Exposing Realities

Children’s Legal Protection Centers: A Good Practice Report

2008
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- CECODAP, Venezuela
- Childline, Cameroon
- Children’s Legal Action Network (CLAN), Nairobi, Kenya
- Children’s Legal Protection Centre (CLPC) of the African Child Policy Forum, Addis Ababa, Ethiopia
- HAQ: Centre for Child Rights, Delhi, India
- The Centre for Child Law, University of Pretoria, South Africa
- The Child Rights Advisory Documentation and Legal Centre (CRADLE) – The Children’s Foundation, Nairobi, Kenya
- The Children’s Legal Centre (CLC), University of Essex, UK

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The African Child Policy Forum (ACPF) is a leading, independent pan-African policy and advocacy centre on child rights. The ACPF was established with the conviction that putting children first on the public and political agenda and investing in their wellbeing are fundamental for bringing about lasting social and economic progress in Africa and its integration and participation in the world economy. The work of the Forum is rights-based, inspired by universal values and informed by global experiences and knowledge. The Forum aims to provide a platform for dialogue; contribute to improved knowledge of the problems facing children in Africa; identify policy options; and strengthen the capacity of NGOs and governments to develop and implement effective pro-child policies and programmes.

In 2005, the Forum established the Children’s Legal Protection Centre (CLPC), the only one of its kind in Ethiopia. Its objective is to provide access to justice to children. The Centre implements projects which carry out advocacy, free legal counselling, judicial representation, capacity building, and psycho-social support.

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The Child Policy Forum

P.O. Box 1179
Addis Ababa, Ethiopia
Telephone: +251-11-662-8192
+251-11-662-8196
+251-11-662-8199
Fax: +251-11-661-8200
Email: Info@africanchildforum.org
Website: www.africanchildforum.org
www.africanchild.info

Children’s Legal Protection Center
P.O. Box 1179
Addis Ababa, Ethiopia
Telephone: +251-11-551-1648
+251-11-551-2997
+251-11-552-8440
Fax: +251-11-553-5542
Email: clpc@africanchildforum.org
Website: www.africanchildforum.org
www.africanchild.info

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ACPF The African Child Policy Forum
ACRWC The African Charter on the Right and Wellbeing of Children
CBGA Centre for Budget and Governance Accountability (India)
CLAN Children’s Legal Action Network
CLC The Children’s Legal Centre (UK)
CLPC Children’s Legal Protection Centre (Ethiopia)
CRC UN Convention on the Rights of the Child
CRADLE The Child Rights Advisory Documentation and Legal Centre
CWC Child Welfare Committee (India)
ECHCR The European Convention on Human Rights
FGM Female Genital Mutilation
LOPNA Organic Law for the Protection of Children and Adolescents (Venezuela)
NGO Non-Governmental Organisation
NHRC National Human Rights Commission (India)
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The African Child Policy Forum
Foreword

This report is entitled ‘Exposing Realities’ because what Children’s Legal Protection Centres (or ‘Centres’) do is to reveal the daily realities of children’s lives and often this reality is grim and hard to look at. These Centres have an excellent vantage point, since they deal with children in contact with the law and in need of protection in all sorts of different contexts: in court rooms, in prisons, on the street, in family homes and in children’s institutions. They take this ground-level knowledge and experience of the realities of children’s lives and channel this upwards and outwards both to expose what is happening and also to influence the concentric circles of care surrounding children: their families, communities, local government, the executive, the judiciary, the legislature and media, as well as the larger international community. Advocacy founded upon firsthand experience can be very powerful because it has conviction and experience behind it.

The African Child Policy Forum (ACPF) believes that one important way to narrow the gap between law and practice is to establish Children’s Legal Protection Centres. There are very many of these Centres throughout the world and most of them, although small organisations in and of themselves, have a very wide reach both horizontally and vertically across the societies they are working in. This report documents the work of eight such centres across Africa, Asia, Europe and Latin America which were selected to cover a geographical range as well as because they are particularly strong and influential organisations.

The unique strength of these organisations lies in the fact that they have in-depth, grass-roots knowledge of the reality of children’s lives and of the working of the child protection structures that surround them. They also have the skills and ability needed to channel this intimate understanding of children’s lives into broader advocacy for reform and improvement at many different levels. This report seeks to elucidate how this direct experience is shaped into effective policy reform and also how advocacy for improvement can be a potent and catalytic force for change. It is hoped that this report will inspire a deeper understanding of the role that these Centres play in strengthening child protection in their own countries and beyond, and that we can learn from them in our own work in building protective environments for children.

The ACPF hopes that this report would be a useful resource for all interested individuals and organisations working on child right issues. The report provides plenty of information on the overall operation of Legal Protection Centres as well as their remarkable achievements and the common challenges they face. In particular, it clearly outlines how such and similar Centres may normally operate and the variety of effective strategies they may employ within their respective political and social context to address the problems children frequently encounter. It would certainly inspire interested child right actors to share relevant experiences and learn from each other as to how they may replicate more successful interventions to redress the abuse and exploitation children are facing everywhere.

Assefa Bequele (PhD)
Executive Director
The African Child Policy Forum
Overview

At the heart of The African Child Policy Forum’s (ACPF) holistic approach to children in Africa is its evolving programme on Children and the Law. Laws articulate a society’s vision and define individual rights and obligations on the one hand and the nature and limits of state action on the other. They are undoubtedly the single most powerful instruments for the protection of human rights. The absence of legal instruments consistent with international conventions and the extent to which they are observed in practice is an important area of concern, particularly in the area of children’s rights. The ACPF believes that one important way to narrow the gap between law and practice is to establish Children’s Legal Protection Centres (CLPCs). This is an overview of a research commissioned by The ACPF on eight particularly strong CLPCs operating in Africa, Asia, Europe and Latin America that are endeavouring to promote, protect and fulfil children’s rights and to enhance and develop child protection structures:

- CECODAP, Venezuela
- Childline, Cameroon
- Children’s Legal Action Network (CLAN), Nairobi, Kenya
- Children’s Legal Protection Centre (CLPC) of the African Child Policy Forum, Addis Ababa, Ethiopia
- HAQ: Centre for Child Rights, Delhi, India
- The Centre for Child Law, University of Pretoria, South Africa
- The Child Rights Advisory Documentation and Legal Centre (CRADLE) – The Children’s Foundation, Nairobi, Kenya
- The Children’s Legal Centre (CLC), University of Essex, UK

BOX 1. What is a Children’s Legal Protection Centre?

The essential characteristics of a CLPC are that they:

- Aim to promote and uphold children’s rights within the context of the UN Convention on the Rights of the Child (CRC) and other regional instruments such as the African Charter on the Rights and Welfare of the Child
- Monitor and contribute to the development of law, policy and practice concerning children and young people and advocate with policy-makers and the general public for child-friendly laws, policies and practices
- Provide legal advice and information for children and young people about their rights, as well as free legal representation for strategically important cases
- Carry out research in the field of children’s rights and produce documents and publications on law, policy and practice
- Provide in-house counselling and appropriate referrals to social services for victims
- Enhance the capacity of the executive, the judiciary, the legislature and media through human rights training
The subsequent chapters in this report give a short introduction to the central theoretical framework of the Centres’ work, followed by a brief examination of the history and work of each Centre, before examining in more detail the different strategies used to help create a protective environment for children.

**Strengths**

Through the assessment it was realised that a number of Centres have a number of strengths worth noting. Some of the major strengths shared by the surveyed Centres include:

1. **Powerful advocacy founded on experience:** CLPCs are a powerful and effective tool for building and sustaining a protective environment for children. They have excellent ground level knowledge since they deal directly with children in contact with the law and in need of protection, and are able to channel this upwards and outwards to expose what is happening and to influence the concentric circles of care surrounding children. Their advocacy is powerful because it has conviction and experience behind it.

2. **Responding to the child in a holistic manner:** Another central feature of the CLPCs is their ability to approach child protection in a holistic and integrated manner. They often act as a bridge between different institutions and agencies relevant to children’s needs, which prevents children from being subject to fragmented and weakened interventions.

3. **A rights-based approach:** CLPCs take a rights-based approach to their work, meaning that they identify rights holders (principally children and their families) on the one hand, and duty bearers (principally the state and its agents) on the other. They seek to strengthen the capacity of rights holders to make their claims and of duty bearers to satisfy their claims. They are inspired by the principle of participation (one of the four guiding principles of the CRC) and aim to promote change, so that children are not perceived as beneficiaries of aid but as rights holders with legal entitlements.

**Strategies**

Children’s legal protection centres use a number of complementary strategies to work towards building a protective environment for children. Much of their work revolves around the need for children’s rights to be implemented through institutions, which are often in need of development because of weakness in local rights practices. They use the following strategies to achieve their objectives: holding governments accountable; strengthening government commitment and capacity; establishing networks; and enhancing children’s knowledge of their rights and participation.

1. **Holding governments accountable** for the way in which they fulfil their obligations under the CRC and other human rights instruments, by acting as watchdogs; using impact litigation; and through effective monitoring and reporting, using tools such as budget analysis, monitoring parliament and conducting research and fact-finding missions.

**Watchdogs:** In many regards, CLPCs function as watchdogs over the state bodies responsible for the fulfilment of children’s rights to ensure that they are held accountable for their obligations. This is ongoing at a low level every day and illustrates how CLPCs are constantly engaged in transforming the rhetoric of rights into concrete reality for individual children. CLPCs use the legal tools available to them with persistence and tenacity to pursue state bodies when they do not take responsibility for their obligations to fulfil children’s rights. They
are also involved in educating state bodies about their obligations and duties to children.

**Impact litigation:** Impact litigation can be defined as advancing child rights through the use of the judicial system and is used by the Centres as an important tool for ensuring government accountability. The Centre for Child Law in South Africa has an explicit mandate to carefully select cases for the specific purposes of impact litigation. The Centre for Child Law, CLAN, CLPC, CRADLE and HAQ do not currently proactively seek out cases relating to specific themes, but will take on cases as they come up in the course of their daily work. CECODAP in Venezuela focuses on group actions as opposed to taking individual cases in order to maximise the impact of the litigation.

Risks have to be carefully factored into the decision to take on a particular case. Because of the indeterminate nature of litigation, it is difficult to predict how long it will take to complete cases, and cases that seem strong at first sometimes collapse for unforeseeable reasons. With litigation there is always the possible risk of losing the case and thereby creating a negative precedent. Risks of costs being awarded against a client, or against the Centre if it is litigating in its own name, also need to be taken into account.

All the Centres who undertake impact litigation grapple with the balance between serving the interests of individual clients and the broader aim of obtaining judgements that could be used by future litigants. They have to protect the interests of their clients in reaching settlement agreements, even though the adoption of a more adversarial litigation policy may have culminated in a national precedent.

There is an inherent tension between the objective of holding government and other duty-bearers accountable for their responsibilities to children and the objective of setting precedents by obtaining written orders and judgements through the courts. At times it can be more worthwhile to allow government service providers to address identified shortcomings in service delivery without the issuance of formal legal proceedings but with the implicit threat of potential litigation hanging in the background.

**Creating tools for effective monitoring and reporting:** It is not possible to hold government’s accountable in an effective way without having credible data and research monitoring the extent to which the government is fulfilling its obligations towards children. For example, HAQ has developed innovative ways of monitoring state accountability towards children using data generated by the government itself in its Child Budget Analysis and by monitoring of parliamentary questions. To complement this, it produces a status report on children every two years, which provides context and analysis for the budget and parliamentary monitoring work and functions as a sort of mirror for the government to reflect upon.

**ii. Strengthening government commitment and capacity** to fulfil their obligations under human rights instruments by promoting the establishment of adequate legislation and ensuring it is properly implemented; preparing child impact assessments of draft legislation; assisting the executive in mainstreaming child rights across all ministries and departments; and providing training to the police and judiciary, in the countries where Centres work and internationally.

**Initiating, drafting and presenting legislation:** The CRADLE has been instrumental in the development and audit of several laws relating to children. It was one of the key actors in the development of the Children Act and it took the lead in the development of a draft Sexual Offences Bill together with the Juvenile Justice Network; amongst many other things the final Act enhanced the protection of children by outlawing the trafficking of
children and child sex tourism, raising the age of sexual consent to 18 years and increasing penalties for abuse of children. This passed into law in 2006 following immense debate and controversy much of it polarised along gender lines. It will also propose measures to secure acceptable programmes for the protection, treatment, and care of victims of sexual violence, as well as the treatment, supervision and rehabilitation of sexual offenders and is charged with auditing and reviewing all existing policies, laws, regulations, practices and customs relating to sexual offences.

**Child impact assessments:** The UN Committee on the Rights of the Child in its General Comment dealing with general measures of implementation states that: 'Ensuring that children’s rights are respected in law and policy and implemented at all levels of government demands a continuous process of child impact assessment which predicts the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights, and child impact evaluation, evaluating the actual impact of implementation. This process needs to be built into government at all levels and as early as possible in the development of policy.’

From 2004 to 2006, the Children’s Legal Centre in Essex was involved in a project to assess new legislation from the perspective of their legal impact on children with a remit to cover bills in which children were less likely to have been specifically considered such as the Identity Cards legislation. The project aimed to improve the understanding of children’s issues in parliament and government, to identify issues that inhibit shared policy development across government departments and to contribute to policy development for children. This was a time-limited project but had a large impact and functioned as a useful model for others to emulate. The Children’s Commissioner has in part taken on this role now.

**Mainstreaming children’s rights within government ministries:** The CRADLE has positioned itself as a leading child rights organisation in Kenya and is perceived very well within government enabling it to punch way above its weight. It has been involved in mainstreaming children’s rights in various government ministries, including unusual ones such as agriculture, roads and water as well as health, land and planning and justice. The programme seeks to shift mindsets in non-traditional sectors and to encourage change agents within ministries to look at their work through the prism of child rights. They train government personnel on the rights’ based approach and devise manuals for various ministries.

**Providing technical support:** Providing governments with technical support is a very important way of strengthening their capacity in terms of children’s rights. Nearly all the Centres were involved in training in child rights for government bodies. The CLPC in Ethiopia, for example, conducts extensive training of judges, prosecutors and police in relation to children’s rights.

CLPCs are also called upon to sit upon governmental committee meetings; for example, HAQ were also involved in drafting the Juvenile Justice Rules which is the implementing document for the Juvenile Justice Act 2000. Judges sitting on the Family Bench in Addis Ababa have referred eight cases so far to the CLPC for their recommendations in cases of custody and maintenance, because the court does not have the resources or capacity to prepare a full assessment of the background to a case in order to determine the best outcome for children. While this is not a sustainable solution, it demonstrates the role that CLPCs can play in supporting the judiciary to ensure the best possible outcomes for these individual children. There are difficulties with providing technical support to governments, since it is often time-consuming, unfunded and vulnerable to high turnover and change of government, meaning that key contacts can be lost.

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1. UNCRC GC No 5: 13
**Strengthening governments internationally:**
The International Section of the Children’s Legal Centre in the UK provides technical assistance to governments around the world to help them fulfil their obligations under the CRC, while recognising the limitations of their role as an external actor. The International Section specialises in the systemic reform of child protection, welfare and juvenile justice systems, including institutional and legislative reform. For example, they worked with the Romanian government on the reform of its child protection and child welfare systems, which were weak and relied heavily upon placing children in institutions. They also had an unregulated intercountry adoption system, which left children vulnerable to trafficking, abuse and exploitation. The CLC drafted new legislation to regulate domestic and international adoption services and standards regulating child protection services.

**iii. Establishing networks** with families, communities, the media, pro bono lawyers\(^2\), ombudspersons, other civil society organisations and child practitioners to extend the Centres’ reach and strengthen overall capacity to fulfil children’s rights.

The CLPCs operate at the centre of a rich and complex web filled with different organisations and people. They actively share relevant research, documentation and experience and the indirect benefit of this sharing of information is that the Centres are supporting other individuals and organisations in protecting and promoting children’s rights as well as generating wide ownership of children’s rights. For example, HAQ is in the process of editing a book on the theory and practice of children and governance with contributions from child rights’ specialists around the world, which will help other organisations reach conceptual clarity about what children’s role in governance can be. Another important way of sharing information is through disseminating cases, research and fact-finding. The Centre for Child Law in Pretoria publishes its successful cases in journals read by civil society practitioners and activists, social workers, prosecutors, magistrates, probation officers and child and youth care workers.

Establishing networks is not just about sharing information for its own sake but also about broadening reach, and it is often through contacts with NGOs, legal practitioners, parents, children, ombudspersons and government departments that they receive referrals and can establish their reputations as expert resources on child rights. Working within a network enables CLPCs to make the greatest impact possible given their size.

**Networks in the absence of child protection structures:** Networking is ever more vital in contexts where there is very little in the way of state provision for social services for children (or adults). Childline in Cameroon recently had a case where they were contacted by an adult who did not know what to do about a child who had been severely abused. The organisation was able to advise him practically and legally; to ensure that the case was properly prosecuted, and to contact child parliamentarians from the area who followed the case carefully. The abuser was prosecuted and sentenced to three years imprisonment. This multi-sectoral approach ensured that legal redress was given even in a climate where, ‘Measures are not well reinforced in Cameroon to deal with neglected and abused children’ and where, ‘People perceive litigation actions negatively as they do not see any reason why an adult can be litigated because of a little child.’\(^3\)

Ethiopia also has very little in the way of social welfare services for children. The CLPC in Addis has responded to this enormous gap by creating a dynamic and effective network of partnerships that are of mutual benefit for both sides. They work with

\(^2\) *Pro bono* lawyers work without charging a fee

\(^3\) Kinkoh Thomas Ngala, CLPC Questionnaire, 11th October 2007
local NGOs for legal/ psychosocial service referral, and the Addis Ababa University Department for Social Workers, who assist them with home assessments in family cases. The CLPC also has a very strong reciprocal relationship with the smallest unit of local government, especially the Women’s Officers, who refer legal cases to the CLPC and in return the CLPC seeks information and advice from them.

