Submission to: Justice and Electoral Committee

Family Court Proceedings Reform Bill

Introduction

1. Thank you for the opportunity to provide this submission on the Family Court Proceedings Reform Bill (hereafter referred to as 'the Bill').

2. As Children's Commissioner, I have statutory responsibility to advocate for children's interests, rights and welfare, including advancing and monitoring the application of the UN Convention on the Rights of the Child (UNCROC) by departments of State and other Crown instruments[1]. My powers, functions and responsibilities are contained in the Children's Commissioner Act 2003 and the Children, Young Persons and Their Families Act 1989.

3. Of all our judicial institutions, the Family Court has by far the most involvement with children and the most direct impact on their lives. The Family Court also plays an important social role in protecting the interests, safety and welfare of children whose lives have been affected by family dysfunction, violence or neglect. The Bill is therefore of considerable importance to children.

4. The Bill follows the extensive Family Court Review process carried out by the Ministry of Justice. My Office contributed a submission to the Review dated 28 February 2012 and engaged in consultation meetings with the Ministry of Justice. A copy of my submission is available on our website[2].

5. I will commence this submission by setting out the UNCROC principles relevant to the issues that arise as a result of this Bill, followed by my substantive comments and recommendations on the Bill itself.

Application of UNCROC – the role and obligations of the State

6. The New Zealand Government ratified UNCROC in 1993 and, in doing so, agreed to bring New Zealand's laws and policies into line with its provisions and principles. The UNCROC therefore provides a framework upon which policy and legislation that affects children and young people (aged 0-17 inclusive) ought to be built.

7. Articles 3.1, 4, 12, 18 and 19 of UNCROC are central to the concerns of the Bill. The text of these Articles is set out in the appendix to this submission for your reference. Articles 3.1 and 12 are of fundamental importance, as they respectively

[1] Children's Commissioner Act 2003, section 12(1)(f)
[2] www.occ.org.nz

concern the duty to consider the best interests of the child as a primary consideration and the right of the child to participate and be heard in matters affecting them.

8. These Articles are reflected in New Zealand's family law legislation[3] and have been further enforced through judicial decision-making in Family Court cases[4] and by the Supreme Court[5] in matters of administrative law. Their application, however, ought not be limited to judicial proceedings themselves, but instead should extend to the actions of all administrative authorities and institutions that work within the Family Court environment. This includes the proposed Family Dispute Resolution process.

9. Articles 4, 18 and 19 support the further development, within the Family Court or family dispute resolution environment, of support services that assist parents and caregivers in their parenting role and special protective and support measures for vulnerable children.

10. I note that the need for further development of such services was identified by the UN Committee on the Rights of the Child in their recent review of New Zealand's implementation of UNCROC, whereby the Committee recommended that the New Zealand Government *'intensify its efforts to render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities".*[6]

11. Further to this point, I refer in support to His Honour Judge Peter Boshier's following observations on the role of the State in family law issues[7]. These observations can be summarized as follows:

    - The State has a fundamental obligation to protect the vulnerable and to afford them assistance.
    - The State has a similarly important obligation to provide a venue and a system that are required to be used in family law disputes, in circumstances where parties cannot use resolve them by themselves.
    - States should invest in their children, for their welfare is the basis of their future prosperity.
    - The State has a special obligation to ensure that the voice of the child is heard and their rights are accommodated.
    - The State should ensure that its laws and policies regarding family law reflect contemporary social values.
    - The State should ensure that the family law system is designed in such a way so as to ensure that disputes are resolved in a cohesive and prompt fashion.
    - The State has a role to ensure that credible alternative dispute resolution methods are available to divert parents away from litigation.

[3] For example sections 4-7 Care of Children Act 2004, sections 5-6 Children, Young Persons and their Families Act 1989
[4] Such as *Hollins v Crozier* for example
[5] *Ye v Minister of Immigration* [2010] 1 NZLR 104
[6] UN Committee on the Rights of the Child, 56th Session, Concluding Observations of New Zealand, 4 February 2011, paragraph 31
[7] Judge Peter Boshier, *The Role of the State in Family Law*, New Zealand Family Law Journal, December 2012, p204

12. I am aware of the fiscal constraints currently facing the family law sector. Both the Family Court Review and the resulting Bill are driven by a need to address current expenditure levels that the Review identified as an issue compromising its ongoing sustainability[8]. This submission is made with that important consideration in mind.

