

From Sydney to Cape Town: the evolution of the World Congress

By the Honourable Justice Rodney K. Burr,
Judge, Adelaide Registry, Family Court of Australia

In 1990, Sydney solicitor Stuart Fowler and I were invited to Hong Kong to address the Council of LAWASIA, an association which represents lawyers and lawyers' organisations in some 21 countries in the Asian and Pacific region. We thought we would be invited to establish a Family Law Section having had considerable experience doing so in Australia.

LAWASIA did indeed issue such an invitation but then delivered a challenge that was intimidating in the extreme. The Council of LAWASIA asked us if we would accept a brief for the human rights of families and children in the Asian and Pacific region. Members of the Council then individually and collectively regaled us with tales of the utmost horror.

They told us of:

- * The plight of some 140,000 children under the age of 14 years sold into prostitution in one small Asian country alone;
- * The potential decimation of several generations by the spread of AIDS through child prostitution;
- * The appalling conditions in child labour camps and factories in several countries in the region;
- * The deliberate mutilation of children in order to use them as beggars;
- * The forced removal of children's organs for sale in the organ transplant trade;
- * The abduction for adoption of many children; and
- * The appalling poverty and health problems of millions of children.

Our instinctive reaction was, "It can't be done". What could a couple of unknown lawyers do about generational problems of the most severe proportions? It seemed impossible.

However, it also became impossible to ignore. No longer were the education and care of our own families and the pursuit of a comfortable retirement the only priorities. There had to be something that could be done. If someone did not accept the challenge, then it certainly would be

impossible.

And so, the First World Congress on Family Law and Children's Rights was conceived and ultimately born in Sydney, Australia in July 1993. It was the product of three years of very hard but very rewarding work. The more people we told of the problems and told of our hopes, the more offers we received and the more volunteers "sprang from the woodwork".

From its inception, the World Congress was designed and promoted to be result oriented. It was to achieve outcomes. It was not simply to be a "talk fest" and a gathering for the exchange of views and ideas which would be quickly forgotten once the departure tax had been paid at the airport.

Over 850 delegates from 54 countries of the world answered the initial challenge and worked hard throughout the Congress to educate and inform others from their own experience and expertise, but more importantly to draft solutions and remedies and to establish the momentum for change.

The First World Congress did achieve results and significant results at that. These included:

- * The enactment of laws imposing criminal sanctions for the abuse and exploitation of children committed extraterritorially;
- * The generation of a climate of international condemnation of the exploitation of children;
- * Significant exchange of information leading to new developments in family law, family courts and alternative dispute resolution;
- * The creation of a LAWASIA

Children's Trust to fund projects consistent with the resolutions of the Congress; and

- * The promotion of a protocol to the UN Convention on the Rights of the Child designed to bolster international sanctions for the prevention of trafficking of children; and
- * The formation of the LAWASIA Family Law and Family Rights Section.

Delegates left the conference with an enormous sense of satisfaction but an awareness that a very long journey had only just begun. It was essential that an organisation be found in one of the larger countries of the world which had the capacity to lead by example, to continue and to expand upon the humble beginnings of the First World Congress.

Fortunately Stuart Fowler and I were introduced to the Association of Family and Conciliation Courts in the USA, which warmly embraced the World Congress and agreed to serve as Secretariat for the Second World Congress, held in San Francisco 3-7 June 1997.

The energetic and enthusiastic contributions of the AFCC representatives on the organising committee drawn from many and varied professions ensured the success of the Second World Congress.

Then First Lady, Hillary Rodham Clinton, embraced the project and served as Honorary Chair of the Second World Congress which attracted 1600 delegates from some 60 countries.