Another result of developing networks and an integrated approach is that children learn to have faith in CLPCs. They view Centres as a haven of practical help and non-judgemental reassurance in a context where government-led support structures for children can be at best weak or inaccessible, and at worse threatening towards children or non-existent.

**Pro bono lawyers:** All the Centres have a system of working with pro bono lawyers who take on casework for no fee, but have their expenses paid. There are many different ways of organising this but the most successful involve building a strong sense of community amongst the pro bono lawyers and ensuring that their work is publicly (and privately) recognised. For example, the CLPC in Ethiopia provides legal counselling and judicial representation to children in prisons and detention centres through paid lawyers. It also has 16 pro bono lawyers that provide judicial representation and legal counselling. The commitment and motivation of these lawyers is bolstered by an annual award ceremony held by a collective of NGOs. The CLPC also provides them with training on child rights and on how to deal with children who are survivors of abuse as well as ethical issues such as maintaining confidentiality. They also have pro bono lawyers working in eight prisons and detention centres outside Addis Ababa, who verify how many children there are in these institutions (this is often not known even by the authorities) and monitor the progress of their cases.

**Shaping the media agenda:** There is a degree of ambivalence amongst the Centres about working with the media. On one hand, it can be effective as a means of reaching large numbers of people and raising awareness about children’s rights. The CRADLE maintains that media reporting of their annual report on sexual abuse over the past three years has been crucial in putting it on to the national agenda.

On the other hand, working with the media can be very time-consuming, eat into energy and resources that would otherwise be devoted to case and policy work and place organisations at the whim of the media’s own agenda. At the Children’s Legal Centre in the UK, they are approached every day with media enquiries but are wary of responding to all of them, because it takes up too much of the lawyers’ time and because raising their profile in this way can generate so many referrals and queries from the public that they are swamped. There is no direct funding to do media work, so it means diverting funding away from case or policy work. They conclude that their strength is the law and that their principal remit is not using the media to raise awareness about children’s rights in the general public.

HAQ has a similar ambivalence to working with the media. They make the point that a high media profile might negatively impact their ability to deal with their clients, since people might be wary of some kind of ‘celebrity’ status. Their work with the media is in more of a ‘back room’ capacity; for example, HAQ helped with a television series on child labour in 2006 by providing background information, leads and contacts, which helped to shape the final series so that it gave a clear message about how child labour violates their rights.

**iv. Enhancing children’s knowledge of their rights and participation**

Children and young people have traditionally been excluded from decision-making processes. The pre-
vailing social norm in most of the regions in which these documented Centres work sees children as the property of their parents who must do as adults tell them. Children, particularly girls, younger children and children with disabilities, are not encouraged to raise their voices or to question adults. However, the CRC entitles children to be heard and to be taken seriously when they give their opinions. The right to participation is a basic civil right and a general principle guiding all other articles of the CRC. The best interest of the child can only be understood by listening to the child.

Nearly all the CLPCs expressed their displeasure at the way in which children's participation has at times been dealt with in the past. They are wary of tokenistic forms of children's 'participation', where children play the same roles as adults by being invited to conferences where they will be unable to make an effective contribution or by being invited to make submissions which require skills that most will not possess.

All these centres are small and to undertake large scale participation work, such as researching children’s views on a specific theme, is time-consuming and expensive. In reality, what the Centres do in their everyday work is to develop children's knowledge of their rights and enact their right to participation in a more subtle and holistic manner, which is grounded in their specific contexts. They emphasise that participation is a process and means ensuring that children have a voice in all arenas from home, school, family, court and police station. This process might involve empowering them, for example, by talking them through the process of how to give evidence before a judge.

Children's views have also been sought in relation to their experience of the Centres work. The Centre for Child Law was subjected to an independent evaluation in 2005, and the panel that undertook the evaluation included a child client who had been a recipient of their services. Child beneficiaries of the CRADLE are invited to complete a form of structured feedback during and after their case.

**Challenges**

The challenges faced by the CLPCs studied include the following:

**i. Lack of awareness of children's rights:**
All the Centres cited a lack of awareness of children's rights amongst the government and other duty-bearers as the key constraint operating upon their work. Judges, prosecutors, civil servants and parliamentarians are often perceived as conservative and unreceptive to shifting their attitudes towards children. Furthermore, when allies are made within government structures, this work is often undone by the high turnover of government officials.

For CECODAP their relationship with government is inhibited by the government’s lack of awareness of children’s rights but also by the fact that the government is inherently suspicious of civil society activities. This has had a concrete impact on their work since people have become increasingly wary of becoming involved in CECODAP lawsuits. It has also affected the willingness of the judiciary to be involved in CECODAP trainings particularly in relation to children having a voice in proceedings.

**ii. Recruitment:** Another challenge is recruiting staff; the work of the Centres is intellectually and emotionally challenging and there is a risk that people may burn out or become jaded by the long hours they work and their exposure and close proximity to the raw realities of children's lives. At the same time it is the sort of work where employees have highly specialised skills and losing them can be very damaging to small organisations which

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\(^3\) Articles in the CRC with specific bearing on participation of children focus on: listening to children and respecting their views (12), expression of thought and ideas (13 and 14), access to information (13 and 17), gathering and dissemination of information (13) and organisation of children (15)
have not managed to transform these skills into institutional capacity. Another issue is that it is not always easy for a small NGO to provide competitive salaries compared to international NGOs and so they are not always able to attract good quality employees.

iii. Sustainability and funding: All the Centres in the study are fairly small, albeit with loud voices, and inevitably they are restricted in the number of cases and the amount of research, policy reform and advocacy they can take on. Conceptual clarity about who they are and what they do as organisations is essential to avoid being swamped by the demand. Several of them go so far as to have explicit criteria, which they use to prioritise their casework and advocacy issues.

Another core issue relating to sustainability is that of funding and working with donors. To a greater or lesser extent, all of the work of the Centres is contingent on the ongoing goodwill of donors and therefore can be vulnerable; for example, the CLC in the UK is currently finding it difficult to get money from the Lottery Fund because so much of it is being channelled towards the 2012 Olympics in London. CECODAP in Venezuela has found its levels of funding seriously hit by inflation and has had to restrict its activities as a consequence.

One way of resolving this vulnerability is to generate funds within the organisation. CRADLE has established a Technical Support Unit, which aims to raise an income through providing consultancies, thereby making the organisation more independent financially. They also have corporate sponsors. HAQ also generates untied funds through consultancies so money is available for fact-finding missions, on unpopular issues or pilot activities.

iv. Growth: The Centres have different opinions about the dilemma of whether to grow larger and to attempt to replicate elsewhere, or to remain small and focus on vertical rather than horizontal growth.

The CLPC in Ethiopia intends to replicate itself nationally and regionally, as a response to the immense need in Ethiopia for such services and the distinct lack of government-led structures to protect children. The CLC in the UK is also inundated with work and feels that they will have to expand in order to meet the demand for their highly specialised legal advice. They aim to grow bigger by establishing satellite offices, but there are logistical, administrative and practical difficulties in having satellite offices. How do you retain supervision over work and maintain cohesion?

Other organisations see strength and flexibility in their small size. Millie Odhiambo-Mabona explains that she does not want CRADLE to, ‘Grow outwards, but vertically. We aim to showcase our work for replication by others.’ HAQ has experimented in the past with expansion but takes the view that small is beautiful since it enables the organisation to work more coherently and with more precision without being ensnared in management issues which can dissipate the work itself.

Conclusion

It is clear from the documentation that children’s legal protection centres work in diverse contexts. However, they are founded upon common principles articulated within the CRC and share common ways of working as a consequence. All the organisations documented in this report have a mandate to promote and uphold children’s rights within the context of the CRC, as well as other regional instruments.

In order for the CRC to be effective it needs to be translated into local terms and situated within local contexts of power and meaning. For more detailed discussion of this process of translation see Merry, Sally Engle Human Rights & Gender Violence: Translating International Law into Local Justice (University of Chicago Press; 2006)
centres is their skill at translating the CRC so it becomes meaningful for children within their specific contexts and structures. In effect they remake the CRC into the vernacular so that the rights it articulates are moulded into an approximate reality for the children who come to them even though they are geographically, and sometimes culturally, far from the centres where such laws are created. They act as translators who are able to move between the different layers of rights language and the realities of children’s lives: a single day might involve providing counselling to a child who has been abused by a member of her family and then attending a governmental steering committee on child protection.

Their over-arching framework is rights-based. They deploy a number of strategies to hold governments accountable for the way in which they fulfil their obligations under the CRC and other human rights instruments. At the same time they ensure that they work together with governments in a relationship which is sometimes strained but often successful. They work to strengthen government commitment and capacity to fulfil their obligations under human rights instruments.

They often act as a bridge between different institutions and sectors relevant for children and create a synergy between them which otherwise would not be there. This approach prevents children from being subject to fragmented, and therefore muddled and weakened interventions. They establish networks with families, communities, the media, pro bono lawyers, other civil society organisations and child practitioners to extend the Centres’ reach and to strengthen capacity to fulfil children’s rights. An essential element of their work is to work with children themselves to give them a voice and enhance their knowledge of their rights.

Their multi-disciplinary and multi-sectoral approach strengthens the capacity of the government, families, communities and children themselves to protect children and to develop systems and mechanisms that provide meaningful protection for all children in the longer term.
1. INTRODUCTION

1.1. Outline of the report

This report documents the work of eight Centres across Africa, Asia, Europe and Latin America which are endeavouring to promote, protect and fulfil children’s rights and to enhance and develop the child protection structures in their countries. Six of these organisations were visited in person for two or three days by the author or a researcher between October 2007 and January 2008 and two of them (The Centre for Child Law in South Africa and Childline in Cameroon) gave detailed responses to a questionnaire (see Appendix Two). Firstly, the report gives a short introduction to the central theoretical framework of the Centres’ work, in terms of their relationship with the CRC, how they approach children in a holistic manner and how they work to build a protective environment for children.

It then moves on to examine the history and work of each Centre through a brief introduction before examining in more detail the different strategies which the Centres use to help create a protective environment for children. On the whole these strategies take a rights-based approach and focus upon strengthening the concentric circles of care which surround children to ensure that their rights are fulfilled. This means strengthening local and national government (spanning the legislature, executive and judiciary), media, civil society, communities and families. They also work to develop children’s own knowledge of rights and to ensure that their right to be heard is fulfilled. The report examines how these strategies are employed and what successes they have had. It concludes by looking at the challenges facing the Centres, particularly in terms of their sustainability.

Box 2: Advocacy founded upon experience

“You learn so much through doing case work and can pass this experience on to others.”

HAQ recently represented a boy with disabilities, called Nihal, who had been arrested on suspicion of stealing a manhole cover. This is a fairly common type of theft; however, in this instance it was plain that Nihal’s disabilities meant that it was very unlikely he would have been physically capable of performing such an act. HAQ represented Nihal at the police station following his arrest and worked very hard to convince the police officer dealing with the matter not to file a case against the child. They emphasised that the implications of filing a case for this boy were enormous: it would mean that he had to go through the slow, much-delayed criminal process and he was unlikely to get bail, as he had no immediate family to support him and so would languish in an institution for a number of years waiting for the case to be resolved. Eventually they managed to convince this particular police officer that the child should be let off with a warning.

During 2007, HAQ were part of the consultative and drafting committees for India’s Juvenile Justice Rules, which is the implementing document for the Juvenile Justice (Care and Protection of Children) Act 2000. They used this as an opportunity to feed in their own experiences and insights, and those of organisations they work with, in many different respects. For example, the experience of representing boys such as Nihal made HAQ very keen to build some flexibility and discretion into the Rules, so that in some cases of petty offences, police may give a warning rather than file a case and launch the full force of the criminal justice system. They were successful in achieving this and are now working to monitor and strengthen implementation of the Rules, by training police designated as child welfare officers in Delhi.
and by examining the effectiveness of the different strategies employed

1.2. What is a Children’s Legal Protection Centre?

Children’s Legal Protection Centres are established to improve the grim situation of children in the respective localities. Their focus is mainly on children coming in contact with the law and in need of protection and support in all sorts of situations. They articulate what children go through in reality through a first hand experience and they try to influence relevant stakeholders such as families, the judiciary, the legislature, communities and the media to ensure the protection of children.

Another central feature of the Centres is their ability to approach child protection in a holistic and integrated manner. They don’t just see the child from a narrow legal perspective or simply as a subject for psychological intervention; they aim to respond to the child as a whole. It is useful to reflect upon the shared characteristics of these Centres globally, without restricting the boundaries of their scope and potential, in order to achieve clarity and common understanding about the definition of the term. So, what are the essential characteristics of a Centre?

- They aim to promote and uphold children’s rights within the context of the UN Convention on the Rights of the Child (CRC) and other regional instruments such as the African Charter on the Rights and Welfare of the Child (‘The African Charter’)

- They monitor and contribute to the development of law, policy and practice concerning children and young people and advocate for child-friendly laws, policies and practices with policy makers and the general public

- They provide legal advice and information for children and young people concerning their rights as well as free legal representation for strategically important cases

- They carry out research in the field of children’s rights, and produce and disseminate documents and publications on law, policy and practice

- They provide both in-house counselling and appropriate referrals to social services for victims

- They enhance the capacity of the executive, the judiciary, the legislature and media through human rights training

1.3. International and regional child rights instruments

Children’s legal protection centres are of course many and varied and work in many and varied contexts. However, they are founded upon common principles articulated within the CRC and share common ways of working as a consequence. The CRC outlines the fundamental rights of

“It is difficult to say this world is a safe place for children. Currently, children are being abused in their homes, in schools and in the community.”

Helen Seifu, Director, CLPC, Ethiopia
children, including the right to be protected from economic exploitation and harmful work, from all forms of sexual exploitation, abuse and neglect, and from physical or mental violence, as well as ensuring that they have the right to a fair trial and that they will not be separated from their family against their will. These rights are further refined by two Optional Protocols, one on the sale of children, child prostitution and child pornography, and the other on the involvement of children in armed conflict.

The CRC is the most ratified human rights instrument in the world and since its inception in 1989, has had a profound impact on the work of NGOs dealing with children including children’s legal protection centres. All the organisations documented in this report have a mandate to promote and uphold children’s rights within the context of the CRC, as well as other regional instruments such as the African Charter and the European Convention on Human Rights (ECHR). The work of all other instruments is informed by the CRC and indeed several were established during the 1990s, inspired by the launch of the CRC and the development of child rights as a concept and discipline that followed in its wake.

What does it mean in practice for these Centres that their work is so saturated by the ethos of the CRC? One consequence is that their overarching framework is rights-based. This approach to their work identifies rights holders (principally children and their families) on the one hand and duty bearers (principally the state and its agents) on the other. They seek to strengthen the capacities of rights holders to make their claims and of duty bearers to satisfy their claims. They are inspired by the principle of participation, one of the four guiding principles of the CRC, and aim to promote change so that children are not perceived as beneficiaries of aid but as rights holders with legal entitlements.

Article 3 of the CRC states that ‘in all actions concerning children, whether undertaken by public or private welfare institutions, courts of law, administrative authorities or legislative authorities, the best interests of the child shall be the primary consideration.’ In practice, this means that some actors have clear moral and/or legal responsibilities towards children; for example, parents, caregivers, teachers and social workers. Child rights organisations do not of course bear the responsibility of the state, but as actors who work with children, they are in a position to encourage and assist the state in meeting its obligations towards fulfilling the best interests of the child. They are also in a strong position to work with the concentric circles of care which surround children including families, communities and the media as well as further afield within the international community, to strengthen and reinforce their ability to fulfil the rights of children.

1.4. “For us, the child is a whole person”

Perhaps the most important principle of the CRC, and other international human rights instruments, such as the African Charter, which these Centres enact within their organisation is that they respond to children in a holistic way. The fundamental goal of the CRC is to achieve the realisation of the rights of each and every child under the jurisdiction of the State. The CRC does not establish any categorisation or hierarchy of rights. As
the Committee on the Rights of the Child has often stressed, all of the rights in the CRC are interrelated and each of them is equally important and fundamental. Introducing an innovative holistic approach, the CRC avoids the traditional dichotomy between civil and political rights on the one hand, and economic, social and cultural rights on the other. It addresses the whole child and all children's rights, including the child's fundamental freedoms of expression, of religion, of peaceful assembly and association; civil rights, as in the case of the right to a name and a nationality; economic and social rights, including the right to health and social security; and cultural rights, including the right to education and participation in cultural life. The holistic approach of the CRC emphasises the importance of promoting a multi-disciplinary and cross-sectoral perspective when consideration is given to policies, programmes or actions in favour of children. The aim is to focus on the whole child and to promote the effective realisation of all his or her rights.

The Centres are very effective at putting this holistic approach into practice. They often act as a bridge between different institutions and sectors relevant for children and create a synergy between them which otherwise would not be there. This approach prevents children from being subject to fragmented and therefore muddled and weakened interventions. Enakshi Ganguly Thukral from the HAQ: Centre for Child Rights explains that: “Internationally, children’s rights are so divided in terms of sectoral interventions. Everyone is a specialist – legal, educational, psychological, and somewhere we felt the child gets lost in the middle of all these specialisations. For us the child is a whole person... that is why we set up HAQ. We don’t want to be a specialist organisation we believe children have a right to be themselves... HAQ looks at children across sectors and issues and makes the cross-cutting connection between sectors and issues.” The following example from the Children's Legal Protection Centre (CLPC) in Addis Ababa, Ethiopia illustrates how potent this holistic approach can be.

