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ISSN 1729-8997
(Online Edition)

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Children Speak

Vol 2, No.8, December '04 - January '05

A Newsletter of the Organization for the Protection of Children's Rights

Message from the President

The tsunami disaster in South Asia has generated an unprecedented response from the international community. Rich countries, usually very slow in providing long-term assistance to poor countries, have already pledged more than US\$ 4 billion for relief efforts, according to the United Nations. The disaster and its aftermath have received extensive and unabated media coverage.

With a death toll currently standing at over 150,000 - at least one third of which are children - and millions rendered homeless including an estimated 1.5 million children, most of whom may also have been orphaned and are vulnerable to disease and exploitation, the magnitude of the disaster is simply mind boggling. The outpouring of compassion and generosity displayed the world over bears witness to the solidarity and willingness of people to help others in distress and, even more importantly, is a tremendous example of what can be achieved when governments, the media and all stakeholders combine their efforts towards a common, humanitarian goal. The huge response to the tragedy, however, also raises troubling questions.

For one, why has there never been a comparable response to the disaster wrought upon children every day, year after year, by poverty and violence, the scope and scale of which dwarfs even those of



Riccardo Di Done

the Asian tsunami? Don't the 30,000 children who die every day from easily preventable causes and neglect, mostly in developing countries, deserve as much compassion and attention than the children and adults who died from the tsunami? What about the 14 million HIV/AIDS orphans in the world, most of them in Africa? Or the 8.4 million children currently trapped in slavery, trafficking, prostitution, pornography and other forms of exploitation worldwide? And the list goes on.

Can the huge difference in response be explained or justified by the fact that the tsunami is a natural disaster compared to the man-made root causes of the disaster wrought by poverty and violence on children and their families? The tsunami came and killed thousands of people without warning and many

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Inadequacies of India's Juvenile Justice System

By Dr. Asha Bajpai

"A juvenile delinquent is nothing more than a poor child caught red-handed in the struggle for survival"

According to the 2001 census, India is estimated to have more than 400 million children below the age of 18 years. The Indian Constitution provides the basis for the legal framework to protect children, whom it recognizes as a discrete group with identifiable rights and needs. Article 15 (3) of the Constitution mandates child protection as a special provision, while Article 39 (E)(F) provides guidelines for protecting children's health and Article (24) prevents children below 14 years from working. In addition, Sections 375, 354 and 509 of the Indian Penal code provide for protection of children from sexual abuse. The most comprehensive law to deal with children's rights is the Juvenile Justice (Care & Protection of Children) Act 2000 which was set up under the machinery of the 1986 Act. The 1986 Act had the following inadequacies:

- Despite prohibition by the law preventing detention of juveniles in either police stations or jails, there have been instances where children have been taken overnight for interrogation by the police, tortured and released in the morning.
- Juvenile courts are located at district headquarters, which is out of reach for most poor parents and children due to the time and expenses involved.



Children at an orphanage in South India

- Unknown

- On most counts, Juvenile Courts are similar to adult criminal courts, and use words such as 'arrest', 'charge sheet', 'criminal', 'bond', 'offender' and so on. They are like second class criminal courts involving police, judge, magistrate, advocate, lawyer, public

prosecutor, etc.

- The investigating officer is the police who has practically no experience of dealing with children, which is, in addition, considered as a low priority job.
- It does not specify nor explore non-institutional methods such as family based, preventive services to deal with juvenile delinquency.
- The Act does not directly deal with child sexual abuse: it defines a neglected juvenile as one who lives in a brothel or with a prostitute or one who is likely to be abused or exploited for immoral or illegal purposes.

There are several areas of concern even in the Juvenile Justice Act 2000. These include:

- The Act has expanded the definition of the child in need of care and protection very significantly. It could lead to undue interference in the lives of several poor children and their families by the 'system'. Adequate safeguards

- need to be provided or there should be two distinctly separate legislations.
- The act fails to expressly lay down the age of innocence, that is, the minimum age below which the Act would not be applicable.
 - The education, training and recreation of children have not been provided for. Besides, basic or school education even higher education and training of these children have to be considered. Distance education should be made accessible to these children.
 - The Act does not take into account the orders and directions of the Supreme Court and the various High Courts relating to repatriation, duty counsels, determination of the age of the child, etc.
 - There is no concept of parental responsibility.
 - Training of personnel and functionaries working in the system is not taken into account, a prerequisite for the implementation of the Act in its true spirit.
 - The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial.
 - Considering the wide scope of the Act provides very limited consideration for the dispositional alternatives provided for a child in need of care and protection.
 - The Act is silent on inter-country adoption.
 - The Act empowers the Juvenile Justice Board to give a child in adoption whereas it is the Child Welfare Committee that deals with children in need of care and protection.
 - Standards of quality care have not been laid down.
 - There is no linkage between the Juvenile Justice Act 2000 and the other legal

provisions related to children for instance child labor, primary education, sexual abuse, adoption, disabilities and health.