Substantive Comments and Recommendations on the Bill

13. If enacted in its present form, the Bill will bring about a number of very substantial reforms to our current family law procedures and institutions, with particular regard to Care of Children Act cases. However, given the broad scope of the Bill, I have focused my submissions on the following areas, which I consider to be of primary importance to children:

    A. The proposed Family Dispute Resolution process
    B. Legal representation of children and parties
    C. Child safety and protection from violence

A. Family Dispute Resolution (FDR)

14. One of the most significant aspects of the Bill is the establishment of the Family Dispute Resolution (FDR) process as a mandatory front-end procedure in parenting and guardianship disputes taken under the auspices of the Care of Children Act 2004[9].

15. As I set out in my submission on the Family Court Review, I support in principle the establishment of a comprehensive front-end alternative dispute resolution service for responding to separation and care of children issues[10], through which most private family disputes are channeled before the initiation of Family Court proceedings.

16. I note that this issue has undergone periodic consideration over the past two decades in major reports reviewing the Family Court, namely the 1993 Review of the Family Court by Judge Boshier, and the Law Commission's 2003 report *Dispute Resolution in the Family Court*. Both reviews recommended the implementation of enhanced family conciliation services available at the front end of the family law system, albeit in different formats.

17. The FDR model proposed by the Bill is more aligned to the model recommended by the Boshier Report than the Court-based model recommended by the Law Commission, proposing an alternative dispute resolution process that sits outside the Family Court, with the Court itself having a purely adjudicative role.

18. While I support the FDR model in principle, I do have two fundamental concerns about the proposal:

    - The proposed cost for accessing to the service.
    - The lack of any provision in the Bill for ensuring that children's views and

[8] Ministry of Justice, *Reviewing the Family Court: A public consultation paper,* 20 September 2011, p7
[9] Clause 60, Family Proceedings Reform Bill
[10] Submission of the Children's Commissioner, *Reviewing the Family Court: a public consultation paper*, 28 February 2012, www.occ.org.nz

interests are considered in FDR.

The proposed cost of FDR

19. The FDR model proposes establishing a process that parties (other than those with low incomes) must undertake through private providers by way of a private contract[11]. The Bill accordingly provides few details about the FDR process itself, other than where it intersects with the Family Court through the filing of a form[12] and that it is legally privileged[13].

20. While the Bill itself does not prescribe a particular set of costs or fees, it is anticipated that FDR will cost parties $877 ($780 GST exclusive), with a subsidy available to low-income parties who would otherwise qualify for civil legal aid[14]. This will have the effect of fundamentally changing the shape of our current system, which presently enables parties to access free family counselling, essentially a form of conciliation, at the Family Court.

21. I am concerned that the proposed fees will result in parents who are having a relationship dispute being unable or unwilling to use FDR. This could result in issues being unresolved or poorly resolved and entrenchment of acrimonious positions, outcomes which are clearly not in the best interests of the affected children. This could have the unintended consequence of catalysing family dysfunction harmful to the welfare of children caught in the middle. The contingent social and fiscal costs may negate the savings brought about by this reform.

22. There is considerable concern across the family law sector about the impact these fees will have on children and their families and I note that both the New Zealand Law Society and the multi-disciplinary Expert Reference Group, established by the Minister to provide advice throughout the Family Court Review process, have conveyed their concerns about this to the Minister of Justice[15].

23. The Regulatory Impact Statement (RIS) indicates that the cost of administering and subsidising FDR is approximately $4.8 million less than current expenditure for all Family Court-funded counselling[16]. This appears to underpin the rationale for the proposed fees.