The CLPC did not simply provide Etenesh with legal advice, nor did it only refer her to other organisations which could provide her with counselling and shelter. Instead it responded to this girl survivor of abuse in a holistic manner by providing her with legal protection, ensuring that the police arrested her father and that the case was properly investigated, and also provided in-house counselling and referral to a local shelter. Furthermore, they distributed the case to a variety of print and broadcast journalists and ensured that the case was widely reported in an ethical way, in order to expose the reality of child abuse in families as an issue in Ethiopian society. During this media briefing, they also highlighted that it is relatively straightforward for a defendant accused of raping a child to be granted bail

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6 There are a multitude of examples, including this one: ‘The Committee reaffirms that the Convention on the Rights of the Child reflects a holistic perspective based on the principles of indivisibility and interdependence of all human rights.’ UN CRC Day of General Discussion on Implementing Child Rights in Early Childhood, Recommendations, 17 September 2004

7 Interview by author with Ms Enakshi Ganguly Thukral, 29th November 2007, Delhi, India

8 Case study based on interviews by the author with Etenesh (name has been changed), 23rd October 2007, Addis Ababa, Ethiopia
Box 3: Responding to survivors of abuse in a holistic manner

“The centre has done everything for me. They helped me just in time.”

An eleven year-old girl called Etenesh was brought to the CLPC in Addis Ababa last year by the daughter of her neighbour, who had heard about the CLPC through the media. The neighbour had heard Etenesh crying and scratching at the walls of her house in distress for quite some time and had finally acted when she came upon Etenesh weeping alone in the streets. When in discussions with a CLPC counsellor, it emerged that Etenesh had been sexually and physically abused by her father since she was two, as a result of which she now has very bad fistula. Her mother left the family house when Etenesh was two and no one is sure where she is now.

Etenesh received extensive counselling at the CLPC and they found her temporary housing in a shelter for abused children. They notified the police of the father’s name and contact details, but it took nearly a year for him to be arrested. The CLPC were instrumental in ensuring that her father was eventually arrested and that the case was properly prosecuted, to the extent of hiring a private detective to locate him. He is now in prison awaiting trial, although he may still be eligible for bail. More than anything, Etenesh wants CLPC to help find her mother so she can live with her. In the future she wants to help abused children by setting up a home for them, since, as she says very practically, “They need to understand the risks of abuse, like disease and pregnancy.”

in Ethiopia. The risks to a child who alleges they are a victim of sexual assault or abuse is not taken into account by the court when deciding whether or not bail should be permitted. The primary focus of a court’s deliberations is upon the defendant’s ability to provide the court with a financial surety rather than upon the best interests of the child victim and bail is available to those accused of raping a child under thirteen.

The CLPC responded to Etenesh’s immediate needs, ensuring that the perpetrator was brought to justice and advocated for change in the inadequate ways in which the courts in Ethiopia deal with the question of bail through promoting consideration of the best interests of child victims. This illustrates how Children’s Legal Protection Centres work to fit the different components of child protection together like a jigsaw.

1.5. Building a protective environment for children

The Centres aim to promote and uphold the rights of all children in accordance with the CRC and other international human rights instruments in a holistic manner. However, their main focus is in building a protective environment for children. Every child needs a safe and secure environment to grow and develop, and this need has been recognised as their ‘right to protection’ in international human rights instruments such as the Universal Declaration of Human Rights, as well as in much greater and specific detail, in the CRC and The African Charter. The goal of child protection, as expressed in the CRC, is to promote, protect and fulfil children’s rights to protection from abuse, neglect, exploitation and violence (see Box 3 above).
It is clear that in Africa, Asia, Europe and Latin America, and indeed right across the world, children's rights to protection are violated in extreme and diverse ways every hour of every day. Approximately 126 million children aged 5 to 17 are believed to be engaged in hazardous work, excluding child domestic labour. More than 1 million children worldwide are detained by law enforcement officials at any one time.

It is estimated that more than 130 million women and girls alive today have undergone some form of female genital cutting. Although reliable global statistics are near to impossible to compile, it is estimated that trafficking affects about 1.2 million children each year and it has taken on alarming forms and proportions over the last decade. The UN Secretary-General’s Study on Violence against Children shows that millions of children around the world are being subjected to the worst forms of abuse with little or no protection. It concludes that violence happens everywhere, is usually inflicted by a person known to the child and is almost invariably hidden or left unpunished.

All children, irrespective of where they live or their socio-economic status, have a right to protection, although some groups of children are more vulnerable than others. The causes of vulnerability are widespread and diverse, ranging from poverty to disasters, conflicts, food insecurity, economic globalisation, rapid urbanisation, trafficking, HIV/AIDS, cultural practices, caste, disability, lack of safety nets, dysfunctional families, political corruption, violence, institutionalisation, membership of gangs, or simply being a girl child.

Child protection work undertaken by these Centres aims to prevent, respond to, and resolve the abuse, neglect, exploitation and violence experienced by children in all settings. This requires a multi-disciplinary and multi-sectoral approach (linking closely, for example, with work in education, health and criminal justice). Increasing the effective protection of children also involves working with a wide range of formal and informal bodies, including governments, multilateral agencies, donors, communities, carers and families. Vitally, the Centres recognise that it also requires close partnership with children, including initiatives to strengthen their capacity to protect themselves. Child protection work aims to strengthen the capacity of all these actors to protect children and to develop systems and mechanisms that provide meaningful protection for all children in the longer term.

The state has the main responsibility for the fulfilment of children's protection rights and should establish a national and community-based child protection system with a coordinated and holistic approach, integrating the contributions of the different sectors and actors. Such a system should be based on a combination of law and knowledge (in line with human rights standards), and include well-trained staff, child participation and awareness raising on the nature and response to child protection concerns. The accountability of the

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10 Defence for Children International *No Kids Behind Bars: A global campaign on justice for children in conflict with the law* www.kidsbehindbars.org


12 Reuters Alert Net (2006)

13 United Nations Secretary-General's Study on Violence against Children which was presented to the Third Committee of the General Assembly in New York on 11 October 2006
state for such a system is essential for its effectiveness and sustainability. The Centres provide children with protection from violence; from the impact of separation from parents or care-givers; state violence through the criminal justice system, laws and institutions; unnecessary institutionalisation; discrimination because of disability, ethnicity or migration and trafficking. Ensuring the right to protection also means that the Centres work towards the development of more appropriate family, community and state mechanisms to protect children.

This overview of the Centres’ conceptual framework is not meant to be reductive: in their role as translators of children’s rights into specific cultures and contexts, the complexities, subtleties and nuances of their work are enormous. However, it is clear that Centres largely take a rights-based approach to building a protective environment for children. Furthermore, much of their work revolves around the need for children’s rights to be implemented through institutions which are often in need of development because of weakness in local rights practices. Their central objectives include:

- **Holding governments accountable** for the way in which they fulfil their obligations under the CRC and other human rights instruments by acting as watchdogs, deploying impact litigation and by effective monitoring and reporting, using tools such as budget analysis, monitoring parliament and conducting research and fact-finding missions.

- **Strengthening government commitment and capacity** to fulfill
their obligations under the CRC and other human rights instruments, by promoting the establishment of adequate legislation and ensuring it is properly implemented, preparing child impact assessments of draft legislation, assisting the executive in mainstreaming child rights across all ministries and departments and by providing training to the police and judiciary.

- **Establishing networks** with families, communities, the media, pro bono lawyers\(^\text{14}\), ombudspersons, other civil society organisations and child practitioners to extend the Centres’ reach and to strengthen capacity to fulfil children’s rights.

- **Enhancing children’s knowledge** of their rights and their ability to participate.

\(^{14}\text{Pro bono lawyers are defined as lawyers who work without charging a fee}\)
2. A BRIEF SUMMARY OF THE WORK OF THE SELECTED CHILDREN’S LEGAL PROTECTION CENTRES

2.1. Children’s Legal Protection Centre (CLPC) of the ACPF, Addis Ababa, Ethiopia

The Children’s Legal Protection Centre (CLPC) of ACPF was set up in 2005 in Addis Ababa under the aegis of the African Child Policy Forum that still provides administrative and technical support. It was initially established to provide legal advice and judicial representation (meaning representation by a lawyer in court) to children, as well as information, education and training on child rights. However, in August 2006, it was felt necessary to add two additional areas to its remit: advocacy and psychosocial support. Its work is framed by the CRC and it adopts an explicitly rights-based approach to its interventions. The CLPC is a young organisation located in the centre of Addis Ababa with a friendly office environment for children.

The overall objective of the CLPC is to ensure the promotion and protection of the rights of children who are victims of exploitation, violence, abuse and neglect by:

- Providing legal counselling to children and their families both for those who are victims of abuses and those in conflict with the law
- Providing judicial representation to cases involving violations of children’s rights
- Providing in-house counselling to children with legal cases at the Centre and facilitating the access of children who are survivors of abuse to other complementary support such as temporary shelter and psychosocial assistance
- Providing legal education and training for various target groups
- Advocating for law and policy reform

State infrastructure for child protection in Ethiopia is inadequate. There is no overarching Children’s Act codifying children’s legislation, and the CRC has not been published in the relevant legal Gazette. Previously this led to ambiguity about whether or not the CRC could be directly applied in domestic courts. However, in 2007, the Federal Supreme Court, in one of the court litigations handled by the CLPC, passed a landmark decision and set a precedent for Article 3 of the CRC, regarding the best in-
terests of the child, to be the principal consideration for cases concerning children. The CLPC believes that this has now resolved the ambiguity regarding direct application of the CRC in courts.

A number of Child Protection Units have been established in police stations in Addis Ababa and some regional towns. These units have contributed to the better treatment of children in contact with the law; however, they face significant problems, such as lack of legal mandate, lack of legal basis for diversion and lack of appropriate training. Since its establishment, the CLPC has been contributing its part to improve the gap through regular training and education targeting the relevant staffs who are running these Units.

There is currently no juvenile justice court in Ethiopia save for some pilot benches. A sizable section of vulnerable groups of children are criminalised under vagrancy legislation and there is very scant provision for legal aid for children in conflict with the law. Under the Ethiopian Criminal Procedure Code, the court may appoint a publicly funded lawyer to a child who has no parent or guardian to represent him or her, or who is charged with an offence punishable by a sentence of ten years imprisonment or death. In practice, children are rarely if ever legally represented in court.

A father whose 13 year old boy has been accused of murdering his neighbour and who is currently being represented by the CLPC explained that this means, the lawyers at the CLPC are the only people who

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15 This particular case involves a 15 years old child who was living with his aunt since he was 1 year old. His father was already married with two children and running his own business. When the child’s mother died two years ago (2005) leaving behind a large amount of money and property, the father filed an application to the local (wereda) court to be appointed as the legal guardian of the child. The court automatically granted him the guardianship. This is because, according to the relevant Ethiopian law, as long as the child’s parents are alive, other individuals can not have any legitimate ground to become guardians. The only issue examined by the court was, therefore, the hierarchy of relationship the parties have with the child, in stead of their respective disposition to protect his best interest. At any rate, after his appointment as the guardian to the child, the father was recklessly squandering the assets left by the deceased mother. The aunt, assisted by the CLPC, complained about the irresponsible actions of the father to the same court that granted the guardianship to the latter. But the court was not willing to entertain the complaint. Hence, the CLPC was forced to take the case on successive appeals to the Regional High Court, Supreme Court and, finally, to the Cassation Bench of the Regional Supreme Court. Unfortunately, the appeals were rejected at all levels on ground of the same legal reasoning adopted by the lower court. After failing in all appellate levels, the last place left for the CLPC to try its ‘chance’ was the Cassation Bench of the Federal Supreme Court of Ethiopia. Finally, the Cassation Bench reversed the decisions passed by the lower courts by applying the principle of the best interest of the child and assigned the aunt to be the legal guardian of the child.

“Advocacy work and litigation at the CLPC are wholly complementary. In fact, the Centre picks its advocacy issues as a result of gaps identified whilst giving legal and social services to children.”

Helen Seifu, Director, CLPC
stand up for him.” Once convicted, children are often imprisoned in adult prisons. One judge from the child-friendly bench in Addis Ababa said that without representation, children often pleaded guilty because they didn’t understand the importance of the mens rea element of an offence (that is the mental intention required to be guilty of an offence) when in fact they may not be guilty at all.

Aside from the inadequacies of the juvenile justice system, there are enormous gaps in the provision of children's services. There are still no adequate institutional structures for ensuring birth registration. Corporal punishment is widely practiced in schools, homes and institutions. Female genital mutilation and forced and early marriages are still widespread. There is a significant lack of data in relation to children’s rights on areas including domestic adoption, street children, children involved in armed conflict, children without parental care, children involved in the justice system, and sexually abused and trafficked children. Overall the welfare system is weak, ill-coordinated, patchy and heavily reliant upon civil society support.

Although the CLPC has only been in existence for 3 years, and is operating in a very challenging context, it has managed to have considerable success so far in filling some of the gaps in the provision of legal aid and psychosocial support for children, as well as in raising awareness more generally about children's rights and advocating for policy reform. As of December 31, 2007, The CLPC has:

- Provided legal counselling and judicial representation to around 3,700 children (child victims and children in conflict with the law)
- Provided free legal counselling to around 60 children by telephone
- Provided direct and indirect psychosocial services to around 210 children
- Prepared independent reports on 29 referred cases from the Federal First Instance Court on custody assessment and visitation rights
- Initiated and established strong referral systems with complementary service providers
- Conducted an assessment of 145 complementary service providers to identify organisational capacities and characteristics of organisations providing child focused support and services in eight towns in Ethiopia
- Currently engaged 16 pro bono lawyers to provide free legal advice and representation to a number of children
- Organised capacity building training for media and community-based organisations
- Identified and lobbied on the following five advocacy issues, including the organisation of debates between law school students at Addis Ababa University on one of the issues:
  ◊ Determination of custody disputes in the best interest of the child
  ◊ Admissibility of DNA test results as proof of paternity
  ◊ Determination of child maintenance
  ◊ Bail rights for the accused charged with sexual abuse against children
  ◊ Admissibility of claims for the emancipation of the child; the CLPC has seen several cases where children are unable to apply to the court to challenge a court decision to appoint a guardian who has become abusive or exploitative
- Disseminated information on various issues regarding children’s rights
using newspapers, radio and television programmes

- Maintained strong partnerships with courts, prosecutor’s offices, police, child protection units, media, women's desks in kebeles (units of local government) and other child-focused NGOs
- Conducted research on various issues, including children in prison and detention centres and the legal rights of children living with HIV/AIDS
- Provided training for judges, public prosecutors and police officers

2.2. The Child Rights Advisory Documentation and Legal Centre (CRADLE) – The Children’s Foundation, Nairobi, Kenya

The CRADLE was founded in 1997 following a baseline survey which showed an urgent need for children in need of care and protection and in conflict with the law to receive legal aid. The CRADLE was officially launched on the 7th of December 1998, on the eve of celebrations of the 50th anniversary of the Universal Declaration of Human Rights, to demonstrate the deliberate choice of a rights-based approach in its work.

It has grown considerably since then, and the current mission of the CRADLE is to enhance the rights of the child and contribute towards the promotion and enhancement of the status of women by improving the status of the girl child. The objectives of the CRADLE are to enhance access to justice for children; ground child rights in development and within communities; enhance a child-friendly legislative and policy framework; work towards the eradication of violence and exploitation of children; and to contribute to the general development of human rights in Kenya. Its offices are quite crowded, but still accessible to children and furnished with lots of toys and pictures, giving it a relaxed atmosphere.

Kenya does have a comprehensive law on children, the Children’s Act of 2001, which contains a section modelled upon the CRC and the African Charter. There is also a law on succession, which enables children to inherit their parents’ property, although implementation is poor. The Sexual Offences Bill received presidential assent in July 2006 and seeks to enhance the provisions of the Children’s Act that protect children against sexual abuse and exploitation. There is still an urgent need for a legislative and policy framework for orphans and vulnerable children. Although the Children’s Act means that children are better protected under the law, there are myriad
problems in its implementation; children in conflict with the law are still mixed in with children in need of care and protection. Many children remain in detention for far longer than legally stipulated, sexual abuse is rampant and there is no government-run legal aid scheme, so indigent children are largely unrepresented.

The CRADLE’s big strength is the way in which its different components of policy reform, legislative advocacy, working with children to raise their awareness of their rights, research and case work are integrated and feed into each other. The organisation is relatively small (around twenty people) and housed in one building so the flow of information is easy. Brian Weke from the CRADLE explains that, “We do not find any tensions between policy and litigation. This is because our policy interventions are actually informed by cases which are reported in our Legal Aid Clinic. As part of our intervention, we follow both and see which works best: policy or intervention.”20 By way of example, the CRADLE became aware that they were dealing with an increasing number of cases concerning children who had been trafficked. They conducted research into trafficking and as a consequence took the lead on anti-trafficking initiatives in Kenya21 and drafted a trafficking bill. They also prepared training manual and trained magistrates, police, etc. and developed an infomercial for television, a comic book and other educational materials for children.

The CRADLE run four programmes which, “move in tandem”.22

**Child rights awareness:** Seeks to create awareness and build the capacities of institutions and communities on child rights through the Safe Horizon Project, a high school-based programme which mentors girls and provides them with means of protection against abuse, and the Letter Link Project which is a primary school-based programme that seeks to empower children to better protect themselves from abuse. Communities are also empowered by the provision of mobile legal clinics and bazaars, electronic and print media campaigns, and the training of paralegals.

**Policy and legislative advocacy:** Seeks to influence the establishment of institutions and the enactment of laws that support a child-friendly justice system. It works by mainstreaming child rights within government through advocacy, constitutional reviews, trafficking campaigning and the child justice reform initiative. It hosts the Juvenile Justice Network and the Regional Africa Juvenile Justice Network and is also a member of many other such as Elimu Yetu Coalition, Kenya Human Rights Network (KHURINET), Paralegal Support Network (PASUNE), the National Focal Point on FGM, Girl-Child Network, Medico-Legal Network on Gender Violence, Care Kenya Information, Education, Communication (IEC) Campaign Network and the NGO Committee on UNICEF.

