THE INTERNATIONAL COMMISSION ON COUPLE AND FAMILY RELATIONS

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In collaboration with

Cana Movement Malta

EMPOWERING FAMILIES AS SUSTAINABLE PARTNERS IN SOCIAL POLICY

KEYNOTE PAPERS AND CHAIR'S REPORT

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EDITOR'S PREFACE

It gives me great pleasure to have had the opportunity to edit this report of such a successful conference in Malta in 2010. The editing task has been made easier because it has brought me many memories of this event – a special time to reflect again on the wealth of experience, thought and initiatives presented during our brief time together. I trust that the reader will find as much enjoyment in this publication as I have, whether you were present or not.

Terry Prendergast
Editor

A report from the Chair of ICCFR/CIRCF

Early March 2010 saw many ICCFR members, and new attendees, flocking to the island of Malta in the Mediterranean for the ICCFR Annual Conference. It is fair to say that many of us on the Board of ICCFR were slightly concerned about whether people would come to the Conference, not because Malta wasn't an interesting place to visit or because the topic was uninteresting, but because the previous year's Conference in Sherbrooke, Canada, had been cancelled and we were wondering whether not having a conference would have led people to forget about ICCFR. We need not have worried since the attendance at the event was the best in years and clearly those who regularly attended the Conferences were "hungry" for this year's event.

Our Conference venue was the Hotel Dolmen, at Qawra, on the Maltese north east coast, with grand views of the north of the island and the neighbouring island of Gozo, part also of the Maltese archipelago. The accommodation for relaxing and working was splendid and the hotel staff was more than welcoming of us as a group. The hotel itself boasted many interesting features though Conference delegates were actually too busy to take real advantage of them. The food and bars were well maintained and contributed to the well nurtured feeling within the event, a tribute in many ways to the preparation that had taken place by our host and partner agency, the CANA Movement, along with Ray Baldachinno, the Conference organiser who worked tirelessly during the event, in addition to the work he had put in prior to our arrival.

The Conference structure was that which has served us so well for so long – a mixture of keynote presentations, workshops and the discussion groups, so typical and unique to the ICCFR. The working language of the conference was mainly English but one of the keynotes was delivered in French and there were mixed language discussion groups.

This was one of the best attended Conferences in many years and part of the credit for that goes to the CANA Movement for ensuring that so many local people attended, mainly as day delegates. It has been notable in the past that good attendance by locals leads to a good Conference, and on this occasion we were not disappointed. There was possibly some concern that too many local people might skew the event, but I certainly did not feel that and the local presence actually enhanced the days we spent together.

Keynote presentations

After the usual Conference preliminaries, we started off appropriately with a keynote presentation from the Chief Justice of Malta, His Honour Dr De Gaetano, who spoke about family law in Malta and of the changes taking place in society that were testing and also creating tensions in law and life. I won't develop his theme in detail as we have the detail of the Conference presentation from the Chief Justice attached to this report. Suffice to say that it was a fitting opening, well delivered and helpfully setting us within the societal context that our Conference was taking place within.

The second keynote, from Monsieur Hubert Brin, from France, was an interesting reflection on processes in French society, related to industrial relations, of the development of participation in policy development by French society. M. Brin is from UNAF, a particular supporter of ICCFR over many years so we were delighted that Hubert had agreed to present this keynote on such a fascinating topic.

The third keynote presentation came from another EU state, the Republic of Ireland, by Mr Dick Hickey. Dick spoke of the development and growth of St Brigid's Community Project in Waterford, in Ireland, and of the way that local people were engaged in the development and delivery of service provision in key and active ways.

All three keynotes, delivered during the course of the Conference provided the perfect backdrop to the workshop structure and programme, and provided nutritious supplement particularly for the discussion groups.

Workshops

Rather than provide feedback from all of the workshops, I have chosen a small sample of them to give the reader a flavour of the variety.

Workshop 6:"Increasing the strengths of families. Parenting support in Flanders, Belgium"

Presenters: Mr Steven Strynckx, Executive EXPOO, Criminologist, Belgium

Ms Nele Travers, Executive EXPOO, Educational Psychologist, Belgium

In Flanders many different strategies to support parents are developed: not only to help families with severe problems, also in creating an environment where 'every parent' can find a support that fits his needs. In the workshop we focus on the different kinds of parenting support: with the engagement of the local authorities, the creation of 'parenting shops' in the 14 largest cities and extra support for families at risk.

This workshop had mostly a narrative flavour of how the 'Parenting Shop' system in the Flanders provides support to anyone in the care of young people between 0 and 18. The presenters described these 'shops' as easily accessible, with tailor-made service providers, with the intention of giving empowerment to parents. Participants in the workshop were very interested in the development and therefore the presenters supplied many details, such as: that this system developed from the recognition by the local authorities, who fund this, of the need for parental support services within the community; persons come for these services voluntarily; and the key services are: basic information, FAQs, educational advice, encouragement towards interaction, with an emphasis on the need for social networking and training. The presenters said this system is still in a developmental phase and concluded by saying that the 'parenting shops' serve also as a research platform from where to further develop the service and provide evidence for research. Participants highlighted experiences in their own countries of origin where similar services were provided: Finland, where this type of service provision is integrated with childcare centres; and, on Gozo: (Malta's sister island) where a similar programme is provided integrated with the schools. It was noted that this is completely different from Flanders where schools and 'parenting shops' are unrelated. One of the conclusions from this workshop was of the difference in approach and perspective between the teaching profession and social care. (Feedback for this workshop was provided by Joanna Zammit Falzon)

Workshop 3: The Family and the State: Intergenerational Transfers in Europe"

Presenters: Dr. Martina Brandt, Senior Researcher (Sociology), Mannheim Research Institute for the Economic of Ageing MEA Germany

Dr. des. Christian Deindl, Scientific Assistant (Sociology), University of Zurich, Institute of Sociology Switzerland

On the basis of the Survey of Health, Ageing and Retirement (SHARE) we will examine intergenerational transfers between older parents and their adult children in Europe ranging from North to South and West to East. The aim is to find out about “best practice examples” concerning the co-operation between family and state.

The workshop started with a list of countries and participants were asked to place these countries in order of the prevalence of where parents’ support is most common. Participants were surprised to find that the research showed that the Scandinavian countries head this list.

The presenters offered information from a Health, Aging and Retirement Survey carried out on 40,000 respondents in 14 European countries which showed that:

- Money - flows from parents to children;
- Household help – respondents help parents and vice versa;
- Family means 2 children per respondent;
- Most 50+ have no parents alive and if they do, it is the mother;
- Most respondents have 2 or more generations left;
- Most children live close to their parents.

Financial transfers and help are an important factor for intergenerational relations and the finding showed that this was more common in Northern and Central European countries than in Southern and Eastern European countries.

Social Policy

In the northern part of Europe, the state spends more on social services than the Southern part. An interesting perspective and view presented was that economists say that the more the State does for the family, the less the family will do. Sociologists say the opposite!

The more Social Services there are:

- The more children help their parents;
- The more likely parents will help their children;
- The help needed is less intense;

The more Social Expenditure there is:

- The less children support parents financially
- The more likely parents support children financially

Social Policy is an important factor. Active aging and sporadic support is encouraged by generous welfare change. (This feedback was provided by Marthese Borg).

Workshop 9: "Nigeria: Restructuring family ties for better marital life in a changing world"

Presenter: Rev Chidi Igwe, St. Stephen's Presbyterian Church of Nigeria

(Note: This Workshop is sponsored by the ICCFR Trust through a generous grant from the Association of American Matrimonial and Family Lawyers Foundation)

Although this workshop was not heavily attended, there was an intensity about the participation! Rev Igwe described the transition that is occurring in Nigeria in family structure and mentality. Before, a girl did not marry only a husband, but his family as well, and vice versa, whereas nowadays marriage has become a very 'private' affair. The pros and cons of this extended family were discussed. The help and support offered by the extended family versus the loneliness and lack of role modelling experienced today were well depicted. The extended family did not only act as educators on marital norms, values and ethics, they also acted as arbitrators and counselors in times of disputes. As a result, the incidence of divorce, separation and single parenthood, which were regarded as a disgrace to the family, were minimal. Today there is a move towards individuality. A big gap between the generations has been created. The result is lack of proper training of the child, an increase in single parenting, and high rate of divorce, separation, etc. Rev Igwe hoped that through his workshop he would increase awareness about the beauty of the extended family and by highlighting this beauty he would help young families find the support they much needed. (Feedback for this workshop was provided Dr Anna Vella.)

Workshop 13: "Representing Children in Legal Proceedings"

Presenters: Ms Anne L. Berger, Family Law, Fellow in the American Academy of Matrimonial Lawyers and Fellow of the International Academy of Matrimonial Lawyers (USA);

Ms Anita I. Rodarte, Family Law and Fellow in the American Academy of Matrimonial Lawyers (USA);

Ms Suzanne Harris, Family Law, Fellow in the American Academy of Matrimonial Lawyers and Fellow of the International Academy of Matrimonial Lawyers (USA).

Children are often involuntarily involved in legal proceedings. This workshop will explore the role of attorneys who represent them in the context of both criminal (delinquency) proceedings and in civil proceedings when parents are either battling over their custody or are unable to care for them.

This workshop was based on citing several real cases and one of the main conclusions was that most of the time children have to suffer innocently for parental misconduct, and this can sometimes be a very sad thing to witness especially for the professionals working in this field. The presenters asked participants to read the texts in relation to the cases beforehand so as to familarise themselves with the contexts of the litigation. The workshop focused on three different areas:

Representing children in child custody proceedings where in parental litigation cases sometimes the judge feels it necessary to appoint counsel for the interests of the child;

Representing children in juvenile criminal proceedings where the issue of the rehabilitation of young offenders is the main issue, and how effectively this might be obtained;

Representing children in legal proceedings where there are allegations that parents are unfit, which therefore has a further focus on parental rights. The basis of this work is to explore whether parental rights should be terminated or not, and/or whether the child should be given an alternative family. (Feedback for this workshop was provided by Joanna Zammit Falzon.)

Footnote: I hope that this gives some flavour of the variety experienced by participants. It was notable that many workshops ran over time, thus suggesting that there was a high level of interest and enthusiasm from delegates.

Discussion Groups

I have always found it difficult to report on these groups during my time as Chair of ICCFR. I have even been somewhat resistant to producing anything, or even of having the groups report back on what I consider to be intimate and closed events. The groups themselves had varying methods of reporting back at the end of the conference, with some choosing not report back anything at all. Suffice to say that the groups were well and consistently attended. These sessions are somewhat unique to ICCFR and are an antidote to the usual conference round of activity and presentation, allowing Conference delegates time to reflect on personal experience, both of the Conference and melding that with personal history and life. It is a chance to put a "foot on the brake" and take stock for Conference delegates, and an opportunity to learn from others, of different cultures, practices and experiences.

