root causes and promoting systemic change.

The UN Convention on the Rights of the Child (CRC) is our guiding framework, and we believe it offers the best blueprint for children's empowerment and emancipation from harm and injustice.

- We believe that the only means of achieving long-term change for children is by strong and explicit promotion of their rights. This means addressing the root causes of the lack of fulfilment of children's rights, including challenging traditional beliefs and practices concerning children. We recognise this will often be controversial.
- We believe that information is a powerful tool for advocacy in pursuing children's rights and that information should be freely available.
- We believe that it is by working together with a broad range of actors committed to a similar vision, that we will be most effective and influential.
- We believe that civil society organisations, activists and children have the right to express themselves freely and openly and should have the right to participate in all matters affecting them.

CRIN is an independent, non political, non religious not for profit organisation registered in the United Kingdom and regulated by the Charity Commission. Globally, CRIN has a membership of over 2,100 organisations in over 150 countries.

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#### **CRIN's website offers 18, 519 child rights resources**

which include information in four languages (Arabic, English, French and Spanish).

CRIN links to 2,100 organisations worldwide. See [www.crin.org/organisations](http://www.crin.org/organisations).

Listed below are some key toolkits and guides available on the site.

- **Guide to child rights mechanisms** (March 2009)  
<http://www.crin.org/docs/CRINmechs.pdf>
  - **Guide to strategic litigation for child rights advocates** (May 2008)  
[http://www.crin.org/docs/Guide\\_to\\_Strategic\\_Litigation.pdf](http://www.crin.org/docs/Guide_to_Strategic_Litigation.pdf)
  - **Media toolkit** (October 2007)  
[http://www.crin.org/docs/media\\_toolkit2.pdf](http://www.crin.org/docs/media_toolkit2.pdf)
- Also on the website:**
- **A to Z of child rights** (May 2007)  
<http://www.crin.org/resources/infoDetail.asp?ID=13423&flag=report>
  - **Legal database**  
[www.crin.org/Law/search.asp](http://www.crin.org/Law/search.asp)

Didn't have time to read the **CRINMAIL** last week? Search the archives here: [www.crin.org/email](http://www.crin.org/email).

#### **Cover**

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# Editorial

Children face a confusing array of minimum ages at which they are deemed capable of making decisions for themselves – some of them potentially life-changing. The age at which children can have a say in their medical treatment, for instance, or get married or vote, or choose or reject a religion or belief, varies significantly across and even within cultures. The legal minimum age may or may not reflect what children themselves feel they are capable of.

These age-based restrictions are founded on two main assumptions made by adults: first, that children lack the capacity to take responsibility for many decisions about their lives and must therefore be protected from the consequences of bad decisions; and second, that age limits are a crude but simple way to achieve that protection – even if some children might attain competence at a younger age, and others attain competence later.

But are rigid age limits the best way of determining children's competence? Age-based approaches rely heavily on adults' perceptions of children's abilities. In some societies, children are already taking on responsibilities for decision-making that would be exceptional elsewhere; other societies protect children to the point where they are given little scope for independent decision-making.

So what are the alternatives? The concept of "evolving capacities", as set out in Article 5 of the United Nations Convention on the Rights of the Child (CRC), addresses these dilemmas by introducing the idea that children should be able to exercise their rights as they acquire the capacity to do so, rather than when they reach a certain age. It requires parents or legal guardians to guide children appropriately and respect the extent to which they can exercise their rights for themselves.

This issue of the Review explores what the concept of evolving capacities means in practice. It looks at: the role of age in determining competence; other factors that contribute to children's evolving capacities; examples of where children's involvement in decisions is competency-based and how competence might be tested; how to balance respect for children's autonomy with their right to protection; and how, when and to

what extent parents or legal guardians should support and encourage children to exercise their rights.

The Review raises questions, in particular around disputed areas of children's rights. For example, while some issues are relatively straightforward and uncontested – eg, a child should clearly not be able to participate in armed conflict as a combatant – questions around the minimum age of criminal responsibility, for example, are much harder to resolve.

The starting point must be respect for rights and children's evolving capacities. It is true, of course, that adults caring for very young children have to make many decisions about children's lives. But, as children grow, it is important that adults take every opportunity to encourage children to discuss, share and then take over decision-making for themselves. Involving children is essential for encouraging and preparing them to exercise their own rights.

**Gerison Lansdown** opens the Review by introducing the concept of evolving capacities.

**Prinslean Mahery** weighs up the pros and cons of different legal approaches to children's right to consent to medical treatment, explaining how South Africa has dealt with the issue. In a related case study, **Alejandra Portatadino**, an Argentinian activist for the rights of lesbian, gay, bisexual and transgender people, discusses her work on a case in which a court granted a 17-year-old the right to a gender reassignment operation, giving an insight into the lives of, and decisions faced by, transgender children and young people. She offers guidance for children, their parents, and advocates dealing with similar situations.

Respecting the rights of children does not diminish the role of parents in children's lives, but emphasises the need for parents to take children's views into account when making decisions that affect them. A **factfile** on promoting children's rights in the home sets out the benefits for all of involving children in family decisions.

The fact that childhood covers such an extensive age range means that it encompasses a wide range of competencies, needs and rights. **Rodolfo Albán Guevara** reveals how Ibero-American countries are addressing older children's rights through a progressive new Convention.

**Bob Franklin** argues that children should be entitled to citizenship rights like anyone else, and that excluding children from political decisions purely on the basis of age is discriminatory.

Adults' freedom of religion and belief is still tightly circumscribed in many parts of the world, so unsurprisingly, children face particular barriers in this area. **Asma Jahangir** provides some direction and points to how children might be supported to make informed choices. **Hossam Bahgat** describes the advances that strategic litigation is achieving for freedom of religion in Egypt. Meanwhile, **Felix Corley** highlights growing opposition in States across Central Asia towards children's participation in religious activities.

Debates around the minimum age of criminal responsibility are contentious even within the child rights community. At a time when many countries are lowering the minimum age of criminal responsibility, we asked **Thandanani Ndlovu**, who has first-hand experience of the justice system, for his thoughts on the debate. **Sabrina Cajoly** reveals the Council of Europe's plans to respond to concerns over rough justice



Photo: ©CCP, Courtesy of Photoshare

through new guidelines that aim to make justice systems more appropriate for children.

Young people with disabilities in Sierra Leone **John Conteh, Saidu Thoronka** and **Mariatu Bangura**, emphasise that the only way to find out about young people's lives and capacities is to ask them. While they appreciate support, they are frustrated by adults' over-protective attitudes, which they feel exclude them from activities and decisions they are perfectly capable of participating in.

**Gillian Calvert** offers evidence of age discrimination from Australia, which, ironically, has some of the most advanced legislation in

the world intended to protect children from age discrimination. Unfortunately, she says, this does not apply to the labour market, where young people are being paid lower wages than adults for doing the same job.

**Angela Melchiorre** considers criteria to think about when establishing a minimum age of marriage. **Husnia Al-Kadri** warns of the harm caused by young people taking on enormous responsibilities too early in life, which she has observed in her campaign work on early marriage in Yemen.

Research by **Save the Children** sheds light on the lives of young carers in

sub-Saharan Africa, who have also been plunged into an adult world at an early age. While they demonstrate considerable capacity for making important decisions and supporting their household financially, strategies must be found to mitigate any damage done in the process.

In the previous CRIN Review, we described how children's right to freedom of association is being curtailed in the UK and other European countries. In a follow-up, **Ankie Vandekerckhove** explains how Belgium is taking a stand.

**Jennifer Thomas** Editor

# Child Rights News Desk

CRIN round-up on recent developments in child rights



## The CRC's 20th birthday: 20 November 2009

The United Nations Convention on the Rights of the Child (CRC) will turn 20 in November 2009. Listed below are some of the events that will celebrate the CRC's anniversary.

For full details of events, visit CRIN's special web page: <http://www.crin.org/crc20/>

### UN Committee on the Rights of the Child: Dignity, Development and Dialogue

8-9 October 2009

[www.crin.org/resources/infoDetail.asp?ID=20614&flag=event](http://www.crin.org/resources/infoDetail.asp?ID=20614&flag=event)

### Convention on the Rights of the Child: From Moral Imperatives to Legal Obligations – in search of effective remedies for child rights violations

12-13 November 2009

Organised by Save the Children, the NGO Group for the Convention on the Rights of the Child, CRIN, UN Office of the High Commissioner for Human Rights and UNICEF Innocenti Research Centre.

## Other child rights highlights

### Complaints mechanism: next steps

Good news! A resolution was adopted by the Human Rights Council in June to set up the working group that will discuss the complaints procedure. This first meeting of the group will take place in Geneva from 14th to 18th December. Plans for the meeting are currently being discussed and will be communicated as soon as available. For further information, contact Anita Goh, Advocacy Offer on "Anita Goh" [consultant@childrightsnet.org](mailto:consultant@childrightsnet.org) or visit:

[http://www.crin.org/law/CRC\\_complaints/](http://www.crin.org/law/CRC_complaints/)

### General Comment adopted on children's right to be heard

The UN Committee on the Rights of the Child adopted its General Comment on Article 12 on the right of the child to be heard in June 2009.

To download the General Comment visit:

<http://www.crin.org/resources/infoDetail.asp?ID=20482&flag=news>

### UN Special Representative on Violence against Children finally appointed

In May 2009, UN Secretary-General Ban Ki-moon appointed Marta Santos Pais as his Special Representative on Violence against Children.

The appointment was made following the recommendations of the UN Study on Violence against Children (2006).

To read the full story, visit: [www.crin.org/resources/infoDetail.asp?ID=20194&flag=news](http://www.crin.org/resources/infoDetail.asp?ID=20194&flag=news)

### Alternative care

The UN Human Rights Council adopted the draft UN guidelines for the appropriate use and conditions of alternative care for children. The guidelines have now been submitted to the UN General Assembly.

To read more, visit:

<http://www.crin.org/resources/infoDetail.asp?ID=20660&flag=news>

## New on crin.org

### Campaign: The future of children's rights – in whose hands?

The aim of the campaign is to ensure transparency in how the top child rights posts are appointed. To read more, visit: <http://www.crin.org/resources/infoDetail.asp?id=20623>

### The CRC in court

CRIN has just begun a project to investigate the ways in which the CRC has been used in courtrooms around the world.

[http://www.crin.org/Law/CRC\\_in\\_court/index.asp](http://www.crin.org/Law/CRC_in_court/index.asp)

### CRIN guide to child rights mechanisms

The purpose of this guide is to help readers understand the 'mechanisms' working on child rights, such as different parts of the United Nations, or regional bodies like the African Union.

<http://www.crin.org/docs/CRINmechanisms.pdf>

### Toolkit on non-discrimination

This new website explores discrimination across the range of children's rights, with a particular focus on age-based discrimination.

[www.crin.org/discrimination](http://www.crin.org/discrimination)

### Ask the expert

Do you have a question about child rights, your work or your organisation? Do you work in the child rights field and think you may be able to answer? Then welcome to CRIN's advice cafe!

The purpose of this service is to encourage users to share information and expertise on child rights, or related activities.

[www.crin.org/experts](http://www.crin.org/experts)

### CRINwire

Have you caught up with the masses yet, and begun to tweet? Visit CRIN's dedicated Twitter page:

<http://twitter.com/CRINwire>



# “Evolving capacities” explained

By Gerison Lansdown, International Child Rights Consultant



Photo: ©David Levene/EveryChild

Peru

We all continue to develop knowledge and skills throughout our lives. But all societies acknowledge that the pace of growth is most accentuated in children, who acquire new capacities at an extraordinary rate.

In most countries, an adult – at whatever age adulthood is determined in any given society – is legally presumed to be capable of taking responsibility for their actions. During childhood, the reverse applies: children are presumed to lack the competence to take responsibility for themselves and are therefore understood to need social and legal protection in accordance with their perceived immaturity and vulnerability.

The United Nations Convention on the Rights of the Child (CRC) provides a framework that recognises the right of every child to such protection. Article 5 states that parents or legal guardians “shall respect the responsibilities, rights and

duties... 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 recognised in the present Convention”.

This requires that guidance provided by parents or legal guardians must be directed towards promoting respect for the rights of the child, and must respect the extent to which the child is capable of exercising their rights on his or her own behalf. For example, every child has a right to a name from birth. Clearly, a newborn baby lacks the capacity to determine their own name, so this right is exercised on their behalf by their parents. However, if the divorced mother

of a 14-year-old child wishes to re-marry, the child will have the competence, and therefore the right, to decide for themselves if they want to adopt the name of the prospective stepfather.

However, children’s rights are not contingent on the ability to exercise their rights on their own behalf, or on legal age limits. All the rights embodied in the CRC extend to all children.

The question is whether children themselves can exercise those rights or whether this responsibility is undertaken on their behalf by parents or other carers, and how decisions are made in a manner consistent with the child’s best interests.