**Research, monitoring and documentation:** The aim of this programme is to hold the government accountable to its national and international commitments by monitoring implementation; for example, by monitoring trends in child sexual abuse, conducting research, and running an in-

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20 Mr Brian Weke, the CRADLE, response to questionnaire, 19 October 2007
22 Interview by author with Mr Brian Weke, the CRADLE, Nairobi, Kenya 26 October 2007
formation and research centre for child rights professionals, academics, etc. It also produces several publications, including Juvenile Justice Quarterly.

**Legal aid programme:** This is really the core of the organisation. It offers legal advice and representation to children through its legal clinic in its own offices but also nationally through its network of pro bono lawyers. The CRADLE also runs a special programme in the Nairobi Children’s Court, where it maintains a duty advocate and has established a Child’s Desk and a Teddy-Bear Clinic to enhance access to justice for children. Cases it cannot handle itself will be referred elsewhere within its wide network. It conducts impact litigation and trains parents on how to represent themselves. It also offers counselling for the children whose cases it is dealing with, and rescue and placement of children in urgent need of care and protection. Another element is judicial consultative meetings with courts and remand homes.

There are now 17 permanent members of staff including 3 lawyers, 6 social workers and psychologists, and administrative staff in the offices in Nairobi which are centrally located. There is also an office in Garissa in the Northeast of Kenya which has five employees. This is a pilot programme set up in a highly marginalised area which has a large number of refugees from Sudan and is largely Muslim. The courts there are largely Islamic (Khadhi courts). The pilot programme has been established to provide legal aid, raise awareness within the community about children’s rights and to train paralegals within the community.

2.3. Children’s Legal Action Network (CLAN), Nairobi, Kenya

CLAN was formed in 1998 as part of a network of government and NGO child protection agencies to legally represent children by coordinating a team of voluntary lawyers. It has since grown enormously, both in size and scope, and now offers legal representation to children as well as advocating for policy and law reform and undertaking large-scale outreach work to heighten awareness of the law and child protection. It aims to provide high quality legal aid services for children and also to work with what it calls ‘frontline service providers’, including the government, civil society organisations, families and children, to strengthen the capabilities of individuals and organisations to uphold the rights of children. A large part of its work is providing mediation services to families at the point of breakdown and dealing with cases of custody, maintenance and contact.
CLAN runs programmes on:

- Law and policy reform, geared towards lobbying and actively participating in policy and law reform in child-related statutes to enhance the status of children
- Provision of free legal assistance to children
- Advocacy and awareness creation targeted at the whole community and aimed at creating awareness on children’s rights, child abuse and neglect and laws relating to children
- Research, documentation and information sharing

They focus a great deal on building and maintaining their network and understand this to be vital for their success and sustainability; for example, they have a pool of advocates nationwide for case referral. In return, CLAN covers their expenses and gives them training on child rights. They have also taken some of their volunteer lawyers to see the Khadi courts in action. The volunteer lawyers, “Value the experiences they get from working with us.”  

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2.4. The Centre for Child Law, University of Pretoria, South Africa

“When things had become stuck, the Litigation Project made things move.”

The Centre for Child Law was established in 1998 and is based in the Law Faculty at the University of Pretoria. The vision of the Centre is to establish and promote child law and uphold the rights of children in South Africa, within an international and regional context, particularly pertaining to their legal position. The mission of the Centre is to work towards the development of child law and the realisation of children’s rights in South Africa, within a regional and international context. The Centre strives to realise its vision and mission by means of the following activities:

- Promotion of child law as an academic subject
- Publications
- Giving advice on the interests of children
- Litigation
- Advocacy

An initial and continuing activity was the establishment of a Master’s Degree (LLM in Child Law), which has four modules: private law, public law, international law and education law. It also offers short courses to practitioners; indeed, much of the Centre’s education work is targeted at practi-
tioners working with children. The Centre broadened its horizons in 2003 with the establishment of the Children's Litigation Project, which undertakes test litigation on children's rights issues. The Centre has been involved in high profile cases in the superior courts of South Africa (including the Constitutional Court) from which a number of positive judgments have been reported. The litigation work has focused on the socio-economic rights of children, children in the criminal justice system (both victims and offenders), children in care proceedings and residential care, family law, children’s right to legal representation and international law matters. It also contributes towards establishing and promoting the best interests of children through education, research and advocacy.

It is the only specialist programme litigation body dealing with child rights in South Africa and as such, it has created a basis for focused child rights litigation. It differs from some of the other documented Centres, since it does not attempt to provide legal representation for children in general. Instead it carefully selects test cases with the overall aim of using impact litigation in the areas of both civil and criminal law.

It also works hard to integrate the litigation component with networking, research, education and advocacy. The formal component to these activities include regular attendance and presentations at workshops and conferences, sharing precedents, lobbying on specified issues relating to child rights, and formulating sector strategies. The less formal aspect of the networking activities is an intangible spreading of the work of the Centre through its interaction with both clients and sector role-players. This element of more general awareness raising should not be underestimated and is an important by-product of its work.

The research activities are conducted mainly by law students. While some of the research is used for existing cases which the Centre is working on, there has also been a programme of wider research aimed at assisting other litigants in the area of child rights. Research is conducted as a means of exploring avenues for future impact litigation cases. The research outputs of the project include applied research on the child's right to participate in legal proceedings and on burden of proof regarding dolus (criminal capacity of minor children).

2.5. Childline, Cameroon

This organisation was established in early 2007, so is still very young with only four permanent members of staff. It aims to promote the protection of the rights of the child in accordance with the CRC and to advocate at national, regional and international levels on issues concerning children’s needs. An important focus of its work is in ensuring that telecommunication and related technologies reach marginalised children. This is accomplished by

“The Centre needs to translate paper rights into real rights.”

Response given by employee from Centre for Child Law in Evaluation of the Litigation Project, Centre for Child Law, University of Pretoria (2005)
establishing strong partnerships with the government and media, but also with more unusual associates, such as the corporate and telecommunication sector. They aim to provide children in Cameroon with free telephone access to report abuses of child rights and receive counselling. They focus specifically on street children, children in conflict with the law and children experiencing violence both at home and in school. The intention of the helpline is to provide direct assistance to children by giving immediate comfort, help and emotional support. Children are encouraged to talk about their problems without judgement or fear of making things worse.

They use a wide range of different strategies including:

- Networking with social care givers and agencies
- School visits and school based marketing campaigns
- Organising campaigns with corporate partnership and service promotion on television and in other media
- Production and distribution of posters and flyers in school and youth centres
- Distribution of educational materials
- Organisation of children’s festivals
- Production and distribution of newsletters to schools and teachers
- Publication of helpline address and phone numbers on school books, public places, churches and others
- Organising events and initiatives for children and parents, in cooperation with civil society

2.6. HAQ: Centre for Child Rights, Delhi, India

HAQ: Centre for Child Rights works towards the recognition, promotion and protection of rights of all children. Although active since 1998, it was formally registered in 1999. ‘Haq’ is an Urdu word meaning rights and the organisation grew out of the recognition of the need to build and strengthen a child rights movement in India. In doing so, HAQ’s emphasis is on the need to look at the child in an integrated manner and to fill the conceptual and practical gaps, making crosscutting linkages between different categories of children and issues affecting them. HAQ believes that child rights and children’s concerns have to be mainstreamed into all developmental planning and action, and must also become a core developmental indicator. While recognising the indivisibility of all rights, they maintain that the rights to survival, development and equal opportunity are the basis of every other right.

India is where 19% of the world’s children live. Despite a massive recent economic boom affecting many parts of the country, in international comparisons of the status and condition of children, India continues to rank poorly. It has the world’s highest number of child labourers and the unenviable accolade of having the world’s largest number of sexually abused children. Children still suffer from poor nutrition, inadequate health services, clean water, sanitation and basic education. The falling number of girls in the under six age group causes alarm: for every 1,000 boys there is an average of just 927 females. In some areas this disparity is even larger.
HAQ’s offices are small and child-friendly, with just nine staff. HAQ runs two programmes:

Children and governance: They have developed some innovative tools for monitoring the state’s performance in fulfilling its obligations to children’s rights, through undertaking child budget analysis, monitoring parliamentary questions and producing child status reports every two years.

Child protection: They have a legal resource centre and provide legal information and training for NGOs, networks, teachers, police and others who work or deal with children. HAQ provides legal aid to children themselves as well as through a panel of lawyers. They work to improve the juvenile justice system; for example, by monitoring the judiciary. They provide counselling in-house through two full-time counsellors and do some participatory work with children through activity-based workshops and theatre.

They undertake a great deal of advocacy and campaigning, both nationally and internationally, and base their advocacy on sound, credible research. HAQ previously hosted the national Campaign against Trafficking of Children and is closely associated with the Campaign against Child Labour, the National Campaign for Right to Education and the Task Force on Children and Conflict in India. HAQ is an associate member of Defence for Children International and a charter member of India Alliance for Child Rights.

2.7. The Children’s Legal Centre (CLC), University of Essex, UK

The Children’s Legal Centre was set up by two leading UK child rights specialist in 1981, as the major UK project for the International Year of the Child. It is a national charity committed to promoting children’s rights in the UK and worldwide. It believes that children have the same rights as other members of society and works to ensure that their interests are represented at every level of the legal process and in the production of legislation. It works to create a coherent structure for the promotion of children’s rights through courts, local authorities, in parliament and internationally. It aims to promote and uphold children’s rights within the context of the CRC and ECHR in the UK and internationally.
It is in a large, well-resourced building attached to the University of Essex and currently has a staff of 42. The UK programme focuses on two specialised areas of law: education and family law for children who are looked after. It is a national leader in the law in these two areas and does not choose to diversify, because there are few other organisations offering legal representation in these specialisations. They do not provide legal representation to children in conflict with the law because this is well covered through the provision of state-funded legal aid and because the human resources required to provide 24-hour cover to arrested children is too great. They are nonetheless engaged in advocacy work relating to juvenile justice in the UK.

The Education Law Department provides free legal advice and representation to children and/or parents relating to schools or Local Education Authorities. It offers advice through an advice line and has a contract with the government to provide means-tested legal advice and assistance through the Legal Services Commission. The Family Law Department ensures that looked after children and children in need are able to access legal advice and representation. They refer cases elsewhere if it requires specialist advice outside their field of knowledge.

In addition to their legal representation work, they also undertake research into different aspects of the operation of children’s rights both internationally and in the UK. Projects in the UK have included work on access to services of unaccompanied asylum seeking children and on child employment. They have also worked with the Independent Police Complaints Commission to see how their procedure can be made more child-friendly. They have a dynamic advocacy department, which works in conjunction with Legal Services in order to support children, and a wide-ranging website where children, carers, parents and professionals can access up-to-date information on all aspects of child law. They produce many publications, including a monthly journal and a range of legal guides on law policy and practice. They also have an international section which works to reform and establish child protection systems to ensure that they are compliant with international children’s rights standards.

2.8. CECODAP, Venezuela

CECODAP was established in 1984, primarily to provide support to families and children in slum areas of Caracas focusing on the provision of alternative education. The organisation grew and developed a community training plan for people to conduct outreach health, community participation and legal protection work. They developed a network with other community organisations providing similar services. During the 1990s the organisation began to adopt a more explicitly rights-based approach and became an important centre for networking amongst child focused organi-
sations. The organisation defines its values as ‘commitment, cooperation, justice, fairness, fraternity, social solidarity, participation, transcendence, responsibility and tolerance.’ Carlos Trapani (coordinator of CECODAP’s Public Impact Area) defines the organisation’s role as being that of, “A vehicle, an intermediary which accompanies children and their families in the defence of their rights... the main thing is to provide the basic tools for people to take over their own leadership.”

Their work is organised into three departments: public awareness (which includes children’s rights and participation); school children’s rights as citizens; and the PANA News Agency, which monitors Venezuelan printed media on their treatment of childhood and adolescence issues. They work through a combination of different strategies, including lobbying, social mobilisation and campaigning, dialogue, sensitising the media, urgent action (where a child’s physical integrity or life is at risk because of the action or omission of the state), monitoring, and education and participation.

25 CECODAP completed questionnaire, March 2008
3. ENSURING GOVERNMENT ACCOUNTABILITY FOR THE FULFILMENT OF CHILDREN’S RIGHTS

Children’s Legal Protection Centres use a number of different strategies to work towards building a protective environment for children. It is hard to separate these strategies out into distinct categories, since they overlap and complement each other reflecting an instinctively holistic and non-compartmentalised approach to the furtherance of children’s rights. They work in an integrated way, translating the world of rights into realities for the children they deal with directly, as well as for children more generally. They ensure government accountability for the fulfilment of children’s rights; strengthen government commitment and capacity to fulfil children’s right to protection; establish networks; and develop children’s knowledge and right to participation.

3.1. Watchdogs

“We are there to be the system’s memory, to watch what is happening and to be a witness to what is going on.” Doug Hiscock, the Children’s Legal Centre, UK

In many regards, the Centres function as watchdogs over the state bodies responsible for the fulfilment of children’s rights to ensure that they are held accountable for their obligations. This is ongoing at a low-level every day and illustrates how the Centres are constantly engaged in transforming the rhetoric of rights into concrete, unassailable reality for individual children.

The following are some examples of how this watchdog role works in practice. They demonstrate how the Centres use the legal tools available to them with persistence and tenacity to pursue states when they do not take responsibility for their obligations to fulfil children’s rights. They also show how the Centres in a sense educate states about their obligations and duties to children.

Box 5: Acting as a watchdog over the state

In Ethiopia, a sixteen year old boy was arrested and severely beaten by police officers. This assault left him seriously paralysed and consequently subject to bed sores. As a result of the infection, he died six months after the assault. His family came to the CLPC seeking redress for the assault before the boy’s death. The CLPC referred the boy for medical treatment and contacted the Addis Ababa City Police Commission to inform them of what had occurred. They also coordinated the gathering of evidence of medical records and witness testimony in order to assist the police in bringing a criminal prosecution against the police officers involved in the assault. The police officers were arrested as a result of CLPC’s efforts. Finally on May 22, 2008, the Federal High Court’s Third Criminal Bench found both defendants guilty of homicide, and they were sentenced to serve 7 years in prison. The CLPC is currently pursuing a civil claim for compensation for the boy’s family.
In the UK, the Children’s Legal Centre (CLC) is concerned at a lack of coherent policy towards children over 16 who are being looked after and who become homeless. The system allows for them to be shunted from the housing department to the local authority with neither body taking proper responsibility for the young person. As Doug Hiscock from the CLC points out, adults would not put up with receiving treatment like this and it is CLC’s role to ensure that proper procedure is followed for young people as well. The CLC works hard to monitor these cases and argues that if a young person between 16 and 18 is presented as homeless then they must be housed and not referred elsewhere. They follow cases to their conclusion and ensure that they are dealt with properly. Carolyn Hamilton, Director of the CLC says, “These children are invisible. It might seem hard to believe that children are at such risk and that this can still happen in the 21st century, but it is a real life situation for some youngsters. That’s why we are here to help.” They have also followed up this issue by conducting research into the causes and prevalence of homelessness amongst young people and this research has fed into their advocacy.

3.2. Impact litigation

Impact litigation can be defined as advancing child rights through the use of the judicial system and is used by the Centres as an important tool for ensuring government accountability. They take very different approaches to impact litigation. The Centre for Child Law in South Africa has an explicit mandate to carefully select cases for the specific purposes of impact lit-

**Box 6: The role of courts**

The CLC was contacted by a 15 year old girl who was living at home with her mother. The family dynamics were very volatile and the police had been involved in 18 incidents over the course of two years involving emotional and physical abuse from the mother to her daughter and vice versa. The girl did not want to stay at home, as the relationship with her mother had broken down, and the mother had been trying for about four years to have her daughter accommodated by the local authority. The local authority refused, saying that the young person was her mother’s responsibility. The CLC wrote to ask that they accommodate the young person, but the local authority again refused. A serious incident then took place, where the daughter stabbed her mother and was sectioned to a mental health unit for young people.

The CLC instructed an independent social worker to assess whether the young person should return home and what her support needs were. This confirmed that she should not be made to return home due to the risk to herself and her mother. There were no other family members she could go to and in addition, her bail conditions stated that she should not have any contact with her mother. Despite this, the local authority still refused to accommodate her in breach of their statutory duty, so the CLC eventually initiated court proceedings against them.

Finally, the local authority agreed to accommodate the young person and she is now placed in a children’s home and receives full services as a looked after child. Without the CLC’s involvement, it is likely that this young person would have been made to return home, that the situation would have resulted in a serious incident and possibly the girl being sent to a young offender’s institution. The psychiatric unit in which she was placed were unsure what they should do and how to seek assistance from the local authority. They thought that the only option was to discharge her into the care of her mother, against the advice of professionals. The psychiatric unit have now been briefed by the CLC that in a similar situation in the future, alternatives should be sought.
igation. The Children’s Legal Centre in the UK, CLAN, the CLPC, the CRADLE in Kenya and HAQ in India, on the other hand, do not proactively seek out cases relating to specific themes, although this may alter in the future, but will take on cases as they come up in the course of their daily work. CECODAP in Venezuela focuses on group actions as opposed to taking individual cases in order to maximise the impact of the litigation.

There are times when it is important to know when not to litigate a case and risks have to be carefully factored into the decision to take on a particular case. Because of the indeterminate nature of litigation it is difficult to predict how long it will take to complete the cases, and cases that seem strong at first sometimes collapse for unforeseeable reasons. With litigation there is always the possible risk of losing the case and thereby creating a negative precedent. The risk of costs being awarded against a client or against the Centre, if it is litigating in its own name, also needs to be taken into account.