- The definition of juvenile delinquency is very legalistic and restrictive and provides very little scope for petty acts to be dealt within the community.

What needs to be done:

- **Representing the Child's Interests in Courts:** The child's future is at stake but his/ her interest is never separately represented in Indian Courts. The child's interests are considered to coincide with the parents or as the Court thinks fit relying on the probation or welfare officer's report, or counselor's report. There is a need to introduce the concept of guardian or child's legal counsel or a social worker involved throughout the court proceedings in which children are involved.
- **Role of NGOs:** NGOs through advocacy and lobbying can pressurize the government for law reform.
- **Training, Sensitization and Capacity Building:** Effective child protection and development depend on skills, knowledge and judgement of all professionals, personnel and staff working with children.
- **Monitoring bodies and Ombudsperson:** For successful compliance of Court orders, and to punish violators, monitoring bodies need to be set up, who should be given legal powers as well. An Ombudsperson such as first appeared in Sweden and Norway in the early 80s, is required to reprimand – where necessary – the lacks of a system.

Dr. Asha Bajpai, formerly Asst. Prof. at the National Law School of India, University of Bangalore, is currently a Reader at the Tata Institute of Social Sciences, Mumbai; she is part of the State Monitoring Committee on Children appointed by the Mumbai High Court to monitor and report the implementation of children's laws in Maharashtra, as well as a member of the legal experts group of the Maharashtra State Commission for women; She is also a member of the working group on Training of Judicial officers for the Ministry of Social Justice and Empowerment, Govt. of India. She is the author of Child Rights in India: Law, Policy and Practice.

Children Worst Affected by South Asian Tsunami

Children may account for more than one third of those killed in the Asian tsunamis and many more are at risk from disease, aid agencies have warned.

Some were too weak to cling on to their families, homes or trees as huge waves struck countries including Sri Lanka, Thailand, India and Indonesia.

Others could not run fast enough to outpace the rushing water which flooded villages and beaches where they played.

For the survivors, many now orphaned, disease poses the biggest threat. Witnesses described seeing children pulled under water by the waves, said Carol Bellamy, executive director of the UN children's agency Unicef.

"Kids can run fast but they were least able to withstand the flooding or hold on," she said. "So that is one of the reasons children have been particularly affected."

"People were screaming and kids were screaming all over the place, screaming 'help, help'. And after a few minutes you didn't hear the kids any more"

Young people are also likely to make up a large share of the casualties because they represent 39% of the population in the hardest-hit countries, Unicef said.

Laura Conrad of the UK charity Save the Children said: "Lots of children on that



"We are working to help them trace their families but clearly it is an enormous task," Ms Conrad said.

Lizette Burgers, of Unicef India, described how poverty-stricken fishing villages in India's Tamil Nadu region were struggling to cope. "I have talked to mothers who are desperately searching for their children but cannot afford a bus ticket to visit nearby villages to look for them," she said.

NEWS...

Sunday morning would have been playing along the beaches and were just swept away. "They wouldn't have been strong enough to grab hold of things and wouldn't have been able to swim against the tide."

At least 123,185 people were killed in 11 countries in southern Asia and East Africa from the massive earthquake and tsunamis on Dec. 26, according to official figures. The United Nations estimates the total number of dead will reach 150,000, while Indonesia and Thailand predict their tolls will rise to 100,000 and 8,000, respectively.

Ms Conrad told the BBC News website that the aid workers' immediate aim was to ensure surviving children had clean water, food, shelter and medical assistance.

Many have been separated from their parents or orphaned by the floods.

"There is no doubt we will need to focus on water and hygiene and there are many children who are traumatised."

Unicef has already flown emergency health supplies for more than 150,000 people to Sri Lanka, and the World Health Organization (WHO) is sending medical kits across the region. Save the Children teams are delivering food and medicine to 37,000 families in Sri Lanka and handing out children's clothes and plastic sheeting in Indonesia.

Children crowded into temporary camps will be particularly susceptible to acute respiratory infections, diarrhoea and waterborne diseases like typhoid and cholera, the WHO said.

The UN Population Fund warned many more women and girls might die in childbirth or lose their children as a result of disease, trauma and damage to the healthcare infrastructure.

□
(BBC)

Ridding the World of Land Mines

Excerpts from Carol Bellamy's Speech at the Nairobi Summit on Mine-Free World, 29 November to 2 December 2004

Five years ago, the international community moved with uncommon unity and resolve to end, once and for all, the production and use of antipersonnel landmines, a weapon that cripples development and hope with the same relentless cruelty with which it kills and disables the young.

Now, in this first five-year review of the Mine Ban Treaty, we have an opportunity to focus on ways to accelerate progress toward the treaty's ultimate objective – and that is a world free of these immensely destructive weapons.

