

Anonymity in donor-assisted conception and the UN Convention on the Rights of the Child

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Secrecy and anonymity in donor conception: origins and current trends

What is now known as donor insemination (DI) has been practised for at least several hundred years (Novaes, 1998). In what appears to be the first detailed account of its successful use, in Philadelphia in 1884, the recipient, who had been previously anaesthetised, did not know that she had been inseminated by Professor William Pancoast using sperm from his “best looking” medical student. Although the woman’s sterile husband was told about Pancoast’s ministrations, he was instructed never to tell his wife. It is likely their son did not know of the circumstances of his conception, although he probably subsequently met his donor. One of Pancoast’s students, Addison Hard, claimed that he had “shake[n] the hand of the young man” who had been conceived as a result of the insemination (at the same time inviting speculation that Hard himself had been that “best looking” student) (Daniels, 1998; Gregoire and Mayer, 1965). Twentieth century British DI pioneers, Mary Barton and Margaret Jackson, were subject to considerable public, political and professional opprobrium (Barton, Walker and Wiesner, 1945; Snowden and Mitchell, 1981; Snowden, Mitchell and Snowden, 1983). Thus, this “unorthodox medical procedure led to the reinforcement of a perceived need for discretion, particularly in those circumstances in which physicians resorted to an anonymous semen provider” (Novaes, 1998, p. 110). Consequently, up until relatively recently, DI was practised under conditions that espoused both secrecy and anonymity. As recently as 1987, the UK’s Royal College of Obstetricians and Gynaecologists was advising prospective DI recipients: “unless you reveal [DI conception] to your child, there is no reason for him or her ever to know that he or she was conceived by donor insemination” (Royal College of Obstetricians and Gynaecologists, 1987, p. 3).

In a survey of international trends undertaken by the Council of Europe (1998), providing data from Australia, Canada, New Zealand, the USA and

35 European nations, 27 States indicated that “the principle of secrecy in . . . donation [is] respected”. Two States reported that they had no relevant legislation or regulation, and no information was available in a further nine States. In only one country, Switzerland, was secrecy *not* afforded protection. However, replies to other questions in this survey suggest that there may have been some misunderstanding of terminology, in particular confusion between “secrecy” and “confidentiality”. For example, some States claiming to respect the principle of *secrecy* in donation, also acknowledged that a donor-conceived person could receive non-identifying information about their donor.

In any event, during the last quarter century the notion that secrecy in donor conception is necessarily the best option has weakened in official discourses. Several factors may account for such change. First, evidence that secrets in families may be damaging (*see*, for example, Triseliotis, 1973; Karpel, 1980; Sorosky *et al.*, 1984; Department of Health *et al.*, 1993; Imber-Black, 1993, 1998) and the endorsement of such ideas by influential government-appointed committees on assisted conception and reproductive technology such as the Australian Waller Committee (Waller, 1983); the UK’s Warnock Committee (Department of Health and Social Security, 1984) and the Canadian Royal Commission on New Reproductive and Genetic Technologies (1993). A second key factor has been the introduction of legislation in a number of countries that protects the donor from any financial or legal responsibility for any child conceived as a result of their donation and also enables the husband or partner of an inseminated woman legally to register himself as the child’s father, thus legitimating the child (for example, the Human Fertilisation and Embryology Act 1990 in the UK and the Infertility Treatment Act 1995 in Victoria [Australia]) – although the latter could, of course, also encourage secrecy. A third influence has been the emergence, made possible by technological developments, of egg donation, which challenges the dominance of the inherently male discourse associated with sperm donation. Crucially, providers of assisted conception services and their professional bodies who remain committed to the principle of donor anonymity in respect of sperm donation are willing to countenance the recruitment of known or identifiable egg donors in order to address the significant shortage of donor eggs (International Federation of Fertility Societies, 2001; Murdoch, 2001). Finally, people who have used donor conception, committed to the principle of sharing with their children information about their origins, have established support groups in a number of countries (e.g. Donor Conception Support Group of Australia Inc., 1997; DI Network, 1999/2000). However, in the main, research evidence indicates that parents who have used donor conception have been – and many remain – unlikely to tell their children about their conception (*see*, for example, Cook *et al.*, 1995; Golombok *et al.*, 1995, 1996, 2002a; Brewaeys, 1996; McWhinnie, 1996; Brewaeys *et al.*, 1997; Gottlieb *et al.*, 2000; Lindblad *et al.*, 2000). Thus,

