

# Children in Conflict with the Law

## An International Perspective

THE EIGHTH KILBRANDON LECTURE

By Björn Westlund Cronstedt  
European Commission Street Children Project, Vietnam  
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### **Kilbrandon Lecture 2007**

Mr Björn Westlund Cronstedt

Good evening ladies and gentlemen, I am Sir Muir Russell, Principal of the University of Glasgow and it gives me great pleasure to welcome you to the Kilbrandon Lecture.

The Committee which Lord Kilbrandon established in 1960 led to the formation of Scotland's unique system of juvenile care and justice: Children's Hearings. Like its predecessors this eighth lecture in the Kilbrandon series is a joint venture between the Scottish Government and the Glasgow Centre for the Child and Society. There have been many distinguished lecturers over the years. In 1999 the lecture was given by Professor Anthony Clare, the renowned psychiatrist and broadcaster, who sadly died last month.

The title of this evening's lecture, "Children in Conflict with the Law", is as relevant to contemporary Scotland, a prosperous developed nation, as it is to many of the world's developing countries.

This evening's lecture makes use of international perspective. The desperate situation of many children in countries around the world attests to the fact that the ideals of the Convention are of vital importance. Those familiar with the Convention will be aware of its principles including the emphasis on early intervention and support to both families and to local communities. All of these principles can be found in Scotland's Kilbrandon Report; a report which is as significant now as it was when it was published 40 years ago.

In many respects the Children's Hearings system which began in 1971 anticipated key aspects of the UN Convention on the Rights of the Child. This Convention, one of the most ratified conventions in the history of human rights, seeks to ensure that children are treated with respect and dignity and that their human rights are recognized and protected.

It is a great pleasure to have with us this evening a representative from Lord Kilbrandon's family, Mrs Heather Wilson. We are also pleased to have with us the Scottish Commissioner for Children and Young People and representatives from the Scottish Arts Council, the

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Scottish Children's Reporter Administration, the Children's Panel, the Scottish Government and academic colleagues from across Scotland. We also have with us individuals actively engaged in the lives of children and young people in Scotland: panel members, social workers, health care workers, teachers, members of the legal profession and very importantly students and young people. You are all very welcome.

Tonight's Kilbrandon Lecturer, Mr Björn Cronstedt, is an ordained priest of The Church of Sweden, whose career has centred on the preservation and promotion of human and children's rights in his home country of Sweden, in countries of the former Eastern Europe, in Latin America, Africa and Asia.

Björn is a graduate of the University of Uppsala. In the course of his career he has worked in radio and television productions for the Swedish Broadcasting Corporation. He was Director of Communications for The Church of Sweden from 1995 until 1999. Björn established the South American Office of Save the Children Sweden in 1983 and during his time there developed national programs in Peru, Chile, Argentina and Paraguay. After the peace agreement

in El Salvador, he developed the Save the Children programme in Central America which carried out work in Guatemala, El Salvador, Nicaragua and Mexico.

Recent work in Sweden has included a Government-commissioned study to establish a Swedish National Centre on Children's Rights. He was also a founder member of ECPAT, an international organisation which works towards the eradication of child prostitution and pornography.

In 1999 he began work in Paraguay as Co-director of a European Union project working in co-operation with the Government of Paraguay to address the needs of children and families at risk.

He has recently returned from a three-year project sponsored by the European Union and The Socialist Republic of Vietnam. The focus of this work was to support the Vietnamese Government in establishing systems and structures to support families at risk of both commercial and sexual exploitation.

His work as a priest, journalist and development worker has enabled him to learn directly of the devastation

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wrought by war, political corruption and poverty and the scarring impact that these can have on children, families and communities. His involvement in political and practical work to rebuild civic society has taught him that it is in everyone's interest that the needs of children and young people are addressed properly and that what is good for the individual child is also good for the whole of society.

It is with great pleasure therefore that I call on Mr Björn Cronstedt to deliver his Kilbrandon Lecture – Children in Conflict with the Law.



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The fire started on the second floor in cell number 8 at half past 4 in the morning. It developed quickly. Two boys were killed almost at once, probably in agonising pain. Forty-two children were taken to hospital; 12 of these were treated for serious burns.

The doctors could not give a reliable long-term diagnosis for the health of the survivors as most of the young patients had also inhaled the fumes from the burning rubber. For this reason a further seven lives were lost in the following weeks.