Social events

The Conference had the benefit of two social events, at different Government ministries. We were more than pleased to find that the Minister for Justice and Home Affairs, Dr Carmelo Mifsud Bonnici, took time out of his personal schedule on the Saturday evening of the Conference, with his wife, to join us in the Ministry for discussions and refreshments. The Minister was also present at the Conference on the final morning to share his views and perspectives on the Conference programme as well as thoughts about issues facing his Government in Malta.

Both social events took place in magnificent Government buildings and the splendour and history of Malta was there for all to see. The rich tapestry of cultures that have informed and developed Malta over the centuries was all too visible. For those of us who work in more pedestrian or utilitarian settings, the beauty if not majesty of these premises was something on which to ponder.

The Next Conference

The tradition of passing on the "baton" to the next host country and agency occurred at the finale of the event. There was a presentation from the Flemish Government, by way of the Department of Welfare, Public Health and Family, in co-operation with the Province of East Flanders, on the subject and context of the 2011 Conference that will take place in Ghent, from 27th to 29th May 2011. The focus will be on "The Family and Social Work: a successful 'marriage'"? I hope that as many of you as possible can attend that event and make it as successful as this one in Malta.

Finally, this is my last Chair's report as I stand down as Chair of the Commission at the October 2010 Board meeting. I have enjoyed the time spent as Chair and am grateful to the many friends that I have made within ICCFR, not least with Board colleagues. I hope to see you at future Conferences, starting with Ghent, and I offer my thanks to all who have made my job easy these last five years by taking on jobs, offering workshops or keynotes, or just by being friendly in the bar or other Conference settings.

Terry Prendergast

Chair ICCFR

August 2010

The Family in the Dock: The Maltese Experience

Vincent A. De Gaetano

When, about a year ago, I was asked by Dr Anna Vella to address this meeting, my initial reaction was: What on earth do people want to know from the Chief Justice about the family? I am not, by any stretch of the imagination, an expert in Family Law – my expertise, if I may claim any, is in Criminal Law (which I taught at the University of Malta for many years right up to my appointment as Chief Justice) and, by virtue of having worked for many years in the Attorney General's Office before being "kicked upstairs" in 1994, I also have some experience in Public Law. Never having been in private practice, I have never had to file writs, or to reply to writs, to deal with such matters as separation between spouses, or custody of children, or maintenance to be paid to a spouse or to her or his children. Nor am I a psychologist or a family counsellor. My degree, among others, in criminology and sociology of deviance seems to point in the opposite direction of good couple and family relations. In fifteen years of service in the Attorney General's Office, the nearest I ever came to dealing with family matters was when I had to file, in two separate cases, applications before the Court of Voluntary Jurisdiction on behalf of the Chief Government Medical Officer so that doctors in government service could override the decision of the parents of children who were refusing to authorise blood transfusions for the child patient on religious grounds; and in another case I had to appear for the marriage registrar, again before the Court of Voluntary Jurisdiction, because the marriage registrar was refusing to recognise a "talaq" divorce obtained in Pakistan by a Pakistani husband from his Maltese wife on the ground that the procedure involved in such divorces (at least at that time in Pakistan) was not regarded by the said registrar as a "judicial procedure". This lack of experience in Family Law and, perhaps more importantly, the lack of experience in the sensitivity attaching to Family Law cases, came back with a sort of vengeance when I was made a Judge in March of 1994. It is not uncommon for judges, immediately upon their appointment, to

be assigned work in an area of law where they had previously never exercised their profession as lawyers. Patrick Devlin, better known as Lord Devlin when he become Lord of Appeal in Ordinary, and a leading exponent of the theory that criminal law could legitimately be used to enforce morality, when he was first appointed to the bench in 1948, had never exercised any criminal jurisdiction and not since his early days at the Bar had he appeared in a criminal court. Yet two days after being appointed, he was trying criminal cases at Newcastle Assizes. Likewise Hubert Parker, later to become Lord Chief Justice of England and Wales, once said that the first summing up in a trial by jury that he had ever heard was the one he delivered himself as a trial judge![1] There are endless other similar examples. In my case I was assigned to hear Family Law cases – something that I, rather presumptuously, thought that I could handle with consummate ease – after all there are only about three score provisions in the civil code dealing with personal separation of spouses (which forms the bulk of contentious work in the Family Court here in Malta) and even less provisions dealing with marriage annulment in the Marriage Act. I was in for a surprise. During my third or fourth sitting, I had before me a case that I had inherited from my predecessor in that court. Husband and wife were fighting tooth and nail as to how to divide the not insubstantial property which they had accumulated during their rather short and turbulent marriage. I was assured by counsel for the parties that there was a very good prospect that they would come to an amicable agreement over the property aspect of the separation. So I put off the case for the following week. In the following week husband and wife duly turned up before me, but without their respective counsel. They were staring at each other across the well of the court, and, as the saying goes, if looks could kill……That is when I made the cardinal mistake of enquiring from both of them, very politely but, I stress, in the absence of their counsel, whether they had come to any agreement. Instead of answering my question, the husband looked at the wife and passed what I thought was, from the tone in which the words were said, some sort of derogatory remark; she retorted with something similar – and don't

[1] Pannick, D., **Judges** OUP (1987), pp. 233-234.

ask me what they actually said – to this day I do not know – and before I could put in even one syllable, they had come to blows and were rolling over each other in the well of the court. In an instant the extended families of both husband and wife – there must have been at least a dozen from either side outside the court room – joined into the fray, and there was I calling for order and banging my gavel while more than a score of people were bashing each other in front of me in a free for all. My elderly usher, and the not so elderly Deputy Registrar – the only court officials present with me in the court room – simply took refuge behind my chair on the bench until a number of police officers, hearing the fracas, rushed from other parts of the court building and arrested all those involved. In those days we did not have “panic buttons” discreetly tucked away under the bench, as we have nowadays. I spent the rest of that eventful day dealing with contempt proceedings in respect of all the participants. But I had learnt the lesson – never address husband and wife who are in the trial stage of the litigation process other than in the presence of their respective counsel. Of course, addressing them not in the presence of counsel in other stages (for example, in the mediation stage) may not only be proper but often essential, even though the element of risk is always there.

Of course, I do not want you to go away with the idea that all or most of my cases in the Family Court ended up in a riot, a rout or an affray. There were the rewarding instances too. I remember in particular the case of a newly married couple – they were in their second year of marriage and had just had their first child – who one day turned up before me seeking a separation. I was baffled, and so, it would seem, were their lawyers. After hearing, not on oath, both parties directly, i.e. not through counsel but in their presence, it turned out that some weeks before the filing of the case a casual remark by the wife, uttered in the heat of some trivial argument, to the effect that had she wanted to she could have married someone else, was deemed by the husband to be so offensive that he had immediately left the matrimonial home and gone back to his parents and, to spite his wife, had even spent a night with another woman. Yet it was clear to

me that these two were still madly in love with each other. I asked where they came from – from Msida, they said – which happened to be then the parish where my wife and I also lived. Did they know Fr Henry Balzan, then a young priest who had been sent to work in our parish? Yes they did, in fact they knew him very well. Then I used a provision of the Civil Code which is nowadays very rarely applied, Article 58(1), which provides that

> "The Court may, where it shall deem it expedient so to do in the interest of the spouses and the children, order the suspension of the action of separation for such time as it may deem proper, and give such interim directions as circumstances may require."

I suspended the action for three months with a direction that the couple should go and have a good chat with Fr Henry. When, three months later, the case was resumed, neither party turned up in court, and I was informed by one of the lawyers involved that they had gone back to live together under the same roof. I never saw them again.

But you may well ask yourselves – and indeed you would be quite right in asking – what has all this got to do with the family being in the dock? Is not the expression "in the dock" usually used for the place where the accused is placed in the course of criminal proceedings (a word which, incidentally, only recently I discovered comes from the old Flemish word docksty, which means a cage)? I have purposely chosen this title – perhaps a slightly provocative title – for two reasons. First I believe that the family, including the family in Malta, has over the last forty years or so, been gradually pushed, figuratively, into the dock, because it has been somehow made to feel inadequate or incomplete or perhaps even defective when measured against new "rights" and new "values" with which its members are constantly being bombarded. In the second place, when the family is, more literally, placed in the dock – that it when it is involved in some way in civil or criminal litigation – it is, unfortunately, left very much to its own devices with very little, if any, structured help from civil society. It is within these two

generic frameworks or parameters that I wish to make some remarks which, I hope, can be taken up in your further discussions in the course of this meeting.

I was born seven years after the end of the Second World war. As a child I still remember going with my father, who was an architect and civil engineer, to places where reconstruction work was going on all over the island, but especially in the area of the so called Three Cities. We lived close to a military barracks in Sliema, and right across the street Royal Navy destroyers and frigates crowded into Sliema Creek. These ships, incidentally, provided a convenient signal for reciting the Angelus: at eight in the morning when the Union Jack was hoisted on the bow and at sunset when it was struck, accompanied by the traditional piping. Round the corner from our house was the Dominican Priory and Church of Jesus of Nazareth, which we, as a family, frequented. Mass was still said in Latin and altar boys had the formidable task of having to learn all the responses off by heart if they wanted to serve as such. School, run by the Sisters of St Joseph of the Apparition, was also in Sliema. My father worked mostly from home, my mother was a housewife and my paternal grandmother, who lived with us, was the person to whom I and my siblings would rush to in an attempt, sometimes successful, to avoid our parents' discipline. For a ten year old boy, here were all the trappings of stability. I suppose if one had to ask me then what I understood by the word "family" I would simply have pointed to my mum and dad, to my sister and younger brother, and to my grandmother. There was no need to define a family – you recognised a family when you saw one, in much the same way that you do not define an elephant, you simply recognise it when you see it. There seemed to be a natural relationship between the family and marriage. Indeed, in 1963 – I was eleven then, just to keep track of the timeline – the Papal Encyclical *Pacem in Terris* underscored this relationship in a very matter-of-fact way. In paragraph 16 one reads:

> "The family, founded upon marriage freely contracted, one and indissoluble, must be regarded as the natural, primary cell of human society. The interests of the family, therefore, must be taken very specially into consideration in social and economic affairs, as well as in the spheres of

> faith and morals. For all of these have to do with strengthening the family and assisting it in the fulfilment of its mission."

