

Interview with Carolyn Hamilton, The Children's Legal Centre

Abstract

Interview with Carolyn Hamilton, Director of The Children's Legal Centre, one of the leading forces behind the UKIERI Project. In this interview, Carolyn Hamilton provides an overview of the work of The Children's Legal Centre, briefly explains the role of the CLC in relation to the UKIERI Project, and discusses achievements, future projects and challenges for children's rights.

1. Introduction

Since 1995, Professor Carolyn Hamilton has been the Director of The Children's Legal Centre ('the CLC'), an independent national charity dedicated to the promotion and implementation of children's rights.¹ A qualified barrister, she has published widely on children's rights. Professor Hamilton is also the Child and Family Commissioner for the Legal Services Commission and was the Senior Legal Adviser to the first Children's Commissioner for England.

The work of Carolyn Hamilton has not been confined within national borders. She has also acted as a consultant to the United Nations Children's Fund (UNICEF) on child protection and juvenile justice in a number of countries, including in Antigua, Georgia, Palestine, Azerbaijan, Kyrgyzstan, Moldova, Tajikistan, China, Kazakhstan and Kosovo. In addition, she is currently preparing a model juvenile justice law for the United Nations Office on Drugs and Crime (UNODC) and awaiting the publication early next year of a handbook and a report for UNICEF.² The excellent work developed by The Children's Legal Centre, under the leadership of Carolyn Hamilton, received international recognition in 2005 when she was awarded a personal prize from the Sigrid Rausing Trust for inspirational leadership, and in October 2009, when the Centre was awarded the prestigious Gandhi Foundation's International Peace Award for its work with vulnerable children in the UK and abroad.

In this interview, Carolyn Hamilton speaks about the work of the CLC, briefly explains the role of the CLC in relation to the United Kingdom – India Education and Research Initiative (UKIERI) Project, and discusses achievements, future projects and challenges for children's rights.

¹ See <http://www.childrenslegalcentre.com/>.

² *The Global Report on Administrative Detention* (Children's Legal Centre and UNICEF) and *The Handbook on Legislative Reform: Juvenile Justice* (Children's Legal Centre and UNICEF) will be published in early 2011.

2. Interview

EHRR: How did the CLC come to existence? Can you give us a snapshot of the state of children's rights protection at that time and of the objectives of the CLC?

CH: Work on establishing the CLC began in 1979, as the main UK project for the International Year of the Child.³ The Centre actually opened its doors in 1981. At that time, the UN Convention on the Rights of the Child was only in embryo stage and children's rights were quite an unknown concept. The objectives of the CLC were always to promote children's rights, and, at that time, it was the only organisation in England working on children's rights. We focused initially on the right of the child to be heard and, from the beginning, represented children in their quest to enforce their rights.

EHRR: You have been Director of the CLC since 1995. Both the demand for children's protection and the international recognition of children's rights have evolved over these years. How has the work of the CLC sought to progress children's rights in England?

CH: Our work changed significantly at the end of the 1990s, when the law permitted organisations with legally qualified staff to obtain legal services contracts, and when the UK Human Rights Act 1998 came into force. We decided that, in order to progress the implementation of children's rights, we would become involved not only in protecting children through the provision of legal information, advice and representation, but also through *strategic litigation* to initiate a discourse on children's rights. We have taken cases on the right to education, the right to manifest religious belief and the right not to be subjected to torture, cruel or inhuman and degrading treatment or punishment. The cases have not only addressed the specific issues relating to our children, but have also caused the courts at all levels, including the Supreme Court before which we have had three cases, to consider and interpret the Convention on the Rights of the Child. We currently have two cases before the European Court on Human Rights. Nevertheless, litigation is only part of the work. We also run advice lines and websites for children,⁴ and for carers and professionals working with children, and produce easily accessible publications on issues of child law and children's rights.

EHRR: The CLC has been widely praised for its notable achievements in the protection of children's rights, the most recent recognition being the prestigious Gandhi Foundation's International Peace Award. Could you explain the work for which this award was granted?

CH: We received our award for two particular projects: the Migrant Children's Project and the Girls Support Project in Tajikistan. The Migrant Children's Project provides information, advice and legal representation to some of the most vulnerable children in England, particularly unaccompanied asylum seekers, smuggled children, trafficked children and children subject to forced marriage. We provide a range of legal services to our children, including legal advice on health, education, protection, local authority care, leaving care and immigration, and are active in taking and progressing strategic litigation cases for these children. We also provide advice to organisations and professionals working with the affected children. Finally, as part of the

³ UN General Assembly Resolution 31/169, of 21 December 1976, proclaimed 1979 as the International Year of the Child.

⁴ See www.lawstuff.org.uk. Last access 8 November 2010.

Migrant Children's Project, the CLC has published the leading handbook on the law relating to child refugees and unaccompanied asylum seekers,⁵ and currently chairs the Refugee Children's Consortium.⁶

The Children's Legal Centre has been working in Tajikistan for the last 8 years. We became increasingly concerned at the practice of 'protective' administrative detention of girls victims of sexual exploitation, and at the impunity of the men who committed these acts. We have been working with the Government and, as a result of funding from the European Commission, The Big Lottery Fund (BIG), the Sigrid Rausing Trust and a number of other charities and trusts, we have set up a Girls Support Centre in the capital, Dushanbe. The project works with national NGOs and the local child protection bodies in all 10 regional areas, to provide protection services to exploited girls and to prosecute the perpetrators. In partnership with the State Committee on Women and Family Affairs, we provide residential care, half way homes, reintegration and independent living services, as well as legal services to girls who would otherwise have no access to care, and to those detained in special institutions. As a result of our work, girls are referred from all over the country and go on to lead happy and safe lives. More recently, in 2009, we worked with the Prosecutor's Office, and managed to obtain eight convictions against men who had sexually abused or trafficked our girls. In recognition of our work, a Presidential Decree was issued, also in 2009, prohibiting administrative detention of girls as a measure of protection.⁷

EHRR: How did the UKIERI Project come into existence and what was the role of the CLC in relation to this project?

CH: Children's rights are not just a growing issue in England but also in India, hence the importance of the UKIERI project. The CLC was a partner organisation to this joint project between the Human Rights Centre at the University of Essex and the Centre for the Study of Developing Societies in Delhi, India. Its aim was to improve educational links between India and the UK. The Children's Legal Centre was present at the very genesis of the project, as it partnered with the Essex Human Rights Centre to seek UKIERI funding to work collaboratively with Indian organisations on issues relating to children's rights.

One of the activities of the project included exchanges of researchers, academics and practitioners between the two countries. As the Children's Legal Centre was already partnered with the Indian NGO 'Children's Rights in Goa',⁸ under the project, one of our members of staff spent eight weeks in India, in 2009, examining the use of administrative detention of children for the purpose of protection and in juvenile justice cases. In exchange, we were happy to welcome back a member of Children's Rights in Goa to England to look at how child pornography on the internet was handled.

⁵ K. Dorling, *Seeking Support: A Guide to the Rights and Entitlements of Separated Refugee and Asylum Seeking Children* (The Children's Legal Centre, Third Edition, 2009). Available at <http://www.childrenslegalcentre.com/Resources/CLC/Documents/PDF%20A-M/Seeking%20Support%20Complete.pdf>. Last access 9 November 2010.

⁶ See <http://www.childrenslegalcentre.com/Migrant+Childrens+Project/refugeechildrenconsortium>.

⁷ For more information on this programme, see <http://www.childrenslegalcentre.com/International+programmes/Countries/Tajikistan.htm>.

⁸ See <http://childrightsgoa.org/index.htm>.

EHRR: How do you see the achievements of the UKIERI Project? Has it contributed to advancing the CLC's mission and ultimately children's rights? How do you see the relationship between research, education and advocacy in the protection of children's rights?

CH: One of the achievements of the UKIERI Project has been to sensitise both ourselves and our Indian partners to the difficult issues that each face. Though our interests are different, and the contexts in which we operate are certainly very different, the cross-fertilisation of work was important to us both, and stimulated thinking. All countries can become quite set in their way of thinking about rights, and it was interesting for us to see the use that was made in India of what might be termed individual rights and community rights. Community rights are a very undeveloped concept in England but one we would do well to consider. It was also extremely interesting to see that the same issues on children's rights arose in both jurisdictions, but the extent to which they were dealt with similarly and differently by the courts. Both jurisdictions, but perhaps more so India, have sophisticated and complex judgments on children's rights, particularly the right to education and the right to manifest religious belief.

EHRR: The collection of articles in this anthology provide different perspectives on the problems faced by children. Together, they highlight the fact that the principle of the best interest of the child is not always respected. For example, they show that this might happen because more powerful interests are at stake (such as when children are in conflict with the law) or because violence and abuse are culturally accepted. Adults fail to timely and accurately identify the best interest of the child in such difficult settings, even though they strive to act in accordance with international human rights standards of child protection. Based on your experience, how do you see this difficulty in the identification, and action upon, the best interests of the child?

CH: I think it is fair to say that issues relating to children are deeply political. While children may be a source of State pride, in many States they can also be subject to an extremely negative press, particularly in the case of juvenile offenders, street children, poor children or ethnic minority children. Some States close their eyes to the rights and needs of children, continuing to regard them as the chattels of their parents, and do not face up to the fact that their children are not protected from abuse or that their education and health systems are inadequate and possibly discriminatory. As a result, states fail children miserably. Children can also be subject to inhuman and degrading treatment and conditions in children's homes, disability homes and detention centres. Much of this is due to children being invisible and not having a voice, either politically, socially or legally. The UN Convention on the Rights of the Child is hugely important in our work as a tool for changing the situation for these children, by providing a legal, social and political framework. When working with States, of whatever culture, the Convention can be invoked as a standard to which the State should aspire and as a mechanism for bringing about change, albeit very slow change. Where states are willing to change, and not all are, a significant input of resources is required to achieve such change. However, legal change is not enough. Policies, practices at political and grassroots level, education and attitudinal change are all necessary if children's best interests are to be protected. Finally, as explained below, access to justice is also essential.

EHRR: What would you envisage as solutions for closing the gap between the acceptance of the importance of the principle of the best interest of the child on the one hand, and the widespread inability of actually identifying the best interest of every child, on the other hand? Some suggestions in this collection include empowering the child through education and peer support, challenging instances of structural discrimination, and understanding the child 'as a child', with his or her own interests, not as a means to adult's ends and certainly not as criminal. The importance of access to justice, via the legal empowerment of the child, which is one of the chief aims of the CLC, could also be added to this list. What would you say about these solutions?

CH: While children's rights can be progressively implemented through education, policy and practice change and legal reform, we believe that access to justice is essential if children's rights are to be fully implemented. Our work has shown us that good laws can be put on the statute book, but, without access to justice, such laws are often not implemented. In order to access justice, children need to have a basic understanding about their human rights. Human rights and legal education need to be offered in schools and legal information needs to be easily available. However, most of all, children need access to *legal advice and representation*. Without it, however good their understanding, children cannot realistically access justice. Such access also requires well trained lawyers as well as good and imaginative legal aid schemes that countries can afford. All children who are detained in police stations should have access to duty lawyers, and legal representation throughout the process or arrest and trial. Few, in reality, are granted this basic right. Thus, the overall conclusion seems to be that, while education and implementation of rights through non-legal means must be advanced, access to justice is of fundamental importance.

EHRR: What are your plans for helping to implement children's rights in the future?

CH: Despite some pessimism about the pace of implementation of the UN Convention on the Rights of the Child, it has to be recognised that children are now on every State's agenda. The last two decades have seen the development of NGOs dedicated to the promotion of children's rights, and children's rights are debated in the courts, in the legislatures and in the press. There is still, however, a very long way to go. Over the next year, the CLC will be focusing on the use by states of administrative detention. Children can find themselves subject to administrative detention for a range of reasons: to control immigration, to hold children alleged to have committed a crime, for security reasons, to provide 'care and protection' and for health or disability reasons. Administrative detention is permitted in limited circumstances in International Law, provided it is used as a matter of last resort and for the shortest appropriate period of time. It is evident, however, that many states use administrative detention unlawfully in breach of children's rights contained both within the UN Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.