24. While I acknowledge the over-riding fiscal concerns driving the shape of this reform, I am of the view that a more financially accessible, ideally open-entry FDR system is preferable. I also note that the FDR fee proposals sits sharply at odds with other comprehensive state-provided alternative dispute resolution schemes, such as Department of Labour employment mediation services (which are free to access for all parties) or the Disputes Tribunal (where filing fees range from $30 to

[11] Family Court Proceedings Reform Bill Explanatory Note
[12] Sections 3C-3D, Family Disputes (Resolution Methods) Act 1980
[13] ibid, Section 3E
[14] Cabinet Paper, *Family Court Review: Proposals for Reform* July 2012, paragraphs 54-57 accessed http://www.justice.govt.nz/policy/justice-system-improvements/family-court-review/family-court-review-documents/Family-Court-Review-Cabinet-paper.pdf
[15] See J Temm, President NZLS, letter to the Minister of Justice *re Review of the Family Court*, 10 August 2012, p2-3 and Expert Reference Group on Family Court Review, *Response of the Members of the Expert Reference Group to Cabinet Policy Announcements on Reform of the Family Court,* 10 October 2012, paragraphs 2.4, 2.5, both accessed http://www.familylaw.org.nz
[16] Ministry of Justice, *Family Court Review: Regulatory Impact Statement*, August 2012 p7-8

$100).

25. I note that an open-entry form of FDR service has operated in Australia in recent years, following the establishment Family Relationship Centres (FRCs) in 2006. FRC provide a comprehensive range of services, including free individual advice and family dispute resolution sessions, such as mediation. Family dispute resolution sessions are free of charge for the first one hour session and up to $30 per hour for the second and third sessions thereafter[17].

26. While FRCs are run by independent organisations, their operation is standardised under a common service charter. They are also subject to a centralised, government-based complaints process administered by the Department of Families, Housing, Community Services and Indigenous Affairs[18].

27. Evidence suggests that the FRC model has had a positive overall impact. An evaluation of the 2006 Australian reforms which established FRCs found that their implementation led to an increase of relationship orientated services, more family disputes being dealt with through family relationship services and a corresponding reduction in recourse to legal services and the courts[19]. The evaluation also noted *"further evidence of a cultural shift whereby a greater proportion of post-separation disputes over children are being seen and responded to primarily in relationship terms."*[20]

28. This suggests to me that investment in a more comprehensive, accessible FDR service, similar to that used in Australia, could pay strong social dividends in the form of improved outcomes for children and a resulting reduction in Family Court expenditure. In addition, such an investment would also advance New Zealand's performance of its Article 4, 18 and 19 UNCROC obligations.

29. However, given the current financial concerns outlined in the RIS, I acknowledge that establishing a comprehensive, largely free FDR service similar to the Australian FRC model, will be expensive and may require savings being made elsewhere in the system.

30. Taking this into account, one option worth consideration is whether the introduction of higher Family Court filing fees for certain proceedings could off-set the costs of a more subsidized FDR service. This approach also appears to me to be more likely to have the desired effect of incentivising the use of FDR and disincentivising litigious behavior.

Recommendation 1

I recommend that sufficient investment made to enable the establishment of FDR services that enable parties access to initial dispute resolution services free of charge or at minimal cost.

I recommend that options for off-setting the establishment and operational

[17] http://www.familyrelationships.gov.au/Services/FRC/Pages/MoreFRCInformation1.aspx#q2
[18] http://www.familyrelationships.gov.au/Services/FRC/Pages/MoreFRCInformation1.aspx#q2
[19] Australian Institute of Family Studies, *Evaluation of the 2006 family law reforms: Executive Summary*, pE2-E4
[20] ibid p E2-3

costs of establishing such a service, such as filing fees for some types of Family Court applications, are investigated.

Lack of provision for considering children's views and interests

31. My second fundamental concern regards the lack of any provision within the Bill regarding either the role of children in FDR or any mechanism which requires that any FDR provider to protect and promote the rights, interests and welfare of children involved. This is despite the intent of the Bill to ensure a *"modern accessible family justice system that is responsive to children and vulnerable people".*[21]

32. Under the current system, the avenues for children to participate in family dispute resolution processes are largely limited to the stage where proceedings are filed and a lawyer is appointed. The Family Court Matters legislation sought to enable child-inclusive Family Court counselling[22], however this legislation is yet to come into force and will be super-ceded by this Bill.

33. The Bill's failure to include any child-centred principles or duties regarding child participation in FDR also appears at odds with the tenor of the Family Court Review itself[23]. The Ministry of Justice consultation paper stated:

"There is growing evidence to suggest that children cope better with the effects of separation if they have been consulted, and that children's involvement in decision making is better linked to better mental health outcomes."[24]

34. Furthermore, the consultation paper included the designs of two possible FDR models, both of which incorporated child-inclusive mediation[25].