official discourses may be more supportive of change than many DI recipients themselves are ready to embrace. At the same time, some recent research suggests the possibility of increased congruence between official discourses and the reality of family life. Scheib *et al.* (2003) report that a significant majority of DI recipients at the Sperm Bank of California have told or intend to tell their children about their origins. In the UK, the most recent evidence from a longitudinal study indicates, in comparison to earlier findings, a reduction in the proportion of parents who intend not telling their children about their origins, and a corresponding increase in the proportion of parents who are either definitely planning to tell or who are undecided about telling (Golombok *et al.*, 2002b).

While the notion of *secrecy* in donor conception appears less potent, that of maintaining donor *anonymity* continues to command much support. In the Council of Europe study previously cited, 24 States indicated that “the principle of the secrecy of the donor’s identity [is] respected”. Eight States indicated that there was no relevant legislation or regulation, and no information was available in a further three States. In only four States was the donor’s anonymity *not* protected (Austria, Germany, Sweden, Switzerland). Again, some ambiguity surrounds these data. In Germany, a Constitutional Court judgment in the 1980s determined that a child has the right to have access to its biological origins. However, all records relating to donor conception may legally be destroyed after ten years, in which case the child’s right to learn about his/her biological origins is considerably compromised (personal communication, Petra Thorn, 16 October 2003). Two countries, the Czech Republic and Iceland, both formally cited as protecting donor anonymity, actually operate a hybrid system, conventionally known as the “double track” system (Pennings, 1997), whereby a donor may choose at the point of donation either to be identifiable to any offspring or to remain anonymous. Prospective recipients of donated gametes may then choose to receive the gametes of either an anonymous or identifiable donor. Thus, both donors and recipients may exercise choice, at the time of donation and receipt respectively, although the future options available to any donor-conceived person are restricted by the choice made by their parent(s). In the case of the Czech Republic “the donor’s identity is kept secret only if he, or the recipients, *do not agree to its disclosure*” (Council of Europe, 1998, p. 127 – our emphasis). In Australia, which is also formally recorded in the survey as safeguarding donor anonymity, legislation is devolved to State level. Victoria abandoned protection of anonymity by virtue of the Infertility Treatment Act 1995 and other Australian States are reviewing their protection of donor anonymity. Since publication of the Council of Europe report, changes have occurred in two countries which previously supported donor anonymity; the Netherlands has legislated for its abolition, while the UK government has announced its intention of doing so from 2005.

Additionally, in some States a court may order disclosure of a donor's identity. Eight States in the Council of Europe survey did so (of which seven claimed generally to uphold the principles of both secrecy and anonymity – Sweden being the eighth state). Thirteen States also allow the identity of the donor to be disclosed (although not necessarily to the recipient or the child) “in order to analyse a possible hereditary risk to the child” (Council of Europe, 1998, p. 128).

In the absence of potential medical risks, eight States give the donor-conceived individual the right to request “at an appropriate age” information on his/her conception. Of these, two (Sweden and Australia [*sic*]) are recorded as also giving the donor-conceived individual the right to learn the identity of the donor, while the impact of future legislation in the Netherlands (now implemented) is also noted. However, Austria, Germany, and Switzerland, which also permit disclosure of the donor's identity to the donor-conceived person, are formally recorded as: “an answer would be meaningless” (Austria), “not regulated” (Germany) and “information not available” (Switzerland). Further, the report notes that in the USA, in the absence of State or federal legislation or regulation, both egg and sperm donation programmes are increasingly asking their donors to consent to being identified.