## Three ways of understanding evolving capacities

The concept of children's evolving capacities can be understood through three conceptual frameworks:

### A developmental concept

The CRC can be seen as a tool for promoting children's development, competence and emerging personal autonomy.<sup>1</sup> Article 6 is the platform for other developmental principles throughout the Convention.<sup>2</sup> It asserts that States parties shall "ensure to the maximum extent possible the survival and development of the child". In imposing these obligations, it clearly extends the mandate to the development of children's cognitive, social, emotional, physical and moral development. This breadth is affirmed in the following articles:

- **Article 23** stresses the right to opportunities conducive to the child "achieving the fullest possible social integration and individual development including his or her cultural and spiritual development".
- **Article 27** explicitly recognises the importance of an adequate standard of living for children's "physical, mental, spiritual, moral and social development".
- **Articles 28 and 29** spell out the role of education in developing the "child's personality, talents and mental and physical abilities to their fullest potential".
- **Article 31** acknowledges the importance of the right to play in children's development.

These articles place obligations on States parties and other actors with responsibility for children to **fulfil** children's right to development of their optimum evolving capacities.

### An emancipatory concept

The CRC includes a number of articles that acknowledge the child as an agent in the exercise of rights:

- **Article 12** guarantees the right to express views.
- **Articles 13 to 17** address rights to freedom of expression, religion, association, privacy and access to information.

Children have the right to respect for their capacities and to exercise their rights in accordance with their levels of competence. States have obligations to **respect** these rights.

In reality, however, our knowledge of children's capacities for informed and rational decision-making remains limited. While research has been undertaken to identify pre-determined physiological or psychological factors linking age with the acquisition of competencies, this has largely been conducted in North America and Europe in laboratory conditions far removed from children's day-to-day lives.

Even within these strict parameters, findings have varied widely. There is also inadequate comparative data to examine the contrasting competencies of children in different social, economic and cultural environments.

Indeed, a growing body of recent research suggests the need for extreme caution in drawing conclusions on age-related competencies, arguing instead that a wide range of other factors influence how children function. Clearly, there is a need for much more research before definitive conclusions can be drawn.

Nevertheless, neither legal frameworks nor policy and practice in most countries give sufficient consideration to the importance of recognising and respecting the capacities of children in the exercise of their rights.

### A protective concept

Children have the right to protection from participation in or exposure to activities likely to cause them harm. For example, the CRC includes rights to protection from violence, economic exploitation and sexual abuse. States have obligations to **protect** these rights.

Respect for children's evolving capacities to take responsibility for their own decision-making needs to be balanced against their relative lack of experience. But it is also important not to undermine children's own capacities for contributing to their own protection.

The extent to which children are likely to be at risk of harm from potential threats is significantly mediated by a number of factors:

- the child's own personality and strengths
- the level of support afforded by key adults in the child's life
- the degree of agency experienced by the child in coping with the situation
- the degree of social and cultural acceptance of the behaviour.

Traditionally, protection has been viewed as a one-way process, with adults as agents and children as recipients. The reality is more complex: legislation, strategies, policies and programmes designed to protect children need to recognise children's capacities to contribute towards their own protection and allow them to build on those strengths.



1. Ochaíta E and Espinosa M A (1997), 'Children's participation in family and school life: a psychological and developmental approach', *The International Journal of Children's Rights*, 5: 279-297



### Encouraging children's capacities

The issue of evolving capacities highlights the necessary balance between, on the one hand, children's right to recognition of their increasing levels of responsibility in the exercise of their rights as they acquire the capacity to do so; and on the other, the need for protection in accordance with their relative youth and immaturity.

The CRC provides a mechanism for ensuring appropriate respect for children's rights without exposing them prematurely to the full responsibilities normally associated with adulthood. It requires primary consideration to be given to the rights of the child while taking into account their views and capacity for independent decision-making.

Of course, cultural considerations must be factored into the equation. Behaviours considered dangerous in one society are taken as the norm in another. Assumptions of responsibility deemed beyond a small child's capacities in one culture are part of their daily experience in another.

Some limitations imposed on children are considered to be socially acceptable while others deny them opportunities to develop, and prevent adults from seeing what children are capable of achieving. Support and encouragement can enable children to achieve skills and competencies far greater than would be possible through threats and punishment.

Promoting children's best interests requires recognition of the importance of their

evolving capacities. But it also necessitates a better understanding of how to provide protection in environments that respect and advance children's capacities.

This poses challenges in almost every sphere of children's rights, including freedom of religion and association, access to information and the media, ages of criminal responsibility and sexual consent, the right to education, and the role of work.

There is an urgent need for better understanding of how to promote the cultural change necessary to ensure that children are protected in accordance with their evolving capacities, and that they are respected, whatever the level of those capacities.



Photo: Ernst Schade: Mozambique, Beira, 1989. Son guides his begging blind father. Website: [www.ernstschade.com](http://www.ernstschade.com)

*A boy holds his x-ray plate up to dry before showing it to the doctor at a clinic in Gosaba, Sundarban, India.*

Photo: ©2005 Nilayan Dutta/Drik, India, Courtesy of Photoshare

# The right to access healthcare: a matter of age or maturity?

*By Prinslean Mahery, Senior Legal Researcher, Children's Institute at the University of Cape Town*

When can a child consent to his or her own medical treatment? This simple question opens the door to a moral maze.

Acting in the best interests of a child requires balancing respect for their autonomy with the need to protect them from harm. Maintaining this delicate balance is particularly difficult when it comes to a child's right to make decisions about their own healthcare.

In many countries, there is an ongoing debate about age versus maturity; for example, should all children be able to access contraceptive advice at a certain age, or is 'maturity' a better test for determining their ability to understand the consequences of their actions? Age is usually the overriding factor since, in the vast majority of cases, if a child is below a certain age she or he will not be able to access certain services without a parent – even if the child is deemed mature enough.

One of the main arguments in favour of the age-based approach is that it serves to protect children from their own lack of experience. The law therefore usually puts parents in charge of safeguarding the well-being of their children. Indeed, in South Africa, children's right to parental care is enshrined in the Constitution.

The United Nations Convention on the Rights of the Child (CRC) obliges States to respect the responsibilities, rights

and duties of parents to guide children in the exercise of their rights while also respecting the extent to which children demonstrate capacity to exercise their rights on their own behalf.

Age limits certainly give clear guidance on how this translates into practice – ie, the extent to which healthcare is the responsibility of parents or other carers, and the stage at which children themselves are able to exercise their right to access healthcare services.

## **Are age limits the best approach?**

Limiting the autonomy of a mature minor who solicits healthcare by insisting on parental consent until a specific age is very restrictive and potentially harmful. For example, a child may be prevented from accessing important sexual health advice because of the views of a parent. An age-based approach assumes immaturity and ignores individuality. There is a less restrictive way to protect immature minors against adverse decisions, namely by using the test of maturity rather than age.

Australian common law, for example, allows children below the age of 16 to make decisions regarding their own healthcare if the child has the requisite level of understanding and maturity to make an informed decision.

South Africa's Children's Act 38 (2005) uses a dual age and maturity approach. A child aged 12 or older can consent to medical treatment, surgery or access to contraceptives without parental consent. However, when it comes to surgery, the child must be assisted by a parent. A child aged 12 or younger can consent to an HIV test. In all instances, the child must also be mature enough to consent before the relevant healthcare service can be supplied.

In South Africa, health rights are directly connected to the constitutional right to dignity. Furthermore, the right to dignity is central to the right to physical integrity. The Constitutional Court found that "every child has his or her own dignity. If a child is to be constitutionally imagined as an individual with a distinctive personality, and not merely as a miniature adult waiting to reach full size, he or she cannot be treated as a mere extension of his or her parents."

There are three main arguments against using age over maturity:

**Inconsistent nature of age limits:** The line drawn is considered arbitrary and in conflict with a child's right to self-determination.

**Inflexible approach:** Rigid age limits ignore the evolving capacities of the child and fail to promote their right to

1. Christian Lawyers Association v Minister of Health and Others (Reproductive Health Alliance as amicus curiae)

participate in decisions that affect them. This is also in conflict with Articles 5 and 12 of the CRC. Although the right to participate is not the same as the right to have decision-making power, the age-based approach generally ignores the views of children below the age of consent.

**Contradictory laws:** In South Africa, there is an apparent contradiction between general laws covering medical care for young people and those specifically pertaining to abortion. For example, a girl of any age can consent to an abortion without parental assistance or consent, but there is an age limit for other healthcare procedures. In one particular case,<sup>1</sup> a court determined that the non-use of age-limits would prevent “frustration of a constitutional right when the minor is in fact emotionally and intellectually able to give informed consent to the procedure”. The court criticised the age-based approach to the extent that it failed to accommodate individual difference.

### The best of both worlds

Using age limits can protect young children from making harmful decisions regarding their health and create certainty for healthcare providers about who they are allowed to serve without the need for parental assistance.

But such an approach is flawed because it ignores the capacity of children below the arbitrarily set age of consent to make informed decisions about their own healthcare. Applying the approach used in the abortion law to other healthcare provisions would certainly go a long way towards protecting the rights of all mature children. However, using a dual approach that considers both the child's age and their maturity, as established in South Africa's Children's Act, is certainly a step forward for children's right to access healthcare services.

**“Every child has his or her own dignity... he or she cannot be treated as a mere extension of his or her parents.”**

Photo: Sentido G



*Interview with Alejandra Portatadino, Argentinian activist for lesbian, gay, bisexual and transgender rights.*

# The crisis of identity: being young and transgender in Argentina

In September 2007, an Argentinian court recognised a minor's right to change her gender identity in the first decision of its kind in Latin America. The court ruled that Natalia,<sup>1</sup> 17, could undergo gender reassignment surgery and have her identity card and birth certificate amended to live as a woman.

Alejandra Portatadino worked on the case as an adviser. Alejandra was herself born with ‘Harry Benjamin syndrome’, more commonly known as transsexuality. Alejandra successfully lobbied for the law to stop considering gender reassignment surgery as mutilation. Her private and public documents were printed with her female name following a Supreme Court judgment, paving the way for others to enjoy the same right. She also persuaded Durand Hospital, Buenos Aires, to create the first medical team in the country to detect cases of gender dysphoria and provide pre- and post-surgical hormonal treatment paid for by the State.

Alejandra is a human rights activist and a member of the Comunidad Homosexual Argentina (CHA), a national NGO that advocates for the rights of lesbian, gay, bisexual and transgender people and has a special section for young people. She also teaches bio-ethics to lawyers, public prosecutors and judges in the Faculty of Law at a University in Buenos Aires.

Alejandra talked to CRIN about the background to Natalia's case.

**“Gender dysphoria” means being discontent with the biological sex you were born with.** It involves being ill at ease with your gender and feeling like your body does not match who you are.

The condition used to be attributed to psychological causes, but thanks to research by the University of Amsterdam among others, we have discovered that it has a genetic origin. During the first two months of pregnancy, the foetus develops hormonal receptors, but sometimes during this process different inter-sexual states are produced, where a combination of male and female characteristics co-exist. This is called Harry Benjamin syndrome, named after the German scientist who pioneered study in this area.

**The condition is often heightened by parental rejection.** It is estimated that in as many as 70 per cent of cases in Argentina, children are expelled from the family home, punished or sent somewhere to “forget” what they are feeling. A tiny minority are thought to receive open-minded parental support. Parents are frequently too focused on what they think their child should be like, rather than on what the child is actually feeling.

Children with this condition often feel uncomfortable in their own skin from an early age, but the sensation usually grows stronger in adolescence. Intervention is ideally undertaken at 16 to ensure an accurate diagnosis. Parents will hopefully understand and support their child, accompanying them

1. Name changed to protect identity

to see a professional psychologist who specialises in cases of gender dysphoria.

The only treatment for this condition is a sex change, or more correctly, "gender reassignment intervention".

In September 2007, the Supreme Court of Argentina recognised Natalia's right to change her gender identity.

**Natalia was born as a boy but it was obvious to all that she had strong feminine characteristics.** She was one of the lucky ones who had her parents' support. They had unsuccessfully sought authorisation for an intervention on two previous occasions before they approached CHA. A court had ruled in 2004 that Natalia would have to wait until she turned 21 to have an operation.

I brought her to be interviewed by health, legal and judicial professionals, and all agreed that the best thing for Natalia would be a gender reassignment intervention. Once we took on the case, an intervention was approved within a year.

We acted with parental consent in this case. However, many children with this condition stay locked in an unbearable silence because they are scared of being thrown out of their homes. Because of this fear, they are often denied any medical or psychological support.

**We based our arguments on the UN Convention on the Rights of the Child (CRC),** particularly on the child's right to be heard (Article 12) and the right to health (Article 24). We also referenced constitutional rights, such as the right to control one's own body and the right to an identity.