Book review on Stephen Gray's Criminal Laws - Northern Territory

Criminal Laws - Northern Territory
by Stephen Gray
The Federation Press

Stephen Gray provides an in-depth look at a much ignored and misunderstood creature, the Northern Territory's Criminal Code in his latest book, *Criminal Laws – Northern Territory*. Having received his legal training in the NT, this writer was dissatisfied with the offerings of various other writers as their emphasis focussed on the criminal codes of Queensland and Western Australia (upon which the NT has based its own code). Though one of the smaller jurisdictions in the Commonwealth, the Territory provides a significant number of cases to the appellate courts and High Court and as such was always deserving of at least some mention in an academic offering. Stephen Gray has done so in his own inimitable style.

Gray outlines the introduction of the customary law practised by the present indigenous population to one degree or another. He points to the conflicts between the two systems and how disadvantaged the Aboriginal people have been to have faced the British legal system, created in a culture that was foreign and confusing, initially in a language that was incomprehensible. Though attempts have been made to make the legal system (and other governmental schemes) accessible through programs such as the Aboriginal Interpreter Service, Gray points out that more is needed in order that the general Aboriginal population can effectively access the protection of the present-day legal system. Gray also makes poignant observations of the rates of incarceration of Aborigines compared to non-indigenous Australians. One could infer that the disadvantages of poverty, lack of education, substance abuse and the dispossession of entire communities from their homelands have played a tremendous role in the underlying causes of the exploding prison

populations for Aborigines. His analysis, not without merit, tended to focus on issues related to the criminal justice system but seemed to argue that rates of incarceration could be addressed from a legislative perspective. The situation seems to have recently become slightly more difficult with the impending demise of the Aboriginal and Torres Strait Islander Commission. Considering the number of Australia's indigenous population who endure poverty, high rates of child mortality, a life expectancy far below that of non-Aborigines, substance abuse and domestic and other types of violence, it would seem that Mr Gray's concerns will only be exacerbated by the future de-funding of ATSIC.

This reviewer was hoping for a more thorough analysis of the subject of recognition of customary law. As topical as the subject is now, the role of customary law plays a critical role in the lives of many Aborigines and the influence of things such as promised marriages and traditional pay-back raise tricky questions in light of Australia's international obligations. The approval by courts (and general community) of both activities would seem to clearly fly in the face of those obligations. Mr Gray's reference to the fairly recent prohibition of whipping as a judicial punishment in 1974 seemed to imply that contemporary views of what is or isn't an acceptable sentencing alternative are not too far removed from the customary practice of spearing or the use of nulla nullas. The comment seemed out of place though it was not inferred as approving of the practice, merely the acknowledgment of similar views of punishment held by both cultures.

In Chapter 4 (the most interesting in this reviewer's opinion), there was discussion concerning the *ex officio* indictment and the various legislative and judicial remedies for preventing the *ex officio* from being used in an abusive manner. It seems to be fairly well accepted that the potential for abuse is ever present but the judiciary seems ready and able to regulate its

injudicious use. The use of the *ex officio* has truly come into its own in respect of the new section 43 Fitness to Plead legislation as the courts previously had little power to deal with criminal defendants found unfit to plead. The Northern Territory is still awaiting the mental health system answers to the questions that arise when defendants (usually persons who are alleged to have committed violent or dangerous offences) are found to be unfit to plead. It is without doubt that the courts currently face a lack of suitable sentencing options in relation to those persons who are not necessarily suitable for the mainstream prison system or in some instances require intensive mental health supervision.

Under the new legislation, defendants who are unfit to plead but found guilty, may be dealt with by the court and this may include imprisonment if suitable facilities are not available. As a safeguard, these prisoners are subject to periodic evaluations. With the prevalence of petrol sniffing (and other substance abuse) and its associated long term consequences, it is anticipated that as a result of such behaviours, there will be an increasing number of persons who will suffer health consequences that include brain damage. In certain instances this resultant damage renders some individuals incapable to controlling violent and at times murderous outbursts and in extreme cases, are rendered so damaged as to be unfit to plead in criminal proceedings. Will these persons be condemned to what amounts to an indeterminate sentence or will the government step in and create a satisfactory alternative? It is necessary for these prisoners to receive adequate care and treatment yet at the same time the government needs to ensure that such care provides the requisite protection to the rest of society from those individuals who are deemed to be a continuing threat. As with many other questions these belong not to the realm of the law but, directly or *continued page 18...*