The main justifications for maintaining donor anonymity, where these are made explicit, are that its abolition would seriously jeopardise donor supply; that identifiable donors could intrude into the privacy and family life of donor-conceived children and their parents; that donor-conceived people seeking to identify their donor could intrude into the donor's privacy and family life, and that this is also in the donor-conceived person's best interests (*see for example Aird et al., 2000; Fortescue, 2003*).

Human rights aspects of donor anonymity have been explored previously by Freeman (1996) and Blyth (1998, 2002). Human rights authorities themselves have proffered different opinions on whether restrictions on information about genetic origins infringe an individual's human rights. Former Norwegian Ombudsman for Children, Målfrid Flekkøy, has explicitly questioned whether a donor-conceived person has a “right” to information about his/her “biological heritage” (Flekkøy and Kaufman, 1997). On the other hand, Steve Ramsey, Director of South Australia's Office of Families and Children, has stated: “principles from the domain of human rights can provide an important framework for responding to one of the most pressing challenges confronting reproductive technology . . . and that is *access by donor offspring to information about their origins* . . . Put at its most succinct, from a human rights perspective, one might ask the question – *how can one argue against the basic human right to know one's own genetic identity*” (Ramsey, 1998, p. 4 – emphasis original).

Donor anonymity and donor-conceived people's ability to receive non-

identifying and/or identifying information about their donor remain topical issues and are currently under review in several jurisdictions (*see*, for example, Blyth and Landau, 2004).

The UN Convention on the Rights of the Child and donor conception

The UN Convention on the Rights of the Child has become the most ratified of all international human rights treaties, having been ratified by 191 countries; only two countries have not done so, the United States which, despite formally signing the Convention, now stands as the only industrialised country in the world yet to ratify it, and Somalia, which currently has no recognised government (UNICEF, 2001). The main significance of the Convention is the establishment of a universally agreed standard of rights for children in addition to stimulating debate within the developed world about the meaningful interpretation of those rights (Lestor, 1995).

Five broad themes within the Convention may be considered relevant to donor conception and, in particular, access to genetic origins information, including: the best interests of the child; the right to know one's parents; respect for identity, family and private life, access to information; and protection against discrimination, although the rights most commonly cited are Article 3 (the best interests of the child) and Article 7 (the right to know one's parents) (*see* below).

The best interests of the child

Article 3 establishes the general principle that “in all actions concerning children, whether undertaken by public or private social welfare organisations, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Since the Convention refers to the best interests of the child only as *a* primary consideration, and not *the* primary consideration, it cannot be relied upon to give the best interests of children any degree of priority compared to the best interests of others, or indeed any other priority. In the Council of Europe survey, only eight States indicated that ‘the concept of ‘the well-being of the unborn child’ [is] explicitly provided for either in legislation or codes of practice governing the conditions for access to medically assisted procreation techniques’. The UK is one of these, although the Human Fertilisation and Embryology Act 1990 simply requires that account be ‘taken of the welfare of any child who may be born as a result of the treatment (including the need of that child for a father), and of any other child who may be affected by the birth’ (Section 13 (5)). Imprecise conceptualisations of “well-being”, “welfare” or “best interests” principles may not only

be of limited value, but may also be positively harmful, permitting assumptions that simply because concern for the welfare of the child is articulated in codes, regulations or statutes, it is necessarily adequately addressed. In contrast to the ambiguity of the UK legislation, the Victorian Infertility Treatment Act 1995 declares that “the welfare and interests of any person born or to be born as a result of a treatment procedure *are paramount*” (Section 5(1)(a) – our emphasis) and that this principle must be applied before all others (Section 5(2)). Further, the Act links this general commitment with a specific right that the donor-conceived person may learn the donor’s identity. The Victorian legislation also refers to the welfare and interest of donor-conceived *people* and does not limit its remit to concern for such individuals during their childhood only.

