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الشرائح التقديمية التالية هي ملكية خاصة بالمؤلفين ، ويتم توفيرها في هذا الموقع كخدمة عامة . يرجى عدم نسخ أو توزيع و إعادة نشر هذه الشرائح دون الحصول على إذن كتابي من المؤلفين المدرجين .

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Situating the best interests of the child in community-based arbitration of marriage disputes

Reflections from a pilot intervention of Terre des hommes Foundation in Assiut, Egypt



Aide à l'enfance. | Kinderhilfe weltweit. | Per l'infanzia nel mondo. | Helping children worldwide.

Doha International Family Institute, May 2015
Kristen Hope, Child Protection Coordinator MENA



Terre des hommes

tdh.ch

Introduction

Terre des hommes Foundation :

- Created in 1960
- Non-political, non-religious, non-governmental organisation
- Mission: to come to the aid of children in need
- Currently working in 34 countries worldwide: child protection, juvenile justice, mother and child health

⇒ Tdh's innovative approach to access to justice for children: **holistic** programming that involves **formal** and **alternative** processes and actors

⇒ Estimated 70 and 90 per cent of all disputes in developing countries, are solved through informal or customary mechanisms (Danida)



Children in marital disputes

Multiple vulnerabilities

- Children, especially **young children** and **adolescent girls**, are particularly at risk of violence by **primary caregivers** and other family members because of their dependence and limited social interactions outside the home (UNICEF , 2014)
 - Risk factors and vulnerability of children increases when the best interest of the child does not coincide with that of his parents, guardians or close family
- ⇒ In Arab countries: Practices of community-based dispute resolution and mediation are widespread : *sulh* (reconciliation) and *tahkim* (arbitration)
- ⇒ Pros and Cons: balance harm done to individual with harm done to community?

Research questions

How do arbitrators in Upper Egypt understand the concept of “best interests of the child”?

What factors are taken into account and whose opinions are sought when arbitrators are asked to intervene in cases of marital conflict?

To what extent are children’s opinions sought out and taken into consideration, as part of a process for determining their best interests?



Methodology

Action-oriented research : Pilot project on ADR in two districts of Assiut governorate: Abnoub and Abu Tiig.



Methodology

- Quantitative data: **266 cases of children** have been recorded through individual meetings with **14 arbitrators (12 male and 2 female)**. **55 cases of personal status disputes**
- Qualitative data: **225 stakeholders** in the community: **children, parents, arbitrators, members of dispute resolution committees, governmental agencies, lawyers, psychologists and social workers**
- **Ethical considerations:** seek informed consent; do no harm; guard confidentiality; provide support; encourage child participation.
- **Limitations: work in progress.** Sessions with children did not cover personal status cases, but child protection in general.

Key concept : The best interests of the child



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Article 3 UNCRC: *“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.”*

“[A] fundamental legal principle of interpretation developed to limit the extent of adult authority over children” (Zermatten)

=> Dual meaning of “best interests” : as a **rule of procedure**; as the foundation for a **substantive right to freedom of expression**

⇒ The interpretation of a child’s best interests must be **consistent with the whole of the UNCRC**:

- No discrimination, no cruel or inhumane treatment, child’s view sought and taken into consideration, involvement of relevant expertise, preservation of development of the child

⇒ What **happens when parent’s views of the children’s best interests conflict with international standards of children’s rights?**

Context: Children in Egypt



Context: Children in Egypt

Population of Egypt: 86.9 million, 32.1% of which are under 14 years of age.

Child poverty: **45.3% of children in Upper Egypt living in poverty**, compared to 17.6% in Lower Egypt and 7.9% in Cairo.

Egyptian children face high rates of violence, especially in homes and schools.

In Assiut governorate (UNICEF 2015)

- ⇒ **67% of children reported experiencing physical violence and**
- ⇒ **86% reported experiencing emotional violence in the past year.**
- ⇒ **66% stated that they had witnessed family members fighting at home in the past week.**

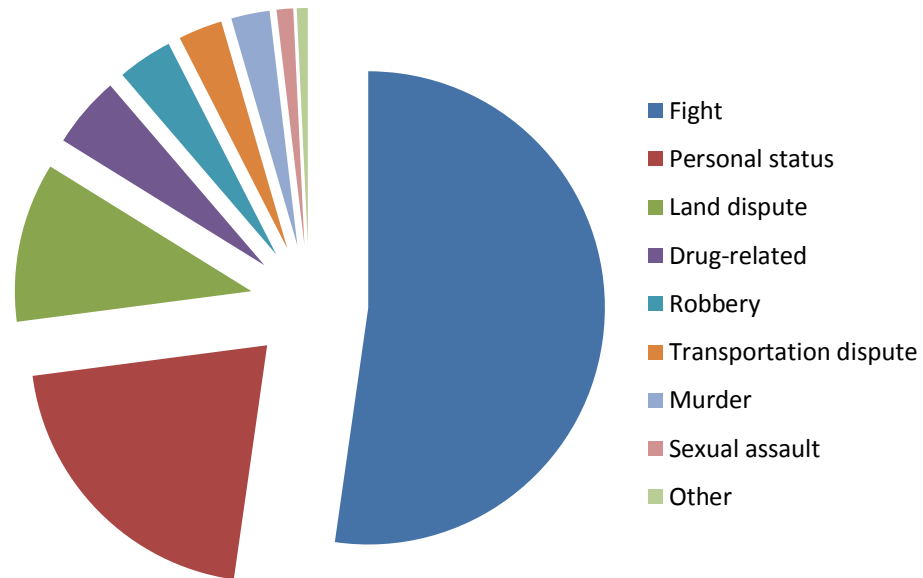
Possible protection:

