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Health, Education, Equality, Protection
ADVANCE HUMANITY



Roundtable Discussion on

Protecting the World's Children –

Impact of the Convention on the Rights of the Child

in Diverse Legal Systems

20 November 2007

GERHU/GPS/DPP

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1. Introduction

On 20 November, 2007, the Global Policy Section (GPS) hosted a roundtable discussion to discuss UNICEF's publication *Protecting the World's Children– Impact of the Convention on the Rights of the Child in Diverse Legal Systems*, published by Cambridge University Press.

The study consists of a compilation of four studies on the impact of the Convention of the Rights of the Child (CRC) on four different legal systems or traditions – civil law, common law, Shari'a based law and plural systems. These studies are, in turn, the result of a long and ongoing Legislative Reform Initiative, which GPS has undertaken as a strategy to implement a HRBA to development under the guidance of the Convention.

The purpose of this document is threefold. First, it seeks to relate the overall *procedures* used in the preparation for the roundtable discussion. By reviewing these procedures, lessons can be learned and used in future similar events. Second, it provides an insight of the *content* of the discussion per se. It summarizes the main points debated and highlights areas which merit further discussions and follow ups. Finally, it serves to consolidate all the main background *documents* used in this event.

2. Summary of procedures

Venue

Three venue options for hosting the roundtable discussion were entertained: 1)- NYU; 2)- UN conference rooms; 3)- UNICEF House (Labouisse Hall). The first two alternatives were dismissed for lack of availability, thus leaving Labouisse Hall as the only remaining choice.

The hall was an easy and comfortable choice. There was a fear, however, that holding the discussion at UNICEF would make the discussion inaccessible to people not accustomed to attending events at UN grounds. This did not seem the case considering the diversity of attendees, which included students, academics and journalists.

Recommendation:

- If a similar event was to take place at a university setting, there could be a chance that a more avid Q&A would arise. It could also have made the event slightly less formal. However, overall, Labouisse Hall did not disappoint.

Date/flow

The date selected for this event marked the eighteenth anniversary of the CRC. In celebration of this historical date, a morning press event also took place at UNICEF grounds. It served to officially launch the publication and to nominate Ishmael Beah as UNICEF's Ambassador. The press conference counted with the participation of Ms. Ann M. Veneman, UNICEF's Executive Director, Ms. Savitri Goonesekere and Ishmael Beah as panellists.

The afternoon roundtable discussion was intended to be an informal and instigating dialogue between the four authors and two expert respondents upon the facilitation of a moderator. Ms. Elizabeth Gibbons gave the welcome speech and introduced the panellists. After two hours of discussion, the respondents concluded with final remarks and the audience had a chance of asking a few questions. Questions were planted among UNICEF's staff but were not needed.

Panellists

In addition to the authors, two respondents and one moderator were selected for the discussion.

Philip Alston was an obvious choice from the start due his expertise and professional background. His actual participation was, nevertheless, under-utilized during the dialogue.

Peter Rosenbloom's name came up after much debate. His performance, however, was dynamic and his comments were excellent. He was probably the most engaging panellist.

Annebeth Rosenboom was recommended by John Berger, from Cambridge University Press, to moderate the discussion. On paper, she had the appropriate legal background needed to facilitate the dialogue (she is Chief of the UN Treaty Section), however, she was not a very dynamic speaker. She was briefed beforehand on the role she was expected to take as a moderator. Unfortunately, she was not able to deliver as expected. She under-utilized the respondents' expertise, spent too much time asking questions in a row to the same author and did not manage time wisely.

Recommendation:

- Follow up with Peter Rosenbloom on partnerships between Columbia's Human Rights Clinic and UNICEF's LRI or on the possibility of creating more space for debate and discussions.
- Careful consideration on future choices for moderators. While having the appropriate background is an important criterion for selection, the moderator must, first and foremost, be a dynamic and energetic speaker in order to create the right tone for the debate.