**"An estimated 70 per cent of children who experience gender dysphoria in Argentina are expelled from the family home, punished or sent somewhere to "forget" what they are feeling"**

Obtaining credible psychological and psychiatric diagnoses is the first step, as the final judgment often rests on these expert opinions. They assure the judge that it is not a case of mental illness or another condition, which would not necessarily require a gender reassignment intervention.

Of course, parental consent is also crucial. In the event that a child has not been granted parental consent, they can seek legal assistance from an advocate to take their case. In Argentina, the law establishes that children over 14 are "minor adults". As such, they have the right to control their own body.

Another key factor was public opinion. Natalia's case attracted a great deal of support from journalists and the general public.

**My advice to others working on such cases** is that the child must come first. Close attention must be paid to what they are saying in order to determine who they really are and what they are feeling.

Second come the parents. They should listen to their children's views about everything in their lives, not just on the issue of dysphoria. They can also accompany their child to consult with specialists, such as psychologists. This can improve the overall relationship and help parents to better support their children against what can often be a cruel world of inquisitive looks from strangers and barbed comments from fellow pupils.

Third come NGOs. Children and parents can seek advice from human rights NGOs such as CHA, which have professional psychologists on their staff and a directory of doctors and other professionals who can help.

The most difficult part is what advice to give the child. This largely depends on the environment in which the child was raised. They may try to cover up for fear of emotional or physical reprisals. In an ideal world, the child should first see a professional psychologist for guidance.

*Natalia underwent surgery to acquire a female identity in December 2007, a few months after winning the court case. The operation took place at a private clinic and went well. Local media protected her identity. She now lives happily as a woman.*

## Transgender children elsewhere

**Spain:** a 16-year-old Catalan has requested permission from a court to have a gender reassignment operation in Barcelona. [Source: AG Magazine]

**Thailand:** Kampang Secondary School introduced a third toilet, in addition to male and female toilets, for transgender children in 2008. Headteacher Sitisak Sumontha estimates that in any year between 10 and 20 per cent of his pupils consider themselves to be transgender. [Source: BBC]

### More information

Comunidad Homosexual Argentina (CHA): [www.cha.org.ar/](http://www.cha.org.ar/)

To read the first ever informed consent form for hormonal treatment written in Argentina (in Spanish), which must be signed by the child concerned, their parents and the doctors involved, visit:

<http://www.shb-info.org/sitebuildercontent/sitebuilderfiles/consentimiento.pdf>

# Factfile: All right at home? Promoting children's human rights in family life



Bucharest, Romania

The information below explains why encouraging children's participation in decision making makes sense in family life.

## Children should not be burdened by unnecessary responsibility or information

Children should not be burdened with more information than they can cope with or understand. But children do like to know what is happening and why. If events that affect them... are not talked about, children may fill in the gaps in their knowledge with imaginings more worrying or frightening than the reality. Or they may blame themselves for events that they are not responsible for. Parents need to work out how much children need to know and how to explain it in ways they can understand. Young children often need to be shown things as well as told about them.

## It takes more time

It is much easier, in the short term, to decide things for children. But without their involvement, parents might get things wrong. And they will deny children the chance to think things through for themselves, weigh up the pros and cons, and begin to take responsibility for their actions.

## Children might make a mistake

They might choose an option that makes them unhappy or puts them in danger. Parents need to remember that they still have parental responsibility to protect their child from harm and to promote their well-being, so if they can see that something will definitely be bad for their child, they say "no"... Parents can help

children out if they find they are unhappy with a decision they have made, or change their mind...

## Children might make a 'wasteful' decision

Children often make choices that their parents feel are unwise or foolish – like choosing a toy that falls apart or that they hardly play with. It can help to think of wasteful decisions that we have made...

## They might want something they cannot have

Children might want their parents to stay together rather than separate, or to stay put when their parents have to move because of work. Even if children cannot have what they want, they do like to be consulted and to be told what decision has been made, and why. There is a great deal of research which shows that children feel better for being listened to.

## If they have their say, they'll expect to have their way

Parents need to be clear about which decisions they are prepared to negotiate and which they are not. They need to continue to make some decisions for children – in their best interests. They also need to let children make some decisions for themselves. And there will be some decisions that parents will negotiate with their children, reaching a compromise that takes into account all of their concerns.

## The benefits of involving children in family decisions

- When you listen to your children, you are telling them that they matter. Their confidence and self-esteem grow.
- You will learn important things from them. They have ideas you need to hear and feelings and reactions you need to know about.
- Only when children can express and understand their own feelings and needs can they consider those of others.
- When children learn to negotiate – and compromise – they can begin to balance their needs against those of others in the family. There is more cooperation and less conflict.

- Children gain information that helps them understand what is possible, and what is not.
- They learn to consider the consequences of certain actions: What might happen if... What happens when...
- Children can try out their ideas on you, within the safety of your family. This might be better than trying them out on the big wide world.
- Children are more likely to stick to decisions that they have helped to make...
- The more you have encouraged your children to know their own minds and make their own decisions, the easier they will find it to stand their ground if friends, or strangers, try to lead them astray. Children who are never allowed to say no to their parents will find it hard to say no to others.

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## The evidence

In hospital trials, children as young as five have shown that they are able to decide how much pain-relieving medicine they need to control their pain – and have kept their doses within a safe limit.

In a survey that asked children: "If we wanted to make a better place for children to live in, what would you like us to do?" the top priority of the seven- and eight-year-olds questioned was: "more zebra crossings".

# Ibero-American countries set progressive youth rights agenda

First Convention of its kind defends rights of teenagers and young adults, but its passage has not been smooth.

*By Rodolfo Albán Guevara, formerly the Coordinator of the Democracy Programme of the Andean Commission of Jurists, now working for the Constitutional Court of Peru.*

The Ibero-American<sup>1</sup> Youth Rights Convention (IAYRC) sets out specific rights for young people aged 15-24. The Convention, which came into force last year, emphasises sexual and reproductive and political rights, and recognises young people as actors in development.

It has so far been ratified by Costa Rica, Ecuador, Honduras, the Dominican Republic, Uruguay, Bolivia and Spain. Any young person in these countries whose rights have been breached can invoke the Convention as a legal tool.

## Why a Youth Rights Convention?

Ibero-America is the only region in the world to have developed a Convention specifically for young people aged 15-24, a group that comprises 30 per cent of Ibero-America's population. The need for such an initiative arose from:

- the significant economic contribution that young people make to the region's economy;
- the fact that political participation of students has been historically important for the development of democracy in the region;
- the fact that the three main causes of death among young people in the region are murder, traffic accidents and suicide.

The IAYRC builds on the United Nations Convention on the Rights of the Child (CRC) to extend legal protections beyond the age of 18 to young adults. Hopefully, it will also help to overcome negative, paternalistic or purely utilitarian perceptions of young people that prevail

in the region today, and to encourage the recognition of young people as citizens entitled to rights.

Many of the rights contained in the Youth Rights Convention are not provided for in any other international treaty. Its provisions include the right to:

- peace and a life without violence
- non-discrimination on the basis of language, religion, sexual orientation, physical aptitude, disability and economic resources
- free legal defence, reporting of violations and equality before the law
- honour, intimacy and personal image (ie, protection from exploitation of their image or practices which may degrade their personal dignity)
- creation of a family and free choice of a partner
- work, social protection, professional training, housing, political participation, sex education and a healthy environment
- conscientious objection to military service
- protection against the death penalty.

## Too progressive for some?

Some of the elements of the Convention were considered controversial by the establishment:

- The Catholic Church: The provisions on sexual and reproductive rights, including sex education at all levels of education and the right to form a family, met with resistance by the church and other conservative sectors of society because they believed these provisions would open the door to the morning-after pill and gay marriage.

- States engaged in internal armed conflict (Colombia): The right to conscientious objection to military service was fiercely contested as contrary to security policy because of the ongoing internal armed conflict that requires "all Colombians... to bear arms when public necessity so requires".<sup>2</sup>
- Costs: Concerns about the costs of implementing the Convention's provisions were also expressed.



1. Ibero-America refers to Latin America as well as Andorra, Portugal and Spain 2. Article 165 of the Constitution



It took seven years to negotiate the Convention due to this conservative resistance. Civil society played a strong role in overcoming these concerns by lobbying politicians to raise awareness about the importance of institutionalising the specific rights of young people. Teenagers and young adults were strongly in favour of the Convention.

### What now?

Two organisations are lobbying for governments to ratify the treaty: the Ibero-American Youth Organisation and the Andean Commission of Jurists. There is currently no mechanism to monitor the Convention, but ratifying States are required to submit a report every two years to the Secretary General of the Ibero-American Youth Organisation.

The next step is to raise awareness about the importance and benefits of the Convention in countries that have not yet ratified it, and to share best practice in policy-making and programming for young people with organisations in other regions.

An obvious place to start would be Africa, which has a Youth Charter, since the continent faces parallel problems of unemployment, a large informal economy, and extreme, protracted violence in some areas.

Hopefully Ibero-American countries will continue to lead the way on this issue and set a shining example for others to follow.

### More information:

Ibero-American Convention:  
[www.crin.org/Law/instrument.asp?InstID=1410](http://www.crin.org/Law/instrument.asp?InstID=1410)

Organización Iberoamericana de Juventud (Ibero-American Youth Organisation):  
[www.oij.org/](http://www.oij.org/)

African Youth Charter:  
[www.crin.org/Law/instrument.asp?InstID=1389](http://www.crin.org/Law/instrument.asp?InstID=1389)

Comisión Andina de Juristas:  
<http://www.cajpe.org.ope>

“Arte & Parte” actors and peer education leaders in Paraguay wear makeup and costumes and blow up condoms to prepare for an educational skit.



Photo: © Population Services International, Courtesy of Photoshare



# Children's rights means citizens' rights

Denying children political rights offends democratic principles, says Bob Franklin, in the context of the UK.

By Bob Franklin, Cardiff University School of Journalism, Media and Cultural Studies.

The British philosopher Bertrand Russell wrote: "No political theory is adequate unless it is applicable to children as well as to men and women." But most people seem to accept children's exclusion from voting as an article of ill-considered faith, a sort of self-evident common sense that requires little justification.

In democratic societies, the presumption must always be against exclusion, and the burden of proof must rest with those who propose to disenfranchise. Excluding children from the right to vote denies them *not merely citizenship rights but also the right to be a citizen.*

The case for excluding children and young people rests on two related arguments:

- Children are irrational and incapable of making reasoned and informed decisions, so it makes little sense to give them rights they are incapable of exercising.
- Children lack the wisdom born of experience, so they are likely to make bad decisions and mistakes. Society is simply protecting them from their own incompetence.

## A rebuttal of the case that excludes children from having the right to vote

- Children have rational thoughts and make informed choices. They often display very sophisticated decision-making abilities – for example, when dealing with a bully at school or an abusive parent. Some claim young people are ignorant of political affairs, but if this is true, it is a truth that extends to many adults. Democracy requires that everyone should have a voice to influence the decisions that govern their lives.

- Children should not be prevented from making decisions simply because they might make the wrong ones. It is important not to confuse *the right to do something with doing the right thing.* Some argue that children would cast their vote frivolously, but many adults do the same or choose not to vote at all.

- Mistakes are learning experiences and should not be viewed as wholly negative. Children, like adults, grow through a process of trial and error. Decisions made by adults are far from infallible, as evidenced by wars, nuclear weapons, global warming and many more bad judgements that have led to pain and suffering. To deny children the right to make mistakes is hypocritical. If the argument is really about competence and not age, then it is not children who should be excluded but people who are deemed incompetent.

- Setting age limits on the right to vote is relativistic and arbitrary. Limits vary from country to country when it comes to criminal responsibility, sexual maturity and political rights. The negative definition of children as "non-adults" is simplistic. From birth to 18, children encompass an enormous range of skills, competencies, needs and rights. A 16-year-old is likely to have more in common with a 19-year-old than a three-year-old, but according to conventional accounts, the 16-year-old and the three-year-old are equally "children". There is no better example than that of a 17-year-old who dies fighting in a war before even having the right to vote.

- The exclusion of children from decision-making is unfair because they can do nothing to change the conditions that exclude them. If incompetence was the issue, the stupid could grow wise, but children cannot prematurely grow old. This argument confuses particular children with *children as a group.*

The argument for the exclusion of children from decision-making is little more than ill thought through prejudice dressed up as "common sense".

## The case in favour of giving children the right to vote

Are children really capable of voting? If they are, is it desirable that they do so? John Holt, a child rights and education reform advocate, answered both questions with a resounding "yes".

Holt argued that everyone should have the right to vote when their interest, knowledge and involvement in politics are sufficiently developed to motivate them to do so. This does not mean that all children would have the right to vote.

Holt believed that few six-year-olds would exercise their vote, but many 10-year-olds would, since "they seem to understand at least as much about the world and its problems as I or most of my friends did when we left college".

Evidence from two key studies (Greenstein 1974; Dawson, Prewitt, Dawson 1977) suggests that Holt had a good point:

- People acquire the ability to discuss, assess and make decisions about politics much earlier than popular opinion imagines.
- The pace of political learning reflects, at least in part, the expectations of performance embraced in that public opinion. If adults acknowledged young people's abilities to discuss political issues, those capacities might be enhanced.

