**Conference and Colloquium organised by CMJA and UNICEF held in the Turks and Caicos Islands from 26th September to 3rd October 2009**

Magistrates, judges and other experts from a number of Commonwealth countries gathered at a conference in the Caribbean to discuss ‘Justice for the Next Generation The Promotion and Protection of Judicial Independence’, and ‘A Colloquium on the Child and the Law’, organised jointly by the Commonwealth Magistrates’ and Judges’ Association and UNICEF.

The aims and objectives of the Colloquium were: to promote greater awareness amongst the magistrates and judges of the Commonwealth, of international treaties and laws relating to the rights of children, and to consider the practical application of that body of law; to enhance networking within the Commonwealth Magistrates’ and Judges’ Association on aspects of the rights of the child; and to develop and strengthen partnership between UNICEF and the CMJA on children’s rights.

The topics covered in the Colloquium included discussion on the Convention on the Rights of the Child and other UN instruments and protocols and their implementation at national level. There were also keynote speeches on Child Participation, Children in Armed Conflict and the Effect of Violence on Children, consideration of children as victims and witnesses, restorative justice etc.

Lively discussions took place with participants contributing their own experiences gathered from their respective courts. Many useful suggestions were forthcoming as to how to make the system more child-friendly and how the national laws may be amended in order to make the provisions of the UN instruments more workable and more geared towards providing a beneficial system for children.

Details of the papers presented by the delegates are promised to be made available in due course.

On the last day of the Colloquium a resolution was placed before the Conference. A number of amendments were suggested from the floor including the addition of Article 12 in the preamble and the inclusion of provisions for disability-sensitive systems in the court procedures. Both these suggested amendments were accepted without much debate and were readily adopted.

It was suggested by the delegate from Bangladesh that the concept of ‘the best interests of the child’ was not receiving due consideration in criminal cases as mandated by Article 3 of the Convention, which provides that **‘In all actions concerning children, whether undertaken by public or private social welfare institutions, *courts of law*, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. ‘**

There ensued a heated debate. Honourable Judges from England, Scotland, Australia and New Zealand argued that in criminal cases the best interests of the child cannot be paramount as that would undermine the rights of the victim and be detrimental to the protection of society. It was argued that it would not be possible to incorporate the concept in the criminal justice systems of those countries. On the other hand, one Professor from an English university and a Research Fellow, also from an English university supported the amendment. They suggested that Article 3 of the CRC required that the best interests of the child shall be **‘a primary consideration’** and not **‘the paramount consideration.’** The motion for the amendment was carried.

Personally, I feel that the inclusion of ‘the best interests of the child’ in the criminal justice system to be a primary consideration is necessary to fulfil the mandate of Article 3 of the CRC. Moreover, we should not forget our obligations towards our children simply because they are alleged to have committed a more serious crime. We must at all times remember that children are not born criminals and that they find themselves in the sometimes inextricable cycle of crime due to lack of necessary provisions and proper guidance. A careful consideration of the background of the child would probably disclose that he is a victim of poverty/broken family or exposure to violence and neglect and has been and is in need of care and protection. Certainly, we must balance the interests of the victim as well as that of society which is required to be protected. In a way these are competing interests. However, the best interests of the child must also be one of our primary considerations. For example, the consideration as to how the accused child may be diverted from the criminal justice system or how best he may be dealt with other than incarceration are in themselves considerations of the best interests of the child. As such keeping within our sights the best interests of the child as a primary consideration is not too difficult. No doubt learned Magistrates and Judges also bear in mind that sending a child to detention or jail custody does not necessarily guarantee that he will not reoffend. On the other hand, engaging a youthful offender in dialogue during the course of trial or confronting him with the victim may lead to a realisation in him that he also owes a duty to society and the victim and may divert him from further crime. The benefits of restorative justice should not be brushed aside simply because the offence committed is a serious one. Youthful offenders should not as a matter of course be exposed to the rigorous criminal justice system reserved for adults simply because they have committed a serious offence. Magistrates and Judges must be able to retain for themselves the discretion to consider what is in the best interests of a child accused of having committed any offence.

Needless to say, I was pleased with the outcome of the debate.

The meeting ended with the following resolutions being passed:

**The Providenciales Resolution on Justice for the Next Generation**

**The Promotion and Protection of the Rights of Children in contact with the Law**

We, the Commonwealth Magistrates’ and Judges’ Association and United Nations Children's Fund on the occasion of the Colloquium on the Child and the Law in Providenciales, Turks and Caicos Islands, 1 - 2 October 2009,

***Recalling*** the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, and especially its articles 3, ***[12]***[[1]](#footnote-2), 37, 39 and 40,

***AND NOTING***

-other International Standards and Norms in crime prevention, criminal justice and the administration of justice for **Juveniles and children,**

-the specific vulnerability of the child to abuse, exploitation, violence and other violations of their rights while in contact with the law, in particular while deprived of their liberty,

-the need to promote and protect the rights of all children in contact with the law.

1. **Urge** the Governments of the Commonwealth to take urgent steps to introduce and implement child justice systems in line with International Standards as established through the United Nations.
2. Commit to encouraging, in co-operation, governments and judiciaries across the Commonwealth in the establishment and enhancement of child-sensitive and gender and ***[disability sensitive]*** [[2]](#footnote-3)child justice systems in line with international standards through:

* the development and promotion of court procedures which are child-appropriate and gender and disability-sensitive;
* the systematic use of child rights principles, including as a primary consideration the best interests of the child in the administration of justice,***[both civil and criminal][[3]](#footnote-4)***;
* the use of deprivation of liberty of children only as a measure of last resort – ***[and for the shortest possible time][[4]](#footnote-5)***.

**Providenciales,**

**Turks and Caicos Islands, 2 October 2009**

It was mentioned that the grammatical construction of the resolution passed may be corrected later.

Justice M Imman Ali

High Court Division

Supreme Court of Bangladesh

1. Added without debate or objection [↑](#footnote-ref-2)
2. Added without debate or objection [↑](#footnote-ref-3)
3. Added after much debate [↑](#footnote-ref-4)
4. Initially motioned to be deleted, but later decided to be retained after reference to Article 37(b) of the CRC [↑](#footnote-ref-5)