Format of discussion

Three options for the format of the discussion were entertained (see box below) and Option #3 (Policy Option) was selected upon consultation with colleagues from GERHU.

#1) Scripted Option

Approach:

The moderator poses a catalogue of previously determined questions to each of the authors (chapter by chapter), and the two respondents are asked to comment after each author's response. The discussion of the four chapters is followed by a Q&A with the audience, and the moderator (or one of the authors) then summarizes and concludes the discussion.

Pro:

- predictability: due to the previously determined questions, the discussion should be easy to manage
- as long as all participants stay within their time-limit, the entire book will be discussed

Con:

- the authors are so engaged with their topics, that their responses might be so detailed, that it will be difficult for the (primarily non-academic) audience to follow – the audience might lose interest
- rigid format: risk of roundtable being a presentation instead of an actual discussion

#2) Academic Option

Approach:

A less question and more presentation focused discussion of the book. Each author presents/summarizes their chapter, and in between the chapter-summaries the respondents are

given the opportunity to comment. This is followed by a Q&A with the audience, and the moderator (or one of the authors) summarizes and concludes the discussion.

Pro:

- the overall scope of the book can be discussed
- flexibility given to the authors to highlight what is important to them (as opposed to focusing just on the specific questions prepared – as in the scripted option)

Con:

- risk of audience losing interest, as discussion may be too academic
- rigid format: risk of roundtable being a presentation instead of an actual discussion

#3 Policy Option

Approach:

A policy-oriented discussion of the book with a focus on three themes: the *purpose* of the book, *implementation* of the CRC through legislative reform, and *challenges* of implementation. Each of these themes is introduced and developed by an author, after which the respondents and other authors are given the opportunity to comment. The discussion is followed by a Q&A with the audience, and the moderator (or one of the authors) summarizes and concludes the discussion.

Pro:

- meet interest of a policy-focused audience
- flexible format: likely that a real discussion will develop, and not merely a presentation of the book

Con:

- lack of predictability: discussion may be more difficult to moderate
- only some aspects of book might be discussed.

Author: Nicola Brandt, 2007

Recommendation:

- While the format selected touched on key points of the book (purpose, implementation, challenges), there might have been also useful to allow the authors to give a summary of their chapters. This would have given an introductory background of the book to the audience.
- It probably would have been also useful to allow the respondents the opportunity to ask questions to the authors. That would have created a more realistic dialogue. Perhaps, the presence of a moderator might have been redundant should the respondents have been instructed to lead the discussion themselves.
- The role of the moderator is an important one as it sets the tone for the overall discussion. Having said that the moderator did not facilitate the discussion well, in future events, more attention must be paid on the dynamism of the moderator before committing to one.

Organization

The overall organization of Labouisse Hall (e.g. catering, set up, decoration, audio, security, etc) was carried through by Ms. Julie-Ann Marshall, from Marshall Production,

an event planning firm. The firm was highly recommended by colleagues from DOC and the end-result was highly satisfactory.

Recommendations:

- For future events of this magnitude, having the professional assistance from an event planner is a must.
- The layout of the room was a success and should be repeated: lapel microphones and chairs in a semi-circle were used for the panellists in order to create an informal setting.

List of invitation

Compiling a thorough list of invitation was an initial challenge. At first, no one seemed to have a consolidated list of UN agencies, NGOs, academic institutions, etc. These different databases were scattered around several people at UNICEF and much ‘chasing’ was involved in order to come up with a final list.

Invitations were sent out via email as timing was of essence. There was a decent amount of RSVPs and reminders were sent out repeatedly. The final turnout was 42 (see attached list) + an estimated 40 UNICEF staff.

Recommendation:

- Consult with Kirsi Madi on certain formal procedures (e.g. how to receive Ambassadors, how to invite senior people at UNICEF). She also seems to have access to several lists of names which can be used for future invitations.

