

Children's Participation
in
Family Law Proceedings

Research Report

for the

**Childwatch International
Children and the Law Study Group**

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Childwatch
INTERNATIONAL
RESEARCH NETWORK

Introduction

Background to the Children and the Law Study Group

In December 2005, Professor Anne Smith submitted an application to Childwatch International seeking funding for a meeting between staff from the Children's Issues Centre (CIC, University of Otago, New Zealand) and the Centre for Children and Young People (CCYP, Southern Cross University, New South Wales, Australia) on a project concerning Children and the Law. It was proposed that a study group and an associated research project be developed to explore how children's rights are respected in law across the different countries who are members of the Childwatch International Research Network. The two issues suggested as the basis for a comparative law analysis concerned, firstly, custody/access disputes and care and protection issues, and, secondly, how the physical punishment of children is treated in the law. Funding (US\$1344) was confirmed by Childwatch in January 2006.

It had initially been proposed to hold the Preliminary Planning Meeting in Dunedin, New Zealand, on 10 February 2006 to coincide with an International Research Symposium on Children and Young People as Social Actors convened by the CIC. Judy Cashmore (University of Sydney; Chair of the CCYP Advisory Board) and Richard Harris (Faculty of Law, Southern Cross University), who were already attending the Symposium, met briefly with Children's Issues Centre staff (Anne Smith, Nicola Taylor, Megan Gollop) and Mark Henaghan (Dean, Faculty of Law, University of Otago) to discuss the Children and the Law Project. However, Anne Graham and Robyn Fitzgerald (from the CCYP) had been unable to attend the Symposium due to other commitments and so a decision was taken to defer further consideration of the Project until a joint meeting could be held with them.

This joint meeting took place on 2 May 2006 at Southern Cross University in Lismore, Australia, following the CCYP's Conference on Contact and Relocation Matters. It was attended by Nicola Taylor and Megan Gollop (from the CIC) and Anne Graham and Robyn Fitzgerald (from the CCYP). Anne Smith and Richard Harris gave their apologies.

Discussion initially centred on the topics originally suggested for the Children and the Law Project. However, research costs and staff availability factors precluded any commitment by these two Centres to research projects on the family law and/or physical punishment issues that year. It was also difficult to envisage how other Key Institutions within the Childwatch Network could join the project as partners.

Instead it was decided that a **Survey on Children's Participation in Family Law Proceedings** would be a beneficial and feasible starting point for this project. This proposal had several advantages as it would:

- be easily manageable within the current resources of the CIC and CCYP;
- be low-cost administratively and not require a research grant;
- be able to be undertaken during 2006;
- enable all Childwatch Key Institutions to be invited to participate in the survey;
- enable those Key Institutions interested in contributing to do so easily and at

- little cost; and
- provide a snapshot of how various countries currently facilitate children's participation in family law proceedings. The findings would then provide a platform for a further stage of the project involving collaborative international research and/or publications.

Development and Distribution of the Questionnaire

Nicola Taylor and Megan Gollop undertook to prepare a first draft of the issues to be addressed in the questionnaire, including:

- relevant statutory provisions and policy statements;
- children's involvement in conciliation and mediation services;
- children's involvement in litigated/contested/defended court proceedings concerning their care arrangements or guardianship issues;
- children's participation in care and protection proceedings and subsequent reviews;
- the availability and role of children's legal representatives;
- the availability and role of specialist report writers, counsellors, psychologists, health professionals and social workers with children involved in family law proceedings;
- judicial interviews of children;
- legal and judicial initiatives to inform and respect children e.g. personally explaining decisions to children and the effect of court orders on them;
- audiovisual resources, websites, and other information for children about family law issues;
- the availability of support/education groups for children;
- cultural and religious issues concerning children's participation;
- new initiatives – such as child-inclusive and child-responsive programmes;
- difficulties encountered in giving effect to children's participation in family law proceedings;
- training of professionals (lawyers/judges) to consult with children;
- influence of the UN Convention on the Rights of the Child on family law;
- relevant contextual factors influencing children's participation or non-participation in family law.

Robyn Fitzgerald, Anne Graham, Judy Cashmore and Sallie Newell, from the CCYP, then took responsibility for formatting and finalising the questionnaire in consultation with the CIC.

In August 2006, a letter (see Appendix One) and a copy of the questionnaire (see Appendix Two) was mailed to each of the 45 Childwatch International Key Institutions inviting them to participate in the project. An electronic version of the questionnaire was available upon request. Pernille Skotte, from the Childwatch secretariat, also promoted the project to Key Institutions in the September 2006 issue of the Childwatch Newsletter.

Project Participants

The Key Institutions were initially asked to return their completed questionnaire to the CIC by 30 October 2006, but this was subsequently extended to accommodate requests for extensions to the timeframe. An email to update everyone was sent out on 20 December 2006, with a reminder to have all questionnaires returned by 2 February 2007 (see Appendix Three).

Sixteen of the 45 Key Institutions of Childwatch International participated in the project on children's participation in family law proceedings. These Key Institutions are from Australia (2), Brazil, Canada, China, Czech Republic, England, Hong Kong, Ireland, Israel, Japan, Mexico, New Zealand, Nigeria, Slovakia, and the USA:

Australia: Elaine Fishwick, Social Justice & Social Change Research Centre, University of Western Sydney, NSW.

Australia: Associate Professor Anne Graham and Robyn Fitzgerald, Centre for Children and Young People, Southern Cross University, Lismore, NSW.

Brazil: Professor Irene Rizzini, CIESPI, The International Center for Research and Policy on Childhood, Pontifícia Universidade Católica do Rio de Janeiro.¹

Canada: Suzanne Williams, International Institute for Child Rights and Development, Centre for Global Studies, University of Victoria.

China: Helen Ju Qing, China Youth and Children Research Center, Beijing.

Czech Republic: Lenka Sulova, Department of Psychology, Faculty of Philosophy, Charles University, Prague.

England: Dr Jonathan Dickens, School of Social Work and Psychosocial Sciences, University of East Anglia.

Hong Kong: Sing Lau, Director, Center for Child Development, Hong Kong Baptist University.

Ireland: Patricia Brazil, Law School, Trinity College.

Israel: Tamar Morag, Faculty of Law, Colman Law School.

Japan: Judge Yoshito Abe / Noboru Kobayashi, Child Research Net, Tokyo.

Mexico: Norma Alicia Del Río Lugo, Centro de Documentación Sobre Infancia (Children's Documentation Centre), Universidad Autónoma Metropolitana.²

- Internment Center for Adolescents and Coordination of Execution
- General Office of Justice of the State of Campeche (Prosecution)

¹ Brazil submitted a brief email response rather than a completed questionnaire.

² Norma Alicia Del Río Lugo translated the questionnaire into Spanish and distributed it to relevant agencies. Seven completed questionnaires were received from Mexico.

- Public Defense of the State
- General Office of Justice of the State of Campeche (Prosecution)
- Human Rights Commission of the State of Campeche
- Center on Integral Assistance to Domestic Violence
- Supreme Court of Justice of Mexico City

New Zealand: Dr Nicola Taylor and Megan Gollop, Children’s Issues Centre, University of Otago, Dunedin.

Nigeria: Umo Udoaka, WhyAfrica/Federal University Teaching Hospital.

Slovakia: Dr Peter Guran, Slovak National Centre for Human Rights.

United States of America: Professor Gary Melton, Institute on Family and Neighborhood Life, Clemson University, South Carolina.

Interest in the project was received from a further five Key Institutions, but we unfortunately never received their completed questionnaires in 2007:

- **Austria:** Dr Renate Kraenzl-Nagl, European Centre for Social Welfare Policy and Research, Childhood and Youth Programme, Vienna.
- **Costa Rica:** Milena Grillo, Fundación PANIAMOR, San José.
- **Norway:** Elisabeth Backe-Hansen, NOVA, Elisenberg 0208, Oslo.
- **Palestine:** Dr Abdel Aziz Mousa Thabet, Consultant Child and Adolescent Psychiatrist, Senior Researcher, Gaza Community Mental Health Programme (GCMHP).
- **Spain:** Ferran Casas, Catalan Interdisciplinary Network on Children’s Rights and Children’s Quality of Life, University of Girona.

Megan Gollop entered all the questionnaire responses into electronic files during 2007 and these were subsequently analysed by Nicola Taylor. The findings are reported in the following chapters of this research report, together with the identification of possible initiatives which could form the basis for a future empirical research project or publication.

In December 2006 Nicola prepared an application to Childwatch International for a 2007 meeting of the Children and the Law Study Group comprising the CIC, CCYP and other Key Institutions who, through the questionnaire exercise, had expressed an interest in working collaboratively on issues relating to children’s participation in family law proceedings. Childwatch considered the issue and the interest in this project in the network to be “very promising” and “partially approved” the project by allocating US\$15,000 for a study group steering committee to meet in late 2007. This group will take responsibility for developing a new comparative study comprising policy, research literature, and empirical components which all interested Key Institutions can then be invited to undertake as the next phase of the project. Care will be taken to ensure the steering group is representative of the Majority and Minority

worlds, fairly reflects the diverse range of Key Institutions which expressed interest in such a study group, and looks to build research capacity on this topic internationally.

The Childwatch International Key Institutions

A total of 21 questionnaires were completed which, together with a one page email response from Brazil, meant that 16 child research centres in 15 countries participated in the project. Seven questionnaires were received from Mexico.

All of the people who completed the questionnaire said their institution was very interested (19 respondents) or quite interested (2 respondents – Israel/Japan) in issues about children and the law. The range of legally-oriented activities that each Institution was involved with included:

- *Providing legal expertise on issues about children and the law* – Canada, England, Ireland, Mexico, NZ, Slovakia, USA, Czech Republic, Hong Kong, China and Japan.
- *Undertaking research projects on issues about children and the law* – Canada, England, Ireland, Mexico, NZ, Slovakia, USA, Australia – CCYP and SJSCRC, Czech Republic, Nigeria, Hong Kong, Israel and China.
- *Writing publications on issues about children and the law* – Canada, England, Ireland, Mexico, NZ, Slovakia, USA, Australia – CCYP and SJSCRC, Czech Republic, Nigeria, Hong Kong and China.
- *Teaching courses on issues about children and the law* – Canada, England, Ireland, Mexico, NZ, Slovakia, USA, Czech Republic, Nigeria, Israel and Australia – SJSCRC.
- *Advocating on issues about children and the law (e.g. submissions to inquiries, test cases etc)* – Canada, England, Ireland, Mexico, NZ, Slovakia, USA, Australia – CCYP and SJSCRC, Nigeria, Hong Kong and Israel.

All of the people who completed the questionnaire were themselves personally very interested in issues about children and the law, and agreed that their institution would like to contribute to a Childwatch Study Group about Children and the Law (the USA said they would ‘probably’ like to do so).

The questionnaire asked each Key Institution to list their main activities and the type of contribution their Institution could make to the proposed Study Group.

Australia: Social Justice and Social Change Research Centre, University of Western Sydney

Main Activities: Research – multi-disciplinary, applied on social justice/social change issues.

Contribution to the Children and the Law Study Group: n/a.

Australia: Centre for Children and Young People, Southern Cross University

Main Activities: Research, evaluation, education, advocacy with and for children.

Contribution to the Children and the Law Study Group: Working with the CIC in New Zealand to initiate the Study Group.

Brazil: CIESPI, The International Center for Research and Policy on Childhood, Pontifícia Universidade Católica do Rio de Janeiro

Main Activities: CIESPI has carried out some research projects and issued some publications about the following issues: BASE LEGIS – our website contains a data bank of the legislation referring to children and adolescents since 1822 (over 200 laws) and is currently being updated to 2006; books and articles about the history of legislation in Brazil, focusing on children's rights (mostly on child protection issues).

Contribution to the Children and the Law Study Group: We have not done any work specifically on the issue of child participation in family law matters, but could get you a contact in Brazil.

Canada: International Institute for Child Rights and Development, Centre for Global Studies, University of Victoria

Main Activities: Implementing children's rights through innovative research, education, and capacity building.

Contribution to the Children and the Law Study Group: Collaborating on latest research, education, capacity building, good practices and improving the state of things worldwide.

China: Youth and Children Research Center

Main Activities: Research, publishing, training, consultation.

Contribution to the Children and the Law Study Group: We could contribute information and documents, and we hope to further our research in this field.

Czech Republic: Department of Psychology, Charles University, Prague

Main Activities: Preparing of young psychologists; developmental and social psychology; family consulting; methodical for family relations and sexual education in graduate schools.

Contribution to the Children and the Law Study Group: Research results publication, methodical publication on how to teach about family relations and children and the law in graduate school.

England: School of Social Work and Psychosocial Sciences, University of East Anglia

Main Activities: Various child care research (e.g. adoption, fostering, child protection and family support) studies; Undergraduate and postgraduate teaching programmes in professional social work.

Contribution to the Children and the Law Study Group: People in our School have expert knowledge of adoption, fostering, child protection; and also issues re post-divorce/separation contact between children and parents.

Hong Kong: Center for Child Development, Hong Kong Baptist University

Main Activities: psychological development and self-concept of children and adolescents; creativity and gifted education of children, adolescents and teachers; suicide ideation of children and adolescents.

Contribution to the Children and the Law Study Group: n/a

Ireland: Law School, Trinity College

Main Activities: As Ireland's oldest Law School, Trinity is strongly committed to the service of society through education, research and public service activities.

Contribution to the Children and the Law Study Group: Collaboration on comparative study concerning children and the law, including multi-disciplinary studies addressing not only legal, but also sociological, aspects of the law and its application to children.

Israel: Faculty of Law, Colman Law School – Faculty of Law

Contribution to the Children and the Law Study Group: I would need to check the possibilities and needs of the group as well as specifics with the Law School.

Japan: Child Research Net

Main Activities: Cyber institute of child science to study parenting.

Contribution to the Children and the Law Study Group: Under consideration. Mr ABE is an important member of Japanese Society of Child Science to which the Child Research Net is affiliated.

Mexico: Internment Center for Adolescents and Co-ordination of Execution; General Office of Justice of the State of Campeche (Prosecution); Public Defense of the State; General Office of Justice of the State of Campeche; Center on Integral Assistance to Domestic Violence; Supreme Court of Justice of Mexico City

Main Activities: Medical activities; agents of Public Ministry, investigation and mediation of conflicts; consultant and juridical assistance; legal process in representation of the victims; promotion, diffusion, teaching and defence of human rights; legal, psychological and social assistance to women and children who are victims of domestic violence; assignment of justice.

Contribution to the Children and the Law Study Group: To give information on the evolution and the measures taken towards adolescents in conflict with the law; information diffusion on crime and its prevention; proposals that may help to defend children; statistics and legal information; to promote, spread and defend the rights of children; experiences we have had in relation to children who have suffered violence and who manifest behaviours as a result of what they have experienced, becoming possible violators of the law.

New Zealand: Children's Issues Centre, University of Otago

Main Activities: Postgraduate courses on child advocacy and childhood studies, research, child advocacy.

Contribution to the Children and the Law Study Group: We are working in collaboration with CCYP (Australia) to initiate and develop this study group. We are analysing the questionnaire responses and preparing the application to Childwatch International for the study group's 2007 activities.

Nigeria: WhyAfrica

Main Activities: Women and child abuse; HIV / Aids; environmental and human rights etc.

Contribution to the Children and the Law Study Group: Research, ideas, participation.

Slovakia: Slovak National Centre for Human Rights

Main Activities: Research of children and family, monitoring of children rights and human rights, family policy, gender research.

Contribution to the Children and the Law Study Group: Data about the situation of children from monitoring activities dealing with the special groups of children –

especially vulnerable (roma, migrants, living in poverty, in institutions etc; data from empirical investigations; statistical data; European comparative study.

USA: Institute on Family and Neighborhood Life, Clemson University

Main Activities: The Institute conducts empirical research, performs policy analyses, develops and evaluates programs, and provides technical assistance and community education related to: the nature of everyday life in families and neighbourhoods; the development, maintenance, and enhancement of community institutions; and current and alternative public policies supportive of youth, families, and neighborhood life.