35. I consider that it is essential that the FDR process is designed in such a way as to take into account the views and best interests of the children concerned. Not only will this increase the likelihood of better outcomes for those children, it also gives effect to the Government's obligations under Articles 3.1 and 12 of UNCROC.

36. This may require a degree of statutory prescription to ensure consistency of practice. Australian research on the participation of children in the FRC processes indicated that while the principle of child participation is well supported by those who use and work within the FRC system, there is ambiguity in its application in practice and significant differences of understanding as to its purpose[26]. This is perhaps indicative of a lack of guidance on this issue within the Australian regulatory framework governing the FRC system.

37. I therefore recommend that the Bill is amended to require FDR providers to both undertake efforts to include children in FDR processes and to ensure that the

[21] Family Court Proceedings Reform Bill, Explanatory Note: General Policy Statement
[22] Ministry of Justice, *Family Court Matters Legislation* accessed http://www.justice.govt.nz/courts/family-court/legislation/new-proposals-and-legislation/family-courts-matters-legislation
[23] Ministry of Justice, *Reviewing the Family Court: a public consultation paper,* September 2011, Chapter 4.2, pgs 29-30
[24] ibid p29, para 93 – referencing Lauman-Billings and Emery (2000); Smith and Gollop (2001); Kelly (2002)
[25] ibid p43-44 Diagrams 2and 3
[26] Graham A and Fitzgerald F, *Exploring the promises and possibilities for children's participation in Family Relationship Centres*, Family Matters 2010 No.84, Australian Institute of Family Studies, p 59

welfare and best interests of the child, as defined by s4 of the Care of Children Act 2004 (COCA), are accorded paramount consideration in those processes.

Recommendation 2

I recommend the insertion in the Bill of a new section s3F of the Family Disputes (Resolution Methods) Act in order to provide a set of duties and obligations on FDR providers regarding the inclusion of children's views and participation in any FDR process.

Recommendation 3

I recommend the insertion of a new s4(1)(c) of COCA [example below] to require that family dispute resolution providers are required to take into account welfare and best interests of the child as a paramount consideration in FDR processes.

s4 Child's welfare and best interests to be paramount
(1) The welfare and best interests of a child in his or her particular circumstances must be the first and paramount consideration
(c) In any family dispute resolution process undertaken pursuant to Part 1 of the Family Disputes (Resolution Methods) Act 1980.

38. In addition, given FDRs potential impact on children, I recommend that it is implemented in stages, through the establishment of demonstration sites in specific regions. Subsequent evaluations should be undertaken to assess both the effectiveness of those demonstration sites in resolving family disputes, including their impact on those children affected. Existing Family Court counselling services should be still made available throughout the demonstration and evaluation period.

Recommendation 4

I recommend that FDR is implemented in stages through the establishment of initial demonstration sites that are subject to evaluation prior to full implementation of the scheme. Existing Family Court counselling services should remain in place during the demonstration and evaluation periods.

B. Legal Representation for children

39. The Bill also has significant implications for the representation of children in Family Court Care of Children Act proceedings.

40. Clause 5 amends section 7 of the Care of Children Act 2004 to provide that a lawyer to represent a child in proceedings under that Act may only be appointed where court *"has concerns for the safety or well-being of the child"* and *"considers an appointment necessary".*

41. This amendment narrows the current statutory criteria for appointment considerably. At present, the appointment criteria under section 7 is much broader, in that it requires the Court to appoint a lawyer for the child in any matter affecting

the child's day-to-day care that is likely to proceed to a hearing, unless doing so would serve no useful purpose.

42. If enacted, this amendment will very likely result in lawyer for child being appointed in significantly fewer proceedings as present. The over-riding rationale for this proposed amendment appears to be cost, with the RIS estimating a saving of $13.1 million a year from current expenditure of $25.3 million per year[27].