This statement, it must be remembered, was made within the context of a document which was remarkable in two ways. It was the first papal encyclical, at least within living memory, which was not addressed to Catholics only – as all other previous documents had been – but also to "all men of Good Will" (as one found in the preamble). Secondly, it was a remarkable document because it attempted to compile a complete and systematic list of human rights some of which civil society to this very day does not consider to be fundamental human rights but rather rights of an economic or political nature which are secondary to fundamental human rights or unenforceable. In this document, in fact, we find that these rights include the right to life, clothing, shelter, rest, medical care, social services, education, freedom of conscience, marriage, safe working conditions, private property (which, the document emphasizes, has also a correlative "social duty" or "social function"), association and free assembly, emigration and immigration, and participation in public affairs. In this sense these human rights are both economic and political rights. But then the document does what few other documents on human rights have done, that is it looks at the other side of the coin by emphasizing the correlative "duties" not only of individuals but also the duties of national governments towards their citizens and, more importantly, the duties of governments in the relations between themselves. The duties of individuals are laid down as being the duty to respect other's rights, to live becomingly, to pursue truth and to collaborate with others to procure the rights of all. It emphasizes that society cannot be founded on force, but only on mutual respect and collaboration. A society is well ordered only if it is founded - and these are cornerstones of the document - on truth, justice, love and freedom. On the relations between governments or between nations, the document begins by asserting that states, like individuals, have both rights and duties. The first duty of a state is to acknowledge the truth - truth, which as Rudyard Kipling reminds us in his poem "If", is often "twisted by knaves to make a trap for fools" – and this, that is truth, entails, according to this encyclical, the rejection of racism

and the careful use of the modern media. The second duty of a state is to regulate its activities by the norms of justice, which includes the watchful protection of the rights of minorities within the nation. A third duty of nations is to co-operate with others - co-operation in solidarity. A final duty of nations is to respect the freedom of others. Even aid to others, we are reminded, must "respect the moral heritage and ethnic characteristics" of both donor and recipient. Finally - and again the document could well have been speaking of today - the document notes that the nation-state is an inadequate structure for dealing with modern global realities, and that some form of global authority is needed. One cannot help notice in this document the recurrent theme of "justice", as if to underline that there can be no peace without justice – almost reminiscent of the words of St Augustine in his *De Civitate Dei* – "*remota iustitia, quid sunt regna nisi magna latrocinia*"[2]-- if you remove justice, what are kingdoms (states) but a bunch of thieves!

Over time, however, this natural – or what appears to many to be a natural – relationship between marriage and family seems to have disappeared or, at least, to have been considerably dissipated. Legal, social and biological considerations have been injected into the equation to such an extent that to-day one is often bemused – not amused – as to what exactly we mean by "family" and "family life". The grafting of international obligations upon state law, and the caselaw of the European Court of Human Rights, have contributed in no small measure to this confusion. Let me say straight away that to my mind the European Court of Human Rights has been the most important post-war European institution which has ensured, in a practical and effective manner, that European Governments respect the fundamental human rights not only of their citizens but of all those within their territory – no other supra-national regional court, as far as I am aware, has had the success that the ECHR has enjoyed, and this is, of course, largely due to the fact that the States parties to the European Convention on Human Rights have accepted the right of any anyone

[2] De Civitate Dei, IV, IV.

within their territory to petition individually and directly this Court. There is no doubt in my mind that the political stability in Europe to-day, founded on the rule of law, owes a great deal, perhaps much more than we realise, to the work over the years of this Court and, until recently, of the Commission which was the "filter organ" of the Court before its re-organisation in 1998. Nevertheless, like any court which is called upon to apply a law, and sometimes to interpret it, the "activist" elements within the court may well overreach the boundaries of the Convention itself thereby in effect reducing, and sometimes eliminating, that "margin of discretion" or "margin of appreciation" that States themselves should enjoy in the enactment and application of domestic law. But before we have a look at how this Court has handled the concepts of "family" and "family life", allow me to make a few comments about Maltese Law.

Although it is true that there is no "general" definition of "family" or "family life" – that is a definition which would be applicable across the board for all purposes: civil, fiscal, administrative, commercial – and probably it is not even possible to have such a definition – our law states in no uncertain terms what it considers to be the family and family life. It is also quite clear as to what is marriage. In fact Articles 2, 3 and 3B of the Civil Code (Cap. 16) – which articles, I should point out, were introduced in their present form as recently as 1993 – read as follows:

> 2 (1). The Law promotes the unity and the stability of the family.
>
> (2). The spouses shall have equal rights and shall assume equal responsibilities during the marriage. They owe each other fidelity and moral and material support.
>
> 3. Both spouses are bound, each in proportion to his or her means and of his or her ability to work whether in the home or outside the home as the interest of the family requires, to maintain each other and to contribute towards the needs of the family.
>
> ….
>
> 3B. Marriage imposes on both spouses the obligation to look after, maintain, instruct and educate the children of the marriage taking into account the abilities, natural inclinations and aspirations of the children.

These provisions fall under the general subheading “Of the Mutual Rights and Duties of Spouses” – which, in the Maltese text of the law – and the Maltese text prevails over the English text for purposes of interpretation – reads “Fuq il-Jeddiet u d-Dmirijiet tar-Ragel u l-Mara lejn xulxin”. For the benefit of those of you who are not Maltese speaking “ragel u mara” means either “man and woman” or, given the context, “husband and wife”. This subheading is preceded by the general heading which reads “Of the Rights and Duties arising from Marriage”.

The Marriage Act, which, after the amendments introduced in 1995, now recognises Catholic marriages celebrated in Malta for all civil effects, does not define “marriage” as such. However, when describing the formality of civil marriage, Article 15(2) provides as follows:

> 15(2). The Registrar or other officiating officer shall ask each of the persons to be married, first to one of them and then to the other, whether he or she will take the other as his wife or her husband respectively, and upon the declaration of each of such persons that they so will, made without any condition or qualification, he shall declare them to be man and wife.

One need not be a rocket scientist, a brain surgeon or indeed a Chief Justice to realise that the cumulative effect of these provisions is that Maltese law still embraces, even if perhaps indirectly, a very traditional approach to marriage and the family. A family presupposes marriage; marriage presupposes a man and a woman who assume the role of husband and wife. It is interesting to note, however, that the declaration required from the spouses by the Registrar for a civil marriage does not refer to any permanence or irrevocability of the marriage. Indeed if sub-article (2) of Article 15 of the Marriage Act were to be strictly applied or strictly interpreted, a spouse who declared that he or she would take the other spouse as his wife or her husband but added something like “until death do us part” would be adding a “qualification” which would render the declaration invalid. This point, mercifully, has never been raised in court. Other

issues, however, have. Thus, for instance, after a person underwent gender re-assignment surgery, now that the person had become externally a woman and also obtained from the courts a declaration that her birth certificate was to include a marginal annotation to the effect that she was now a woman, this person sought to marry a man. The Marriage Registrar refused to publish the banns. The would-be spouse applied to the Court of Voluntary Jurisdiction, and this court, relying exclusively on the birth certificate which indicated that the applicant was now a woman, held that the Registrar was at fault in refusing to publish these banns and ordered him to do so. The Marriage Registrar sought to quash this decision by instituting a case before the First Hall of the Civil Court. The First Hall of the Civil Court, in its judgment of the 21 May 2008 [3] upheld the position taken by the Marriage Registrar and held that the defendant and her would be husband could not get married. The reasoning of the court was, briefly, as follows: (1) the marginal annotation in the birth certificate (which, incidentally, now, after several local court cases which had ordered such annotations, is specifically provided for by statute) is meant to protect the right to privacy of the person concerned, and does not effectively make him or her a man or a woman; (2) gender reassignment surgery only changes the external appearance, but does not make a man a woman or a woman a man; and (3) since under the marriage act, marriage may only be contracted by a man and a woman, defendant, being still for all intents and purposes a man, could not marry a man. The case did not go to the Court of Appeal, so for the moment that seems to be the position at Maltese law.

You may well say that all this does not seem to be putting the Maltese family "in the dock" in the sense of making the traditional Maltese family feel "inadequate" or "incomplete" – in other words on the defensive. (I should say, by way of parenthesis, that I use the adjective "traditional" rather warily, because unfortunately the word has been to much misused and abused, both in the context of the family and other contexts, not least in the context of the political

[3] D.P.R. v. Cassar.

posturing of all political parties in Malta when it comes to family assistance.) It would seem, you may well say, to be rather the opposite, that is, that the law and the courts appear to support the traditional concept of family and marriage. To this objection, I would like to counter by making two observations. The first is that the provisions of the Civil Code and of the Marriage Act I have referred to, and other provisions ancillary thereto, do not make provision or cater for a social reality which is now becoming palpable, namely children who are being raised, for one reason or another, by a single parent, as well as children who are being raised by couples who are not, again for one reason or another, married. Our civil law – and I specifically limit myself to the civil law because, quite frankly, I am not aware how such realities are dealt with, for instance, for fiscal or social security purposes – cannot continue to ignore these realities. Let me make it quite clear, I am not advocating divorce or civil partnerships or anything of the sort. In fact I am not advocating any form of legal or legislative solution or solutions to the problems raised by these realities. It may well be, indeed, that the solution does not even lie in the civil law, that is in amendments to the Civil Code or the Marriage Act, but in other laws or in policies or initiatives which, while continuing to uphold and strengthen the link between marriage and family, will allow people who are living and experiencing these other realities to be supported and to be absorbed into society while fully respecting their basic human rights.

My second observation is that the Maltese family, notwithstanding the position under Maltese law, is nevertheless affected by the way the concept of the family is viewed by others, especially significant others like the European Court of Human Rights. This court, I hasten to add, is not, unlike the European Court of Justice, a part of the domestic judicial system. Our Constitutional Court has said time and again that while the case-law (jurisprudence) of the Strasbourg court is important in the application and interpretation of the European Convention domestically, the Constitutional Court is not bound by the case-law of the ECHR. Indeed, we have had cases before our Constitutional Court (for example in tax matters) where the case-law of the European Court was specifically not followed

and instead the Constitutional Court followed the line taken in dissenting or minority judgments of the Strasbourg court. Even in enforcing in Malta a judgment of the ECHR, our Constitutional Court has said that that it has the power to refuse to enforce such a judgement if the judgment of the Strasbourg court runs counter, for instance, to Maltese public policy (*ordre public*) [4].

Let us see now, very briefly, how the "family" is conceived in the case-law of the Strasbourg court.

The relevant Articles of the Convention are Article 8 and Article 12. Article 8 provides:

> 8(1). Everyone has the right to respect for his private and family life, his home or his correspondence.
>
> (2). There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law as is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the preservation of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 12, on the other hand, allows for no derogations:

> 12. Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

As early as 1979, the ECHR, in a case originating from Belgium (Marcks v. Belgium [5]), held that the notion of "family life" in Article 8 was an autonomous concept which must be interpreted independently of the national law of the Contracting State. Seven years later, in the case Johnston v. Ireland [6] that court laid down the rule that family life under the said Article did not refer solely to the

[4] **Case of the San Leonardo Band Club** – Constitutional Court, 13 March 2005.
[5] 13 June 1979.
[6] 18 December 1986.

de jure family, that is family where the parents were married, but also to the *de facto* family:

> "In the present case it is clear that the applicants, the first and second of whom have lived together for some fifteen years…constitute a family for the purposes of Article 8. They are thus entitled to its protection, notwithstanding the fact that their relationship exists outside marriage."