- Child Law no.126/1996 amended by law no.126/2008
- **No definition factors that constitute the child's best interests**
- Penal Code: battery as criminal offense. Divorce?
- **Stigma**



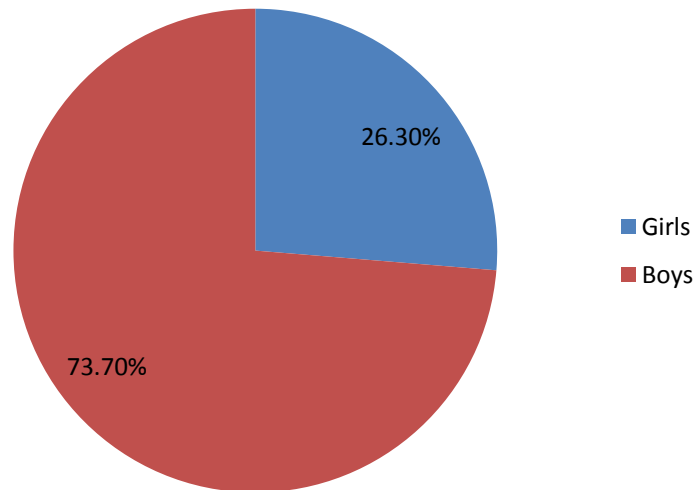
Research findings: total sample

Type of crime

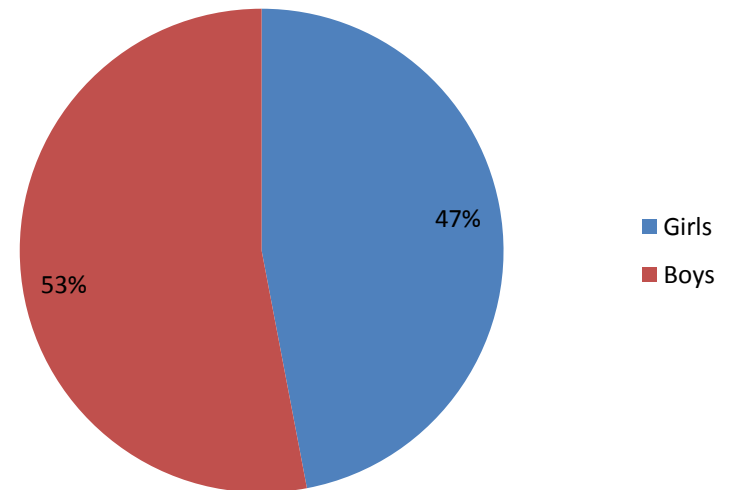


Research findings: Gender

Total sample



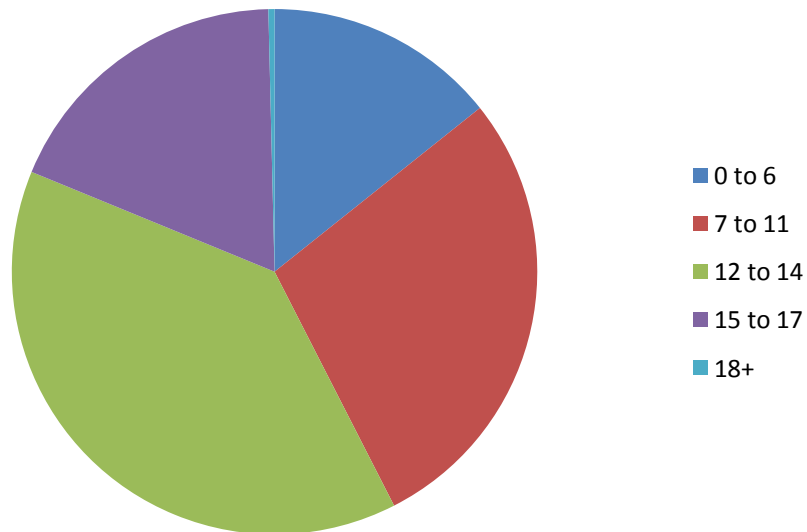
Personal status cases



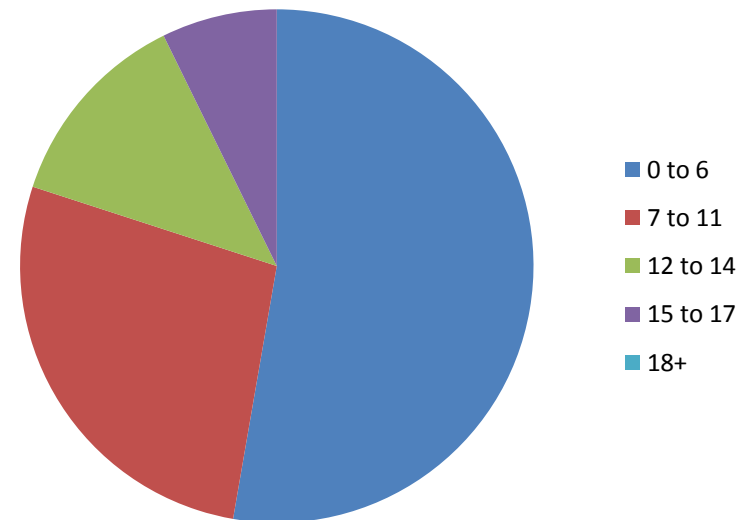
One third of total cases of girls in the sample were personal status cases.

Research findings: Age distribution

Total sample



Personal status cases



Is it through personal status disputes that the youngest children will enter into contact with ADR mechanisms.

Research findings: Factors influencing on determination of the child's best interest

		Total cases	Personal status cases
Child participated in proceedings		63%	31%
Access to legal advice		15.8%	29%
Gender of arbitrator	Male	86.8%	40%
	Female	13.2%	60%
Type of outcome	Agreement	66.5%	89%
	Judgment	33.5%	11%

Of all the cases dealt with by female arbitrators, 94.4% were personal status cases.

Research findings: case study

Amina spoke about her daughter, who often had fights with her husband. Initially, Amina stated that the fights were caused by disagreements over money, but later in the conversation she stated that her son-in-law drank alcohol and was violent towards her daughter. Following one particularly fierce fight, Amina's daughter went to her mother's house with her one-year-old son and refused to return to her husband. Amina contacted Soumaya to help solve the dispute. Soumaya convened a meeting with Amina's husband and a senior male representative of her son-in-law's family, in addition to the mayor of the village and the imam of the local mosque. Together, they tried to reunite the disputing couple by drawing up a set of conditions for Amina's daughter's husband to adhere to, such as refraining from drinking and beating Amina's daughter. Amina's daughter agreed to return to her husband's home with her child. Soumaya stated that she was following up by periodically speaking to Amina's daughter over the phone to make sure that the husband was abiding by the terms of the agreement. When asked how a wife should deal with a violent husband, Amina said, with a shy smile: "She needs to be patient".

Analysis :
situating the
best interests
of the child



Analysis : situating the best interests of the child

1) Protecting children from violence: The reluctance to discuss violence and acceptance of it when openly questioned suggest that women's attitudes at best normalize violence, at worst perpetuate it as a social taboo. **Against the fear of being stigmatized in divorce, domestic violence comes to be considered the lesser of two evils.**