Contribution to the Children and the Law Study Group: Three faculty with JDs (one also has a PhD); one faculty with Master of Legal Studies who also has a PhD; one PhD with extensive experience as a law professor. Strong substantive focus on ‘legal architecture’ – legal structures to promote desired social behaviour.

Social Context for Children

Respondents were asked to describe the social context for children in their country, including how their state viewed children's place within the broader society; children's rights, and children's participation in society:

Australia

Children's place within the broader society: SJSCRC: Paternalistic – conservative; CCYP: Generally speaking, children and young people play a central role in Australian life. Children and young people are the focus of a broad and diverse range of social, economic and political policies aimed at improving their health, education and well being, and a range of bureaucracies and organisations have been created in the last decade to support their development. The Australian government has also made a substantial investment in early childhood research and programs in the last decade. However, while children are increasingly the focus of national policy initiatives, there is also evidence that inequalities in Australia between the most advantaged and the most disadvantaged children are increasing. Many Australian children, especially indigenous children, continue to live in poverty and/or situations characterised by violence, abuse, neglect and parental substance abuse. In addition, increasing proportions of Australian children have complex diseases such as asthma, diabetes, obesity, and psychological problems such as depression, suicide and eating disorders (see Fiona Stanley, Sue Richardson & Margot Prior (2005) *Children of the Lucky Country?*).

Children's rights: SJSCRC: Defensive - NGO report (2005) to UN Committee on the Rights of the Child clarifies this.

CCYP: The current Executive government and High Court take a restrictive, rather than expansive, view of Australia's implementation obligations. The recent NGO report by the National Children's and Youth Law Centre and Defence for Children International (2005) on the *Implementation of UNCRC in Australia* suggests that Australia still has some way to go in progressing better outcomes for children and young people:

The lack of an effective national commitment to the Convention, a national Commissioner for Children and a national plan of action for children inhibits the development of a national collaborative process to evaluate, share information, learn lessons and promote best practice. (p. xii)

There is no mainstream rights platform in Australia from which to launch children's rights implementation initiatives. Other than the few government agencies (such as The Human Rights and Equal Opportunity Commission which has reported on the rights of children in immigration detention and the children of the 'stolen generation') and NGOs which are involved in research and advocacy relating to children's rights, the legal and sociological research and advocacy about children's rights remains largely removed from the everyday experience and knowledge of Australian citizens. The concept of rights has not featured significantly in Australian history (unlike America, Europe, South Africa and the Middle East). The language of minority rights is seldom used (or accepted) in Australian political life and in the national media (e.g. Tampa, children in detention, stolen children, changes to industrial relations systems).

Politically, the Federal Government continues to be criticised for failing to take into account children's rights across a number of policy areas, but particularly in relation to refugee children, indigenous children, children with disabilities, children in care and children who infringe the law.

Several Australian government and non-government institutions monitor or promote the 'safety, welfare and well-being of children' but few monitor compliance with the rights of children in legal and policy arenas (for example, HREOC, NSW Commission for Children, Queensland Children's Commission, Ombudsman, CREATE, Chilout and DCI, Children's Legal Centres). Notwithstanding such developments, breaches of children's rights, and human rights generally, do not feature significantly on the current political radar in Australia. That is, arguments based on established breaches of children's rights, in and of themselves, seldom lead to policy or legislative change in Australia. The most recent example is that the recently announced changes to legislation in relation to the detention of children were not triggered by the findings of the HREOC that Australia's mandatory detention policy breaches the CROC but rather by threats of a handful of members of the governing political party to cross the floor if the changes were not made. In Australia, we need to advocate for a fuller domestic implementation of the Convention. Ratification of CROC by the Australian government obliges it:

- To make CROC, by appropriate and active means, widely known in Australia by both children and adults (Article 42) ;
- To ensure the rights in the Convention are available to each Australian child (Article 2.1)
- To take all appropriate legislative, administrative and other measures in order to implement the rights set out in the Convention (Article 4); and
- To report to the UN Committee on the Rights of the Child regularly on progress made in ensuring children enjoy in practice the rights given to them under the Convention.

Children's participation in society: SJSCRC: Limited – although NSW has incorporated some acknowledgement of these in policy procedure and organisation.

CCYP: There is no Federal Minister or Ombudsman for Children. In a major report on young people in decision making in Australia (*Sharing a New Story: Young People in Decision Making* published by the Australian Youth Research Centre for the Foundation for Young Australians) Wierenga, Wood, Trenbath, Kelly and Vidakovic (2003) report that the idea of children's participation is gaining momentum in Australia, with the strongest leadership coming from the community sector. In addition, the government is increasingly facilitating youth councils, youth roundtables, youth advisory groups and youth consultation. However, despite these initiatives, and along with the fact that children are the focus of a number of national policy priorities in Australia, children and young people continue to be largely excluded from political and civil life, including from government and executive decision making education, housing, transport, environment and local governance issues. Wierenga et al. (2003) suggest that this exclusion of children and young people is reflected in the following recurring themes and challenges that arise for children and young people in decision making:

- young people are involved in token and 'decorative' ways;

- young people are involved marginally, but adults make all the decisions;
- young people are involved in making ‘decision-less’ decision where the decisions are limited to issues that do not really matter;
- young people are include in decision making but the project is under resourced, making action difficult; and
- youth is transitory: experienced young people become ‘too old’ to fulfil their ‘youth’ role.

Brazil

Children’s place within the broader society: There is a strong call for including children in general, but great disparities between the way marginalised children are treated. In short, the law does not guarantee equal treatment to all our people and that is reflected in how children and young people are treated as well.

Children’s rights: The notion of children’s rights is definitely present in our society, especially after the Children’s Act 1990 (The Statute of the Child and the Adolescent). However, there is still a huge gap between the rhetoric of child rights and the implementation of our progressive law.

Children’s participation in society: This issue is seen with ambivalence – many advocating and acknowledging the importance of children’s participation rights and others resisting.

Canada

Children’s place within the broader society: The views vary from jurisdiction to jurisdiction, but generally children’s rights are not fully honoured, particularly when it comes to traditionally marginalized children and children at risk, and children’s contributions are not invited or valued in the way that they could be.

Children’s rights: The views vary from jurisdiction to jurisdiction, but generally children’s rights are not fully honoured, particularly when it comes to traditionally marginalized children and children at risk. Children’s contributions are not invited or valued in the way that they could be.

Children’s participation in society: Meaningful children’s participation as a process is pretty much non-existent There are some examples of children’s participation but it is not mainstreamed, and most often is event driven or compartmentalized to child/youth-only contexts.

China

Children’s place within the broader society: Very important.

Children’s rights: It’s becoming more and more important.

Children’s participation in society: We’ve just started to realise children’s participation rights and found it important to respect children’s ideas.

Czech Republic

Children’s place within the broader society: Law protected personality.

Children’s rights: Officially fully respected.

Children’s participation in society: Until the age of 15 years the child is more directed by authorities, after 18 years the child is an adult person in the sense of the law.

England

Children's place within the broader society: There is great ambivalence – punitive attitudes towards children in trouble with the law; highly protective attitudes from middle class parents; ‘tolerance’ rather than enjoyment of children generally.

Children's rights: A language of children's rights is slowly taking hold, but we still allow parents to smack their children.

Children's participation in society: Limited. There are many ‘school councils’ or ‘children's councils’ etc – but real influence is limited.

Hong Kong

Children's place within the broader society: No formal government policies.

Children's rights: Advocated mainly by NGOs.

Children's participation in society: A document has just been completed and submitted to the government and the UN.

Ireland

Children's place within the broader society: There is a growing awareness of the special vulnerability of children within Irish society and the need to ensure their best interests are at all times the paramount consideration. This awareness stems from recent revelations concerning the prevalence of both physical and sexual abuse in Ireland during the 20th century.

Children's rights: The concept of children's rights is a nascent one at present in Irish law; currently there is no express recognition of any such rights in the Irish constitution, although a referendum is to be held in May 2007 to consider inserting a provision to this effect. There remains a body of thinking that children's rights are, and should be kept, subordinate to those of their parents, as the parents as primary caregivers can best ensure the welfare of the child. This gives rise to serious child protection concerns, and the ability of the relevant agencies to intervene in cases where abuse is suspected.

Children's participation in society: The Office of the Ombudsman for Children was set up under the Ombudsman for Children's Act, 2002. The functions of the Office are to investigate complaints regarding actions by public bodies, to promote children's rights including through participation and communication services and to provide research and policy advice. Whilst the Ombudsman has done significant work in encouraging children's participation in society and in particular in advocating on issues which impact them, this form of participation remains the exception rather than the rule.

Israel

Children's place within the broader society: There is a social consensus on children's well being as a strong social value in Israel.

Children's rights: A shift is beginning towards greater recognition of children as rights holders. Yet there are clearly great infringements of children's rights - especially rights of minorities and of children from marginalized groups.

Children's participation in society: Children's participation is far from satisfactory. Children rarely take part in the legislative process. The success of Children's Councils at the Local Authorities has been very partial. There has been a significant shift towards greater participation of children in schools and in court proceedings.

Japan

Children's place within the broader society: Children under 20 years are not expected to exercise their rights with regard to social matters, but their parents are expected to take parts regarding the best interests of children. However, with regard to some family affairs, children under 20 years can exercise their own rights, for example, marriage and adoption.

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Children's participation in society: Children over 15 years are able to work, with some exceptions.

Mexico

Children's place within the broader society: They are left behind. They are illiterate; We are at the first stage: diffusion of knowledge and sensitisation among the professionals in relationship with minors; Our country is now preoccupied of watching over their rights; It is beginning to be studied as a theme. It is a positive sign; Priority in the political agenda; Up to this moment there is no sensibility or enough information in the Institutions or in the people in general about the importance of childhood and on how they should be treated; Its importance is growing day by day.

Children's rights: Actually it is intended to respect their rights; Emphasis is given to informing about them; They are guaranteed and are exercised; This is an important issue that is beginning to be taken into account; Children are protected by federal and state laws that are based on the basic principles of UNCRC; More diffusion is needed to target adults who still don't know or understand the meaning of each of the children's rights; In many schools, especially in cities, they are being taught.

Children's participation in society: There are assistance programs but they are not equitable; It is based on schemes; Active and enthusiastic; It is very little; It is scarce; Medium as the public policies on child participation are still a novelty; There is no space for participation. There have been a few attempts as, for example, the Children's Consultation made by the IFE (Institute of Federal Elections) on themes that may be of interest to children, but they are not allowed to contribute with their ideas.

New Zealand

Children's place within the broader society: Children comprise around 23% of the population and are valued members of NZ society. Health and educational status of Māori and Pacific children and children of sole parents significantly poorer than for other NZ children.

Children's rights: Strong child advocacy network of NGOs and University academics promoting children's rights. Government support also. But ambivalent attitudes towards children's rights by some sectors of society who consider parental rights will be diminished as a consequence.

Children's participation in society: Increasing recognition of children's right to participate. This is particularly well advanced in contested Family Court proceedings, but can be tokenistic in other areas e.g. schools, communities. However, genuine efforts are being made in most fields to engage children in decision making processes and child participation is one of the seven Action Areas identified in the government's Agenda for Children.

Nigeria

Children's place within the broader society: Last place citizens.

Children's rights: Children's rights are not implemented or observed. These rights are absolutely abused.

Children's participation in society: Children's place or participation in the society is minimal, and may be at a very low level in school, church and the family caucus. Since 1963, May 27 has been set aside every year as Children's Day in Nigeria, but it could hardly be celebrated any more - its importance has depreciated every year.

Slovakia

Children's place within the broader society: Very high value of the child for all groups of adults, strong family support.

Children's rights: Children's rights are guaranteed in all relevant legal documents, there are some problems with implementation in praxis.

Children's participation in society: Child is in more of a passive role - until now there is little active participation.

United States of America

Children's rights: Under American law, children are granted certain basic rights, such as the right to freedom of thought and religion and the right to due process in a court of law. However, these rights may be limited by the state's interest in healthy socialisation.

Children's participation in society: In the United States, children have opportunities to participate in society in various settings, including participating in health care decision making, providing witness testimony in legal proceedings, and expressing their opinions both in and out of school. Children are especially likely to have an important niche in religious institutions.

The United Nations Convention on the Rights of the Child (UNCRC)

Each country was asked to report on the status of the UNCRC, and whether or not there were any specific references in legislation to the UNCRC generally or to Article 12 in particular:

Australia

Status of UNCRC: Ratified by the Australian Government in 1990. The NGO report (2005) to the UN Committee in 2005 clarifies its status.

Any specific references to UNCRC in legislation: No - International instruments ratified by Australia do not create rights or obligations under Australian law unless the Australian Government legislates to give them effect. The Australian Constitution provides for the following rights: section 40 - the right to vote; section 116 - the right to freedom of religion; and section 117, the right to freedom from disabilities or discrimination on the basis of State residence. Australia has enacted specific legislation to give effect to its international obligations in the areas of racial discrimination, sex discrimination, disability discrimination and age discrimination. The Human Rights and Equal Opportunity Commission (HREOC) administers these four Acts, as well as the Human Rights and Equal Opportunity Act 1986 (Cth). UNCRC has not been incorporated into Commonwealth legislation and so is not part of Australian domestic law. However, the HREOC can inquire into the Acts and practices of the Commonwealth to evaluate their consistency with the UNCRC. But it is important to note that Australian child welfare law is governed by State legislation, and so HREOC has no jurisdiction. This includes the welfare of Aboriginal and Torres Strait Islander children.

Any specific references to Article 12 in legislation: No. While there are no specific references to Article 12 of the UNCRC in Australian domestic legislation, it is evident that the Convention has been influential in the wording of Part VII of Family Law Act (Cth). Following recent amendments to the Family Law Act by the Family Law (Shared Parental Responsibility) Act 2006, the right of the child to be heard, as articulated in Article 12 of UNCRC, is given effect by s60CC(3)(a), which requires a court determining what is in the child's best interests to consider: "any views expressed by the child and any other factors (such as the child's maturity or level of understanding) that the court thinks are relevant to the weight it should give the child's views." While the Australian legislation provides for the child the right to express his or her views, it is apparent no right to be heard in *any* proceeding that affect the child exists, nor does the child have the opportunity to express his or her views freely. Two factors curtail Article 12 gaining full effect in the Australian legislation. Firstly, section 60CC(0)(a) creates a two tier structure of 'primary' and 'additional' considerations, with the primary considerations referring to shared parenting and protection from ill treatment (Chisholm, 2006). Subsequently, consideration of the child's views are secondary to the courts consideration of a child's Article 7 provision rights (to know and be cared for by both parents) and Article 19 (to protection from violence). The Australian legislation is therefore inconsistent with the intention of the Convention that Article 12, along with Articles 2, 3, 6 and 12 be given special emphasis as basic to the implementation of all rights contained within the Convention. This is a significant omission, particularly in light of the fact that Article 12 was envisaged by the UN Committee as being required to:

... guide the way each individual right is ensured and respected; a criterion to assess progress in the implementation process of children's rights; and an additional dimension to the universally recognized freedom of expression, implying the right of the child to be heard and to have his or her views or opinions taken into account. (UNICEF statement on the UNCRC at <http://www.unicef.org/crc/crc.htm>)

Secondly, the obligation to apply the 'best interests' checklist applies only to contested proceedings. When a matter is resolved privately and the adults are in agreement, s 63B(e) states that parents are merely encouraged, in reaching their agreement, to regard the best interests of the child as the paramount consideration.

Brazil

Any specific references to UNCRC in legislation: The Children's Act 1990 (The Statute of the Child and the Adolescent) has many similarities to the UNCRC. Our law was actually inspired by the UNCRC, but this is not something that most people would know. The Statute became very important in Brazil, almost at the same time as the Convention was ratified – may be that is why a lot of people in Brazil are not familiar with it.

Canada

Status of UNCRC: Canadians know very little about the UNCRC, and those that do know something often misunderstand its content and application.

Any specific references to UNCRC in legislation: Yes – The BC Child, Family, Community Services Act echoes some of the UNCRC contents.

Any specific references to Article 12 in legislation: Yes - BC Child, Family, Community Services Act and Family Relations Act requires that the views of the child be considered as a factor in determining their best interests. Other jurisdictions in Canada have similar references.

China

Status of UNCRC: It's very popular here and lots of organizations are working on it.

Any specific references to UNCRC in legislation: Yes – we are amending the Minor Protection Act and there is lots of discussions on UNCRC.

Any specific references to Article 12 in legislation: Yes – we are going to write down the principle of children's participation rights in our new Act.

Czech Republic

Any specific references to UNCRC in legislation: Refer to contracts about children's law in the Czech Republic.

England

Status of UNCRC: Still unfamiliar to many, although the Children Act 2004 does recognise it and this may lead to greater awareness. Generally, UNCRC is seen as an issue for poorer countries.

Any specific references to UNCRC in legislation: Yes - The Children's Commissioner established by the Children Act 2004 is required to have regard to the CRC.

Any specific references to Article 12 in legislation: Don't think so.

Hong Kong

Status of UNCRC: A document had just been completed and submitted to the UN. Child representatives had participated in the UNCRC in the past.

Ireland

Status of UNCRC: Ireland signed the Convention on the Rights of the Child on 30 September 1990 and ratified it, without reservation, on 21 September 1992. However, the Convention has not been incorporated in Irish law, which means that its provisions cannot be relied upon before the domestic courts.

Any specific references to UNCRC in legislation: No - the Convention remains unincorporated at the domestic level.

Any specific references to Article 12 in legislation: No - the Convention remains unincorporated at domestic level.

Israel

Status of UNCRC: It has been quite influential. A legislative committee (The Rotlevi Committee) was appointed in 1997 to reevaluate the entire body of Israeli law in light of the UNCRC. The Committee produced a six volume comprehensive report. The Convention is very frequently cited in court decisions. There are many educational activities by the Ministry of Education centred around the convention.

Any specific references to UNCRC in legislation: Yes - there is child impact legislation stating the need to clarify the effect of any legislation on children. The law refers directly to the principles of the UNCRC. Several law proposals pending before the government refer to the Convention as well.

Any specific references to Article 12 in legislation: No - There is a proposal for a model code on child participation - which has been drafted by the UNCRC legislative committee which has not been enacted so far.

Japan

Status of UNCRC: This was approved by the Diet of Japan in May 1994.

Any specific references to UNCRC in legislation: No – because the UNCRC was approved in the Diet of Japan, it has the same power as the law.

Any specific references to Article 12 in legislation: No – we have laws legislated paying respect to Article 12 of the UNCRC.

Mexico

Status of UNCRC: Conscience is being made to society to respect and guarantee the rights of children; It is fundamental since the agreements taken from it direct the justice procedures; It is applied in our state; It is central and directing principles; A Supreme Law of the nation; With the reform of the Constitution (Article 18) there is an intention to fulfil what the UNCRC establishes; It is known by very few people.

Any specific references to UNCRC in legislation: Yes – in the law of Children and Adolescents of the State of Campeche, and in the recent reform of the 18th Article of the Constitution, the law of Social Assistance, and the local laws of Justice for Adolescents; Yes – There are state laws protecting children and adolescents; Yes – A normative framework has been constituted since 2000.

Any specific references to Article 12 in legislation: Yes - it has recently been applied since the reform of the laws; Yes – it is taken into consideration according to the age of the child; Yes – moderately; Yes – it is mentioned in the Constitution, but it is not put into practice, since the opinions of children are not taken into account.

New Zealand

Status of UNCRC: Ratified by the NZ Government in March 1993. UNCRC has been influential on government policy (Agenda for Children; Youth Development Strategy) and professional codes of practice (e.g. for lawyers for children).

Any specific references to UNCRC in legislation: Yes – the UNCRC is attached as an appendix to the Children’s Commissioner Act 2003 and is referred to in various provisions relating to the Commissioner’s duties, powers and functions.

Any specific references to Article 12 in legislation: No – not directly incorporated, but section 6 of the Care of Children Act 2004 is even more liberal than Article 12 and has removed any reference to ‘age and maturity’ in the ascertainment of children’s views in Family Court proceedings.

Nigeria

Status of UNCRC: The Convention is just a piece of paper in Nigeria and many other countries. We now need enforcement to protect our children.

Any specific references to UNCRC in legislation: Yes, but not implemented.

Any specific references to Article 12 in legislation: Yes, but not implemented.

Slovakia

Status of UNCRC: Ratified in 1990. It is fully implemented in our legal system.

Any specific references to UNCRC in legislation: Historically important and open international document.

Any specific references to Article 12 in legislation: According to the special laws – obligation of the court and official offices to hear the child out.

United States of America

Status of UNCRC: The United States is a signatory to the Convention, but the US Senate has not yet ratified the document, in part because of opposition by the Religious Right. Nonetheless, US law generally comports with the strictures of the Convention, and most Americans share the values underlying its provisions. The US Supreme Court has recognised the CRC as important authority in analysing the proper bounds of punishment of serious juvenile offenders. The UNCRC may be binding in US law as part of the body of customary international law.

Any specific references to UNCRC in legislation: Recognised in state legislative resolution.

Children's Participation in Family Law Matters

Private Law Proceedings

These proceedings concern disputes between parents / guardians over guardianship or residence/custody and contact/ access/visitation following parental separation or divorce.

Australia

Processes for resolving private law proceedings: Currently, 65 Family Relationships Centres (FRCs) are being established around Australia in order to provide family dispute resolution services to separating parents. Their purpose is to encourage parents to resolve issues about children away from court. From 1 July 2007, any application for relief under Part VII of the Family Law Act 1975 will require a certificate from a family dispute resolution practitioner stating that attempts to resolve the dispute have been unsuccessful. In contested matters, the Family Law Act 1975 (Cth) Part VII, gives effect to processes and procedures for the resolution of the dispute. The Court is to conduct proceedings without undue formality, in an inquisitorial rather than adversarial manner (section 69 ZQ(1)). In addition, many of the rules of the Evidence Act 1995 do not apply under Part VII. Section 69ZN states that the Court must give effect to five principles:

1. Consider the needs of the child and the impact the conduct of the proceedings will have on the child
2. Court to actively direct control and manage proceedings
3. proceedings are to be conducted in a way that will safeguard the child against family violence, abuse and neglect and the parties to the proceedings against violence
4. Proceedings, as far as possible, to be conducted in a way that promotes cooperative and child focused parenting
5. Proceedings to be conducted without undue delay, formality, legal technicality and form as possible.

Ways that children can participate: There is lip service paid to children's participation in counselling and formal court proceedings. In the Family Court there are provisions for the Children's (Best Interests) Representative, Judicial Interview, and Family Reports. Children can also request to meet with the judicial officer. In matters where mediation is unsuccessful or inappropriate, matters can be referred to the Children's Cases program. The program provides opportunities for children to be heard by way of a Family Report or the appointment of an independent children's lawyer. A key priority for FRCs in the delivery of the Government's *Family Relationships Services Program (FRSP) Strategic Plan 2005 – 2008* is to improve responsiveness to children and young people and to facilitate their inclusion in decision-making where appropriate. However, the participation of children in FRCs is highly discretionary, and subject to:

- (i) when it is 'appropriate'
- (ii) if families wish for and consent to the child's participation
- (iii) whether the FRC has the capacity to facilitate the child's involvement.

Canada

Processes for resolving private law proceedings: Private mediation, collaborative law processes, consent agreements between parties, judicial case conferences, interim applications, trials.

Ways that children can participate: Receive information in a way they understand, be informed about what is going on, have opportunity to ask questions, be given the opportunity to share their views (in writing, via third party interview, via video, directly with the decision maker, at the decision-making table etc), having decision explained to child etc.

China

Processes for resolving private law proceedings: Mediation first. Formal court decision next.

Ways that children can participate: Children's voice should be heard if they are older than 10 years old.

Czech Republic

Processes for resolving private law proceedings: Divorce between parents.

Ways that children can participate: Divorce – the child is protected by a social worker and can use the support of a psychologist or psychotherapy.

England

Ways that children can participate: Limited involvement, unless the parents disagree or go to court in which case a 'Child and Family Reporter' may see the children and report on their views.

Hong Kong

Processes for resolving private law proceedings: Not clear and spelled out.

Ways that children can participate: Not clear and spelled out.

Ireland

Processes for resolving private law proceedings: Poor. Such disputes are generally dealt with at District Court level. Judges are under-resourced and receive no training in dealing with such issues. The only mode of resolving such disputes is by way of generally acrimonious court proceedings. A state funded mediation service is available to parents who wish to resolve such disputes. However, this service is under-promoted and under-resourced, and there are significant delays for those who seek these services. This acts as a disincentive to pursue a non-contentious option.

Ways that children can participate: Very limited. Depending on their age and the attitude of the judge hearing the case, the views of the child may be sought by the judge in the absence of the parties. There are no guidelines as to how such views should be sought, and the absence of training for this purpose is a cause of concern. Such proceedings are most often decided without any direct participation by the child.

Israel

Processes for resolving private law proceedings: Court proceedings; agreements ADR.

Ways that children can participate: Children may write to the judge, meet with the judge with or without a social worker. There is no clear right in the law for child participation. A legislative subcommittee (which Dr Tamar Morag has chaired) has

proposed a model for child participation in family courts. The pilot project will start in two family courts in about four months time.

Japan

Processes for resolving private law proceedings: We have 50 Family Courts to deal with family affairs, which have judgement proceedings and conciliation proceedings.

Ways that children can participate: Family Court judges or Family Court probation officers are expected to ask children's opinions.

Mexico

Processes for resolving private law proceedings: Family Judge; Direct participation of minors in matters of custody; Divorce - to determine the legal custody of minors; It is still under the criterion of the judge; Not good - the process takes a long time and this worsens the situation for children. There are procedures, but problems emerge when they are put into practice.

Ways that children can participate: From the age of 6 years they can decide with whom they want to live; They can be listened to by the judge; When the judge calls them in order to get acquainted with their opinion; They can be there giving their opinion if it is solicited and if the judge accepts the presence of children. In general they are not taken into account. Parents have an agreement or the judge decides; Custody - by expressing their opinion, making sure there won't be any retaliation from one of the parents. Visiting after separation from parents - flexible visiting schedule according to the age of the children.

New Zealand

Processes for resolving private law proceedings: Six free counselling sessions are offered by the Family Court to parents (but not their children). If resolution is not achieved at counselling, then a judicial mediation conference is held in the Family Court. If no agreement and consent orders are possible through mediation then a defended hearing occurs where the family Court judge makes the decision and issues orders accordingly.

Ways that children can participate: When parental dispute is likely to involve Family Court proceedings then children's views must be ascertained and lawyer for the child is usually appointed. No real opportunity for children's participation in conciliation processes (counselling/mediation).

Nigeria

Processes for resolving private law proceedings: Unfortunately you rarely find these kinds of disputes in the court. If parents separate the woman (mother) is sent packing. Not resolved in the court.

Ways that children can participate: Children do not partake or participate and have no say in the matter, or else they would be sent packing with the mother.

Slovakia

Processes for resolving private law proceedings: Family law; mainly juridical procedures, visitation is part of sentence.

Ways that children can participate: Various ways of statements by court.

United States of America

Processes for resolving private law proceedings: In a divorce, the court presiding over the divorce proceedings typically has jurisdiction over custody disputes. Court decisions related to custody and visitation are generally based on the best interests of the child standard. Whether joint or sole custody is preferred by law varies by state.

Ways that children can participate: Children's views and interests may be presented in court through lawyers or guardians ad litem acting on behalf of the child. Additionally, children's wishes are generally taken into account in determining the child's best interests, though the weight given to these wishes may vary by state.

Private Law Proceedings Involving Allegations of Abuse / Neglect / Violence

We were also interested in exploring what happens in private law proceedings when allegations of child abuse / neglect or family violence are raised by one parent against the other.

Australia

Processes for resolving these allegations: In theory, children may take out restraining orders, or ask for action to be taken by welfare services – in practice doesn't happen often; Responsibility for the care and protection of children lies with State and Territory governments, and questions of child abuse and neglect may be dealt with, or referred to the State and Territory Authorities. When allegations of child abuse or neglect are raised in the Family Court, court registrars are required pursuant to the Family Law Act to notify state authorities. After the matter has been investigated by the relevant authority it may be referred back to the Family Court or the authority might in some cases intervene in the proceedings. The Family Court has sought to address the problems that arise from the constitutional impediments to the care and protection of children through the Magellan Project which is currently being implemented around Australia. Magellan brings together members of the Family Court, the Attorney General's Department, Legal Aid, State Children's welfare departments, lawyers and police to ensure the efficient exchange of information and cooperation between state and federal government departments.

Ways that children can participate: Same as for private proceedings. In theory children may take out restraining orders; or ask for action to be taken by welfare services – in practice doesn't happen often. A key feature of the Magellan process is its child-focused approach, included state funded independent children's representative. In addition, conference proceedings are privileged. The Family Court in Western Australia also runs its own program targeting cases involving allegation of abuse or family violence exists, called the Columbus Project.

Canada

Processes for resolving these allegations: Child is likely not permitted to visit with the party who is an alleged abuser, or only under supervision. If matter becomes criminal – e.g. charges laid for sexual abuse – criminal side kicks in re: children as witnesses.

Ways that children can participate: Same as for private law proceedings, but contextualized to the child's situation.

China

Processes for resolving private law proceedings: The court will decide whether the parent keeps the guardianship or selects another person as guardian.

Ways that children can participate: There are no regulations on children's participation in these cases.

Czech Republic

Processes for resolving these allegations: Family violence / family neglect.

Ways that children can participate: Family violence – the child is protected by a social worker who will make the decision about who will speak before the court (the child or the social worker). Family neglect – the child is protected by social workers and is immediately taken away from the family to a crisis centre.

England

Ways that children can participate: In extreme cases, the court would order a report by the local authority social services under s37 of the Children Act 1989.

Hong Kong

Processes for resolving these allegations: No clear proceedings. Cases are made known to the public and related parties through the media.

Ireland

Processes for resolving these allegations: The Court hearing the case can order an Investigation to be conducted by the Health Services Executive (HSE) which is the agency responsible for all care proceedings in Ireland. The HSE is required to report back to the court after its investigation is concluded and to recommend whether any further steps or proceedings are necessary to safeguard the interests of any vulnerable persons, including children.

Ways that children can participate: The HSE will appoint a social worker to conduct the investigation. Interviews will be held with any concerned parties, including children, and their views will normally be included in the final report. However, the social worker does not ultimately advocate on behalf of the child, and effective participation cannot be guaranteed through this method.

Israel

Processes for resolving these allegations: The Family Court is authorised to take protective measures if needed.

Ways that children can participate: Same as for private law proceedings.

Japan

Processes for resolving these allegations: Cases are brought to the Family Court and judgement about whether the child should be separated from parent or guardians.

Ways that children can participate: Same as for private law proceedings. Family Court judges or Family Court probation officers are expected to ask children's opinions.

Mexico

Processes for resolving these allegations: It is handled by Human Rights and DIF (The National System for the Integral Development of the Family); There are no private processes of this sort in the state; The authorities, through experts, learn about the needs of children and occasionally they listen to them directly.

Ways that children can participate: By expressing their feelings; They can be called by the authorities in circumstances that may affect them; They can participate only when they are solicited at an audience or by a psychological expert; To be able to denounce without retaliation against the child from one of the parents. Children do not denounce for fear of punishment. Legal processes are very long and children are submitted to interrogation and difficult situations. Sometimes these accusations are made to avoid visiting rights by children with their parents and they get confused and regard it as reality even though it may not have happened. Children are used to force them to declare what their parents tell them.

New Zealand

Processes for resolving these allegations: The Care of Children Act 2004 governs this – abusive/violent parent is not allowed day to day care or unsupervised contact with the child.

Ways that children can participate: Children's views are one of the factors taken into account by the court in determining whether or not the abusive/violent parent should have care or unsupervised contact with the child.

Nigeria

Processes for resolving these allegations: It depends how we interpret neglect and abuse. Abuse, neglect and violence children are very rampant, including sexual abuse, but no one ever gets arrested or charged.

Ways that children can participate: The highest thing a child can do is to go to a neighbour's or a relative's house. After a day or two they will go back to their parent.

Slovakia

Processes for resolving these allegations: Separation of perpetrator, network of public services and institutions for the victims of violence.

Ways that children can participate: Psychological advisoring.

United States of America

Processes for resolving these allegations: Although parents are generally presumed to act in the best interests of their children, this presumption can be rebutted by evidence of abuse or neglect.

Ways that children can participate: Children's views and interests may be presented in court through lawyers or guardians ad litem acting on behalf of the child. All states have mandated reporting laws.

Public Law Proceedings

These proceedings involve disputes between families and the state over care and protection, issues, child abuse, neglect and abandonment.

Australia

Processes for resolving public law proceedings: Children can seek orders but this is not done; In situations where abuse or neglect is identified following investigation by State and Territory authorities of a notification, authorities may commence proceedings in the State or Territory Courts. In some circumstances, such intervention might entail the removal of the child from the family to ensure the child

is protected from further abuse or neglect. If abuse is identified, there are several ways that the case might proceed:

- (i) services might be provided to the family by way of family therapy or counselling to address the problem;
- (ii) in cases where there co-operation from the perpetrator of abuse, the child may be permitted to stay with the family;
- (iii) agreement may be reached between the department and the family pursuant to which the child is placed in out of home care or the abuser leaves the home; or
- (iv) application might be made pursuant to the Children and Young Persons (Care and Protection) Act 1998 for state intervention and removal of the child in certain circumstances.

Ways that children can participate: Children can seek orders but this is not done; Section 99(3) states that there is a rebuttable presumption that a child who is not less than 10 years of age and a young person are capable of giving instructions to his or her legal representative.

Canada

Processes for resolving public law proceedings: Director of Child Protection makes an order, voluntary mediation and ADR, family group conferencing, interim orders, case conferences, trials.

Ways that children can participate: Same as for private law proceedings - receive information in a way they understand, be informed about what is going on, have opportunity to ask questions, be given the opportunity to share their views (in writing, via third party interview, via video, directly with the decision maker, at the decision-making table etc), having decision explained to child etc.

China

Processes for resolving public law proceedings: Criminal procedure.

Ways that children can participate: Children could act as a witness, but whether their proof would be accepted or not depends on their capacity to discern and express.

Czech Republic

Ways that children can participate: Care and protection – Social worker defends the child against the family and can take the child away from the family. Abandonment – the State is offering different kinds of care or protection for children of different ages.

England

Ways that children can participate: Children's interests are represented by a solicitor and a 'children's guardian' (usually social work trained) – a member of CAFCASS.

Hong Kong

Processes for resolving public law proceedings: No clear proceedings.

Ways that children can participate: No clear proceedings.

Ireland

Processes for resolving public law proceedings: Such proceedings are determined by the District Court, upon an application by the HSE. The Orders which can be made range from supervision orders to monitor the situation on an ongoing basis, to care orders removing the children from the parents' care in cases where the abuse or

neglect is proven. However, care orders are only temporary solutions, and the ability to put in place permanent solutions such as adoption can be very limited where the parents will not give their consent.

Ways that children can participate: A guardian ad litem can be appointed to represent the child in any public law proceedings where orders may be made which will impact on the child. The child's participation in the process is achieved via the guardian ad litem, rather than first hand, direct participation.

Israel

Processes for resolving public law proceedings: Court proceedings.

Ways that children can participate: The child may meet with the judge at the judge's discretion. No special procedures have been established.

Japan

Processes for resolving public law proceedings: If parents should be accused with regard to child abuse, they are sent to the criminal court.

Ways that children can participate: Public prosecutor and judges will ask children about abuse.

Mexico

Processes for resolving public law proceedings: DIF (The National System for the Integral Development of the Family). Family Court; Regulated through established institutions; Preventive measures, application of sanctions and penalties with measures of security among others; They are called to the judgements sessions; It is difficult because of the time it takes for the process and the requirements after that.

Ways that children can participate: They can be listened to by the judge; Occasionally when they are 9 or 10 years old, they can act as a witness and testify; There have been cases in which the processes go on without taking into account the age of the children. Because of the negative social reaction, they are more careful now.

New Zealand

Processes for resolving public law proceedings: These cases are governed by the Children, Young Persons and their Families Act 1989 – a progressive approach involving family group conferences with extended family members playing a significant role in ensuring the child's future safety under the guidance/support of Child, Youth and Family (statutory care and protection agency).

Ways that children can participate: Children do not usually attend Family Group conferences, but must be informed about the care and protection proceedings in a way they can understand. Usually they have a lawyer appointed to represent them and will also have a social worker they can talk too.

Nigeria

Processes for resolving public law proceedings: Same as for private law proceedings. See this journal - <http://lawfam.oxfordjournals.org/cgi/content/abstract/10/3/281>.

Ways that children can participate: Same as for private law proceedings.

Slovakia

Processes for resolving public law proceedings: Law about social-legal protection of the child – mainly through the social offices in community.

Ways that children can participate: Social work with the child.

United States of America

Processes for resolving public law proceedings: After the initial reporting and investigation, a state attorney may file a petition alleging abuse. A hearing then takes place to determine whether the allegation is valid. If the child is found to be abused or neglected, the court, considering the best interests of the child, may order parents to meet conditions designed to improve the quality of their child care (e.g. to attend parent-education classes or obtain vocational training) and to ensure the safety and welfare of the child (e.g. by transferring custody to the department of social services). In extreme cases, the court may order termination of parental rights; however, such termination must not only be in line with the child’s best interests but also typically requires specific findings of parents’ lack of amenability to treatment, and sometimes requires documentation that the state has made diligent efforts to remediate the parents’ propensity to maltreat the child.

Ways that children can participate: Children’s views and interests may be presented in court through lawyers or guardians ad litem acting on behalf of the child. Additionally, children may be called on to testify as witnesses in abuse proceedings, whether criminal or civil.

Rating Scale

The questionnaire asked each respondent to rate how much opportunity they thought there was in their country for children to participate in family law proceedings (see Table One):

Table One: Opportunity in each country for children to participate in family law proceedings

None	Very Little	Some	Quite a Lot	A great Deal	Did Not Answer
Nigeria	Canada	Australia	Czech Republic		Brazil
	Hong Kong	China	Japan		USA
	Slovakia	England	New Zealand		
		Ireland	Mexico		
		Israel			

Research, Policies, Laws/Statutes and Key Cases Concerning Children’s Participation in Family Law Proceedings

Australia

Research /Reports: Burns, A., & Dunlop, R. (1999). How did you feel about it? Children’s feelings about their parents’ divorce at the time and three and ten years later. *Journal of Divorce and Remarriage*, 31, 19-35; Parkinson, P., Cashmore, J., & Single, J. (2005). Adolescents’ views on the fairness of parenting and financial arrangements after separation. *Family Court Review*, 43(3), 429-444; Parkinson, P.,

Cashmore, J., & Single, J. (in press). Parent's and children's views on talking to judges in parenting disputes in Australia; Sheehan, G., & Carson, R. (2006). Protecting children's rights in contact disputes: The role of Children's Contact Services in Australia. *Family Court Review*, 44(3), 412-428; Graham, A., & Fitzgerald, R. (2006). Taking account of the 'to and fro' of children's experiences in family law. *Children Australia*, 31(2), 30-36; Bagshaw, D., Quinn, K., & Schmidt, B. (May 2006). Children and families in transition: Towards a child-centred integrated model of practice, University of South Australia; McIntosh, J., & Long, C. (October 2006). Children beyond dispute: A prospective study of outcomes from child-focused and child-inclusive post separation family dispute resolution - Final Research Report. *Family Relationships Quarterly*, Issue 3, Australian Institute of Family Studies. Every Picture Tells a Story: Report on the Inquiry into Child Custody Arrangements in the Event of Family Separation (2003); Out of the Maze: Pathways to the Future for Families Experiencing Separation, (2001), Family Law Pathways Advisory Group; Seen and Heard: Priority for children in the legal process, (1997), Report Number 84 Australian Law Reform Commission; For the sake of the kids, (1995), Report Number 73, Australian Law Reform Commission; DCI Australia http://www.dci-au.org/html/court_proceedings.html; Inquiry into the Australian Legal Aid System, Chapter 5 - Separate representation of children, http://www.aph.gov.au/senate/committee/legcon_cttee/completed_inquiries/1996-1999/legalaid_report/C08.ht.

Policies: NGO report (2005) to UN Committee clarifies these; Family Relationships Services Program (FRSP) Strategic Plan 2005 – 2008.

Laws/statutes: Family Law Act; Family Law Reform Act 1995; Family Law (Shared Parental Responsibility) Act 2006; Children and Young Persons (Care and Protection) Act 1998.

Key Cases: Re K; J v Leischke (1987) 162 CLR 447; B and R and the Separate Representative [1995] FLC 92-636; H and W [1995] FLC 92-598; Harrison and Woollard [1995] 18 Fam LR 788; R & R: Children's Wishes [2000] Fam CA 43; R and R [Children's Wishes] [2002] Fam CA 383; R and R [1998] Fam CA 108; Re G: Children's Schooling [2000] Fam CA 462; Re Alex [2004] FamCA 297 on right to sex change operation; ZN v YH and Another [2002] Fam CA 453; Brear v Corcoles-Alfaro [1997] FLC 92-768; B and B: Family Law Reform Act 1995 (1997) 21 Fam LR 676; Minister of State for Immigration and Ethnic Affairs v Teoh (1995) 128 ALR 353; (1995) 183 CLR 273.

Canada

Research: See www.iicrd.org/familycourt for our recent work. We are continuing this work through development and piloting of education for key stakeholders (lawyers, judges, social workers) in partnership with the Continuing Legal Education Society of BC, and other initiatives. Other research may be accessed via the Department of Justice Canada website (www.justice.gc.ca) research section on family law, and the report of Canada's Senate Committee on proposed amendments to Canada's Divorce Act, For the Sake of the Children.

Policies: See the link www.iicrd.org/familycourt for our recent report on Meaningful Child Participation in BC Family Court Processes that captures the current state.

Czech Republic

Research: Additional information provided.

Policies: In schools the children are educated about the knowledge about their laws; The child can contact a social worker, the child can call any crisis call centres; the child can use the services of psychotherapy or psychology. During the school course on psychology a child may start to speak about abuse in the family. The psychologist would contact the social worker, children's doctor and police.

Laws/statutes: The Czech family law results from the tradition of several law systems, especially the Roman Law and the Canonic Law.

China

Research: A project supported by Childwatch International to research children's participation in China and four other Asian and Pacific countries.

Laws/statutes: Marriage Act; Criminal Procedure Act; Civil Procedure Act; Some regulations by the Supreme Court; Minor Protection Act; Penal Act.

England

Research: On children's guardians (formerly known as 'guardians ad litem'); Marian and Kim Oakley; Hunt.

Policies: 'Dual representation' in public law process – legal interests represented by lawyer, welfare interests by children's guardian (much less developed in private law).

Laws/statutes: Children Act 1989; Children Act 2004.

Key Cases: Gillick case – for children to make their own decisions as they grow older.

Hong Kong

Policies: No clear policy. If there are any policies, they are not known to the general public. There is not enough public education. The rights and channels for help are usually made known to the children and the related parties after the cases are publicised in the media.

Ireland

Research: Martin (2000). The politics of children's rights. Cork University Press; Shannon (2005). Child law. Round Hall; Connelly (2003). Children's rights in Constitutional Law, 3 *Irish Journal of Family Law*, 2.

Laws/statutes: Constitution of Ireland, Arts 40.3, 41 and 42; Guardianship of Infants Act 1964 (as amended); Child Care Act 1991 (as amended); Adoption Acts 1954-1998 (as amended).

Key Cases: G v An Bord Uchtála [1980] IR 32; North-Western Health Board v HW [2001] 3 IR 622; N v HSE Supreme Court, unreported, 13th November 2006.

Israel

Research: Dafna Hacker, Children from Divorce Proceedings, 22 *Hamishpat Law Review*, in Hebrew); Stating lack of child participation in Divorce Proceedings. In courts, Mediation, Agreements (based on interviews with parents, judges and lawyers).

Policies: The COROC Legislative Committee has established proposed legislation and guidelines for child participation. These have not yet been enacted.

Laws/statutes: The right to be heard is clearly stated in child abuse, adoption and child abduction legislation, but not in the law relating to Family Courts. Supreme Court cases have repeatedly stated that children's views should be taken into account and may sometime be decisive. See, for example, CA - 241/57 in the matter of Paltiel – "the court may not ignore the child's views unless her wishes are clearly harmful for

her.” In recent years we have noted a growing recognition of the child’s right to be heard especially in Family Court decisions. For a review of case law on the matter see Tamar Morag - Court decisions following the ratification of the UN Convention - A new era. *22 Hamishpat Law Review* (in Hebrew).

Japan

Policies: Children over 15 years are expected to express their opinions with regard to matters which have an interest in child custody.

Laws/statutes: One example is the Family Affairs Proceeding Rule, article 54.

Mexico

Research: Socio-demographic statistics on the state of infancy elaborated by INEGI (National Institute of Statistics, Geography and Computer Science); Recommendations of the public institutions of protection and defence of human rights; Research and reform proposals re local family violence codes so that this may be classed as a crime.

Policies: Creation of the Children’s Congress, the parliament of children and youth; To legislate and approve laws for the protection of minors; Integral Protection for Adolescents; Reforms to the Constitution and creation of laws and regulations on behalf of minors; To establish programs of auto-defense of children, child parliaments, Children forums; Training courses have been offered to personnel of different institutions. A diffusion policy is just beginning.

Laws/statutes: The Law of Children and Adolescents; the Law of Civil Assistance; Civil Code of the State; The law of Justice for Adolescents; the Law of Rights of Children; Treaty for Children and Adolescents; law of social assistance; Law of Justice for Adolescents; Law of Penal Justice for Adolescents, civil codes; Constitution: art. 18; The Law of Children and Adolescent Rights.

Key Cases: Loss of patria postestad (rights of parents over children); Food pension; Special Judgement cases for children and adolescents; Family Judgment cases; Penal Judgment cases; Instruction cases, Oral judgment case for adolescents; Administrative procedure before the Office of the Defence of Minors, Women and Family; Judgment cases of necessary divorce, minor custody.

New Zealand

Research: The Children’s Issues Centre has researched and published widely on this topic: children’s perspectives on access following parental separation; children and lawyers’ perspectives on the role of lawyers for children; children, parents and Family Court professionals’ perspectives on Family Court proceedings to resolve custody and access disputes; children, parent and staff perspectives on supervised contact. We are currently undertaking a new study on relocation disputes. One of our postgraduate students, Murray Cochrane, undertook a survey of Family Court Judges in 2005.

Policies: *Agenda for Children* (NZ Government policy for children) – Action Area Three emphasises children’s right to participate; Family Court Practice Notes issued by the Principal Family Court Judge e.g. for lawyer for the child.

Laws/statutes: s6 Care of Children Act 2004; Children, Young Persons and Their Families Act 1989.

Key Cases: Several recent cases concerning interpretation of s6 Care of Children Act 2004 re children’s views in cases concerning parental disputes over guardianship, day-to-day care and contact.

Nigeria

Research: Presentation by Umo Udoaka at the Rights of the Child Conference in Ottawa, Canada, in March 2007 entitled ‘The African child: Its rights, struggles and survival’.

Policies/Laws/statutes: More research needed on this, so I can give you a complete and accurate answer.

Slovakia

Research: Country side family in Slovakia (1998); monitoring of child participation (2006).