43. While I acknowledge the concerns regarding costs, I am concerned by the impact of this amendment on the State's obligations concerning the rights of children under Article 12 of UNCROC. There is a likelihood that this amendment will lead to international criticism of New Zealand's commitment to its obligations under UNCROC in this regard. In its 2011 report on New Zealand, the UN Committee on the Rights of the Child recommended that the New Zealand government act to:

"Promote, facilitate and implement, in legislation as well as in practice, within the family, schools, and the community as well as in institutions and in administrative and judicial proceedings, the principle of respect for the views of the child"[28]

44. This amendment also moves our family law system away somewhat from its current jurisprudential commitment to UNCROC in this regard[29].

45. I am also concerned that the amendment could risk leading to poorer outcomes for both children and their families. As noted by the Expert Reference Group, the amendment will result in the Court not having access to independent information on the views of the child, nor the contextual issues relevant to those views and the resolution options in that case. This will hamper the ability of the Court to effectively focus its resources on the underlying issues in the case and lead to more entrenched conflict, posing greater levels of risk to the well-being of the children concerned.[30]

46. While cost is clearly the main driver behind this amendment, as I stated in my submission on the Family Court Review, I do not see this as a reason on its own to limit the role in the manner proposed by the Bill. The costs of lawyers for the child are directly linked to the scope of their brief from the Court, the management of the proceedings and the requirements that flow out from them.

47. Effective front-end alternative dispute resolution processes that reduce the numbers of COCA proceedings being filed, together with the procedural amendments aimed at simplifying and improving initial processes and the deposition of evidence and reducing delay and the numbers of fixtures, should have the effect of achieving savings on current levels of expenditure on lawyers for child.

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[27] Ministry of Justice, *Family Court Review: Regulatory Impact Statement*, August 2012, p12

[28] UN Committee on the Rights of the Child, 56th Session, Concluding Observations of New Zealand, 4 February 2011, paragraph 27(a)

[29] See Judge Jan Doogue, Suzanne Blackwell, *How Do We Best Serve Children in Proceedings in the Family Court?* Australasian Family Courts Conference, Auckland, October 1999 p4, and Judge Peter Boshier, *The Role of the State in Family Law,* New Zealand Family Law Journal, December 2012, p204

[30] Expert Reference Group on Family Court Review, *Response of the Members of the Expert Reference Group to Cabinet Policy Announcements on Reform of the Family Court*, 10 October 2012, paragraphs 2.4, 2.5, accessed http://www.familylaw.org.nz/

48. In addition, it is notable that s6 of COCA is retained without amendment. The Ministry of Justice has stated that this provision gives effect to the State's Article 12 obligations.[31] Section 6(2) provides that in COCA proceedings that:

- a child must be given reasonable opportunities to express views on matters affecting the child; and
- any views the child expresses (either directly or through a representative) must be taken into account

49. It is difficult to see how these s6 obligations will be met as a result of the proposed amendments to s7. Parties at odds over a parenting issue are clearly not in a position to advance the child's views in an impartial manner. In addition, without the appointment of independent counsel to represent their views, there is no mechanism through which a child is guaranteed any standing in the court proceedings themselves.

50. The Bill's proposed amendments are therefore directly at odds with the existing s6 principles. It is therefore important that the s7 criteria is retained, with savings to lawyer for child expenditure enabled through effective FDR or front-end conciliation services and simplified court procedures.

Recommendation 5

I recommend that the current s7 Care of Children Act criteria regarding appointment of lawyer for child is retained.

Legal representation for parties

51. Clause 5 of the Bill makes fundamental changes to the current right of parties to have legal representation in the Family Court through the insertion of new section 7A of COCA. As many other submitters will no doubt address this issue in considerable detail, I do not propose to spend much time traversing it.

52. I am concerned by the implications of this reform on parties who are unable to afford legal assistance or advice, due to the Bill's limitations on the availability of legal aid in COCA matters through amendments proposed to Part 4 of the Legal Services Act.

53. This amendment will disadvantage parents who are not primary income-earners and do not have sufficient post-separation income to instruct a lawyer to advise and assist them prior to a defended hearing. These parents will only be able to access legal help at the final hearing stage. Conversely, a parent who maintains a high post-separation income will more likely be able to afford to retain a lawyer to advise and assist them throughout the pre-hearing stages of a proceeding. This will place them at a distinct advantage, particularly when identifying the relevant legal issues and preparing the most effective legal arguments.