Basically, therefore, from the very start the ECHR has taken the stand that the traditional European concepts of the countries of the Council of Europe are not considered decisive for determining whether there is a family. Thus a family composed according to a different cultural pattern – for example a polygamous family – is equally entitled to protection under Article 8, but not under Article 12. Moreover in various other cases the Court has held, albeit sometimes *obiter*, that the same respect for different cultural patterns applies in principle to the way in which parents bring up their children. According to the Court, respect for family life comprises respect for a style of education which differs from that which is common in a given society, provided that the treatment involved is not to be considered criminal and punishable under the general standards prevailing in the Contracting states[7].

The next notable case is that of Berrehab v. The Netherlands [8]. Here the applicant complained that The Netherlands had violated Article 8 by separating him from his daughter when it refused to extend his visa and deported him. He was a Moroccan national and, while residing in The Netherlands, had married a Dutch wife. Their child was born almost two years later, days after the marriage had been dissolved. For four years after the birth Berrehab contributed to the child's support and saw her four times a week for several hours each time. The Government refused to extend his permission to remain in The Netherlands which had been granted "for the sole purpose of enabling him to live with his Dutch wife". After extended appeals and reviews by the domestic courts in

[7] van Dijk, P. and van Hoof, G.J.H. **Theory and Practice of the European Convention on Human rights** 3rd ed. p. 504.
[8] 21 June 1988.

Holland, he was deported. The ECHR held that even an entirely formal legal relationship could create *prima facie* a protected family unit:

> "It follows from the concept of family on which Article 8 is based that a child born of such a union [viz. a lawful and genuine marriage] is *ipso jure* part of the relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to a 'family life' even if the parents are not living together…Subsequent events, of course, may break that tie, but this was not so in the instant case [referring to the regular visits between the applicant and his daughter]."

It seems rather peculiar that here the Court appears to give a special, stronger position to the children born out of a lawful marriage precisely in a case were the subsequent divorce indicated that the marriage had ended in a failure[9]. The cumulative result of these and a few other cases which I will not bother to mention is that according to the Strasbourg court a substantive family relationship is protected, even if unaccompanied by legal form, and that, conversely, a formal, legal family relation is protected even if without substantive content[10]. For example in X, Y and Z v. U.K. [11] the Court held that a family relationship existed between a female-to-male transsexual and the child (conceived by artificial insemination) of the woman with whom he had lived in a stable relationship for more than ten years. What seems to have prompted the Court to come to this conclusion is the fact that the couple had applied jointly for the fertilization treatment and that "X was involved throughout that process and has acted as Z's father in every respect since the birth."

In all the cases just mentioned the claim to "family life", whether based on legal or biological ties, was evidenced by a substantial social relationship. But even this seems not to be essential according to the ECHR. In a case coming from Ireland – Keegan v. Ireland [12]– the ECHR held that there was "family life" even where the father had established no personal relationship with the child, the relationship being only biological. Admittedly, the facts of the case were rather

[9] *op. cit.* p. 505.
[10] Janis, M. *et al*. **European Human Rights Law** 2nd ed. p. 236.
[11] 22 April 1997.
[12] 26 May 1994.

unusual. The child, born after its parents had cohabited and then separated, had been placed with prospective adoptive parents at the age of seven weeks. The applicant father had seen the baby the day after it was born but had not been allowed to see it thereafter. The adoption was carried out without his knowledge or consent. In holding that the adoption was a violation of Article 8, the Court said this:

> "The Court recalls that the notion of the 'family' in this provision is not confined solely to marriage-based relationships, and may encompass other de facto 'family' ties where the parties are living together outside the marriage…A child born out of such a relationship is ipso jure part of that 'family' unit from the moment of his birth and by the very fact of it. There thus exists between the child and his parents a bond amounting to family life even if at the time of his or her birth the parents are no longer co-habiting or if their relationship has then ended…In the present case the relationship between the applicant and the child's mother lasted for two years during one of which they co-habited. Moreover, the conception of their child was the result of a deliberate decision and they had also planned to get married…Their relationship at this time had thus the hallmark of family life for the purposes of Article 8. The fact that it subsequently broke down does not alter this conclusion any more than it would for a couple who were lawfully married and in a similar situation. It follows that from the moment of the child's birth there existed between the applicant and his daughter a bond amounting to family life."

No weight, if any, seems to have been given by the Court in this judgment to the future welfare of the child – her interests automatically gave way to the "right" of the father under Article 8. Perhaps the Court was unduly impressed by the fact that Irish law, as it then was, allowed the secret placement of the child for adoption without the applicant's knowledge or consent, leading to the bonding of the child with the proposed adopters and to the subsequent making of an adoption order. And this case was a unanimous judgment. But in the next – and last – case I will be mentioning, there were dissenting voices coming from the Maltese and the Spanish judges on the Court. The case – Kroon v. The Netherlands [13]– dealt with the impossibility under Dutch law then in force for a biological father to have legally recognised family ties established with his child, if the latter is born out of a relationship with a woman who at that moment was still

[13] 27 October 1994.

married to another man. The Netherlands argued that the relationship between the father and his biological child did not amount to family life, since the child was born out of an extramarital relationship, the father did not live with the woman and the child, and did not contribute to the child's upbringing. This is what the Court, continuing to compound the problem of definition and stretching the concept of family life to the limits (and virtually transforming the word "life" into an unspecified "unit") had to say:

> "…the Court recalls that the notion of 'family life' in Article 8 is not confined solely to marriage-based relationships and may encompass other *de facto* 'family ties' where parties are living together outside marriage… Although, as a rule, living together may be a requirement for such a relationship, exceptionally other factors may also serve to demonstrate that a relationship has sufficient constancy to create de facto 'family ties'; such is the case here, as since 1987 four children have been born to Mrs Kroon and Mr Zerrouk. A child born of such a relationship is ipso jure part of that 'family unit' from the moment of its birth and by the very fact of it…There thus exists between Samir and Mr Zerrouk a bond amounting to family life, whatever the contribution of the latter to his son's care and upbringing."

Judges Morinella from Spain and Mifsud Bonnici from Malta strongly disagreed. Judge Morinella, after expressing the view that in interpreting the Convention the Court was, with its constant extensions of the definition of family life, in effect usurping the legitimate powers of the elected representatives of each member state, went on to say this:

> "This dilemma is even greater in matters such as marriage, divorce, filiation or adoption, because they bring into play the existing religious, ideological or traditional conceptions of the family in each community. The majority of my colleagues have, however, considered there to be a 'positive obligation' incumbent on the Netherlands to recognise the right of the natural father to challenge the presumption of the paternity of the legal father (the husband of the mother), thus giving priority to biological ties over the cohesion and harmony of the family and the paramount interest of the child. In my opinion, this conclusion involves a dangerous generalisation of the special circumstances of the instant case and one which imposes on the Contracting States an obligation not included in the text of Article 8, based on changeable moral criteria or opinions on social values."

And he continued:

> "Account should also be taken of the importance of the family in many Contracting States, of the persistence in these countries of a social rejection

> of adultery and of the common belief that a united family facilitates the healthy development of the child. These factors provide justification for interference by the State, in accordance with paragraph 2 of Article 8, with the applicants' exercise of their right to respect for family life, since its aim is the protection of 'morals' or the protection of the interests of the child against the intrusion of an alleged biological father into his or her family circle or legal status. The social consequences of denying legal paternity as regards the cohesion and harmony of the family, or in terms of legal certainty concerning affiliation and parental rights, are better assessed by the national authorities in the exercise of the extensive margin of appreciation conferred on them."

And Judge Mifsud Bonnici remarked, equally poignantly:

> "In my opinion, 'family life' necessarily implies 'living together as a family'. The exception to this refers to circumstances related to necessity, i.e. separations brought about by reasons of work, illness or other necessities of the family itself. Forced or coerced living apart, therefore, is clearly an accepted exception. But, equally clearly, this does not apply when the separation is completely voluntary. When it is voluntary, then clearly the member or members of the family who do so have opted against family life, against living together as a family. And since these are the circumstances of the instant case where the first two applicants have voluntarily opted not to have a 'family life', I cannot understand how they can call upon Netherlands law to respect something which they have wilfully opted against. The artificiality of this approach is in strident contradiction with the natural value of family life which the Convention guarantees. The judgment moreover fails to explain how 'a relationship [which] has sufficient constancy to create ... family ties' can be made equivalent to 'a relationship which has sufficient constancy to create family life' - as manifestly these two propositions are by no means the same or equivalent."

In the light of all this, is it in any way surprising that many people do not know exactly what a family is, whether there is a need for a relationship between marriage and family life, whether the traditional family to which I referred to earlier is, indeed, necessary for a stable society? Again, I repeat, I do not wish to be misunderstood – human society is not perfect and therefore families are not perfect. Some individuals and some families may have problems more than others, but one must always be very careful not to miss the wood for the trees and, in any attempt to rectify those problems, one should not dismantle the very foundations of society which is the family based on marriage. This applies also to judges, whether at the domestic level or otherwise. In determining particular

cases one must be very careful not to lay down principles which go beyond the remit of the court concerned, or which could have undesired negative consequences when applied to different facts in a different case. Judges, being human like everyone else, sometimes do get knotted in legal arguments, and come out with a decision which, although it may do justice in the instant case, would have far-reaching and unintended consequences in other areas or in other cases. Sometimes the result may be even considered weird. A case in point is the decision of the ECHR in Tysiac v. Poland [14], which also dealt with Article 8 but where the issue touched not upon family life, but upon private life. Polish law allows therapeutic abortions where there is a threat to the woman's life or health attested by a consultant specialising in the field of medicine relevant to the woman's condition. The applicant – who suffered from severe myopia – was in her third pregnancy and she was worried that because of degenerative changes in her retina, she might suffer a detachment as a result of the pregnancy or of childbirth. Although three ophthalmologists acknowledged this possibility, they refused to issue the necessary certificate in terms of the relevant law because, in their view, this detachment was not a certainty. A general practitioner issued such a certificate, but this was not sufficient for the purposes of Polish law, and the gynaecologist refused to perform the abortion. Tysiac delivered the baby boy safely, but some time after her eyesight suffered deterioration. She filed a criminal complaint against the gynaecologist, but a panel of experts, appointed by the public prosecutor, came to the conclusion that there was no causal link between her deteriorating eyesight and the gynaecologist's actions. She went to Strasbourg claiming that the Polish State had violated her right to private life under Article 8 because it had failed in its "positive obligation" to provide legislatively the means to challenge in court the ophthalmologists' conclusions and possibly to override them. The Court, by six votes to one, found that there had been a breach of Article 8. I would strongly recommend that you read the dissenting opinion of the Spanish Judge, Borrego Borrego. I will only quote the last paragraph of that dissenting judgement:

[14] 20 March 2007.