Ambiguity about the precise meaning of the welfare of the child has resulted in its being used to support both the maintenance and the abolition of donor anonymity. For example, a committee established by the King’s Fund Centre (now the King’s Fund, an independent charity based in London concerned with health improvement) expressed concern that the limited genetic origins information to be made available to donor-conceived children in the UK “would appear to be inconsistent with a proper concern about the welfare of the child” (King’s Fund Centre, 1991, p. 19).

Dawn Primarolo, a member of the UK Parliament (and a middle ranking minister in the present government) has argued that it is in children’s best interests not to know *anything* about the circumstances of their origins since this could set them apart from other children (Primarolo, 1990). Others have claimed that donor anonymity promotes “the integration of the child within the family” (Council of Europe, 1989, p. 28), while Haines (1992) quotes a member of the Warnock Committee questioning “whether it was really in the child’s interests to confront someone who had masturbated off as a donor” (p. 129).

The right to know one’s parents

Article 7 provides the child with the right “. . . as far as possible . . . to know . . . his [*sic*] parents”. Exercise of this right clearly hinges on the definition of “parent”. When the UK government ratified the Convention it stated its intention to restrict definition of the term “parents” to persons who are treated as such in law. Since the Human Fertilisation and Embryology Act 1990 provides that a donor whose consent to donation has been properly obtained is not regarded in law as a parent of the child, it may be argued that Article 7 has no relevance to donor anonymity in the UK. Other UN Member States have interpreted Article 7 to give effect to the donor-conceived person’s right to know the identity of their donor. The introduction of the *Fortpflanzungsmedizingesetz* (Reproductive Medicine Act) in Austria affording a person conceived following sperm donation the right to learn the identity of

his/her genetic father on reaching the age of fourteen (egg and embryo donation being illegal in Austria) was predicated on the Austrian government's interpretation of Article 7 (in addition to its interpretation of Article 8 of the European Convention on Human Rights and Fundamental Freedoms) (personal communication, Dr Michael Stormann, Austrian Justice Ministry, 26 November 1997).

Respect for identity, family and private life

The Preamble to the Convention refers to the encouragement of child rearing "in a family environment, in an atmosphere of happiness, love and understanding" while Article 18 (2) notes States' obligations to provide "appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities". As the personal accounts of donor-conceived people and their parents indicate (for an overview *see* Blyth, 2002), some donor-conceived people are seeking more information about their genetic parents in order to obtain a fuller sense of their own identity. Some consider successful achievement of this requires knowledge of the donor's identity, a person who may never have intended a parental relationship with their offspring but who, nevertheless contributed half of their genetic make-up. Experiences of parents of donor-conceived children indicate that one of the barriers to sharing genetic origins information with their children (and helping them achieve a sense of identity) is the lack of available information to share (Cook *et al.*, 1995). This lack of information could therefore be promoting deception and family secrets that may themselves generate tension and stress within families. Consequently, withholding this information, or failing to make reasonable attempts to collect it in the first place, may be seen as inconsistent with the obligations outlined in the Preamble and Article 18.

Access to information

Article 13 provides rights to information. The existence of official records that could establish a genetic link between a donor and their offspring, but to which the donor-conceived person has no right of access (such as those held on the Human Fertilisation and Embryology Authority's Register of Information in the UK and similar registers in existence or being planned in other countries) could be seen, therefore, as a contradiction of Convention principles. However, promotion of the rights of the donor-conceived person to such information could also conflict with the rights to privacy of both their parents (where telling the child about their origins would expose the parents' fertility difficulties) and donor (where the latter donated on the basis that their anonymity would be respected).

Protection against discrimination

Article 2 provides for protection from discrimination. It could be argued that both withholding information from a donor-conceived person about his/her genetic origins and providing such information (as this might expose them to discrimination on the part of others) could be discriminatory.