This fire happened on 10 February 2000 in the Panchito López prison in Asunción, capital of Paraguay. Panchito López was the prison where children and juvenile delinquents were held. The children had set fire to their foam rubber mattresses as a protest against their inhumane treatment and the time taken to process their cases. (<http://web.amnesty.org/library/Index/ESLAMR450102001?open&of=ESL-PRY>)

Their living conditions were appalling. The prison was designed for 30 children but normally at least 300 children were imprisoned there. 42 children were held in a cell of 24 square metres. That's 6.2 square feet per child. Their

beds were in three storeys but they had to share the bed with at least one, often two or three other children. In summer the temperature in the cell was around 40 degrees centigrade. In winter, when the temperature could be as low as five centigrade during the night and in the early morning, no heating was available. To survive, the children peeled the plastic away from the electrical cable and put the electricity on. The children had to stay inside their cells for 22 hours a day. The food they received did not meet basic levels of nutrition. The prison staff had no training, no knowledge, no skills to be able to respond to the needs of these young boys. The only form of intervention or treatment was violence. (Newspaper ABC February 11-28, 2000, Ultima Hora February 11-28, 2000)

These conditions would be sufficient to provoke rage in anyone. The real trigger for the protest for these children, however, was their sense of injustice at the slow process of their legal cases. 96 per cent of all children in Panchito López were locked up without due process. Most of the children did not even know exactly what they were accused of. There were no court proceedings, no sentences. They were imprisoned for an indefinite period of time.

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## Greetings

Principal, distinguished guests, ladies and gentlemen, it is a great privilege to be invited to the 8th Kilbrandon Lecture. I am grateful for this opportunity to share my experience with you. Few Government reports are reprinted twice after their original publication, but by recommending that children under the age of 16 should be treated for their needs rather than their deeds, the Kilbrandon Report has been granted a place in history. It is also of relevance to Scotland and, as I will demonstrate this evening, the international community more than 30 years after it was written.

I follow in the footsteps of very distinguished speakers including the late Donald Dewar, a graduate of this University and the first First Minister appointed to the re-established Scottish Parliament.

There is an added pleasure: my wife is attending this event, and her family have close connections with Scotland, her grandmother was Scottish. In the early 19th century, Ole Salvesen and his children began trading with the ports of the Scottish east coast. In the 1850s the Salvesen family established a base in Scotland and his

company has since contributed to the development of this country since that time.

### **Introduction**

Returning now to Panchito López prison in Paraguay. This is just one example from one country of which I have first-hand experience. There are many others, too many others. Whilst almost all countries of the world have ratified the Convention of the Rights of the Child (UN General Assembly resolution 44/25 of 20 November 1989, came into force on 2 September 1990, in accordance with article 49), many pay only lip service to implementing the Convention.

*“No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”*

That is clearly set out in Article 37:b of the Convention, one of the seven core treaties forming the international human rights framework. However, an alarming number of children around the world are deprived of their liberty and held in detention without sufficient cause. Whilst the

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Convention stresses that imprisonment of a child shall be used “only as a measure of last resort and for the shortest appropriate period of time”, many children have been rounded up simply for being a nuisance. Moreover, most of them have not been tried before a court of law, and yet they are held for months, and in too many cases for years, often without access to legal aid. In some countries, the great majority of children coming into conflict with the law live in disadvantaged communities and are criminalized for simply trying to survive. Their basic crime is poverty and hunger.

Frequently, children are subjected to “inhumane and degrading treatment or punishment”. (Article 37:a). They are often placed in prison together with adult prisoners. Violence and sexual abuse committed by other prisoners and prison guards is part of their daily routine. Child victims of trafficking and sexual exploitation are often re-victimized. Physical abuse is common and children suffer trauma arising from torture and harsh interrogation.

In some countries “street children” are rounded up and brought to prison in an effort to get them off the streets, particularly before local or national events or before the tourist season starts. There are cases when such “social cleansing” has resulted in children being murdered.

Whilst the unanimous adoption of the UN Convention on the Rights of the Child by the United Nations General Assembly in 1989 provided a major impetus to worldwide efforts to protect children's rights and brought media spotlight on many of the underlying issues, UN experts are warning that troubling developments with serious implications for children's well-being are not receiving sufficient attention. To address these problems, great efforts have to be made to encourage other countries to bring their juvenile justice systems into line with international standards and to safeguard the rights of children who come into contact with the law.

### **Children in conflict with the law**

The term 'Children in Conflict with the Law' refers to anyone under 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence. Most children in conflict with the law have committed petty crimes. Minor offences such as vagrancy, truancy, misuse of alcohol and begging. ([http://www.unicef.org/protection/files/Conflict\\_with\\_the\\_Law.pdf](http://www.unicef.org/protection/files/Conflict_with_the_Law.pdf))

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Some of these are known as 'status offences' because they are not considered criminal when committed by adults. In addition, some children who engage in criminal behaviour have been used or coerced by adults. Prejudice related to race, ethnicity or social and economic status may bring a child into conflict with the law even when no crime has been committed.