> "All human beings are born free and equal in dignity and rights. Today the Court has decided that a human being was born as a result of a violation of the European Convention on Human Rights. According to this reasoning, there is a Polish child, currently six years old, whose right to be born contradicts the Convention. I would never have thought that the Convention would go so far, and I find it frightening."

Let me now pass on to the second aspect of the Maltese family in the dock, namely when the family, or its members, are involved in civil or criminal litigation.

As I have said, the bulk of litigation in the family court consists of cases of personal separation and cases of marriage annulment. I am sure that those of you who are not Maltese have realised by now that we do not have a divorce law in Malta, but only a law which regulates annulments, the difference between the two being that in an annulment the court declares that because of a defect of consent or of some essential formality there was never a valid marriage, whereas a divorce presupposes a valid marriage which is dissolved either by mutual consent of the parties or at the request of one party with the approval of the court. As a historical aside, up till 1975 Malta did not even have a law regulating civil marriage. For historical reasons, the law of marriage in Malta was canon law, in the sense that marriage, even by non-catholics and non-believers for that matter, had to be celebrated before a catholic priest in accordance with the formalities of canon law. Although the civil courts could take cognizance of annulment cases, they also had to decide the case by applying canon law. All this was changed in 1975 when a purely civil law of marriage was introduced. Apart from civil litigation, there is also the criminal offshoot to civil matrimonial litigation. When a civil court, whether by final judgment or by interim decree, orders the payment of maintenance by one spouse to the other, failure to do so amounts to a criminal offence, albeit only a contravention, not a crime. The same applies when a court orders one spouse to give access to the child or children in his or her custody to the other spouse, and the spouse so ordered fails to do so. The defaulting spouse faces a maximum jail term of two months for each infraction.

Now the problem as I see it here is this: when a couple has to resolve its problems in court, it generally means that the marital situation has reached a critical stage, in most cases the point of no return. If either one or both parties had previously sought some form of counselling or other help, this has clearly failed. The moment one of them or both decide to go to court – and the law requires that they go to court if they want to separate – a third person comes into the picture: the lawyer. Now I have nothing against lawyers. I am a lawyer myself. I know many practising lawyers who simply refuse to handle matrimonial cases, especially separation cases, because they find them too stressing and extremely distressing. I know of other lawyers who go out of their way to try and reconcile the parties, very often putting the brakes on their own clients in an attempt to see whether there is a possibility of reconciliation and, failing that, whether there is the possibility of an amicable separation (or as it is technically called, separation by mutual consent or consensual separation). Even this latter form of separation, that is separation by mutual consent, however, requires the intervention of the court. The court must examine the draft deed of separation to ensure that there really are valid grounds for separation according to law and also to ensure that no party is taking undue advantage of the other, and, where minors are involved, to ensure that the children have been duly provided for in the contract. Only then will the court give its approval for the deed to be published by a notary public. Failing all this, lawyers will have to do what they are expected to do – fight it out in court on behalf of their clients. Now it is also true that the present legal regime, introduced in 2003, requires that before a separation case can go to trial before the Family Section of the Civil Court, the parties must appear before a mediator (either appointed by the court or chosen, from a list of mediators, by the parties themselves), who must first attempt to reconcile them and, failing a reconciliation, attempt an amicable separation. Unfortunately in Malta lawyers are allowed to appear before the mediator at any and every stage of the mediation process. Some lawyers assume a very low profile at this stage, intervening only when some clarification, perhaps on a point

of law, is necessary. Others view their role differently. Once the case moves from the mediation stage to the trial proper, the relationship between the spouses tends to become even more acrimonious. Very often the tension in the court room is palpable. The situation is not made any easier when lawyers, whether directly or indirectly, use inflammatory language to make some point, or refer to the opposing party in very uncomplimentary terms, whether in writing or orally. In some cases husband and wife are still living under the same roof during the entire separation proceedings, and this behaviour by lawyers can have serious consequences for the safety of both spouses. Where children are involved the situation becomes dramatic – very often the children are used as pawns by their parents (and sometimes, unfortunately even by insensitive lawyers). The parent having the temporary custody of the child or children will sometimes come up with all sorts of excuses to deny or at least limit or frustrate access to the children by the other party – that the child is sick, that he or she is refusing to go with the other parent, that the time of access clashes with some school activity – the repertoire is endless.

Of course the judge – and we have two judges sitting separately in the Family Section of the Civil Court – does exert a moderating influence, but both because of the sheer workload and also because of his/her very role as the final arbiter of disputes, there is a limit to what the judge can do. The judge is certainly not a mediator. Neither can he prefer any sort of advice to the parties, whether of a legal or other kind. It is trite knowledge that the social welfare agencies have limited resources and they also have their priorities – and even when dealing with child welfare cases they have to prioritise, with child abuse cases being given such priority – although to my way of thinking, the manipulation of children by the parents in the course of separation proceedings is a form of child abuse, and, indeed, a very insidious form of child abuse because of the covert means employed by the spouses. Perhaps it is about time for the legislator to consider whether a special warrant should be introduced for advocates to practice in the Family Section of the Civil Court. Such a warrant would be granted only after the

advocate has undertaken specialised training, possibly organised by the Chamber of Advocates, in matrimonial litigation, and the warrant would be subject to renewal every so many years.

Let me just give you a quick bird's eye view of what I am talking about in terms of numbers, taking as a sample year last year – 2009.

Mediation proceedings commenced in 2009:

Personal separation – 792
Care and custody of child/ren – 138
Access to child/ren – 65
Maintenance – 106
Variation of a previous contract of separation – 86

Mediation proceedings terminated in 2009

Separation by mutual consent – 508
Agreement involving single parents – 36
Reconciliation – 89
Abandoned – 232
Authorisation to proceed to trial – 334
Decreed but without proceeding to trial – 83
Deed of separation by mutual consent not approved by court -- 29

Trial proceedings commenced in 2009

Personal separation – 133
Annulment of marriage* – 137
Care and custody of child/ren – 27
Access to child/ren – 4
Maintenance – 9
Filiation* – 36
Repudiation of filiation* -- 32

(cases marked with * do not require the parties to go to mediation before trial)

These figures do not include the interlocutory or interim decrees that a judge sitting in the family court is constantly being asked to deliver – to vary access, to authorise one party to leave Malta temporarily with a child, to vary the temporary maintenance which one party was ordered to pay to the other party. Last year the

two judges in the Family Section of the Civil Court delivered between them no less than 3403 such decrees in contentious proceedings and another 4026 in mediation proceedings.

Most of the protracted separation litigation is due to disagreement over the patrimonial aspect of the separation. My brief experience in the Family Court in the mid nineties showed that when the spouses had no property of any distinction, the issue as to whether there are grounds for separation, who, if any, it at fault, custody of and access to the children and, to a slightly lesser extent, the maintenance, if any, to be paid by one spouse to the other could be decided in two or three hearings. When, however, there was substantial property involved, and especially if this consisted of things like shares in commercial companies or stocks or property overseas, then the litigation could become seemingly endless. Maltese law, unfortunately, does not impose on the spouses in litigation an obligation, backed by sanctions, of prior disclosure of all assets involved. This means that in many cases, one party or the other has to go on a virtual fishing expedition, calling upon witnesses and examining them, and requesting from them bank statements and other documents. If the parties are unwilling to co-operate in this, even the possibility of a settlement at the initial mediation stage is, of course, thwarted. One possible solution to speed up separation cases could be to separate completely the personal separation, custody and maintenance issue from that of the liquidation of the community of acquests; and in any case to introduce an obligation of disclosure which would require the parties to disclose all assets at the very beginning of the litigation.

As to mediation, while the statistics show that it is a useful tool to reach separation by mutual consent, it yet remains to be seen whether more can be done at this stage to effect reconciliation between the spouses. Perhaps some sort of quality assurance should be undertaken of the mediation process to find out whether this goal of reconciliation is being properly approached by the mediators, and what can be done possibly to improve the rate of reconciliations.

Mediation in family law cases has now been in place for just over six years, and it is about time that all the stake holders sit down round the table and examine dispassionately the strengths and weaknesses of the regime introduced in December of 2003.

As you can see, I have taken up most of my time speaking about problems facing the family, some of which eventually end up in court. When I read that people have a negative view of the courts and of the judicial system, I always say that I would be extremely surprised if they did not! People do not go to court for fun; they go to court because they have a problem, very often a serious problem which, instead of resolving with the shotgun, they attempt to resolve it in what we regard to be a civilised way, that is, to use perhaps an American expression, "by due process". Or they end in court because they have been charged with having committed a criminal offence. Either way, court is no fun place – even those of us who were brought up on a weekly diet of Perry Mason or Rumpole of the Bailey must surely agree with this. I have chosen to speak about this negative aspect of marriage and family relations because it is a reality that no society can afford to ignore – just like the single parent families I mentioned earlier. But neither can society afford to ignore another and, perhaps more important, reality – and I will end on this positive note – namely the reality of those families which never make the headlines for the wrong reason. I am referring to those families – and I would venture to add that they still constitute the majority of families in Malta – founded on a stable marriage, who, in spite of all the economic and social difficulties they may encounter at various times, and in spite of the inevitable ups and down of human relations, still provide the bedrock for a good upbringing, education and formation of children. Civil society owes a great deal to these families. They may not be vociferous in campaigning for this or that right or pseudo-right; they may not rush to send letters to the newspaper editors or to comment to blogs about the issues they make the daily headlines in the media. Nevertheless they are the cornerstones of civil society, and of the Church in so far as the Church is also a society. These families too need to be supported and encouraged directly. I am

confident that you will be devoting a lot of time in the course of this conference, particularly in the workshops, to discussing how this can continue to be done in an ever more effective manner.

Families and Social Policies

Hubert Brin

First and foremost, I would like to clarify who I am: I am not a teacher, nor a scientist, a researcher or a professional within the sphere of the family, but I am a militant from family associations. I belong to one of the sixty French family movements called the *Conféderation Syndicale des Familles*, mostly set up in working-class areas. I have presided over the *Union Nationale des Associations Familiales* (UNAF – National Union of Family Asscoiations) from 1996 to 2006.

In France, UNAF pulls together almost all the existing family associations irrespective of their philosophical, sociological, cultural and denominational diversities.

Of particular importance is the fact that it has legally received the mission of defending the interests of the family and of representing the families, wherever they face difficulties. My expertise lies in this field and in the method inherited from youth movements with their cry: “listen, judge, act” or to take up some contemporary expressions: “watch – listen, analyse, propose and/or decide”. Therefore, my perspective derives from, first and foremost, the life of family associations and of the trade unions’ model of action and represention. I have stated this to explain the development of my ideas and to open up a discussion, rather than indicating that it is necessarily an example to follow.

I would like to thank the members of the Commission and its President for inviting me to contribute to this conference. I thank them for their trust, whilst hoping that I will not let them down.