State Party reports to the UN Committee on the Rights of the Child

Review and analysis of State Party reports submitted to the UNCRC under Article 44, summary records of meetings between State Parties and the UNCRC, and the UNCRC's "Concluding Observations" published on website <www.unhcr.ch/tbs/doc.nsf> up to October 2003 revealed specific reference to donor anonymity in assisted conception in respect of eleven countries: Austria, Denmark, France, Greece, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, and the United Kingdom.

First, we consider themes in State Party reports where provision is made – or proposed – for the disclosure of donor identity. Austria's 1997 report (UNCRC, 1997) noted the existence of legislation providing for a donor-conceived child reaching the age of 14 to have access to records on his/her donor – including details of the donor's identity. New Zealand's 2003 report (UNCRC, 2003a) referred to proposed legislation (which is expected to be implemented during 2004) allowing a donor-conceived person reaching the age of 18 years to access identifying donor information held by service providers and the Registrar-General. The proposed legislation would also allow a donor and a donor-conceived person to receive non-identifying information about each other by mutual consent before the donor-conceived person reaches the age of 18. A donor may learn the identity of any offspring reaching the age of 18 years who consents to the disclosure of his/her identity to the donor. A donor may learn the identity of any offspring reaching the age of 25 years without the consent of the donor-conceived person. The Dutch report of 2003 (UNCRC, 2003b) made passing reference to new legislation on DI, without providing details of its proposals to permit a donor-conceived person to learn the identity of his/her donor. Sweden's 1998 report (UNCRC, 1998a) noted that a judgment has to be made about providing information to a donor-conceived child that is consistent with the child's welfare. So it is "essential that a child should not be forcibly given information which it is not sufficiently mature or prepared to receive". The Swedish legislation, therefore, imposes no lower age limit at which such information should be made available. Instead, parents will decide not only when their child has attained "sufficient maturity" but also if it is in the child's best interests to be told, although "at hospitals where insemination takes place, the attention of parents should be drawn to the importance of frankness with the child as a principle". Switzerland's 2001

report (UNCRC, 2001a) stated that where a donor-conceived person “of any age can show a legitimate interest”, (s)he has the right to obtain “all the information on the donor”, while a donor-conceived person over the age of 18 can automatically obtain information on the donor’s identity and physical appearance without having to prove a particular interest. Greece’s 2001 report (UNCRC, 2001b) referred to the obligation on all sperm banks to maintain records of donors and of the provisions for these records to be accessed by the Ministry of Health and the judicial authorities: “In this way the child has a legal interest and may be informed, through the judicial channels, of the identity of its natural father”. In discussion with the Greek delegation, the UNCRC sought to clarify the grounds under which a court might permit a donor-conceived child to learn the identity of their donor. The Greek representatives replied that donor conception had only been practised in Greece since the mid-1990s, and that no case had been brought before the courts, although older children existed who had been conceived as a result of donor procedures undertaken abroad (UNCRC, 2002a).

Second, we consider State Party reports that specifically refer to the maintenance of donor anonymity. Spain’s 2001 report (UNCRC, 2001c) stated that “in no case shall the entry in the Civil Register [birth register] reflect information from which the form of reproduction involved may be inferred”. France’s 1993 report (UNCRC, 1993a) specifically claimed the maintenance of donor anonymity to be in the interests of the donor, the recipients, “and the child, who should be a child like any other without having to face problems of a dual relationship”. Norway’s 1993 report (UNCRC, 1993b) noted that a husband who had consented to his wife’s insemination would be regarded as the child’s father. Consequently the donor would not be so regarded and, therefore, “the child’s right to know the identity of his parents pursuant to article 7.1 of the Convention applies only ‘as far as possible’. Norway does not regard article 7.1 as any hindrance to continuing its present practice of upholding the anonymity of the donor”.

We now turn our attention to the UNCRC’s “Concluding Observations”. The introduction of measures enabling donor-conceived people to learn the identity of their donor has been specifically welcomed (UNCRC, 2002b). The UNCRC has also noted a “possible contradiction” between the rights specified under Articles 3 and 7 of the Convention and the maintenance of donor anonymity (UNCRC, 1994a, 1994b, 1995, 2002c).