The Convention on the Rights of the Child contains rules aimed at protecting these children. All too often however the Convention is disregarded. Or if it is taken into account, countries lack the capacity, and at times the political will, to put in place administrative procedures to implement the Convention. There is often a wide gap between official intention and everyday reality.

What we really need to have in place to reduce incarceration to protect children from further violence, abuse and exploitation is rehabilitation. Rehabilitation that involves families and communities in developing more appropriate and effective approaches than punitive measures. This is hard, probably politically unpopular, but justice systems designed for adults are not appropriate for children.

## Alternatives

It is for this reason that international organizations like UNICEF strongly advocate

*diversion*, directing children away from judicial proceedings and towards community solutions, *restorative justice*, promoting reconciliation, restitution and responsibility through the involvement of the child, family members, victims and communities, and *alternatives to custodial sentencing*, counselling, probation and community service.

[www.unicef.org/protection/files/Conflict\\_with\\_the\\_Law.pdf](http://www.unicef.org/protection/files/Conflict_with_the_Law.pdf)

But we have a long way to go.

Estimates from *Defence for Children International*, indicate that more than 1 million children worldwide are living in detention as a result of being in conflict with the law.

[www.dci-is.org/dciwork/juvenile/global.htm](http://www.dci-is.org/dciwork/juvenile/global.htm)

Putting children in prison instead of seeking constructive alternatives will stigmatize them as delinquents, rob them of opportunities for education and employment and expose them to others who have committed more serious crimes.

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Most of the children at the Panchito López had been there for several years, the majority for petty crimes. Stealing a chicken for their family, taking fruits from the market to feed their brothers and sisters or stealing money to buy medicine for a sick family member. Most were released as arbitrarily as they had been detained.

Some children were fortunate if they had a conscientious lawyer who might keep an eye on the case and could urge the authorities to release the child. In other cases whole childhoods were stolen and children left prison with little more than the tattoo of the gang that they had been coerced to join. Whilst in prison they nurtured a deep sense of injustice. Their chances of an ordinary adult life had been sacrificed.

A short time after the first tragic fire in Panchito López prison a new fire was started. This time 17 boys were seriously injured.

Unfortunately Paraguay is not an exception.

## **Myself**

I have been involved in work concerning children in conflict with the law in many countries. In most countries in Latin America and the last years few in South East Asia. I have also been on short missions to several countries in Africa and in Asia, always related to children at risk. Inhumane treatment of such children is the rule rather than the exception.

If you would like to really know a country, visit their prisons for children or their psychiatric hospitals for children. Then you will be able to obtain an accurate measure of the genuine interest of the government in its most vulnerable citizens.

## **The context**

The *commitment and capacity of the Government* is crucial if we are to promote and support policies that encourage the use of alternatives to the deprivation of liberty. A just approach to juvenile justice requires that efforts are made to prevent children from coming into conflict with the law in the first place. This is work for the entire society, not just the government. Every adult, after

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all, has a duty to care for the next generation and to promote children's rights.

Considering *legislation, policy and regulations* let me start by saying this:

In general, and in most countries, there is a robust legal framework in place that should in theory guarantee that children's rights are respected. In addition, the United Nations has systems for holding governments accountable for the action which they take to support the effective implementation of Convention on the Rights. So the problem is not the legal framework. The problem is the administration, interpretation and application of the legislation.

First regarding basic rights:

You could argue that the first right after being born is to have a name and a nationality, as stated in the Convention of the Rights of the Child, article 7

*(1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and in part 2: States Parties shall*

*ensure the implementation of these rights in accordance with their national law).*

In many countries children are commonly not registered. In Paraguay in 2002, at least 600.000 children were not registered. That is 10% of the whole population and 20% of all persons under 18 years of age and 36% of all children born from 1990 to 1999. It was hard to understand the reasons for this. Registration was free of charge for the first 9 months after birth. We understood that many children were not registered because they were born physically weak, their future was uncertain, and the registration office was in another village. An additional problem was that after 9 months, a fee and a fine had to be paid, increasing for each year. (Céspedes, Roberto (2002) *Estimación del déficit en el Registro Civil de la Niñez 1990-1999*, AMAR, Asunción)

Here we can see that these children already find themselves in some sense in conflict with the law from their earliest years. The importance of this most basic right is perhaps hard to understand if you have been born and raised in Scotland.

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However, without registration you have no formal name, no family and no nationality. You are excluded from health-care and from education. Problems with registration make it impossible for authorities to make realistic plans to meet the needs of the communities for which they are responsible. For these children, in conflict with the law from their earliest years, the initial problems multiply, for example, you can be detained by the police because you have no identification card.