The theme chosen for this 57th conference seems particulary judicious at the end of the first decade of the 21st century.

In fact, although this topic finds its roots in the second half of the 20th century, it is mainly in the early years of the year 2000 that for most nations the question of sustainable development became the subject of debates, not to mention decisions.

While the altruistic aim of sustainable development, or to be more direct, its primary non commercial aim, is to leave a planet that can still be inhabited by our descendants, it is curious to note that the word family is almost absent from all the texts and conferences dedicated to this initiative.

However, I think that on looking more closely at a couple of examples, such as the need to change our way of life and our way of consumption, and the necessity to preserve water, , we find the family at the core of the answers to these problems. In spite of its many faults or precisely because of all its faults,

the family is on the frontline because it is the principal place of education and of transmission of culture and identity.

Obviously the problem of the family differs according to where one lives, whether it is in a developed country, in an emerging one or in a country that is still developing.

Since undoubtedly, this new "thinking of our common future" will be an unavoidable measure in future economic, social and cultural decisions, it is important to state that the family remains a partner that deserves to be associated, or at least consulted, in all the decisions concerning it.

I have used the expression "remains a partner", rather than "becomes a partner", because for me, even in countries where the family is not considered as a partner, it exercises this role. We are all very well aware of the fact that when the family is not functioning properly, the repercussions are felt by all its members and consequently, by society. This proof does not prevent however a politician from my country to compare the number of children in a family to the costs of CO2 of a return trip by plane from Paris to New York, to justify the fact that financial help is resctricted to families having two children!

In the light of this quick look, and since elected politicians regularly hold the family as the main entity responsible for the illnesses of society and, a bit less often, responsible for progress and healing, and since they are not faced with the question of sustainable development, acknowledging the family as an economic, social and cultural partner is not only part of the democratic concept but it is a must for the implementation of the indispensable changes to our future.

Incidentally, it is interesting to note that the theme for the UNAF for 2010 – 2012 is "There is nothing sustainable without families". You will note above that I no longer hold any post of responsibility since June 2006 with the UNAF, but I deeply believe in this theme.

I draw your attention, however, to the fact that very often the following expressions are associated with "sustainable development": precautionary spirit, risk free society, perfect quality. Now, the association of these four expressions presents a major risk of establishing a sterile society, a dead society, a society without any mystery, together with the creation of new social norms from which the poor are excluded. This small sentence is too short and mild to specify my line of thought, and this is not today's subject. Nevertheless, so that the sentence "there is nothing sustainable without the family" comes to life, in order for families to be considered as sustainable associates in social policy, there is, in my opinion, some necessity to understand what this means, and some conditions that cannot be ignored.

I would like to specify two of the necessary explanations:

- the word *family*
- the field of *family policies*.

Among the conditions that cannot be ignored, I will select:

- organising the defense of family interests by the families themselves;
- the legal acknowledgement of the family as a social, economic and cultural partner along with the organisation of public meetings between the government and all those responsible for family policies.

Defining the word family

Why is this necessary? During the debates on the very first draft of the European constitution, the UNAF would have liked to meet the main drafters to ensure that the family was integrated into European law and policy. To include the family in these matters, one had to tackle gender equality, the reconciliation of family life with professional life, endangered childhood, etc., but not family policy in itself. The answer to our request was brief andi it was *no*, because the definition of family is linked to religion.

In another debate, this time an internal, French one, during the celebrations to commemorate the law passed in 1905 on the separation between Church and State, the answer was once again meaningful: familly and secularism do not go together, since the family belongs to the private sphere, with the underlying meaning that the family is similar to religion.

We can clearly see how a number of States never make public their policies regarding the family. We speak of fighting poverty, of taking care of the elderly or of people with special needs, of improving housing, education and formation, etc. - so many terms that, bypass and shun the word family. This process is also happening in Europe. Once again, it is as if this word *family* is frightening.

However, whether one is in favour of or against what our parents have tried to pass on to us, it is only in relationship to what has been transmitted to us that we build ourselves. I am aware, however, that nowadays the concept of the family is taking on new dimensions, placed somewhere between yesterday's conventional model and the present, broken, single, and even same-sex model.

Whether it pleases us or not, the spectrum of family configurations is stretching towards new horizons, without even refering to new procreation techniques let alone what will be proposed in the future. It is therefore understandable that some associations challenge certain currently promoted family models but since this is sometimes done because of religious beliefs, for many this is a vicious circle since it infers that family equals religion.

If we want our governments to recognize the family as partners, we must surely specify what we mean by this word.

The first explanation, and perhaps the only one, focuses on the use of the singular (the family) or the plural (the families), since placing an ideological content on the use of the singular or of the plural will inexorably lead to the denial of both. There is the family: a community of people, of functions, of rights and duties, but as this applies to each member of a family, meaning specific social, economic, cultural and personal contexts, then the plural must also be used.

We are not dealing here with a juridical definiton of the word family, and it is not desirable that the State take this direction, since this provokes the risk of coming up with a definition that destroys freedom.

Being an instituion that represents all the French and foreign families living in France, the UNAF has dared formulate a definition, which had served at one time as foundation for all the works of the UIOF: the family is based on marriage, or on legitimate or adoptive filiation, or on the exercise of parental authority. It is this wide definition that allows all the different French family associations to agree on a common aim, that of defending a global family policy. This leads us to my second explanation.

Explaining the field of family policy

First of all, I've noticed that the title of this conference speaks of social policy whereas we, the French, who at times have the habit of splitting hairs, have created an idealogical debate on the distinction between social policy and family policy. The aim of social policy is to fight against poverty, whereas family policy is based on a concept of universality, meaning all families, irrespective of their income.

I immediately put aside this distinction because I do not think it's fundamental for the subject we are dicussing. In fact, before examining on what conditions the association of families can take place, it is better to define to what we would like the family to be associated.

The title of your conference states social policies, but my question is: what do you understand by the word social? Family interests are not restricted only to social security or social benefits. In my introduction, I have already hinted at the fact that starting from the concept of sustainable development, families are concerned with other public policies, besides those from the social field.

Since we are in the field of the family, since we want to represent it and defend its interests, we must be interested in all family lives. Let us take a few examples. We cannot seriously reflect on how to act against children's educational failure if we do not take into consideration questions like income,

lodging, health, disabilities, the reconciliation of the parents' professional life with their family life, etc.

We cannot have this set of observations which I will incorrectly qualify as *materialistic*, if we do not observe at the same time the changes within the family which I have just mentioned: the decrease of siblings, the increase of separations and blended families, the aging population, etc.

Finally, we cannot see this new set of observations, if we forget to look at the contribution of information and communication technology, or if we leave aside the concept of immortality and evolution of man, spread through the application of genetic discoveries.

As you can see, our idea of family policy integrates the totality of the human being. To go a bit further, family associations are not called to act instead of trades unions. They are not called to sign collective conventions, neither to negociate with employers unions. However, who can deny that the world of work has prodound consequence for family life? But, where, when and how is the family given a say in this subject? Considering families as economic, social and cultural partners infers that the definitions of the policies that concern them must also be questioned.

In a democracy, on questions of general interest, elected representatives should always have the final say, otherwise there will be anarchy or dictatorship. However a perennial question seems to be this: in a democratic society, who can say the first word? Who has the right to pronounce the first word ? How is the first word organised in our societies? Historically, the first place belongs to social partners (unions and employers), but besides these two poles, during the 20th century various forms and objects of speech have developed, in some way multiple forms and objects of the same word. The voice of the family is amongst thousands of other voices. And, like these other *voices*, these questions of definition challenge its legitimacy to speak and its representativeness.

Legitimity and representation are at the heart of three inevitable conditions in order to have families considered as sustainable associates, even if our concept is restricted only to social policy.

First and foremost, the organisation of the defense of family interests by the families themselves. The name of this first condition should be enough without needing, *a priori*, a very long explanation. However, if the aim of the title of this conference is to associate the families to the policies that concern them, this does not make sense unless the families organise themselves to make their voices heard. During my militant life, I have battled to have something done, or to do something with the families, but not to do it in their place. I am aware that this idea of representation is not perhaps shared by everyone, but it is the most natural one for me.

Taking into consideration what has been said about the area of the policies concerned, from my experience in my own country, it seems to me that the forms of organising the defense of family intersts can be articulated in various ways.

The French family movement is made up of what we call general movements and specific movements. General movements act on all the aspects of the family lives they cover, whereas specific movements only act on the specificity of their groups (families with disabled children, families with multiple births, families of railroad workers, etc., to quote three examples).

Then, these different associations or movements can decide to come together or to continue to act on their own, according to what they deem the most useful to their cause, or according to the strategies of increasing the number of members, the geographical locations, or of widening the areas of family concerns and of actions with the families.

In France, this grouping of several movements, be they general or specific, was done in a natural way through the existence of the UNAF, since through it, the movements can have access to an important number of representations, be they national or local.

Besides these questions on the choice of the organisation (general or specific, alone or in groups), another question arises regarding the stand we take: are we in a lobbying position or in that of a social partner ?

The choice of our position depends, according to me, on whether we are acting for or representing, so that families can identify with the definition and the setting up of policies that concern them. This choice obliges us to clarify the cultures of these positions.

In the lobbying culture, it is important to permanently show the ideal of our concept of public policies to implement, without trying to come to terms on the time it takes to do so. By doing so, we will be giving others the responsibility to decide. We are therefore in a position of double intellectual satisfaction: that of not having given up anything in the name of our ideal, and that of being able to critisice the decisions taken by others. This function and culture of lobbying has its usefulness, even on the subject of « family », but we will not go deeper into it now, if the aim of this conference is its title : parental consent as sustainable associates in social policy since, in its very essence, this culture functions on the model of requirements and not on that of shared responsibility

On the other hand, in a culture of social partership, it is still necessary to display the ideal we wish to attain, and try to reach, with the patrner or partners involved, where there is a common diagnosis achieved by expressing and listening to our mutual constraints. Then we try to overcome our constraints, and negociate together on what we would like and what is feasible, and we end up by

putting in writing where we have arrived in the discussion, and then start to implement the points on which we have agreed, in the name of the principle of reality.

The difficulty of such a process increases if the association concerned is of a multiple composition, because at the end of the negociations, there is regularly at least one of the constituants who affirms that the negotiaters have passed from reaching a compromise to dishonesty, and that they have "sold", or even lost their common ideal. This behaviour of social partnership implies therefore that one has to know and to acknowledge one's macro-economic environment.

In the context of globalisation, as well as in a decentralised process such as in mainland France, problems exist. In Europe, since 29th May 2005, there has been a crisis unequalled in decades, where we cannot ignore the fact that scarce public funds, or the re-deployment or decrease of such funds, has been taking place to curb public debt.

Asking to have families to be engaged in the defining of policies concerning them has no chance of succeeding if those who formulate these requests talk in terms of having everything, immediately, especially where they refuse to take into consideration the importance of working together within greater macro-economic balances.