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By then it was clear that the momentum could only be carried forward by the continuation of World Congresses on a regular basis. Not only were we encouraged by the results of the first two Congresses but also by the growing body of international support for its aims and objectives amongst the legal profession and related professions worldwide. The enormity of the task of preparing such World Congresses meant though that they could not be held any earlier than each four years. Subsequently, another very successful Congress was held in Bath, England in September 2001.

In the intervening years leading up to each Congress and subsequent thereto the work continues in securing international support for the aims and objectives of the World Congress in addressing human rights abuses of children. The World Congress has been successful in securing support at a Governmental level from the Australian, New Zealand, Canadian, United Kingdom and Irish Governments. Support has also flowed from numerous other individuals, foundations and

organisations from around the world, including the United Nations and its various agencies.

As stated, the second Congress in San Francisco attracted the very public support of the First Lady, Hillary Rodham Clinton. For the third Congress, the patron was H.E. Mary Robinson, United Nations Human Rights Commissioner and Former President of the Republic of Ireland.

Palpable benefits were also achieved at the second and third Congresses including:

- * The drafting and promotion of voluntary codes of conduct for multinational corporations employing children in their manufacturing operations off shore;
- * The building of two schools in Central America;
- * The establishment of the International Children's Rights Protection Network (now Children's Rights International) using voluntary advocates to embrace specific cases or general causes for disadvantaged or abused children;

- * The receipt of "report cards" on the performance of the world's nations in seeking to implement the resolutions of the World Congress; and
- * The successful continuation of a drive to get as many nations of the world as possible to pass laws mirroring Australia's child sex tourism laws in imposing criminal sanctions for the abuse and exploitation of children committed extra-territorially.

The planning for the fourth Congress is already underway and is to be held in Cape Town, South Africa from 20 – 23 March 2005.

The World Congress is now a truly international event recognised as one of the most significant events on the world calendar in promoting the protection of children. The World Congress has received a United Nations Award for services to the family. As its work continues, many new and energetic people, too numerous to mention, have asked to be involved to increase the reach and effectiveness of the World Congress. Its future seems assured and hence the hope of achieving beneficial change for many of the world's children, attainable.

For further information, please visit our website www.lawrights.asn.au

To be placed on the mailing list, contact:

Gail Fowler, Project Manager
Capital Conferences
PO Box 253
Church Point
NSW Australia 2015
Tel: +61 2 9999 6577
Fax: +61 2 9999 6733
Email: gail.fowler@capcon.com.au

The congress is held under the auspices of the Board of the World Congress on Family Law and Children's Rights Inc.①

Book review on Stephen Gray's Criminal Laws - Northern Territory cont...

indirectly, affect its administration.

This work has been long awaited. In light of various other writers and publishers ignoring the unique Territory system, it was a courageous attempt at exposing the inner workings of the NT's criminal laws and Mr Gray has done so in a concise manner whilst maintaining a broad view of the criminal laws of the NT. University students will appreciate this book as it appears to be an invaluable resource for the study of the criminal law. As a practitioner, I have enjoyed reading Mr Gray's work as it was well laid

out and informative. Mr Gray referred to the anticipated decision in the appeal of the *DPP Reference No 1* [2002] NTCCA 11 where the High Court is to decide if *McMaster* (1994) 4 NTLR 92 is to remain the authority for rape cases in the Territory. The implications of this decision (one way or the other) should have huge ramifications for the prosecution of rape and this reviewer looks forward to Mr Gray's analysis of that decision.

.. **Juan Alberto Dominguez, Jr.,
Office of the Director of Public Prosecutions** ①