As part of the European Union-project we carried out in Paraguay we negotiated an agreement with the Government to end the system of fines and then implemented a “fast track” model for registration that enabled us to register more than 250,000 children during two years. This system is now used by other Non-Governmental Bodies including *Plan International* in other countries throughout the developing world.

### **Exploitation**

You could say that many children have to pay a very high price: exclusion makes them vulnerable to exploitation, they are forced into work, some are even forced into prostitution,

no school, no formal education, then they are caught by the police and put into jail for something they were forced to do.

Many business enterprises are using the situation and exploit children's innate vulnerability. Children may be forced to work for 12 hours per day, or longer, in an unhealthy environment. The owner's sole concern is profit and they wish to avoid paying a fair salary to an adult person. A great number of job opportunities are therefore lost. Adults lose the opportunity to work and children lose the opportunities which are opened up through education. The cost to families and society is very high.

Parents face the choice of sending their child to work or school. This is a difficult decision and few parents would take it if there were other options. Sometimes the children are safe because they accompany their own parents to work and work alongside them. Sometimes they go with a relative, or a neighbour, and in these cases parents can form a judgment as to whether their child will be safe.

Sometimes, however, children are entrusted to a stranger who has promised to take care of the child, provide them with care, and education and some light work so that the

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child can send money back home. Invariably, trafficking is increasing – internationally and domestically. Money is at the root of child trafficking. Brokers and agents make generous offers to the family and they can hardly refuse.

*“We will send you £20 a month, and we will take care of your child, she will work as a lottery seller, it is easy”. Well, for a poor family £20 is a substantial amount of money. In some cases the child might sell lottery tickets and receive some kind of piece work. “The rules are clear, you have to deliver £15 a day. If not I will beat you”. So the child has to find ways to get money if insufficient lottery tickets are sold. Begging or stealing, from morning to late at night. For the adult exploiting the child for each month he will have a gross intake of perhaps £420, and as £20 will go to the child’s family, he will make £400 profit. Good business. A profit of 2000%. Let’s say that you employ four children, you will have £1,600 a month. It is easy you only have to pay the necessary bribes to poorly paid police and the prosecutor and/or the judge if necessary.)*

But the child might have to beg or steal or to do other illegal activities to earn the daily sum of money demanded of the trafficker. Whilst involved in such activities it is not

unusual for a young person to be detained by the police, whilst the pimp or broker remains free. Later these children may find themselves in conflict with the law and sentenced to reformatory school or prison.

The adult who has exploited the child is merely inconvenienced. He will now have to find another child to use and exploit. Such children are easily available and are almost queuing for the opportunity that they might escape poverty. These children come from poor families. Poverty excludes.

These are some of the problems in the application of legislation and the articles of the convention. Poverty becomes a crime. In short it is the use and adaptation of the legislation that gives rise to difficulty.

### **Attitudes, customs and practices**

Just as problems emanate from failure to apply the administrative procedures necessary to support implementation of the Convention, they also arise *from attitudes, customs and practices* characterised by complacency; the absence of training, lack of attention paid to skills, confusing policies, contradictory strategies

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and a minimum of political will. However, central to all of this is a negative view of childhood especially of those children in trouble with the law.

### **Perceptions of children**

Having spent much of my earlier career in broadcasting I am only too aware of the circumstances where you may find children demonised as dangerous, feral, unruly and wild. When this image grips the public imagination there is an instinctive demand for tougher responses from the police and harsher sentences.

A few days after the fire at Panchito López prison which I have referred to I was asked to participate in a televised discussion on children in conflict with the law. The host of the programme was also a member of the Parliament of Paraguay. In his introduction, he made clear that his own opinion was that these children had no right to exist and that the best thing for society at large was that they be literally exterminated. The host suggested that he himself would be willing to serve as the executioner.

This is an extreme example of the perceptions that people can have of children who come into conflict with the law.

Another more everyday example may illustrate this point more clearly. When we were working in the Panchito López prison the youngsters told us that they had two main concerns. The first was the slow and confusing judicial process, to which they were subjected.

More surprisingly their desire to receive urgent treatment for their bad teeth. With hindsight it seems obvious with bad teeth you will have problems in chewing food, and this in turn will lead to problem with digestion.

Their first concern was partly met by projects carried out by the Catholic University in Asunción and by NGOs who were prepared to offer legal advice and support.

To meet the second one, we asked several local dentists to come to the prison to treat the children's teeth. They all refused. Some of them did not want to treat children because the children were not worth treatment. "They are bad children", "They deserve pain", "They are responsible for their situation". Others were too afraid to go to the prison as they knew, from what they had heard or read or seen on the television, that they would probably be at risk or possibly killed.

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My wife asked our own dentist at home in Sweden to help. He closed his private practice for a month, took his dental nurse with him and came to Paraguay. With him working in the prison we were able to persuade a Paraguayan dentist to collaborate. In the early days the courageous Paraguayan dentist was so afraid and her hands were shaking so much that she could not attend any patients. However, after a few days she could start treating the children. In the process she got to know some of the children and could see that the majority of them were quite nice and polite and very grateful for the treatment. So she re-evaluated and revised her perception of these children.

At the same time she came to understand that most of them were just children, who had ended up in prison through circumstances related to poverty. She could also see that there were no children from rich families in the prison. And she learned that the legal and judicial system is divided in two separate parts: one for important families – just pay a bribe and your child will go free and another for poor families.

Such a system, of course, reinforces the idea that only poor people are bad people and that only the poor and bad people should be punished. The rich, however, frequently have the resources to place themselves above the law in many countries within the developing world.

### **Lack of intervention**

Closer to home, my home Sweden, in the 1990s we were carrying out a survey of children's circumstances in Sweden. It was obvious that something was going very wrong with many of our Swedish young people. More children were homeless, engaging in criminality, drug abuse and prostitution. These children were becoming detached from mainstream Swedish Society. Why? We interviewed families, parents, social workers, teachers, psychologists, policemen, lawyers, politicians and lawmakers – and, of course, the children themselves.

It made us understand the following:

In Sweden nowadays it is possible to see in Kindergarten, if a child has difficulty in communicating and in coping with new situations. Theorists of Attachment including Bowlby, have taught us that you can learn a great deal

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from examining children's patterns of behaviour. (Bowlby, John [1969]. (1999) *Attachment*. New York: Basic Books. Lagerberg, Dagmar & Sundelin, Claes (2000). *Risk och prognos I socialt arbete med barn – forskningsmetoder och resultat*. Göteborg: CUS/Förlagshuset Gothia.)

What happened in Kindergarten when children's behaviour was disturbing, violent or unstable? After a while the children would be moved to another group. If the "difficult" behaviour continued, they were moved once again. Of course there were meetings and conversations with the parents but the main response bordered on the punitive. The intervention was always to find a new environment – thereby avoiding having to address difficulties in the family and the community. (Sjögren, Michaela (1992) *Utsatta barn i Sverige*, Stockholm: Rädda Barnen; Sjögren, Michaela & Westlund, Björn (1992) "*Hej då sa dom*", Stockholm.)

A similar pattern arose when the child entered school. The child was moved from one school class to another. Sooner or later the child received the message: I am the problem! I am not worth anything! I am nobody! I am a failure! But not only this. The child also thinks I have caused my

father's alcoholism! I am responsible for my parent's divorce! I am bad! I have nothing good in me. The child comes to understand that he or she is not good enough and every time this happened their self-esteem is reduced. And self-esteem is something totally different from self-confidence. Many of the children at risk have developed skills for survival and may appear outwardly very self-confident. They can be very convincing, but it is a mistake to think that everything is OK. They may have little or no self-esteem. And without self-esteem you feel that you are, and never will be good enough. These children are caught in a vicious circle.

In our research we concluded that something else could have been done by teachers or by social workers or others in the child's life. They did not work alongside the parents to try to understand the real situation of the family. There was an absence of coordination and cooperation between the professionals, a tendency to avoid difficult issues such as domestic violence, physical and sexual abuse.

The pressure was on the children to show solidarity towards their family. Nobody outside the family should know! The child has to cover up the real story.

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It is a familiar story in Sweden and I am sure in Scotland too that we avoid confronting the real situation within families and fail to address possible problems at an early stage. When intervention does take place problems are compounded by the fact that frequently those intervening in the situation do not consult with the child. This leads to additional disappointments and reinforcement of the child's perception of themselves as being worthless.

We also interviewed adult prisoners about their upbringing and found that they had many things in common:

- as pupils they had difficulties in learning to read and write in school
- they had witnessed, or been victims of abuse, violence or assault
- they had been placed in correctional or reformatory institutions as a child.

From these experiences we might learn a few things. To:

- promote early intervention in order to reduce future costs, both economic and human, for the child, for the family and for victims, as well as for the society

- give special support to children with difficulties in school
- be open and respond to the child's behaviour by providing concrete and direct support to the child and the child's family. We must implement appropriate programmes which support children and families.

It is strange that following involvement in traumatic events, people in the prosperous Northern hemisphere, will be provided with “debriefings” and urgent and expert psychological support. A child witness or victim of abuse, violence or assault, however, seldom receives the same standard of support. This might bring very serious consequences. (Charles R Figely, red (2006) *Mapping Trauma and Its Wake. Autobiographic Essays by Pioneer Trauma Scholars*. Routledge; Herman, Judith (1992) *Trauma and Recovery. The Aftermath of Violence – From Domestic Abuse to Political Terror*. New York: Basic Books.)

There has been a lack of understanding of these issues but there has also been a lack of training and a lack of coordination and cooperation to unite services in a way that provides the best support possible for children at risk. Your “*Getting it Right for Every Child*” programme in

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Scotland is to be commended in this respect. In the words of Kathleen Marshall, Scotland's Commissioner for Children, who is with us tonight, it is in everyone's interest to get it right.

### **Co-ordinating intervention**

Shortly before leaving Sweden for Vietnam I was asked by the Swedish Government to evaluate the need for a National Swedish Centre for Child Rights. The idea was to see if important children's issues could be gathered under one umbrella. Two things were astonishing:

In Sweden, the first country to sign the Children's Rights Convention, a country with high standards in education and acute awareness of human rights, it was a surprise to me to find that there is no obligation to have any knowledge of Children's Rights in any formal academic education programme. This applies to professionals training to work with children. Further to this, the training for police in how to interview and communicate with children, the most sensitive of police duties had been suspended because of budget restraints. Policemen had, at their own expense, to take leave and go to the University of Linköping to be trained. Even the training of

medical doctors no longer includes the development of skills in how to interview children. The UN Committee on the Rights of the Child has in its feedback to the Swedish government Report repeatedly been mentioning the lack of systematic and continuous training on child rights for professionals working direct or indirectly with children. (CRC/C/15/Add.248 i grundöversättning 210BarnKom.doc3380 ord ver 4)

Secondly, the administration of children's services was delegated to so many authorities that it was impossible to get an overall view or to assess in policy terms how well we were meeting children's needs. It is as if the child is cut into a great number of slices, every slice allocated to a different institution or authority. For example, a local authority can have two officials in the same office taking totally contradictory decisions regarding the same child. The lack of overall coordination or sharing of information will cause problems for any child. And there is a real cost to society if things do not change. Poor decision-making by organisations charged with caring for children has real and lasting costs to the child. (Cronstedt Westlund, Björn (2005) Barnrättscentrum – kunskapscentrum för barnkonventionsrelaterade frågor. Stockholm: Socialdepartementet.)

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Is there a similar problem in Scotland? I wonder what Lord Kilbrandon's answer to this question might be. If he were sitting among us this evening he invite us to return to his recommendation that calls all of the education, social work and health care professionals to work together.

It is of grave concern that we continue to have these problems in our rich developed nations. It should be clear by now that each and every worker engaging directly or indirectly with children must be properly trained for what is require of them. The State should guarantee that relevant professional educational standards are in place and that relevant training is available.

### **Vietnam**

As I have suggested, if we have difficulties in achieving “the best interests of the child” in the world's developed nations, the situation is far more critical in the developing world.

Some developing nations have high quality judicial structures in place that meet international standards but the systems that support the judiciary are weak. The education and training of law officers is questionable,

procedures are overly complicated and the consequence is that poor practice ensues.

One important problem is, of course, the lack of economic resources. The lack of finance however frequently comes down to whether Government has a long-term commitment and interest in children. There are countries which are trying hard to do their very best in spite of difficult circumstances. Countries which are trying very hard to respond to the clear message set out in Article 4 of the Convention on the Rights of the Child:

*(State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation. (Article 4).*

I have recently returned from Vietnam, a vibrant country with a rich heritage and resilient population, a Communist society which is experiencing major economic expansion. Whilst there I was attached to the Assistance to street Children Project which worked closely with Central

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government and was based in Hanoi but with a national remit. In this posting I carried out intensive work to support the establishment of an organisational structure within the country's public administration system. Together we put in place systems and models and methods at central, regional and local level to support children and families at risk.

There are children in Vietnam at risk. Some are or will be victims of exploitation. Others might be used in criminal activities and prostitution. An increasing problem is domestic trafficking, taking children from rural areas to cities. Many new enterprises need workers but will not pay regular salaries or meet with official standards for workplace safety. And then there are the needs of Vietnam's burgeoning tourist industry; here children are at particular risk of harm.

### **Preventive packages of support**

Therefore, within the Assistance for Street Children Project (ASCP) in Vietnam, we developed several models and methods to support both the return of street children to their families and communities as they are at great risk of

being exploited. The same models and methods were used to prevent other children from being exposed to the threats, dangers and demands of the uncontrolled “market”.

In most development projects focused on children at risk, you concentrate on one component. You focus on children in slices. It could be health-care, or education, or vocational training. In the ASCP we prepared a comprehensive package of support for the entire family encompassing health-care, basic school education, vocational training, job finding. We combined these with enterprise skills supported by micro credit and mini-loans given to families at risk to establish small businesses. We created day care centres for the children.

We also tried to respond to more local needs. One example was the assistance provided to children who worked with their parents scratching a livelihood scavenging from the garbage dump in the city of Nha Trang. We agreed with their parents that their children should not work at the dump, but go to the preparatory school that we attached to the day care centre (ASCP Final Report 2007).

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The package of support had to be provided to staff with the necessary skills and to do this we used systems and models developed here in Scotland. We learned of the importance of developing the capacity of families and communities to be involved in these processes and of the need for regular interaction between all the actors involved.

However, some children still find themselves in conflict with the law. In Vietnam, children under 16 years of age who are charged with less serious offences and who come within the scope of the administrative regulations are handled by a “panel”. Whilst members of the Scottish panel are lay people, Vietnamese panels are made up mainly of officials and professionals. They have representatives from the child’s school, the Youth Union, the Women’s Union, the police and the prosecutor. The panel’s recommendations are submitted for approval to the Chair of the District or Provincial People’s Committee. The “Panel” can decide to send the child to a Social Protection Centre or to a term of supervision at home. The Panel should also, according to post-release programmes for children, ensure the child is provided with work or education. The panel will also see to it that the

child's development is supervised and, when necessary, introduce supportive measures to the family.

Children who are considered to violate social norms can be sent to Social Protection Centres. These Centres fall under the Ministry of Labour, Invalids and Social Affairs. Their task is to take care of children who are at risk of being caught up in what the legislation describes as "social evils" such as vagrancy, prostitution and, drug-abuse or criminality. The Social Protection Centres also cater for orphans, abandoned children, street children and other children at risk. The role of the Centre is to protect and/or rehabilitate the children. Basic general education is provided as well as some vocational training.

In more serious cases a child can be sent to a Reformatory. Normally such schools provide regular school classes and also vocational training.

This system of Panels and Hearings for young offenders, is a very positive development but it is not enough. There needs to be additional support and staff with the knowledge and skills to deal with the problems that children and their families experience.

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In Vietnam, social work is still in the process of becoming a profession. In recent years 17 universities have been approved to carry out academic training in social work. However, the need is huge and the capacity of the universities is not sufficient to provide the quality and volume of education that is required. It will take a long time to produce the number of social workers the country needs. We already know that most of those who will graduate as social workers in the next few years will never work directly with people who need care. They will be immediately absorbed by the administrative structure as managers or policy makers.

As experience from Scotland and elsewhere shows there is a need to train staff in universities certainly but also in colleges and in the work place. The use of Vocational Qualifications based on nationally agreed standards of care is something that could be transferred and adopted in many of the world's developing countries. The need is great. In the coming decades for examples Vietnam will require 180,000 university-trained social workers and 1,620,000 social care workers.

Most of the personnel involved in social services in Vietnam are employed by the Government and have no real training and no skills. The use of vocational education systems and “on-the-job training” will make a huge difference. Workers are already being paid and step-by-step, the quality of care will increase and the performance improve.

### **Scotland’s contribution**

Here in Scotland you have developed two very useful systems to support children in conflict with the law and at risk: one is the Children’s Hearing System a system that seeks to guarantee that the child will have his or her rights respected, have her opinion heard and be involved in decisions concerning their best interests. An innovation that, as acknowledged by the United Nations, Scotland should be proud of.

The second system is the Vocational Qualification System. A training system which is used in many different sectors and industries in Scotland. Such a system lends itself to supporting social change in many developing countries. Standards can be set, skills assessed and over time the quality of service increased. In Vietnam we have had the

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privilege of having Raymond Taylor and Irene Stevens from the Glasgow School of Social Work working with us to embed education and training which develops the confidence of the workers, increases knowledge of children's rights and raises awareness of child development. It has been of extraordinary benefit and very much appreciated by all involved. There is an expectation in Vietnam of a continuation of cooperation to develop this project further. Such systems needed to be established and developed in other countries of the developing world.

## **Closing remarks**

There are too many examples of how children in conflict with the law are affected by a cycle of disadvantage and injustice. The survival strategies that many children born into poverty resort to, to enable their families to survive, frequently brings them into conflict with the law and leads to further exclusion.

To escape this cycle of disadvantage one important strategy has to be concerned with building children's capacity. Developing their life skills, knowledge and participation. Children who come in conflict with the law

need to be informed about their right to be heard as stated in the Convention's Article 12:

*(1. States Parties shall assure the child who is capable of forming his or her own views the right to express views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

*2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.)*

Such participation is essential.

Half the population of most of the economically poor countries are under 18 years of age. They have no right to participate in elections or participate in the democratic processes. In some countries however it is acceptable for children to contribute to the economy by working in dangerous environments, to support their families, to serve as soldiers and yet not participate in elections.

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Why? Is this democratic responsibility a heavier burden than others that young people carry. Or are governments afraid? If 10% of new young voters could change the political agenda and change priorities, then the political parties would have to present meaningful proposals to young voters.

When the possibility of a lower minimum voting age was on the agenda in Brazil and arguments were being presented about the right to participate in elections from 16 years of age, many argued that children could not take such important responsibilities. Others thought it inappropriate to burden young people. The children said what they wanted; three important things:

- to go to school and to have a good education as good preparation for employment
- a good health care system for all
- a secure job for their parents.

Few political parties would, however, be willing to pursue such a radical political agenda. The question that arises is whether participation in the electoral system would make a difference and bring about lasting change and improvement.

Nicaragua and Austria have recently lowered the voting age and this provides at least some opportunity to track progress.

In moving towards my conclusion we need to recognise that:

- The Convention on the Rights of the Child has ensured that across the globe legislative frameworks concerning children are improving.
- The implementation of the legislation in administrative and policy terms is all too often flawed.
- Transforming this situation requires political will and education at all levels for those working directly or indirectly with children.
- We need to develop alternative models to formal court processes and procedures in order that we can better respond to the children's needs.
- We need to take urgent action to develop humane and effective alternatives to prison for children in conflict with the law.

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What we are doing is not charity or distribution of gifts. We are just advocating for rights, no more no less,

Ladies and gentlemen in presenting tonight's lecture on Children in Conflict with the law a number of themes have emerged; human rights, justice, the corrosive impact of poverty on the lives of children and communities and the importance of knowledge and skills in improving children's lives. We have not however spoken of forgiveness, a quality which one might be forgiven for thinking, is growing increasingly more scarce and yet is of fundamental importance if we rare to help children and young people move on from coming into conflict with the law. Rather aptly, one of my notable countrymen, the statesman Dag Hammarskjold former head of the United Nations who died in 1961 said that of forgiveness that it "... is the answer to the child's dream of a miracle by which what is broken is made whole again, and what is soiled is made clean again." Perhaps this should be the topic of the next Kilbrandon Lecture.

Thank you!

## **Vote of Thanks to Björn Cronstedt from Professor Noreen Burrows, Dean of Law, Business and Social Science**

Ladies and gentlemen, Principal, distinguished guests; it is my pleasant task to thank Mr Björn Cronstedt for presenting his Kilbrandon Lecture and for providing us with an engaging, stimulating thoughtful and, at times, moving presentation. Björn's conviction and passion to protect and promote the needs, and rights, of children and young people have touched us all.

It is through inviting guest speakers from other countries that we are able to understand and learn from each other. I hope that what we have heard here this evening has begun to give us all a greater appreciation of how both the approach and delivery of children's services in other countries compares with our own here in Scotland.

Scotland is no stranger to international visitors where our Children's Hearings system is concerned. Scotland's child-centred approach, focusing on what needs to be done to help the child's needs as a whole, has attracted interest from all over the world. Most recently this has included Georgia, the States of Guernsey and Chile.

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On behalf of the University I would like to convey my thanks for the support that the Scottish Government gives to the Kilbrandon Lecture.

I would also like to take this is opportunity to thank the University's academic, support and technical staff for their contribution to making the lecture so successful.

I also need to acknowledge the work of Mrs Lynne Phillips and Mr Phil Reid from the Scottish Government and Mr Raymond Taylor from the Glasgow Centre for the Child and Society for their contribution to this evening's lecture.

I would like to recognise in particular the meticulous work of Ms Clare Laidlaw and her colleague Ms Laura Gallagher from the University of Glasgow.

Finally, can I convey my thanks to you, members of the audience, who have come to hear the Kilbrandon lecture, particularly those of you attending for the first time: students, panel members, professionals and members of the public. You may be interested to know that the lecture will be available in text form on the Scottish Government's website in the coming weeks and it has also been filmed and recorded and will be available on the University's website in the near future.

Ladies and gentlemen, this is the first time that I have had the opportunity to attend the Kilbrandon Lecture. In closing this evening's proceedings I would like to make one final point echoing the Principal's introductory comments. When first introduced in 1971, the hearings system was a bold move away from tackling problems and behaviour in isolation. It is a matter of pride that the system and its principles have stood the test of time. This important lecture is a means of ensuring that the legacy of Lord Kilbrandon, Scotland's distinctive Children's Hearings system, is celebrated and that the Kilbrandon vision of a more effective and integrated justice and welfare system for children and young people is passed on to future generations. Björn's inspiring lecture has served to re-animate this vision and we are very grateful to him.

Thank you once again, Björn.

Good night.

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