Children's views of risks: children seem more likely to focus on incidents outside the home, in the wider community, than in the own home.

- Against UNICEF's recent research and the case studies, it appears that while children in Assiut are likely to face violence in their homes, **their reluctance to speak about it confirms its taboo status.**

2) Discrimination: in personal status cases: no difference between number of girls or boys; gender of child did not impact on participation. But significant differences in other cases.

- Social expectations of girls lead to less offending?
- Certain crimes involving girls are more likely to be buried?

Analysis : situating the best interests of the child

3) Access to expert advice : arbitrators are more likely to seek advice of legal experts for personal status disputes than in other types of disputes. recognition of the fact that family courts and Shari'a law have more favourable provisions in terms of custody and inheritance than customary law.

4) Child participation: children in personal status cases were half as likely to participate as in other cases. The younger the child, the more unlikely he or she is to participate in proceedings. There is a **widespread perception that young children do not have the capacities to participate in a meaningful way**

- **Decisions are being made about children's best interests without taking their experiences into account.** If parents and arbitrators are not seeking to understand the impact of violence on children from children's own perspectives, is it easier to adhere to social norms?

Conclusion

In community-based resolution of marriage disputes in Upper Egypt: the harm done to the community is prioritized over the harm done to the victims.

How does this fit with an appreciation of the larger context, the wider social, economic and political factors that enable and constrain action?

- Perhaps the recurring challenges of child protection work are not located in an unwavering battle between international principles and context specificity or cultural relativism
- Points of tension across the spectrum of human experience can be understood as the nexus of social change, as **the locations where macro structures may be challenged by individual agency.**
- Resilience and resourcefulness in negotiating amongst different systems, values and expectations
- Shifting profiles of arbitrators (gender) and practices

Conclusion

As children's voices become more acknowledged and involved in these processes of social change, possibilities for decision-making informed by their worldviews continue to open up.