All the Centres who undertake impact litigation grapple with the balance between serving the interests of individual clients and the broader aim of obtaining judgments that could be used by future litigants. They have to protect the interests of their clients in reaching settlement agreements, even though the adoption of a more adversarial litigation policy may have culminated in a national precedent. There is an inherent tension between the objective of holding governments and other duty-bearers accountable for their responsibilities to children and the objective of setting precedents by obtaining written orders and judgements through the courts. At times it can be more worthwhile to allow government service providers to address identified shortcomings in service delivery without the issuance of formal legal proceedings but with the implicit threat of potential litigation hanging in the background. CECODAP likens the process of litigation to a chess game: “You have to know when to advance and when to retreat.”

Using impact litigation as a tool for advancing child rights can have many different outcomes depending on the legal context and nature of the case. The following case-studies illustrate some of the ways in which impact litigation can be deployed, in order to:

- Hold governments accountable for their obligations towards children
- Create public awareness about a particular child rights violation
- Highlight an anomaly in the law or in decision-making
- Establish the substantive content of legal rights and the protection of children and to seek clarity on the law
- Push forward the boundaries of the law relating to children
- Set precedents thereby shifting the attitudes of courts
- Use group litigation for maximum impact

“We have managed to find a balance between litigation and policy work. We participate a lot in law reform, the drafting of regulations, etc. We are often asked by government departments to advise them on aspects of the law, yet sometimes we find ourselves litigating against the same departments that seek our advice. We see this as a sign of a confident, growing democracy.”

Ann Skelton, Centre for Child Law, South Africa

27 CECODAP completed questionnaire, March 2008
a) Holding the government accountable – HAQ, India

HAQ were contacted by the family of a seven year-old girl, Chaaya (not her real name), who had been raped by a neighbour in the outskirts of Delhi. Following the rape, the perpetrator was arrested and Chaaya was taken to hospital where she stayed for a month to recover from her injuries. After a short spell in a children’s home she was then returned home. In order for the case to be prosecuted it was necessary for Chaaya to give her evidence before a magistrate, in this instance a Metropolitan Magistrate. HAQ helped to prepare her by explaining clearly what would happen in the courtroom and how to present what had had happened to her. She attended court with her family on the given date, but they were told to come back at a later date. In the following two months, this happened eight times and over the course of these two months Chaaya became very upset and distressed, and eventually refused to go to the court. A HAQ lawyer visited the family in their home to try and reassure them. Chaaya, “has faith and confidence” in her lawyer and refers to him as ‘bhaiya’ which implies she is happy and comfortable in his presence.28

HAQ complained to a judge in the High Court of Delhi informally about the way in which this child victim had been treated. The National Human Rights Commission (NHRC) were also notified and the High Court of Delhi summoned the Metropolitan Magistrate dealing with Chaaya’s case and, with the assistance of HAQ and the NHRC, laid down guidelines to be observed in cases concerning child victims of sexual abuse who are to be treated ‘with compassion and dignity.’ Although HAQ did not bring the case specifically themselves, they tactfully and tactically used their knowledge and understanding of the judicial system to provoke action of its own accord to redress its failings. These guidelines are an important step in ensuring that courts create an enabling environment for children so that they can express themselves properly. As well as reminding the judiciary of a previous Supreme Court ruling regarding the treatment of victims of sexual abuse, the guidelines cover the functions of the police, medical examiner, magistrate recording a child victim’s statement and the conduct of the trial court. They ensure that:

- The officer recording the statement of a child victim shall not be in uniform
- The parents/guardians of the child should be allowed to be present whilst a statement is taken
- At no point should the child victim come into contact with the accused during an investigation

“We realised that you cannot monitor the judiciary without engaging yourself in individual casework. You can’t look from the outside because you only get case law which doesn’t tell you exactly what is going on. It doesn’t tell you if the judicial process is child friendly or child supportive.”

Enakshi Ganguly Thukral, HAQ: Centre for Child Rights, India

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28 Interview by author with Chaaya’s father, 30 November 2007, Delhi, India
29 W.P (Crl.) No. 930/2007, High Court of Delhi at New Delhi, 14 August 2007
30 2004 (5) SCC 518 Sakshi vs. Union of India and Ors
• If the victim is a girl, the medical examination should be undertaken by a female doctor

• The statement of the child victim should be recorded promptly by a magistrate and if adjournment is unavoidable then reasons for this should be given by the magistrate in writing

• A trial court should endeavour to create a child friendly atmosphere

• The proceedings should be in camera and the child victim should not be confronted by the accused

A chairperson from one of the Child Welfare Committees in Delhi explained the implications of this case in these terms:31

“You have to make a concerted effort to make an impact on the mindset of the judiciary. They are routine-ised and you have to work hard to make a dent in their skins... this case produced an excellent judgement and sets a precedent for other Metropolitan Magistrates... it shows how HAQ knows the law but also knows children. I want to work with people who have this combination of knowledge and sympathy.”32

b) Impact litigation as a tool for public sensitisation – the CRADLE, Kenya

The CRADLE recently took a case to the High Court concerning the provision of maintenance for children born out of wedlock. This case is a good example of how the legal process can interact with broader advocacy and public sensitisation. Under Kenya’s Children Act (2001), the issue of parental responsibility is determined by whether or not the parents were married at the time of the child’s birth. In cases where the parents were married, both the mother and the father have parental responsibility. However, in cases where the parents were not married at the time of the child’s birth and have subsequently not married, the issue of responsibility towards the child is different. In these cases, the mother is the one with full parental responsibility whereas the father bears no responsibility at all. The father can acquire responsibility, however this is optional and more importantly, it is entirely a matter for the father and cannot be forced upon him. This means in practice that a father who denies paternity cannot be compelled to provide a child with maintenance unless a court proves paternity. Access to this sort of court order is extremely difficult for most women in a country with such high levels of poverty.

Initially the CRADLE advocated with the government for a provision in the draft constitution to prevent children born out

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31 Child Welfare Committees are the government bodies established to take care of children in need of care and protection

32 interview with Ms Bharti Sharma, Chairperson of Child Welfare Committee, 30 November 2007
of wedlock being discriminated against in this way, but this was unsuccessful, so they took a test case to Court to declare the provisions unconstitutional thereby asking the Court to act as a check on parliament. A child, R, who was born out of wedlock sued the Attorney General for discriminatory laws through the CRADLE. It was claimed that the provision within the Children’s Act is discriminatory in itself and also that it is inconsistent with the principle of non-discrimination enshrined in both the Children’s Act and the Constitution. Moreover is it claimed that it is inconsistent with international law (Kenya is a monist state).

The background of the case was that R’s mother (J) and father (S) were a cohabiting couple living on the outskirts of Nairobi. S left J and informed her that he had no intention of coming back and would not financially support his daughter. J was forced to move out of their matrimonial home and had to live with different friends and relatives. She relied on menial jobs, such as washing clothes, but the money was not enough to meet the basic needs of her and her child; on several occasions they went for days without food. R developed health problems, but J could not afford to pay hospital treatment or medication. In 2001, J sought help from the CRADLE. It was obvious that R, who by that time was about a year old, was in a very poor condition. She suffered from acute malnutrition, unattended curable infections and moreover, she was naked.

Ultimately the case was dismissed by the High Court in 2006 and the Act found not to be discriminatory, but the CRADLE used this case to emphasise not only the discrimination inherent in the Children’s Act, but also how issues of family breakdown should not become polarised in terms of gender, but should focus upon the impact on the children involved. This case generated a great deal of public debate within Kenya. The CRADLE held a workshop with children to explain the issue and children attended the court buildings during hearings waving candles and wearing T-shirts calling for children not to be discriminated against. As Millie Odhimabo-Mabona, executive director of the CRADLE explained, “The children were better at articulating this issue than us.”

c) Clarifying the law – the Children’s Legal Centre, UK

Shabina Begum chose to start wearing a jilbab in 2002, but she was told that she could not wear it to school, as it was a health and safety hazard and did not conform to her school’s uniform policy. She remained out of school for two years until a neighbouring school agreed to accept her. Shabina first contacted the Children’s Legal Centre via its education telephone advice line and they took her case all the way to the House of Lords in 2006. Shabina claimed that she had been excluded unlawfully from school under Article 2, Protocol 1 of the ECHR which states that ‘No person shall be denied the right to education.’ She also claimed that her rights under Article 9 of the ECHR to manifest her religion or belief had been infringed. The school’s policy not to allow Shabina to wear the jilbab meant that she felt unable to attend school and therefore she claimed that had been de

33 RM (suing through next friend), JK, CRADLE and GAO vs. The Attorney General (High Court Civil Case No. 1351 of 2002 cited in The Law on Children – A case digest Volume 1 2007 (CLAN)
34 Traditional full length Muslim dress covering the whole body
35 R (on the application of Begum (by her litigation friend, Rahman)) (Respondent) vs. Headteacher and Governors of Denbigh High School (Appellants) (2006) UKHL 15
excluded, but that the correct procedures for exclusion had not been followed.

The House of Lords judged that Shabina’s right to education had not been breached, that she had not been excluded from school, as the school had never sought to stop her attending, and that she could have attended an alternative school and continued her education there. Lord Hoffman stated that, “There is a statutory duty to provide education, but not at a particular school”. The majority of the Lords believed that her right to manifest her religion had not been infringed. It was, however, unanimously agreed that if Shabina’s Article 9 right had been breached, it was justified under Article 9(2) ECHR, which specifies that: ‘Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.’

In particular, it was argued that the school uniform policy was prescribed by law, as schools are entitled by law to set their own policies. The school had clearly published the policy and Shabina had been aware of the rules on entering the school. Furthermore, the school’s reasons for not allowing the jilbab were considered to be both proportionate and for the protection of health and the rights and freedoms of other pupils. In particular, it was argued that allowing the jilbab could place pressure on other pupils at the school to also wear the garment. As Lord Hoffman concluded: “... her right was not in my opinion infringed because there was nothing to stop her from going to a school where her religion did not require the jilbab or where she was allowed to wear one. Article 9 does not require that one should be allowed to manifest one’s religion at any time and place of one’s choosing.”

Ultimately the House of Lords did not find in Shabina’s favour. Shabina herself said following her initial victory in the Court of Appeal in 2005, that the school’s action should not be viewed in isolation, “Rather it was the consequence of an atmosphere that has been created in Western societies post 9/11, an atmosphere in which Islam has been made a target for vilification in the name of the war on terror. It is amazing that in the so-called free world I have to fight to wear this dress.” Following this case and another similar, the UK Department for Education and Skills released Draft Guidance on the issuing of school uniform policies to clarify the position. This was a positive move, which recognised that in a multicultural society, schools need to be aware of the issues surrounding the right to ‘manifest one’s religion or beliefs’. These guidelines also acknowledged that schools should be sensitive and refrain from discriminating, without justification, against specific groups in the formulation of their policies.

d) Pushing the boundaries of the law – CLPC, Ethiopia

Under Ethiopian law, a child is not capable of initiating a civil case against their guardian until he or she reaches 18 or is emancipated under the law. This means that a guardian may exploit their position

36 The Children’s Legal Centre, Press Release, January 2006
37 Articles 216(3) and 312 of the Revised Family Law
by transferring an orphan’s property to their own name. In order to be emancipated under the law, a child must be at least 14 and have an interested relative applying on their behalf. In many cases this is very difficult to achieve, since orphans often do not know the whereabouts of any relatives who could act on their behalf, if indeed they have any. The law is unclear as to whether or not a child can act on behalf of another child to whom they are related as an ‘interested person.’ The CLPC receives many cases of children being abused physically and psychologically by court appointed guardians who are also trustees of property, as well as instances of their property being misappropriated. Given that there are estimated to be five million orphans in Ethiopia, this is a problem confronting a great many children.

Box 7: Using litigation to push the boundaries of the law

“The CLPC is like my family. It has given me hope and the strength I need to look after my brother.”

A 16 year-old girl called Almaz and her 10 year-old brother Sisay contacted the CLPC in 2006 with the help of their nanny. They were orphans after both their parents died of HIV/AIDS when the children were just nine and two. Both Almaz and Sisay are HIV positive. Their parents had not made arrangements for their care before they died and had left no will, although they had inherited their parents’ house. Furthermore, they had no close family who could look after them. A man called Kebede who had had close links with their father applied to the court to be their legal guardian. Subsequent to this, he refused to allow them their anti-retroviral medication and at times did not allow them to eat. He rented out their parents’ house, but did not spend any of the proceeds on them and would make nightly visits to where they were staying and abuse them physically and psychologically.

The CLPC provided the children with food and clothes and arranged for them to stay with relatives. At first they tried to mediate with Kebede, but this proved unsuccessful. They then assigned a pro bono lawyer to the case to emancipate Almaz from Kebede as their legal guardian. The court at first refused to do this, because it is not legally allowed for a minor to bring an action against her guardian, but subsequently they did agree to emancipate Almaz and enabled her to become the legal guardian of her younger brother. The court also ruled that the rent from their parents’ property should go to the CLPC and thence to the children. They are now living with their nanny and the CLPC has arranged for them to receive education and health support from other NGOs. The CLPC dealt with these children in a holistic way dealing with their right to education, health and legal protection as well as enabling these children to bring a case against their abusive guardian.

e) Setting precedents – Centre for Child Law, South Africa

The Centre for Child Law has had considerable success in deploying impact litigation to set precedents for the advancement of children’s rights and in particular to hold the government accountable for adhering to acceptable standards when dealing with vulnerable children such as those in conflict with the law. Below is a selection of cases.

*M vs. State* was a recent Constitutional Court case where the Centre entered as amicus curiae. The case established the meaning of ‘paramountcy’ in relation to the best interests of the child, and found that when a court is sentencing a primary care giver
to imprisonment, it must consider the effect it will have on the children. This develops the common law of sentencing in line with children's rights, as the judgment mentions the CRC and the African Charter.

**De Gree and Another vs. Webb and Others (Centre for Child Law as amicus curiae) 2007 (5) SA 184 (SCA).** This was a Supreme Court of Appeal judgment, which found that inter-country adoption has to be done by the Children's Court, and according to principles set out in international law. The position taken by the amicus prevailed in the majority judgment. The amicus submissions had also won the day in the High Court matter, which is also a reported judgment. This matter went on appeal to the Constitutional Court, where the Centre again intervened, and the judgment of that court is still awaited. The judgment mentions the UNCRC, the African Charter and the Hague Convention on Inter-Country Adoptions.

**Centre for Child Law vs. MEC for Education, Gauteng.** This judgment is soon to be reported in the SA Law Reports (in early 2008). The Centre brought an application on behalf of children who were being neglected and maltreated in a state-run 'school of industries'. In a ringing judgment the Court held that children have a first call when it comes to socio-economic rights.

**Centre for Child Law and Another vs. Minister of Home Affairs and Others 2005 (6) SA 50(T).** The Centre brought an application on behalf of 80 children who were unaccompanied children from Zimbabwe, Mozambique and Swaziland. They were being held together with adults at a repatriation centre and the case interdicted the government from returning them to their countries, and ordered that they be held in a place of safety for children, pending children's court inquiries. This was set as the correct procedure for future cases. The judgment mentions the CRC and the African Charter.

**Director of Public Prosecution KZN vs. P 2006 (1) SA 446 (SCA).** This was a Supreme Court of Appeal judgment on the sentencing of children. The Centre's advocate was on the defence team of a girl who was only 12 when she ordered two men to murder her grandmother. She was convicted, but got a non-custodial sentence. The State appealed, as they wanted her to go to prison. The judgment upheld international and constitutional law principles of sentencing of children, and although the court added a suspended prison term to the sentence, the girl was not required to spend any time in prison.

Another case involved children with psychiatric disorders who were awaiting trial and had been sent for mental observation by the courts. As the state had closed the adolescent ward at a local psychiatric hospital two years previously, the children were instead placed at a secure care facility. The Centre intervened to request that a *curator-ad-litem* be appointed to ascertain whether these placements were appropriate. The case highlighted the poor provision of mental health care to minors. A direct result of this intervention was the reopening of an adolescent ward at the psychiatric institution.

**f) Group actions for maximising impact – CECODAP, Venezuela**

In 1997, CECODAP established a legal office to take individual cases on behalf of children and the organisation was instrumental in the passing of the ‘Organic Law for the Protection of Children and Adoles-
cents’ (LOPNA), which came into force in 2000. LOPNA allows for judicial remedy against ‘events, acts or omissions by individuals, public or private organs and institutions that threaten or violate the collective rights of children’ (Article 276). More recently CECODAP has chosen to focus on group action litigation and the implementation of collective rights, particularly in relation to the rights of children with chronic illnesses to treatment and care. Recent cases have involved ensuring the right to health for children suffering from HIV/AIDS, leukaemia, cystic fibrosis, congenital cardiopathies, haemophilia, mental illness, Hunton syndrome, pulmonary hypertension and disability.

CECODAP emphasises that a vital component of this litigation is to provide a space for companionship and solidarity amongst children and their families who are pursuing cases against the government for lack of treatment. They also emphasise that the litigation process must be part of a broader education and mobilisation process and not an end in itself. The affected groups must gain knowledge themselves about laws and procedures and CECODAP encourages their active participation in the litigation process. “The most important [success] and one that can be measured is the change in the attitude of the children and their families, the change in their language. They arrive talking about needing a drug and end up talking about the right to health... It is very interesting to observe that the families begin to assume rights as a way of life and this gives the programme sustainability. These processes take years. The fibrosis case has been going on since 2003 and it was only half-way through last year (2007). The families have now started to work on their own; and CECODAP helps them only in specific instances.”

The families and children involved in this group litigation activity on behalf of the right to health have organised themselves to create different associations in Caracas, which have in turn been duplicated in other regions. Trapani explains that “...first, the judicial action had an impact on Caracas, at the JM de los Ríos hospital, a national point of reference and the one to which we had access. Thanks to the judgment in this case and with the help of the families’ mobilisation, we were able to create the National Cystic Fibrosis Plan as a state policy, a government action. This event in Caracas had an impact at national level; a very isolated judicial action extended its impact to a national level.”