[31] Ministry of Justice, *Reviewing the Family Court: a public consultation paper*, September 2011, Chapter 4.4, p31, para 100

54. This type of imbalance between parties cannot be beneficial in any way to the welfare and interests of the child caught in the middle of such proceedings, a matter further potentially exacerbated by the absence of any lawyer for child appointment to represent the child's views and interests to the Court.

55. This reform may also make a judge's adjudicative role considerably more difficult, as in such cases they will have to make additional efforts to ensure that both the unassisted party understands the relevant legal arguments and issues needed to be addressed, and that the views of any child concerned are ascertained. This may lead to the Court bearing increased costs.[32]

Recommendation 6

That Clauses 70 and 71 of the Bill are deleted in order to enable parties to apply for civil legal aid for legal advice and assistance with preparation of legal documents in COCA proceedings

C. Child safety and protection from violence

56. I support the Bill's amendments to the Domestic Violence Act 1995 that expand the definition of "violence" to include financial and economic abuse and that increase the maximum sentence proposed for protection order breaches. Together, the expanded scope and stronger sanctions sends a strong social message that abusive conduct is unacceptable.

57. I would, however, recommend that new section 31 of the Domestic Violence Act is amended to place an additional obligation on the provider of a joint domestic violence support programme (attended by both applicant and respondent) to ensure that a provider is satisfied a delivery of a joint programme is not contrary to the welfare and best interests of any protected child.

58. The Bill also replaces the criteria under sections 58-62 of COCA which regards cases involving evidence of violence or allegations of violence. The current COCA criteria directs that a Court must not make a day-to-day care or contact order in favour of a "violent party"[33], unless it is satisfied that certain criteria have been met[34]. The Court can, however, issue a supervised contact order, with supervision conducted by an authorized provider[35].

59. The Bill replaces this model with a much simpler regulatory framework which removes all reference to the 'violent party' and 'allegations of violence'. Instead, it simply proposes that the Family Court may make a supervised contact order where it is not satisfied that the child will be safe with the party concerned. The presumption against making a day-to-day care order in favour of a violent party therefore is consequentially removed.

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[32] See Expert Reference Group on Family Court Review, *Response of the Members of the Expert Reference Group to Cabinet Policy Announcements on Reform of the Family Court,* 10 October 2012, paragraphs 3.8, accessed http://www.familylaw.org.nz/

[33] A 'violent party' is defined by s58 of COCA as a person whom has a protection order against them or who has had an allegation of family violence proved against them under s59 of COCA

[34] Section 61, COCA

[35] Section 60(5), COCA

60. While the new s58-60 COCA criteria is certainly less prescriptive and simpler in terms of procedure, I am not entirely comfortable with its removal of the presumption against making a non-supervised contact order that currently exists.

61. I welcome the Bill's amendment to section 5 of COCA which places as its first principle that the child must be protected from all forms of violence. It follows that the Act's corresponding provisions regarding cases that require consideration of supervised contact should also explicitly reflect this principle. I therefore consider that the current framework under ss58-62 of COCA should be retained.

Recommendation 7

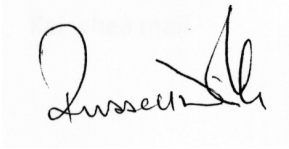
I recommend that new s31 of the Domestic Violence Act 1995 is amended as follows [amendment in bold]:

s31 Joint programmes
(1) If the conditions in subsection (2) are satisfied, a programme provider may arrange for—…
(2) The conditions referred to in subsection (1) are that—
(a) the protected person agrees; and
(b) the respondent or, as the case may be, the associated respondent agrees; and
(c) the programme provider is satisfied that no safety issues exist; and
(d) the programme provider is authorised to undertake both domestic violence support programmes and non-violence programmes; and
(e) the programme provider gives primary consideration to the welfare and best interests of any protected child before approving a joint programme under subsection s31(1)

Recommendation 8

I recommend that current ss58-62 of COCA are retained through deletion of Clause 14 of the Bill.

62. Thank you for your consideration of my submission. If you require further information, please contact my Principal Advisor (Legal) John Hancock on (09) 374 6102 or at *j.hancock@occ.org.nz*.



Dr Russell Wills
Children's Commissioner

Date: 13 February 2013

APPENDIX

United Nations Convention on the Rights of the Child

Article 3.1

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration

Article 4

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

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those 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.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement