

## Lecture: C.L.C.C. Conference

### The Rights of the Child By Judge Dalia Dorner

A short time after my nomination to the District Court in Beer-Sheba, I was asked by a separated couple, both religious Jews, to approve an agreement regarding the custody of their children. The eldest was 12 years old. The parents fought over him and the compromise they reached was sending him to a yeshiva in Jerusalem. I heard the parents, and thought that there was no reason to deny their request. But next morning I had an unexpected visit in my chambers. The boy came to the court and knocked on my door. I was surprised to see a child. He said, still standing, "I heard that you decided to send me to a yeshiva in Jerusalem. But I don't want to leave Beer-Sheba. All my friends are there, and it's not my fault that my parents got separated". I asked him to sit down, ordered some cake and orange juice for him and listened to what he had to say. Then I invited his parents. They heard, for the first time, of the wishes of their son, and agreed to change the custody agreement according to those wishes. Years later, in an adoption case, The Supreme Court ordered the return of a three year old boy, who was raised by a couple in the intention of adopting him, to his birth mother. The boy refused to leave his home and the only family he had ever known. The Court-appointed psychologist tried to explain to him that a new and loving mother was awaiting him. His answer was: "Let the new mother look for new children. I want to stay with my old dad and mom". The Judgment was reversed by a majority (mine was the casting vote) in a Further Hearing, and the boy stayed with his adoptive parents. So I learned that a child – even a small child – has a voice and a will of his own which must be heard, and his wishes – as far as possible – must be respected.

My conclusion coincides with developments in the Laws concerning children. The UN Convention on the Rights of the Child of 1989 (hereinafter: the Convention) was based on the principle of "the best interests of the child". This principle views the child as lacking the maturity to make decisions that may affect his life, and therefore places the authority in the hands of his parents or the government. But in the last two decades, increasingly children are becoming viewed as human beings entitled to rights independent from those of their parents. In legal terms, children are granted the same status as human beings in general. The perception, that human rights should be applied to children independently, requires hearing children who are capable of forming and expressing their own opinions and respecting their wishes in matters concerning them, even when these do not coincide with what adults perceive as their "best interest".

Nevertheless, children also need special care and protection – first of all by their parents, whose right to raise their children according to their belief imposes on them at the same time the duty to do so. In addition, the society as a whole has a duty to protect and promote human rights of children as stated in the Convention – to healthcare, education and adequate standard of living, to express their own opinions, to privacy, to a home and a caring family, and many more. Furthermore, the child has a right to protection from neglect, from forced Labor, from trafficking and abduction and from sexual abuse.

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The fundamental principles declared in the Convention are also the fundamental principles on which laws concerning children are based in Israel. In 2000 the Student Rights Act was legislated. The Law declares as its goal the protection of students' rights in the spirit of the Convention and of human dignity. Furthermore, it establishes the right for education, and prohibits physical or otherwise humiliating punishment. Indeed, Israel's courts – both Supreme and the lower ones, including Family Courts – cite the Convention and base rulings upon it. For example: The Supreme Court's understanding of the essence of children's rights was based on the Convention, in its ruling in favor of the plaintiff in a paternity suit of a Moslem girl, which was based on a child's right to know his parents, as stipulated by article 7 of the Convention (Civil Appeal 3077/90 Anonymous Plaintiff (Hemda) et al. v. Anonymous Defendant (Yunis), P.D. 49/2 578). In two other rulings, the Court referred to the Convention's prohibition against the use of corporal punishment in children's education.

The Tel-Aviv-Jaffa District Court has also based several of its rulings on the Convention, stating that the Convention is "a source of great importance" (see for example Criminal Case (Tel Aviv-Jaffa) 64/96 State of Israel v. Anonymous Defendant (not yet published); Criminal Case (Tel Aviv-Jaffa) 511/95 State of Israel v. Anonymous Defendant (not yet published)). In another case, the Tel Aviv Family Court did not allow the parents of twins, born to a surrogate mother in Israel, to relate their experiences in a television movie. The judge ruled that the children's right to privacy – a right anchored in the Convention – takes precedence over the parents' right to publicity (Family Court Case (Tel-Aviv) 4570/98 Anonymous Plaintiff et al. v. Attorney General (not yet published)). In yet another case, the Tel Aviv-Jaffa District Court used the Convention as a source of legal interpretation, emphasizing the right of children to separated parents to maintain contact with both parents and, derivative thereof, the right of children to be heard by the Court before their custody is decided (Family Court Appeal (Tel Aviv-Jaffa) 33/96 Anonymous Plaintiff v. Anonymous Defendant (not yet published)). The Jerusalem Family Court rejected the petition of a mother to change the name of her minor son; the decision was based on the Convention's stipulation that children have independent rights in this issue. In another case, the Jerusalem Family Court noted that Israeli law regarding a child's right to be heard in legal proceedings does not fully comply with the statutes of the Convention, and should be changed accordingly (Family Court Case (Jerusalem) 19530/97 Anonymous Plaintiff v. Anonymous Defendant (not yet published)).

There are a few other principles outlined in the Convention that have not yet been fully grounded in Israeli law. I refer primarily to the principles set in articles 12 and 27 of the Convention. Article 12 stipulates that the views of a child who is capable of expressing his or her opinion must be given due weight in accordance with their age and maturity. Article 12 also stipulates that children should be heard in any administrative or legal proceeding that concerns them directly or indirectly. Current law in Israel provides the procedures for the fulfillment of a child's right to be heard and for the child's opinion to be considered in matters of his or her concern.

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However, while current legislative initiatives address specific aspects of a child's right to be heard there is yet no general order in this matter.

Special problems arise in Israel. That is a result of our multi-ethnic and multi-religious population, and especially due to the cultural diversity of the Jewish population, comprising of people born and raised in various cultures and different geographic areas. To this may be added the Arab-Israeli conflict (five wars have occurred since the Establishment of the State of Israel), and, presently, Israel's struggle against ruthless Palestinian terror attacks aimed at the innocent civilian population, including children. The forces fighting against Israel hide within their own civilian population. In the struggle against them children are inadvertently wounded and killed.

This is a deplorable situation. But we hope and strive for peace, and in the meantime we have to implement, promote and protect the human rights of the Israeli Children. We have to raise awareness to the basic rights of the child and to the responsibilities of parents and society in large through education. We have to bring human rights into the classroom, and use the power of mass media. People cannot make sure their rights are fulfilled if they do not know that they have rights. Animation and cartoons are very effective in educating people, especially children, and I am sure that the animators participating in this conference will demonstrate how animation can be used to promote the human rights of the child.