Policies: National action plan for children.

Laws/statutes: Family law, law about social and legal protection of the child.

Key Cases: Participation – e.g. adoption, foster care, divorce.

United States of America

Research: Much more research has been done on child involvement in juvenile delinquency proceedings. Also, there is a huge body of research on children (text missing).

Policies: ABA Standards of Practice for Lawyers Representing Children in Custody Cases; ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Proceedings.

Key Cases: Troxel v. Granville, 530 U.S. 57 (2000); Maryland v. Craig, 497 U.S. 836 (1990); Michael H v. Gerald D., 491 U.S. 110 (1989); In re Gault, 387 U. S. 1 (1967).

How Influential has the UNCRC been on these Policies, Laws/Statutes and Key Cases?

The questionnaire asked each respondent to rate how influential they thought the UNCRC had been on their country’s policies, laws/statutes and key cases concerning children’s participation in family law proceedings (see Table Two):

Table Two: The UNCRC’s influence on each country’s policies, laws/statutes and key cases concerning children’s participation in family law proceedings

Not at all	Slightly	Somewhat	Quite	Very	Don’t Know
Ireland	Australia	Canada	Czech Republic	New Zealand	Nigeria
USA	China		Israel		Hong Kong
	England		Japan		
			Mexico		
			Slovakia		

Australia: Justice Alistair Nicholson, former Chief Justice of the Family Court, was a great advocate for children’s participation but was resisted strongly; The existence of different legislative frameworks affecting various aspects of children’s lives means that the influence of the UNCRC has varying influence across jurisdictions. As a general rule the UNCRC can be said to be more influential in its effect in public law matters than in private law matters in that children are represented via direct representation models rather than the best interests model.

Czech Republic: Our own law is more influential, but respects international contracts.

China: UNCRC has not been substantially accepted into the justice system.

Ireland: In circumstances where the UNCRC has not been incorporated into Irish law it has no influence over law, statutes and key cases in Ireland.

Israel: The UNCRC is often cited in court decisions. Is the major base for the governmental recommendations?

Mexico: There have been reforms and application of the UNCRC in laws; The new Law has been adjusted in accordance to the UNCRC; Due to the Convention there have been changes in the criterion of the judges and other authorities; There has been a recent move to give the UNCRC the importance it deserves to these rights and to really put them into practice.

New Zealand: The UNCRC is specifically mentioned as a key influence in the drafting of policies/laws/cases.

Slovakia: Some delay – influence mainly after 2000.

United States of America: The UNCRC has not been significant.

Factors Influencing Children’s Participation in Family Law Matters

Australia

Social, cultural or religious factors: Relatively strong religious lobby groups reinforcing traditional family values. Indigenous kinship structures recognised in some legislation - & therefore expanded notion of participation; A significant social and cultural factor in Australia influencing children’s participation in family law is that children are understood as vulnerable and in need for protection, thus underestimating their capacity to participate actively and constructively in decision making processes.

Other contextual factors: Political resistance to UN and international treaties.

Major barriers to children’s participation: Political resistance, limited funding to legal aid services, resources targeted to other ‘priority’ areas. Adversarial system – focuses on adults; There are several barriers to children’s participation in family law processes:

1. Child-inclusive models of family law practice resist the involvement of children.

The underlying model of service provision of FRC’s, that is of child-inclusive family law practice, focuses on effecting normative changes in parental behaviour by encouraging parents to focus on their children. Perhaps the most significant contribution to the development of the model has been the Children in Focus program developed by Jennifer McIntosh (see <http://www.childreninfocus.org/index.html>).

This model is highly successful in reducing the intensity and animosity of parental disputes, and showing greater improvement in parental alliance for fathers, children’s experiences of improved emotional availability of their fathers and a greater sense of closeness to him, greater satisfaction of fathers with care and contact arrangements, greater stability of care and contact patterns and preservation or improvement in

mother-child relationship from both perspectives of mothers and children (see J. McIntsoch & C. Long (2006). Children beyond dispute: A prospective study of outcomes from child-focused and child-inclusive post separation family dispute resolution - Final Research Report. *Family Relationships Quarterly*, Issue 3). There is also evidence to suggest that child-inclusive mediation has positive implications for children, with children's overall mental health in the study improving over the year after intervention. However, despite these early but positive indications of the success of child-inclusive interventions, child-inclusive and child-focused interventions informing FRC's also present a barrier to children's participation from a procedural perspective in that children's participation is almost entirely confined to children's consults in FRC's, which in turn will only take place:

- (i) when it is deemed as 'appropriate'
- (ii) if families wish for and consent to the child's participation
- (iii) the FRC has the capacity to facilitate for the child's involvement.

Although the Family Relationships Centres initiative is in its early days, we suggest that child-inclusive models of practice have the potential to exclude the meaningful participation of children in decision making processes, both by 'hiding' the majority of children from the family law processes, thus limiting the potential of children to contribute constructively to decision making processes, and by framing family dispute resolution processes within a rhetorical framework that suggests that the children are central to the processes that determine where they will live and with whom they will have contact.

2. Special Interest Groups

In Australia, an increasingly strong voice from the Father's Rights groups such as the Lone Fathers Association, the Men's Rights Agency, the Men's Confraternity, Fathers Without Rights, the Shared Parenting Council, Dads Against Discrimination has dominated the national political agenda for most of this decade (see Carol Smart, (2004). Equal shares: Rights for fathers or recognition for children? *Critical Social Policy*, 24(4), 484). One casualty of the successful campaign by father's rights groups has been the way in which children's views and perspectives have been predominantly ignored and silenced in the debates that have taken place. In what can only be described as a reversion back to understandings of children as the property of their parents, fathers groups have sought to argue that the family law system should be based upon notions of equality between fathers and mothers in ways that would see the care of children 'shared' between fathers and mothers, in an exclusive equation that is centred on the interests and concerns of parents.

3. Discourses of Rights It is significant that Australian family law policy in the last five years has taken shape in the form of discourses framed in terms of one of the fundamental principles of Australian law, that is, the right of the child to have contact with both parents, subject to contact being in the child's best interests. That children's rights have gained authoritative status in family law discourses, whilst an important recognition of children in the political arena does not make the concept of children as rights bearers either neutral nor unproblematic. In a similar way to discourses of child-inclusive and child-focused family law practice, rights discourses have featured heavily in the debates and policy speeches leading up to the implementation of the new legislation, but in ways that have blocked further dialogue about the role of children in family law decision making. This has taken place by the privileging of children's provision and protection rights over their participation rights. In doing so,

children have been positioned as objects to be ‘shared’ or ‘protected’ and subsequently their participation has been resisted on the grounds that children lack the autonomy, maturity and rationally to participate in the processes that follow when their parents separate. Perhaps even more than ever, children are being submerged in their family identity which presumes that they belong to their parents, in equal shares, unless the child is in need of protection. This dominant discourse not only circumscribes positions for the child to occupy in family law (most often within the rights/welfare polarity) but acts to shut down other, less powerful discourses of the child and of childhood that challenge legal conceptions of children as lacking capacity to participate in legal decision making processes that concern them. The reforms therefore contribute to the perpetuation of conceptions of children as unable to act and to speak on their own behalf, and which confine children to the margins of family law decision making. In practice, this means children are often not envisaged by and are thus prevented from participating in any meaningful way in the decision making processes that surround their parent’s separation (see Davies, p. 131).

Canada

Social, cultural or religious factors: Depending on the child, these factors can have a great impact on whether and how a child participates.

Other contextual factors: Disability, developmental.

Major barriers to children’s participation: See the link www.iicrd.org/familycourt for our recent report on Meaningful Child Participation in BC Family Court Processes that addresses this from the perspective of young people, lawyers, judges and service providers.

Czech Republic

Social, cultural or religious factors: The social and cultural level of the family is important, but there is a very good network of social workers etc in the country.

Other contextual factors: Members of some special ethnic group, for example, Roma people coming from Romania without assurance or domicile.

China

Social, cultural or religious factors: Very much.

Other contextual factors: Ideas from Western society have started to have some influence. There will be more and more influences in the coming years.

Major barriers to children’s participation: Traditionally people don’t value or respect children’s idea and don’t think it is important to listen to them.

England

Social, cultural or religious factors: Strong legacy of Victorian attitudes - that children should be ‘seen not heard’.

Ireland

Social, cultural or religious factors: The Constitution of Ireland very much reflects Catholic ideology, in particular the provisions on the family. These provisions continue to influence the approach of the courts to children’s rights, including the right to participate in proceedings which affect them.

Major barriers to children’s participation: The subordination of children’s rights to those of the family as a whole; this has the effect of prioritising parental rights over

those of the child, with the power of the state to intervene in cases of conflict severely limited as a result.

Israel

Social, cultural or religious factors: These may play an important role - as we do have a system of religious courts (Jewish and Arab). Many religious families litigate in the Rabbinical Courts and many Arab families do as well. The context is very different and child participation seems to be quite rare (but there is no research on this).

Major barriers to children's participation: Judges are quite hesitant about child participation in Family Courts and many of them have been quite reluctant to establish a project in their district.

Japan

Social, cultural or religious factors: We have the social consensus that the opinion of the person whose matter is discussed in the court proceedings should be asked to make the judgement or to resolve the case.

Mexico

Social, cultural or religious factors: It has a positive influence since in some cases the children are socially reintegrated; There is very little participation; Interest in educating children with the culture of rights; It is quite important; They are determinant when decisions are made by authorities; There is still a generalised idea that children should only obey their parents, that they should study, behave well but there is no culture of respect to their rights above all and of the interests of adults.

Other contextual factors: Physical, psychological, economic; Not all the opinions of children are taken into consideration in legal processes. Sometimes parents only use children for their personal purposes without regard to their well-being.

Major barriers to children's participation: None; Lack of civic culture; Lack of personnel capable of applying the law; Age, lack of information by the authorities and society in general about these issues; Ignorance of the law, lack of sensibility towards needs; It is not mandatory to grant the expression of children's opinions; Many people that work or are involved with children have not been trained; It hasn't been given the importance it deserves in society.

New Zealand

Social, cultural or religious factors: Some adults are reluctant to involve children because this is regarded as a burden they should not bear, or because children are deemed too immature and incompetent to participate.

Major barriers to children's participation: Adult attitudes towards children – paternalistic, protectionist ideology. Tension between what adults regard as being in children's best interest vs children's own views.

Nigeria

Social, cultural or religious factors: Church and school are the most influencing factors.

Major barriers to children's participation: Article 13 says the child shall have the right to freedom of expression. The child is the lowest citizen and member of the family and would never be allowed any say. The children would always be the ones to suffer the consequences.

Slovakia

Social, cultural or religious factors: Until now the traditional mode of family pattern, mainly in the country, exists. Slow changes.

Other contextual factors: Over the last 15 years there has been influence from European Union countries.

Major barriers to children's participation: Traditional values – child excluded from important decision in family; Catholic religion.

United States of America

Social, cultural or religious factors: Principal direct influence on participation is whether the case is resolved through private negotiation. Some state laws also prescribe involvement.

Major barriers to children's participation: See above.

New Initiatives being Implemented to Improve Children's Participation in Family Law Matters

Australia: Introduction of Family Relationships Centres; work of Jennifer McIntosh and Laurie Maloney *Children in Focus*; judicial interviewing of children in contested disputes; New mediation processes with court appointed mediator (introduced 2006); Children's Cases Program trial - see www.familycourt.gov.au/html/22004.html; Child Responsive Dispute Resolution Program in Family Law changes.

To what extent have these new initiatives improved children's participation: In Australia the idea of judicial interviewing of children as part of the process of judicial decision making in parenting proceedings is gaining interest, although the practice remains unusual.³ In the only major study in Australia exploring children's perspectives of judicial interviewing, Parkinson, Cashmore and Single have recently examined the initiative of judicial interviewing in a major study involving interviews with 47 children and young people and 90 parents. This study suggests that judicial interviewing, whilst not unproblematic, offers children and young people the opportunity to participate in a way that respects their involvement and what they have to say as important. The study reports that parents and children were in favour of children talking directly to judges and referred to children's right to have a say in decision making processes, with a number of parents and children reporting that judicial interviewing allowed for the truth or 'real picture' to come out without the distortions arising from the parental conflict. Secondly, children who had been the subject of contested proceedings, especially in those matters where there have been allegation of abuse and violence, were more likely to want to speak to a judge, whereas those not the subject of contested proceedings were more likely to want to talk to their parents as a preferred option for being heard.

Canada: (1) 'hear the child' interview practice – a one-on-one interview that an independent third party has with the child, records the child's views verbatim, and

³ Parkinson, P., Cashmore, J., & Single, J. (in press). *Parent's and children's views on talking to judges in parenting disputes in Australia*. See also: Nicholson, A. (Chief Justice, Family Court of Australia) (2002). *Children and young people – The law and human rights*. Sir Richard Blackman Lecture 14 May 2002, Canberra.

www.familycourt.gov.au/presence/resources/file/eb0004059d0aa05/blackburn.pdf.

provides them to the court; (2) IICRD is developing education for key stakeholders that will be piloted in 2007 and roll out begun; (3) www.familieschange.ca

To what extent have these new initiatives improved children's participation: IICRD is doing an evaluation on the 'hear the child' interview practice and results will be available in 2007. Education still too early to report the difference it makes. Have only heard anecdotal response on the website – it 'normalises' divorce for kids. IICRD's work is making an impact. The 'hear the child' interview practice was to be a pilot, but the jurisdiction where it was piloted is wanting to keep it in place, and other jurisdictions are calling for it; Provincial Court of BC has asked IICRD and CLEBC to develop an online deskbook for use by judges on children's participation in BC Family justice systems.

Czech Republic: New methodical for how teachers can explicate the law for children.

To what extent have these new initiatives improved children's participation: During this new activity in schools children may gain more knowledge about the law, but they may openly speak about their own real problems too.

England: New initiatives to help parents and children when the parents separate – see DFES/DCA website on children's needs, parents' responsibilities – parenting plans.

Ireland: There is a proposed referendum to be held in May 2007 with a view to inserting an express recognition of children's rights into the Constitution. It is thought that, if passed, this will have a significant impact upon the rights of the child, including the right to participate in family law proceedings which affect them.

To what extent have these new initiatives improved children's participation: n/a.

Israel: The Legislative Subcommittee on children and their families, which Tamar Morag chaired, has prepared a very comprehensive proposal for the establishment of a child participation unit in the Family Courts as well as a legislative proposal aimed at promoting child participation. A pilot project is to start in the next few months in two districts in which a child representation project will work within the Family Court. The project will be accompanied by research to evaluate its success. The Justice Department has expressed its commitment to the outcomes of this project. Tamar is a member of the implementation committee which is designing the pilot.

To what extent have these new initiatives improved children's participation: Too early to tell.

Mexico: The Law of Justice for Adolescents; the rights of children are fundamental; Reform project to sanction domestic violence; e-network to follow-up cases of domestic violence; new public policies to establish bilingual schools (indigenous languages/Spanish); training courses to have specialised personnel in institutions; In our institution a magazine is produced which includes articles related to the rights of adolescents; active assistance of rehabilitation centres to drug addicts and psychiatric cases; we need to reform civil laws.

New Zealand: Care of Children Act 2004 requires children's views to be ascertained (section 6) and lawyer for the child must meet with the child (section 7), and later explain the parenting order to the child. Several judges are now explaining their decisions to the children or writing their judgment in a child-friendly fashion. Judges

are also being encouraged to meet with the child during the proceedings. The Family Court website includes a section specifically for children. The Family Court has recently piloted non-judge led mediation and started a new Children's Hearing programme.

To what extent have these new initiatives improved children's participation: Much greater respect for children is now very evident in Family Court and a genuine desire to encourage their participation. The Principal Family Court judge is very proactive in promoting children's rights. Despite liberal nature of s6 Care of Children Act, some judges/lawyers still take child's 'age and maturity' into account when giving consideration to the child's views. There is still little opportunity for children to participate in conciliation processes as the emphasis in NZ law has primarily been on enhancing children's participation in contested Family Court proceedings.