Some measure of the impact of the UN Convention on national policy may be judged by reference to the experiences of Norway and Denmark.

Norway is one of few countries to have submitted both an initial and second report and to which the UNCRC has responded. As we have noted above, Norway submitted its first report to the UNCRC in 1993 (UNCRC, 1993b) and responded to the UNCRC’s reservations concerning donor anonymity

(UNCRC, 1994b) in its second report submitted in 1998 (UNCRC, 1998b). In paragraph 132 of this report the Norwegian government noted:

“Concerning the right of a child to know her or his origins, Norwegian law makes an exception for children conceived by artificial insemination using sperm from sperm donors. According to section 2–7 of the Act relating to the medical use of biotechnology (1994), the identity of sperm donors shall be kept secret. The decision has been arrived at after weighing the interests of all parties. Anonymity is in the interest of the sperm donor and his family. Anonymity of the sperm donor is considered to be the most efficient way of avoiding the creation of emotional or legal bonds between the child and the sperm donor, which is in the best interests of the child. Finally, full anonymity for the donor is also in the interests of the legal/social father. (Reference is made to the Committee’s comments to the initial report, paragraph 10)”.

Thus, the Norwegian government reiterated its original position and made no concession to the UNCRC’s criticisms. This issue was raised in discussion of the report between the UNCRC and the Norwegian delegation (UNCRC, 2000a), with the latter acknowledging that donor anonymity would be examined within Norway’s proposed Plan of Action for Human Rights (UNCRC, 2000b). However, there was no mention of donor anonymity in the subsequent “Concluding Observations” (UNCRC, 2000c), implying that this issue was no longer considered of sufficient priority by the UNCRC to warrant a formal record.

Denmark submitted its initial State Party report in 1993 (UNCRC, 1993c). Although this made no specific reference to donor anonymity, Denmark’s policy on anonymity was criticised by the UNCRC (UNCRC 1995). In its second report (UNCRC, 2000d) the Danish government addressed donor conception as follows:

Paternity by artificial insemination

55. The Committee on Child Legislation proposes that the husband or the cohabitant is to be the child’s father if he has consented to artificial insemination and the child has been conceived thereby.

56. It follows from Act No. 460 of 10 June 1997 on artificial insemination in connection with medical treatment, diagnostics and research, etc., that a sperm donor is to remain anonymous if the sperm was donated for the purpose of a doctor’s use for artificial insemination or to a public or private sperm bank operated under a doctor’s responsibility. Against this background, the Committee on Child Legislation proposes that it be specified that a sperm donor cannot be adjudicated father of a child conceived by artificial insemination with his sperm in such cases.

57. The Committee on Child Legislation further proposes that in case of inseminations performed without the assistance of a doctor or under his responsibility, the donor should not be anonymous. Therefore, a donor or a partner should be

able to be adjudicated father also because no forensic genetically applicable distinction can be made between a sexual relationship and insemination without the assistance of a doctor.

Maternity by artificial insemination

58. The Committee on Child Legislation proposes a legal provision to the effect that the mother of a child conceived by artificial insemination is the woman giving birth to the child. Such rule corresponds to what is assumed to be applicable law without any legislative support.

59. It has not been decided when a bill based on the report of the Committee on Child Legislation can be introduced.

The UNCRC response in 2001 (UNCRC, 2001d) made no specific mention of donor conception, although it made the following more general observation:

“The Committee is concerned that the general principle of the best interests of the child (art. 3) is not fully applied and duly integrated in the implementation of the policies and programmes of the State party. In this regard, the Committee notes that the rights of parents are often found to be more important than the best interests of the child”.