Conclusion

Overall, the roundtable discussion was a success. It was the result of great team work – not only within GERHU, but also in constant collaboration with DOC. It was also a great accomplishment in the sense that, while the topic in question was very technical and highly complex, the two-hour discussion went smoothly and retained the audience’s attention and interest throughout. Minor recommendations have been presented (e.g. more careful choice of a moderator, etc), but, for the most part, the event was a great feat.

3. Content of the roundtable discussion

The roundtable discussion sought to address key points of *Protecting the World's Children*. The discussion revolved around three specific areas: purpose, implementation and challenges in the implementation of the Convention on the Rights of the Child (CRC) in different legal systems. Each author had a chance to comment on those three key areas and address the remarks from both respondents.

Purpose

Savitri opened the discussion by laying out the purpose of the book. According to her, the publication is an influential tool which may encourage developing countries to further engage in HRBA initiatives. The author acknowledged that many countries have attempted to harmonize their domestic legislation in line with the spirit of the CRC. However, this has not been done consistently or effectively across the board. She believes UNICEF's Legislative Reform Initiative serves to reinforce and guide such endeavours in a more persuasive way. She also stressed the importance of combining legislative reforms with other initiatives (e.g. budget, social and economic policies, etc).

Peter and Philip responded. Both were surprised at UNICEF's bold move to engage in such an ambitious project. In academia, implementation of human rights treaties is a highly complex and conceptual topic. They raised concerns about certain aspects of the Convention itself which are not straightforward and need to be fully addressed before being implemented. These aspects range from the best interest of the child, children's evolving capacities, universalism vs. communities to the fact that the CRC is an instrument with a particular constituency in mind. For Peter, these unsolved issues and contradictions make the implementation of the Convention particularly difficult. Philip also mentioned that social rights have not been traditionally treated as judicial rights compared to protection rights.

Savitri replied that, in spite of these difficulties, laws are still important tools in determining what is right and wrong and legal control has a crucial meaning in developing countries. In her opinion, rights should not be a luxury of rich countries. They are critical mechanisms of control, remedies, and entitlements.

Implementation

For Emilio, the Convention contributed to a healthier relationship between adults and children. Similarly to the impact of CEDAW in the relationship between women and men, the CRC has made the discretionary power of adults over children illegal in the long run. However, the author acknowledges that the CRC Committee has exercised a more limited role in Latin America, while civil society has accomplished more.

Philip echoed this statement by declaring the many of the battles in children's rights have been won in the field by NGOs. Peter also mentioned that the book does not fully address the question of institutional measures. Savitri commented that, while independent

commissions are important mechanisms for the implementation of children's rights, the focus still remains directed to the role of the judiciary, particularly courts.

Challenges

Shaheen remarked that there is more convergence – rather than divergence - between the CRC and the Islamic law. Nevertheless, she admitted that the complexity and diversity of the Islamic juridical system have been kept away from public knowledge. She also suggested that child issues have not traditionally been considered priority agendas, while the CRC has been deemed a top down approach.

The author recognized further challenges, such as the reservations made by States parties to the Convention; the difficulty of translating the language of the CRC into indigenous norms; as well as the obstacles in securing the necessary human and material resources required to effectively implement the rights enshrined in the Convention.

Peter replied that much of those tensions arise from the idealism of the law and the very notion of human rights which can be seen as normative impositions. Shaheen responded, in turn, that she would rather look at these challenges through more practical - and less 'academic' - lenses. She said she was more interested in, for instance, devising ways to raise funds to invest in economic, social and cultural rights as opposed to remaining trapped into conceptual argumentations.

Savitri commented that international standards help deconstruct colonial law which often does not have any resemblance to reality. It also allows for the growth of critique and questioning. As such, she claims that the implementation of human rights is not just the work of the state. It involves social responsibility amongst different stakeholders who should jointly search for ways to translate the spirit of the Convention into local language and concepts. Therefore, the human rights process has provided capacity to engender strategic partnerships. She cited examples from India and other South Asian countries, where there has been visible evidence of work being carried between courts and civil society, particularly in the enactment of environmental laws. She concluded by saying that human rights is a holistic process which goes beyond the domain of law schools.