Thus, even if the choice made is that of the culture of social partnership, the outcome is not guaranteed, because then there is the problem of having the intervention legitimately legally recognized.

There is a second and inevitable condition for the development of partnerships – that is, by recognizing legally the role of the social, economic and cultural partnership played by families. In order to have an agreement recognized legally, the signatory parties must have the legimate power to implement policies. This presupposes that the elected members recognize the family as an key actor of society, and that this recognition is translated to the law, so that the organisations who have undertaken the responsability of defending the family can be considered as fully-committed economic, social and cultural parties. And it is important to note that this recognition will be easy to obtain if the organisation that demands it is representative of the families on whose behalf it is expressing itself. Let me give, somewhat in caricature, an example: if we are dealing with public policies regarding infancy and the requests are proposed only by associations mostly made up of grandparents, the chances of success will be clearly lower than if we were dealing with associations of young parents.

However this question of representation by age must not be an absolute. Since we are in the sphere of the family, the guideline must be an equilibrium among generations, which implies that in instances of representation, there are at least as many parents as grandparents, which unfortunately is not always the case.

It is a pity, because that weakens the defence of the family.

It goes without saying that to have a recognized representation, legislation is inevitable. In France, we are lucky because we have had such a law since 1945, but we need to remain vigilant because the longevity of the law does not presuppose its continued existence. The diversity of sensitivities, ages and demography, together with the wide spectrum of family situations, will be checkpoints of such levels of representation.

In my opinion, it is useful nowadays as it was in the past to try to be coherant in our analysis. Following the example of the media, or of a certain number of our fellow citizens, we cannot believe that the question of representation and therefore “the ability to express oneself in the name of all” only concerns trades unions, employers unions and political parties… and suggest that this doesn’t apply to the sector of associations in general, and with the Family Movement in particular. Let us be clear, in all so called developed countries, we are all faced with the corelation between the rise of the standard of living of our fellow citizens and that of their individualism. We know very well that the commitment and the time given to defend the general interest mobilises less people than it used to do in the past.

The last inevitable condition is that of organizing public meetings between the government and all the actors concernd with family policy. There again my analysis is partially based on union practises, where the setting up of regular meetings and negotiation is vital, especially in situations of conflict, so that social dialogue is encouraged.

If I try to look objectively at 10 years of annual conferences on the family, I remain fully convinced that this procedure has allowed us to take real steps forward to respond to the needs of the families, and it allowed for the public acknowledgement across the country of the interest in those who have made the choice of maternity and paternity.

However, this success of the annual conference of the family made others jealous: associations of disabled persons, organisations of retired people - everyone wanted their annual conference. This also provoked a strong opposition from the Minister of Finance because it goes without saying that the government could not organize such conferences without incurring expenses. Obviously, the principle of reality and the culture of social partnership demand such events, and at times these expenses can be rather symbolic. But, there were also occasions when more than a billion euros was involved, or when the step forward for the family, such as the 15 days of paternity leave, was going to be very expensive.

Finally, after 10 years, it is the Ministry of Finance who have won the day, and the annual conference of the family, which used to be held at the Prime Minister's offices under his patronage, is now the responsibility of a hig-ranking civil servant, responsible for writing reports. The symbolism is no longer the same, let alone the results.

It is a pity, because imperceptibly, we are turning to the family to take on more of an educational role, as if the family had the sole responsibility for our social illnesses, or the construct that should make us fulfill better our filial duties towards our aging parents.

In all developed countries, we are getting evermore concerned about questions raised by our aging populations, and in economic debates what is being emphasized is people's dependancy and health, to the detriment of families with young children.

I could take the risk of doing a little psychoanalysis in that I would say that our countries are sinking in a depressive spiral by investing more in death, and in its denial, than in its young future.

And it is because I believe in the role of the family for our future that I will continue to fight for the family, and it is because of all this that I sincerely believe that the theme of this conference has come just at the right moment to question those who are in positions of responsibility. It arrives just in time to put the family at the centre of the sustainable development of our planet.

Family Support using Community Strengths

Richard Hickey

A few months ago I would not have imagined myself addressing an audience such as this – but the persuasive powers of Claire Missen plus the support and encouragement of my colleagues in Ireland combined to convince me that I should go ahead.

As you will have seen from your programme, I do not claim to be an expert in the area of Family Support but I do believe that the story of the Family Resource Centres in Ireland is worth telling.

In order to understand our present position and our views on "Family Support using Community Strengths", it is important to give you a definition and some background.

> *"Family support is generally seen as a way of promoting healthy relationships in families and preventing dysfunctional relationships from getting worse. As such it can be a form of either primary, secondary or tertiary prevention, a trilogy of interventions which have been cryptically defined as addressing problems either before they happen (primary prevention), before they get worse (secondary prevention) or before it is too late (tertiary prevention). (Professor Kieran McKeown)"*

> *"Family support is empowering of individuals, builds on family strengths, enhances self esteem and engenders a sense of being able to influence ones life's, has significant potential as a primary preventive strategy for all families facing the ordinary challenges of day to day living and has particular relevance to communities that are coping in a stressful environment" (Commission on the Family 1998)*

Background to the Programme

In 1994, to mark the International Year of the Family, the then Department of Social Welfare granted nearly 320,000 pounds in funding to 10 Family Resource Centres on a three year pilot basis. When the work of these centres was evaluated in 1997, the main recommendation was that their funding should continue under a dedicated Family and Community Services Resource Centre Programme (FRC Programme) within the Department.

In 1995, the Government had established the Commission on the Family. This Commission on the Family met for three years with substantial input from experts in the field. The Commission reported in 1998. The Commission recommended that the FRC Programme be extended throughout Ireland and the Government committed to 100 Family Resource Centres by 2006. This was built into the

National Development Plan and the target was met in 2006. Since that time a further 7 FRC's have been established. The Family Resource Centres Programme was included in a new state agency Family Support Agency which was established in 2003.

The Agency also is responsible for Family Mediation Services and funds a range of counselling activities including Marriage and Relationship Counselling, Marriage Preparation, Bereavement and Child Counselling.

The 1998 Commission on the Family report, entitled 'Strengthening Families for Life', the most detailed policy resource we have on the area of families in Irish society in the 21st century, informs the Family and Community Services Resource Centre Programme.

This programme aims to combat disadvantage by supporting the function of the family unit and by utilizing a family support approach in a community development setting. All work upholds the community development ethos and the principle of inclusiveness meaning that it works with people in a meaningful way to create change in their lives.

Community Development is concerned both with building resilience in communities and with empowering people to lead their own communities. It is a specific approach to tackling poverty, exclusion and disadvantage.

The strategy of the Programme is to establish a network of family resource centres in communities affected by high unemployment, poverty and disadvantage. Projects all have an anti-poverty, anti-exclusion focus and work using community development principles and methods. Projects are concerned with the needs of

- men, women and children,
- those with disabilities,
- the homeless,
- lone parent families,
- the elderly,
- the unemployed,
- young people at risk,
- Travellers,
- and other disadvantaged groups.

Projects adopt a holistic approach embracing the needs of individuals, the family unit and the community.

FRCs encourage the participation of people and groups in society by building their capacity to identify and realize solutions for themselves and their communities. The work of projects is people centred, aiming to enhance the skill

and self-confidence of people to allow them to work collectively and influence issues of importance to their families and communities.

The model of family support delivered through the FRC Programme recognizes informal and formal support sources and emphasizes that families, friends and personal networks are traditionally the foundations of a rich and valued life in the community. The principles of the family support approach are family focused, with participation of the families in all aspects of the work using community development methodology to empower family members to take control of their situation.

Thus all work is service-user led and needs-led as opposed to service led.

All activities supported by the Family Resource Centres are designed to respond to the needs of the local community. These activities include

- information,
- advice and support to target groups and families in the area (including parenting, counselling and specialized intensive interventions such as play therapy).

Additional services provided include

- advice and administrative facilities for community groups;
- courses and training opportunities;
- child-care provision, ranging from full day care to sessional care
- facilities for those attending courses provided by the project;
- after-school clubs.

Many FRCs offer counselling services, both individual and couple counselling.

It is important to note that FRC's work with the whole community in a non-stigmatising manner while targeting those most in need.

At the beginning of 2009 the Irish Government commissioned an Economic Report from the eminent Irish economist Dr. Colm McCarthy. The report entitled '*The Report of the Special Groups on Public Service Numbers and Expenditure Programme'* was released on 16th July 2009. The purpose of the Report was inter-alia to 'see where expenditure savings might be made'.

The Report made the controversial recommendation that funding to the FRCs should be severely cut as 'the funding stream for community organizations overlap in some cases with other State funded community and voluntary programmes'.

This is simply not the case. FRC's are engaged in the development and delivery of family support programmes at the community level. They do this by using a community development approach which entails working with families experiencing disadvantage to create change and meet needs. No other

community organization uniquely offers family support models of service delivery through community development activity.

These support models clearly achieve a number of outcomes identified in '*The Agenda for Children's Services' – 'connecting families and community strengths'*

- by supporting community organizations;
- 'opening access to services' in local communities where they are needed; and
- 'delivering integrated services' by working in partnership with other organizations, sharing resources and, in fact, minimizing expenditure.

We will return to this policy document further in this presentation.

The debate generated by the McCarthy recommendation has forced the Family Support Agency and the 107 Family Resource Centres organized through their national body – the Family Resource Centres National Forum (The Forum) – to consider the nature and quality of their work, particularly in Family Support.

Whilst we were all aware of the scope of support given to families and communities across the country, we felt it necessary to articulate this in a way that was meaningful to our politicians and also charted the way ahead for FRC's.

The policy document 'Agenda for Children's Services' was launched in 2007. This is a key document and informs the future plans for the Programme. The Minister for Children states in the Foreword (Page 5)

> "An important aspect of this policy document*, The Agenda for Children's Services*, is the emphasis placed on the role of families and communities in the lives of our children. Too often in the past, services were provided to our children and young people in isolation from their families and communities. This was, and is, to the detriment of all concerned. The inclusion of families, extended families and local communities, where possible, in services for children goes a long way to ensuring that these services are actually responding to the needs of the child and ensures that they continue to be effective in the long term, even when direct intervention from State or voluntary agencies has ceased."

The document further states (page 17 and 18)

> "ensuring that children and young people receive the support they need when they need it is the central challenge for children's services. This requires that formal services connect with and promote the networks of informal support that surround children and young people. <u>Supporting and complementing the many ways in which the immediate family protects and cares for children is the central function of child health and child welfare services.</u>

This is easier to achieve with some families than others. Social exclusion is a major barrier to effective support and needs to be directly addressed through targeting need and developing and delivering culturally competent services. Effective protection of children and young people at risk or in crisis, as well as the promotion of all children's well-being, requires working in partnership with families. Retaining the trust of families is the key.