Discussion

In its response to implementation of the Convention in a small number of European countries the UNCRC has demonstrated concern that the existence of donor anonymity may breach Articles 3 and 7 of the Convention. The UNCRC has also formally endorsed the abolition of donor anonymity in an even smaller number of countries. However, since the majority of countries that permit donor conception also support the principle of donor anonymity, restriction of reference to donor anonymity to these few reports suggests – despite clear indication that certain individual members of UNCRC may rate it as a significant children’s rights issue – an absence of systematic concern within the UNCRC as a whole. We concede that, in the overall scheme of disadvantage and discrimination to which the world’s children may be subject, including refugee children, children involved in armed conflict and children involved in the sex trade, a donor-conceived person’s lack of knowledge about their genetic origins is unlikely to emerge as a major global priority. Within the developed world, however, where children’s most basic rights are generally respected, we consider that there is a case for this to be given a more significant profile by the UNCRC.

Our, necessarily focused, review of a limited aspect of the UN Convention on the Rights of the Child has revealed some major limitations regarding its

operationalisation. First is the general issue of late (or even non-) submission of reports. While the Convention obliges States Parties to submit periodic reports according to a prescribed timescale, in practice it is evident that few do so. The UNCRC has no power to impose any sanctions on a State Party that fails to respect its reporting obligations. For example, the UNCRC's "Concluding Observations" on the late submission of, and omissions from, the initial Greek report (UNCRC, 2001b) expresses:

"... regret that the initial report was submitted five years late and that the State has not yet submitted a human rights core document. The Committee notes that while the report contained very useful information on the legislative framework relevant to the Convention's implementation within the State party, it lacked sufficient information on the effects to implement the Convention itself. The Committee notes with regret that the report did not include a specific section on general measures of implementation, as required under the Committee's reporting guidelines" (UNCRC, 2002b).

Where a State Party's initial report is overdue by more than ten years, the UNCRC provides the State Party with a written requirement to submit the report by a specific date. So far the UN has been largely successful in securing reports at least eventually, although there have been some extensive delays in respect of some specific reports. The Committee has recently adopted recommendations relating to the reporting process in order to deal with States Parties which have failed to submit reports on time.

Second, the UNCRC has recourse to limited remedial action in the event of a State Party failing to meet standards endorsed by the Convention. At its most rigorous this would involve the use of diplomatic avenues, encouragement or embarrassment as a means of facilitating compliance. In practice, however, the scope of such strategies is evidenced in the examples of Danish and Norwegian policies on donor anonymity, which suggest that State Parties may ignore the UNCRC's criticisms with relative impunity.

A third major limitation relates to the tenacity of the UNCRC itself in ensuring that a particular issue remains on the agenda for discussion, as exemplified by the fate of donor anonymity in Norway. While it would be overstating the case to criticise the UNCRC for abandoning the argument, the absence of any reference to donor anonymity in the UNCRC's "Concluding Observations" (UNCRC, 2000c) does not convey the impression that the UNCRC considers this worthy of any particular priority.

The fourth limitation relates to the timescale within which discussion and change may occur. While it is clearly unrealistic to expect immediate change, the prospects of the Convention bringing about speedy (if any) change within a non-compliant State Party appear to be non-existent as evidenced by the provision that a State Party may be able to delay submission of its initial report by up to ten years without undue negative consequences. The case of donor

anonymity in Norway further exemplifies this, where donor anonymity continues to be practiced over a decade after its endorsement by the Norwegian government was identified by the UNCRC as a possible breach of the Convention.

Finally, there is a sense in which the UNCRC has dealt with donor anonymity solely on a reactive “case-by-case” basis in which the potential force of its position is fragmented and weakened. It seems to us that, having identified common practices regarding donor anonymity that it considers inimical to the Convention’s principles, the United Nations could be more proactive by producing a policy statement on donor anonymity that could apply equally to all State Parties where donor conception is practised.

In conclusion, while the UN Convention on the Rights of the Child provides a suitable framework for challenging the practice of donor anonymity, the process by which implementation of the Convention is monitored has proven an ineffective mechanism for instituting policy change at national level. There is no evidence from this review that this is likely to change in the foreseeable future.

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