One of the characteristics that make landmines so horrific is their indiscriminate nature. They do not distinguish between a soldier and child, a care-giver or military target. Thousands of children around the world have been killed or maimed by landmines – and the agony of those who survive lingers in myriad ways, from sheer pain and suffering, from discrimination resulting from disability – and in the emotional pain that attends the loss of friends and loved ones.

The Mine Ban Treaty explains in its preamble the determination of States Parties to put an end to the suffering and casualties caused by anti-personnel mines, most of them innocent and defenseless civilians and especially children – and the severe, long-term effects of landmines on development and the repatriation of refugees. We are all here at this Summit to undertake a careful analysis of our successes and shortcomings in the realization of this aim.

For UNICEF, landmine activities are wholly in keeping both with our mandate and principles proclaimed by the Convention on the Rights of the Child, which explicitly incorporates humanitarian law and measures to protect children and their care-givers in armed conflict – including the rights of disabled landmine survivors, like our young friend Nikola.

Yet the picture that emerges over the last five years is mixed. On one side we celebrate our successes, such as the development of new mine action programmes – and the welcoming of many new signatories to the Mine Ban Treaty. On another, we live with the knowledge that mines and other explosive remnants of war continue to plague the lives of children in more than 80 countries around the world.

Despite considerable investments in educating children and their communities about minimising the risk of mines, people in many seriously affected areas still do not have access to basic warning messages to which we all know they are entitled, nor do mine victims have access to essential medical care.



MYRON WEINER

By Lucian W. Pye



(11 March 1931 - 3 June 1999)

Myron Weiner, Ford International Professor of Political Science at MIT, was a leading authority on Indian political studies and a specialist in the fields of political development, political demography, migration, ethnic conflict and child labor.

In 1999, a few months before he died of cancer, he shocked the Indian political establishment with his Princeton Press book, *The Child and the State in India*. He boldly suggested that it was not poverty that caused child labor and illiteracy, but

PROFILE

rather, as showed to be the case in other countries, it was the other way around, and that overcoming illiteracy would in fact reduce poverty. He fearlessly suggested that India had a special problem because the caste system led people to think that lower-caste children were destined for menial jobs and hence did not need reading skills.

Myron was a master of empirical field research, especially of the art of interviewing officials and common citizens. He had no vested interest in any particular grand theories, but rather sought answers to clearly formulated questions. As an area specialist of the developing countries, and of India in particular, Myron had great respect for indigenous cultures, but he was never an apologist for questionable practises or harmful policies. His prime commitment was always to finding the appropriate facts and presenting them in a context that would explain the movement of history. □

(The American Philosophical Society)

Ridding the World of Land Mines

In Chechnya, my colleague Olara Otunnu, the Secretary-General's Special Representative for Children and Armed Conflict, has estimated that out of an estimated 7,000 to 10,000 landmine casualties in recent years, at least half were children. In Ethiopia and in Cambodia, nearly 40 per cent of all mine and unexploded ordnance casualties are reported to be children.

Much of the progress that we have seen in ridding the world of the scourge of anti-personnel mines has been the result of committed partnerships between governments and civil society, including national NGOs and international organisations at every level. Yet five years after the Mine Ban Treaty entered into force and became a moral and legal benchmark, some States still dispute the humanitarian consequences of anti-personnel landmines and refuse to sign the Treaty. This is unconscionable and indefensible. Our legal responsibilities could not be clearer. International humanitarian law requires warring parties to distinguish between combatants and civilians – and the Convention on the Rights of the Child requires States to ensure a safe environment for children.

To that end, UNICEF commits itself to support the implementation of comprehensive mine-risk education programmes, to undertake advocacy to universalise the Mine Ban Treaty, to support the formation of lasting and appropriate partnerships to realise the aims of the Treaty – and to ensure that child landmine survivors are included in public health, education and other development programmes. □



Message from the President

criticized the lack of an early warning system in the affected areas, which could have saved many lives. For many years now, we have been continuously warned by international organizations such as the UNICEF that an unacceptable number of children die every day from preventable causes. Yet, these repeated warnings remain unheeded and, even more revealing, underreported or not reported at all by the media. Nor is there sufficient mention of the fact that the death toll from the tsunami is as high as it is and will continue to grow because of the lack of infrastructure, poor quality of housing and other effects of the high poverty that characterizes countries in the affected regions. Many of the deaths could have been prevented through more and better long-term assistance, more equal distribution of resources and fairer trade rules.

We can hope that the worldwide movement of solidarity and compassion generated by the tsunami disaster will carry over to the neglected emergencies besetting children in many parts of the world and open the way for long-term, sustainable and empowering solutions to poverty and violence against children. Or, better still, we, both as individuals and collectively, can work together to ensure that the newfound awareness and willingness to help those less fortunate than ourselves does not peter out over time and remains a priority of the international community. For the Love of Our Children! □



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