Most children are enthusiastic about the possibilities of voting. Consider the following quote from Olive Stevens' book, *Children Talking Politics: Political Learning in Childhood*:

“We’ve got to vote. I mean, us children. We’re not allowed to vote until we’re eighteen, the government said that. But I think we should have more say – in the Common Market and things. We might make the wrong suggestions, but at least we’ve tried to be more mature in our ways.”

Holt’s formula is attractive because it would allow those young people who are interested in politics to help form decisions. This “participation according to interest” or “creeping franchise” approach mirrors adult electoral behaviour.

## Objections to be overcome

Despite the arguments in favour of allowing children to vote, there remain many obstacles:

- It might be argued that children are more likely to vote on the basis of the personality of the party leader than on the policies of the parties, but adults often do the same. And why not? The different personalities of party leaders are relevant considerations when assessing a party’s potential for achieving its manifesto commitments.
- It is sometimes suggested that those who support a youth franchise are imposing adult lifestyles and patterns of behaviour upon children and young people precociously. But they do not want to force children to do anything. On the contrary, they wish to create opportunities for young people to participate where previously they have been inappropriately excluded. It is adult opponents of child suffrage who currently force children to comply with their perceptions of what it is to be “child-like”; namely innocent, irrational, incompetent, powerless and excluded.
- Opponents similarly suggest that some see the right to vote as a panacea for all the difficulties which children and young people confront, but they have overestimated its significance. Of course, the right to vote is not a panacea. Individuals must use their vote to complement their participation in pressure groups and a host of other community organisations if they are to maximise their influence on democratic policy-making.
- Finally there is, allegedly, the danger that parents might seek to influence their children’s electoral choices. This objection can be met in a number of ways:

a. While it is true that research shows that the electoral preferences of parents form a powerful influence on children’s voting patterns, these influences persist whether we are 10, 20, 50 or 80 years of age. To exclude only young people because of parental influence is one-sided and unjust.

b. If children had the right to vote and enjoyed a greater responsibility for their affairs, they would be less susceptible to parental influence.

c. A secret ballot would assist children’s autonomy.

## “No political theory is adequate unless it is applicable to children as well as to men and women.”

Bertrand Russell, British philosopher

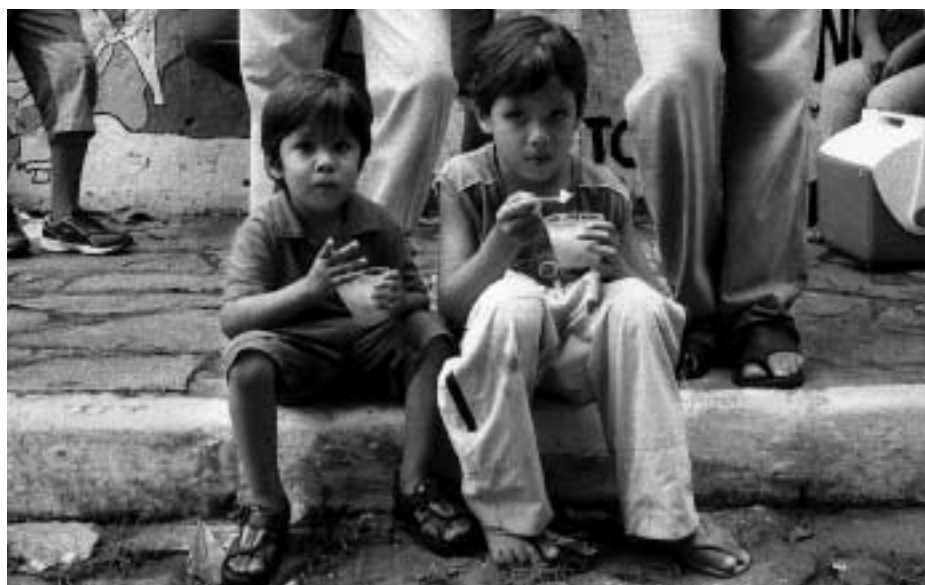


Photo: René Collins. Elections in Paraguay

## Conclusion

The denial of political rights to children offends fundamental democratic principles. The division between voters and non-voters based upon age is incoherent.

Democracy should encourage as many people as possible to become informed about and actively engaged in the affairs of their society. Everyone should be allowed to vote or join a political party when their interest, knowledge and involvement motivates them to do so.

Of course, not all children would vote, and very young children with only a marginal interest in politics would probably abstain. The sheer scale of the current exclusion of many millions of young people is wholly unacceptable.

If these are some of the possible implications of the extension of franchise to young people, bring it on!

## Countries where under 18s can vote

### Over 16s

Austria, Brazil, Cuba, Ecuador, Germany (in some states), Guernsey, Isle of Man, Jersey, Nicaragua, Philippines (for municipal elections and married persons), Switzerland (in some cantons for cantonal and local elections).

Over 16s can vote in the following countries if they are employed: Bosnia and Herzegovina, Croatia, Montenegro, Serbia and Slovenia.

The Norwegian government is piloting a project allowing over 16s to vote in local elections

### Over 17s

East Timor, Indonesia, North Korea, Sudan, Seychelles, Israel (local elections only), United States (for some primaries)

[Sources: National Youth Rights Association, National Youth Agency – UK, the Office of the Norwegian Ombudsperson for Children]

# Children's religion or belief: making an informed choice

Some pointers for supporting children to answer some of life's big questions.

*By Asma Jahangir, United Nations Special Rapporteur on Freedom of Religion or Belief.*

Does a child have the right to choose his or her own religion? If parents switch religions, can their children still practice this religion against the will of their parents? How might children be helped to make an informed choice? Should there be strict age boundaries, or is a case-by-case approach better? These are tough questions that many families and indeed States struggle to resolve.

They call for a balancing act between the rights of the child and those of the parent.

A child's right to freedom of religion or belief is enshrined in Article 14 of the United Nations Convention on the Rights of the Child (CRC).

However, the same article also reaffirms the rights of parents to provide direction to the child in the exercise of their right to freedom of thought, conscience and religion *"in a manner consistent with the 'evolving capacities' of the child"* [our emphasis].

National legislation varies widely with regard to children's competency to decide whether they can change or reject their religion. In some countries, under 10s may convert to a new religion if both parents agree or if one parent obtains a court's approval. For children older than 10, conversion often requires both an application by the parents and the consent of the child.

Laws in other countries feature varying age limits. In some nations, children over 14 can decide their religious affiliation for themselves, while children over 12 cannot be educated against their will in a religion different to the one they were born into. And in others still, 15 or 16 is the legal threshold for reaching full "religious maturity".

While strict age limits may provide reassuring certainty, they do not fully consider the maturity and "evolving capacities" of the child. An immature child in some countries may be granted full rights, while the rights of a mature child in others could be denied.

International legal guidelines do not give much direction. Indeed, documents detailing the drafting process for the International Covenant on Civil and Political Rights indicate that delegates wanted to leave the matter to national governments for determination.

## Is there an alternative?

A case-by-case approach – as supported by Article 12 of the CRC – may be a better solution. If the child's maturity is in doubt, a competent administrative or judicial authority, with the help of expert opinion, can assess the maturity of the child in relation to the issue.

But this approach is not without its drawbacks. It may lead to increasing tensions between the child and their parents. It could also result in more litigation, although this is not necessarily a bad thing because it can provide an opportunity to develop constructive case law.

The following approaches might prove useful for those dealing with this divisive issue:

- **Free choice:** It is of utmost importance that the child has freely chosen to change his or her religion. In a number of cases children, especially girls, have allegedly been abducted by members of a different religious community, forced into marriage and converted to a different religion.
- **Supporting parents and children:** Parents should be supported in exercising their rights in accordance with the best interests of the child, so that they can play a full role in educating children about tolerance and non-

discrimination. However, it cannot be taken for granted that all parents or legal guardians encourage the "evolving capacities" of the child by providing objective information about other religions or beliefs.

- **Education:** Teaching religion should be carried out in a fair and balanced manner. The Toledo Guiding Principles on Teaching about Religions and Beliefs in Public Schools provide excellent practical guidance.
- **Cultural implications:** Children should be made aware of the implications of opting out of a particular religion in communities where this could lead to ostracism. Governments should endeavour to eradicate prejudices and conceptions that are incompatible with freedom of religious belief, and to ensure respect for, and acceptance of, pluralism and diversity.

No child should be subject to coercion that impairs their freedom to adopt a religion or belief of their choice. As reaffirmed by Article 3 of the CRC, the best interests of the child should be the primary consideration.

Ultimately, a child's choice of religion is restricted by their parents' right to determine their child's religion up to an age where the child is capable of doing so. But we must work to ensure that no child is forced to follow a belief system they do not adhere to.

**“It is of utmost importance that the child has freely chosen to change his or her religion.”**



Photo: ©René Collins 'Salta, Argentina'

### **Opting out of religious education: the views of young people from minority belief backgrounds**

In the UK, as in many other countries where religious education has a place in the education system, the right of parents to withdraw their children from such teaching (and related activities such as school worship) on grounds of conscience is enshrined in domestic law and in international human rights law. Such law considers that the existence of a right to opt out is sufficient to respect and protect the freedom of thought, conscience and belief of these students and their parents.

However, parental decisions to withdraw their children from religious education set students from minority belief backgrounds (including those who do not belong to any religion) apart from their peers during the school day. This division has the potential to shape young people's relationship with their school and the wider community, as well as their religious understanding. In addition, it can affect their relationship with their parents and their belief community.

A research project by Queen's University, Belfast, Northern Ireland, will examine the views and experiences of young people of minority belief with respect to opt-out policies and provision in schools, and explore the extent to which they believe that their right to freedom of thought, conscience and religion is thereby protected. The research addresses the following questions:

- Do young people from minority belief backgrounds feel that opt-outs respect their right to religious freedom?
- To what extent do young people feel that opting out negatively or positively affects their sense of belonging to their school and religious community?
- Do parents and communities consider that opt-outs in schools protect religious freedom?

For more information, contact: Dr Alison Mawhinney at [a.mawhinney@qub.ac.uk](mailto:a.mawhinney@qub.ac.uk)

# Man on a mission: Hossam Bahgat on freedom of religion in Egypt

Hossam Bahgat is the founder of the Egyptian Initiative for Personal Rights. Hossam spoke to CRIN about freedom of religion in Egypt, and his recent work in challenging forcible conversions among children.

## How did you come to work in this area of human rights?

I worked as a journalist with a national newspaper in Egypt for three years. Being a journalist was a real eye-opener to the human rights situation in my country, particularly the lack of freedom of religion.

After working in the media, I founded the Egyptian Initiative for Personal Rights, a human rights NGO dedicated to freedom of religion, the right to health, privacy and bodily integrity. Our main tools are research, advocacy, campaigning and strategic litigation.

## Can you tell us a bit about freedom of religion in Egypt?

We have three main areas of concern:

- **Discrimination:** Laws, policies and practices that overtly discriminate against religious minorities, such as the freedom to establish places of worship or appointments to public office and in the family law system. These concern Coptic Christians<sup>1</sup> in particular.
- **Persecution:** The arrest, detention and prosecution of non-Muslims or those who hold an interpretation of Islam that differs from that of the State.
- **Conflict:** The government's response to sectarian tensions and violence, which is often grossly inadequate.

We recently made progress on the issue of identity (ID) cards. In Egypt, all citizens must obtain an ID card when they turn 16, which includes the holder's religious affiliation. This resulted in many people from the minority Baha'i community – and

others from "non-recognised" religions – being forced to misrepresent themselves as Muslims or Christians as a prerequisite for obtaining these mandatory documents, which are essential for accessing all basic services in Egypt.

After a five-year campaign, a new decree was recently issued by the Interior Ministry granting everyone the right to obtain an ID card without stating their religious affiliation. We are now working with the Ministry on policies to implement the decree.

## Have you worked on any cases concerning children's rights?

We have been working on the case of 14-year-old twin boys who had their religious affiliation forcibly changed to Islam in official documents when their Christian parents divorced and the father converted to Islam. The mother lost custody of the children by virtue of her religion.

The case highlights two related problems for children's rights:

- If a child's father converts to Islam, the child's birth certificate is automatically amended by the State, without the knowledge or consent of the child. The children often only find out when they turn 16 and go to get their ID card.
- Mothers are usually entitled to custody until the child turns 15. However, before the recent ruling, a Christian mother would often lose custody to the child's Muslim father.

After we lost in the lower-level courts, we were able to have the case heard by the Court of Cassation – Egypt's highest court.

## How did the children feel about the case?

We met with the children involved, but the case had been filed by their mother, as children in Egypt cannot initiate court proceedings until they reach 21. The children clearly self-identified as Christian, which was the religion they grew up practising, especially since they continued to live with their Christian mother after their father divorced her and left the family. Neither the lower-level courts nor the Court of Cassation heard the views of the children on this essential matter, however, and the mother's requests for the twins to testify were consistently denied.

In June 2009, the Court overturned the decision to strip the mother of custody of her 14-year-old twins. For the first time, the Court affirmed the right of a non-Muslim mother to retain custody of her child until the age of 15 – as stipulated by Egypt's Personal Status Law – even when the child's father converts to Islam.

## When can children choose their own religion?

Prior to this ruling, the Court's position had been that a child must be transferred to the custody of their Muslim father and have their religious affiliation officially changed to Islam at the age of seven, which is considered the age of "religious maturity" by the Hanafi<sup>2</sup> school of Islamic jurisprudence.

The Court did not accept the argument that Christian-born children over seven, whose fathers convert to Islam, should enjoy the freedom to choose their religion – as set out in some schools of jurisprudence and as argued by the Public Prosecutor. Unfortunately, the Court upheld its previous

1. Coptic Christians are Christian descendants of ancient Egyptians





Photo: © Amr Soliman

precedent that when a parent becomes Muslim, the religion of their children is automatically changed to Islam until they are 15, which is the age of puberty under the Hanafi school. According to the Court's previous precedent and to the currently applied interpretation of Shari'a, children can choose to change their religious affiliation once they attain the age of 15. However, in practice there is no channel to do this if someone is born a Muslim, so in reality it is only possible to convert to Islam.

While the case is a positive step forward, it still does not address the root cause of the problem: the forcible conversion of Christian children in official documents without regard for the children's or mother's opinion when their father converts to Islam.

This is a restrictive and conservative interpretation of the law that legitimises discrimination in the name of Islam. We are pressing the government on this issue in amendments to the Personal Status Law that are scheduled to be brought before parliament later in the year.

### **What kind of religious education do children receive in schools?**

Religious education is mandatory according to the Egyptian Constitution, but is provided only in Egypt's official religions, so if a child is Christian or Muslim they will

receive religious education but only in their own faith. This is another issue for children whose religion is automatically changed by the State when their parents convert as they must change their studies and be instructed in Islam even if they continue to practice Christianity and live with their Christian mothers.

### **How did you argue the case?**

We referred to all relevant instruments in the case, including the UN Convention on the Rights of the Child (CRC), the African Charter and Egypt's new Child Law, which came into force last year.

The element of the case concerning the automatic change of children's religious affiliation is now pending with the African Commission on Human and People's Rights.

Egypt has an opt-out on the African Charter on the Rights and Welfare of the Child, stating that it does not recognise the African Committee of Experts' authority to examine individual complaints, although individual complaints can still be examined by the African Commission.

### **Do you have advice for others involved in similar cases?**

When taking on strategic litigation, we have learned that the planning phase is

often more important than the litigation phase. Identifying the case that will have the most strategic impact, examining the facts, weighing up the possible options and building the strategy are essential. Where cases fail or backfire, it is usually as a result of poor preparation.

The second thing I have learned is patience! Some cases take years to resolve in court. Plus, there is a very repressive law governing how we choose and conduct our activities. At the end of the day, we live in an autocratic state where interference and harassment are commonplace in our line of work.

You can't expect quick results. The advocacy and public campaigning you do after the case are just as important as the work you do before it.

### **More information:**

Egyptian Initiative for Personal Rights:  
[www.eipr.org/en/](http://www.eipr.org/en/)

CRIN's toolkit on child rights and strategic litigation:  
[www.crin.org/resources/infoDetail.asp?ID=17127&flag=report](http://www.crin.org/resources/infoDetail.asp?ID=17127&flag=report)

CRIN's briefing on the African Committee of Experts:  
[www.crin.org/RM/acrcw.asp](http://www.crin.org/RM/acrcw.asp)

2. The Hanafi school of jurisprudence is one of four schools of law within Sunni Islam and is the school on which the Egyptian family courts rely when a matter is not codified elsewhere.

# Factfile: Curbs on children's freedom of religion in Central Asia

States across the region discourage or ban children's participation in religious worship and education – even in their free time.

*By Felix Corley, Editor, Forum 18, a Christian web and e-mail initiative on the freedom of thought, conscience and belief.*

Why are governments in Central Asia so scared of giving children the freedom to choose and practice their own religion?

It is difficult to answer this question because governments refuse to engage in public discussions. It may stem from a heritage of Soviet-era atheism, or the tendency for authoritarian regimes to try and tightly control every aspect of individuals' lives. They may see religious organisations as a threat to their own power.

Whatever the reason, the evidence of their hostility is clear. Many States discourage or ban children's participation in religious worship and education – even in their free time. Both children and parents have been threatened for attending mosques, churches or temples.

New or existing laws on religion put this increasingly antagonistic approach on open display.

## Uzbekistan

The children of Baptists and Jehovah's Witnesses have been summoned and intimidated by police and local government committees.

In April 2008, a teacher and the police threatened the children of Baptists with imprisonment if they attended church. The children were interrogated about what their parents taught them, what books they read, what films they watched, what music they listened to, and what songs they sang.

This campaign of intimidation spread from one region to another, with children being forced to sign statements saying they would not attend mosques, Internet cafés or sports clubs in February this year.

Muslim children are, in effect, banned from attending Friday prayers. The official excuse is that it interferes with school, but research by Forum 18 found that they are prevented from going to mosques at any time.

## Turkmenistan

Forum 18 has been informed by members of smaller religious communities, which do not include members of the Russian Orthodox church or Muslims, that the State requires religious leaders to get official written permission from both parents for every child who attends any religious event, even when one or both parents are present.

Police have raided various religious communities and interrogated and filmed children alone, against their parents' wishes.

In one example, authorities threatened to lock a Jehovah's Witness mother of four in a psychiatric hospital, place her two under-age children in a children's home, and deport the other two.

## Tajikistan

Tajikistan passed a new restrictive law on religion in April of this year. It requires both parents of any faith to give their permission in writing for children aged seven to 18 to have religious education. No provision is mentioned for children under seven, an apparently deliberate omission that officials could interpret as making such religious education illegal.

Young girls are banned from wearing the hijab headscarf and a secret unwritten instruction prohibits children from visiting mosques in school hours.

Education Minister Abdudjabor Rahmonov claimed in 2005 that wearing the hijab "is unacceptable in secular schools and violates the constitution and a new law on education," even though the Tajik constitution does not bar wearing the hijab. Mr Rahmonov also claimed, without justification, that many pupils "spend evenings in mosques and do not do their homework".

## Kyrgyzstan

Children attending places of worship have faced harassment and girls wearing hijabs to school have been threatened or suspended.

Officials conduct widespread "check-ups" on religious communities. One Protestant told Forum 18: "They had two main questions: how many ethnic Kyrgyz we have and what activities we have with children. These are the things that most bothered them."

## Kazakhstan

In 2003 the Education Ministry issued a directive that ordered school directors "not to allow visits by students and children to religious associations...".

In 2004 one region ordered schoolmasters to conduct compulsory "educational work" with children who attend places of worship.

In 2005, officials in another region issued a questionnaire asking children about their religious beliefs and practices. Such surveys are illegal under Kazakh and international law.

In 2009 the government failed in its attempt to pass a highly restrictive new law on religion. An early draft text required permission from both parents for children to attend any religious event.

Although the new law was vetoed, police raids have continued, especially on places of worship without State registration, with children being questioned about why they participate in worship services.

## More information

visit: [www.forum18.org](http://www.forum18.org)



Photo: Y Care International

# Taking the “criminal” out of responsibility

Thandanani Ndlovu from South Africa, was arrested for being associated with the perpetrator of an armed robbery when he was 16. He was detained for five months in jail awaiting trial. Since his release he has been supported by Amanzimtoti YMCA in KwaZulu-Natal and has been involved in Y Care International’s Youth Justice in Action campaign.

**The criminal justice system is more about punishment than education and rehabilitation.**

**The conditions in prison are bad. I was in the same cell as adults.** I often found myself sleeping on the floor as there were 80 of us in one cell – and that is not healthy or right for any human being.

**I had been studying at the time I was arrested, but I was unable to continue my studies in the adult prison.** I was eventually moved to a juvenile prison where I was offered education, but it wasn’t easy and I couldn’t get hold of the books I needed. Despite this, I worked as hard as I could and was able to take exams for the first year of a course in marketing and management.

**A year later there were still no books and no one organised for me to take my second year exams.** I was so angry because I had wasted my time trying to study. I have heard that the Department for Correctional Services now works with the Department for Education to improve young people’s access to education in prison, but at that time, it was virtually impossible.

**I have followed debates about the minimum age of criminal responsibility.**

In South Africa, the minimum age is 10, which I think is far too low. It should be at least 15. The main thing though, is to improve the system itself. More resources must be put into preventing young people entering the justice system in the first place and making sure they receive support and encouragement from a young age. Once they are in the system, they should be supported to develop skills and contribute positively to the community, instead of being criminalised. Criminalisation just puts young people in a worse situation when they come out of prison than when they went in.

**I feel very strongly about this because when I came out of prison I had nowhere to go.** With the help of a social worker, I eventually found a halfway house run by the YMCA, and they helped me to get back on my feet. But many young people do not receive any support and no company will employ them, first, because of the stigma attached to having spent time in prison, and second, because they haven’t had the opportunity to develop their skills and prepare themselves for life.

Hardly any government departments hire people with a criminal record. How can they expect other people to employ us when they won’t employ us themselves? What message does this send?

**I have one last thing to add:** I went to the 10th Session of the UN Human Rights Council in March. Governments are very good at writing reports and making pledges to commit themselves to do wonderful things, but I want to see them follow through and put these words into action.

*For more information on the Youth Justice in Action campaign, visit:*  
[www.youthjusticeinaction.org/](http://www.youthjusticeinaction.org/)

## More information

The Constitutional Court of South Africa recently put an end to minimum sentencing for children aged 16 and 17. This will protect children from being subject to harsh prison sentences without their individual circumstances being taken into account.

To read more, visit:  
<http://www.crin.org/resources/infoDetail.asp?ID=20877&flag=news>

# Making justice child friendly: guidance at last



Photo: Y Care International

A new tool will shed light on what child-friendly justice means in practice.

*By Sabrina Cajoly, the Co-Secretary of the Group of Specialists on child-friendly justice (CJ-S-CH) at the Council of Europe.*

Michael is 10. His parents are divorcing and fighting over his custody. Michael wants to see the judge and say that he wants to live with his mother. Tina, seven, has been sexually abused, the doctor says, but she confusingly raises an accident in the bathroom. The judge is considering a re-enactment of the crime scene but fears causing her further trauma. Emma is 16. A famous modelling agency offers her an exclusive five-year contract. Emma's

parents do not want her to accept, but Emma thinks that she should have a say in her career plans and wants to choose her own legal representative. Olga, 15, killed her stepfather, who regularly beat her and her mother. She is in pre-trial detention, wondering what will happen next and whether she will be seen as a victim, witness or author of domestic violence. She also wonders what will happen to her after the trial, as her mother has rejected her. Aleksandar's parents are subject to an eviction procedure. Their lawyer argues that the eviction contradicts the child's best interests, in particular his right to

decent housing. Hasan, five, is an unaccompanied migrant minor. He is being detained in a European airport.

What do all these children and young people have in common? Life has brought them all, in some way, in contact with the justice system – be it civil, criminal or administrative procedures. They are fictitious characters reflecting real situations that are confronting professionals – lawyers, judges, police officers, social workers and psychologists. Those professionals have a duty to ensure a place and voice for these children and young people appropriate to



their age and individual case, prioritising the best interests of the children concerned.

Because many Michaels, Tinas, Emmas, Olgas, Aleksandars and Hasans really do exist, and because so many other situations occur where children are not seen or heard, or their views are ignored by the justice system, the Council of Europe (CoE) is currently drafting guidelines on child-friendly justice in order to enhance children's effective access to and adequate treatment in the justice system. This work is being led in close cooperation with the CoE's programme, Building a Europe For and With Children.

The aim of the guidelines is to safeguard the best interests of the child in all circumstances where he or she is, for whatever reason, likely to be brought into contact with any sphere – civil, administrative or criminal – of the national justice system. Three of the CoE's major intergovernmental committees dealing with civil law and administrative law will work together on the guidelines.

### **More than just another set of guidelines**

The aim of the guidelines is to promote and protect children's rights to

information, representation and participation in judicial and administrative procedures, giving them a place and a voice at all stages. They will not only be a declaration of principles, but a practical guide to implementing internationally agreed standards. They will therefore build on existing international, European and national standards. The guiding thread of the European guidelines will be the best interests of the child.

Work began on the guidelines in 2008 when experts presented reports on child-friendly justice as a basis for discussions at conferences held in Stockholm, Sweden, and Toledo, Spain. The findings of these meetings will inform the Group of Specialists on child-friendly justice, which was established to draft comprehensive European guidelines on child-friendly justice in 2009. The Group of Specialists is a multidisciplinary group, including judges, prosecutors, psychologists, police officers and social workers, as well as representatives of the Member States. Its first meeting was held in Strasbourg in April 2009.

