

# Assisted Reproduction: Should Prisoners have Access?

Ethical dilemmas associated with reproductive technology continue to emerge. In England the convicted murderer of a 74 year-old pensioner has challenged a refusal by the Home Office to allow him and his wife (whom he married while in prison) access to assisted reproduction. The prisoner is arguing he has a right to start a family under the European Convention on Human Rights and that since he and his wife are not allowed conjugal visits to conceive 'naturally', the only recourse is artificial insemination.

The case raises many ethical issues, not least of which is whether a conception in these circumstances would be in the best interests of the child to be born. Under South Australian legislation 'The Reproductive Technology Act 1988' it is clearly stated that:

The welfare of any child to be born in consequence of an artificial fertilisation procedure must be treated as of paramount importance and accepted as a fundamental principle in the formulation of the code of ethical practise' {S10(2)}

The code of Ethical Clinical Practise (1995), in addressing the eligibility criteria for infertility treatment and gamete donation states, *inter alia*, that:

A statutory declaration signed by the persons or couple stating:

- (i) the person or couple were not subject to a term of imprisonment or to outstanding charges for an offence for which imprisonment may be imposed; and
- (ii) that the person or either partner of a couple has been found guilty of a sexual offence involving a child; or of an offence involving violence; and
- (iii) whether either spouse has had a child permanently removed from his or her guardianship (other than by adoption)

The South Australian Council on Reproductive Technology debated this issue long and hard, and concluded that imprisonment was not conducive to a child's best interests. One might add that imprisonment for a violent crime would be even less so. The question of public policy is at issue and whether the public interest transcends individual rights.

Sally Castell-Mcgregor was a member of the SA Council on Reproductive Technology between 1988-1994 and played a significant role in arguing the children's interests provisions in the Code of Ethical Clinical Practice.



# Child Soldiers - better protection coming

An Optional Protocol to the UN Convention on the Rights of the Child was finally agreed at a UN meeting in January, banning all forced recruitment and all participation in hostilities of children under 18 and requiring governments to provide rehabilitation and social reintegration for former child soldiers. Governments are also required to criminalise the recruitment of under 18 year olds into non-government forces, such as rebel groups.

This is a welcome improvement on the minimum required under the Convention on the Rights of the Child which gives 15 years as the minimum age for participation and recruitment.

However the question of the minimum age for *voluntary* recruitment into government armed forces was left unresolved, and this new Protocol simply requires State Parties to set themselves a binding minimum above 15. This unsatisfactory outcome frustrated the vast majority of countries who wanted 18 years to be the minimum in all respects (the "straight 18" position) and disappointed the many non-government organisations which had campaigned hard for a clear universal standard based on 18.

Olara Otunnu, UN Special Rapporteur on Children in Armed Conflict, praised the efforts of the International Coalition to Stop the Use of Child Soldiers, which had significantly moved world opinion, and continued to influence the final outcome even in the last day of debate. Many countries echoed this appreciation of NGO action.

The Australian Government, disappointingly, followed the USA position on most aspects, including failing to argue even for its own position, which is voluntary recruitment (with parental permission) at 17 years. However it has undertaken to allocate funds for the demobilisation of child soldiers and has asked the Australian Coalition for suggestions of projects.

Another anomaly, specifically to humour the USA, was the decision that States which are not State Parties to CROC (and this only applies to the USA and Somalia) may sign and ratify this Optional Protocol. While this pragmatic compromise may ensure that the USA plays an active role in global efforts to keep children out of hostilities, it is feared that it will weaken the overarching status of CROC, and allow the USA to remain uncommitted to the other provisions of CROC.

Helen Bayes

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