3.3. Creating tools for effective monitoring and reporting

It is not possible to hold governments accountable in an effective way without having credible data and research to monitor the extent to which the government is fulfilling its obligations towards children. HAQ has developed innovative and powerful ways of monitoring state accountability towards children using data generated by the government itself in its Child Budget Analysis and by monitoring of parliamentary questions. To complement this, it produces a status report on children every two years, which provides context and analysis for the budget and parliamentary monitoring work and functions as a sort of mirror for the government to reflect upon. The CRADLE is also deeply entrenched in the process of monitoring the Kenya government’s compliance with its international obligations.
a) Child budget analysis – HAQ, India

History
HAQ first undertook a decade long analysis of the Union budget from a child rights perspective in 2001. This was the first analysis of its kind in India and it helped to establish a need as well as developing a methodology. The basic premise is that budgets can be analysed and used as a tool for tracking progress on children’s rights and for advocating for change. The budget analysis is not a separate budget, it is merely an attempt to disaggregate from the overall budget the allocations made specifically for programmes that benefit children.

Child budget work has come a long way since 2001. Sustained advocacy and lobbying by HAQ with the Government of India has successfully led to the institutionalisation of child budgeting, which is currently being carried out for the Ministry of Woman and Child Development by UNICEF, through the Centre for Budget and Governance Accountability (CBGA) using the methodology established by HAQ. The CBGA is carrying out a state-level child budget analysis in three states as well as an analysis of the Union budget.

While an understanding of the Union budget is important, it is not enough as a large share of allocation and expenditure is made in the states. The Union of India comprises 28 states and each formulates its own budget based on allocations it makes on its own and from amounts received from central government. HAQ now undertakes a rolling process of budget analysis at both a central level and within eight states. It provides local NGOs with training on a common methodology and with technical assistance so that these organisations can undertake the work themselves. Once the ground is set, using the findings effectively for advocacy at the state, district and local levels of governance is a natural process, especially if such analysis is carried out by an organisation based in the state.

Child budget analysis as an advocacy tool
While advocacy and lobbying with the Indian government has institutionalised child budgeting at the national level, HAQ has also used this analysis at various levels of governance. For example, HAQ's child budget analysis has been used to file legal petitions, strengthen the arguments of the Right to Food campaign, to raise questions in parliament and in debate on various pending bills. It has also been used by children to demand higher allocations and investment of adequate resources. At the international level, HAQ's child budget analysis work has been used to prepare shadow reports to the UN Committee on the Rights of the Child.

Effective use of such a tool depends on how well HAQ is able to connect child budget analysis with larger issues of development, micro- and macroeconomic policies, trade agreements and to position the child in the context of globalisation and India’s political economy. Child budget analysis can be used to:

- Monitor the allocation and expenditure of resources for children by the

38 These states are Tamil Nadu (ICCW), Andhra Pradesh (MV Foundation), Orissa (Open Learning Systems), Himachal Pradesh (HP Voluntary Health Association), Uttaranchal (SAROKAR), Jharkhand (CREJ), Uttar Pradesh (CREDA), Assam (NE Social Research Centre) and West Bengal (SPAN)
government to realise their rights

- Conduct advocacy to ensure a more equitable distribution of resources
- Empower civil society, communities and children themselves with budget related information to enable them to create a public argument for policy change
- Share information on child budget analysis with the village-level government (gram sabha), which helps build pressure on the focal point between the government and village (sarpanch), who in turn are able to use the information to negotiate with Block and District Officials for better grants. The experience from the MV Foundation is that, “Now the officials get worried when they see our Child Protection Committee members because they know that they can no longer be fooled. The panchayat (local self-government) members carry the child budget information in their pocket when they go for discussions.”

b) Monitoring the legislature – HAQ, India

“At least by this means we keep our government and our MPs on their toes. They know that they are being closely watched on how they use Question Hour.” Bharti Ali, HAQ, India

Another tool used by HAQ to evaluate India’s progress in implementing children’s rights is to monitor the legislature. This involves examining parliamentary questions concerning children that are asked in the course of debates and to analyse them in terms of who is asking them, what issues are being presented, how these questions impact upon policies and programmes, whether there is a consistent lobby for child rights, and what sources of information are parliamentarians are basing their questions on. This information is used as a barometer for measuring the commitment of parliamentarians to child rights, as well as a platform to encourage them to focus on child rights in a more focused and potent way. HAQ provides parliamentarians with assistance and background information and resources when they are preparing to ask a question concerning children so that the impact of the question can be maximised.

Copies of these analyses are sent out to the media and other civil society organisations as well as MPs in both the houses, especially members of certain Parliamentary Standing Committees and members who raised child focused questions in the budget session. This analysis has a certain shock value, since so few of the questions do concern children (only 3% during 2003/04 sessions) and of those, 60% concerned education, and the main source of information for parliamentarians appears to be news reports.

c) Monitoring compliance with international treaty obligations – the CRADLE, Kenya

Nearly all the Centres are involved in one way or another with drafting of the alternative CRC report for their countries. Indeed HAQ’s report on the status of children in India was used as a background document for writing the 2003 alternative report. It was also referred to by the Committee on

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39 THAQ: Centre for Child Rights Children in Globalising India: Challenging our conscience January 2003
the Rights of the Child in formulating their observations and recommendations. The CRADLE is closely involved with monitoring the compliance of Kenya’s government with its obligations in terms of the CRC and other treaties. Its Director was appointed in 2004 to be a member of the Government of Kenya Advisory Consultative Committee on International Human Rights Obligations under the Ministry of Justice and Constitutional Affairs, whose primary role is to advise the government on its treaty obligations including reporting and domestication obligations. They are also part of the Task Force to develop a National Policy and Action Plan on Human Rights in Kenya. The CRADLE, working with the World Organisation against Torture and others, developed a report for the Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights and was also part of the team that worked on the preparation of the International Covenant on Economic, Social and Cultural Rights Periodic Report to the UN in 2005.

d) Research and fact-finding – HAQ, India

Another tool for holding governments accountable is to conduct credible, solid research. Every two years HAQ produces a status of children report to reinforce the messages of the budget analysis and parliamentary monitoring. This comprehensive overview has been described as an invaluable bible for child rights activists in India. It covers all aspects of child protection, including general measures of implementation, health, education, housing, violence, juvenile justice, sexual abuse, emergencies, trafficking and labour.

In 2005, HAQ, along with various other organisations, undertook a fact-finding mission to the mines of Karnataka where they documented the appalling child labour they witnessed there. In this report they found that children from the age of five were employed, in violation of child and labour laws. They were found digging, breaking stones, loading, dumping, transporting and processing of iron ore with no safety equipment, fixed wages or working hours. The children were handling a high-level of toxic waste and were exposed to mine dust. ‘They are not just ordinary jobs that these children do. Sitting hunched over hot ferrous ore, chipping away steadily at them with a hammer can never be child’s play. At it is safest, it is painful for the shoulders and the back, the wrist joints and arms hurt while the little hands are filled with bruises and blisters. At its hazardous best, this “occupation” causes severe injuries and even results in maiming and death as heavy stones fall or the hammer in tired hands misses its aim.’

There was widespread national and international media coverage of this report and HAQ drew it to the attention of the National Human Rights Commission who subsequently directed the State Government of Karnataka to look into the allegations.

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40 Swami Agnivesh, speaking at the Asian Social Forum in 2003
42 Ibid.
43 ‘NHRC directive to Karnataka on child labour’ The Hindu, 27 May 2005
Box 8: Fact-finding to follow up the situation of trafficked children

In 2006, HAQ was asked to produce a fact-finding report by a Child Welfare Committee (CWC), who were anxious to find out what had happened to a group of 85 children who had been rescued from the zari (delicate embroidery work) industry in June 2005 and January 2006 in Delhi. The children had all been restored to their families in different parts of Bihar and West Bengal. HAQ has always insisted that the situation of trafficked children be followed up to ensure that re-trafficking has not occurred, and so was delighted to be working with the CWC on this issue. Without the CWC taking an interest such a follow-up would not have been possible, as there would have been no data and addresses to reach out to the children.

At the same time, it was important to have some understanding and information about the traffickers, the practices they adopt for procuring children from the source area and their proximity to the vulnerable families in order to assess the possibilities and threats of children being re-trafficked. The findings of this report were alarming. The children had been working 12 to 20 hour-long days in darkened rooms and had been physically assaulted by their employers. They had been paid between 10 and 30 rupees a week (less than $1 US). By the time of the report investigations (some six months later), nearly a third of the children had been re-trafficked. The traffickers were mostly male friends and relatives of the family. Following the report, a dialogue with the CWCs in Delhi was organised by HAQ to initiate a process of setting up a protocol on dealing with such children according to basic standards of care and protection.
4. STRENGTHENING GOVERNMENT COMMITMENT AND CAPACITY

All of the documented Centres work with government structures to a greater or lesser extent to strengthen their capacity to fulfil their obligations towards children. This work can take many different forms: training; making yourself available at the end of the telephone to provide parliamentarians, judges or civil servants with informal advice and guidance; by providing a newly installed magistrate on a children’s bench with a ‘pack’ of information on the rights of children in conflict with the law; or by sitting on a drafting committee for a new five year plan for government. The CLPC in Ethiopia, for example, conducts extensive training of judges, prosecutors and police in relation to children’s rights. It can also involve a wholesale attempt to shift mindsets within the civil service by entering into a full-blown programme of mainstreaming. Millie Odhiambo-Mabona, Executive Director of The CRADLE, explains how important working directly with government can be: “It is about the nexus of child rights and reality...where the tyre rubber hits the road.”

The following is a short description of some of the many different pathways the Centres use to influence government thinking on children’s rights. These include mainstreaming children’s rights within government ministries, providing technical support and leadership to governmental reform bodies and initiating, drafting and presenting bills to government.

4.1. Mainstreaming children’s rights within government ministries

The CRADLE has positioned itself as a leading child rights organisation in Kenya and is perceived very well within government, enabling it to punch way above its weight. It has numerous programmes and interventions whereby it is involved directly with government agencies. The CRADLE has been involved in mainstreaming children’s rights in various government ministries, including unusual ones such as agriculture, roads and water, as well as health, land and planning and justice. “Some engineers from the Ministry of Roads requested that we send a child representative or at least a representative from CRADLE to sit on one of their Committees... they are acting as watchdogs for child rights in their work.”

The programme seeks to shift mindsets in non-traditional sectors of government. “Infusing child rights into policy and structures... in this way we can gain political will and it can spiral throughout government.”

Millie Odhiambo-Mabona, Director, the CRADLE

“Infusing child rights into policy and structures… in this way we can gain political will and it can spiral throughout government.”

Millie Odhiambo-Mabona, Director, the CRADLE

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44 Interview with Ms Millie Odhiambo-Mabona by the author 26 October 2007, Nairobi, Kenya
and to encourage change agents within ministries to look at their work through the prism of child rights. They train government personnel on the rights based approach and devise manuals for various ministries. Millie Odhiambo-Mabona explained that this work is about, “Infusing child rights into policy and structures… in this way we can gain political will and it can spiral throughout government.”

4.2. Providing technical support

Providing governments with technical support is a really important way of strengthening their capacity in terms of children’s rights. Nearly all the Centres are involved in training on child rights for government bodies. They are also called upon to sit upon governmental committee meetings; for example, the CRADLE is one of five civil society organisations who sit on the Technical Coordination Committee of the Governance, Justice, Law and Order Sector Reform Programme. The Government of India has on several occasions invited HAQ’s contributions on policy matters. Enakshi Ganguly Thukral is a member of the Steering Committee on Women’s Empowerment and Child Development and has been asked to write the section on child development for the chapter on Women and Children for the government’s Eleventh Five Year Plan document. HAQ refused the invitation to be on the Drafting Committee set up for finalising the Government of India’s National Study on Child Abuse, because they had earlier expressed their dissatisfaction on the tools and methods proposed for research and were concerned about the ethics of research on such a sensitive subject. HAQ were also involved in drafting the Juvenile Justice Rules which is the implementing document for the Juvenile Justice Act 2000. Bharti Ali sat on the drafting committee and explained that, although at time ponderous, this process was very important, “As a way of importing our ideas and experiences and those of other organisations we work with into the legislation”

Nonetheless there are difficulties with providing this sort of support since it is often time-consuming, unfunded and vulnerable to changes in government, meaning that key contacts can be lost.

Judges sitting on the Family Bench in Addis Ababa have referred eight cases so far to the CLPC for their recommendations in cases of custody and maintenance. This is because the court does not have the resources or capacity to prepare a full assessment of the background to a matter in order to determine the best outcome for children and so relies upon the CLPC to do this on their behalf. This is not a sustainable solution but demonstrates the role that the CLPC can play in supporting the judiciary to ensure the best possible outcomes for these individual children.

4.3. Child impact assessments

The UN Committee on the Rights of the Child in its General Comment dealing with general measures of implementation states that: ‘Ensuring that children’s rights are respected in law and policy and implemented at all levels of government demands a continuous process of child impact assessment which predicts the impact of any pro-

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45 Interview with author 1 December 2007, Delhi, India
posed law, policy or budgetary allocation which affects children and the enjoyment of their rights, and child impact evaluation, evaluating the actual impact of implementation. This process needs to be built into government at all levels and as early as possible in the development of policy.\footnote{CRC General Comment No 5: 13}

From 2004 to 2006, the Children’s Legal Centre in Essex was involved in a project to assess new legislation from the perspective of their legal impact on children with a remit to cover bills in which children were less likely to have been specifically considered, such as the identity card legislation. This child impact assessment was conducted in partnership with the National Children’s Bureau who looked at the social implications for children. The project aimed to improve the understanding of children’s issues in parliament and government, to identify issues that inhibit shared policy development across government departments and to contribute to policy development for children. The project involved analysing bills and producing child impact statements for them, which were presented to the bills team. They also held seminars with interested parties to discuss relevant issues. This was a time-limited project but had a large impact and functioned as a useful model for others to emulate. Currently the Children’s Commissioner has partly taken on this role.

4.4. Initiating, drafting and presenting legislation

The CRADLE has been instrumental in the development and audit of several laws relating to children. It was one of the key actors in the development of the Children Act and has more recently been involved in the review of this act by the Kenya Law Reform Commission. It took the lead in the development of a draft Sexual Offences Bill together with the Juvenile Justice Network; amongst many other things the final act enhanced the protection of children by outlawing the trafficking of children and child sex tourism, raising the age of sexual consent to 18 years and increasing penalties for abuse of children. This passed into law in 2006 following immense debate and controversy, much of it polarised along gender lines, and the CRADLE now sits in the Task Force set up by the policy framework and guidelines for the implementation and administration of the act to secure accessible and uniform treatment of offenders. It will also propose measures to secure acceptable programmes for the protection, treatment, and care of victims of sexual violence as well as the treatment, supervision and rehabilitation of sexual offenders. It is also charged with auditing and reviewing all existing policies, laws, regulations, practices and customs relating to sexual offences.

4.5. Strengthening governments internationally

The Children’s Legal Centre (CLC) in the UK has an International Section which provides technical assistance to governments around the world, principally in Europe and Central Asia, to help them fulfil their obligations under the CRC. It recognises the limitations of their role as an external actor and states that, “In the long term the role of advocating for the promotion and protection of
children’s rights must rest with local NGOs rather than international organisations.” 47

Through their work they became aware of the lack of effective local children’s rights NGOs in the Commonwealth of Independent States (CIS) countries and therefore established two new child rights NGOs in Tajikistan and Moldova, which will eventually operate independently from the CLC.

The International Section specialises in the systemic reform of child protection, welfare and juvenile justice systems. This can cover institutional reform; for example, in Tajikistan the CLC was funded to reform a Temporary Isolation Centre, which had been set up for children aged 3 to 18 who were without parental care. In effect it was run like a prison, with children languishing in very poor conditions. The CLC worked with the government and other institutions to re-draft regulations, train staff and renovate and refurbish the centre so that it could operate as a temporary welfare centre that sought to assess and reintegrate children, where appropriate, within a 30 day period. They have also been involved in establishing an innovative grassroots scheme for juvenile offenders in Tajikistan. The project, the first of its kind in Central Asia, offered an effective alternative to processing children through the criminal justice system and sending young offenders to one of the closed detention centres which at the time offered very poor conditions and no rehabilitation services. At the end of their sentences, children struggled to reintegrate into their families and society. The success of the project has led to its replication in three other areas of Tajikistan and a government commitment to roll out the project throughout the country.

Much of their work at this international level concerns legislative reform. The CLC worked with the Romanian government on the reform of its child protection and child welfare systems. These were weak and relied heavily upon placing children in institutions. They also had an unregulated international adoption system that left children vulnerable to trafficking, abuse and exploitation. The CLC drafted new legislation to regulate domestic and international adoption services and standards regulating child protection services.

47 The Children’s Legal Centre ‘Overview of International Work’
5. THE VALUE OF PARTNERSHIP

Children’s Legal Protection Centres operate within a rich and complex web of different organisations and people. They do not take a proprietary stance towards their work and actively seek to share all the information at their disposal. The indirect benefit of sharing information is that the Centres are supporting other individuals and organisations in protecting and promoting children's rights, as well as generating wide ownership of children's rights. For example, HAQ is in the process of editing a book on the theory and practice of children and governance with contributions from child rights’ specialists around the world, which will help other organisations reach conceptual clarity about what children's role in governance can be. Another important way of sharing information is through disseminating cases, research and fact-finding. For example, the Centre for Child Law in Pretoria publishes its successful cases in journals read by civil society practitioners and activists, social workers, prosecutors, magistrates, probation officers and child and youth care workers.

Establishing networks is not just about sharing information for its own sake, but also about broadening the Centres’ reach. It is often through contacts with NGOs, legal practitioners, parents, children, ombudspersons and government departments that they receive their referrals and can establish their reputations as expert resources on child rights. Working within the context of a supportive web enables Centres to make the greatest impact possible given their size. One crucial component of the Centres’ network is the media, which can play an invaluable role in raising awareness about child rights in the general community (but is also often approached with caution).