### **Important dates:**

**28-30 September and 8-10 December 2009:** Group of Specialists meetings

**7 December 2009:** Hearing with leading international organisations and NGOs specialising in children's rights. NGOs will be consulted throughout the drafting process, and possible ways of ensuring children's direct and meaningful participation are currently being examined.

**2010:** The final guidelines should be adopted by the CoE's Committee of Ministers.

For more information about the CoE's work on child-friendly justice, visit: [www.coe.int/childjustice](http://www.coe.int/childjustice)

### **More information**

"The right of children to be heard: children's right to have their views taken into account and to participate in legal and administrative proceedings", authored by Daniel O'Donnell for the UNICEF Innocenti Research Centre (April 2009). <http://www.unicef-irc.org/cgi-bin/unicef/Lunga.sql?ProductID=553>

# Disability: Support? Yes. Sympathy? No

Young people in Sierra Leone agree that people with disabilities may need help. But that doesn't mean being stifled.

*By John Conteh, Saidu Thoronka and Mariatu Bangura, Young Voices of Sierra Leone, a project by Leonard Cheshire Disability.*

As disabled children in Sierra Leone, the biggest challenge we often face is the attitude of over-protective adults. It is the same for many of our peers worldwide.

We want to play and go out on our own. We want to hang out with our friends and participate in community activities. But well-meaning parents often stop us from doing these things out of fear that it may adversely affect our health.

With the utmost respect for caring adults, we don't need your sympathy. In a world where we are often not even allowed to go to the toilet without adult supervision, we value our privacy deeply. We need our freedom!

The United Nations (UN) Convention on the Rights of Persons with Disabilities guarantees our rights to movement and privacy. We fully understand that, in certain situations, we face greater risks than our non-disabled peers, but the degree of protection that we need should be decided only after considering our views.

We often find that we have a very limited say about our own way of living. This privilege is afforded only to the few of us who have access to jobs and economic independence. But even so, it still depends on age and support.

We want to break the silence that surrounds disabilities in Sierra Leone and elsewhere. We want people to realise that disability does not mean inability. We want to reshape the way adults, communities, families, employers, schools and decision-makers perceive disability.

We call on the government, NGOs and the private sector to create a level playing field for disabled people. In particular, we would like to see the National Disability

Act and the UN Convention on the Rights of Persons with Disabilities ratified as soon as possible. We urge NGOs to work towards this goal.

We also want more education to help make us independent. We want to be self-sufficient and to break the bonds of poverty and dependency that hold us back.

We believe that children and young people with disabilities should be given opportunities to make their own decisions, especially in education, movement, privacy, and healthcare. We should be treated as individuals capable of having a voice and making decisions. Like everybody else, we want to form our own identity and lead our own lives. Help us to achieve our goals.

## More information

Read about Young Voices and watch videos made by young people with disabilities at:  
[www.lcdisability.org/youngvoices](http://www.lcdisability.org/youngvoices)

The UN Convention on the Rights of Persons with Disabilities:  
[www.crin.org/Law/instrument.asp?InstID=1048](http://www.crin.org/Law/instrument.asp?InstID=1048)

'See Me, Hear Me: A guide to using the UN Convention on the Rights of Persons with Disabilities to promote the rights of children', authored by Gerison Lansdown for Save the Children UK and Sweden on behalf of the International Save the Children Alliance, May 2009:  
[www.crin.org/resources/infoDetail.asp?ID=19928&flag=report](http://www.crin.org/resources/infoDetail.asp?ID=19928&flag=report)

Find the latest news and resources on the rights of children with disabilities at:  
[www.crin.org/themes/ViewTheme.asp?id=5](http://www.crin.org/themes/ViewTheme.asp?id=5)

## Young Voices project

The UN Convention on the Rights of Persons with Disabilities (CRPD) took effect on 3 May 2008. The Convention expressly recognises the equality of persons with disabilities for the first time in international law.

Young Voices helps young people bring the UN Convention to life. The project introduces people with disabilities both to the arguments that will help bring about implementation of the provisions of the UN Convention and to new advocacy tools.

Young people involved in the project set out the following tips for other young advocates.

## Ten point programme – what you can do

There is no time for delay. The time to act on the Convention is now!

- 1 Study and discuss the Convention.
- 2 Campaign for implementation of the Convention.
- 3 Lobby Governments and officials.
- 4 Push disability issues in the media and write articles and blogs.
- 5 Support each other against discrimination.
- 6 Protest when people with disabilities are abused.
- 7 Link with Disabled People's Organisations.
- 8 Celebrate when barriers are lifted and discrimination is overcome.
- 9 Think of new ways to tell your stories.
- 10 Demand the right to be heard.



# Australia: make equality work!

Differential pay rates for young people and adults are discriminatory.

*By Gillian Calvert, New South Wales Commissioner for Children and Young People.*

Is it fair for a 16-year-old waitress on minimum pay to earn 38 per cent less than an adult on minimum pay doing the same job? The answer would patently appear to be no, but that is exactly what is happening across Australia and, what's more, it is legal.

The country's workplace relations laws have undergone major reforms over the past 15 years, but junior rates of pay have not been reviewed since 1999, when they were left unchanged despite their discriminatory nature.<sup>1</sup> Minimum rates of pay for young workers – up to the age of 21 in many industries – are still based on age, typically as a percentage of the adult rate.

Defenders of the current system argue that young people don't have the skills and knowledge that only on-the-job experience can bring. Many adults justify unequal pay by claiming that young people's work is a stepping stone to better paid work. These rationales need to be challenged on the grounds of fairness and to better reflect young people's "evolving capacities".

Research by the New South Wales Commission for Children and Young People has shown that young people working moderate hours in jobs with reasonable conditions have a positive experience. Not only do they learn specific skills relevant to their job, they also gain talents they can use to benefit their communities. Moreover, others see, and can learn from, their participation.

Young people's capacities are not necessarily influenced by age, but by many social, emotional and cultural factors. In the Australian experience, work often begins informally within the family, moving to neighbours, the broader community and then into the adult job market. It is not uncommon

for young people – even at 16 – to enter the adult workforce with valuable skills and experience.

Relying solely on age as the basis of progression through a minimum wage scale does not reflect differences in skill levels. It also ignores jobs in which young people on junior wages are performing roles that require higher levels of skill than their peers, such as supervising other young people. A competency-based system that recognises the context of the work – as exists in New Zealand and elsewhere – seems a more appropriate model.

There are certainly characteristics of childhood that set young workers apart from adult workers, but this should not result in unequal pay for doing the same job. Rather, young people's vulnerabilities require additional consideration of their needs, so that they have an equal standing with adults in the workplace.

However, while young people may need support or protection to get the most from their experience of work, the last thing they need are regulations that stifle their development. There is a risk that promoting equity for young workers could result in a rise in youth unemployment, particularly in the current economic downturn.

**A 16-year-old Australian waitress on minimum pay earns 38 per cent less than an adult on minimum pay doing the same job.**

Australia's industrial relations system needs to recognise young people's evolving capacities through equitable conditions and pay, while providing adequate protection in view of their vulnerability. There is a need for greater understanding of the role junior rates of pay play in employment decisions, and the possible effect of removing them.

Over the next few years, the laws on junior pay rates will once again undergo significant changes. This presents an ideal opportunity to consider the appropriateness of an age-based wages system.

Hopefully, in the not too distant future, young waitresses will be paid fairly according to the work they do, rather than the status they have been afforded.

## Examples of prohibitions on age discrimination in employment

**Belarus** prohibits age discrimination in wage rates. Its Constitution provides that minors are "entitled to equal remuneration for work of equal value".

The **Netherlands** offers statutory guarantees for equal treatment in employment, occupation and vocational training, irrespective of age.

**New Zealand** moved to stop discrimination against children in employment by abolishing youth wages in 2008. However, this applies only for persons aged 16 and over.

[Source: "Global report on laws protecting children from age discrimination" (CRIN, 2009) See: <http://www.crin.org/resources/infoDetail.asp?ID=20816&flag=report>]

1. Australian Industrial Relations Commission (1999) Report of the Australian Industrial Relations Commission Junior Rates Inquiry conducted under section 120B of the Workplace Relations Act 1996 (Cth), Canberra

# Marrying protection and autonomy

Establishing when people can marry requires a rights-based approach, not just the right age.

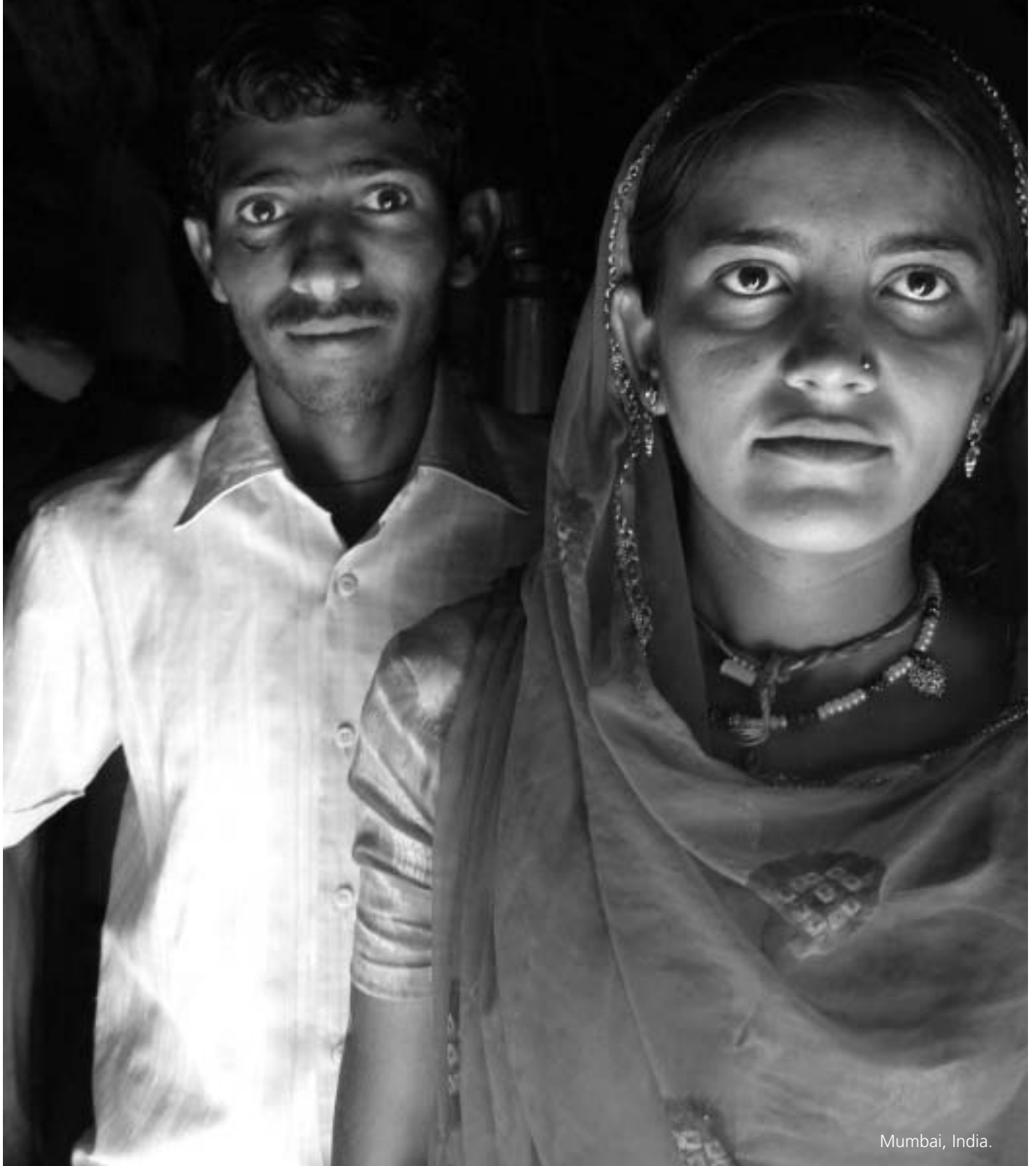


Photo: ©2006 Rose Reis, Courtesy of Photoshare

Mumbai, India.

By Angela Melchiorre, Research Coordinator for the Right to Education Project/ActionAid International. She previously worked as Human Rights Lecturer at the University of London, Human Rights Adviser for Italy at the UN in Geneva and New York, and as consultant for the First UN Special Rapporteur on the Right to Education.

Often lauded as the most comprehensive human rights instrument for the protection of children, the Convention on the Rights of the Child (CRC) fails to clearly indicate where it stands on marriage. This may not be surprising: marriage is not a matter for children. Unfortunately, though, practice demonstrates that many children enter wedlock at a very young age. While an obvious case can be made against the forced marriage of young children, matters become more complex when the decision to marry is voluntarily taken by 16- or 17-year-olds. In such cases, the evolving capacities of the child (Article 5) and the respect for his or her views (Article 12) need to be considered and balanced with the concept of protection from harm.

## A complex issue

There is no magic formula prescribing the 'right' balance for child marriage and approaches to a minimum age in this area vary. Analysis of States Parties' reports to the Committee on the Rights of the Child reveals that several countries have no minimum age for marriage: some set it very low; others admit that the law is often ignored; yet others allow girls to marry at a younger age than boys.<sup>1</sup>

The CRC does not mention age limits for marriage, but Article 1 defines a child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier". This proves especially critical in situations where children acquire majority through marriage, as they become adults for the law of their country and therefore are no longer eligible for protection under the CRC. On the other hand, the rationale behind granting majority through marriage lies in the recognition of capacity and maturity. This certainly favours a more emancipatory approach, challenging the commonly held view that 18 is the dividing threshold between childhood and adulthood and that age is the key element

in determining competence to act. Therefore, more questions need to be asked about children's capacities from an enabling rather than disabling perspective.

## Important questions

Here are a few important questions and issues to consider when thinking about minimum age requirements for marriage:

### • Criteria and limitations

1. What are the factors that determine the minimum age for marriage?
2. Is this minimum age absolute or are there exceptions to it?
3. How universal are these criteria and limitations?

### • Consideration of contexts and values

1. How deeply entrenched is marriage as an institution in local customary, religious and cultural practices?
2. Is the application of worldwide standards possible?

### • Aims and implications

1. Is this age established to protect children or to recognise their capacity and entitle them to the full and free exercise of a right?
2. What are the benefits and consequences of establishing such a minimum age?

### • Consistency with the general principles of the CRC and the definition of the child

1. Is the minimum age discriminatory towards any group?
2. Is the decision in accordance with the best interests of the child?
3. Is the free and informed consent of the child included as a determining factor?
4. Are the evolving capacities of the child taken into account?
5. Does the minimum age match with the notion of childhood underlying the CRC?

In addressing these dilemmas, the Committee has provided countries with specific recommendations to:

- Increase the minimum age when it is too low
- Ensure that the minimum age is "the same for boys and girls and closely reflect[s] the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity"

## Balancing act

Discussions on child marriage have focused on the protection of children from harm, and rightly so. However, where older children are concerned, more consideration should be given to other factors. While, on the one hand, a minimum age should protect children from the harmful consequences of child marriage; on the other, it needs to recognise, and encourage respect for, the autonomy and views of the young people involved. A rigid minimum age does not appreciate this complexity. This is why more attention needs to be paid to all the general principles of the CRC (non-discrimination, best interests of the child, his/her survival and development, and his/her views), as well as his/her evolving capacities.

A rights-based approach which sets an age range for marriage, and is consistent with the CRC general principles and definition of the child, could offer a more realistic and sustainable approach to this issue.

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For more information, contact:  
angela.melchiorre@actionaid.org

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1. Examples of no minimum age for marriage include Lebanon, Marshall Islands, Mauritania, Palau, Saudi Arabia; cases of low or different minimum ages for boys and girls include Austria, Chile, Japan, Republic of Moldova, Romania, Suriname, South Africa, and Trinidad and Tobago. See A. Melchiorre, 'At what age?...are school-children employed, married and taken to court?', (The Right to Education Project/UNESCO-IBE, 2004), available on line at [www.right-to-education.org](http://www.right-to-education.org)

# Early marriage in Yemen: through the eyes of a campaigner

## The power of the media: a campaigner's guide to early marriage

*By Husnia Al-Kadri, Executive Director of the Gender-Development Research and Studies Centre, Sanaá University, and experienced campaigner against early marriage.*

Najood Ali was 10 years old when she walked up to a courthouse last year and demanded a divorce from her 30-year-old husband. I am sure you have heard about this – it was all over the international press. The case in itself was a campaign.

Najood had complained to her aunt and uncle that this man was treating her badly. They advised her to go to the local courthouse and demand an annulment. Who knows, maybe they were joking, but Najood went and, through the court, she found two lawyers sympathetic to her situation. One of them, Shada Nasser, immediately agreed to take her case and texted other activists. Pretty soon, the court was filled with journalists. The judge granted the divorce straight away. Najood's case was the most powerful factor in getting a minimum marriage age of 17 in Yemen.

### For the good of the family

Marriage in Yemen is not about the union of two people. The aim is to bring someone as an extra pair of hands to serve in the home where the extended family usually lives together under one roof. Early marriage affects boys as well as girls, but to a lesser extent. The boy's family pays a dowry to the girl's family. There are many reasons for early marriage: poverty, fear of girls being abducted and forcibly married, and so on. But the most significant factor is cultural tradition and the belief that the younger a girl is, the more easily she can be moulded into a good wife.

Girls report being abused and marginalised. They say they feel humiliated and unable to express themselves or communicate with their husband. They leave school before they are married and usually fall pregnant

within a year of marrying, often having several babies within a short space of time, leading to serious health problems. More than 19 per cent of maternal mortality occurs in early marriage.

It is different for boys. While it is hard for them too, they do not experience the same problems as girls. Boys report being subjected to the will and demands of their parents and extended family, in part because they cannot yet support their wife, so must remain financially dependent on their family. Sometimes they contribute to family work, but usually boys continue to go to school. Boys are often blamed by their family for what they see as their wife's 'shortcomings', and they are not in a position to defend their wife, or know how to treat her.

### Boys' privilege

When boys finish their education, they often want another life. They married because of pressure from their family, but when they have completed their education – maybe they went to university – they do not feel their life is complete with their wife, so they leave and don't come back.

More than 52 per cent of girls enter into marriage before they turn 14 and a half compared with just 6.7 per cent of boys, according to a study I conducted with 10 other researchers in 2005 across 17 governorates. The findings formed the basis of a campaign to establish a minimum age of marriage, which was initially approved by Parliament last year. In 1992 the minimum age of marriage was 15, but in 1998 Parliament revised this law to allow girls to marry as long as they didn't move in with their husbands until they reached sexual maturity. Some girls are married between the ages of seven and 10. The only exception is in Aden, in the south of the country, which has a different history and is a more open society, having been exposed to many different cultures and international

influences, and where access to education is much better. North Yemen united with the secular and Marxist South in 1990. In 1979, the government in southern Yemen set the minimum age of marriage at 16 for girls and 18 for boys.

Parliament had no choice but to agree to the law, following Najood's case and strong campaigning by civil society, which put them under a lot of pressure.

### Religious split

Sadly, the law was disputed by a group of hard-line Islamists. It was initially approved, but objections were raised before it was published in the government's official bulletin, which makes the law official. It is now back up for discussion in Parliament. These religious groups profited from the fact that the ruling party is concerned about elections due to be held in 2011 – the law is unpopular with some sectors of society.

Some fundamentalists believe that because the Qur'an is silent on the issue of early marriage, it permits the practice, although, of course, there are also many moderates within religious groups.

We have a very vocal Youth Parliament, which went to Parliament to campaign on this issue. The young people involved really know their rights and are very familiar with the Child Law, our national law on children's rights.

### Lesson learned

I have learned that repetition is key. Repeat the same thing, the same issue, over and over. We have to do this at many different levels and in the language of the people we are trying to influence.

*Although Najood originally stayed with an uncle, she is now back with her father and says she forgives him for what happened. She plans to become a human rights lawyer or a journalist.*

# Old before their time? Child carers in sub-Saharan Africa

We know very little about the lives of child carers. A new project enabling child carers to conduct research into their own and each other's lives plans to change this.



Photo: Kaabong, Uganda, Kristopher Carlson

*This research, which is funded by the Ford Foundation, was led by Glynis Clacherty and commissioned by Save the Children UK.*

Recall for a moment yourself as a child of eight. Now picture yourself having to take care of your younger siblings at that age because your parents have died or emigrated to find work. Can you imagine what this would be like?

While debates rage about how to determine children's capacities for decision-making in their own lives, many children are already taking on exceptional responsibilities. The devastating effects of the AIDS pandemic in Africa have resulted in vast and growing numbers of orphans and vulnerable children at a time when the continent is undergoing huge demographic change.

By the end of 2005, 12 million children in sub-Saharan Africa were orphaned by AIDS. However, hidden within this broad category of orphaned and susceptible children is a smaller but highly vulnerable group of 'child carers' – children who through the death, illness or migration of a parent have become the primary carer in the home.

Not only do these children carry out the usual domestic tasks that all children undertake, but they also bear the heavy responsibility of caring and providing for others – often tending to a dying parent while looking after their younger siblings as well.

Save the Children conducted research in four African countries: Angola, Nigeria, Uganda and Zimbabwe, to find out more.

## Why has this phenomenon arisen?

Given the high proportion of adults living with HIV, the number of children providing care in the home is assumed to be significantly higher than in the developed world, where it affects between two per cent and four per cent of all children. If we assume that five per cent of all orphans have a significant caring role (it may be fewer, but other non-orphaned children are also carers), then we can estimate that over 850,000 children are carers.

While there are no reliable data on the scale of the problem in Africa, there are clearly a number of factors fuelling the growth in the number of child carers:

- Increasing HIV prevalence and more adults needing care.

- Parents dying or migrating to find work means more children caring for younger siblings.
- Reduced public spending on healthcare services.
- Limitations of NGO provision due to precarious funding and government policies promoting volunteer-reliant, home-based care.
- Conflict situations break down immediate and extended family, as family members die or migrate.

In the face of all these pressures, Africa's traditional coping mechanism – the extended family – is being stretched beyond its ability to respond. While relatives still step in to support these children whenever possible, increasingly the safety net provided by extended families is no longer there. In addition, the stigma attached to HIV and AIDS often prevents families from seeking help. The result is that the burden of care is increasingly falling on children.

There is very little known about the views of child carers, and those being cared for, especially siblings or elderly people. Without reliable data, it is impossible to design policies and programmes to meet their needs and defend their rights. However, the research that has been carried out in sub-Saharan Africa has highlighted some key findings.

- Children are likely to end up in caring roles when there are no other support services available.
1. Girls are more likely to become carers than boys, although many boys are also carers
  2. Children in poor and low-income families are more likely to assume caring roles
- Children who are carers can experience a number of negative outcomes:
  - Impaired educational attendance and performance
  - Isolation from friends
3. Trauma and psychological distress
  4. Stigma and discrimination
  5. Forced migration

- But fortunately, there are some positive effects for child carers, which include:

1. Gaining new skills, maturity and emotional strength
2. Developing a strong, loving bond with the care recipient
3. Improving the family income by releasing others for work

Despite the risks, for many children the challenge of taking care of others may be a source of self-efficacy, self-esteem and resiliency. A number of factors that build resilience in children who care, as well as those who live with sick relatives or orphans, have been identified – for example, the quality of the relationship between child and adult; the provision of healthcare or social grants; and the capacity within social networks to provide food, sustain livelihoods, and ensure that children and adults feel included in the community.

More information is needed about the gender-specific issues faced by child carers, including the differing expectations for boys and girls in caring roles and how gender affects child carers' ability to access support. Girls tend to play a greater caring role, so school attendance is more likely to be impaired. Boys often receive less support when carrying out traditionally "female" roles.

## Nigeria

Save the Children and Fantsuam Organisation researched the situation of school-going children aged 12 to 17. The children talked about their own lives and then, after some training, went off to research the lives of other child carers they knew.

Two of the children in the core group of child researchers are looking after ill parents – one boy of 14 is looking after an ill father and uncle. Previously he had nursed his dying mother. Two other children are heads of households, and the rest are looking after old grandmothers or grandfathers. Many of these children looked after their ill parents before they died.

These children are performing tasks such as cooking, bathing and fetching medicines while at the same time acting as the main income earners in their

homes. Earning money to support their family is a massive burden. Many sell small items around the village or work as porters carrying goods from the market – one of the most difficult jobs – as they have to carry heavy loads. Others – both boys and girls – work on building sites. In addition, they often fetch water or collect wood for neighbours for a fee. Most of this work is done after school. After working, they then have a heavy load of household work to attend to.

The researchers conducted one exercise where children collected stones to represent the things that cause them stress. The researchers presented the young carers with some stones, but the children were not satisfied because the rocks were too small to represent their burden. They went out to get their own very large stones.



In the exercise, the largest stones they collected represented "being the only one responsible for the whole family". The second biggest ones were "unrelenting work", and the third biggest symbolised a "lack of food".

The children had an incredibly strong sense of responsibility for those they care for. Amazingly, they did not resent their duties.

When they were asked to help with further research, not only were they enthusiastic but they also had strong opinions on what the focus of the research should be. They all knew at least one other child carer they could interview, and most knew two.

### The next steps

The information gathered will be used to:

- identify the kind of tasks child carers are doing
- assess the protection, care and support requirements for child carers
- evaluate their access to support
- implement interventions at community level that promote the resilience of, and respond to the challenges faced by, child carers in Africa, and identify how these can be integrated into existing HIV and child protection responses
- define and advocate for policy and programming interventions in Africa that recognise and support child carers through national and Africa-wide advocacy.

To download the literature review, which also includes information on Uganda,

Zimbabwe and Angola, visit:  
<http://www.crin.org/resources/infoDetail.asp?ID=20684&flag=report>

For more information, contact Lucy Hillier at Save the Children:  
[lhillier@savethechildren.org.za](mailto:lhillier@savethechildren.org.za)

### More information

"Reversed roles and stressed souls: child-headed households in Ethiopia", African Child Policy Forum 2008:  
<http://www.crin.org/resources/infoDetail.asp?ID=20683&flag=report>  
<http://www.crin.org/resources/infoDetail.asp?ID=20683&flag=report>



Guinea-Bissau, Farim, 2005. Collecting silt for the production of salt.



# FOLLOW-UP: Defeating anti-social technology: positive moves in Belgium

In a follow-up to our last issue, Belgium takes successful action to prevent the spread of an unwanted new technology.

*By Ankie Vandekerckhove, former Belgian Children's Commissioner for the Flemish community.*

On a beautiful Sunday afternoon in February 2008, I read about a disturbing new technology being used by small businesses to scare children and young people away from public spaces where adults do not want them. The 'Mosquito', which made its entrance in the UK, is an electronic device that emits a high-pitched, and reportedly painful, sound audible only to young people.

The introduction of this anti-social technology seemed in line with the British trend of treating young people as "unwanted pests". Unfortunately, some policy-makers in the Netherlands also agreed that it was a simple, cheap and effective solution. I was determined to see that Belgium did not follow suit.

I joined forces with the Children's Rights Commissioner for the French speaking community to investigate the matter. We brought this worrying trend to the attention of all possible policy-makers – including the Regional and Federal Parliament, local community councils and the press – as it was unclear what level of government had the authority to address the problem. We focused on the following arguments against the Mosquito, urging decision-makers to take a positive and supportive attitude towards young people:

- It is against the best interests of children and young people (United Nations Convention on the Rights of the Child (CRC), Article 3). It has no pedagogical value whatsoever.
- It is a discriminatory device, as it works against all young people irrespective of their behaviour (CRC, Article 2). We acknowledge the fact that a minority of young people can at times disturb "public order", just as adults do at times, but we do not believe that dispersing all young people constitutes a solution.

- The reported damage and painful effects are a form of violence, particularly for younger children, and are thus unlawful (CRC, Article 19).

In our campaign, we called for the following:

- A multidisciplinary approach. It is not just public order that is at stake, but also the well-being of children and young people and their right to public space. We targeted different departments and ministries such as Health, Internal Affairs, Youth & Welfare and Urban Planning.
- A clearly formulated legal ban, including well-defined sanctions and monitoring. We argued that it was essential for monitoring to include young people because otherwise they may not know where to lodge a complaint. Children must be involved in monitoring the ban's implementation because adults cannot hear the device.
- More support for youth centres and public spaces for young people to gather and engage in sports, culture or simply to hang out and chat.

We were delighted to receive immediate positive feedback from policy-makers, NGOs and youth organisations. The Flemish Minister for Culture, Youth and Sport made a clear statement in the Flemish Parliament in support of our quest for a legal ban, saying that society needs to stop stigmatising young people.

On the other hand, the response from the European Commission was very disappointing. The Commission delegated responsibility for any initiative to Member States. The few MEPs (Members of the European Parliament) that did support the initiative were unable to get enough signatures to start a debate.

On a more positive note, our recommendation to local councils led to new police regulations. Some 40 councils speedily introduced a ban, while others said they would wait for federal legislation to take further action.

The Federal Parliament introduced several resolutions supported by the various political parties (except the extreme right). The Minister of Internal Affairs also announced he would investigate a possible ban. All initiatives made reference to the CRC arguments. A new law to ban all similar devices is currently pending. Further investigation of some aspects of the law is still needed – bizarrely, including a European Union (EU) check on the free movement of goods – but the law should face a vote soon.

This campaign was one of our most successful in recent times and only involved a limited amount of research and energy. Most of the political parties immediately took a stand against the device and followed our recommendations. It was very rewarding to receive such a positive reaction, unlike the feeble excuses offered by many policy-makers in the UK and the Netherlands. We hope our actions can inspire similar campaigns in other countries to ban this – and any other – anti-social technology aimed at young people.

*To read our previous issue of the Review, "Children's right to the city", which covered how the 'Mosquito' is being used in the UK, visit:*  
<http://www.crin.org/resources/infoDetail.asp?ID=18421&flag=report>

## For more information:

Buzz-off website:  
<http://www.nya.org.uk/information/109482/buzzoff/>

# Child rights puzzles

## Wordsearch

The object of this wordsearch is to find and circle all of the words at the side hidden in the grid. The words may be written horizontally, vertically or diagonally.

- CHILD
- RIGHTS
- EVOLVING
- CAPACITY
- CRIN
- JUSTICE
- FREEDOM
- CONVENTION
- PARTICIPATION
- RESPECT
- AGE
- DISCRIMINATE
- MATURITY
- EXPRESSION
- OPINION
- LAW
- INTERNATIONAL

S T H G I R E J O P I N I O N  
 N D V V Q E M N V A W W E P D  
 P I T S U V A Y S R M H C C J  
 A S O J O O T S N T O N I O S  
 V C J V L L U L X I D R T N C  
 R R C E R V R C L C E E S V H  
 Z I K G V I I M I I E S U E I  
 R M E A Y N T J N P R P J N L  
 D I V S T G Y Y V A F E N T D  
 W N Y W N E G T N T W C R I H  
 C A P A C I T Y L I T T K O S  
 W T B C R I N A R O U U S N Z  
 Z E Z I H A W T Q N F C S G R  
 Y D I N T E R N A T I O N A L  
 M B E X P R E S S I O N K G M

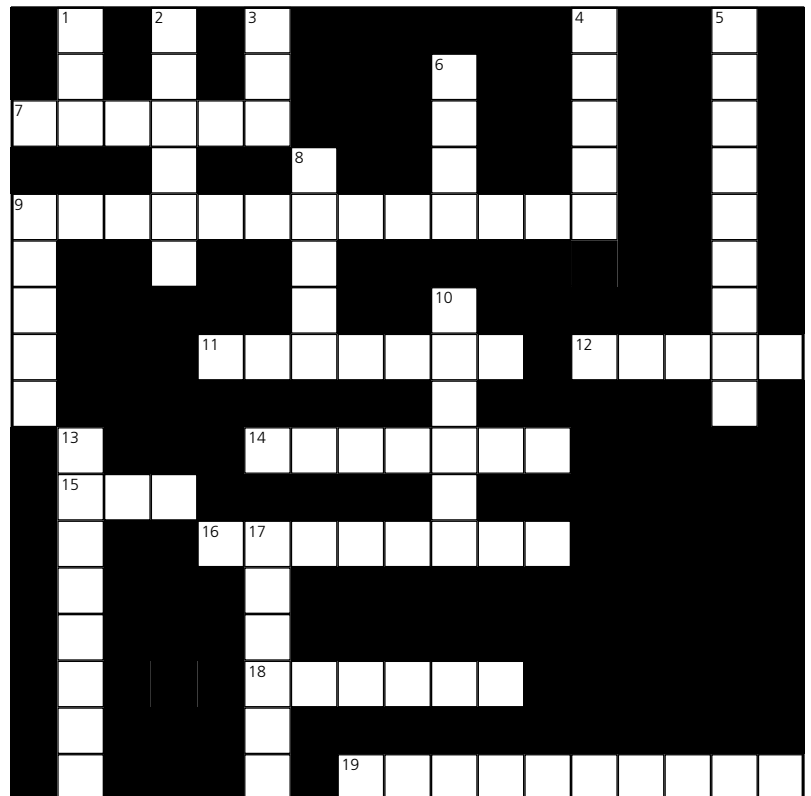
## Crossword

### Across

- 7. Meeting place of the Committee on the Rights of the Child (6)
- 9. Involvement (13)
- 11. Country with smallest population (7)
- 12. Human being below the age of 18 (5)
- 14. Surname of former Executive Director of UNICEF (7)
- 15. Acronym for UN body responsible for monitoring child labour (3)
- 16. E-newsletter about child rights (8)
- 18. A landlocked country in Asia beginning with B
- 19. UN human rights expert: Special....(10)

### Down

- 1. Surname of Chair of Committee on Rights of the Child (3)
- 2. The CRC is an example of one of these (6)
- 3. Country that has not ratified the CRC (3)
- 4. Largest country in Africa (land size) (5)
- 5. Woman who was instrumental in human rights movement (9)
- 6. CRC: Decisions must be taken in accordance with a child's....interests? (4)
- 8. Entitlement (5)
- 9. Capital of France (5)
- 10. Second largest country in the world (land size) (6)
- 13. Inter American Commission's Rapporteur on child rights (8)
- 17. Unit of currency in Russia (6)



- Answers**
- Down
  - 1. Surname of Chair of Committee on Rights of the Child (3) Lee
  - 2. The CRC is an example of one of these (6) Treaty
  - 3. Country that has not ratified the CRC (3) USA
  - 4. Largest country in Africa (land size) (5) Sudan
  - 5. Woman who was instrumental in human rights movement (9) Roosevelt
  - 6. CRC: Decisions must be taken in accordance with a child's....interests? (4) Best
  - 8. Entitlement (5) Right
  - 9. Capital of France (5) Paris
  - 10. Second largest country in the world (land size) (6) Canada
  - 13. Inter American Commission's Rapporteur on child rights (8) Pinheiro
  - 17. Unit of currency in Russia (6) Rouble
- Across**
- 7. Meeting place of the Committee on the Rights of the Child (6) Geneva
  - 9. Involvement (13) Participation
  - 11. Country with smallest population (7) Vatican
  - 12. Human being below the age of 18 (5) Child
  - 14. Surname of former Executive Director of UNICEF (7) Bellamy
  - 15. Acronym for UN body responsible for monitoring child labour (3) ILO
  - 16. E-newsletter about child rights (8) CRINMALL
  - 18. Bhutan
  - 19. UN human rights expert: Special....(10) Rapporteur

# Information

The Child Rights Information Network (CRIN) is a global network promoting information sharing and action on child rights. We press for rights, not charity, and are guided by a passion for putting children's rights at the top of the global agenda by addressing root causes and promoting systemic change.

The UN Convention on the Rights of the Child (CRC) is our guiding framework, and we believe it offers the best blueprint for children's empowerment and emancipation from harm and injustice.

CRIN's activities are based on the belief that information is a powerful tool for realising children's rights. CRIN distributes news, events and reports, lobbies, enables advocacy and promotes knowledge sharing and coordination. CRIN participates in international child rights coalitions and advocacy groups, supports campaigns and makes the UN and regional mechanisms more accessible to those lobbying for social change.

## A website

Updated regularly, the website contains references to thousands of publications, recent news and forthcoming events as well as details of organisations working worldwide for children. The site also includes reports submitted by NGOs to the UN Committee on the Rights of the Child. CRIN also offers two thematic websites on rights based programming and violence against children.

CRIN also hosts the websites of: The NGO Group for the Convention on the Rights of the Child, the European Network of Ombudspersons for Children (ENOC), the Better Care Network (BCN) and the European Children's Network (EURONET).

## An email service

CRIN offers a number of email updates, in English, French, Spanish and Arabic, as well as thematic updates. The main CRINMAIL is sent out twice a week and provides information on the latest news, reports and events on child rights issues. To subscribe or read online, go to: [www.crin.org/email](http://www.crin.org/email).

## A review

Published yearly, the Review (formerly the CRIN Newsletter) is a thematic publication that examines a specific issue affecting children.

Information about child rights in other languages is available at the links below.

### Arabic

<http://www.crin.org/arabic/index.asp>

### French

<http://www.crin.org/francais/index.asp>

### Spanish

<http://www.crin.org/espanol/index.asp>

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Bookmark CRIN's website to learn more, or email us to contribute news or information.

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## Previous issues

CRIN Review 22, September 2008:  
Children's Right to the City;

CRIN Review 21, November 2007: A  
Generation On: Enforcing children's rights;

CRIN Newsletter 20, February 2007:  
Child Rights and Emergencies;

CRIN Newsletter 19, May 2006:  
Children and Violence;

CRIN Newsletter 18, March 2005:  
Rights Based Programming with Children:  
an introduction;

CRIN Newsletter 17, May 2003:  
Children's Rights and the Private Sector;

CRIN Newsletter 16, October 2002:  
Children and Young People's Participation;

CRIN Newsletter 15, March 2002:  
Mainstreaming Child Rights;

CRIN Newsletter 14, June 2001:  
The Special Session on Children;

CRIN Newsletter 13, November 2000:  
Children and Macroeconomics.

CRIN Newsletter 12, March 2000:  
Education.