Nigeria: Not much is done, but there is a great need in these areas.

To what extent have these new initiatives improved children's participation: Educating the parents and children of the need, and providing laws to govern their involvement. If it is done, the initiative will surely improve children's participation and their respect for their involvement and sense of belonging and security.

Slovakia: awareness raising campaign (UNICEF), educational and informational program for lawyers (our Centre), millennium – self government of pupils in the schools; Law about social and legal protection of children – evaluation of individual plans of education in institution with children living in institution.

To what extent have these new initiatives improved children's participation: Small extent, only the beginning of this process.

United States of America: See web site of the ABA Center on Children and the Law.

To what extent have these new initiatives improved children's participation: For the most part, negligible.

Community-based Support for Children

Table Three depicts the types of community-based support children can be offered when their parents are involved in family law proceedings:

Table Three: Community-based Support for Children

	Yes	No	Don't Know
School-based education / support programs	Australia Czech Republic Israel – but basic Mexico New Zealand – but only on a very limited basis Slovakia USA	Canada Ireland Japan Nigeria	China
Community-based education / support programs	Australia Canada China Mexico USA	Czech Republic Ireland Japan New Zealand Nigeria	Slovakia
Therapeutic counselling	Australia Canada Czech Republic Mexico New Zealand – only if parent pays Slovakia USA	China Ireland Japan Nigeria	
Resources (websites, books etc)	Australia Canada Czech Republic England Israel Mexico New Zealand Slovakia USA	Ireland Japan Nigeria	China
Other forms of support	Canada – a movement is developing in the collaborative law context for child advocates China – money & care from civil society Czech Republic – phone crisis line; social worker support		

Children’s Involvement in Family Law Processes

Children are able to participate in the following conciliation processes (such as counselling and mediation) in their country’s family law system:

Table Four: Children’s Involvement in Family Law Conciliation Processes

	Not allowed	Allowed but not encouraged	Allowed	Allowed & actively encouraged
Counselling through the Court	Czech Republic Ireland Japan New Zealand – although some counsellors do involve children at times Nigeria Slovakia		Australia Canada China Mexico USA	
Mediation	Japan New Zealand Nigeria	Ireland Israel – but rarely practiced – will be discussed in pilot Slovakia	Australia Canada China Mexico USA	Czech Republic
Other forms of conciliation to help parents reach agreement before going to Court	Japan Nigeria	Australia Ireland Israel – but rarely practiced – will be discussed in pilot	Canada China Mexico USA – but uncommon	Czech Republic Slovakia
Other processes			Canada – ‘parenting after separation’ course provides some basic information to parents to support children’s participation	

How Children Participate in Counselling

Australia: In some cases, children may be involved in child-consultations. Jennifer McIntosh suggests that child consultations are child-inclusive in that they aim to:

- consult with children, in a supportive, developmentally-appropriate manner about their experiences of family separation and dispute, and in a way that avoids and removes any burden of decision-making from the child;
- understand and formulate the child’s core experience within a developmental framework;

- validate children's experiences and provide basic information that may assist their present and future coping;
- form a strategic therapeutic loop back to the child's parents by considering with them the essence of their child's experience in a manner that supports them to hear and reflect upon their child's needs;
- ensure that ongoing mediation/litigation and agreements or decisions reflect the psycho-developmental needs of each child;
- support parents to leave the dispute resolution forum on higher rather than on diminished ground with respect to their post separation parenting.

Canada: Children may be counselled by a Family Justice Counsellor, along with their parents.

Czech Republic: Consulting with social worker.

Ireland: Any counselling which does occur is entirely voluntary, and is not normally a matter within the Court's concern.

Mexico: Individual or group psychological therapies; Direct participation; Children are sent to a psychologist; Through the specialised therapeutic support offered by DIF (National System for the Integral Development of the Family); Counselling is conceded when one of the parents solicits this assistance; Children are taken by their parents.

New Zealand: Some counsellors do include children in Family Court counselling sessions – but these 6 free sessions are primarily for the parents and it is not standard practice to include children. Where this happens it is an extension of practice beyond what the law currently provides for, although moves are afoot to amend the legislation and enable children to be included.

How Children Participate in Mediation

Canada: Sometimes mediators seek the views of children affected by mediated decisions.

Czech Republic: A social worker can make contact for the child with a psychologist, paediatric doctor, lawyer etc.

Ireland: There is a State mediation service, however, this service is almost entirely parent-based. Children are not always involved, and where they are brought into the process, it is not on the basis of seeking the child's views as to the arrangements thereby allowing participation by the child, but rather consists exclusively of the mediator meeting with the child after the parents have reached an agreement to inform the child of the agreement reached. There is therefore effectively no process by which the child can be an active participant as to the decisions ultimately reached.

Mexico: Conciliation with their parents; Direct participation; The child's opinion is taken into account; Children can attend; It is offered by the Office of the Defense of Minor, Women and the Family; Children do not participate - only parents participate.

New Zealand: Mediation is judge-led within the Family Court and children are not present. A recent non-judge-led mediation pilot in 4 Family Court districts did allow for children's involvement but where this did occur it was brief.

Slovakia: Juridical regulation, state offices, NGO.

USA: In child custody cases, in particular, children's views may be represented through a court-appointed attorney who represents the child's interests. A child may also attend mediation sessions and provide his or her opinions where the mediator and the child's attorney deem such participation appropriate. This decision is generally based on the child's age and maturity. This is also dependent on wishes of the parties.

How Children Participate in Other Forms of Conciliation

Canada: Parents are provided with information at the 'parenting after separation' course to equip them to discuss the separation/divorce with their children. Some children will also participate in Family Group Conferencing.

Czech Republic: Family therapy.

Mexico: At schools or privately.

Slovakia: Juridical regulation.

Legal Representation for Children Involved in Family Law Cases

Table Five indicates whether lawyers are appointed to represent children in private and/or public family law proceedings:

Table Five: Legal Representation of Children

	Never	Occasionally	Sometimes	Always
Private Family Law Proceedings	England Japan Nigeria	Australia Canada Ireland USA	China Israel	Czech Republic Mexico New Zealand Slovakia
Public Family Law Proceedings	China Japan Nigeria	Canada Israel	Ireland	Australia Czech Republic England Mexico New Zealand Slovakia USA – if the case goes to Court

Appointment of a Lawyer to Represent a Child

Australia

Who selects the lawyer? The Court; or legal aid.

Who funds the lawyer? Family Court (Federal) or Legal Aid Commission of Australia (State).

What is the lawyer's role? Separate representation for children; Independent children's lawyers (ICL's) are required under s68LA to form and act on an independent view of what they believe to be in the child's best interests.

Canada

Who selects the lawyer? Private - child, friend/relative of child; Public - generally the state through the Legal Services Society.

Who funds the lawyer? Private - private funds; Public - Ministry of Attorney General.

What is the lawyer's role? It is not always clear whether they represent what they think is in the child's best interest or the views of the child – there are no practice standards in place other than a general duty to the client; professional responsibility.

China

Who selects the lawyer? Court/guardian.

Who funds the lawyer? Government/guardian.

What is the lawyer's role? To represent children's rights and interests.

Czech Republic

Who selects the lawyer? The Court.

Who funds the lawyer? The state.

What is the lawyer's role? To defend the child's interests.

England

Who selects the lawyer? Appointed by the court, or the children's guardian.

Who funds the lawyer? Legal Aid.

What is the lawyer's role? To represent the interests of the child - they generally work with the children's guardian, but may take instructions direct from older/competent children.

Ireland

Who selects the lawyer? A guardian ad litem, who will represent the child in the proceedings, will choose the lawyer.

Who funds the lawyer? The State will pay for the services of both the guardian ad litem and the lawyer representing him or her.

What is the lawyer's role? To ascertain the child's views on the matters at issue and present those to the court; to present any other relevant information concerning the child to the court.

Israel

Who selects the lawyer? The Court.

Who funds the lawyer? Legal aid and NGOs.

What is the lawyer's role? Depending on their appointment - GAL or child representation.

Mexico

Who selects the lawyer? The state; The judge; If they don't have a private lawyer chosen by parents, they are assigned a public defendant.

Who funds the lawyer? The state.

What is the lawyer's role? To defend the child; To watch for the child's interests; To be a social representative; To represent the minor; To represent the interests of the child.

New Zealand

Who selects the lawyer? The Family Court.

Who funds the lawyer? The Family Court.

What is the lawyer's role? To meet with the child and provide the child with an opportunity to express their views. To advocate the child's views in the Family Court and the child's welfare and best interests.

Slovakia

Who selects the lawyer? The Court.

Who funds the lawyer? The state.

What is the lawyer's role? To represent the interests of the child.

United States of America

Who selects the lawyer? The Court. There are also lay GALs.

Who funds the lawyer? The state.

What is the lawyer's role? To advocate the child's interests to the court.

Are Lawyers Required to Meet with the Child they have been Appointed to Represent?

Yes

Czech Republic: But it depends on the age of the child. Too small children are only in contact with the social worker or psychologist.

England: Yes.

Mexico: Only in audiences.

New Zealand: This is a requirement of the Care of Children Act 2004 unless exceptional circumstances apply.

No

Australia: Although lawyers are strongly encouraged to meet with the child.

Israel: There is no official requirement, but lawyers almost always meet with the child.

Lawyers' Advocacy to the Court about the Child

Each country was asked to indicate whether or not the lawyers appointed to represent children were required to advocate the child's views to the Court and/or the child's welfare / best interests to the Court:

Australia

Advocate the child's views to the Court: Lawyers must put the views of the child in relation to the matters before the court (s68LA (5)); ICL's are required not to advocate the children's views to the court, so much as to take their views into account in the independent determination of what, in the lawyer's view, is in the child's best interests.

Advocate the child's welfare / best interests to the Court: Independent children's lawyers must advocate for the best interest of the child, rather than on the child's instructions; The child's views and best interests don't always match and this is still a contested area.

Canada

Advocate the child's views to the Court: It is not always clear whether they represent what they think is in the child's best interest or the views of the child – there are no practice standards in place other than general duty to the client professional responsibility.

Advocate the child's welfare / best interests to the Court: see above.

England

Advocate the child's views to the Court: Yes - as much as lawyers do!! (i.e. if it seems 'reasonable' to them).

Advocate the child's welfare / best interests to the Court: Yes - in practice; in theory they will represent the child's wishes.

Ireland

Advocate the child's views to the Court: This is usually done by way of a written report that is circulated to all parties and the judge in advance, although oral evidence can also be given.

Advocate the child's welfare / best interests to the Court: In addition to conveying the child's wishes to the court, the guardian ad litem will also make representations based on what they regard as being in the child's best interests.

Israel

Advocate the child's views to the Court: If appointed as Lawyer and not as Guardian Ad Litem.

Mexico

Advocate the child's views to the Court: Yes – It happens very frequently; But they plead well for the interests of the parents.

Advocate the child's welfare / best interests to the Court: Yes - In every aspect in which we intervene; Not always.

New Zealand

Advocate the child's views to the Court: Yes

Advocate the child's welfare / best interests to the Court: Yes - a hybrid role is required of lawyer for the child.

How Lawyers Report to the Court

Australia: ICL's make submissions to the Court. The legislation makes it clear that lawyers should not feel inhibited in making a submission about what orders the Court should make (s68LA(3)).

Canada: If they are added as a party, as any other party through written or verbal submissions as the context requires.

China: They submit their opinion report to the Court, express his/her ideas on the Court, argue with the other party.

Czech Republic: Directly as an ordinary advocate.

England: The children's guardian writes the report – the lawyer is simply an advocate.

Ireland: This is usually done by way of a written report which is circulated to all parties and the judge in advance, although oral evidence can also be given.

Israel: They argue before the Court.

Mexico: By being present at the litigation audiences and by written promotions; Written report during the process; In a written report.

New Zealand: Through a written report to the Family Court, plus they attend the hearing and are able to cross-examine witnesses.

Slovakia: Personally.

United States of America: Primarily through argument and presentation of evidence.

Lawyers' Influence on the Court's Decisions

Each country was asked to rate how influential they thought that lawyers' appointed to represent children were on the Court's decisions:

Table Six: Influence of lawyers appointed to represent children on the Court's decisions

Not at all	Somewhat	Quite	Very	Don't know
	China England Ireland Slovakia	Mexico New Zealand	Australia (although can be variable depending on Registrar/Judge/Magistrate and case circumstances) Czech Republic Israel USA (sometimes substantial)	Canada Nigeria

Qualifications/Training for Lawyers to Help them Talk with Children

Australia: Lawyers representing children do not need specific qualifications other than a legal qualification and approval by the relevant state Supreme Court as being entitled to practice as either a solicitor or a barrister. In 2004 the Legal Aid Commission NSW established a panel for Independent Children's Lawyer. Legal Aid lawyers apply for appointment to the new panel to act as Independent Children's Lawyers; In NSW care and protection lawyers have to receive specialist training.

Canada: Not much. In our "Hear the Child" interviews, all interviewers had previous mediation training, and were provided with training in talking to children, putting children at ease, general developmental info on children, an interview structure to follow, and recommended instructions to provide to parents.

China: No special requests on their qualification/training. Most of them are warm-hearted persons. There have been some training for this group, but it's not compulsory.

Czech Republic: They meet the child with a social worker or psychologist in more difficult cases.

England: Have to be members of the Law Society 'Children's Panel'.

Ireland: There is no formal training available for lawyers representing children.

Israel: Not specified in the law. Most of them are lawyers of NGOs and have much knowledge on children's issues.

Mexico: Specialised Public prosecutors, attorneys, lawyers; No additional training; They do not have the professional qualification for treating children.

New Zealand: Lawyers have to be very experienced in family law work and attend a 3 day training programme which is a prerequisite for their consideration for selection by an interdisciplinary panel for inclusion on the list of lawyers able to represent children.

Slovakia: Psychology, social work.

Children's Contact With Judges

Table Seven outlines the degree to which children can have contact with the judge involved in their family's case, while Table Eight indicates how common it is for children to have such contact in each country:

Table Seven: Children's contact with Judges

Not allowed	Allowed but not encouraged	Allowed	Allowed & actively encouraged	Compulsory	Don't know
Czech Republic Nigeria	Canada China England Ireland Slovakia	Australia Israel Japan Mexico USA	New Zealand		

Table Eight: How common it is for children to have contact with the Judge involved in their family's case

Not at all	Slightly	Somewhat	Quite	Very	Don't know
Canada Czech Republic Nigeria	Australia China England Ireland Slovakia USA – depends on child's age & whether the case is contested; usually not in camera	Israel Japan New Zealand	Mexico		Nigeria

Children's Means of Communication with the Judge

Australia

Can children write to the judge? The Family and Child Specialist will provide advice to the Judge about whether or not the child wishes to speak to the Judge and the arrangements that should be put in place to enable that to occur. Unsure whether this extends to request that the child write to the judge.

Can children meet with the judge? Yes – see above.

Canada

Can children write to the judge? Sometimes.

Can children meet with the judge? Sometimes.

England

Can children write to the judge? Depends on the nature of the case.

Can children meet with the judge? Depends on the nature of the case.

Ireland

Can children write to the judge? There is no specific provision preventing this from occurring, but if it occurs at all it is within the discretion of the individual judge and does not occur with any great frequency.

Can children meet with the judge? Occasionally, an individual judge might seek to have the child brought to court for the purpose of meeting with the child. Again, there is no provision/guidelines regulating the circumstances where this will occur, and it would not be a particularly frequent event.

Mexico

Can children write to the judge? They can, but it is not accustomed since they can have direct contact with the judge; Yes, but they do it directly in a session with the judge; It helps the judge to understand the child's legal situation.

Can children meet with the judge? Frequently; It enables the identification of the different problems of the minor.

New Zealand

Can children write to the judge? Yes

Can children meet with the judge? Yes – judicial interviews with children are becoming increasingly more common now.

Slovakia

Can children meet with the judge? In the court, out of court, according to the situation and the child's age.

Meetings between Judges and Children

Australia

Where does the child meet the judge? The practice of judicial interviewing is rarely utilised in Australia, but where it does happen it is in the judge's chambers.

What is the purpose of the meeting? Hearing the children's voices.

Who else is present? The Judge may direct that other persons, such as the Family and Child Specialist and/or the Child Representative, be present at such an interview.

How is the meeting recorded?

What does the judge do with the information children provide? The Children's Cases Program Practice Direction 5.20 states that it is open to the judge to act on the views expressed by the child.

How much of the information is disclosed to parents? The Children's Cases Program Practice Direction 5.21 states that the Judge will provide a report through a Family and Child Specialist or some other means of the outcome of any child interview. The content and method of provision of such report is a matter solely within the discretion of the Judge and will be determined having regard to the particular circumstances of the case, the best interest of the child(ren) and the interests of fairness to the parties. However, note the following comment by Parkinson, Cashmore and Single (in press): "However, the view that a judge does not have an obligation to disclose the basis on which he or she relies for the purposes of making a decision in a parenting dispute is probably a minority position. Within the common law adversarial system, at least as understood in Australia, it is not possible to have a confidential communication to a judge of which the parties, the parents, are not aware. A judicial officer can base his or her decision only on the material, information and evidence which has been

presented to the judge in a way which all those involved have had an opportunity to respond to, comment on, contradict or correct as the case may be. For a judge to be influenced in his or her decision by a private communication, the content of which the parents are unaware, would violate fundamental principles of due process and fairness in the adversarial process.”

Canada

Where does the child meet the judge? Judge’s chambers, judicial case conference, at trial (in rare exceptions).

What is the purpose of the meeting? To receive input from the child on what might happen to them.

Who else is present? Sometimes a clerk, sometimes no-one, sometimes counsel for the child.

How is the meeting recorded? Sometimes notes are taken, sometimes these form part of the record.

What does the judge do with the information children provide? Not known for sure. Some hear from the child in presence of clerk and do not provide a copy of exactly what child said to parties, but give them a general report; in other cases views of child shared with judge and parties and factored into decision.

How much of the information is disclosed to parents? See above.

China

Where does the child meet the judge? Family. School. Court.

What is the purpose of the meeting? To investigate the case further and to understand the children’s ideas.

Who else is present? No specific regulation.

How is the meeting recorded? Notes usually.

What does the judge do with the information children provide? Most of them will respect children’s ideas but they will have to further investigation before their final decision.

How much of the information is disclosed to parents? Don’t know.

England

Where does the child meet the judge? The key factor here is the nature of case – in a private family law case a meeting would be most unlikely and would be resisted by Judges and lawyers; in care proceedings, the child could attend court, I think a private meeting with a judge would be unacceptable however (and even attendance at court is unusual). However, at an adoption hearing the child would normally meet the judge although not by themselves.

Ireland

Where does the child meet the judge? In the judge’s chambers/private office.

What is the purpose of the meeting? To discuss in general with the child the issues which are before the court, and to elicit the views of the child on those issues. In particular, the judge will often seek to determine whether either parent is seeking to influence the child’s views.

Who else is present? The judge’s Registrar will be present as an independent observer, but the parties and their legal representatives are not permitted to be present.

How is the meeting recorded? The judge may make notes, although this is not always done. Any recording that is made will not generally be made available to any of the parties, although a copy of such notes might be placed within the court file.

What does the judge do with the information children provide? The judge will usually attempt to factor into his or her decision the views of the child. Very frequently, the judge will be seeking to ascertain whether the child's wishes are being influenced by either parent, which can have a significant impact on the final decision in the case.

How much of the information is disclosed to parents? The judge might refer in outline to the information disclosed, but there is no obligation to make full disclosure, and the judge will often seek to protect any information given in confidence by the child, save where that might present a legal difficulty as regards the right to fair procedures.

Israel

Where does the child meet the judge? In chambers - or in the social work unit.

What is the purpose of the meeting? To talk to and hear the child.

Who else is present? Usually a social worker from the social work unit.

How is the meeting recorded? No notes/transcript - just a general report by the judge.

What does the judge do with the information children provide? He usually writes a short summary - not in the specific words of the child but with the general impressions from the meeting.

How much of the information is disclosed to parents? Not all, but a general outline. This is not written anywhere but is common practice.

Japan

Where does the child meet the judge? In the Family Court.

What is the purpose of the meeting? To ask the child's opinion with regard to custody matters.

Who else is present? Usually the Family Court probation officer is present.

How is the meeting recorded? Notes are made by the Family Court probation officer.

What does the judge do with the information children provide? The judge will take account of the information when he has to understand the opinion of the child.

How much of the information is disclosed to parents? It depends on the will of the child. The judge will not disclose when disclosure is not good for the child.

Mexico

Where does the child meet the judge? At court; In the judge's office; In an exclusive area for minors.

What is the purpose of the meeting? To take into account what the child desires and to know the problem; To know, protect and watch the situation and the state of the minor; Open dialogue with the child to understand his/her situation; To know the child's opinion; To observe the behaviour and reactions of the minor as well as to learn his/her version of what happened and his opinion; To allow the child to express his/her opinion.

Who else is present? A representative of the Public Ministry (public prosecutor office) and his/her legal representative; They are alone; His/her attorney and parents; The secretary of court; Sometimes only the judge is present and other times they are with whoever has custody depending on the age of the child.

How is the meeting recorded? Written notes; Official internal annotations; Transcription of the session; An audience is raised and notes are taken by the judge; A secretary of agreements records the meeting.

What does the judge do with the information children provide? It is taken into consideration for his (her) resolution; He (she) evaluates it; He (she) takes it into consideration; It is an input for the evaluation of the whole case (the proofs, what can be observed in the minor and the opinions of the minor); Sometimes the judge takes it into consideration but other times they do not; It depends on the criterion of the judge.
How much of the information is disclosed to parents? 90%; Frequently; Widely; When it is solicited; The Judge has an interview with the minor and has the option to communicate or not the result of the interview according to the circumstances of the case; It depends on the judge's criterion to share the information or not.

New Zealand

Where does the child meet the judge? In the judge's chambers, private office, or in the Family Courtroom when recording equipment is required to tape the interview with the child.

What is the purpose of the meeting? For judges to get to know the child, to get a clearer understanding of the child's views about their family situation, to see how congruent the child's views are with the evidence of these presented by other sources (such as parents, lawyer for child and the report writer), and for the child to be respected as a person significantly affected by the dispute between their parents.

Who else is present? Usually the child's legal representative (lawyer for the child); sometimes the court registrar.

How is the meeting recorded? The judge will write notes; increasingly now the discussion is taped in case the matter is subsequently appealed to a higher court.

What does the judge do with the information children provide? Uses it, along with all the other evidence, to assist him/her in arriving at a decision which promotes the welfare and best interests of the child.

How much of the information is disclosed to parents? The Judge uses his/her discretion about what to disclose to the parents. Usually a general overview of what has been said is disclosed, but the judge would not reveal information the child wanted to be kept confidential or information which the judge thought might lead to detrimental consequences for the child. Some Family Court judges are, however, now recording their conversations with children as they are concerned about the fact these private meetings do not form part of the evidence directly before the court and are therefore not open to cross examination. They also feel that these recordings are invaluable should the case go on appeal to a higher court.

Slovakia

Where does the child meet the judge? In the court, out of court.

What is the purpose of the meeting? To obtain the opinion of the child.

Who else is present? Advocate.

How is the meeting recorded? By notes.

What does the judge do with the information children provide? Take it in court, he/she can start the proceedings.

How much of the information is disclosed to parents? They are disclosed.

United States of America

What does the judge do with the information children provide? Depends on child's age. (Use in testimony)

Judges' Qualifications/Training to Help them Talk with Children

Canada: Not much.

China: No special requests on it. According to our law, judges for children's cases must be good at communicating with children. But there is no specification on their qualifications or training.

Czech Republic: The judge does not have this qualification, but the social worker does.

Ireland: There are no formal qualifications or training provided or required of judges to help them talk with children.

Israel: There have been several trainings for judges in recent years on the matter. Yet not all judges have participated.

Japan: We don't have such a special training course.

Mexico: Not enough since they are only attorneys; They do not have specialised information to communicate with children; We ignore that.

New Zealand: Judges appointed to the Family Court bench have to have a special aptitude and personality for this work. There is no formal training programme, but a two day seminar was held in February 2007 to upskill all Family Court judges on how to interview children (as this role is now becoming much more routinely practiced).

Slovakia: Until now not all of the judges have a special training (socio-psychology).

Children's Contact with Other Court-Appointed Professionals

Table Nine depicts the range of Court-appointed professionals with whom children may come into contact with during their family's court proceedings:

Table Nine: Children's Contact with Court-appointed Professionals

	Never	Occasionally	Sometimes	Often	Always
Psychologists	Nigeria	China Mexico USA	Ireland Israel	Australia Canada Czech Republic England New Zealand Slovakia	
Social Workers	Nigeria	China Mexico USA	Australia Canada England – in addition to the local authority worker in public law cases Ireland	Israel New Zealand – in care & protection cases	Czech Republic Slovakia
Cultural experts	Canada Ireland Israel Mexico Nigeria Slovakia USA – virtually never	Australia Canada China	Czech Republic England New Zealand		
Paediatricians	Nigeria	Australia China Ireland Israel Mexico New Zealand USA	Canada England Slovakia	Czech Republic	
Psychiatrists	Nigeria	China New Zealand Ireland Israel Mexico USA	Czech Republic England Slovakia	Australia	
Others			Canada – Family Justice Counsellors		Japan – Family Court probation officer

The Role of Court-appointed Professionals

Australia

Role in relation to children and the court: To provide the court with relevant information as the court thinks desirable (section 62G(10)).

How they report to the court: Report (Section 62G(2)). R 15.03(4) provides for the court to make an order requiring a party or the child to attend for the purposes of preparing a report and for the oral examination of the person who prepared the report.

Canada

Role in relation to children and the court: Generally appointed to assess/examine the child.

How they report to the court: Prepare a written report for the court, but they may be cross examined on their report if the matter goes to trial.

China

Role in relation to children and the court: As juror. We have a juror system in China. All of the professionals or other civilians could apply to be jurors but the court will select and train them. Only in a very few courts are they appointed as investigators to report on the child's background.

Czech Republic

Role in relation to children and the court: To be in direct contact with the child, to help facilitate the process for the child, and to respect the welfare of the child. To protect the child against the negative influences of this situation and defend the best interests of the child.

How they report to the court: Directly before the court.

England

Role in relation to children and the court: Children's Guardian – social work trained – crucial in public law cases

How they report to the court: Written report(s) and verbal evidence. Crucial role in out of court negotiations.

Ireland

Role in relation to children and the court: Their role is to report to court as to the issues in the proceedings, and very frequently to represent the views of the child on those issues, and also to consider whether those views are consistent with the child's best interests or welfare. The psychologist will interview the child, generally on a number of occasions, discuss with the child the issues at the heart of the proceedings and seek to establish the child's views on those issues and any concerns the child might have.

How they report to the court: Reports are primarily in the form of written reports, although such persons may also be required to give evidence and be examined and cross-examined as to the content of their reports and their findings and recommendations.

Israel

Role in relation to children and the court: Mainly to evaluate the child's best interest. Welfare officers meet with the child and include his/her views in the written report.

There is no official requirement to meet with the child and this is a rather new practice. The court's social workers meet with the parents and the child and if the child wishes to participate will assist the judge in hearing the child.

How they report to the court: In a written report - and then may testify in court.

Japan

Role in relation to children and the court: To support the child and the participants of the family affairs proceedings. To make research about the child's mind and the case.

How they report to the court: They write reports to the court.

Mexico

Role in relation to children and the court: To give support to the authority; To educate; Social Representative; To give the expert point of view on the subject solicited by the judge; To assist the minor that is in the middle of a family situation that is not beneficial; The psychologist intervenes by requirement of the judge, only observing or participating at the audience to communicate with children so that afterwards he/she may be able to give a professional opinion; To identify child's problems; Psychological assessment; To give them therapies, to listen to them; To give them permanent support; To follow up administrative processes.

How they report to the court: Through a written report; A specialised report; Integral diagnosis and advances of the activities; A report is made when it is solicited by the parties or by the judge; They report to DIF (National System for the Integral Development of Family).

New Zealand

Role in relation to children and the court: To fulfil the brief provided by the Family Court which usually involves an assessment of such issues as attachment, family relationships, parental competence etc. They provide expert/specialist advice to the court on the child and family dynamics.

How they report to the court: Written report, and then they appear in the Family Court and can be cross-examined.

Slovakia

Role in relation to children and the court: Consultation, help for the child, information for the court.

How they report to the court: Personally or report, expert judgement.

United States of America

Role in relation to children and the court: Provide specialised knowledge relevant to the case.

How they report to the court: Written report, deposition, testimony.

The Court-appointed Professional with the Most Contact with Children

Table Ten indicates the Court-appointed professional most commonly coming into contact with children whose families are involved in family law proceedings:

Table Ten: Court-appointed professional most commonly in contact with children

Psychologists	Social Workers	Children’s Guardian	Family Court Probation Officers	Lawyer / Lay Guardian ad Litem	Jurors
Australia - Family Report Writer Canada Ireland - pursuant to s.47 of the Family Law Act 1995 New Zealand Mexico	Czech Republic Israel –social workers who write evaluations (welfare officers); & social workers who work in the court’s social work unit	England	Japan	USA – representation of the child	China - they must have a certain education level and be warm-hearted and responsible persons

Court-appointed Professionals’ Influence on the Court’s Decisions

Each country was asked to rate how influential they thought that Court-appointed professionals were on the Court’s decisions:

Table Eleven: Influence of Court-appointed professionals on the Court’s decisions

Not at all	Somewhat	Quite	Very
	China	Canada Ireland Mexico New Zealand	Australia Czech Republic England Israel Japan Slovakia USA (often substantial)

Other Comments

Canada: We have been working on the Meaningful Child Participation in Family Justice Processes work for over three years, and will likely continue this work for the next three years as a roll-out of children's participation evolves. Our key partners on this works include Chief Judge of the Provincial Court, experienced family law lawyers, service providers and key Government representatives. We would be interested to share our learning with others and vice versa. If you host a conference we would be pleased to present some of our work. I would welcome to opportunity to collaborate with you and others as we continue to move the work forward here and possibly elsewhere.

England: Interesting survey – made me realise some big gaps in my knowledge.

Ireland: Ireland is a jurisdiction which has yet to properly grasp the full implications of a rights regime for children, and the proper role of children in proceedings which affect them. There is a growing awareness amongst legal practitioners and childcare experts of the need for reform of Irish law, and the growing lobby for change is already yielding some results, with the proposed Constitutional amendment on children's rights being held in May 2007. Whilst a constitutional acknowledgement of the rights of the child might go some way to redressing the imbalance which currently exists in Irish law in this area, there remains much work to be done at a lower level. As is evident from the above, the right of the child to participate in proceedings which affect them are limited, and where such participation is permitted it is very much on an ad hoc basis, at the discretion of the individual judge. Ireland has much to learn from other jurisdictions which have successfully implemented practices and procedures which promote the rights of the child to be involved in proceedings which will impact on them, and the opportunities for comparative studies in this regard are clear.

Israel: We are working these very days on designing our pilot project on child participation in divorce proceedings I would be very happy to receive any information others have on the matter which may assist us in designing the project. I would love to learn more about the study group and how I may take part in it.

Mexico: This is an opportunity to give an opinion of the minors; To open up the audience to children in order to identify their priorities; It would be important in our state that emphasis should be made on the participation of minors in all processes; There is a need for greater participation of children and that their opinions, what they feel and express really need to be taken into account, as well as to sensitize the population in order to respect them; We would like to know more about Childwatch.

New Zealand: Looking forward to seeing this study group develop during 2007.

Slovakia: The Childwatch study group should have representatives from all continents; representatives of children; various professions – lawyers, social workers, psychologist, sociologist, pedagogist etc.

United States of America: The answers to this survey are often grossly oversimplified. They also vary by jurisdiction and by the child's age. Private bargaining is by far the most common means of resolving disputes.

Additional Information Provided

Czech Republic: Provided five appendices.

1. Publications or researchers;
2. NGOs in our country;
3. Contracts about children law in the Czech Republic;
4. Chapter being sent to Greenwood publication (actually in press);
5. Presentation for Hanoi conference about foster families in the Czech Republic.

Canada: International Institute for Child Rights and Development (IICRD). (2006). *Through the eyes of young people: Meaningful child participation in BC Family Court Processes*. This report is also obtainable from www.iicrd.org/familycourt.

England: Paper by Lord Justice Wall to the conference: *Opening Up the Family Courts: An open or closed case* (on 30 October 2006).

Nigeria: Rahmatian, Andreas. (1996). Termination of marriage in Nigerian family laws: The need for reform and the relevance of the Tanzanian experience. *International Journal of law, Policy and the Family*, 10, 281-316.

United States of America: Melton, Gary. B. (2006). *Background for a General Comment on the right to participate: Article 12 and related provisions of the Convention on the Rights of the Child*. Prepared for use by the UN Committee on the Rights of the Child.

APPENDIX ONE

Children and the Law Project

Letter to All Childwatch International Key Institutions

Introduction

Earlier this year Childwatch International provided a small grant to fund a meeting between staff from the Children's Issues Centre (University of Otago, New Zealand) and the Centre for Children and Young People (Southern Cross University, Australia) to develop a project concerning Children and the Law. It was proposed that a study group and an associated research project be developed to explore how children's rights are respected in law across the different countries which are members of the Childwatch International Research Network.

Our joint meeting took place in Australia on 2 May 2006. We decided that a **Survey on Children's Participation in Family Law Proceedings** would be a realistic starting point for this project as it would:

- be easily manageable within the current resources of our Centres;
- be able to be undertaken during 2006; and
- enable all Childwatch Key Institutions to be invited to participate in a collaborative study.

The Survey

The questionnaire we have developed is enclosed with this letter. We do hope that your institution will be willing to complete it. It will take about 30-45 minutes of your time. If you have someone on staff with an interest in and knowledge of legal issues then they would be ideally suited to answer the questions. If you do not have such a person, then you could either fill out the questionnaire to the best of your ability, or alternately ask a colleague within your university with legal knowledge to complete it on your behalf.

An **electronic copy** of the questionnaire is available as well. If you would prefer to receive this, then please email megan.gollop@stonebow.otago.ac.nz and ask for a copy to be emailed to you.

Once you have completed the questionnaire, please **return** it to Nicola Taylor, Children's Issues Centre, University of Otago, PO Box 56, Dunedin, New Zealand **by 30 October 2006**.

Future Steps

Our two Centres will collate the results from the questionnaires and write up the

findings. A copy of the research report will then be sent to you and to the Childwatch secretariat. This will provide a snapshot of how various countries currently facilitate children's participation in family law proceedings, and will hopefully also enable us to identify ways of developing the next stage of the project. Anyone with a specific interest in Children and the Law should let us know if they would like to be part of a **study group** to help progress this topic further. If the questionnaire phase has been successful, we plan to seek funding from Childwatch for a meeting of the study group where the findings can be further discussed and plans made for an international empirical research project and publication.

Childwatch's Executive Committee is very positive about this project. They especially like the way it has the potential to involve the entire network working together on a particular topic. Hopefully, you may have seen the project mentioned in Pernille Skotte's recent Newsletter. Financial support from Childwatch will depend on the feedback and interest from each Key Institution to this first questionnaire stage of the project. Childwatch has told us that a strong presence of Key Institutions from the majority world in the project will greatly strengthen our application for networking support in 2007. So we encourage as many of you as possible to participate in the project.

What To Do Now

1. Complete (or arrange for a colleague to complete) the enclosed questionnaire on Children's Participation in Family Law Proceedings;
2. Return this to the Children's Issues Centre by 30 October 2006;
3. Let us know if your Key Institution is interested in being a member of a Childwatch study group with a specific interest in child law issues.

Later this year we will take responsibility for preparing an application to Childwatch International for a 2007 meeting of the Children and the Law Study Group comprising our two Centres and other Key Institutions who, through the survey exercise, have expressed an interest in working collaboratively on issues relating to children's participation in family law proceedings. Planning for the future development of this project would occur at this meeting, with centres then responsible for finding research grants within their own countries for any empirical work or publications.

We look forward to your involvement in this project.

Kind regards

Nicola Taylor
Children's Issues Centre
New Zealand

Anne Graham
Centre for Children and Young People
Australia

APPENDIX TWO: Childwatch International Research Network

Children and the Law Project: Survey about Children's Participation in Family Law Proceedings

All Key Institutions in the Childwatch International Research Network are asked to **complete and return this survey – by 15 September 2006:**
Return to: Dr Nicola Taylor, Children's Issues Centre, University of Otago,
 PO Box 56, Dunedin, New Zealand

About Your Key Institution

Name:

Mailing Address:

Main Activities:

Country/State represented:

How interested is your Institution in issues about children and the law? (*circle one answer*)

Not at all interested	1		3	Quite interested
Slightly interested	2		4	Very interested

How involved is your Institution in the following activities? (*circle one answer for each*)

	Not at all	Slightly	Quite	Very
Providing legal expertise on issues about children and the law	1	2	3	4
Undertaking research projects on issues about children and the law	1	2	3	4
Writing publications on issues about children and the law	1	2	3	4
Teaching courses on issues about children and the law	1	2	3	4
Advocating on issues about children and the law (eg: submissions to inquiries/test cases)	1	2	3	4

Is your Institution interested in contributing to a ChildWatch Study Group about Children and the Law? (circle one answer)

Yes 1 → Are you the best contact person? Yes 1 → **Go to next question**

No 2 → **Who is:** Name:

Position
:

No 2 → **Go to Section 2**

Email:

Please identify the kind of contribution your Institution could make to this Study Group and/or any ideas you have about its focus and role?

About You – the person completing this survey

Name:

Job Title:

Main Duties:

Email Address:

How interested are you in issues about children and the law? (circle one answer)

Not at all interested	1	Quite interested	3
Slightly interested	2	Very interested	4

How involved are you in the following activities? (circle one answer for each)

	Not at all	Slightly	Quite	Very
Providing legal expertise on issues about children and the law	1	2	3	4
Undertaking research projects on issues about children and the law	1	2	3	4
Writing publications on issues about children and the law	1	2	3	4
Teaching courses on issues about children and the law	1	2	3	4
Advocating on issues about children and the law (eg: submissions to inquiries/test cases)	1	2	3	4

About Your Country/State – and its social context for children

How would you describe your country/state's views on each of the following:

Children's place within the broader society?	
Children's rights?	
Children's participation in society?	
The UN Convention on the Rights of the Child (UNCRC)?	

Are there any specific references to the following in your country/state's legislation?

UNCRC, generally	<i>Circle one:</i> Yes / No / Don't know	<i>Comment:</i>
Article 12 of UNCRC	<i>Circle one:</i> Yes / No / Don't know	<i>Comment:</i>

About Your Country/State – and children's participation in family law matters

How would you describe your country/state's processes for resolving each of the following – and the ways children can participate in the proceedings?

	Processes for Resolving	Ways Children can Participate
Private law proceedings - disputes between parents/guardians (ie: guardianship, residence/custody, contact/access/visitation following parental separation)		
Public law proceedings –		

disputes between families and the state (ie: care and protection, child abuse, neglect, abandonment)

Overall, how much opportunity is there for children to participate in family law proceedings – in your country/state? (circle one answer)

- | | | | |
|-------------|---|--------------|---|
| Very little | 1 | Quite a lot | 3 |
| Some | 2 | A great deal | 4 |

Please outline any policies, laws, statutes or key cases concerning children’s participation in family law proceedings – in your country/state:

Policies:

Laws / Statutes:

Key Cases:

How influential has the UNCRC been in these policies, etc?	Circle one: Not at all / Slightly / Quite a lot / Very	Comment:

How do the following factors influence children’s participation in family law matters – in your country/state?

Social, cultural or religious factors:

Other contextual factors:

What are the major barriers to children’s participation in family law matters – in your country/state?

Please describe any research that has been undertaken – in your country/state – about children’s participation in family law matters. (please include reference details or, if possible, a copy of the publications)

Please describe any new initiatives being implemented – in your country/state – to improve children’s participation in family law matters. (eg: child-inclusive/child-responsive programs; lawyers/judges personally explaining decisions to children and the effect of any court orders on them; audio-visual resources, websites, etc for children about family law issues)

To what extent have these new initiatives improved children’s participation and/or respect for their involvement?

Please give an example of an initiative where this is evident?

About Supporting Children with Parents Involved in Family Law Proceedings

Are any of the following offered to children in this situation? (circle one answer for each)

	No	Not sure – think not	Not sure – think yes	Yes	No idea
School-based education/support programs	1	2	3	4	5
Community-based education/support programs	1	2	3	4	5
Counselling	1	2	3	4	5
Resources (websites, books, etc)	1	2	3	4	5
Other forms of support – <i>please specify:</i> _____	1	2	3	4	5

How is children's participation in the following processes viewed? (circle one answer for each)

	Not allowed	Allowed but not encouraged	Actively encouraged	Compulsory	No idea
Counselling	1	2	3	4	5
Mediation	1	2	3	4	5
Other forms of conciliation (to help parents reach agreement before going to court)	1	2	3	4	5
Other processes – <i>please specify:</i> _____	1	2	3	4	5

Where it is allowed, how do children participate in the following processes?

Counselling	
Mediation	
Other forms of conciliation	
Other processes	

About Legal Representation for Children involved in Family Law Cases

Are lawyers appointed to represent children in the following? (circle one answer for each)

	Never	Occasionally	Often	Always	No idea
Private family law proceedings	1	2	3	4	5
Public family law proceedings	1	2	3	4	5

Where lawyers are appointed, ...

Who chooses them?	
Who pays them?	
What is their role?	
Do they meet with the	Circle one: Yes / Comment:

child they represent?	No / Don't know	
Do they advocate the child's views to the court?	Circle one: Yes / No / Don't know	Comment:
Do they advocate the child's welfare interests to the court?	Circle one: Yes / No / Don't know	Comment:
How do they report to the court?		
How influential are they on the court's decision?	Circle one: Not at all / Slightly / Fairly / Very	Comment:

Where lawyers do meet with the children they represent, ...

What qualifications / training do they have to help them with this?	

About Children's Contact with Judges

How is children having contact with the judge involved in their family's case viewed? (circle one answer)

Not allowed	1	Actively encouraged	3
Allowed but not encouraged	2	Compulsory	4

How common is it for children to have contact with the judge involved in their family's case? (circle one answer)

Not at all common	1	Fairly common	3
Slightly common	2	Very common	4

Where children do have contact with the judge, ...

Can they write to the judge?	Circle one: Yes / No / Don't know	Comment:
Can they meet with the judge?	Circle one: Yes / No / Don't know	Comment:
What does the judge do with the information they give?		

How much of the information is disclosed to their parents?

Where judges do meet with the children they represent, ...

Where do they meet?

What is the purpose of the meeting?

Who else is present?

How is the meeting recorded? (eg: notes, transcript, video)

What qualifications / training do they have to help them with this?

About Children’s Contact with Other Professionals

How often do children involved in family law cases have contact with any of the following other professionals, by appointment of the court? (circle one answer for each)

	Never	Occasionally	Often	Always	No idea
Psychologists	1	2	3	4	5
Social workers	1	2	3	4	5
Cultural experts	1	2	3	4	5
Report Writers	1	2	3	4	5
Paediatricians	1	2	3	4	5
Psychiatrists	1	2	3	4	5
Other professionals – <i>please specify:</i> _____	1	2	3	4	5

Where other professionals are appointed, ...

Who chooses them?

Who pays them?

What is their role?

How do they report to the court?

How influential are they | *Circle one:* Not at all | *Comment:*

on the court's decision?

/
Slightly / Fairly /
Very

--

Any Other Comments

Would you like to make any other comments about children's participation in family law proceedings ... or about the proposed ChildWatch Study Group?

That's all the questions – thank you very much – for your time and your contribution!!

APPENDIX THREE

Childwatch Children and the Law Project Update

20 December 2006

Dear Key Institutions

I am emailing to update you with progress on the Childwatch Children and the Law Project in which you have all participated or expressed interest in doing so. Thank you to those of you who have returned the completed survey concerning children's participation in family law proceedings in your country. We have now received questionnaires back from **ten countries**, along with an email with some brief information from Brazil. The people and countries taking part in the project are a diverse mix and are listed below, along with details about their Centre's main roles:

1. Dr Jonathan Dickens, School of Social Work and Psychosocial Sciences, University of East Anglia, England - Various child care research (e.g. adoption, fostering, child protection and family support) studies. Undergraduate and postgraduate teaching programmes in professional social work.

2. Suzanne Williams, International Institute for Child Rights and Development, Centre for Global Studies, University of Victoria, Canada - Implementing children's rights through innovative research, education, and capacity building.

3. Dr Peter Guran, Slovak National Centre for Human Rights, Slovakia – Research of children and family, monitoring of children rights and human rights, family policy, gender research.

4. Judge Yoshito Abe / Noboru Kobayashi, Child Research Net, Tokyo, Japan – cyber institute of child science to study parenting.

5. Elaine Fishwick, Social Justice & Social Change Research Centre, University of Western Sydney, NSW, Australia – Research – multi-disciplinary, applied on social justice/social change issues.

6. Patricia Brazil, Law School, Trinity College, Ireland – As Ireland's oldest Law School, Trinity is strongly committed to the service of society through education, research and public service activities.

7. Ju Qing, China Youth and Children Research Center, China – Research, publishing, training, consultation.

8. Professor Gary Melton, Institute on Family and Neighborhood Life, Clemson University, South Carolina, USA – The Institute conducts empirical research, performs policy analyses, develops and evaluates programs, and provides technical assistance and community education related to: the nature of everyday life in families and neighborhoods; the development, maintenance, and enhancement of community institutions; and current and alternative public policies supportive of youth, families, and neighborhood life.

9. Tamar Morag, Faculty of Law, Colman Law School, Israel

10. Dr Nicola Taylor / Megan Gollop, Children's Issues Centre, University of Otago, Dunedin, New Zealand – postgraduate courses on child advocacy and childhood studies, research, child advocacy.

11 (email only). Professor Irene Rizzini, CIESPI, Rio de Janeiro, Brazil

We have also received **interest in the project** from the following countries, but are yet to receive their completed questionnaires:

1. Department of Social Work, Filisofical Faculty, Charles University, Prague, Czech Republic

2. European Centre for Social Welfare Policy and Research, Programme Area "Childhood and Youth", Vienna, Austria

3. WhyAfrica/Federal University Teaching Hospital, Nigeria

4. Costa Rica

5. Catalan Network of Child Researchers, Spain

We would be grateful if the Key Institutions from these five countries (and any others) could send us their questionnaire **by 2 February 2007** as we are awaiting their information before we analyse all the findings. The information we have received to date has been collated, and will be written up once we are sure that all interested countries have had a reasonable opportunity to send us their completed questionnaire.

Meanwhile, we plan to submit an **application to Childwatch International** to meet their 10 January 2007 deadline for funding support for this new study group. Based on the questionnaire responses and our communications with you, there is clearly great interest in collaborative work occurring within the Childwatch network on the Children and the Law topic. We are excited about the prospect of this continuing via a study group next year and are hopeful of Childwatch's support for this new initiative.

We will be in touch again next year when all the questionnaires have been received and analysed, and the outcome of our application to Childwatch is known.

Best wishes for Christmas. We look forward to liaising with you in 2007.

Kind regards

Nicola Taylor & Megan Gollop, **Children's Issues Centre, New Zealand**
Anne Graham & Robyn Fitzgerald, **Centre for Children and Young People, Australia**