Q&A

- **FMG**

Rebecca referred to two instances where the case of FGM has been changed by law (e.g. Burkina Faso and Egypt). Peter, however, declared that, to the best of his knowledge, there were no studies that prove that laws have actually abolished the practice.

Savitri responded by saying that FGM is a form of violence against the personal body and security and that has been the position taken by various children's and women's rights advocates. She suggested that prohibition is a necessary first step towards the abolition of the practice and the same goes for other harmful practices, such as *sati* and forced labour (servitude). According to Savitri, when the law does not send out a clear message, it ends

up giving social legitimacy to these harmful traditions. Most countries in her study have legislation on FGM. She quoted Burkina Faso, where there have been efforts to combine legislation with outreach to tribal rulers and awareness campaigns. She concluded by saying that just because law enforcement is challenging, legislation should not be deemed unnecessary. Rather, laws should create an ideal state and society should be gradually brought up to these standards.

Shaheen added that, in some cases, FGM goes beyond national borders, such as in the case where girls are flown to first world countries to undergo the procedure under 'sanitized conditions' ('female circumcision'). She points out the importance of having strong and enforceable laws in those countries as well.

- **Rural/urban children**

Savitri mentioned that, in most cases, child labour has been fought by education (ILO position), but the link between minimum standards of work and the push for compulsory education has been effectively established by the CRC. The same goes for trafficking and other areas of protection, where the CRC has made a difference, particularly to children in marginalized areas.

Shaheen also referred to the need of synchronizing legislation with budgetary allocation. She cited the example of Pakistan where funds for health are dramatically skewed towards urban children at the expense of the majority of children living in rural areas.

Rebecca replied that lawyers are 'necessary evils' in this process and more is needed from them, particularly at law schools.

- **ESC rights**

Savitri alluded to cases of the right to shelter and rights in family law, which have been litigated under the auspices of the CRC. Shaheen mentioned some cases in family law where CEDAW and CRC have been quoted.

- **Discrimination in Sharia based systems**

Shaheen acknowledged that her goal was not to sidestep some discriminatory interpretations in the law and in the Quoran and Hadith, which she recognizes do exist. She suggests, however, the need for a multi-pronged approach for addressing discrimination. She claims that one must first look at the basic necessities in life (e.g. education, health, etc) on a basis of equality. Simultaneously, one must also endorse principles of non-discrimination and the best interest of the child, which should serve as yardsticks in all actions.

- **Non-implementation**

Savitri mentioned the need to create 'independent commissions' to create accountability for non-implementation of human rights instruments, which do exist in some countries (e.g. India). However, in their absence, she declares that courts remain the best forum for harmonization of legislation.

- **Potential clash between different constituencies behind different human rights instruments (e.g. children's and women's rights)**

Savitri commented that Asia and Africa have traditionally looked at women's and children's agenda in harmony.

- **UNICEF's work and litigation**

Rebecca mentioned the need for stronger leadership in the area of LRI within UNICEF. She also cited the need to engage the legal community more often and devise more effective plans for communication and information. Emilio thinks it is better for UNICEF to remain silent rather than engaging in confrontation with countries, particularly in cases of legal reform with negative connotations.

Final Remarks

Philip declared that UNICEF should not be silent. In fact, he believes UNICEF could do much more in the area of legal reform. He thinks the High Commission of Human Rights has taken a stronger position before courts while UNICEF has been too comfortable in leading a diplomatic role.

Peter thought the book was an exciting departure point from which to address hard questions about the law. In his opinion, the book is an ambitious platform for discussing and debating on how to use the law.

4. Supplements:

1. Summary of events
2. Report on roundtable discussion
3. Concept note
4. Flyer
5. Invitation
6. One-page summary of book
7. Liz's opening statement
8. Questions for roundtable discussion
9. Description of moderator's role
10. Bullet-points about the book
11. Guest List (original)
12. List of attendees (final)
13. Briefing note on Morning Press event