The support that children receive from other informal sources beyond their immediate family also needs to be recognized – the wider family, friends and community. There is strong evidence that for children in adversity it is these informal networks that are the key sources of help and yet they are often overlooked by professionals. Help from these networks can be available on a 24 hour basis in a less stigmatizing fashion and can be very cost-effective. They operate in the immediate world of the children and young people.

The Agenda for children's services identifies five characteristics of a service which should be in place to achieve the best outcomes. The Family and Community Services Resource Centre Programme excels in each of these domains and clearly highlights the effectiveness of services provided by the FRC Programme.

(i) Connecting services with families and community strengths.

Since the commencement of the programme in 1994, the number of core funded Centres has increased from 10 to 107. This demonstrates that FRCs are popular in local communities and that there is a need on the ground for community-based approaches to family support.

FRCs work within the cupped model of family support, locating the children and family within their immediate community and the wider context of local services and national policy. The cupped model of family support places the child or young person at the centre of the intervention. Beyond the nuclear family there are extended family and friends, then the school and community, then wider organizational networks and finally national policy and legislation. The cupped model of family support is based on the ecological approach which focuses on the various contexts at play in any situation. FRC's are managed in such a way that there are high levels of community ownership of centres in local areas and high levels of community participation in all their processes thus linking all elements of this ecological approach.

(ii) Ensuring quality services.

As advocated in the Commission on the Family (1998) report '*Strenghtening Families for Life'*, FRC's work from an approach of building strengths in families which is:

- Preventive
- Empowering
- Building on family strengths
- Enhancing self esteem and
- A sense of being able to influence events in ones life

and draws on community-based responses. Utilizing this approach and the ecological model, the services offered through FRC's are varied and address a number of levels of outcomes.

Services available in the FRC's can be located within a number of levels on the Hardiker Model (1991). The Hardiker model conceptualizes four levels of service provision.

- Level 1 provides open access support to families (such as public health nurse and medical services) and health promotion and information services. It is provided to families generally and at their request. An example of a service in St Brigid's is our Parent and Toddler Group which offers a universal service to all parents promoting social interaction and good parenting skills.
- Level 2 is provided to families at their request, and is targeted support by assessment of need. An example here is our Parenting Courses which include one-to-one assessment sessions.
- Level 3 is a prescribed intervention for families in difficulty and children at risk. The voluntary dimension may be no longer present and work with the family is in many cases mandated by law. We would deal with mandatory attendance by parents (especially fathers) at parenting courses.
- Level 4 refers to work with families where the need is so acute that the children have been placed in out of home care.

As outlined in more detail below, the majority of services in FRCs can be located at levels 1 and 2 with an emphasis on level 2, however, some services can be located in level 3.

Each of these service types is as important as the other. As FRCs are locally based and work on the ground with families and children on a daily basis, they can facilitate early intervention. They are in touch with communities and therefore act as part of a Child Protection support system whereby support and services are provided to prevent re-entry into the child protection system, highlighting the importance of the gate-keeping role of FRCs.

(iii) Open access to services.

FRCs are based in local communities and are part of local communities. Having the remit to provide universal services mean that they are ideally located to provide easy accessibility to a range of services. Their presence in the local community is non-stigmatizing. Work in FRCs is also targeted at vulnerable and

hard to reach groups in the community. As I mentioned earlier, target groups include:

- youth,
- lone parents,
- unemployed people,
- disabled people,
- members of new communities,
- older people and
- isolated and older men.

FRCs provide a social network which would otherwise not be available in isolated areas and areas of disadvantage.

Around the country these services receive one million visits on a yearly basis to access essential services and facilities. In 2008, other community and voluntary groups used FRCs over 16,000 times to host meetings, and over 41,000 times to use project facilities. Over 10,000 adults have chances of returning to employment or gaining higher-skilled work.

Furthermore by providing accessible affordable childcare services throughout the country, (over 60 FRCs have childcare attached to them), FRCs also enable parents to become part of the workforce or engage in training courses with a view to updating their skills. The sheer volume of visitors to FRCs demonstrates the demand on the ground and the willingness of communities to engage with this type of service.

(iv) Delivering integrated services.

FRCs are part of range of family support services and support infrastructure. This is beneficial in a number of ways.

- Firstly FRCs are integrated into both the local community and the local service community. The emphasis in the projects is on the involvement of local communities and on creating successful partnerships between the voluntary and statutory agencies in the area of family support. FRCs work in partnership with other agencies working on the ground within communities. Thus, there is an established system of collaborative work and systems of referral where necessary and appropriate, and FRCs service users are linked into a range of social services.

- Secondly integrated services are cost efficient. The FRC model encourages the sharing of resources, thereby reducing the need for the Government to provide individual supports to various organizations and community groups. In addition, having core funding, granted by the Family Support Agency, FRCs are supported to generate further income from other sources. Family Support Agency support to the 83 FRCs that contributed to the SPEAK FRC database during 2007 amounted to just over 13.2 million. These FRCs generated a further 19.2 million from other

sources during the same year. (SPEAK means Strategic Planning and Self Evaluation System).

(v) Planning, monitoring and evaluating services.

All FRC's use a strategic planning approach to their activities. All FRC's take part in the SPEAK self appraisal and reporting tool. These monitoring and evaluation tools clearly demonstrate the effectiveness of the Programme. They demonstrate that the Programme is delivering a much-needed public service in an efficient and cost-effective manner. Additionally, Centres have their own formal and informal methods of evaluation. Services and programmes are delivered after a rigorous consultation process.

Strategic Partnership and alliance building

The development of effective partnerships between the Health Services Executive and FRCs can greatly enhance the delivery of, and expand, family support services at local level. There is a huge need for FRCs and the HSE Community Care and Social Work Teams to develop protocols for working together, particularly for families who are at risk and in relation to child protection policies. Child Protection and protection of vulnerable adults is critical to our work. A practical example of such collaboration would be the opportunity for FRCs to provide the HSE with additional supervised access visits (Child Contact Centres) in both child and family friendly environments. This need has been identified in the recent One Family report '*Supporting Child Contact – The Need for Child Contact Centres in Ireland*'.

FRCs play a key role in inter-agency planning and consultation regarding local needs, in particular in the area of family support. Care must be taken to avoid an overload of intervention in families.

Many FRCs actively engage at local government level participating in social inclusion measures groups and with other local development agencies.

This is reflected in the high level of family focused programmes and initiatives provided through FRCs in partnership with various agencies, including

- Adult Education
- Drugs Awareness
- Youth Services
- Sports Partnerships
- Local Government etc.

Continued development of family support services and supports

FRCs also play a key role in the provision of parenting supports and childcare supports.

In an opinion piece in the Irish Times in March 2009, a leading expert Prof. Pat Dolan of the Child and Family Research Centre in Galway University stated

> "While many young people thrive during childhood, others do not experience life as good or safe. Rightfully, in recent years, much attention has focused on how best to support vulnerable children and youth.
>
> With the inevitable incoming tide of 'cutbacks' in services in Ireland (and elsewhere) a decrease in vital and relatively low cost preventive services and supports to young people may actually increase their risk of harm. Clearly, the harsh experience of many children often demands remedial interventions that sometimes culminate in their removal from their families and communities. However, there is growing international research evidence that early interventions delivered through inclusive family support programmes for all types of family structures, particularly in disadvantaged communities, can work.
>
> In times of limited resources for children and families in need, we must not overlook this.
>
> Furthermore, even before any professional intervention, family, friends, school and community resources are the proven primary sources of help for children and are often the unsung heroes in the lives of young people."

There is huge potential for FRCs to target families experiencing particular disadvantage such as drug addiction and in developing innovative pilot programmes and in being the vehicle for rolling out new government parenting/family initiatives.

Targeting and working with parents and siblings of families who are living with drug and alcohol addictions is urgently required. This is one of the fastest growing and endemic issues of many communities, with parent and siblings themselves highly stressed and many coping with prescription medication. Weekly facilitated support meetings that are educational based i.e. personal development, parenting skills, communication, drug and alcohol awareness training would support the family unit in dealing with these issues.

The Social Policy and Ageing Research Centre in Trinity College, Dublin recently launched "The Role of Grandparents in divorced and separated families", a research report funded by the Family Support Agency. They recommend that there should be

1. "Greater recognition by family resource centres of the important role grandparents can play in the post-separation family. Information and counselling should be available to grandparents who are heavily involved in the care and support of their adult children and grandchildren, and also for grandparents who experience their contact with grandchildren as

inadequate. The creation of peer-support groups within these centres should be piloted and if successful, rolled out around the country.

2. More information (through information packs and relevant websites) for grandparents on how they can help and support grandchildren in the early years of their parents' divorce or separation.

3. More information (through information packs and relevant websites) for grandparents on legislation governing their right to apply for access to grandchildren following their son's or daughter's divorce or separation."

This is a challenge which we will take up in 2010.

A potential area for future development is one parent family programmes in the local community that also target fathers to engage with their children on a regular basis. This type of support develops confidence, alleviates stress and mental health illnesses through developing social networks and friendships. The programme would provide appropriate information, develop life plans for the individual, link with education and training opportunities, provide child care and child development.

FRCs presently deliver work outside their named target areas and people who live outside the named target areas access services and supports of FRCs. FRCs refuse support or access to no one.

St Brigids Family and Community Centre

The Project was founded in 1984 by the Irish Sisters of Mercy, based on a charitable model where well-meaning people were harnessed to deliver services identified by the Sisters as needed in the community.

In 2000 the Centre joined the FRC Programme. This presented a number of challenges to the Centre in terms of its Board of Management, its culture and ethos. As the FRC Programme is rooted in community development, change was needed. Like any project, there has been a resistance to change but slowly we have shifted our emphasis and ethos from a charity based model to a community development model.

All the activities in our Centre are informed by the consultation process carried out in recent years and particularly by the Inner City Integrated Strategic Plan 2008-2010. We have a range of programmes and services for all age groups and our Centre is seen as a focal point for advice and support as well as being a drop-in Centre for our catchment area.

Examples of services and programmes delivered at St Brigids include:-

- Couple and Relationship Counselling
- Adult Counselling
- Child Counselling and Play Therapy
- Full range of child-care activities allowing us to also provide one-to-one parenting advice and tailored parenting courses and workshops
- Parent and Toddler groups
- Family and Community Services i.e.
    - Drop-in Centre with a programme of activities including cookery, art and craft classes, computer classes
    - Weekly coffee mornings
    - Capacity Building Workshops to increase peoples awareness of local structures and how to engage and participate in local decision-making processes
    - Befriending Projects.

But, to really know what we are doing and the contribution we make to the inner city, you must come to Waterford and visit us.

Thank you for your interest in our work and a sincere thank you to the organizers for inviting me here to address you.

Note:
To access the full research report entitled
"Family Figure: Family Dynamics and Family Types in Ireland, 1986-2006",
please view the website of the Family Support Agency www.fsa.ie and click on "research".