5.1. Networks in the absence of child protection structures

Networking is ever more vital in contexts where there is very little in the way of state provision for social services for children (or adults). By way of illustration, Childline in Cameroon were recently contacted in the Fundong Area in the North West Province by an adult who did not

Box 9: Working with Ombudspersons

CECODAP has worked very effectively with the Ombudsman for children’s rights. The law in Venezuela allows for children and/or their families to be invited to give evidence as third parties to a trial. CECODAP reached an agreement with the Ombudsperson to allow some children with disabilities to give evidence as a third party in a case concerning the right to health in which the Ombudsman was involved. This gave the case more weight and impact. CECODAP has also asked the Ombudsman to act as a mediator in negotiations with government, which helps to give the arguments validity in the eyes of the government and is a good example of using networking to maximise impact.

Establishing networks is not just about sharing information for its own sake, but also about broadening the Centres’ reach. It is often through contacts with NGOs, legal practitioners, parents, children, ombudspersons and government departments that they receive their referrals and can establish their reputations as expert resources on child rights. Working within the context of a supportive web enables Centres to make the greatest impact possible given their size. One crucial component of the Centres’ network is the media, which can play an invaluable role in raising awareness about child rights in the general community (but is also often approached with caution).
They contacted the state lawyer and ensured that the case was properly prosecuted and also contacted the parliamentarian from the area, who followed the case very carefully and attended most court hearings in support of the child. The abuser was prosecuted and recently sentenced to three years imprisonment. This multi-sectoral approach ensured that legal redress was given even in a climate where, “Measures are not well reinforced in Cameroon to deal with neglected and abused children” and where, ‘People perceive litigation actions negatively as they do not see any reason why an adult can be litigated because of a little child.”

Ethiopia has very little in the way of government-led social welfare services for children. The CLPC in Addis has responded to this enormous gap by creating a dynamic and effective network of partnerships that are of mutual benefit for both sides and through this reciprocal process, children’s rights are more effectively advanced. Another result of this integrated approach is that children have learnt to have faith in the CLPC and to view it as a haven of practical help and non-judgemental reassurance, in a context where government-led support structures for children can be at best weak or inaccessible and at worst, abusive or non-existent.

The CLPC has memorandums of understanding with six different providers of psychological and social services. A local organisation, Integrated Family Services Organisation (IFSO), runs a special centre for survivors of sexual abuse who are under 15, with both rehabilitation and prevention programmes. The rehabilitation comprises counselling and psychiatric care, medical services, drama and music therapy and photography, financial support and a foster care programme. They refer children in need of legal representation to the CLPC and in turn the CLPC refers children to them for rehabilitation. They also work with the Addis Ababa University Department for Social Workers, who assist them with home assessments in family cases by providing a rota of six social worker students.

The CLPC has a very strong reciprocal relationship with the smallest unit of local government (kebeles). Within each kebele there is a Women’s Officer who is from the community, usually well-respected and is often a former teacher or nurse; there are 91 in Addis Ababa. They have a close understanding of their neighbourhoods and as such are an invaluable resource for the CLPC to tap into. They refer legal cases to the CLPC and in return the CLPC seeks

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**Box 10: Employing local networks to strengthen child protection**

A group of children sent the CLPC in Ethiopia an anonymous letter explaining that a man had been waiting for them when they left school and had been physically abusing them. They gave his name and the area he came from but would not disclose their identities out of fear. The CLPC contacted the Women’s Officer from the kebele office in this area and she sent out guards to identify potential schools and search for the accused man. At the writing of this report, the matter was ongoing, but it is interesting that the children perceived the CLPC to be a safer and more effective source of redress for the physical abuse they were experiencing than traditional support structures, such as their teachers, families or the police.
information and advice for them often in relation to tracing people’s whereabouts. The CLPC has given them training on child rights issues and organised a systematised phone list of names and contact information for each Woman’s Officer in each kebele in Addis.

5.2. Pro bono lawyers

All the Centres have a system of working with pro bono lawyers who take on case work for no fee but have their expenses paid. There are many different ways of organising this, but the most successful involve building a strong sense of community amongst the pro bono lawyers and ensuring that their work is publicly and privately recognised. For example, the CLPC in Ethiopia provides legal counselling and judicial representation to children in prisons and detention centres through paid lawyers. However, it also has 16 pro bono lawyers that provide judicial representation and legal counselling at the premises of the Centre and at the Child-Friendly Bench of the Federal First Instance Court in Addis. The commitment and motivation of these lawyers is bolstered by an annual award ceremony held by a collective of NGOs. The CLPC also provides them with training on child rights and on how to deal with children who are survivors of abuse as well as ethical issues such as maintaining confidentiality.

They also have pro bono lawyers working in eight prisons and detention centres outside of Addis who verify how many children there are in these institutions – this is often not known even by the authorities – and monitor the progress of their cases. The reach is by necessity limited, but as well as assisting these individual children this scheme helps to highlight the situation of children being imprisoned in adult prisons and to give an indication of the scale and scope of the problem. To have these watchdogs for children within prisons reinforces research undertaken by the CLPC in 2007 with many recommendations for improving the situation of imprisoned children.49

On the other hand, CECODAP has not had such a positive experience of working with volunteers and draws a distinction between the rigidity of lawyer and the fluidity of the work of children’s legal protection centres.

Lawyers have a rigid way of thinking; everything must be set in legal terms. Lawyers are not trained to have a social vision or be interested in public impact. I think that law schools are behind the times in this approach and the realities of law schools are divorced from those of real life.”

Carlos Trapani (coordinator of CECODAP’s Public Impact Area), CECODAP

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Box 11: Maintaining the commitment of pro bono lawyers

The CRADLE works with up to 250 pro bono lawyers who contribute enormously to the organisation’s work. In order to maintain their commitment and enthusiasm in the absence of remuneration they provide a wide variety of different incentives:

- **CRADLE** trains its lawyers up to three different levels, which can count towards the points needed to keep up mandatory continuous legal education. Through this scheme, pro bono lawyers are trained in three phases in collaboration with United States International University professors, and training manuals have been developed for this scheme. The first phase is on public interest litigation; the second phase is on child rights and involves training on international conventions and national laws on child rights. The third level is on child psychology and the law. The lawyers subsequently offer free legal services to children. So far, over 150 lawyers have been trained.

- The CRADLE has also established regional pro bono committees in enclaves.

- An East and Southern Africa Regional Conference, held annually for the last four years, seeks to share and consolidate experiences between the national committees and other lawyers from the region. It functions as the meeting for the Regional African Juvenile Justice Network (RAJJNet) that was formed during the 2003 Regional Conference.

- An annual award scheme and a roll of honour were established to honour outstanding pro bono lawyers and committees, with gold, silver and bronze awards. The award recognises in particular diligence, commitment to work, consistency and innovation. The CRADLE also offers international, regional and national training opportunities for best performing lawyers.

There is a degree of ambivalence amongst the Centres about working with the media. On one hand it can be very effective as a means of reaching a huge number of people and raising awareness about children’s rights. The CRADLE maintains that media reporting of their annual report on sexual abuse over the past three years has been crucial in putting it on to the national agenda. On the other working with the media can be very time-consuming, eat into energy and resources that would otherwise be devoted to case and policy work, and place organisations at the whim of the media’s own agenda.

At the Children’s Legal Centre in the UK, a country with a huge and free media which is hungry for stories, they are approached every day with media enquiries. They are wary of responding to all of them, in part because it takes up too much of the lawyers’ time, and in part because raising their profile in this way can generate so many referrals and queries from the public that they are swamped. They have thought carefully about the impact the media can have upon the growth and development of the organisation. Since they are not funded by donations from the general public they do not need to generate revenue through the media, but at the same time it can be an excellent way of raising their profile and that of children’s rights; for example, a three year
old British child called Madeleine McCann disappeared from her holiday villa last year and has never been found. The media covered this story relentlessly in the UK and the CLC took the opportunity of using this as a window to highlight the fact that there is no UK law clarifying the age at which a child can be left at home alone and that this is a difficult judgement to be made by parents.

Another dilemma is that there is no direct funding to do media work and so it means diverting funding away from case or policy work to do it. Furthermore, many of the issues they deal with are not ‘sexy’ for the media, as they are complex technical points of educational and social welfare law. They conclude that their strength is the law and that their principal remit is not using the media to raise awareness about children’s rights in the general public.

HAQ has a similar ambivalence to working with the media and makes the point that should they have a high media profile as individuals then this would negatively impact their ability to deal with their clients on a day-to-day basis since people might be wary of some kind of ‘celebrity’ status. They are also sceptical of being over-exposed: “If you are in people’s face every day they get irritated.” They work with the media in more of a ‘back room’ capacity. For example, HAQ helped CNN-IBN to do a series on child labour leading up to the ban of employment of children in homes and hotels in India in 2006. They provided the programme makers with background information, leads and contacts that helped to shape the final series so that it gave a clear message about how children’s labour violates their rights. They also supported a photographer called Fazal Sheikh who has been producing a book about the girl child in India by giving him background information and contacts. It is a coffee table book called Ladli (meaning ‘beloved daughter’), which seeks to explore what being a girl means in a society that has a strong cultural preference for boys and the discrimination which they face.

The Centre for Child Law in Pretoria also plays a key role in shaping and informing the media agenda by teaching child law to journalist as part of its Media Monitoring Project. They also work with journalists to develop media friendly guides on new pieces of legislation. The CLPC in Ethiopia, where the free media is growing but still hesitant, shapes the agenda by having a media committee of ten key media organisations who meet at least once every two months to be briefed on key aspects of children’s rights. They also have a weekly column in a newspaper, weekly radio slot and from time to time use the state-run TV channel to promote issues and cases.

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50 Interview with Enakshi Ganguly Thukral, 30 November 2007

51 The book, Ladli, will be published in April 2008 and is available online at www.fazalsheikh.org
6. CHILDREN’S RIGHT TO PARTICIPATION

Children and young people have traditionally been excluded from decision-making processes in all parts of the world. The prevailing social norm in most of the regions in which these documented Centres work sees children as the property of their parents who must do as adults tell them. Children, particularly girls, younger children and children with disabilities, are not encouraged to raise their voices or to question adults. However, the CRC entitles children to be heard and to be taken seriously when they give their opinions. The right to participation is a basic civil right and a general principle guiding all other articles of the CRC.\(^\text{52}\) The best interest of the child can only be understood by listening to the child.

Nearly all the Centres expressed their displeasure at the way in which children’s participation has at times been dealt with in the past. They are wary of tokenistic forms of children’s ‘participation’ where children play the same roles as adults by being invited to conferences where they will be unable to make an effective contribution or by being invited to make submissions which require skills that most will not possess. Enakshi Ganguly Thukral from HAQ described how she witnessed a non-English speaking child struggling to understand proceedings at a conference conducted wholly in English with no translation available. Millie Odhiambo echoes this: “You have to avoid tokenism and listen to the power of children’s raw voices.” All of these Centres are small and to undertake large-scale participation work, such as researching children’s views on a specific theme, is time-consuming and resource driven. “We try and do participation on the back of people who are better than us at doing it, rather than trying to reinvent the wheel.”\(^\text{53}\)

\(^{52}\) Articles in the CRC with specific bearing on participation of children focus on: listening to children and respecting their views (12), expression of thought and ideas (13 and 14), access to information (13 and 17), gathering and dissemination of information (13) and organisation of children (15)

\(^{53}\) Ibid.
In reality, what the Centres do in their everyday work is to develop children’s knowledge of their rights and enact their right to participation in a more subtle, holistic and less contrived manner which is grounded in their specific contexts. They emphasise that participation is a process and means ensuring that children have a voice in all arenas from the home and family to schools, courts and police stations. This process might involve empowering them by talking them through the process of how to give evidence before a judge. HAQ were involved in a case where a father had been accused of abusing his daughter. They took time to get to know the girl involved, they counselled her and when the time came to give evidence they carefully prepared her for this. Her mother described this process: “It was a form of empowerment for my daughter. She was learning that by speaking out to the judge she could protect herself.”

HAQ also does some participatory work with children through activity based workshops and theatre. However, it has chosen to focus on enhancing the participation of children in non-traditional areas such as education and juvenile justice. For example, it made a submission to the Committee on the Rights of the Child Day of General Discussion on children’s right to be heard, advocating for improvements for both children in conflict with the law and children in need of care and protection, so that their voices can be heard and taken into account within the judicial processes which affect them.

Children’s views have also been sought in relation to their experience of the Centres work. The Centre for Child Law was subjected to an independent evaluation in 2005, and the panel that undertook the evaluation included a child client who had been a recipient of their services. One of their child clients participated in a workshop where they discussed a restorative justice intervention in her case. Children who are beneficiaries of the CRADLE are invited to complete a form of structured feedback during and after their case. Of all the centres documented, the CRADLE has embraced the idea of child participation most actively and it undertakes a wide variety of different activities designed to provide children with forums for having their voices heard.

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54 Interview with HAQ client, Delhi, India, 30 November 2007
55 HAQ ‘Children’s right to be heard in judicial processes’ Submission to the Committee on Rights of the Child Day of General Discussion, 2006
Box 12: Some examples from the CRADLE of developing children’s right to participation

The CRADLE facilitates one-off events so that children can have direct contact with key decision makers; for example, it invited some street children to attend and speak at a workshop on streetism where the audience included a minister. During the constitutional review process it held two workshops with children to identify the most important issues for them. The key issues emerged as the provision of legal aid for children, corporal punishment and discrimination against children born out of wedlock. The children involved in this workshop then made a presentation to the constitutional commissioners.

There are plans to have children representatives at board level in the future. Children are often involved in evaluation workshops and they participate in strategic planning processes and baseline surveys.

Safe Horizon is a club for high school girls. They have a chair, a secretary and a patron (often a teacher who has been trained as a paralegal and gives the group direction), as well as trained mentors who go to visit schools; for example, TV presenters, parliamentarians, business women, singers and actors, whom girls can identify with, who inspire them and who can talk about issues which affect them.

Letter Link is a scheme for primary schools which have boxes in them where children can put letters anonymously or otherwise for advice from the CRADLE. These have included children writing in who are HIV positive, or who have been sexually abused. There is also a magazine distributed throughout primary schools called Letterlink which publishes some of the letters anonymously and talks about child rights; for example: ‘I am a 10 year old girl living in Kibera with my mother and two sisters. My father and mother are married but we do not live together and my father has refused to pay our school fees for this year for no good reason. My sisters and I have been chased away from school because of this. I fear that if my father does not pay our school fees soon we shall be forced to leave school. I love going to school and hope to become a doctor when I grown up. Please CRADLE help me so that my sisters and I can go back to school.’

The CRADLE holds two children’s conferences annually. One is primarily for child survivors of abuse and the second is open to children who participate in Safe Horizon and Letter Link forums. This is often a conference within the pro bono lawyers’ conference, so the adult participants get the opportunity to listen to children and to discuss with them.

Box 13: Children’s participation in and around court hearings

CECODAP in Venezuela has involved children in court hearings concerning group actions to ensure adequate medical treatment is given. They highlight the dangers of doing this: the children concerned are often ill, court hearings can be lengthy and demanding and emotionally exhausting. However, provided these risks are assessed and the children concerned are well enough, wish to attend, know why they are there and what is expected of them, this can be a very effective tool both for advancing the legal arguments as well as giving children a voice.

Trapani from CECODAP explains how this worked in a case concerning children with cystic fibrosis who were demanding adequate treatment: “I believe that the best statements in court were made by children and if you read the decision you will find quotes from children. In addition, space for children’s participation out of court was opened up. There were problems because the judge would not hand down a sentence, so we made a public demonstration outside the court holding cards that read: ‘Do you know who can help us?’ When the card was opened, there was a mirror with the judge’s reflection, and the statement: ‘For our right to health, we demand a decision’. In the morning, we held a press conference with the media. In August of 2007 –three years after the decision– we baked a cake and took it to the Mayor’s Office together with the children involved. We wanted to celebrate that the children now had medicine and appropriate nursing.”
7. CHALLENGES FACED BY CHILDREN’S LEGAL PROTECTION CENTRES

7.1. Lack of awareness of children’s rights

All the Centres cited a lack of awareness of children’s rights amongst the government and other duty-bearers as the key constraint operating upon their work. Judges, prosecutors, civil servants and parliamentarians are often perceived as innately conservative and culturally unreceptive to shifting their attitudes and perceptions regarding children (one lawyer described public prosecutors as perceiving themselves to be ‘omniscient’). Furthermore, alliances are forged within government, but this work can be undone in a moment by the high turnover of government officials.

For CECODAP their relationship with government is inhibited by the government’s lack of awareness of children’s rights but also by the fact that the government is inherently suspicious of civil society activities. This has had a concrete impact on their work since people have become increasingly wary of becoming involved in CECODAP lawsuits. Trapani explains that: “In the investigative stage of some cases, having access to certain sources or key testimonies, such as those of medical doctors, was very difficult. People were afraid to become involved in the lawsuit that CECODAP was advancing; they were afraid for their jobs; they refused to provide information. For this reason, we had to seek doctors in private practice.” It has also affected the willingness of the judiciary to be involved in CECODAP trainings, particularly in relation to children having a voice in proceedings. Trapani again: “I think that these difficulties are a result of a perception about NGOs in general in our country, where the political context has greatly affected the spaces for dialogue with the state. I think that only when the people who hold some offices in certain institutions are replaced with others will the communication channels open again.”

7.2. Recruitment

Another challenge facing some is the problem of recruitment. The work of the Centres is intellectually and emotionally challenging and there is a risk that people may burn out or become jaded by the long hours they work and their exposure and close proximity to the raw realities of children’s lives. At the same time, it is the sort of work where employees have highly specialised skills and losing them can be very damaging to small organisations that have not managed to transform these skills into institutional capacity. According to HAQ, people who do this work should be in it for the long haul: “Look at the wide range of work we do. This can’t be done in a day and so people have to stay in order to get things done.”

It is not always easy as a small NGO to provide competitive salaries. Thomas Kinkoh Ngala from Childline in Cameroon explains how difficult it is to get good quality employees in a competitive arena: “We have had it easy, but the issue is that people do request for much more motivation (salary). So people are there but we cannot hire their services because of financial resources.” HAQ says that, “Our biggest challenge is finding the people to do this work. The international NGOs are all setting up offices in India and this is where all the young professionals are going. We pay comparative salaries
but they will never be the equivalent of an international NGO. Globalisation is drawing people in everywhere and the NGOs are no different.”

7.3. Sustainability and funding

The CLPCs are immensely important for those individuals whom they represent. A child accused of murder in South Africa and represented by Ann Skelton from the Centre for Child Law described how “…being in prison was really scary, I thought that my life was over in the five months I spent there, but when I met Ann and started to trust her I knew it would be okay and it is. My life has completely turned around. [Q: Could you have found this help elsewhere?] No, I don’t think so. I had some lawyers before I met Ann and they didn’t seem to care or understand. But Ann did, it made it so much easier for me to talk to her and tell her what happened.”

Carlos Trapani (coordinator of CECODAP’s Public Impact Area), CECODAP

“Every day financing becomes more limited, because we continue having the same amount of dollars as three years ago, but inflation has skyrocketed. Before, we were able to produce manuals, brochures, well... now we only have money to cover the payroll. In the past we printed small books, now we produce the information on CDs because it is cheaper.”

CRADLE’s criteria for advocacy themes:

- Non-conformity with international laws
- A lacunae
- Where the prevalence rates or magnitude of abuse is growing; for example, CRADLE’s work on trafficking and sexual abuse was informed by an increasing caseload in these areas
- Hidden forms of violence which can be brought into the public eye
- Child abuse and mainly sexual abuse and exploitation
- CRADLE’s criteria for case selection:
  - A means test and focus on the indigent, especially in civil cases
  - Cases where rights are violated under the CRC and the African Charter (whether or not indigent) e.g. discrimination of children born out of wedlock, legal aid, etc. or any other impact litigation case that has the potential of affecting law or policy and thereby the lives of many children
  - Cases involving child abuse
  - Children who are in conflict with the law

56 Client questionnaire from Centre for Child Law, 16 October 2007
They do not take running down cases (accident cases) as there are many lawyers who are willing to do that.

The CLPC in Ethiopia’s criteria for case selection:

- High priority issues representing the majority of children’s interests and which can help advocacy efforts
- If the child or his/her guardian is not in a position to defend themselves because of their fragile personality or poor educational background
- If the financial status of the child and/or guardian is such that they are unable to bring the case by themselves effectively
- If the child and/or guardian has health problems or physical disabilities, this should be taken into account

Another core issue relating to sustainability is that of funding and working with donors. To a greater or lesser extent, all the work of the Centres is contingent on the ongoing good will of donors and therefore can be vulnerable; for example, the CLC in the UK is currently finding it difficult to get money from the Lottery Fund because so much of it is being channelled towards the 2012 Olympics in London. The CLC also makes the point that, “It is always going to be a problem with our work that we challenge government, but half the time we are funded by the government and sometimes the government cut our funding because we do too good a job challenging what we do.”

CECODAP in Venezuela has found its levels of funding seriously hit by inflation and has had to restrict its activities as a consequence: “Every day financing becomes more limited, because we continue having the same amount of dollars as three years ago, but inflation has skyrocketed. Before, we were able to produce manuals, brochures, well... now we only have money to cover the payroll. In the past we printed small books, now we produce the information on CDs because it is cheaper.”

One way of resolving this vulnerability is to generate funds within the organisation. CRADLE has established a Technical Support Unit which aims to raise an income through providing consultancies, thereby making the organisation more independent financially. They also have corporate sponsors, such as Safaricom, and this helps to diversify the range of donors. HAQ also generates money through undertaking consultancies so that they can have some untied funds to spend on a fact-finding mission on an unpopular issue or to try a pilot activity before seeking more extensive funding.

7.4. Growth

The Centres have different opinions about the dilemma of whether to grow larger and to attempt to replicate elsewhere or to remain small and focus on vertical rather than horizontal growth. The CLPC in Ethiopia intends to replicate itself nationally (and indeed within Africa), so as to be more accessible to more children in other parts of the country. This is a response to the immense need in Ethiopia for such ser-

57 Interview by author with Rachel Harvey, 23rd November 2007
VICES AND THE DISTINCT LACK OF GOVERNMENT-LED STRUCTURES TO PROTECT CHILDREN.

The CLC in the UK is also inundated with work and feels that they will have to expand in order to meet the demand that is there for their highly specialised legal advice. “No-one else does what we do... It is difficult to turn away children who are homeless.” They aim to grow bigger by establishing satellite offices in London or in the North of England (they are currently based in Essex, about two hours drive from London). There are logistical, administrative and practical difficulties in having satellite offices, such as how you retain supervision over work and maintain cohesion. However, there are also many advantages: it enables easier networking and the demand from homeless young people and children in London is huge. In part this will for expansion is driven by their funding structures. Their UK legal advice work is funded by the contracts they have with the government-run Legal Services Commission (LSC), so to grow their advice work further they would have to tender for contracts with the LSC in other areas of the UK. This is a complicated process, but very likely to be successful.

On the other hand, other organisations see strength and flexibility in their small size. Millie Odhiambo-Mabona explains that she does not want CRADLE, “To grow outwards but vertically. We aim to showcase our work for replication by others.” HAQ has experimented in the past with expansion but takes the view that small is beautiful, since it enables the organisation to work more coherently and with more precision without being ensnared in management issues which can dissipate the work itself.

57 Interview by author with Mr. Doug Hiscock, 23rd November 2007
8. CONCLUSION

It is clear from this documentation that these Children’s Legal Protection Centres, and others like them, are very diverse and work in diverse contexts. However, they are founded upon common principles articulated within the CRC and ACRWC, and share common ways of working as a consequence. All the organisations documented in this report have a mandate to promote and uphold children’s rights within the context of the CRC, as well as other regional instruments such as the African Charter and ECHR.

In order for the international instruments to be effective they need to be translated into local terms and situated within local contexts of power and meaning. One of the special characteristics of these Centres is their skill at translating the instruments so they become meaningful for children within their specific contexts and structures. In effect they remake the instruments into the vernacular, so that the rights they articulate are moulded into an approximate reality for the children who come to them even though they are geographically, and sometimes culturally, far from the centres where such laws are created. They act as translators who are able to move between the different layers of rights language and the realities of children’s lives: a single day might involve providing counselling to a child who has been abused by a member of her family and then attending a governmental steering committee on child protection.

Their overarching framework is rights-based. This approach to their work identifies rights holders (principally children and their families) on the one hand, and duty bearers (principally the state and its agents) on the other. They seek to strengthen the capacities of rights holders to make their claims and of duty bearers to satisfy their claims. They are inspired by the principle of participation (one of the guiding principles of the CRC and ACRWC) and aim to promote change so that children are not perceived as beneficiaries of aid, but as rights holders with legal entitlements.

The Centres deploy a number of strategies to hold governments accountable for the way in which they fulfil their obligations under the CRC and other human rights instruments through acting as a watchdog, through impact litigation and by effective monitoring and reporting using tools such as budget analysis, monitoring parliament and conducting research and fact-finding missions. At they same time they ensure that they work together with governments in a relationship which is sometimes strained but often successful. They work to strengthen government commitment and capacity to fulfil obligations under the human rights instruments, by promoting the establishment of adequate legislation and ensuring it is properly implemented, preparing child impact assessments of draft legislation, assisting the executive in mainstreaming child rights across all ministries and departments and by providing training to the police and judiciary.

57 For more detailed discussion of this process see Sally Engle Merry Human Rights & Gender Violence: Translating International Law into Local Justice University of Chicago Press (2008)
They often act as a bridge between different institutions and sectors relevant for children and create a synergy between them which otherwise would not be there. This approach prevents children from being subject to fragmented and therefore muddled and weakened interventions. They establish networks with families, communities, the media, pro bono lawyers, other civil society organisations and child practitioners to extend the Centres’ reach and to strengthen capacity to fulfil children’s rights. An essential element of their work is to work with children themselves to give them a voice and enhance their knowledge of their rights.

This multi-disciplinary and multi-sectoral approach strengthens the capacity of the government, children themselves, families and communities to protect children and to develop systems and mechanisms that provide meaningful protection for all children in the longer term.
Further reading

International instruments and documents:


*UN Convention on the Rights of the Child* Nov 20, 1989, 1577 UNTS 3 CRC

United Nations Secretary-General’s *Study on Violence against Children* presented to the Third Committee of the General Assembly in New York on 11 October 2006

Cases referred to:

*Centre for Child Law and Another vs. Minister of Home Affairs and Others* 2005 (6) SA 50(T)

*De Gree and Another vs. Webb and Others (Centre for Child Law as Amicus Curiae)* 2007 (5) SA 184 (SCA)

*Director of Public Prosecution KZN vs. P* 2006 (1) SA 446 (SCA)

*R (on the application of Begum (by her litigation friend, Rahman)) (Respondent) vs. Headteacher and Governors of Denbigh High School (Appellants)* (2006) UKHL 15

*RM (Suing through next friend) JK CRADLE Millie and GAO vs. The Attorney General* (High Court Civil Case No. 1351 of 2002 cited in *The Law on Children – A case digest Volume 1* 2007 (CLAN)

*Sakshi vs Union of India and Ors* 2004 (5) SCC 518

W.P (Crl.) No. 930/2007, High Court of Delhi at New Delhi, 14 August 2007
Other resources

Merry, Sally Engle  
*Human Rights & Gender Violence: Translating International Law into Local Justice*  

Richter, Linda M & Rama, Sharmla  
*Building Resilience: A rights-based approach to children and HIV/AIDS in Africa*  
Save the Children Sweden (2006)

**Ethiopia**

African Child Policy Forum & UNICEF  
*Children in prison and detention centres in Ethiopia: the way forward* (2007)

National Committee on Traditional Practices in Ethiopia  

Save the Children Sweden and African Child Policy Forum  

**India**

HAQ: Centre for Child Rights  
*A Report of Fact Finding team on Children rescued from Zari industry, Delhi and restored in their families in various districts in Bihar* (2007)


*Children’s right to be heard in judicial processes Submission to the Committee on Rights of the Child Day of General Discussion* (2006)

*Fact finding report on child labour in mines* (2005)


*Status of Children in India Inc.* (2005)

Most of these documents can be located through the relevant organization's website, listed in Appendix One
Himachel Pradesh Voluntary Health Association


India Alliance for Child Rights


The Hindu

‘NHRC directive to Karnataka on child labour’ 27 May 2005

Kenya

CLAN


The CRADLE

After the promise: A situation analysis of child rights protection under the Children’s Act (2003)


Letterlink Vol 3, Issue 3 Sept-Dec 2006


Robbing the Cradle: Case and Media Trends on Sexual Violence against Children in Kenya (2006)

South Africa

de Jong, Ynze & Chaskalson, Jerome

Evaluation of the Litigation Project: Centre for Child Law, University of Pretoria (2005)

UK

The Children’s Legal Centre

childRIGHT, November 2007

Venezuela

CECODAP

What can we do when collective rights are violated? (2005)
Appendix 1: Contact list for documented Centres

1. **CECODAP**
   Av. Orinoco entre calles Baruta y Chacaño,
   Qta. El Papagayo, Cecodap.
   Bello Monte Norte,
   Caracas
   Venezuela
   Tel: +58 212 9514079/ 9526269
   Email: ctrapani@cecodap.org.ve
   Website: www.cecodap.org.ve
   Contact: Mr Carlos Trapani, Co-ordinator of Public Impact Area

2. **Childline, Cameroon**
   PO Box 905
   Bamenda
   Cameroon
   North West Province
   Cameroon
   Tel: +23777642951
   Email: t_ngala@yahoo.ca
   Contact: Mr Kinkoh Thomas Ngala, Director

3. **Children’s Legal Action Network (CLAN)**
   Mugo Kibiru Rd, Off Ngong Rd,
   P.O Box 7979 C 00200
   Nairobi
   Kenya
   Tel: +254 02 3867757
   Email: info@clan.or.ke
   Website: www.clan.or.ke
   Contact: Mr Edward Ouma, Head of Programmes

4. **Children’s Legal Protection Centre**
   PO Box 1179,
   Addis Ababa,
   Ethiopia
   Tel: +251-11-655 6763/64
   Email: clpc@africanchildforum.org
   Website: www.africanchildforum.org/clpc/index.htm
   Contact: Ms Helen Seifu, Director

5. **HAQ: Centre for Child Rights**
   208 - Shahpur Jat,
   New Delhi 110049
   Tel: +91 11 26490136
   Email: info@haqcrc.org
   Website: www.haqcrc.org
   Contacts: Ms Enakshi Ganguly Thukral and Ms Bharti Ali, Executive Secretaries

6. **The Centre for Child Law**
   Law Building (Room 4-31)
   University of Pretoria,
   South Africa
   Tel: +27 124204502
   Email: childlaw@postino.up.ac.za
   Website: www.childlawsa.com
   Contact: Dr Ann Skelton, Co-ordinator of the Child Litigation Project

7. **The CRADLE - The Children Foundation**
   PO Box 10101-00100
   Nairobi
   Kenya
   Tel: + 254 202710156
   Email: info@thecradle.or.ke
   Website: www.thecradle.or.ke
   Contact: Ms Millie Odhiambo-Mabona, Executive Director

8. **The Children’s Legal Centre**
   University of Essex
   Wivenhoe Park
   Colchester
   Essex CO4 3SQ
   United Kingdom
   Tel: +44 1206 872 466
   Email: clc@essex.ac.uk
   Website: www.childrenslegalcentre.com
   Contact: Ms Rachel Harvey, Head of International Policy and Programmes
Appendix 2: Questionnaire on Child Legal Protection Centers

This was completed by all eight Centres.

1. **Vision and aims**
   
   What role does your CLPC have?
   
   In your view what is the function of CLPCs generally?
   
   Why was your CLPC established in the first place?
   
   To what extent is the work of your CLPC informed by the CRC?
   
   What is your vision for your CLPC?
   
   What gaps does your CLPC fill in your country?
   
   Do you have much reach outside of the urban centre you are located in? If so, how have you managed to raise your profile and extend your reach nationally (or internationally)?
   
   Who are your target groups?
   
   How do you choose what areas to focus on?
   
   Do you have formal criteria for the litigation you choose to pursue? What criteria do you use?
   
   Do you have formal criteria for the policy/ research/ advocacy work you pursue? E.g. birth registration, conformity of national legislation with international human rights standards, diversionary alternatives within the juvenile justice system, social and economic rights, trafficking, harmful traditional practices, status crimes, prison conditions, age of criminal responsibility... If so, what are the criteria used?
   
   What process do you go through to decide upon your priorities for intervention? Are children involved in this decision making process. If so how? If not, why not?
   
   Do you feel there is a tension between undertaking litigation and doing policy work? Is it difficult for your organisation to find the correct balance between the two? Do they inform and enrich each other? If so, please give examples
   
   **Children’s participation in the organisation**
   
   To what extent are children involved in the organisation’s running and decision making process? For example, do you have a children’s board or formal structures to ensure children’s participation in the centre’s running?
   
   Do children have any sense of ownership of your centres? Are they consulted for their views on new directions the centre might take or how to reach difficult groups of children such as street children or those out of school?
2. Strategies

Please provide a short outline of your organisation’s work
What sort of partnerships do you have within the justice system? For example, judges, police, prosecutors, etc.
Do you work with traditional justice structures as well? e.g. village mediation. How successful have such partnerships been?
How easy has it been to obtain funding for the organisation?
Can you get legal aid from the state for representing clients or do you have to be self-funding? If so, how easy has it been to get funding for controversial cases or research?
What sort of training do you give your staff to ensure that they are up to date with new developments in child rights law?
Have you had many evaluations or conducted documentation of your work? Are you willing to share these with us?
What are your views about the possibility of setting an international network of CLPCs?
To what extent do you work with the media to promote child rights? What successes have you had with this and what challenges has this raised?
Do you have a helpline for children?
How do people hear about your work? Do you advertise through the media or through word of mouth?

3. Successes

What has been your organisation’s greatest success to date and why?
What other successes have you had? For example, key cases setting a precedent or significant change in the law to further children’s rights; successes for individual children or communities, etc. – please provide as much information as possible

4. Challenges and constraints

What are the main constraints your organisation faces? How have you tried to overcome these?
Recruitment
Has it been easy for you to find good staff with relevant experience in both policy aspects of
child rights and representing children in court?
Do you have a pool of lawyers who offer to work pro bono?
Do you have contacts with your local bar association?
Do you use paralegals as well? If so has this been successful?
Do you have links with law schools to provide internships or do you have a volunteer
programme?

Child protection policies
Do you have an official child protection policy for your employees to sign? If so what does it
consist of?
Have you ever had any problems in relation to child protection issues with your employees
and if so how have you resolved them?

Child friendly environment
Are your offices and building child friendly for your clients? What efforts have been made
to ensure that they are open and friendly environments?
To what extent are your offices accessible for children?

5. Lessons learned
How have you grown as an organisation? Has your management structure and organisation
grown too? What have been the difficulties you have confronted along the way?
How are you perceived by other actors concerned with child rights e.g. donors, governments,
parents/ carers/ children/ other NGOs?
What are the areas you wish to improve in the coming year? And in the longer term?
How do you ensure that your centre is sustainable in the long-term?
Questionnaire for users of the centres

1. How did you first contact the centre?
2. Why did you first contact the centre?
3. What service did they provide for you?
4. Were you happy with the service provided?
5. Could you have found this help elsewhere?
6. What improvements or changes would you like to see within the centre?