CHRONICLE CHRONIQUE CRÓNICA

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Editorial — Avril Calder

Working together

This edition of the Chronicle benefits from the help of two members—**Benoît van Keirsbilck** of Defence for Children International (DCI) and **Cédric Foussard** of the International Juvenile Justice Observatory (IJJO). My sincere thanks to both of them—their contributions are recognised (**§** and **‡**) at the end of each article where their organisations have had an input.

Benoît has been deeply involved in the global Kampala conference—Deprivation of Children's Liberty as the Last Resort—in November 2011 which brought together child rights experts, some of whom are our members, from across Africa and the wider world. I am very pleased to publish an overview by **Karabo Ngidi** and the resulting **Munyonyo Declaration**.

Gangs

Gangs seem to be prevalent and increasingly criminal all over the world. **Chantal Fredette** writes most informatively and persuasively about the Quebec experience. I was so pleased to receive her article because I intend to concentrate on 'gangs' in the January 2013 edition. So please send me your experiences, information about research and any other aspects of the nature of gangs and the resolution of the challenges they pose to young and old alike.

Children's Rights

Putting theory into practice or, more correctly, implementing international instruments by states parties is a huge challenge. **Mr Justice Bankole Thompson** exquisitely sets out the Sierra Leone model, comparing and contrasting the Articles of the Convention on the Rights of the Child (CRC) and the Act passed by the Sierra Leone Legislature.

Prof Dr Tiffer highlights with reference to Costa Rica the difficulties arising from moving from a protective model of juvenile justice to one based on rights while **Judge Patricia Klentak** takes us into new territory with an article putting the case for mainstreaming a gender bias—in this case for girls—in juvenile justice systems.

Detention

Prof Dr TIffer points out the increase in the use of sanctions when a rights model is employed and, as we all know, the move to the detention sanction has been much in evidence over the last twenty years. So I am pleased to be able to publish several articles on the topic.

The first, by **Dr Matsuura** tells us that in Japan an alleged offender is dealt with by the Family Court, with referral to the Public Prosecutor only when a criminal sanction is deemed necessary. A possible disposal is to one of two kinds of correctional training school, which is also considered to be both a protective and an educational measure.

The next, by **Anaëlle Van de Steen,** is a précis of research she conducted in Belgium involving the views on detention of professionals involved in the juvenile justice system. You may recognise some of the views……

The drawbacks of the detention of juveniles in Pakistan are clearly set out by **Abdullah Khoso** who. In a second article draws our attention to the plight of much younger children who are imprisoned with their mothers. This article is echoed by **Mr Justice M. Imman Ali** who writes of similar problems in Bangladesh.

Dra Aleksandra Deanoska–Trendafilova succinctly guides us through recent (2007) legislation in Macedonia which emphasises a restorative approach.

An abiding concern about detention is the mental state of those imprisoned so I am pleased to be able to publish an informative article by **Alison Hannah** Director of Penal Reform International (PRI). She quite rightly presses the points that mental health problems—psychiatric disabilities and intellectual disability—are exacerbated by imprisonment.

So are there ways forward?

The Florida Juvenile Justice Model introduced into Miami-Dade County, Florida, USA by **Wansley Walters** has, over the last ten years, resulted in a 66% fall in juveniles in detention in the County and diversion systems have resulted in a 41% fall in arrest and a very significant 78% fall in re-arrests. Echoing Judge Klentak's article, diversion schemes take into account both gender and age and appropriate assessment tools are used.

Restorative justice is now the field of many professionals. The two articles included in this edition are by three academics with long experience. They are **Ted Wachtel,** President of the International Institute for Restorative Practices (IRRP) and **Adjunct Professor Bob McCold** and **Brian O'Mahoney**. The explanation of Restorative Justice by the first two is admirably clear and I look forward to publishing a follow up article about results achieved in the last few years. Brian O'Mahoney tells us about results in Northern Ireland where Restorative Justice has been in use for some time. There is a web reference to results in New Zealand in Contact Corner.

Cédric Foussard and colleagues report IJJO's approach to child friendly juvenile justice through three Green Papers on the subject. It would be interesting to hear from our colleagues in MERCOSUR of similar activities in South America.

Last, but not least, there is an overview of a recent congress for family judges in Poland by **Dr Magdalena Arczewska**.

Contact Corner

You will see that **Judge Eduardo Rezende Melo**, our Secretary General, has kindly taken on the task of putting together the information for Contact Corner. Thank you, Eduardo.

This publication depends on you. Please keep sending me articles, especially on **parenting** for the July 2012 edition and on **gangs** for the January 2013 edition.

With my very best wishes for 2012,

Avril

chronicle@aimjf.org

Letter from the President— a difficult year ends, a new year begins

Joseph Moyersoen

Dear Members of the IAYFJM,

I take this moment to send a message of good wishes for the New Year.

At present there seems no end in sight to the global crisis—which is only partly economic—with all the consequences that has for our own field of endeavour. Clearly we must keep hoping for a rapid recovery.

I am convinced that our work is essential for the promotion and dissemination of a culture of respect and to defend the rights of the most vulnerable people—children. Among my wishes, there is the hope that we can all continue to spread and defend children's rights with passion and perseverance, so that more and more people can know and share our ideals.

A lot of work lies ahead of us, on several fronts. Regarding the IAYFJM, in addition to the Chronicle—for which we must thank Avril Calder and the team that reviews the texts in the three working languages—other communication tools have been activated in recent months.

First let me mention the on-line forum in three languages—

aimjf-en@googlegroups.com for English

aimjf-fr@googlegroups.com for French,

aimjf-es@googlegroups.com for Spanish

which are live directly to your email address to exchange interesting information, studies and documents.

Second, we now have the new and independent website www.aimjf.org which has just started up. Please send any comments that can help us to improve and strengthen it. to the email address of the Secretary General secretarygeneral@aimjf.org or to mine president@aimjf.org .

Finally, I have some interesting information that I'd like to share with you all, the adoption by the UN General Assembly on December 19 2011 of a new Optional Protocol to the Convention on the Rights of the Child (CRC).

This third Optional Protocol establishes an individual complaints procedure for violations of child rights. In a similar way to the Convention against Torture, when children believe their rights have been violated and they have not been able to obtain redress in their country, the Optional Protocol will allow children and their representatives to address the Committee on the Rights of the Child in Geneva. The Optional Protocol will come into force when it has been ratified by 10 member states of the CRC.

I pause here to make room for the articles and information you will find in this number of the Chronicle.

A wonderful year 2012 to all,

Joseph Moyersoen

Deprivation of children's liberty as the last resort—a global conference on child justice in Africa

Karabo Ngidi

Introduction

On 7 and 8 November 2011 Kampala, Uganda, was host to a conference by the African Child Policy Forum (ACPF) and Defence for Children International (DCI). The conference assembled child rights experts and delegates from Africa and other parts of the world. The experts included members of the Committee on the Rights and Welfare of the Child and members of the African Committee of Experts on the Rights and Welfare of the Child.

The conference was to focus on the protection of children when they come into contact with the justice system. The justice system was defined by conference organizers to include the criminal justice system; the civil justice system; administrative, social and other processes that affect a child.[1] The overall goal of the conference was to—

> *contribute to the improvement of law, policies, systems and procedures in the justice system in Africa when it deals with children."*[2]

Objectives and content of the conference

The objectives of the conference were to raise awareness about the gaps in the child justice system in Africa among policy makers, CSOs, academia and other relevant stakeholders.[3] Furthermore, to identify and share good practice models and concrete actions in the justice system when it deals with children as well as the promotion of learning and linking among African states.[4]

In light of the aforementioned aim and objectives, the title of the conference—*Deprivation of Liberty as a Last Resort*—may be considered misleading as it leans towards the protection of child offenders, while the conference in fact was of broader content than just this aspect. At the commencement of the conference there were deliberations about this issue and the majority of delegates were in agreement that the aim was to focus on the broader child justice system and not only on children in conflict with the law. The other key objective of the conference was to develop Guidelines on Child Friendly Justice in Africa which would be recommended and advocated to African states for their endorsement.

The protection of children's rights has reached great heights globally and this is evident from the fact that all but two countries in the world have ratified the United Nations Convention on the Rights of the Child, while the regional African Charter on the Rights and Welfare of the Child has now been ratified by all but eight African states.[5]

The conference commenced with an overview of these treaties as well as other international and African human rights frameworks applicable to the protection of children's rights. At the conclusion of this session it was clear that there is a wealth of treaties, policies and guidelines on international and regional level aimed at the protection of children and their rights. Therefore the existing challenges in relation to the protection of children in the justice system must be, it was agreed, due to lack of implementation on state level.

In order to enhance the conference and to enable delegates to share country experiences, themed parallel sessions were planned. The themes were as follows—

- Child Justice Interventions in Africa with a focus on good practices.
- Country experiences on child protection and justice systems in Africa with a focus on policy and practice.
- Country experiences of the formal child justice system in Africa, looking at both policy and practice.
- Traditional or informal child justice systems in Africa.
- International experiences on child justice.

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1 See http://www.kampalaconference.info/index.php?optiion=com_content&view=article&i accessed on 30 November 2011.

2 Ibid.

3 Ibid.

4 Ibid.

5 The list of ratifications is available at http://www.africa-union.org/root/au/Documents/Treaties/List accessed on 30 November 2011.

The themes were biased towards a focus on the criminal child justice system and this is evident from the output documents of the conference.[6]

The second day of the conference comprised further presentations. The day covered an assessment of child justice reforms in Africa and internationally, through country experiences. The crucial part of the day was the parallel group work undertaken to allow the delegates to work through the draft *African Guidelines on Child Friendly Justice*. The aim with the guidelines is to translate good practices from other regions and to set a pace for the implementation of reforms in the field of child justice systems in Africa.[7] The draft document essentially captures the treaties that most African states have ratified, both regional and international, that pertain to children's rights, as well as other documents recognized by the African Union. The guidelines are further aimed at supporting African states in protecting children's rights at all stages of judicial and extra-judicial procedures through the promotion of the rights to information, representation and participation of children.[8]

In order to affirm commitment the protection of children's rights in the African child justice system and as a step towards child friendly justice, the Munyonyo Declaration was presented to delegates. The preamble to the declaration encapsulates the broader issues relating to the protection of children and is not confined to the child justice system and calls on African states to be pro-active in addressing systemic impediments to access for justice for children.[9]

Conclusion

ACPC and DCI did commendable work in providing child rights experts and delegates with a platform to assess their own country as well as Africa's position in the quest to protect children in the justice system. This was a crucial step in ensuring that the end product of the conference, which is the intended Guidelines on Child Friendly Justice in Africa, reflect the common systemic issues that African states need to address.

Ms Ronaldah Lerato Karabo Ngidi
Attorney, Centre for Child Law, University of Pretoria, South Africa

Benoît van Keirsbilck writes—

In addition to—

- the Guidelines on Child Friendly Justice for Africa,
- the report of the Conference,
- the report on the situation of juvenile justice in Africa and
- the Munyonyo declaration,

the Kampala conference produced a very important documentary on child justice in Africa : "**10**".

This title makes reference to the average Minimum Age of Criminal Responsibility in Africa. The documentary focuses on detention of children in Africa and shows the incredibly bad conditions in which children are detained throughout the Continent; nobody can stay indifferent towards such a situation!

This documentary is available on the website of the Conference: www.kampalaconference.info .

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[6] The presentations of the speakers will form part of a Report on Good Practice for purposes of learning and linking in the field of juvenile justice, see http://www.kampalaconference.info/index.php?option=com_content&view=article&i accessed on 30 November 2011.

[7] See http://www.kampalaconference.info/index.php?option=com_content&view=article&i accessed on 30 November 2011.

[8] Ibid.

[9] These issues include the protection of children from harmful cultural practices and the need to harmonise formal and informal justice systems, such as traditional and religious courts.

The Munyonyo Declaration on Justice for Children in Africa

On 7-8 November 2011 at Munyonyo, in Kampala, Uganda, representatives of governments, CSOs, INGOs, the African Committee of Experts on the Rights and Welfare of the Child, the UN Committee on the Rights of the Child, the African Union, UN agencies, UN experts and other experts, from all over Africa and other parts of the world, met to discuss about justice for children in Africa, taking into account the views of children, and adopted the following declaration:

PREAMBLE

It is evident that with the advent of the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, most countries in Africa have made progress in passing new child rights laws. However, new child rights policies have not been fully integrated into the general development agenda of governments. Protection structures are largely neglected, and services are mostly ad hoc in nature, fragmented and do not achieve the desired effect on children. Definitions of child abuse have not been fully adapted to the African context and some forms of child abuse (for example, harmful traditional practices, corporal punishment and child labour) are still not totally recognised as abuse in Africa.

The implementation of children's rights in the justice system remains challenging within the informal and formal justice systems. One of the concerns is the lack of adequate legal provisions and mechanisms for the protection of victims and witnesses in most countries. They are often re-victimised during legal proceedings. Furthermore, children with disabilities and children belonging to minority groups are at higher risk of abuse when in contact with the justice system.

Despite the fact that deprivation of liberty should be a measure of last resort, many children are still kept behind bars. They are regularly incarcerated in the same facilities as adults, frequently face horrible conditions and often endure lengthy periods of pre-trial detention. Detention facilities generally lack proper sanitary facilities, adequate food, and educational and recreational programmes. Children in detention are at high risk of violence including sexual abuse. Separating children from their families and communities causes serious damage to their physical, psychological and social development and the consequences of incarceration on children can be lifelong and denting. Far too few prevention and rehabilitation measures are in place, and although some new policies provide for diversion and alternatives to detention, the structures and resources required for implementation of these policies are normally absent or weak.

Many children in Africa are not registered at birth and cannot benefit from their rights as children because they cannot easily prove their ages when legally required. As a result, some States have instituted age verification procedures, many of which are neither child friendly nor accurate, and unfairly place the burden of proof of age on the child. While it is pertinent that in the case of conflict or inconclusive evidence regarding the age of the child, the child must have the right to the benefit of doubt, this does not happen in practice.

Justice systems in Africa are complex. Most States have dualistic legal and governance systems that combine both informal justice system which is administered by community leaders and traditional authorities using customary laws and the formal justice system which is administered by the judiciary using written laws including colonial laws. In some countries in Africa, religious systems such as *Sharia Law*, also play a crucial role in the justice system. Thus, in Africa, ordinary citizens, including children, seek justice from a variety of mechanisms. These systems are sometimes disconnected, polarised and constrain children's access to justice. Formal justice systems tend to be the least utilised by the population due to costs, limited accessibility and prolonged proceedings.

It is therefore important that cooperative and mutually supportive relationships are developed across all sectors and disciplines working in the field of justice for children.

CALL FOR ACTION

To all actors:

- ***Ensure that all children enjoy their rights in the justice system, whether they are in conflict with the law, or they are victims, witnesses, or subjects of judicial proceedings.***
- ***Ensure that deprivation of liberty is used as a measure of last resort for children and promote alternative measures, such as diversion and restorative justice.***

1. To the African Union:

- Put the issue of justice for children on the agenda of the Heads of State Summit, and advance and adopt Guidelines on Action for Children in the Justice System in Africa, which shall guide States to take positive actions for children in the national justice systems;
- Urge States to make children's rights and welfare in justice a priority on their development agenda;
- Urge States to invest in programmes to respect and protect the rights of children in contact with the law;
- Provide the political and technical leadership and guidance to States to guarantee children's rights in the justice system in both law and practice.

2. To the African Committee of Experts on the Rights and Welfare of the Child:

- Put the issue of justice for children on its agenda and support the further advancement of the Guidelines on Action for Children in the Justice System in Africa;

- Hold a consultation with CSOs and [I]NGOs and authorities and a Day of General Discussion on justice for children in Africa;
- Establish a working group on justice for children, mandated to draft a general comment covering all aspects of justice for children;
- Systematically raise the issue of justice for children, in particular when examining State Party reports and conducting investigative or fact-finding missions.

3. To the UN Committee on the Rights of the Child:

- Continue the collaboration with the ACERWC and the relevant special procedures mechanisms;
- Ensure that child justice is reflected in the concluding observations to State Parties;
- Consider the possibility of drafting a General Comment on Children of incarcerated parents, as a follow-up to the 2011 Day of General Discussion.

4. To our Governments and Parliamentarians:

- Increase budget allocations for children to the maximum extent of available resources in order to facilitate the development of effective systems of justice for children;
- Harmonise informal and formal justice systems by clearly defining jurisdictions, building working relationships between the two systems, and establishing procedures for their interaction;
- Strengthen the capacity of community leaders to promote and respect children's rights in the justice system;
- Define child abuse and violence against children within the national context in accordance with international and regional standards and ensure access to services and justice from the lowest to the highest level;
- Guarantee birth registration systems that are free, compulsory and accessible to all, and design child friendly guidelines for age verification to the benefit of children who cannot submit their birth certificate whenever required and that respect the rights and interests of the concerned children;
- Adopt and invest in programmes that prevent children from coming into conflict with the law and in programmes aimed at rehabilitating and reintegrating children in conflict with the law into society, with a view to minimizing recidivism;
- Establish and/or strengthen child protection systems including alternative family-based care for children in need of alternative care to enable them have a stable family environment thereby reduce the risk of them coming in conflict with the law;
- Strengthen child rights monitoring and accountability systems, and bring to justice those responsible for corruption, and child rights violations including arbitrary arrest and detention, extra-judicial killings , torture and other cruel, inhuman or degrading treatment;
- Establish specialised children's courts, Independent Human/Child Rights institutions with a mandate to consider children's rights in the justice system as a matter of priority;
- Strengthen child protection units within the police and provide institutionalised training on children's rights for all professionals in the field of justice for children, including social workers, lawyers and judges;
- Include continuous training on children's rights in schools' curricula;
- Invest in community based diversion and alternative dispute resolution initiatives;
- Develop free legal aid and paralegal programmes to facilitate children's access to justice;
- Ensure protection measures are in place for all children who come in contact with the law, giving particular attention to children with disabilities, children at risk and children belonging to minority groups;
- Increase opportunities for children to participate in decisions that affect them and their communities and foster their roles as positive social actors;
- Support the mandates and collaborate with the UN Special Representatives of the Secretary General on Violence against Children and on Children and Armed Conflict, and other relevant international and regional special procedures;
- Acknowledge the competence of, cooperate with, and respect and implement the decisions of international and regional human rights complaints mechanisms.
- Request technical advice and assistance in justice for children provided by the relevant UN agencies and programmes in particular the Interagency Panel on Juvenile Justice (UNICEF, OHCHR, UNODC, DPKO, UN CRC, UNDP);
- Collaborate with the African Committee of Experts on the Rights and Welfare of the Child and other international and regional human rights bodies in submitting periodic reports and implement their Recommendations;
- Conduct research and collect and publish data and information concerning children in contact with the national justice system and make the data available to relevant stakeholders;
- Cooperate with CSOs and [I]NGOs in the implementation of joint programmes on justice for children.

5. To the United Nations Committee on the Rights of the Child:

- Continue the collaboration with the African Committee of Experts on the Rights and Welfare of the Child and the relevant special procedure mechanisms;
- Ensure that justice for children is reflected in the concluding observations to States Parties;
- Consider the possibility of drafting a General Comment on Children of incarcerated parents, as a follow-up to the 2011 Day of General Discussion.

6. To the United Nations and other international partners:

- Provide resources and technical assistance to key government ministries to develop and implement national policies and plans of action to set up effective justice systems for children;
- to establish data collection and management systems and to build the capacity of legal and law enforcement professionals;
- Support and provide financial assistance to CSOs and [I]NGOs to enable their active participation in national policy making;
- Make the issue of children's rights in the justice system paramount on the international agenda and organise frequent international fora to further this agenda;
- Conduct and fund ongoing research on children's rights and examine the dynamics of issues affecting children.

7. To [I]NGOs and CSOs:

- Monitor the implementation of children's rights with regard to child justice and provide governments, regional and international bodies with facts and evidence including by participating in treaty body reporting procedures and submitting complaints to relevant international and regional mechanisms;
- Persistently engage government to take action to improve respect for children's rights in the justice system;
- Assist governments with relevant training on children's rights in the justice system and other capacity building initiatives for government officials and community-based actors who encounter children in their work;
- Raise public awareness of children's rights in the justice system and mobilise the public on their role in justice for children;
- Educate children on their rights in justice and increase their capacity to understand and enforce their rights;
- Help children to access justice through the legal system where their rights have been violated;
- Engage with children and ensure that their views are shared with relevant stakeholders and taken into account in the justice system.

8. To Community Leaders, Religious Leaders and Parents:

- Promote and advance good traditional practices that respect and protect the rights of children, in accordance with international and regional standards such as good parenting and family based care and prohibit traditional practices that are harmful to the health, welfare and development of children;
- Strengthen mechanisms for alternative dispute resolution, and ensure children's representation and participation;
- Improve cooperation with the police and other formal justice institutions in cases of child abuse, violence against children, and other child rights violations.

9. To the Media:

- Play a key role in promoting children's rights in the justice system;
- Make the issues affecting children in contact with the law visible, using accurate and balanced information without stigmatising or further victimising individual children;
- Protect the dignity, identity and privacy of children.

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For comments, please send an email to Ileana Bello at: director@dci-is.org

Street gangs and young people—issues & concerns—a view from Quebec

Chantal Fredette

Introduction

The influence that groups of delinquents can have on anti-social behaviour is a matter of concern in many countries. Moreover, the membership of street gangs—which is thought to be the most dangerous form of that kind of association—has been given special attention both in the academic literature and among sociologists, criminologists and decision makers. Although not new, the interest shown in the area of gangs has grown over the last two decades. The growth in the number and range of studies may well be connected to the view that gangs are behind the rise in crime—especially violent crime—among the young people who belong to them. However, a review of these studies brings out the difficulty of defining '*gang*', '*gang member*' and '*gang-related crime*'. As a result, the methodologies advocated for investigating the influence of these groups on individual behaviour are controversial. Clearly such disputes may damage the quality of the data collected and can lead to inappropriate policy or action. For example, many initiatives against gangs taken at local, national or international level are based on the belief that gangs are on the increase and that young people who belong to them are risking their futures or—from the public safety point of view—that they pose an increased risk to the rest of us. But there is no convincing evidence at present of an increase in gangs, nor of the need to develop measures specifically targeted at gangs. In any case, it is certainly a mistake to think that being associated with a gang affects every young person in the same way. Saying that one either is or is not a gang member imposes an either-or view on a much more complex set of issues.

Defining and measuring street gangs, their members and their activities

From the beginning of the nineteenth century many definitions of the terms *gang*, *gang member* and *gang activities* have been put forward, but none has gained universal acceptance. The issues inherent in establishing agreed definitions bring with them problems when it comes to estimating the number of gangs and their members or to studying changes over time or between locations (Klein 2005). Most published estimates depend upon the analysis of police returns, which—while useful in the fight against crime—have important methodological limitations and need to be interpreted with care. (Katz 2003). Methods of identifying gang members by the welfare and penal authorities depend to a large degree on police data (Guay and Gaumont-Casias 2009). It is rather disturbing that this should be the basis for labelling a young person as a gang member, because that will influence decisions that are taken about him or her.

On the face of it, the identification of gang members might appear a trivial matter. However, given that gang membership is often viewed by the courts as an aggravating factor, it raises important ethical issues. Undoubtedly, the most important problem is linked to the impossibility of getting rid of the 'gang member' label once it has been attached. Errors arising from mistaken identity are rarely—not to say never—corrected (Spergel 2009). What is more, belonging to a gang is usually a temporary affair—in other words, most young people who come into contact with a gang will inevitably become ex-members. But, in many official data banks, they will always remain members (Katz 2003). If you conceive of gang membership as a state which does not change over time, it is not possible to understand and quantify the dynamic aspect of the risks that may be associated with membership (Spergel 2009). Current approaches are clearly the result of this static view, which leads to difficulties in understanding the influence of gangs on the delinquent behaviour of young people.

Although it is generally assumed that contact with gangs contributes to delinquency among young people, not much is understood about the sequence of events. Three models are put forward to explain the influence of gangs on delinquency (Krohn and Thornberry 2008). First, the **selection model** proposes that those young people who are most likely to join gangs show from the outset the greatest propensity to delinquent behaviour. In this model, joining a gang does not itself promote delinquent behaviour, because these groups are made up of young people already engaged in it.

The **facilitation model** on the other hand suggests that young people do not inherently have a greater tendency towards delinquency. Before joining the gang, they might exhibit a few (or possibly no) examples of delinquency, but these would increase significantly during their period of membership. Then the **mixed model** proposes that the relationship between delinquency and gang membership lies in both the selection and the facilitation effects. Thus young people who join street gangs will have shown a greater tendency towards delinquency (selection) and their association with the group will significantly increase that (facilitation). These three models restrict themselves to the formulation of explicit hypotheses about delinquent behaviour and the factors that lead certain young people to join gangs. None of them offers a satisfactory explanation of the precise ways in which gangs encourage delinquent behaviour. Having said that,—given their personal and social characteristics—it is scarcely surprising that young people who join gangs show early signs of severe behavioural problems.

The gang experience, characteristics of members and differences

Gang members are mainly males aged between 12 and 30 from a diverse racial background. They come from unstable, even broken or dysfunctional families (Hill et al 1999). Their relationships with their parents are often described as lacking in affection; and guidance and parental control are often sadly lacking (Gatti et al 2005). Family problems often coexist with learning difficulties (Craig et al 2002) which not infrequently lead to problems in taking part in the labour market later on (Hagedorn 1988). Yet young people who join gangs are more than just young men from disadvantaged backgrounds lacking opportunities. They are often described as young people who find in a gang an environment that fits in with their way of life and the cast of their personality. They often show manipulative, aggressive, impulsive and angry behaviour as well as superficial emotional responses, feelings of power and serious problems in dealing with conflicts with other people (Dupéré et al 2007). These anti-social aspects of their personalities could explain why some young people flourish in the atmosphere of violence which goes with this way of life and the gang sub-culture (Guay and Fredette 2010).

Although girls are known to take part in gangs, the extent and nature of their participation is difficult to determine. Few studies are concerned specifically with girls (compared to those focusing on boys) and the estimate of girls' participation derived from the studies is not statistically reliable (ranging from 5% to 20%)—which helps to explain our lack of knowledge. Although the number of studies of girls' membership of gangs has increased since the end of the 1990s, these studies concentrate almost exclusively on their experience of victimization.

But boys can also be victims within gangs (Miller 2002). Moreover some boys are more vulnerable than girls to becoming the victims of serious physical violence (Miller and Decker 2001). So it seems that, within gangs, victimization is not the sole preserve of girls. That presents several surprises, one of which is the escalation of violence which most young people—both boys and girls—would not have been expecting. This escalation traps them into being both aggressors—responsible for their actions—and victims—subject to violence from others (Sanders 1994). For all young people taking part in gangs of whatever kind, being the perpetrator or the victim of violence seems to represent two sides of the same coin. Having said that, the girls have for a long time been thought of as dependants of the boys, and for all practical purposes that denied the possibility that they could play a similar role in the gang to the boys. All the same, some girls have taken on such roles and were even encouraged to develop a criminal career of their own (Miller 2002). Although their delinquent behaviour was less serious and occurred less often than the male gang members', these girls showed a greater tendency to deviant behaviour than young male offenders who were not part of a gang (Miller 2002).

However, as the relationships within gangs tend to follow stereotypes, it is sadly not surprising that girls who are made use of for subsidiary purposes should be over-represented. Within gangs machismo, misogyny, aggression, domination and sexual exploits are highly valued (Dorais 2006). Male gang members often think of women in contradictory ways, either as the wife who values the effort of being loved or as the whore who offers immediate gratification. Because a Madonna must be unsullied and devoted to the well-being of her husband and children (and so kept away from any activity that might be thought immoral), most girls who take up with a gang are naturally considered to be whores to be made use of. Contempt and insensitivity are shown openly and justify their treatment as tradeable sex objects—which is often their fate (Dorais 2006). Adolescent girls targeted by gangs for prostitution are considered simply as one means among others of making money (Fredette 2008). Forced to submit to boys who despise them and victims of psychological, economic, physical and sexual exploitation, they have neither the status nor respect accorded to other members of the group.

Sexual exploitation and gangs

The definition of sexual exploitation varies considerably from age to age and country to country. Nevertheless, one image above all others remains fixed in the public mind across time and space—street prostitution. The vast majority of sexual services available on the street emanate

from pimps and those provided by gangs (exclusively girls) are by definition organized in networks by pimps. Usually operating under the guise of escort agencies or lap-dancing clubs, the gang-based activity takes place, for the most part, on private premises. This factor helps to camouflage the sale of sex and to ensure client confidentiality. Alongside traditional services, modern ways of selling sex have appeared with the growth of new communications technology. With globalization and the opening of frontiers to free trade in goods, it is no surprise that a market in sexual services has developed in cyberspace.

As a general rule, seduction is the method that gangs use to recruit girls for sexual exploitation. Some girls get involved in prostitution unwittingly; others—in search of affection—approach the pimps themselves. Their affiliation to the gang is an answer to their deep need for love rather than being a response to some more direct reward offered by the gang—except perhaps for an idealized vision of the future. (Fredette 2008). But if the benefits are felt strongly at the outset, there are sadly too many disadvantages—physical, emotional, psychological and social. Nevertheless, many girls maintain their involvement in the hope that they will either find the *Don Juan* again whom they once met or the tender, loving boy who promised to take care of them (Fredette 2008). Some have lost all hope that anything or anybody can change their situation for the better (Fredette 2008). Like women who are the victims of violence in their love lives, the girls recruited by gangs for the purposes of sex do not want to leave their loved one. They just want the violence to stop. As long as they do not question the affection shown to them by their lover, they stay in the gang—despite the exploitation they are subjected to.

Conclusion

Difficulties surrounding the measurement or study of gangs, their members and their activities are to a large extent tied to the fact that they are thought of as quite different from other groups, other delinquents or other victims. Street gangs are considered to be a very special kind of group and taking part in their activities is thought of as a 'condition'—like a medical diagnosis (Guay and Fredette 2010). But there is no fundamental difference between street gangs and other criminal groupings, just as there is no difference between delinquents who belong to gangs and individuals seriously engaged in a life of crime, or again between girls exploited by gangs for prostitution and other women involved in the sex industry. All, to varying degrees, come from difficult family backgrounds, are impulsive, feel that their most basic needs are not being met, are idle, loaf about, drink, have anti-social values and demonstrate serious behavioural problems.

Despite that, many politicians and penal and social workers see a useful—albeit invisible—dividing line between street gangs and other organized criminal groups, between gang members and non-members and between a girl who is exploited by a gang and a girl who is exploited by a street hustler (Guay and Fredette 2010). But, right now, employing the concept of *the gang* or *gang member* does not give a true grasp of the distinctive nature of these groups and the main players any more than it provides indicators of effective policies and ways to measure their impact.

Adolescent boys and girls who associate with gangs run risks and have needs of varying intensities— manifested in their differing levels of attachment to the group. In order to take the best decisions, a nuanced evaluation is needed of the risks they run. However, when gang-related problems crop up, the first demands are for deterrent and repressive measures to suppress their activities and to punish the members severely. Even if they are necessary, these measures only ever deal with the most visible symptoms and are not effective on their own. Our current state of knowledge points to joined-up, global strategies as having the best chance of dealing with the problems effectively. These approaches bring together the community-minded citizen, social, health, rehabilitation, and judicial institutions, schools and the local community and aim to prevent criminal behaviour and to combat it when it occurs.

> *Like adults, children live in systems which interact with each other—their school life is influenced by their family life and their social life impacts on their life in the family. The problems their parents have at work or at the social security office come back home and family tensions disturb their attendance at school. It all hangs together….until the day when—for administrative convenience—the child's life is cut up into as many pieces as there are services and organizations. (Bouchard et al 1991 p149)*

In working with adolescent boys and girls involved with gangs, networks are needed for prompt and coherent responses, otherwise any measure—preventive, diversionary, or repressive—will lose its point and above all its effectiveness. Working with these boys and girls needs an unshakeable commitment to improving their lives and the lives of their families.

Chantal Fredette MSc teaches at the School of Criminology at the University of Montreal and is Director of Planning and Research at the Montreal Centre for Young People—an Institute of the University of Quebec, Canada.

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Rights of the Child—The Sierra Leone Model

Hon. Justice Bankole Thompson, Ph.D.

I. Introduction

On the 20 November 1989 the United Nations General Assembly adopted the Convention on the Rights of the Child [the Convention]. After a protracted period of inexcusable neglect, this event constituted an unquestionably significant milestone in the protection of the world's most vulnerable population. In 2007 the Sierra Leone Parliament enacted "The Child Rights Act 2007" [the Act] incorporating key substantive and procedural provisions of the Convention. The Act is a comprehensive piece of legislation aimed at capturing the letter and spirit of the Convention as a new morality for the children of the world. It is a landmark legislative step in the domestic recognition of children's rights. However, given Sierra Leone's present situation, the practical realization of the Act's provisions is not without difficulties.

The focus of this article is twofold. As an academic exercise, it is to determine the nature and extent of compatibility between the Act's provisions and the obligations and specific rights guaranteed by the Convention. The article also examines the efficacy of the administrative, judicial, and related mechanisms for achieving the Convention's objectives and goals in Sierra Leone. It will contend that existing socio-cultural, economic and related constraints on the country's development have the potential to inhibit progress towards the full realization of such rights.

II. Philosophical basis of the Convention

The philosophical thrust of the Convention stems from four core norms or values—

- the child's right not to be discriminated against (Article 2);
- the matrix norm that in all matters concerning the child his or her best interests are a primary consideration (Article 3.1);
- the right of the child to be heard in all matters concerning his or her welfare (Article 12.2); and
- the right of the child to life[1] (Article 6).

It is from these core values that the Convention's operative general obligations emanate.

III. The Convention's general obligations

Part I of the Convention (Articles 1-61) embodies the general obligations binding upon State's Parties and the rights guaranteed to every child.

Article 1 defines a child as

> "every human being below the age of eighteen unless, under the law applicable to children, majority is attained earlier."

This definition is evidently a concession to the sovereignty of the State in matters of such delicacy and complexity.

As to the scope of the Convention's obligations, Article 2(1) imposes on States' Parties the obligation to "respect and ensure" the rights secured to every child

> "within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parents or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

Article 3 is pre-eminent. It enshrines the principle that inspires and guides the protection and enjoyment of the rights guaranteed by the Convention, namely, that *the best interests of the child* should be *a primary consideration* in the resolution of all matters involving the child's welfare. It has been quite plausibly observed that, although the standard is simple to state, it can be exceptionally difficult to apply because of the range of personal, social, economic and other factors that determine the perception of what is in "the best interests of the child."

Even if that determination has been made, it is only **a** (*and not* **the**) primary consideration[2].

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[1] It is evident that this is a positive right since the right to survival is a prerequisite to the right to life, which encompasses other significant rights such as those to education, healthcare, and adequate living. (Grahn-Farley, Maria 2008. "Neutral Law and Eurocentric Lawmaking: A Postcolonial Analysis of the UN Convention on the Rights of the Child." *Brooklyn Journal of International Law*: 1-28.)

It has been argued that the universal application of this guiding principle cannot be consistent, coherent, and uniform in any jurisprudential sense because in developed countries its application becomes part of the complex interplay of statute law and judge-made law as against customary law in many parts of the developing world[3]. This complexity is brought out by specific references in the Convention to the culture of the child and to cultural traditions[4], which clearly import a high degree of relativism from the cross-cultural perspective.

IV. Comparison of specific rights between the Convention and the Act

For the purpose of comparison between the Convention and the Act, the rights guaranteed by the Convention may be divided into four groups—

- those where the Act confers a right significantly different from the Convention;
- those where the Convention and the Act substantially agree;
- those rights in the Convention not referred to in the Act; and
- places where the Act goes further than the Convention.

In what follows, 'Article' refers to the Convention and 'Section' to the Act.

a. where the Act confers a right significantly different from the Convention

♦Right to Name and Nationality (Article 7)

According to the Convention

> a child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality, and as far as possible, the right to know and be cared for by his or her parents.

Section 24 is phrased in these terms:

> No person shall deprive a child of the right from birth to a name, the right to acquire a nationality or the right as a far as possible to know his natural parents and extended family.

The Act's formulation is noteworthy in three respects. The first is that instead of conferring the right expressly on the intended beneficiary, Section 24 imposes an obligation on every person not to deprive a child of the right in question. The second is that the right referred to in the second limb of the Section is not the equivalent of the Convention, which is the right to be cared for by one's parents. The third is the Act's attempt to bridge the gap, in this complex area of African Family Laws, between cultural realities and legal theory, recognizing the primacy given to the notion of the extended family in African culture.

There is, evidently, a lack of compatibility here between the Act and the Convention. By no stretch of the legal imagination is the right "to know one's parents and extended family" the same as the very important right "to be cared for by one's parents" Moreover, given the peculiarities and sociology of the African extended family system, one can conceive of situations where it may not be in the best interest of the child to know everyone in his or her extended family. The courts of Sierra Leone may some day be confronted with the task of reconciling these two values when they conflict. However, Section 25—see under Article 9 in group b. below—does imply the right of the child to be cared for by parents.

b. where the Convention and the Act substantially agree

♦Right to Life and Development[5] (Article 6)

> Section 23 (1) of the Act imposes the obligation of ensuring this right as a joint and shared responsibility between the parents and the State.

♦Right to grow up with Parents (Article 9)

States Parties are under an obligation:

> to ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review so determine, in accordance with the applicable law and procedure, that such separation is necessary for the best interests of the child.

Consistent with this provision, Section 25 states:

> No person shall deny a child the right to live with his parents and family and grow up in a caring and peaceful environment unless it is proved in court that living with his parents would
>
> a) lead to significant harm to the child; or
> b) subject the child to serious abuse; or
> c) not be in the best interests of the child.

The Convention and the Act both guarantee the right in qualified not absolute terms. This follows from the Convention's general principle that the best interests of the child should be a primary consideration in the resolution of all matters involving the child's welfare. Perhaps, it should

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[2] McGoldrick, Dominic. "The United Nations Convention on the Rights of the Child" International Journal of Law and the Family August 1991. Vol. 5 No. 2, 132-169.

[3] McGoldrick 1991 ibid, Uzodike 1990, Nhlapo 1989, Morse and Woodman1988

[4] Notably in Articles 20(3), 29, and 30 (McGoldrick 1991 op cit)

[5] It has been argued that the term "development" may be given the restrictive meaning of physical and mental development instead of the right to development as an "inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized" (McGoldrick 1991 op cit). In the context of the Convention, the term "development" is broad and all-encompassing.

also be noted that Section 25 implies recognition of the right of the child to be cared for by his or her parents.

♦Freedom from Physical or Mental Violence (Article 19)

This right is provided under Sections 32 and 33 which cumulatively prohibit in respect of a child conduct of an exploitative, inhumane, degrading, or an unreasonable corrective character.

♦Right of a Disabled Child to a Decent Life (Article 23)

Under Section 30(1)

"no person shall treat a disabled child in an undignified manner"; and

Under Section 30(2)

"a disabled child has a right to special care, education and training whenever possible to develop his maximum potential and be self-reliant."

♦Right to Life, Dignity, Respect, Leisure, Liberty and Health (Articles 6, 24 and 28)

Section 26(2) guarantees a conglomeration of rights in these terms:

"Every child has the right to life, dignity, respect, leisure, liberty, health including immunization against diseases, education and shelter from his parents."

These rights are broadly compatible with the inherent right to life (Article 6), the right to enjoy the highest attainable standard of health and facilities for the treatment of illness and rehabilitation of health (Article 24), and the right to education (Article 28).

♦Right to protection against Economic Exploitation (Article 32)

Section 32 guarantees this right in these terms:

(1) No person shall subject a child to exploitative labour as defined in subsection (2).

(2) Labour is exploitative of a child if it deprives the child of its health, education, or development."

♦Protection from service in Armed Forces (Article 38)

(1) States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflict which are relevant to the child.

2) States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

(3) States Parties refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.

Evidently, drawing lessons from the experiences of the civil war with regard to the recruitment of children, Section 28 provides in explicit terms:

(1) Every child has the right to be protected from involvement in armed or any other kind of violent conflict, and accordingly, the minimum age of recruitment into the armed force shall be eighteen.

(2) The Government shall not—

(a) recruit or conscript any child to military or paramilitary service or permit such recruitment or conscription by the armed forces";…

This statutory provision is clearly in line with the decision of the Special Court for Sierra Leone which held [6] that conscripting, enlisting and using children under the age of 15 years to participate actively in hostilities constituted "serious violations of international humanitarian law."

♦Right to Social Activity, Rest and Recreation (Article 31)

Section 29 states that:

No person shall deprive a child of the right to participate in sports, or in positive cultural and artistic activities or other leisure activities.

c. rights in the Convention not referred to in the Act

♦Right to preserve Identity (Article 8)

In the author's opinion, compatibility does not become an issue here because this particular creation of the Convention is not matched by any provision in any other human rights' instrument. It is plausible, as McGoldrick observes[7], that its inclusion in the Convention was influenced by the "enforced and involuntary disappearances" experienced in Argentina and other countries since the 1960s.

♦Freedom of Expression (Article 13)

This may be considered to be covered by Section 31—see group d. below

♦Freedom of Thought, Conscience and Religion (Article 14)

Section 31 of the Act—see group d. below—however, grants such rights in a composite form, Moreover, the rights are analogous to those secured to children by Section 25(1) of the Sierra Leone Constitution Act No. 6 of 1991.

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[6] In *Prosecutor v. Sesay, Kallon and Gbao* (SCSL 2009) on the related issues of the conscription, enlisting and use of children under the age of 15 years in war.

[7] McGoldrick 1991 op cit

♦Freedom of Association and Peaceful Assembly (Article 15)

These rights are guaranteed to every child in Sierra Leone under Section 26 of the Sierra Leone Constitution Act No. 6 of 1991.

♦Freedom from Arbitrary and Unlawful Interference with Privacy (Article 16[8])

One can only speculate that the drafters of the Sierra Leone legislation do not attach any significance to such a right. Another perspective is that such a right may not seem efficacious in the context of the Sierra Leone legal system as it is presently functioning, especially its juvenile justice component[9],

♦Right to access Information from national and international sources (Article 17)

Given the low level, or lack, of access and sophistication to information technology in Sierra Leone, it may be questioned whether such a right is feasible at present.

♦Right to protection against Narcotics (Article 33) and

♦Freedom from Abduction, Trafficking or Sale (Article 35)

Regrettably, there are no corresponding rights guaranteed under the Act.

♦Right to protection against all forms of Sexual Exploitation or Abuse (Article 36)

There is no express statutory provision in the Act proscribing sexual exploitation or abuse of children in Sierra Leone. However, the Prevention of Cruelty to Children Act[10], does criminalize sexual abuse or exploitation of female children under certain specified ages.

♦Right to be treated with dignity under the Penal Law and promoting the child's reintegration and assumption of a constructive role in society (Article 40)

There is no corresponding provision in the Act, although these rights are guaranteed under the general procedural law of crime and the country's juvenile justice legislation.

d. where the Act goes further than the Convention

♦Right to express Views (Article 12(1))

Under the Convention, member states are—

to assure to a child, who is capable of forming his or her own views, the right to express those views freely in all matters affecting it, those views being given due weight in accordance with the child's age and maturity.

Section 31 of the Act states

no person shall deprive a child capable of forming views the right to express an opinion, to be listened to and to participate in decisions which affect his welfare, the opinion of the child being given due weight in accordance with the age and maturity of the child.

This is a considerably expanded version of the right. It is substantially compatible with the Convention.

♦Right to protection against Torture and related Ill-Treatment (Article 37)

States Parties undertake to protect children from

torture or other cruel, inhuman, or degrading treatment or punishment.

Section 33 (1) states:

No person shall subject a child to torture or other cruel, inhuman or degrading treatment or punishment including any cultural practice which dehumanizes or is injurious to the physical and mental welfare of a child."

Thus harmful cultural practices, such as ritual murder and female circumcision—though prohibited under the general criminal law of the country—are specifically and expressly rendered impermissible by this Section of the Act—indeed a progressive departure from cultural traditionalism.

♦Right to Parental Property

No direct or express provision in the Convention confers upon the child the right to parental property, However, Section 27 states:

No person shall deprive a child of reasonable provision out of the estate of a parent, whether or not born in wedlock.

Evidently, this statutory provision is designed to remove the stigma of illegitimacy from children born out of lawful wedlock under the inherited English common law rule which deprives them of any proprietary interest in their father's estate after death.

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[8] Article 16 states: "no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation."

[9] For a description, see the present author's "Recent Developments and Reform of Juvenile Justice in Sierra Leone", IAYFJM Chronicle January 2008, pp 14-18.

[10] Cap.31 of the Laws of Sierra Leone

♦Right to refuse Betrothal or Marriage

Under the Convention, there is no express provision protecting children against early betrothal or marriage. However, Section 34 provides explicitly as follows:

> (1) The minimum age of marriage of whatever kind shall be eighteen years.
> (2) No person shall force a child—
> (a) to be betrothed;
> (b) to be the subject of a dowry transaction; or
> (c) to be married
> (3) Notwithstanding any law to the contrary, no certificate, license or registration shall be granted in respect of any marriage unless the registrar or other responsible officer is satisfied that the parties to the marriage are of the age of maturity.
>
> Evidently, this is a progressive statutory initiative. It may help ease some of the difficulties raised by child marriages under Sierra Leone customary laws where such a concept conflicts with the Convention's principle of the "best interests of the child." By any objective reckoning, it is not in the best interest of any child that he or she should marry during childhood.

V. The Act's implementing mechanisms

It is possible to classify the rights secured by the Convention into four broad categories:

i. personal rights—for example, the right to a name and a nationality from birth,
ii. social rights—for example the right to family, parental, or related care,
iii. economic rights—for example, the right to be protected from exploitative labour practice; and
iv. rights in the context of administration of justice—for example, the rights of children under penal law in Article 40.

In so far as personal, social and economic rights are concerned, the Act provides for an elaborate network of implementing mechanisms: (i) National Commission for Children, (ii) Local Committees and District Councils, (iii) Family Court, and (iv) Child Adjudication Processes.

(i) National Commission for Children

The Commission is a thirteen member advisory body with statutory responsibility[11] to:

a. keep under review legislation and customary law practices relating to children to ensure their compatibility with the Convention;
b. undertake a progressive study of the principle of the best interests of the child, including protection from economic exploitation;
c. contribute to the decentralization to districts and other local levels the process of ensuring that every child has access to health-care and free basic education, including the provision of adequate school facilities, materials and trained teachers in rural areas;
d. seek and mobilize international support towards the implementation of the Convention, with special reference to discrimination against women and children and the provision of facilities for the prevention and proper management of juvenile delinquency;
e. through professional training, adult education and child rights activities promote the registration of births, elimination of forced marriages for girls, female genital mutilation, sexual abuse and economic exploitation of children;
f. engage in advocacy for a just and progressive system of juvenile justice, to promote the use of imprisonment of children as a last resort and the use of alternatives to the imprisonment of children and to advise Government with regard to bringing existing legislation into harmony with the relevant international legal instruments on juvenile justice;
g. issue reports, including recommendations, on child rights in Sierra Leone, and
h. do all other things conducive to the attainment of children's rights.

(ii) Local Committees and District Councils

The Act also provides for Local Committees and District Councils with child welfare responsibilities. Village Child Welfare Committees[12] have responsibility within their village to:

a. promote child rights awareness and enjoyment;
b. monitor the enjoyment of child rights;
c. submit regular observations, reports, and concerns on child welfare to a chiefdom child welfare committee and the Ministry;
d. monitor the advancement of girls' education;
e. determine the suitability of a person to foster a child and monitor foster placements;
f. prevent domestic violence and all forms of gender-based violence;
g. provide advice and instruction to a child alleged to have committed a minor misdemeanour;
h. provide advice to children, parents and other community members in promotion of the short and long term best interests of the child.

[11] The Act, Section 11

[12] Sections 47(1) and 48(1) and (2)

i. issue recommendations and instructions on the maintenance and support of particular children;
j. consider complaints and concerns referred to it by any adult or child concerning the welfare of any child in the village;
k. refer to a chiefdom child welfare committee when necessary; and
l. undertake any other functions that may advance the enjoyment of the rights of the child.

Chiefdom Welfare Committees[13] are responsible for advising village committees, attending to cases referred to them from villages and reporting to and, where necessary, referring matters to the District Council or Ministry.

(iii) Family Court

The Act[14] establishes a Family Court with authority to issue appropriate welfare orders where it is found that a child "has been abused or is in need of immediate care and protection." Specifically, the Family Court has jurisdiction in matters concerning parentage, custody, access, maintenance of children and other related powers[15].

(iv) Adjudication

The Act allows District Councils to set up non-judicial Child Panels to mediate in criminal and civil matters[16]. In civil matters, the Child Panel may mediate any dispute involving the rights of the child and parental duties[17]; while in quasi-criminal matters, the Panel may facilitate a reconciliation between the child and anyone offended by the child's actions[18].

VI Adequacy and effectiveness of institutional structures

The key question is whether the Convention's norms and principles have become integrated into the administrative, legislative and legal institutions of the State of Sierra Leone.

The implementing mechanisms created by the Act comprise an elaborate and comprehensive network of institutional arrangements and procedures with the ultimate aim of creating social justice for Sierra Leone's children. They seem entirely adequate. Society owes an obligation to care for children from two perspectives. The first is when they are in need of care and protection; the second is when they come into conflict with the criminal law. Translating the Act's norms into reality must be managed—in accordance with basic principles of equity and justice—in a way that ensures the fair distribution of the costs and burdens of protecting and enforcing the guaranteed rights and freedoms.

The Act's provisions authorizing the setting up of Child Welfare Committees, Child Panels in civil matters, and a Family Court are clearly predicated upon the notion that the State of Sierra Leone bears ultimate responsibility for ensuring full enjoyment by its children of the core rights essential for their optimal survival and development—personal, social and economic rights.

Protection of these rights will primarily depend on the effectiveness of the implementing institutional structures which will, in turn, depend on a combination of factors. A key factor is whether the Government will muster and demonstrate the political will to implement the Act's provisions fully. A second factor is whether there will emerge a public consciousness that implementation of the Act is vital for the creation of social justice for children throughout the country.

A third factor relates to the nature, extent and actual functioning of the implementing institutions and structures, especially the supervisory roles assigned to the Minister for Children's Affairs and the National Commission for Children. A fourth factor is the extent to which the domestic courts—particularly the Family Court—will, in the interpretation and application of the Act, demonstrate judicial creativity in developing an authoritative and effective body of jurisprudence to protect the guaranteed rights consistent with existing legislation[19]. It will be interesting to see how the Courts interpret and apply to the infinitely varied circumstances involving the welfare of children the Convention's, (and now the Act's) pivotal principle—"the best interests of the child".

A fifth factor is the very high probability of an adverse impact of some of the country's prevailing socio-cultural, economic and related constraints.

[13] Sections 49(1) and 50(1) and (2)

[14] Sections 61, 62, and 63

[15] Section 78

[16] Section 71(2)

[17] Section 74

[18] Section 75(1)

[19] Such as the Births and Deaths Registration Act, the Married Women Maintenance Act, the Devolution of Estates Act, the Children and Young Persons Act and the Prevention of Cruelty to Children Act.

VII. Obstacles to effective implementation

There are indeed legions of socio-cultural, economic and related constraints that may affect national efforts to give practical meaning to the Act for the benefit of the children of Sierra Leone. This is not to say that prospects for implementation are bleak. It is to inject a note of caution and realism. It is common knowledge that Sierra Leone is a developing nation. One of its major problems is poverty deriving from underdevelopment. Realism dictates that, in the protection and enforcement of children's rights, one must acknowledge the varied dynamics of underdevelopment. Macpherson observes:

> "[In] the poorest countries it is not only that resources are low in absolute terms, although they are very low,….what scarce resources exist are moved away from the points of greatest need." [20]

My thesis, therefore, is that the full realization of the rights of children in Sierra Leone under the Convention and Act is a question of social justice. Social justice, according to Lord Scarman,[21] is "justice in depth, not only penetrating and destroying the inequalities of sex, race, and wealth, but also supporting the weak and the exposed." Unquestionably, children are the weakest, most exposed and most vulnerable of the world's population. The Convention is indeed a Children's Charter for social justice. As a fundamental moral imperative, social justice posits that all persons are entitled to basic human needs regardless of superficial differences. This includes considerations of poverty and illiteracy, the establishment of sound environmental policy and equality of opportunity for healthy personal and social development.[22] Undoubtedly, existing influences of a socio-cultural, economic and related character are very likely to impact adversely on governmental and institutional efforts to translate the provisions of the Act into reality.

VIII. Conclusion

However, the inference is irresistible that by adopting the bold and progressive initiative of incorporating the Convention's norms and principles into its municipal law, the State of Sierra Leone has become one of the leading principled defenders of children's rights in the African Region, thereby enhancing its commitment to the rule of law, nationally, regionally, and globally. By this unique legislative model, the State of Sierra Leone has demonstrated its ability, willingness, and determination to be the regional pace-setter in Africa in the global effort to establish international standards for children's rights.

Hon. Justice Bankole Thompson*, M.A., LL.B., PhD, was from 2003 to 2009 a judge on the Special Court for Sierra Leone—a United Nations-backed war crimes tribunal—and Professor of Criminal Justice, Eastern Kentucky University. In his native country of Sierra Leone, he served as State Prosecutor, Judge of the High Court and Interim Dean of the Sierra Leone Law School. He has published several articles and two books, namely, *The Constitutional History and Law of Sierra Leone (1961-1995),* and *The Criminal Law of Sierra Leone*. He has also recently co-authored a third book, *American Criminal Procedures.*

[20] Macpherson, S. "Five Hundred Million Children: Poverty and Child Welfare in the Third World" Sussex: Wheatsheaf, 1987.

[21] Scarman, Sir Leslie: "Law Reform, The New Pattern". London: Stevens, 1968.

[22] Thompson, Bankole: "The Role of International Law in Promoting Social Justice", Social Justice in Context, Vol. 3, 2007-2008, pp. 1-7.

Juvenile Justice and International UN instruments—the Costa Rican experience

Prof. Dr Carlos Tiffer

Comprehensive protection and Juvenile Criminal Law

The approval of the Convention on the Rights of the Child (CRC) in 1989 brought about an international paradigm shift in the notion of childhood. In many Latin American countries the change took place not only in the theoretical field but also in the legislation. New Latin American legislation adopted a different approach, following the CRC principles, both in the area of social protection of childhood as well as in the protection of procedural rights and guarantees when children are charged with a violation of penal law.

The research discussed below describes the situation of childhood prior to the approval of the CRC, making reference to the different youth justice models and their historical development. The purpose is to compare prior systems with the new ideology introduced by the CRC and shed light on how the change is reflected in the handling of juvenile offenders. The new paradigm implies a shift from the traditional guardianship model to the justice model based on the notion of criminal responsibility of adolescents. Also, the research explains the juvenile responsibility system derived from the CRC through a description of the theoretical elements of the justice model, the different forms of dejudiciarization and the punishment system.

Then, a review is made of the *UN Guiding Instruments on Juvenile Justice,* namely: The UN Standard Minimum Rules on the Administration of Juvenile Justice ('the Beijing Rules for the Protection of Juveniles deprived of their Liberty. Special focus is made on Rules'), The UN Guidelines on the Prevention of Juvenile Delinquency and the UN Convention on the Rights of the Child to conclude that the new doctrine, originated in the CRC, revolves around the notion of comprehensive protection.

This implies not only legal but also social protection, involving respect for human rights, in particular the rights of adolescents who are considered not as objects but as subjects, holders of inherent rights, who also have obligations and responsibilities.

Costa Rica, as can be seen in this paper, has not remained outside the legislative changes in the region. On May 1, 1996, Costa Rica passed Act 7576, entitled "Juvenile Criminal Justice Law". This law adopted the model of responsibility, which meant a shift in the conception of the Costa Rican criminal policy from a guardianship model that considered that youth had no responsibility and were incapable of violating criminal law to a model that—on the contrary—provides for the possibility of youth violating the law, of deeming youth guilty of violating criminal law and therefore, for the possibility of imposing sanctions with the consequent negative connotations this brings. The new law seeks to adopt the principles established in the CRC, and at the same time to provide a satisfactory response to the new social demands in the handling of adolescents who violate the criminal law. The state´s approach to criminality in general and, most particularly to crimes committed by adolescents, must be based on the principle of respect for human rights. This holds true for any state determined to be seen as a State of Law, subject to the rule of law.

Juvenile Justice Models and their historical development

Actions of adolescents have had consequences in all justice systems and thus, different categories and regulations have been established since time immemorial. Modern states have been no exception and have intended to regulate and *control* adolescents´ behavior through diverse systems or models. To a certain extent this control has been a display of adult power over the youth behaviour. Apart from this, states have always sought and *found ways to legitimize control*. Be it invoking reasons of public peace, national security, citizenship security, the rule of law and order or others, states find reasons to control the behaviour of youth or adolescents.

Such control may put more or less emphasis on the penal or social aspects, with the participation of different players, including psychologists, social workers, educators or jurists, creating—overtly or covertly—a model of formal control over the behaviour of adolescents. Without intending to describe all juvenile system models, I will present the most representative and relevant models, with more emphasis on the justice model on which the Costa Rican Juvenile Criminal Justice Law is based. By analyzing different legislation and legal

systems, it can be seen that a plurality of models has been developed to approach youth crime.

Juvenile responsibility system

The Costa Rican Juvenile Criminal Justice Law (LJPJ) adopts the responsibility model, which meant a shift in the conception of the Costa Rica criminal policy from a guardianship model that considered that youth had no responsibility and were incapable of violating criminal law to a model that—on the contrary—provides for the possibility of youth infringing the law, of deeming a youth guilty of infringing criminal law and therefore, for the possibility of imposing a sanction with the consequent negative connotations this implies. Such responsibility also implies procedural guarantees that go with it, since no state of law can allow for the possibility of applying a penal sanction to a minor without observing the penal guarantees internationally recognized for adults and the special guarantees recognized for the judging of youth by reason of their age.

As stated above, the responsibility model is based on several assumptions. Below I describe some of the principles that characterize it.

The experience of Costa Rica with the adoption of the Juvenile Criminal Justice Law

Costa Rica, like the rest of the Central American countries, subjected its adolescents to the negative effects of the Irregular Situation Doctrine for over thirty years. Since 1963, all matters related to childhood and adolescence were regulated by the provisions of the Organic Law on Minors Jurisdiction, a clear example of the application of such doctrine. The adoption of the UN Convention on the Rights of the Child in 1990, which diverged significantly from the postulates of the Irregular Situation Doctrine, introduced a clear contradiction between both instruments, and this in turn made it necessary to adapt the national law in such a way as to introduce the principles of the Comprehensive Protection Doctrine.

Two examples that clearly depict the Costa Rican criminal policy effective at the time of approval of the LJPJ are the Increasing Penalties Law and the Bill on Urgent Criminal Reforms. Both pieces of legislation reflect the ideology that prioritizes citizen security and responds to the repugnance of crime and to the generalized perception of the growth and increase of criminality rates and, in general, to a climate of personal and property insecurity.

The Increasing Penalties Law amended Articles 51 and 76 of the Criminal Code, increasing the maximum prison sentence and security measures from 25 to 50 years. This reform gave rise to a new Costa Rican criminal policy, different from that established by the 1970 Criminal Code. It is clear that in this 1994 reform the principles of minimum intervention, rationality and the principle of humanity that must guide penalties in a democratic criminal system were ignored. Apart from being unrealistic, such a long penalty would have the same practical effects as life imprisonment.

The Bill on Urgent Criminal Reform was based on the notion of citizen insecurity and the alleged accelerated growth of criminality rates, embodied in murders, attacks or rapes perpetrated by youth and adolescents, which had not been empirically proven, but was a prevalent social perception

This bill, so called *emergency,* provided for the need for a deep revision of the criminal legislation and referred to the pressing need to reform certain criminal provisions to effectively combat organized crime, youth criminality and other antisocial behaviors.

Some of the reforms this project sought to introduce were aimed at increasing prison penalties—even for minor offences—and imposing restrictions in cases of automobile related crimes. This bill also intended to change the minimum criminal responsibility age and, the proposal that triggered the hottest reaction was the possibility of convicting drug or alcohol addicted youth, a clear illustration of the political orientation of this project.

These two state acts suggest that the approach to crime of the Costa Rican state is repressive and confinement-oriented. In some instances, like the Bill on Urgent Criminal Reform, the state seems to be putting aside fundamental rights and principles such as that of legality or infringing the principles of rationality and proportionality, like in the Increasing Penalties Law.

The Juvenile Criminal Justice Law (PLJPJ) Bill was a response to this authoritarian and violent approach that undermined the rule of law. The new text was inspired in the recommendations of International Instruments and Conventions and was drafted by experts, with the contribution of academics and representatives of the civil society.

In summary, it might be said that this bill was a technical response in a climate of citizen insecurity. This bill intended to be a guarantee oriented response within a rule-of-law context and attempted to clearly distinguish social problems (perhaps the most prevalent) from legal-criminal conflicts involving adolescents in the criminal law.

The PLJPJ was drafted in a climate of social alarm because of rampant crime, which is clearly reflected in the maximum penalties. The rationale of the new law is the social hypersensitivity produced by the perceived scourge of youth crime, both in terms of its high incidence and the high level of aggressiveness. Also, the society considered that the guardianship oriented legislation was inefficacious and rendered the authorities impotent to punish youth crime.

The stigmatization of youth crime staged by some mass media had a clear influence on expediting approval of the law and in the increased penalties.

This modification of penalty terms, a fundamental element in penal legislation and a characteristic element of the criminal policy of the state, could serve as the basis to characterize the LJPJ within the context of the criminal policy of the state.

The LJPJ could be described as a technical response that incorporates a new model of accountability for the criminal acts committed by minors, based on a special and minimum criminal law concept, recognizing the principles of legality and guilt for the action, and including procedural guarantees such as the right of defence, the presumption of innocence and the right of being judged by specialized courts by reason of the personal condition of the individuals addressed by the norm.

This criminal policy means much more than a mere modification or legislative response. The LJPJ approaches adolescents not as objects but as subjects of inherent rights, who also have obligations and responsibilities. This law is based on the comprehensive protection doctrine, implying not only legal but also social protection, which in turn implies respect for human rights, particularly the rights of adolescents.

Apart from the global reform framework the LJPJ is part of, we should mention ***two bills*** that have been submitted to the Legislative Assembly and are part of this reform movement; namely the Penal Code Reform Bill and the Bill on the Implementation of Juvenile Criminal Sanctions. The first of these two bills also proposes a modern and democratic reform of the Criminal Code. From any perspective, a new criminal legislation is necessary, since the current Criminal Code was enacted in 1970 and in over 30 years social and economic reality in the country has changed and at the same time the study of criminal sciences has advanced. As for the Bill on the Implementation of Juvenile Criminal Sanctions, it is of fundamental importance since what is sought is the regulation of the relations between the defendant and the administration, the respect of the fundamental rights during implementation of sanctions and ways of materializing or actually fulfilling the educational objectives intended by the penal sanction.

As we have observed, the LJPJ was passed in a climate of legislative change, but the spirit of the law, for it to be a realistic and effective instrument, should not be limited to the punitive or repressive aspects, since it is known that neither crime nor criminality will be eradicated, however good the laws may be; on the contrary, what is required are strong social policies, support to the weakest economic sectors and compliance with educational goals. This last statement I find to be the most correct, since ***although we cannot eradicate crime*** in general, particularly youth crime, at least we can ***contain criminality rates*** through social policies and we can even reduce them, but this calls for public policies aimed at greater equality, justice and tolerance.

Another formal source for the approval of the LJPJ is the body of decisions of the Constitutional Court, a solid precedent that led to the reform.

Final comments

The enactment of the new LJPJ in Costa Rica led to a new criminal policy approach, at least with reference to the judgment of minors. The guardianship paternalist model was replaced by a guarantor model with emphasis in the concept of responsibility. The youth or adolescent is considered to be a subject, who not only enjoys legal and social rights, but a subject who is held accountable for his/her actions by the criminal legislation.

The idea or responsibility of the youth or adolescent is based on understanding the illegality of the action. At present it would be difficult to maintain that a 12 to 18 year old adolescent has incapacity or lack of maturity to understand the illegality of an action.

However, judging a crime committed by a minor should be handled as a specialized matter of juvenile criminal justice within the ordinary jurisdiction. For this reason, specialized bodies such as the Juvenile Judiciary Police, the Attorney-General's office with specialized attorneys and specialized public defenders should be involved, beginning with the investigation phase. Juvenile Criminal Courts have been created, as well as a specialized appeals court, the Juvenile Criminal Superior Court. The principle of specialization is also mandated by international instruments. This very important principle has not yet been fully implemented in Costa Rica five years after the enactment of the Juvenile Criminal Justice Act.

A basic principle for criminal justice intervention is the accusation of having committed or having participated in the commitment of a crime, which was not clearly established in the Guardianship Law. The act in question must be specifically listed in the effective criminal law at the time of commitment. A minors law system with emphasis on the guilt and dangerousness of the criminal, has given rise to a juvenile criminal law with emphasis on the guilt for the crime, with minimum judicial intervention. That is, any sanction must imply guilt, and the sanction should not exceed (even when it can be lower) the degree of such guilt; this is where the principle of rationality and proportionality are fully applied.

The Juvenile Criminal Justice Law reflects procedural guarantees internationally recognized for adults, such as: the principle of legality, presumption of innocence, due process, right of defence, right of appeal. Other special guarantees apply in the case of youth and adolescents by reason of their age, such as: differential treatment, specialized courts, reduction of confinement terms

and greater institutional benefits than adults, the principle of celerity, single process, and others. However, certain special guarantees, such as the principle of celerity which tries to reduce terms to the shortest possible are under serious threat. An example of this is Bill 57, that amended Section 59 of the LJPJ, increasing the original provisional detention term (currently two months that can be extended for two additional months) up to six months, which can be extended for another three months, and in case of an appealable conviction sentence, for another six months.

The judicial reaction to the commitment of a crime is denoted sanction and not measure. Measure oriented criminal law focuses on the criminal and on the notion of dangerousness. A sanction or negative penalty is a normal reaction to the commitment of a crime. However, sanctions seek an educational purpose. A sanction seeks to attain a goal: to educate the youth or adolescent to be a responsible individual, prepared for normal coexistence, and social rehabilitation. Sanctions must seek positive preventive purposes.

Without any doubt, the issue of children and adolescents in conflict with the law goes beyond the legal aspects, and most particularly, beyond punitive law. The most important aspect is perhaps the economic and social deterioration of the population, the current family situations and the opportunities each social group has for the development of their lives. In the past, as we have been able to see, based on a care oriented model, the handling of crimes committed by minors and individuals in a situation of poverty was limited to mitigating the state of "social risk" of adolescents and youth. Without the existence of legal guarantees, such purposes lent themselves more for power abuse than for the search of solutions to the problem of youth in conflict with the law.

At present, with the approval of the LJPJ, a new justice model has been implemented, seeking to promote a guarantee oriented system, minimizing sentences and criminal prosecution. The law has established the idea of "*guarantism*" for the judgment of adolescents, which, through a clear separation of social and legal approaches has proven the benefits this brings to minors charged with the commission of a crime. Examples of this are: the short duration of the processes, the right of defence, the provisional detention on an exceptional basis and the rational use of deprivation of liberty.

However, this level of acceptance and incorporation has not been fully implemented in the legislative area; on the contrary, we find cases in which it seems that the response to crime or delinquency is the traditional reaction of punishment and severe penalties.

Legislation in Costa Rica has incorporated institutions that promote dejudiciarization. A regulated "principle of opportunity" has been introduced, which is an effective way to reduce judicial intervention. Pre-trial *settlement* has also been adopted and is an excellent form of dejudiciarization, since involving the victim of the crime has great educational potential for the youth. Also, the Juvenile Criminal Justice Law promotes dejudiciarization by means of the *probationary suspension of process* which, in a broad way allows the judge to decide not to continue with all cases through the final phase of the process, when the probabilities of applying a sanction are incremented. The probationary suspension of process with the application of behavioural rules (orientation and supervision orders) for a specific term is an excellent opportunity for the normal development of a youth to continue. In most cases youth have fulfilled the conditions and processes have concluded, without the need to hold the trial or conference. Also, the conditional application of the confinement sentence, not limited by types of crimes or severity of the sanction, give the judge ample room for decision making and the possibility of resorting to a confinement sentence as "*ultima ratio*" or last resort.

The pessimism that prevails in many cases in adult criminal justice by reason of the inefficacy of social rehabilitation mechanisms should not have a negative influence on the juvenile justice system. On the contrary, we should be optimistic when dealing with youth in conflict with the law, we know that many young people have a great potential to work, to change and to adapt in order to overcome the harsh conditions they are living in. Preventing the development of this potential by providing a traditional or repressive response would mean to part from the idea that all persons can improve, particularly youth.

Prof. Dr Carlos Tiffer
United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) consultant

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Good practice to guarantee access to justice for girls—a view from Argentina

Judge Patricia Klentak

Introduction

The Juvenile Justice System in Argentina has come a long way since the Convention on the Rights of the Child was adopted in 1989.

The new General Theory that has been applied since then, called the *Doctrine of Integral Protection of Rights*, required the states to adapt their laws and institutional practices since, in accordance with such doctrine, the child is now conceived as a subject of rights, as opposed to the former doctrine, called the *Doctrine of the Irregular Situation*, which considered the child as an object of protection.

As a subject of rights, the child has particular needs that have justified the application of the *specialization* principle, which guarantees the child to be treated by specialized laws and by specialized bodies created for such purposes. In this context, in which domestic laws and institutional practices are being progressively adapted to the principles set forth in the Convention on the Rights of the Child, the administration of juvenile justice in my country is yet to find the time or space required to enhance the mainstreaming of a gender perspective into judicial procedures.

Nonetheless, in Argentina, a large number of cases are brought before the courts involving little and adolescent girls who have suffered from abandonment, domestic sexual abuse, commercial sexual exploitation, and corporal punishment. Teenage pregnancy rates among girls aged 12-18 are high, as well as mother and child morbidity-mortality rates, especially in the poorest rural areas. Many factors have an adverse effect on adolescents, including alcohol and drug abuse, suicides, eating disorders, and other risky life styles. Such factors should be tackled judicially by mainstreaming a gender perspective into judicial procedures in order to guarantee the full recognition, enjoyment, exercise and protection of all human rights, free of any form of discrimination and respecting the rights of little and adolescent girls to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.

The most important legal instrument for gender mainstreaming is, without a doubt, the *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).* Under this convention, three important aspects are recognized—

- the right to non-discrimination (Article 1);
- the rights affecting the different aspects in a woman's life that, when exercised, prevent discriminatory practices on the basis of nationality, education, health, reproductive rights, work, marriage and family, among others; and
- the obligation of the States Parties to take all appropriate measures to guarantee *de facto* equality between men and women.

Under the Inter-American Human Rights System, women's rights are protected by the provisions contained in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, *Convention of Belém do Pará*, which should be coordinated with the provisions set out in Principle 8 of the American Declaration of the Rights and Duties of Man (1948), with Article 19 of the American Convention on Human Rights, and with Articles 13, 15 and 16 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights—*Protocol of San Salvador.*

At an Ibero-American level, the Plenary Meeting held at the XIV Ibero-American Judicial Summit (Brazil 2006) approved the *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, which include provisions on the protection of young boys and girls (section 2(2)) and on gender issues (section 2(8)). Such Regulations have been endorsed by the Argentine Supreme Court of Justice (order 5/2009), which considered them a valuable tool in matters relating to access to justice, and consequently, they should be taken as guidelines in the matter.

As regards children's rights, the right to non-discrimination and the right to identity are recognized by the Convention on the Rights of the Child (Articles 2, 7 and 8). Among the international documents drafted with the purpose of understanding the scope of the Convention, special attention should be paid to the General Comment No. 10, drafted by the International Committee on the Rights of the Child, which

provides a deep insight into the Principle of Non-Discrimination—

> *States parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see paragraph 97 below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation*.

Advisory Opinion 17 issued by the Inter-American Commission on Human Rights (2002), in its paragraph 50, states that the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") must be applied impartially, without distinction of any kind, for example as to race, color, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. The Advisory Opinion further states that, as pointed out in the Convention on the Rights of the Child, children have the same rights as all human beings, and also special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State.

The more we study the gender perspective, the clearer the need for reconsideration of the contents of the Convention on the Rights of the Child from a gender approach in order to enhance its scope of application. For example, although several international documents mention the rights to equality and to non-discrimination, the protection of children's rights taking a gender approach requires mainstreaming other concepts into these rights, such as those prescribed by the Convention of Belém do Pará concerning the right of women to be valued and educated free of stereotyped patterns of behaviour and social and cultural practices based on concepts of inferiority or subordination.

The premise is based on the concept of a Liberal State that endorses the universal system. As such, the Liberal State is expected to provide services to individuals. Consequently, the Inter-American Court of Human Rights has stated that it is—

> *the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights*[1]

Accordingly, the Convention of Belém do Pará sets out immediate duties of the States[2] and also details the progressive duties of the States Parties. Such duties include the development of programs—

- to promote awareness of the right of women to be free from violence;
- to modify social and cultural patterns of conduct of men and women, including the reform of formal and informal educational programs;
- to promote the education and training of all those involved in the administration of justice and other law enforcement officers;
- to provide appropriate specialized services for the victims;
- to encourage the communications media to develop appropriate media guidelines;
- to provide effective readjustment and training programs to enable women to fully participate in public, private and social life; and
- to ensure research and the gathering of statistics relating to the subject.

These duties should be taken into consideration and included among those duties that, with the purpose of protecting children's rights, are required of the State Parties to the Convention on the Rights of the Child by virtue of the principle of effectiveness set out in Article 4.

In view of the above, I hereby state the importance of committing to ongoing training programmes and to a multidisciplinary approach that would include gender perspectives and enhance the integration of the Human Rights System.

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[1] Advisory Opinion OC-11/90 of August 10, 1990, paragraph 23.

[2] Liliana Tojo, member of CEJIL, during a lecture at a Seminar on Practices (2010)

Winfried Hassemer states in his Critique of Modern Criminal Law that the Rule of Law greatly depends on the training of jurists, since it promotes a type of intervention that would substantially improve judicial practices and consequently help to guarantee, in a broader and more efficient way, the comprehensive protection of a greater number of rights to all persons.

Furthermore, the matter posed herein exceeds the institutional scope and involves a global level. *The State of the Future report, chapter* "*Scenarios for the Future of Latin America 2030*", provides a framework to understand global changes through fifteen global challenges: Sustainable Growth and Climate Change; Water; Population and Resources; Democratization; Creation of Long-Term Policies; Globalization of Information Technologies; Gap between the Rich and the Poor; Health; Decision-making Skills; Conflict Resolution; Improvement of Women's Situation; Transnational Organized Crime; Energy; Science and Technology; Global Ethics.

Good Practice for Access to Justice by little and adolescent girls

In July, 2011, the Sixth Internship on *Good Judicial Practices for the Access to Justice for Women*[3] was held in Costa Rica, in compliance with the agreements subscribed to in Cadiz at the XI Magistrates' Summit, where female magistrates from the highest bodies of the Ibero-American Justice System participated. The purpose of this Internship was to discuss the need to mainstream gender perspectives into the administration of justice and the proper organizational structure to carry out such a purpose.

Within this framework, the Guarantees Youth Court No. 2 for the San Isidro Judicial Department where I preside submitted a judicial practice related to this matter.

The **general objective** of the abovementioned practice is to mainstream gender perspectives into the administration of juvenile justice through the protection all of their rights as a means of enhancing the full exercise of the right to access to justice for young and adolescent girls. The concept of *access to justice* is conceived as the right of access to courts and, at the same time, to receive a prompt, fair and humanitarian answer from the judicial system.

The specific objectives are—

- to make a practical contribution by creating a legal framework that would include laws for the protection of children's and women's rights and that would work as a preventive model of intervention;
- to prevent intersectional discrimination cases based on multiple grounds, e.g., being both a minor and a woman;
- to systematize the criteria for diagnosis, planning, referral to protection programs, monitoring and assessment that would mainstream gender perspectives into their design;
- to create permanent collaborative structures to work in social networks;
- to ensure the participation of young and adolescent girls in judicial procedures affecting them; and
- to prevent juvenile delinquency through the promotion of development.

The work areas of the practice are—

1. Legal Framework
2. Multidisciplinary Approach and Social Networks
3. Participation
4. Judicial Resolutions

Proposed actions within each area

Area No.1: **Legal Framework**

Several actions have been adopted taking into consideration: the existence of important national and international judicial instruments for the protection of young and adolescent children and for the protection of women; the recognition of all human rights as indivisible, interdependent and interrelated; and the need for the protection of the rights of little and adolescent girls to non-discrimination, equal treatment and dignity. Such actions include—

1. Defining and systematizing the "specialized" legal framework for intervention in judicial practices: children's rights—*Appendix I*, women's rights—*Appendix II.*
2. Integrating the regulations contained in the abovementioned appendixes by creating a preventive model of intervention. The key concepts proposed to coordinate the abovementioned regulations are the following rights and principles:— Dignity–Participation–Intimacy–Training–Health–Cooperation and Social Networks–Multidisciplinary Approach–Principle of Effectiveness–Nationality–Information–Non-Discrimination–Freedom of Though and Expression–Social Security–Most Favorable Law–Identity–Constitutional Guarantees–Right to Life and Development–Best Interests of the Child–Access to Justice–Right to Leisure–Education–Family–Social Integration–Human Trafficking–Protection from Violence and Exploitation.

[3] Justice and Gender Foundation and United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders –ILANUD, is its acronym in Spanish,

3. Creating institutional spaces for the training of judicial operators in the application of the integrated legal framework.
4. Measuring the application of the Integrated Legal Framework *Appendix IV.*

Area No.2: **Multidisciplinary Approach and Social Networks**

The intervention of professionals who work with young and adolescent boys and girls involves multidisciplinary spaces in which gender issues are treated.

Consequently, it is further proposed—

1. to design Inter-Institutional Framework Programmes of Intervention that would include gender perspectives: *Model of Inter-Institutional Framework Program: Court—Civil Association (Appendix V).*
2. to create the position of "liaison officer", who will be trained in gender issues, children's rights and communication strategies to facilitate networking *Training Program for Judicial Operators in "Communication Strategies", Appendix VI.* The main role of the liaison officer within the framework of judicial cases is to facilitate interpersonal communications (whether within or among institutions) in order to solve issues arising out of group activities, and to build a permanent communicative network. It is believed that by improving communication among operators, cooperation is encouraged, resulting in a more efficient system
3. networking statistics *Charts - Appendix VII.*

Area No.3: **Participation**

Little and adolescent girls are encouraged to participate in procedures affecting them. The right to participation is conceived not only as an intervention strategy in cases involving violence against the child, but also as a mechanism of prevention, protection and strengthening of rights.

The scope of the right to participation involves the right of the child to receive information, to form his or her views, to express them, and to be heard by those who have the power to make a decision affecting the child.

In order to achieve this, the following actions should be taken at the institutional spaces—

1. to inform little and adolescent girls about their rights;
2. to encourage little and adolescent girls to form their own views;
3. to create appropriate spaces where they can be heard (environment, relationships, etc.);
4. to encourage a multidisciplinary specialized approach;
5. to take into consideration the views of little and adolescent girls, in order to diagnose, plan actions and decisions affecting them, monitor and assess practices.

The statistics on the exercise of the right to participation of young and adolescent children in judicial procedures *Appendix VIII* are based on the menu of indicators and the monitoring system for children's right to participation drafted by the Inter-American Children's Institute (OEA, Organization of American States.)

Area No.4: **Judicial Resolutions**

The actions taken include the following:

- mainstreaming gender-sensitive language into the practices *Appendix IX—Style Guide for Written and Oral Communication***.**
- analyzing judicial resolutions from a gender perspective *Appendix X—Analysis Guide.*

Learning—from the answers provided to the proposed questionnaire, we expect to reach some conclusions and to propose actions related to the subject.

Questionnaire:

1-Importance of access to justice for women and empowerment

Answer: The institutional character conferred upon the gender perspective through the application of specialized laws on the protection of women's rights in judicial procedures affecting little and adolescent girls is a mechanism to mainstream such perspective into all judicial stages of intervention (interviews, hearings, criteria design for derivations to programs, monitoring and assessment criteria, creation of judicial opinions for judicial resolutions, etc.)

2-What are the training aspects of the practice?

Answer: The practice provides theoretical background on national and international laws regarding the protection of women's rights. Furthermore, it provides training for the integrated application of children's and women's rights and for the intervention in multidisciplinary spaces and in networking. It also develops communication skills and participation criteria of intervention.

3-How has the target group participated during the practice?

Answer: this participation is developed through several strategies (interviews, hearings, work groups, workshops, etc.). The target group continuously participates during the practice by receiving information on its rights, exercising its right to be heard in matters affecting it, and forming its own views, which are taken into account when planning actions and measures affecting it. (Statistics on participation are detailed in *Appendix VII*).

4-What type of access to justice is offered and promoted?

Answer: in accordance with the Brasilia Regulations, *access to justice* is conceived in a broad sense as the right to access to courts and as the right to receive a prompt, fair and equitable answer from the judicial system. The practice guarantees full protection of the right of little and adolescent girls to be treated equally, based on their status of both minors and women.

5-How does this practice promote equality and non-discrimination?

Answer: this practice promotes equality and non-discrimination by providing theoretical and practical background in order to ensure that little and adolescent girls involved in judicial procedures enjoy the full exercise of the rights and guaranties recognized to all individuals by international instruments. Furthermore, this background should ensure that little and adolescent girls receive the required special care they need for their development, based on their status as developing persons; it should also ensure that the special measures set forth by the CEDAW for the protection of women based on their gender are applied (including those relating to women's sexual and reproductive rights.) The best way to achieve this objective is by training judicial operators.

6-How is the gender perspective mainstreamed?

Answer: the proposed judicial practice mainstreams gender perspectives into the administration of juvenile system through the protection all of their rights as a means of enhancing the full exercise of the right to access to justice for little and adolescent girls. Several actions are taken from the four abovementioned work areas adopting a gender approach. These areas are: legal framework, multidisciplinary approach and social networks, participation, and judicial resolutions.

7-Are all the relevant interested parties doing their part?

Answer: all the relevant parties to the Social Network involved in the resolution of each individual case (judicial operators, district attorneys, defense attorneys, reference centers, local services for the protection of children, community programs, schools, health care centers, etc.) have made a great contribution to the practice and have also shown a great sense of commitment. However, this practice is neither generalized nor widely spread to ensure its application by other Juvenile Justice judicial bodies. The Juvenile Justice System in Argentina has come a long way since the Convention on the Rights of the Child was adopted in 1989. The new General Theory that has been applied since then, called the "Doctrine of Integral Protection of Rights", required the states to adapt their laws and institutional practices since, in accordance with such doctrine, the child is now conceived as a subject of rights, as opposed to the former doctrine, called the "Doctrine of the Irregular Situation", which considered the child as object of protection. As a subject of rights, the child has particular needs that have justified the application of the "specialization" principle, which guarantees the child to be treated by specialized laws and by specialized bodies created for such purpose. In this context in which domestic laws and institutional practices are being progressively adapted to the principles set forth in the Convention on the Rights of the Child, the Juvenile Justice System is yet to find the required time or spaces to enhance an effective implementation of this practice.

8-Are there specific indicators showing that the practice will continue to be effective in the long-term future?

Answer: there are currently many initiatives and training programs within and outside the juvenile justice system that promote awareness on the matter. Moreover, the several parties involved show an ongoing curiosity and a growing interest in the matter by maintaining a sustained dialogue. Nonetheless, we are experiencing a process of transformation in the field of juvenile criminal liability and, in a certain way, it will take time to consolidate the mainstreaming of the practice into the juvenile justice system.

9-Assessment and Results: Provide a description of results. Acceptability: Assess the practice feasibility and acceptance by the main interested groups (e.g., judges, district attorneys, public defense attorneys, experts, lawyers, female users, victims, female offenders).

Answer: although not every single judicial operator is currently applying the laws concerning the protection of women's rights, the practice is absolutely feasible and does not cause any rejection, since it is customary to apply the whole body of laws encompassing the protection of human rights (including conventions on gender) and it's only a matter of time before these laws are more extensively and expressly applied. Likewise, this practice is implied in the work of the other parties (defense attorneys, experts, etc.), but it is necessary to create a broader institutional framework for it.

10-Assessment Method: Describe the quantitative and/or qualitative assessment methods and detail the indicators showing the practice positive results. Results: Show to what extent the practice objectives have been achieved and the results (e.g., improvement on the access to justice, legal literacy, access to the judicial system, quality of life, satisfaction of the personnel/user, victim or offenders, etc.)

Answer: I believe the practice objectives have been achieved. A legal framework including laws for the protection of children's and women's rights has been created and is currently being applied. The criteria for diagnosis, planning, referral to protection programs, monitoring and assessment that mainstream gender perspectives into their design have been systematized.

Furthermore, permanent collaborative structures to work in social networks are being created. The participation of young and adolescent girls in judicial procedures has also been encouraged by promoting a specialized approach. We have also measured the amount of cases in which integrated specialized laws have been applied, the number of cases where young and adolescent girls have expressed their views in the process, and the number of referrals to community programs (including a gender approach). Finally, impact indicators are being created (statistics on changes in quality of life) by obtaining feedback from institutional reports, surveys to young girls and their families, etc.

11-Efficiency (economic results): What is the current cost and the benefits derived from the practice? Can you compare the efficiency of the practice with other similar/former practices?

Answer: The practice does not incur more expenses than those arising out of training and the benefits are qualitative, since they provide training for operators and aim at improving the quality of life of young and adolescent girls.

12-Conclusions and Recommendations: What are your conclusions and recommendations? Lessons learnt: provide a good tip on how to transfer the practice to other judicial operators (e.g., success factors or barriers). Future: Summarize the measures to be taken in order to extend or improve their practice.

Answer: In my opinion, gender practices and laws should be mainstreamed as a legal framework of intervention with little and adolescent girls. They should not only be applied when discrimination has already taken place, but they should also be applied as a preventive model of intervention that could prevent discrimination from happening. This is particularly feasible in the field of juvenile justice because all efforts are aimed at ensuring the development of young boys and girls and, consequently, actions on reproductive health, sexual education, education free of disqualifying stereotypes based on gender, etc. can be mainstreamed into this preventive model.

The specialized nature of the juvenile venue also allows for the inclusion of the family and the community into these preventive practices.

It is of the utmost importance to work with well-trained liaison officers able to ensure a positive outcome in order to favor institutional coordination. I also believe that it is important to work on the prejudices and stereotypes of all those intervening in the practice, since such prejudices and stereotypes could represent an obstacle to achieve our objective. I think we could broaden or improve the practice even more by enhancing the creation of a gender indicators matrix for the measurement of the practice impact by inviting specialists on the matter. We should improve the feedback channels of the system in order to assess results in terms of quality of life of the young and adolescent girls we work with.

13-Further Information: Is there any further information/material available about the practice? Are there any web sites on the practice? And any developed and available material on this subject (e.g. printed documents, instruments, presentations, videos, leaflets, etc.)?

Answer: For further updated information on web pages related to the practice as well as for the above-mentioned appendixes, please contact patklen@hotmail.com

Judge Patricia Klentak* is a Juvenile Court Judge in Martinez Station, Argentina.

Correctional Education, Alternative Measures and Detention in Japan

Prof. Dr Naomi Matsuura

I. Principles of Juvenile Law and Special Procedures for Juveniles

a. Principles of Juvenile Law

It is very well-known that for a long time Japan has had an extremely low incidence of crime (*Matsuura et al. 2009b*). There are many possible reasons.

Firstly, the Juvenile Law established in Japan in 1948 set down principles aiming to:

- promote the sound development of juveniles
- implement and coordinate correctional educational and environmental provision for delinquents
- establish a special system/procedure for criminal cases involving juveniles

As you can see from the above, the needs of juvenile delinquents are basically respected in Juvenile Law, especially those involving court decisions. As a result, Japanese Juvenile Law is considered the most protective law for delinquents to be found anywhere in the world.

b. Special Procedures for Juvenile Cases

The Juvenile Law of 1948 establishes a special procedure for juvenile cases. Juveniles are defined as persons under 20 years of age, and the underlying philosophy of the law is that, for juveniles, education and rehabilitation are preferable to criminal punishment. While regular criminal cases are tried in District Courts and Summary Courts, juvenile cases are primarily dealt with in Family Courts.

The age of criminal responsibility in Japan is 14, and the following types of juveniles come under the jurisdiction of a Family Court:

i. Juveniles, 14 years or older, who have committed a criminal offence;
ii. Juveniles, 13 years or younger, who have committed an act which would have been criminal except for the age requirement; and
iii. Juveniles who are prone to commit crimes or violate criminal laws in light of their character, behaviour, or surrounding circumstances.

Family Court proceedings begin when a juvenile case has been received from one of various sources. In practice, they mainly come from the police and the public prosecutors. The Family Court will first make an inquiry into whether a juvenile hearing should be opened, and in doing so, the court will assign the case to a family court probation officer, who will undertake a thorough social inquiry into the personality, personal history, family background, and environment of the juvenile. The court may also detain the juvenile in a juvenile classification home. The maximum period of detention in such a home is four to eight weeks depending on the circumstances, and, during that period, a scientific assessment (classification) of the personality and disposition of the juvenile will be conducted by the classification home.

If, after the inquiry, the court determines that there are no grounds or it is inappropriate to open a hearing, the case will be dismissed without a hearing; otherwise, a juvenile hearing will be opened. The Juvenile Law requires that the hearing be conducted in a warm and child friendly atmosphere. The hearing is not open to the public except for victims and their families, under limited circumstances and with permission of the court.

Likewise, public prosecutors are generally not entitled to attend the hearing.

When the hearing is completed, the Family Court will either—

a. place the juvenile under protective measures;
b. refer the case back to prosecutors;
c. refer the case to a child guidance centre; or
d. dismiss the case upon hearing.

There are three forms of protective measures:

- probation;
- commitment to institutions established under the Child Welfare Act; and
- commitment to a juvenile training school.

Referral to public prosecutors takes place when the court determines that criminal punishment should be imposed. Juveniles aged 16 years or older who have committed an intentional act that resulted in the death of a victim must be referred to public prosecutors unless the court determines otherwise.

Public prosecutors, as a general rule, are required to prosecute the cases referred to them from the court. Such cases will be prosecuted and tried in almost the same manner as offences committed by adult offenders. However, juveniles are generally punished by indeterminate sentences—a ten year maximum—and capital punishment may not be imposed on juveniles who were under 18 years old at the time of their offence.

Cases will be dismissed by the hearing when the court determines that there are no grounds or that it is not necessary to make any particular disposition.

II. Juvenile Justice Systems in Japan

Japan has two major juvenile justice systems, in other words, correctional facilities, which are *Jodo-Ziritsu-Shien-Shisetu* (JZSS) and *Juvenile Training School* (JTS). Although JZSS and JTS are both facilities for juvenile delinquents, there are some differences. First, JZSSs are managed by the Ministry of Health, Labour and Welfare and local governments while JTSs are administered by The Ministry of Justice. Secondly, JZSSs have an 'at home' atmosphere with family-like settings while JTSs commonly have structured settings, institutional systems, and strict rules.

The unique correctional facility, JZSS

What Jido Jiristu Shien Shisetsu (JZSS) is.

JZSS is a child welfare facility in addition to being a correctional institution. It is quite unique in terms of being managed by National and local government. Its facilities are for juveniles who have not been appropriately cared for by their parents or may have committed crimes and/or may show a high risk of deviant behaviour.

There are 58 JZSSs in Japan, each JZSS has about five dormitories.

What is a dormitory? (Figure 1)

A dormitory is like a foster care home, offering community-based residential treatment for children and adolescents at risk.

Treatment in each dormitory is carried out by a well-trained treatment team. The team typically comprises a married couple (housefather and mother) who play a crucial role with other professionals, such as clinical psychologists and child psychiatrists, in the work of the dormitory.

Dormitory staff carry out a *model for treatment* in which familial warmth is emphasised and caring staff behave towards the children and young people as if they were family members—in short, the children and young people live in close association with the housefather and mother in a family-style environment.

The professional dormitory staff are trained to use intervention strategies to create daily opportunities to teach the children and young people the social skills needed in their natural environment.

Figure 1

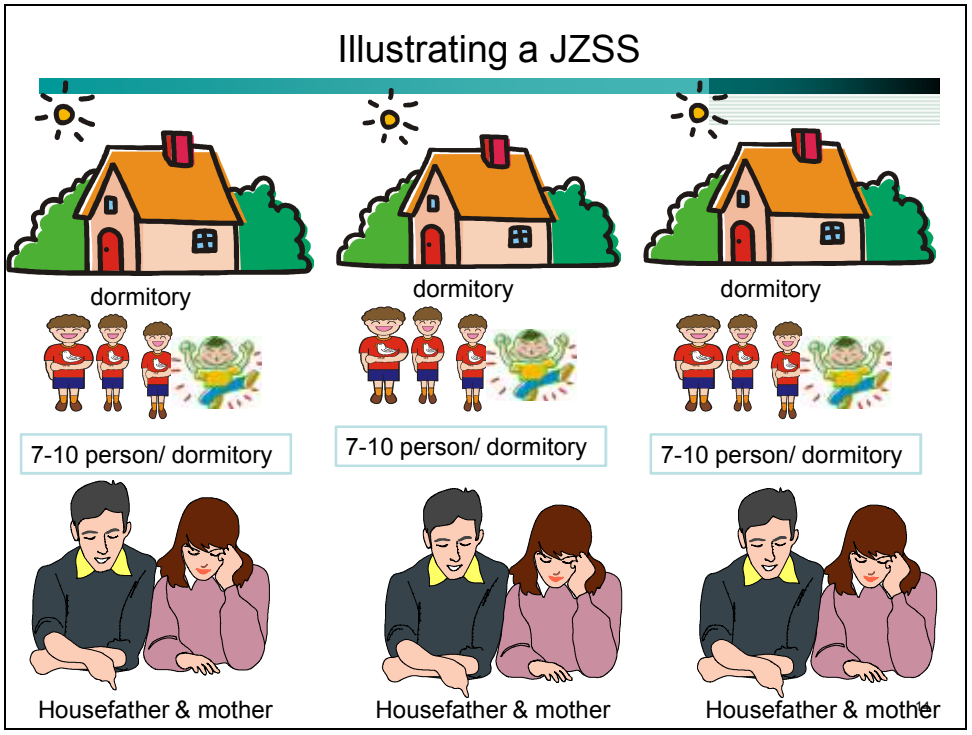
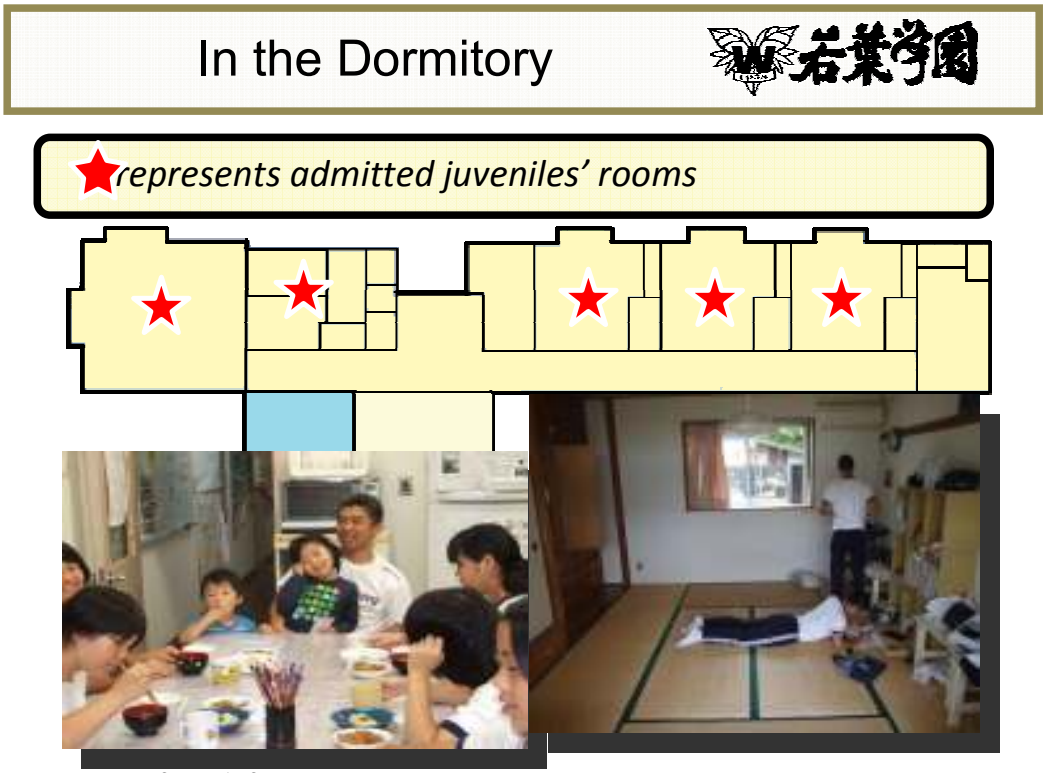


Figure 2



Note: The housefather's family (including his children) and admitted juveniles have a meal together. The house parents take care of the young people while they are resident.

The housefather and mother (Figure 2)

It can be said that the house parents provide *Home-Based Treatment,* the programme offering intensive, long-term intervention for admitted juveniles.

They play three roles—as parents, as professional educators, and as welfare workers.

What is a school in JZSS?

JZSSs provide *School-Based Programmes*—an educational setting specializing in interventions and behavioural support for admitted juveniles who have been unsuccessful in traditional classroom environments.

Public school teachers (elementary and secondary school teachers) work in a JZSS school.

Teachers have classes with fewer students and try to recognize and respond to at-risk students using proven *model techniques* such as effective praise, preventive teaching and alternative skill reinforcement.

Teachers follow the *model* which takes into account research-based efficacy in regular education classrooms and they teach special needs students in self-contained classrooms.

Daily life in a dormitory

Most admitted juveniles have been exposed to serious maltreatment.

Battered-children don't know what a family is, how a family works or what parents should do for their children.

Therefore, professional staff use consistent discipline in a stable and family-like environment, encourage behavioural change throughout 24 hours support systems and aim to form and strengthen a familial bond to develop their self-esteem

The Juvenile Training School (JTS)

Structure

A juvenile training school is a correctional institution that provides correctional education for juveniles committed to it by the Family Courts. (Matsuura et al. 2008, 2009a, c) Commitment to a juvenile training school is one of the three forms of protective measures that can be taken by the Family Courts. As of 2010, there are 51 juvenile training schools and one branch juvenile training school. In 2009, a total of 3,962 (3,544 male and 418 female) juveniles were newly admitted.

There are four types of juvenile training schools categorized by the age, level of criminal tendency, and mental or physical conditions of the juveniles: primary, middle, special, and medical. The type of school to which a juvenile will be committed is specified by the Family Court. Except for medical juvenile training schools, each school accommodates males or females exclusively.

Juvenile training schools offer long-term and short-term programmes, and the latter are further divided into general short-term programmes (maximum term of detention: generally, six months) and special short term programmes (maximum term of detention: four months). The maximum term of detention for the long-term programme is, as a rule, two years. Primary and middle juvenile training schools provide both long-term and short-term programmes whereas special and medical juvenile training schools offer long-term programmes only.

Treatment process

There are five components to the correctional education provided in juvenile training schools:

i. living guidance;
ii. vocational guidance;
iii. academic education;
iv. health and physical education; and
v. special activities.

In order to implement them effectively, the treatment process is divided into the orientation stage, the intermediate stage, and the pre-release stage.

During the orientation stage, an individualized treatment plan (ITP) that sets the goals, contents, and methods of correctional education is drawn up for each juvenile. In doing so, reports prepared by juvenile classification homes and family court probation officers are taken into consideration. In accordance with the ITP, educational activities are fully implemented during the intermediate stage, and educational treatment designed to facilitate reintegration into society is provided in the pre-release stage.

As a general rule, commitment to a juvenile training school lasts until the juvenile offender reaches 20 years of age, but that may be extended under certain circumstances. In practice, the majority of juveniles are released early on parole by a decision of the Regional Parole Board, in which case he or she will be placed under probation by the probation service.

Correctional Education

As stated above, there are five components to correctional education: living guidance, vocational guidance, academic education, health and physical education, and special activities.

i. Living Guidance

Living guidance is the centrepiece of correctional education. Through various methods such as one-to-one or group counselling, essay guidance, diary guidance, and social skills training it addresses—

a. problems in the juvenile's way of thinking, attitude, and behaviour that could lead to delinquency;
b. problems in the juvenile's predisposition and emotions;
c. enrichment of sentiments;
d. life habits, law-abiding and self-controlling attitudes, and relationships with others;
e. problems in the juvenile's relationship with family and friends; and
f. career selection, life planning, and social reintegration.

As part of living guidance, "Education from the Viewpoints of the Victims," which aims at deepening juveniles' understanding on the feelings and sufferings of their victims, is implemented in every juvenile training school.

ii. Vocational Guidance

Vocational guidance is offered to foster the will to work and to equip juveniles with the skills and knowledge necessary in vocational life. As part of vocational guidance, vocational training is available for welding, woodcraft, civil engineering and construction, construction machinery, agriculture, horticulture, office work, nursing services and other subjects. In 2009, 46.6% of released juveniles had obtained qualifications or licences related to their vocational guidance course, and 52.0% had obtained qualifications and licenses unrelated to their vocational guidance course.

iii. Academic Education

Academic education is provided to juveniles who have not completed compulsory education (elementary and junior high school level). Senior-high-school level education is also provided to qualified juveniles who need and wish to receive it. Supplementary education to equip juveniles with basic scholastic ability needed for daily life or to prepare them for their return to school is provided as well.

iv. Health and Physical Education

Health education provides guidance on health care and disease prevention, including guidance on a balanced diet, the harm of illicit drugs, and prevention of sexually transmitted diseases. In physical education, various sports activities are organized to enhance physical strength, concentration, patience, compliance with rules, and co-operativeness.

v. Special Activities

Special activities include voluntary activities, extramural educational activities, club activities, and recreation. Volunteer work and study tours are conducted as extramural educational activities. Volunteer visitors, chaplains, members of the Women's Association for Rehabilitation Aid, and members of BBS (Big Brothers and Sisters Movement) offer support for such activities.

Medical Care

Ordinary medical care is provided by the medical section of juvenile training schools. Juveniles in need of special medical care are treated in one of the two medical juvenile training schools.
Juveniles can also receive treatment in hospitals outside the school when necessary.

III. Probation and Parole

Both probation and parole are forms of community-based treatment of offenders and juvenile delinquents. Probation is a court-imposed disposal that places the offender or juvenile delinquent under the supervision and assistance of the probation office, while allowing them to remain in the community. As long as they abide by the conditions of probation, probationers can avoid being committed to prison or juvenile training school.

Parole is the supervised early release of offenders and juvenile delinquents who have been committed to prisons or juvenile training schools. Parole decisions are made by Regional Parole Boards, and parolees are also placed under the supervision and assistance of the probation office.

The probation office deals with the following two categories of juvenile delinquents:

- juveniles placed on probation by the Family Court (juvenile probationers);
- juveniles provisionally released from juvenile training schools on parole (juvenile parolees);

Juvenile Probationers

The Family Court, after a juvenile hearing, may place a juvenile delinquent under a protective measure, and probation is one of the options available as a protective measure. The legally prescribed period of probation for a juvenile probationer is until he or she reaches 20 years of age or for two years, whichever is longer. In 2009, the Family Court placed 26,172 juveniles on probation. This represents 17.6 % of the juveniles who were disposed of by the Family Court.

Juvenile Parolees

A juvenile committed to a juvenile training school may be provisionally released on parole by a decision of the Regional Parole Board. Juvenile parolees are placed on probation during the period of parole, which is, as a general rule, until reaching 20 years of age. In 2009, 3,867 juveniles were paroled from juvenile training schools, accounting for 99.4 % of those who were released from juvenile training schools.

Summary

This short article introduced Japanese justice systems for juvenile delinquents and correctional educational which are implemented in two different types of facilities. As I mentioned earlier, the Principles of Juvenile Law are generally respected by most Japanese people, enabling protective decisions to be made in the Family Court. Hence, it is exceptional for juvenile offenders under 20 years old to face a criminal charge or sentence. Except for rare exceptions, most juvenile delinquents are eligible for correctional education according to the decision of the Family Court.

However, in recent years, tougher measures such as lowering the age of criminal responsibility from *over 16* to *over 14* have been introduced. As in other developed countries, there is controversy in Japan over the issue of the administration of Juvenile Law. Japan has maintained quite a low rate of crime for two decades. These effective correctional educational systems may contribute to maintenance of public order and security. We should try hard to keep everyone informed about it.

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Professor Naomi Matsuura, Ph.D. (Medicine and Education), Tokyo University of Social Welfare
namatsuu@ed.tokyo-fukushi.ac.jp

‡

Professionals' views on detention of young people—Belgium

Anaëlle Van de Steen

Detention of delinquent young people promotes endless debate in society. According to Belgian law, this is a step that should be taken only as an exception. However, one has to take note of the rise in the number of young people sentenced to detention and in the number of secure places available to youth court judges. This obvious contradiction prompted the present study, which looks at a range of professional viewpoints on the issue of detention.

Developments and inconsistencies

In Belgium, at the start of the twentieth century, there was a significant shift in judicial attitudes to juvenile delinquency. The 1912 law on child protection changed the prevailing doctrine of punishment—under which youth crime had been treated basically the same as adult crime. The failure of the neo-classical penal model prompted the law-makers to set up a model of justice that was tailored to young people, especially by introducing "measures of protection, support and education"[1].

This welfare-based approach was further strengthened by the Law of 8 April 1965 on youth protection which aimed to extend the new approaches to cover young people who were not delinquent, but who were thought to be "at risk" or "in need of protection"[2]. From then on, the legal approach became entirely one of protection, the aim being "to give priority to welfare and prevention over the dictates of the judicial system"[3]. This law removed the aim of retribution, because every young person brought before the courts was seen as in need of help and not punishment, irrespective of what he or she had done to break the law.[4]

This approach only lasted a certain time, as "worrying developments in juvenile delinquency" soon led to another legal reform. Indeed, according to the claims of the legislators of the time, the 1965 law no longer offered a response to modern forms of juvenile delinquency, which had become more serious regarding the number of juvenile offences committed, the age at which delinquent behaviour started and the nature of the crimes being committed[5]. Parliament therefore wished to reintroduce "penal sanctions for young people in cases where this was the only way that society could be protected"[6].

This was a watershed in the use of restrictive measures. Even though they are still presented as being reserved for "the most serious cases", one may wonder if that is the way they are used in practice.[7]. Indeed, although, according to both the spirit of Belgian law and international conventions, youth detention should be a "last resort", it is noteworthy that the number of secure places continues to increase.

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2 CARTUYVELS Y., *et.al.*, « La justice des mineurs au prisme des sanctions », *Déviance et Société*, 2009, vol. 33, n° 3, p. 272.

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4 *Ibid.*, p. 20.

5 *Ibid.*, pp. 22 et 23.

6 Government agreement of 9 July 1993. The reasoning is set out in : *Doc. parl.*, *Ch.*, sess. 2004-2005, n° 51 1467/001, p. 4.

7 JASPART A., « Le placement en institution publique limité ? Regard critique sur la protection de la jeunesse réformée », *in* MOREAU T., *e.a.*, *La réforme de la loi du 8 avril 1965 relative à la protection de la jeunesse - premier bilan et perspectives d'avenir. Actes du colloque des 31 mai et 1er juin 2007*, Liège, Jeunesse & droit, 2008, p. 210.

However, this development runs completely counter to the approach established by law and to the findings of empirical research on the subject of the increase in juvenile delinquency[8].

This obvious conflict is the reason for the present study[9], which was undertaken among a limited number of interviewees who, by virtue of their professions, have an influence on the measures that may be put in place for juvenile delinquents—that is, two judges, two prosecutors, two barristers and two politicians.

Worsening juvenile delinquency and empirical findings

The switch towards security which this reform led to was strongly influenced by claims that juvenile delinquency was getting worse. Although the claim was questioned by various experts, it is still frequently put forward in the media, by politicians and in expressions of public opinion.

The subjects interviewed for this study held a variety of views on developments in juvenile delinquency, and these viewpoints were rarely black or white. The most generally held view was that there has not been an increase in the amount of delinquent behaviour, which, according to these professionals, has stayed fairly constant. Views were more varied on the age at which delinquent behaviour starts and the seriousness of the offences committed. Emphasis was often, but not always, put on an increase in *gratuitous violence* by a population that is becoming younger on average. One interviewee, supporting the theory that juvenile delinquency is getting worse in all its aspects, said that he believed that this worsening is apparent to everyone and is confirmed both by those working in the field and also through news reports and our day-to-day experience.

Although these opinions were quite nuanced, some stereotypes were employed that scientific research has shown to be invalid. This is not particularly surprising, given the lack of credibility accorded to such investigations. When they are asked about empirical findings, many professionals remain very cautious about them, as they are often seen as needing to be put in context, the reliability of statistics is always uncertain and research workers are often seen as being at *too great a distance from the reality on the ground*.

These remarks prompt one to re-examine the views that the interviewees held on juvenile delinquency and recent developments. In practice, they all—at least to some extent—based their views on their experience in their daily lives.

So we need to consider each person's background in so far as it helps to explain their particular view of the issues and, going further, the differences between the interviewees. In fact, some interviewees seemed aware of their biases and drew attention to the fact that their views were quite subjective because they were based on individual cases and were also affected by where they practised. Indeed, several interviewees stressed the fact that the seriousness accorded to an offence depended to a large degree on the judicial district in which it was committed.

We therefore need to put the claims of an increase in juvenile delinquency into the context of the role of each of the people concerned, the filters through which they form their impression of delinquency and the kind of information they use to come to an overall view on the issue.

Protection, punishment and detention

First we need to be clear that a belief in an increase in juvenile delinquency can influence individuals' opinions, particularly on the appropriateness of the *protective* or *repressive* models.

The jurists' opinions were categorical—the protective model was unanimously supported. These interviewees stressed the need to consider each young person as an individual and *within the framework of each case to maintain the way of thinking needed to decide on the most appropriate response, given the character and situation of the young person* and not the seriousness of the offence. They were then asked their views on the possibility of an automatic reassignment[10] in cases of the most serious offences committed by young people and for frequent re-offenders. Their rejection was immediate and decided—the jurists held forth strongly and at length on the need to consider a young person as *a human being in the course of construction* and not as an adult. They also pointed out forcefully the contradiction between an automatic reassignment and the underlying protective premiss of the law which is opposed to automatic measures and to taking the seriousness of the offence into account.

Another point of view, just as forcefully expressed, was against the protective philosophy and emphasized the need to protect society and its members as well as the need *not to give way to naïve optimism* and *to provide these young people with a structure* which *the youth court judges lack in the current state of affairs*.

[8] NAGELS C., « Le dilemme de la réforme "Onkelinx" : protéger les jeunes ou protéger la société ? Analyse socio-politique des débats parlementaires », *in* MOREAU T., *e.a.*, *op. cit.*, p. 56.

[9] This research was accomplished during a training period spent at DCI-Belgium.

[10] This means committing the young person from the youth court to an adult criminal jurisdiction. This is possible under Belgian law but not automatic; the judge has to justify his decision on the circumstances of the case.

Several questions arise over the value that the interviewees accord to the protective approach. Although the move towards punishment does not seem at its strongest among most of the sampled interviewees, this overall protective attitude is a cover for some retributive views. Several interviewees spoke particularly about the *need to give juvenile delinquents a sense of responsibility* and about *some incorrigibles….who understand nothing but imprisonment*. Even the most vehement protectionists acknowledged the usefulness in some serious cases of being able to lock up delinquent young people.

So the opinions held by the sample generally agreed with the law's essentially protective approach, but even the law has recently shown a move back towards a more punitive outlook. It is hardly surprising that on the issue of imprisonment the interviewees demonstrated opinions that were carefully nuanced and varied but often influenced by the legal debate in this area. On the understanding that imprisonment is considered *a last resort*, the interviewees put forward various criticisms and recommendations to improve its effectiveness. These can be summarized under three main headings.

The first is the most opposed to detention, considering it *basically useless* with no benefit over the other possible approaches. One interviewee argued that if the factors leading to delinquency lie essentially within the family, it is illogical to remove the young person from their setting and to work only with them. She conceded that secure centres might be the answer for *extremely dangerous young people*, but questioned their effectiveness for the future of the young person and cast doubt on whether secure centres were indeed used only in the most dangerous cases.

Other interviewees were equally unhappy at the failures of detention, but did not see the measure itself as entirely negative. Imprisonment fulfils several functions, such as the protection of the public and of *law-abiding young people*. Several saw detention as a *means of resocialisation and of making the young person take responsibility* and deplored the fact *that resources are not available to social workers to achieve their aims*. Criticism concentrated on the limited period spent in detention. Several interviewees were in favour of longer stays in detention to enable those working in the institutions to get to the root of each individual's problems.

Finally, the third position was linked to the previous one—in agreeing that detention could be productive—but took the opposite line on its length, characterizing it as a period of *standing still* which should be *as short as possible*.

There seemed therefore to be a consensus on the value of detention. If we were to generalize, we could say that the interviewees looked on it as repressive measure from a protective perspective. They seemed largely unaware of its inconsistency with the rest of the youth protection system[11] and tended to limit their criticism to practical issues which lead cause detention to fail.

There seems to have been very little questioning by most interviewees of the spirit of the law and the measures that it offers. Although they generally appeared to sign up to the protective approach, it is worth noting that several interviewees leant towards a toughening of the only "real" sanction at their disposal. This is in tune with recent legal developments. If there is one thing that emerges from this part of the study, it is the influence that political and Parliamentary debate has had on the minds of some of those interviewed.

The consequences of public debate

Thus the debates on juvenile detention that there may have been seem to have had a marked influence on individual beliefs. This emerges from the degree of convergence in the ideas that were expressed and a similarity in the vocabulary that was used. Indeed some expressions—such as *a culture of naïve optimism*, *reassignment* [to an adult court] *constituting a safety valve within the system* or the need to *fight against the feelings of delinquents that they can act with impunity and the corresponding feelings of insecurity among members of the public*—are all terms used in previous political manifestos[12]. This observation leads to consideration of the influence that public discussion has on the treatment and perception of juvenile delinquency.

The term "public discussion" encompasses all the remarks made by the media, political figures and the general public. These three groups influence each other—on the one hand conveying ideas on all kinds of topics and on the other acting in accordance with their beliefs[13].

The question of influence was certainly recognised by a fair number of those interviewed. Thus some raised the issue of politicians using various striking but unrepresentative facts in order to promote a more security-based approach. Propaganda of this sort runs directly counter to the spirit of the law on the protection of young people and some interviewees deplored this.

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[11] FRANCIS V., « La réforme de la loi du 8 avril 1965 à l'aune de quelques théories contemporaines portant sur les transformations de la pénalité dans les sociétés dites libérales avancées », *in* MOREAU T., *e.a.*, *op. cit.*, p. 101

[12] NAGELS C., *op. cit.*, p. 56.

[13] See especially S. COHEN et P. LASCOUMES

Equally, the media's sensationalist approach was unanimously criticized. The interviewees deplored the impact it has on the public's perception of protective justice as well as its tendency to reinforce public prejudices on juvenile delinquency. One view put forward was that media professionals should take responsibility for the roles they fill and for the influence that they have on the views of the public.

This criticism fits in with Kaminski's comment—

> *The media broadcast "discussion" [based on]* sensationalism—*meaning that they give priority to the extraordinary over the normal—and* moralizing—*meaning that they give priority to indignation over analysis"*[14].

The exclusion of analysis from the media has an influence on the views held by "the members of the trinity—the public, communicators and decision takers"[15].

This mutual influence was recognised and to some extent deplored by the interviewees, but they were generally silent on the consequences these debates might have on the law and on professional practice. The impact of public debate on the judicial system was not touched on, except to say that it was non-existent. Public debate could however lead to changes in the law arising from "situations that were without doubt exceptional and generated emotional knee-jerk responses as well as clichés"[16]. Youth justice is not immune to this—for example, the reintroduction of some repressive measures into the law, following the move towards punishment which is currently taking place in Belgium. The influence of stereotypes has led to a reform that panders to public opinion[17]—a result of the abdication of government and Parliament in the face of "media pressure and supposed public opinion"[18].

It is not necessary to look very hard to find an example of the triumph of reaction over analysis. Thus the issue of the continuing growth in the number of secure places brought forth a wide range of responses from the interviewees.

The first response was that there are not enough places within the IPPJs[19], either in the open or secure sections. This, minority, view arose from the difficulty of explaining to the public that some young people cannot be placed, particularly if their offence has been given wide publicity. This opinion gives credit to the theory that the three groups are held in a relationship that drifts with the tide of events.

The second opinion was that an increase in the number of secure places would be a *bad thing* and would *not help with the excess of demand for these places*. The arguments put forward depended on how effective imprisonment was thought to be by the interviewee. Some thought that the money should be devoted to an improvement in the monitoring of young people by the institution they are assigned to. Others wanted the budget to be allocated to putting restorative and educational measures in place. Some emphasized the need to invest in prevention, to stop young people in their *downward spiral into delinquency*, reducing the number of juvenile delinquents placed and, in consequence, the number of secure places required. Finally one interviewee wanted to see a review of all the legal measures in order to determine their effectiveness and to put any necessary changes in place. She explained the excess of demand for secure places by saying that imprisonment was used as a "default solution" when the measure that the magistrate would have preferred was not available.

With the benefit of hindsight, we might ask whether the wide range of replies shows that responses tend to be personal and rather indicative of the cast of mind and profession of each interviewee. Two broad perspectives did indeed emerge, but no two individuals' arguments were identical and the recommendations were clearly grounded in their personal experience. Might this spontaneity be a result of the relative silence of Parliamentarians? Legal guidelines recommend a reduction in the use of imprisonment for young delinquents—although some argue this demonstrates a degree of hypocrisy on the part of Parliamentarians who have made detention easier for youth court judges to impose[20]—while, in parallel, the three public groups in society are advocating a more repressive approach. In the light of the influence that these different viewpoints seem to have on those working in youth justice, it is easy to understand why the ideological position adopted would not be as straightforward as on the topic of the benefits of the protective approach as compared to a regime of punishment.

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14 KAMINSKI D., « Médias et réaction sociale à la délinquance », *in* MOREAU T., *e.a.*, *op. cit.*, p. 65.

15 *Ibid.*, p. 69.

16 FIERENS J., « Caïn, Abel, Etéocle, Polynice et les autres. Aspects historico-mythiques de la réforme de la loi du 8 avril 1965 », *in* MOREAU T., *e.a.*, *op. cit.*, p. 32

17 *Ibid.*, p. 31

18 *Ibid.*, p. 13

19 *Institutions Publiques de Protection de la Jeunesse*—Public Institutions for the Protection of Young People. These institutions are required by the judge to take the young person and work with him or her on their education and reintroduction to society.

20 JASPART A., *op. cit.*, p. 219.

Education, dialogue and the comfort of ideology

The general conclusion of the professionals was that it is necessary to educate society on the advantages of the protective system compared to a regime of punishment. The "pupils" put forward for this varied, but the main target seemed to be the "members of the trinity".

As far as the broad public is concerned, several interviewees thought that educational effort was needed over the long-term and should start at as early an age as possible. Moreover, one of the professionals thought that a victim who believed in the protective approach would find it easier to get involved in the restorative process, and that would tend to reduce the need for other approaches. Equally, some interviewees thought that it would be advisable to encourage the media to reconsider their line on juvenile detention. Interviewees were divided on the role that should be accorded to these "communicators" in the educational process—some seeing them as "pupils", others as "teachers" who should help educate the wider public. But some thought it would be foolish to try to involve the media in this way, because the media need a sensational approach in order to get any benefit. Political figures were rarely cast in the role of pupil, but several interviewees thought that decision takers should be involved in the fight against stereotypes, especially to avoid public debate having the sole aim of pandering to public opinion. Finally, it should be noted that several interviewees wanted to involve the judicial system itself in the educational process, even though others were against it, believing that *the judicial system does not need to justify itself* or to *convince or educate the public about a system that was chosen by politicians*.

The interviewees also identified a second group of people with whom it would be sensible to deal—those working in the judicial system and those working in the field. Two important—and apparently connected—problems came out of the discussions. The first was the imperfect knowledge that judges, prosecutors and lawyers seem to have about the measures the law provides and, especially, the range of services available. Some of those interviewed thought that a big information campaign needed to be launched for those in the justice system, to make them aware of what was available to them. The campaign would also cover how the educational and restorative services go about their work; and these services should regularly bring themselves to the attention of those in youth justice.

The lack of communication between the judicial system and social workers seems to cause problems—which came out clearly in some divergent responses given during the interviews. Indeed, there were contradictions which tended to show that politicians and those in the justice system have only a partial understanding of the services that provide alternatives to detention. Going further, is it possible that there is a lack of communication within the judicial system itself? Certainly, some interviewees contradicted themselves in certain areas, such as the professional approaches in other judicial districts or the benefits of particular legal measures.

To summarise, education seems to be the key issue for the interviewees. They were quick to point to "pupils" and some "teachers", although they had little to suggest on how the education should actually be carried out. The range of responses and the contradictions that emerged brought into sharp focus the fragmented view that each professional has of the working of the system and the work of the other participants. This relative ignorance, combined with a lack of interest on the part of some participants in improving communication, means that such a development would be in doubt if it relied solely on those within the system. Some solutions—more theoretical than practical—were proposed in the form of grand designs that varied from interviewee to interviewee. The professionals were almost unanimous in declining that responsibility for themselves, preferring to delegate to someone *more competent for that role*. So the way forward seems blocked, as the issue arises whether there is anyone willing to pick up the gauntlet of reform and, if so, whether the other players would be willing to recognize his or her competence to undertake it.

Anaëlle Van de Steen is a criminologist and an assistant researcher in the Belgian National Institute of Forensic Science and Criminology—Department of Criminology (INCC)

This article is based on the author's report of her research. The full report is available in French from anaelle.vds@gmail.com

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Detention of Juveniles in Pakistan

Abdullah Khoso

The Juvenile Justice System Ordinance (JJSO)

In July 2010, the Juvenile Justice System Ordinance (JJSO) 2000 completed its first ten years. During this ten year journey it has gradually influenced the justice system in Pakistan. It has contributed to shaping the perceptions of people towards child offenders, leading to an acceptance that children need protection and a chance to be rehabilitated and reintegrated into society.

The JJSO has certainly faced challenges. The children of the Federally Administered Tribal Areas (FATA), for example, have not been liberated from the tyrannical Frontier Crimes Regulation (FCR) despite promises made to them by the President and Prime Minister. Moreover, in December 2004 the Lahore High Court deemed the JJSO 'unconstitutional' and abrogated it. Although in February 2005—following an appeal by the Federal Government and SPARC—the Supreme Court of Pakistan (SCP) gave a stay order, that Court has yet to decide the final fate of the JJSO. This delay has created a great deal of uncertainty in the relevant institutions, including the police and the judiciary.

Despite the uncertainty, the fact remains that the JJSO has brought a shift in our justice system—a system that was focused mainly on adult criminals and was grounded in the concept of detention rather than rehabilitation. The JJSO introduced different procedures to deal with a person below 18 years of age and their reintegration into society. In addition to increasing the age of the 'child' under the law from 15 to 18[1] years and prohibiting the death sentence for children, the JJSO extends a lenient approach towards child offenders before and after the conclusion of a trial or inquiry, keeping in view the principle of 'detention as a last resort' enshrined in the UN Convention on the Rights of the Child.

All over the country, during arrest, trial and detention, children faced serious human and child rights violations. For weeks or months they were illegally kept at police stations and in the 'personal prisons' of police officials and other law enforcement agencies where they were brutally tortured to extort confessions or bribes. The courts, without taking into account the ages of the children, would remand them into police custody. More seriously, some were tried by the Anti-Terrorism Courts. During 2010, even girl children remained subject to the terrorism law, which overrides the JJSO.

Unfortunately, the 2009 National Judicial Policy offered no improvement in the lives of the children in conflict with the law. The Reclamation and Probation Departments (RPD) gained some scant attention under the Policy but, by the end of 2010, they had not produced the desired results. One of the major reasons is that the JJSO has not been made part of the syllabus for judicial and police academies and schools.

Khyber Pakhtunkhwa and Sindh Provinces have progressed on many fronts of juvenile justice and serious attention has been given to the violation of juvenile offenders' rights. A major achievement of 2010 was the passing of the Khyber Pakhtunkhwa Child Protection and Welfare Act, which provides for special treatment for children who come into conflict with the law.

However, a review of newspaper reports and fact finding by SPARC shows that the behaviour of the police and law enforcement agencies towards children has not been satisfactory.

Juvenile Population in Pakistani Prisons

End Year	Under Trial	Convicted	Total
2002	4513	936	4979
2003	3049	537	3060
2004	2689	439	2539
2005	2682	363	2368
2006	2677	231	2266
2007	2316	205	2018
2008	2043	153	1788
2009	1225	132	1357
2010	1074	151	1225

Source: Population statements from IG Prisons Pakistan

[1] In the case of Sindh the age was increased from 16 to 18 years, in the case of Punjab from 15 to 18 years, whereas for the rest of the country, it was for the first time that the law had set an age for the 'child'.

Young people in detention

At the end of 2002, two years after the promulgation of the JJSO, there were 4,979 children in prison; at the end of 2010, the numbers had come down to 1,225. However, increasing child militancy in the Tribal Areas and the Government's military operation against militants have increased the number of juveniles in detention centres—mainly in Khyber Pakhtunkhwa, FATA and Balochistan—although the numbers are not reported in the jail population statements. Nor do the figures include children detained in judicial lock-ups, military detention centres, certified schools or the Karachi Remand Home.

On 1st June 2010, the Chief Justice of Pakistan (CJ) took *suo moto* notice of reports of 1300 cases of imprisoned juveniles in Pakistan.[2] He called for details of the juvenile offenders' cases to be put before him on July 15th 2010, However, it is not clear whether that information has ever been submitted to the Chief Justice.

Current conditions for juveniles in prison

During extensive visits to prisons all over the country by SPARC representatives and Child Rights Committee members, it was clear that the living conditions of juveniles and the behaviour of prison officials towards them were inappropriate. Apart from the issue in all prisons of the segregation of juveniles from adults, there were accounts of serious human rights violations against juvenile offenders in several jails in Pakistan.

On 31st December 2010, 16 year old Abdul Razaak, a kidney patient, died in Central Jail Peshawar due to the lack of medical treatment[3]. The jail's juvenile ward is not only overcrowded and lacking in proper health facilities, it is situated at the far end of the jail. A juvenile who enters the jail has to pass by all the barracks for adult prisoners. This exposes juvenile offenders to risks of abuse and exploitation. Most of the Taliban leaders and criminals involved in heinous offences from the FATA region were detained in the same jail and had easy access to the juvenile ward in the jail.

On March 11th 2010, at the request of the deceased boy's mother, a divisional bench of the Sindh High Court instigated an independent inquiry into the death of Mohsin Baloch, a 15 year old juvenile offender[4]. Mohsin had been arrested three times in different cases. Following his first conviction on February 11th 2009 he was sent to the YOIS Karachi. However, after his third conviction on November 7th 2009, he was sent to the Karachi adult prison where he was found hanging from the ceiling of the mosque[5]. In the same month, a Hyderabad Court took notice of the torture of 17 year old Nasir Rajput at the Youthful Offenders' Industrial School (YOIS) Hyderabad and ordered criminal proceedings to be taken against the two prison officials who had broken his leg and hand.[6]

A 16 year old boy was sodomized and tortured by adult prisoners in the Central Jail Khairpur. It took a very long time for his father to get a case under way against the adult prisoners and staff members involved[7]. During a visit to the Judicial Lock-up in Gambat District Khairpur, SPARC learnt about a 14 year old boy, Dawood Khan, detained along with adult prisoners for three months without being declared a juvenile by the court.

In prisons all over Punjab, the attitude of the prison officials towards juveniles is of serious concern. They are not treated as different from the adult prisoners and are kept in the middle or far end of jails where adult prisoners can easily access and communicate with them.

Young girls and women prisoners are also bound to suffer the same agony in prisons which expose them to risks of abuse and exploitation. When SPARC's team visited Haripur Jail, there were six female juveniles offenders and six children with women prisoners. All the prisoners—including males and females of all ages—had to pass through the same gate. The Women's Ward was next to the main gate where six female juveniles were detained.

It has been widely presumed that riots in Sindh's prisons take place over the juvenile offenders available to adult prisoners. A local Sindhi newspaper reported that, in one prison, two groups of inmates fought over a boy[8].

In July 2009, because of violations of juveniles' rights by adult prisoners, the Inspector General (IG) Prisons Sindh had the juveniles transferred from a number of jails across Sindh to the Juvenile Ward at Central Prison Sukkur I. During a visit to the Jail, a Justice of the Sindh High Court

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2. *The Nation 2010* , 'CJ takes suo moto notice', 6 July; retrieved at http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Regional/Islamabad/06-Jul-2010/CJ-takes-suo-moto-notice

3. *News International 2011* , ' Ailing son of militant dies in jail' , January 01 viewed http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=23330&Cat=7&dt=1/1/2011.

4. *Daily Times 2010* , 'SHC orders inquiry into death of juvenile UTP' , March 12

5. *The Nation 2010* , 'Superintendent submits comments before SHC' February 24

6. *Jang 2010*,'Violence against a 17 year old prisoner' , March 2

7. *Jang 2010* , FIR lodged against sodomy with a juvenile inmate', March 12

8. *Daily Kawish* 2010 , ' In Sukkur, two groups of prisoners fought over a pretty boy, one in critical condition', May 30

ordered the prison authorities to send all the juveniles back to their original place of detention. Upon returning to their original prisons, the juveniles found that their Juvenile Wards had been dissolved and the jail authorities lodged them with hardened adult criminals.[9]

Effect of anti-terrorism operations

According to Human Rights Watch (HRW)[10], the military operation in Swat and the Tribal Areas of Khyber Pakhtunkhwa Province has resulted in serious human rights violations. Not merely in the conflict zones of these areas but all over the country, hundreds of people have been detained in a nationwide crackdown on militants. HRW says that the detainees are kept mainly in two military facilities which are not open to independent monitoring. Amnesty International confirms the arrest of 900 people by the military[11]. It is feared that many among them are children.

SPARC was recently asked informally to provide psychological counselling to about 300 children held in military detention camps at different locations in Khyber Pakhtunkhwa. At the same time it emerged that—as the detention camps were still under the control of the military—it was not possible for SPARC or other NGOs to access them. The children had been arrested under terrorism charges and placed in farms and hotels which were designated as sub jails. It is not known whether they will be tried by any court. Children may be detained as the law provides on behalf of a competent court, but these children were detained 'outside the prison system, and without the knowledge of the judicial authorities'.[12]

In Balochistan in 2006, the juvenile population in detention centres almost doubled (from 68 to 121), a major reason being the law enforcement agencies' crack down on the tribal people of Balochistan which resulted in a number of arrests of children. Then the juvenile population gradually decreased and—at the end of 2010—it was recorded as 49. However, it is rumoured that there are still many children under 18 years of age kept in detention by the Pakistan secret services.

Development of institutions for young people

In early December 2010, the Sindh Prisons Department established a separate jail for the children of Larkana region, adjacent to the Women's Jail. The IG Prisons has promised SPARC that the jail will be designated as the YOIS Larkana and that juvenile numbers will be shown separately in statistical returns, as SPARC has urged.

The Home Department Khyber Pakhtunkhwa was also willing to designate Bannu Jail as a Borstal Institute but it lacked legal authority. Moreover, the future administration of the Institute is in dispute between the Home Department and civilian groups. Although the IG Prisons was prepared to run the Institute, civilian groups objected believing that it should not be run by people in uniform.

With the establishment of YOIS Larkana, Pakistan will have six so-called juvenile rehabilitation centres[13]. In 2010, 2380 juveniles in total were held in these centres. However, they are being run under Prison Rules. Only one, Certified School Sahiwal—established under the Punjab Youthful Offenders Ordinance 1983—is under the administrative control of the Reclamation and Probation Department (RPD) and the Department does not have legal authority to operate it[14].

The Remand Home established under the Sindh Children Act 1955 comes under the administrative control of the RPD Sindh and received 112 children in 2010, but is not considered a rehabilitation centre because it only receives children on remand or under trial. Moreover, like the Certified School Sahiwal, the Remand Home's population is not included in the prison statements issued by the IG Prisons Offices.

Rehabilitation

The JJSO offers four options to save a juvenile from incarceration or detention. The first two options are offered before the conclusion of the trial—release on bail, or release into the custody of a probation officer or suitable person. The other two options are offered at the conclusion of the trial or inquiry (if the case is proved against the child)—release the child on probation, or send the child to a Borstal Institute to be 'given education and training for mental, moral and psychological development'.[15] From this it seems that the JJSO does not allow for the punishment or sentencing of a child; rather, it provides for the child's care and protection and for assistance in restoring the child to a normal life.

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9. *Dawn* 2010 , 'Juvenile Prisoners at risk of abuse', March 26

10. *Human Rights Watch 2010,* Pakistan: Military Undermines Government on Human Rights, *http://www.hrw.org/en/news/2010/01/20/pakistan-military-undermines-government-human-rights*

11. Amnesty International 2010, *The State of the World's Human Rights* (ISBN: 978-0-86210-455-9), Annual Report, Amnesty International, http://thereport.amnesty.org/sites/default/files/AIR2010_AZ_EN.pdf#page=197

12. Dawn 2010, 'Ten years of the JJSO', July 19

13 The other five (with 2010 populations in brackets) are—YOIS Karachi (963), YOIS Hyderabad (273), Borstal Institute & Juvenile Jail Faisalabad (756), BI&JJ Bahawalpur (385) and Certified School Sahiwal (Punjab) (3)

14 because the Punjab Destitute and Neglected Children Act 2004 repealed the Punjab Youthful Offenders Ordinance 1983

15. Section 2(a) Juvenile Justice System Ordinance 2000

However, at present in the administration of juvenile justice, rehabilitation, reintegration and psychological counselling are completely ignored. Throughout the country, not a single exemplary Borstal Institute has been functioning for the rehabilitation of child offenders. Those that are functioning are operated by people in uniform under the rules prescribed in the Jail Manual (1894).

During detention in juvenile wards or jails, the child offender is not offered psychological counselling and his/ her anti-social sentiments are not addressed. During visits to juvenile wards, SPARC has met a number of children who have become repeat offenders. Furthermore, a street child without parents or even one with parents who are very poor becomes the subject of continual arrests even if that child has committed only one offence in his life.

Recidivism was acknowledged by and of concern to several juvenile detention centre officials who recognised that there are no services aiming to change the anti-social feelings of the children.

Conclusion

In 2010, the Pakistan National Assembly Sub-Committee of the Standing Committee on Human Rights held two meetings:

> *to examine the jail manual, make recommendations for jail reforms, improvement of conditions of prisons and prisoners.*[16]

The Sub-Committee received proposals from a wide range of government bodies and NGOs. SPARC's recommendations stressed the need to include the provisions of the JJSO and its rules in the Committee's final recommendations. These have yet to be produced.

So, while there is much to celebrate over the good intentions underlying the JJSO, the high principles it has established and over the impact it has had on public attitudes since 2000, it is clear that the priority for the next ten years at least must be to make sure that conditions for young people do in reality meet the standards set by the JJSO and the relevant international conventions. This is a task in which SPARC is most willing to play a leading role.

Abdullah Khoso is a human rights activist working with SPARC as National Programme Manager, Juvenile Justice and Child Labour. He has post-graduate degrees from Islamabad, Denmark and the University of London. He recently gave a presentation on Children of Incarcerated Parents on the Day of General Discussion organized by the Office of the High Commissioner of Human Rights in Geneva.

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16. Letter No. F. 12 (1)/2010-Com-II; dated April 22, 2010.

The detention of juveniles—Macedonian legislation and practice

Assistant Professor Dra Aleksandra Deanoska–Trendafilova

Juvenile justice legislation in Macedonia underwent a significant reform in 2007 when the new Law on Juvenile Justice was adopted by the Macedonian Parliament. With this Act, the restorative justice system was brought into being for the first time. Until then, the elements of juvenile delinquency—the liability, the offences, the measures and the sanctions—had been regulated within the Criminal Code. Since 2007, this new Law on juvenile justice has been amended several times. Because some institutions were not ready, the application of this Law finally started in the summer of 2009. Some provisions will be applied from January 2012.

The issue of detention of a juvenile is one of the most sensitive covered by this law and the criminal law in general. Deprivation of liberty in the pre-trial phase and the sentencing of the juvenile to detention have been subject to the new Law since 5 November, 2010.

In general, a younger juvenile (age 14-16) guilty of a criminal offence may be sentenced only to educational measures. An older juvenile (age 16-18) may be sentenced to educational measures and, exceptionally, may be sentenced to alternative measures or juvenile imprisonment.

The criminal procedure against a juvenile is urgent i.e. has to be completed as soon as possible. The Law stipulates that it may take no more than one year, or up to one year and six months where a serious crime has been committed—these are criminal offences for which the sentence prescribed in the Criminal Code of Macedonia is above four years of imprisonment. For lesser violations (misdemeanours), the procedure against a juvenile must be ended within 6 months at the latest.

The public prosecutor is the only person authorized to bring charges against juveniles. The public is always excluded from the criminal trials of juveniles.[1]

During the preparatory phase of the proceedings, the juvenile judge can decide upon:

- temporary placement of the juvenile in an educational or similar institution;
- foster care or other family care;
- surveillance of the juvenile by the Centre for Social Affairs, if it is necessary to remove the juvenile from his or her home environment or to provide support, protection or accommodation.[2]

A juvenile can be detained by the police in several situations—for example if he/she is caught committing an offence or if his/her identity cannot be determined. The police must inform the public prosecutor in charge, the juvenile judge or the investigative judge, the parents, the attorney-at-law (for protection of the juvenile's rights) and the Centre for Social Affairs about the detention. The detained juvenile must be brought before a juvenile judge immediately and no later than 12 hours after arrest. If the juvenile judge finds no grounds for the detention of the juvenile, he/she will release the juvenile and at the same time will assess whether the detention of the juvenile was legal. Alternatively, if there is a proposal from the public prosecutor for pre-trial detention, the juvenile judge will decide to allow detention until the trial or, if such a proposal does not come from the public prosecutor, will decide on a short detention of up to 24 hours to allow the public prosecutor time to submit such a proposal. If, within the 24 hours, the public prosecutor does not propose pre-trial detention, the juvenile is released.[3] Prior to the decision on detention of the juvenile (pre-trial or 24hours), the opinion of the Centre for Social Affairs must be obtained.

[1] Law on Juvenile Justice, art.84, para 2.

[2] Ibid. art. 108, para 1.

[3] Law on amendments of the Law on juvenile justice, No. 145/2010, art. 56 and Law on juvenile justice, art. 109.

Grounds for detention

The grounds for pre-trial detention are stipulated in the Law on criminal procedure.[4] as follows:

(1) If there are grounds for suspicion that a person has committed a crime, pre-trial detention for the person may be determined:

1) if he hides[5], if his identity is unknown or if there are other circumstances suggesting the likelihood of escape;
2) if there is a justified fear that he will destroy the traces of the crime or if certain circumstances suggest that he will affect the investigation by interfering with witnesses, collaborators or the instigators;
3) if certain circumstances justify the fear that he will commit further crimes or he will complete the attempted crime.

(2) Pre-trial custody is compulsory when there are grounds for believing that the person has committed a criminal act which carries life imprisonment.

(3) In case of item 1.1 of this Article, pre-trial detention due to not knowing the identity of the person lasts until his identity is revealed. In case of item 1.2 of this Article, pre-trial detention will be ended as soon as the evidence for the pre-trial detention is determined.

The pre-trial detention of a juvenile may last up to 30 days. Based on justified reasons it may be extended for a further 60 days.[6] There is a guaranteed right of appeal against all the decisions mentioned previously. The juvenile judge (or the investigative judge if he/she issued the decision on detention) must visit the detained juvenile at least once during the 24 hour detention and at least every ten days during the pre-trial detention.[7]

When in detention, the juvenile must be placed in premises separate from adults.

Statistics

Evidence shows that juvenile judges do not make decisions for pre-trial detention in a large number of cases.

The following figures give a precise picture on the juvenile delinquency trends with emphasis on the period 2008-2010 (including the detention figures).

The juvenile delinquency trend in the Republic of Macedonia is falling.

An analysis made of the figures published by the State statistical office of Republic of Macedonia for the period 1999-2008 shows that while the total number of juveniles reported as suspected perpetrators of crimes in 1999 was 1999[8], in 2008 it fell to 1355 (of whom 46 were female).

Most of the crimes were perpetrated against property (1768 in 1999 and 1023 in 2008).

In second place were crimes against life and the person (81 in 1999, 84 in 2008)—the numbers accused were 1190 in 1999 and 981 in 2008; The numbers convicted were 936 in 1999 and 715 in 2008.

In 2008, there were 18 cases of pre-trial detention—1 for up to 3 days, 9 from 15 days to 1 month, 7 from 1-2 months and 1 case longer than 3 months. [9]

In 2009 the number of juveniles reported was 1519 (of whom 60 were female), 1030 juveniles were accused and 748 were convicted.

In 2009 there were 22 cases of pre-trial detention — 1 for up to 3 days, 4 for 3 to 15 days, 12 from 15 days to 1 month, 4 from 1-2 months and 1 case from 2 to 3 months. [10]

In 2010, 1244 juveniles (of 26 are female) were reported as suspected perpetrators of crimes, 750 were accused and 547 convicted. Pre-trial detention was used in 13 cases—1 case from 3 to 15 days, 6 cases from 15 days to 1 month, 3 cases from 1-2 months and 3 cases longer than 3 months.[11]

In practice and according to expert opinion, pre-trial detention in the Republic of Macedonia has been an issue that has raised no serious problems. Juvenile detention was regulated in a similar way before the adoption of the new Law when it was also exceptional. A juvenile is brought before a judge in a timely manner in order to decide on the legality of and the necessity for the deprivation of liberty and for the protection of the young person's rights.

One weakness is the lack of institutional capacity, i.e. the buildings and premises cannot meet demand, but every effort is made to ensure that juveniles in detention are separated from the adults.

Similarly, the new concept of restorative justice—introduced with the new Law on juvenile justice—has not yet been implemented successfully because of a lack provision of resources, particularly in the Centres of Social Affairs because of financial problems.

Discussions on new amendments to the Law have started, so reform is still very much ongoing. The epilogue will be when amendments are prepared and adopted.

Ass. Prof. Dr Aleksandra Deanoska–Trendafilova
Faculty of Law "Iustinianus Primus" State University "SS. Cyril and Methodius"—Skopje, Macedonia

[4] Law on criminal procedure, No. 15/2005, art. 199.

[5] In this case, the police inform the judge that the juvenile could not be found or a warrant for arrest has been previously issued.

[6] Law on juvenile justice, No. 87/07 art. 110.

[7] Ibid, art. 112.

[8] This figure of 1999 is correct—it is coincidentally the same as the year to which it applies—Editor.

[9] State Statistical Office, Statistical Review: Population and Social Statistics, Skopje, 2009

[10] State Statistical Office, Statistical Review: Population and Social Statistics, Skopje, 2010

[11] State Statistical Office, Statistical Review: Population and Social Statistics, Skopje, 2011

Effects of incarceration of child-rearing parents in Bangladesh—a brief look at some aspects

Justice M. Imman Ali

Introduction

The situation in the prisons of Bangladesh is overcrowded beyond all proportions. The total capacity is around 27,000 prisoners, but there are currently 70,000 prisoners (2570 are female) in the different prisons across the country including those on remand (about 66% of the total). The vast majority of female prisoners are in custody pending trial. In May 2011 a study was undertaken on 900 female prisoners in Dhaka Central Jail and Kashimpur Central Jail-III (which is exclusively for female prisoners) of whom only 211 were convicted and the remaining were on remand. As on 17 July 2011, along with the 2,570 female prisoners there were 389 babies inside the prisons; some of the women have more than one child residing with them. The babies are in the prisons because their parents are not able to make any alternative arrangement for them outside the prison or because the babies are too young or breastfeeding and cannot be kept with other relatives. Some of the mothers start as petty offenders due to poverty-generated need and become habitual offenders. They may get bail due the existence of young children who need care, but they still come in and go out of prison on a regular basis and their children similarly frequent the prisons with their mothers.

Sentenced mothers

Female prisoners serving long term sentences bring their babies into the prisons only by the order of the court and can keep them there up to the age of four years or, with the permission of the superintendent of the prison, up to the age of six years. If a female prisoner fails to bring her child with her on first entry into the prison, she can apply to the court subsequently through the prison authority to bring the baby inside the prison. Similarly orders need to be passed from the court for the release of those babies after attaining the age of four years or, at the discretion of the superintendent, six years. If any mother is interested to transfer her baby to any approved institute, for example those run by the social welfare department, she can apply to the District Magistrate to take the child into the care of the authority.

Provision for the children according to the Jail Code.

It is the responsibility of the jail authorities to care for the children who reside on their premises, including provision for their food and clothing. Mothers who have children with them are also entitled to nutritious food and certain other privileges. The children are kept in a separate place when their mothers are engaged in duties allocated to them as convicted prisoners. In ten of the central jails the government has set up child development centres, where they are kept during the daytime. Dhaka Central Jail has a full-fledged Day-Care Centre, where children are kept while their mothers take part in vocational training. The District jails, of which there are 55, do not have any separate facilities for children. They are kept in the areas designated for female prisoners. Sometimes one or two female prisoners are assigned duty to take care of all the children during the day.

The effect of prison on children

The downside of having children in prisons is that their psychological, mental and intellectual development is deficient, inasmuch as they do not see the outside world and have no idea about nature and real-life surroundings. There is no scope for them to grow up 'normally' as other children in a free society amongst friends and relatives. They do not have the benefit of their father's presence and his guidance. There is also no scope for any type of education for the children inside the prisons. From the beginning of their lives they are exposed to confinement with women who are convicted or accused of criminal offences. Just like the prisoners, the children have no freedom of movement or association or interaction with others. The likelihood is that they may become misfits in society, e.g. after release,

they would not realise what to do if they came across a cat or a dog. The children may also leave prison with a stigma attached to them for the rest of their lives. This would have an immense negative psychological effect when they enter mainstream education.

Is there an alternative?

Various alternatives can be considered for 'child-rearing' women who are accused of criminal offences:

- Remanding them into custody pending trial should be the **exception** and not the norm.
- Counselling should be offered about the possibility of their being separated from their children and/or the negative and detrimental effects of the child residing inside the prison.

Where incarceration is inevitable—

- there should be an alternative system of open-type prisons for women with suckling babies or with very young children
- the State should ensure better placement of these children within immediate, extended or other families or
- facilities should be provided for the care of children in a separate compound away from the prison where educational and other everyday facilities may be provided.
- a change in the sentencing system could be introduced whereby the mother's sentence is suspended until after the baby is weaned and is old enough to be left at home
- periodic imprisonment may be considered whereby the mother is kept in confinement only at weekends or a set number of hours during the day. In this way the child can be kept 'free' with maximum contact with the mother. There can be many other permutations of this.
- a sentence of community service could be used as an alternative to custody.

The best interests of the child must be a primary consideration and first preference should always be to avoid the incarceration of children.

Serious Considerations

Laws of the State parties must indicate that the above matters have been considered and adequate measures taken to avoid confinement of children in prisons. More broadly, the sentencing of any convicted person, including male members of the family should take into account the interests of children who would be deprived in more ways than one. In the absence of the father/mother the children not only lose the bread-winner, but also lose the love, affection, guidance and security expected from the parent. This is especially so in a patriarchal society where the father is the dominant figure. The devastating effect on the children's safety, food security, education and general upbringing must be taken into account when passing sentence of imprisonment upon the parent of a child. In the absence of the father, in particular, the male children tend to become unruly and uncontrollable. The children's education suffers most. It must be remembered that in most developing countries, including Bangladesh, there is no social welfare system in place to support the family in the absence of the bread-winner. A sudden financial crisis leads to some families becoming destitute and in many cases engenders criminogenic behaviour in the remaining family members.

Laws/guidelines need to be in place to ensure that sentencers make provisions for the general well-being of children before sentencing either parent to spend time in prison. No matter how bad a criminal the father or mother might be, the children are innocent and need protection. Unless they are properly looked-after and brought up in a civil life-style, they may themselves take up criminal activities and are likely to end up as a menace to themselves and society.

Justice M Imman Ali*
Appellate Division
Supreme Court of Bangladesh

Babies and children living with women prisoners in Pakistan

Abdullah Khoso

Introduction

In Pakistan the rights of babies and children living with women prisoners/mothers in prisons are ignored. From the time of arrest till the release of women prisoners their children's best interests are not taken into consideration and there is neither policy nor law nor minimum standards on best practices. There are no worthwhile analyses on the rights of these children or records or research on the impact on them of growing up in prison.

Investigation

In July and August 2011 SPARC gathered information on the situation of babies and children in prison with their mothers by interviewing 15 women and their 10 children, four prison officials in four jails[1] and officials from the Probation & Reclamation Departments.

In our preparatory reading we found that:

1. Pakistan Prison Rules[2], 1978, do not cover the rights of such children.
2. Article 4 of the Constitution of Pakistan[3][4] should cover the children but in practice does not.
3. Article 25 of the Constitution allows the National Assembly and the Senate to make special provisions for the protection of women and children. However, laws are not enacted that could deal with the protection, survival and development issues of children and pregnant women in our prisons.
4. In 2004 the Committee on the Rights of the Child (CRC) saw "children living with mothers in prisons as being among the most vulnerable children". Yet in:
   - 2006 Pakistan's National Plan of Action has no account of these children; and while in
   - 2008 the UN Human Rights Council's (HRC) Periodic Review of Pakistan stated that children with women prisoners 'are devoid of medical facilities and living in deplorable conditions', the
   - 2009 Concluding Observations and Recommendations (CO&R) made by the CRC in its Periodic Report on Pakistan completely misses the plight of children with women prisoners.

How many children are affected?

The table below shows a total of 158 children in the six months up until June 30th 2011—a fall in the figure of 234 reported by the Society for the Protection of the Rights of the Child in December 2010[5]. However, there is often a difference (except for Sindh Province) between the figures prepared by the IG Prisons and a jail's population statement.

Numbers of women prisoners and numbers of children with women prisoners

	Province	Women Prisoners	30 June 2011 Children with Women Prisoners
1	Punjab	860	80
2	Sindh	100	21
3	Khyber Pakhtunkhwa	156	44
4	Balochistan	27	13
	Total	1143	158

Source: Population Statements from IG Prisons in Pakistan

[1] Women Ward in Central Jail Peshawar, Women Prisoners Jail in Karachi, Women Ward in Central Jail Lahore and Women Ward in District Jail Quetta.

[2] Also known as Jail Manual

[3] http://www.pakistani.org/pakistan/constitution/part1.html. Last retrieved on August 18, 2011

[4] Article 4 does not cover the children of Federally Administrated Tribal Areas (FATA) in the North of Pakistan where the Frontier Crimes Regulation (1901) applies.

[5] Khoso, Abdullah (2011). The JJSO: Caught in the Quagmire of the Non-Implementation. Chapter Two in The State of Pakistan's Children. SPARC- Islamabad.

What are the ages of the children?

Allowing children to live in prison with their mothers or separating them from their mothers is problematic both ways.

Those children born in prisons are brought up there and do not see the outside world; their ages range from birth to six years and in some cases up to ten years. Although, according to Rule 326 of the Prison Rules, a woman prisoner in prisons of Khyber Pakhtunkywa, Punjab and Sindh can keep a child with her up to six years of age; beyond six years, she is not allowed to do so.[1] The prison officials in Balochistan told SPARC that the Government of Balochistan has not raised the age from three to six years but a child may stay until 10 years with the understanding of the prison Superintendent and the permission of the court concerned, especially for children who have no one to take care of them outside the prison.

According to Rule 327 of the Prison Rules when a child reaches six years or his/her mother has died, the Superintendent has to inform the District & Sessions Judge and the home and relatives of the child. The Judge will ask the child's relatives to take custody of the child; in other cases the Judge will seek help from organizations and institutions that are taking care of such children.[2]

Taking children into and out of prison

It is the Court that decides entry of the child into prison along with his/her mother. On her first appearance before the Court, she may request the Court to grant permission to keep the child with her.

A later written request to the Superintendent of the prison, who will then consult the court, is possible under Rule 326 of the Prison Rules.

Some women avoid taking children into prison because of the negative impacts on the child especially when there are relatives outside to look after the child. In certain less serious cases, women who do not initially bring their children inside the prisons subsequently do so if they believe the presence of children will help them to get bail. There is no system to check whether the child belongs to the woman or not.

Prison authorities maintain a separate record of children going into and leaving prison and for security reasons physically search them.

Living conditions, services and chance of abuses

Except for four women prisons[3], women prisoners' wards are designed for males. Women, children with women prisoners, juvenile offenders and male prisoners enter by the same main-gate of the prison. But the four women prisons are managed by administration of which majority is men.

Prisoner numbers exceed the authorized capacity of prisons. In these circumstances, where even the prisoners can't get their due rights, the babies/children with mothers face the same problems or perhaps more worse because of their age and social status.

The most common things we noticed in prisons and reported to us by women are:

- that the children face loneliness, live in isolation and have limited access to the outside world;
- there are only very small areas (corridors) for walking and playing;
- prisons are not clean places (unhygienic); skin diseases (eg scabies) are common among women and children;
- the quality of food is not good;
- health services are not available—eg little or no treatment for HIV and other sexually transmitted diseases[4].

Government does admit that children with women prisoners are languishing. The Interior Minister stated in the Senate, "they are languishing in different jails of the country just because their mothers are undergoing various prison terms"[5].

The Prisoners' Aid Society claims that women inside prisons were raped by prison authorities; many among them gave births to illegitimate children whose mental state was not stable[6]. In 2002, the 'Country Report' on Pakistan issued by the US State Department supported this claim.[7]

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[1] Yasmeen S.: Children Living with Mothers Behind Bars; in the State of Pakistan's Children 2006; SPARC- Islamabad- Page 162.

[2] Cheema, Moeen and Shah, Sikander. "Rights of Imprisoned Mothers in Pakistan". " South Asian Journal, 2006; Vol. 13 (July - October, 2006). Last retrieved at http://www.southasianmedia.net/magazine/journal/13_rights-of-Imprisoned.htm, on June 30, 2011.

[3] Karachi, Hyderabad, Larkana, Multan

[4] Saleem S. (2010); Pakistan: A Call for Prison Reform. In DAWN. Last retrieved on August 22, 2011 at http://blog.dawn.com/2010/04/06/a-call-for-prison-reform/

[5] Cheema, Moeen and Shah, Sikander. "Rights of Imprisoned Mothers in Pakistan". " South Asian Journal, 2006; Vol. 13 (July - October, 2006). Last retrieved at http://www.southasianmedia.net/magazine/journal/13_rights-of-Imprisoned.htm, on June 30, 2011.

[6] Prison Aid Society (), 'Prisoner Released' last retrieved on August 22, 2011 at http://webcache.googleusercontent.com/search?q=cache:npPm2MJ6koMJ:www.ansarburney.org/persons_released.html+children+with+women+prisoners+pakistan&cd=7&hl=en&ct=clnk&client=firefox-a&source=www.google.com

[7] *Country Reports on Human Rights Practices 2002, Pakistan,* US Department of State, Washington DC, www.state.gov, 2003

Diet and water

Rules 487[8] and 489[9] of the Prison Rules clearly set out guidelines for a child's diet and Rule 288 for a pregnant woman's diet," .However, a study conducted in 2008 on 'Prison Women and Children from a Nutritional Perspective' revealed that the diets of women prisoners and their children were insufficient and there is a dire "need to include rich protein, iron and calcium sources in their daily diets."[10]

Education[11]

At a majority of prisons and in women's wards education services or facilities are not provided other than by NGOs.

We were told by the authorities that young male children, above six years of age, go to educational programmes in the juvenile sections of prisons. However, these officials were ignorant of the fact the children are then exposed to risks and abuses at the hands of juvenile and adult male prisoners.

In 2006, the Minister for Education and Literacy, Sindh Province, during her visit to the Women's Prison, Larkana, stated that "children living with mothers in women jails have equal right to get education in jail". There and then she directed the Executive District Officer for Education, Larkana, to appoint a female teacher for the education of these minor children[12] but sadly nothing has happened.

Monitoring of abuse, discrimination and violation

There is no independent system or body in place within or outside the prison departments to monitor abuses, exploitation and discrimination of the children which make it an impossible task to protect their rights.

Meetings with relatives

Visits by relatives may be arranged, but there is no separate room for such meetings at women's wards in jails built for men.

So, why do women keep their children in prison when the conditions are so poor?

The following may apply:

1) when the mother is convicted and sent to jail, she has no choice because there is no one else in her family to assume responsibility of her child;
2) under Section 401 of the Criminal Procedure Code (CrPC), 1898, remission of sentences is possible at both Federal and State level, especially for breastfeeding women, but the power is rarely exercised;
3) the mother may keep the child to gain extra food or milk;
4) the mothers are unwilling to send their children to live with grandparents for reasons unknown (Provincial Minister for Law on the floor of Sindh Assembly)[13].
5) women who are alleged to have killed their husbands do not have the option of leaving their children outside where they would be dependent on the mercy of other relatives. The case of Hameer Kolhi is worth mentioning. A human rights activist met a six year old boy, Sameer Kolhi, in the Central Jail Hyderabad. He was detained with his mother who was alleged to have killed her husband. At the time of the offence, Hameer was six months old. For 6 years, Hameer was not listened to by anybody who had come to visit him and/or his mother. He said to the activist "You are the first outsider who has taken an interest in me and spoken to me"[14];
6) many children are abandoned by their fathers and no one else comes to visit them because prisons are bad places and carry a social stigma;

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[8] Rule 487:provide , a child of one year old "shall receive, in addition to the ordinary diet 467 Gr.[8] of milk and 29 Gr. sugar daily

[9] Rule 489: (i) "A child admitted to prison with his mother shall receive according to age, one or other of the following allowances of food daily:- (a) Under twelve months: Milk 467 Gr. Sugar 29 Gr. (b) Over twelve months up to 1-1/2 years: Milk 467 Gr., Sugar 29 Gr., Rice 117 Gr., salt 10 Gr. Ghee 12 Gr.
(ii) Extra when necessary shall be given as the Medical Officer directs.
(iii) 117 Gr. fresh fruit thrice weekly shall be issued to all children above the age of one year."

[10] Khattak I.A., Naveed U., Abbas M., Paracha P. I., Khan S. (2008). Prisoner Women and Children- from Nutritional Perspective". Sarhard J. Agric 24 (1): 123-127.

[11] Article 25-A of the Constitution of Pakistan: education is a fundamental right from 5 to 16 years

[12] Cheema, Moeen and Shah, Sikander. "Rights of Imprisoned Mothers in Pakistan". " South Asian Journal, 2006; Vol. 13 (July - October, 2006). Last retrieved at http://www.southasianmedia.net/magazine/journal/13_rights-of-Imprisoned.htm, on June 30, 2011.

[13] The Nation (2009), 40 Children Living with mothers in Sindhs Jails; June 20, 2009.

[14] Kolhi, V. (2010), Save Sameer Kolhi; The News International, April 18, 2010. Last retrieved at http://jang.com.pk/thenews/apr2010-weekly/nos-18-04-2010/kol.htm#4

7) there is no legislative system in place requiring authorities to take care of children whose mothers are behind bars. According to the Superintendent of the Women's Prison, Karachi, it is the responsibility of the government to make alternative arrangements to house and feed these helpless victims of circumstances. Initiatives taken by *SOS Village*[15] in different cities are being reported in which children above 6 years are sent to them if their mothers have to spend more time in prison and if there is no other person to look after them. These SOS Villages were not established for this purpose and so are in not in every city where a prison exists;
8) probation officials of all four provinces have not come across a single case in which the Court released a woman prisoner on probation solely on the ground that she is pregnant or has a young child to look after. This was endorsed by prison officials.

Pregnant women prisoners **are** granted bail, largely because prison cannot provide for them, but are not released solely if they are unable to arrange sureties. Although the Court under Section 497 of the CrPC may give consideration to the financial position of women prisoners, this provision is hardly ever used.

Budgetary allocation

All over the country there is no budget for the welfare and protection of children with women prisoners. According to prison officials, they manage all prescribed needs/material of such children from the total budget. For prison officials, these children are "viewed as a liability and a drain on their already meagre jail budgets."

Delivery of babies

There are no special arrangements for pregnant women and efforts are not put to help pregnant women prisoners to deliver their baby in hospital. They usually give birth to the child in the prisons and jail wards[16]. But the prison officials did not agree with the statement that they do not make arrangements for the delivery of the child.

Children used as a tool for deceiving

Most women prisoners in prisons are poor and most are there for murder (possibly of husbands) and alleged drug trafficking (some said that family members put drugs in their luggage when traveling); and drug traffickers manipulate poor women with children.

A couple of women prisoners said they are habitual drug traffickers and it is routine to keep their children with them to deceive law enforcement agencies.

Recommendations

There is need for—

1. legislation to address the rights of children on the arrest of their mothers;
2. trials to be heard quickly;
3. a strengthening of probation and the bail system to make them functional;
4. two female probation officers to monitor the prison situation of children and their mothers;
5. free legal aid, sureties and bail for the women prisoners;
6. Government initiated institutional arrangements near to prisons for children whose parents are in jail to reflect Article 9 of the UNCRC and children's rights under the Constitution of Pakistan.

Finally, there are two positive developments worth mentioning. In a few places civil society has taken initiatives; and, in 2000, the Government of Sindh established a *Committee for the Welfare of Women Prisoners* (CWWP). It has been working on a project to provide legal aid to women and children in detention centres in Karachi, Hyderabad, Sukkar and Larakan cities. There isn't an available assessment of its progress.

Abdullah Khoso[17], National Programme Manager with the Society for the Protection of the Rights of the Child (SPARC)

abdullahkhoso@hotmail.com

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[15] SOS Children's Villages is a private social welfare organization. There are ten SOS Children's Villages in Pakistan which provide protection and a family life to orphans and abandoned children from the area. http://www.sos-childrensvillages.org/Where-we-help/Asia/Pakistan/Pages/default.aspx)

[16] Cheema, Moeen and Shah, Sikander. "Rights of Imprisoned Mothers in Pakistan". " South Asian Journal, 2006; Vol. 13 (July - October, 2006). at http://www.southasianmedia.net/magazine/journal/13_rights-of-Imprisoned.htm, Last retrieved on June 30, 2011.

[17] I acknowledge the support of my colleagues in helping to conduct interviews of women prisoners and their children: Among them are Arshad Mahmood, Rashid Aziz, Akbar Shah, Madni Memon, Sajjad Cheem and Nadir Khoso.

Mental health and young offenders— the need for a multidisciplinary and integrative approach

Alison Hannah

In summary the paper focuses on seven areas:

1. *prisoners' right to health;*
2. *mental health disorders amongst juveniles in conflict with the law*
3. *some statistics about the situation in the UK;*
4. *case studies;*
5. *good practice examples*
6. *Penal Reform International (PRI)'s experience in the area of Juvenile Justice and mental health service provision; and*
7. *concluding thoughts and observations.*

Prisoners' right to health—international and regional standards

The Right to health care is guaranteed by article 12 of UN Covenant on Economic Social and Cultural rights recognising "*the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*".

The same statements with the special focus on prisoners are reiterated in principle 9 of the UN Basic Principles for the Treatment of Prisoners, which requires that "*prisoners shall have access to the health care services available in the country without discrimination on the grounds of their legal situation*"; and the principle of *equivalence of treatment between the general public and the prison population* should apply, with the provision of health care falling within the national health service rather than prison/justice services.

Article 22.1 of the Standard Minimum Rules for the Treatment of Prisoners provides that *the medical services in prisons should be organised in close relationship to the general health administration of the community or nation*.

UN Principles for the protection of persons with mental illness and the improvement of mental health care[1] provide for the Protection of Minors (principle ii). Special care should be given within the purposes of these Principles and within the context of domestic law to protect the rights of minors and recognize that every person with a mental illness should have the right to exercise all civil, political, economic, social and cultural rights as recognized in the UDHR, ICCPR and ICESCR and the Declaration on the Rights of Disabled Persons[2]—the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

The protection of the health of juvenile detainees is protected by a number of international standards. Article 37 (b) UN Convention on the Rights of the Child (CRC) and Rules 1 and 2 of the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990 states that "The arrest, detention or imprisonment of a child should be a measure of last resort and for the shortest appropriate period of time and *facilities must promote health and allow access to family and appropriate training be given to adults dealing with juveniles.* The Committee on the Rights of the Child states[3] that *detention regimes should be appropriate for children if detention is deemed necessary.*

General Comment no 3 of 2003 Adolescent Health and Development focuses on disability, mental health HIV/AIDS and child participation. Health care must be holistic and promote the highest attainable standard of health. CRC Art 24 of the Convention of the Rights of the Child calls for the full implementation of health care in the best interests of the child. The African Charter on the Rights and Welfare of the Child states[4] that *Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health*"

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[1] Adopted by General Assembly resolution 46/119 of 17 December 1991

[2] Human Rights Council 6th A/HRC/RES/6/29

[3] in General Comment no 10, 2007

[4] Article 14 Health and Health Services

Perhaps most importantly for the subject of this conference, article 1.3 of the Beijing Rules states—

> *Sufficient attention should be given to positive measures that involve the full mobilisation of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law*'

Mental health and juveniles in conflict with the law

Countless studies demonstrate that there is an increasing correlation between mental health problems and juvenile offending.[5] Without proper screening and treatment these juveniles are likely to spend too many years in the criminal justice system and have a high chance of re-offending.

Although adolescents may display some of the intellectual capacity of adults a *maturity gap* in their cognitive functioning means that they do not assess risk, and do not have the emotional maturity to understand the consequences of their actions or have full capacity for independent action. This applies to all juveniles and, as Prof Erik Luna has indicated, would indicate an even lower capability for juveniles suffering from a mental illness/ disorder. The Juvenile Justice system is designed to treat and rehabilitate youths. As such it offers an opportunity to intervene in the lives of juveniles with a mental disorder and prevent the development of dangerous behaviour or patterns. [6]

The most commonly identified mental health disorders among the juvenile justice population are disruptive disorders and substance use disorders. They also experience anxiety and mood disorders at a much higher rate than the general population.[7]

In many countries the Juvenile Justice system operates as a dumping ground from the mental healthcare system as children migrate to the former after the latter has failed them. [8] Problems may often emerge at the detention hearing stages when maintaining a juvenile in detention may be a direct result of his/her need for mental health treatment, but that treatment is rarely available adequately within the criminal justice system. [9]

Undiagnosed learning disability and poor relations between schools and health care services are also a problem faced by juveniles in conflict with the law.[10] A lack of early intervention may lead juveniles further into criminal justice systems due to breaches of court orders and further offences. Dysfunctional families, abuse, neglect and parents who are unable to act as advocates for their children at school and in the juvenile justice system lead to failures of understanding the system and gaining access to it. [11] There is also a need to educate those within the juvenile justice system of the value of treating juvenile mental health needs within the community, and the long term benefits of such an approach.[12]

The criminal justice system is responsible for assessing the mental health of an accused person in the light of relevant human rights and criminal legislation.[13] Mental health disability includes psychiatric disabilities and intellectual disability[14]

Furthermore, mental health is impaired by imprisonment. Consensus exists that severe mental illnesses are probably not preventable, but deterioration within prison can be prevented by provision of adequate services which in turn will benefit society. Article 82 of the Standard Minimum Rules for the Treatment of Prisoners states that people affected by severe mental health issues should not be imprisoned but hospitalised to undergo treatment for their condition.[15]

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[5] Nicholls, Brian, Jay ' Justice in the Darkness; Mental Health and the Juvenile Justice System' in *11 Journal of Law & Family Studies, 2008 – 2009* , p 555 – 563 at p 556.

[6] Ibid p 557, citing Geary Juvenile Mental Health Courts 2005.

[7] Redding, Richard E 'Barriers to meeting the Mental Health Needs of Juvenile Offenders ' in *19.1 Developments in Mental Health Law. (1999) p 3*

[8] Ibid.

[9] Ibid.

[10] Ibid p 14

[11] Ibid p 15

[12] Ibid p 21

[13] Amnesty International Report on Japan http://www.amnesty.org.uk/uploads/documents/doc_19662.pdf

[14] Report of the Special Rapporteur on the right of everyone to enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, Commission on Human Rights, sixty-first session, ESCR E/CN.4/2005/51, 11February 2005, para 18.

[15] Fraser, Andre 'Mental Health in Prisons: A Public Health Agenda' in *International Journal of Prisoner Health Vol 5 No. 3 Sept 2009 pp 132 – 140 at p 133.*

Access to justice and legal aid services is a problematic issue for those with mental disability.[16] Intellectual disability may cause an arrested juvenile to admit to a crime of which he or she is innocent.[17] Stigmatisation by prison officials and other inmates leads to further isolation and reduces access to education and vocational training opportunities.[18] Juvenile detainees with mental disability may find following rules more difficult and be more disruptive, leading to disciplining for breach of rules. Punishment for breach of rules may lead to restraint and isolation for long periods of time further exacerbating the problem and affecting behavioural record and Parole Board rulings.

Realities in the UK

Youth crime has been declining since the 1990s in general, but imprisonment/detention of children is increasing. Some statistics for 2008, published by the Prison Reform Trust (PRT) show that:

- in 2008 there were 3,012 children under 18 in custody, of whom 37 were under 14;
- in 2007 there were 1,007 incidents of self-harm in young offender institutions and 78 imprisoned children received hospital treatment for the damage done by restraint, assault or self-harm in one year;
- by April 2008, 48 children in custody were serving indeterminate sentences;
- a quarter of under 17s have literacy and numeracy levels of an average seven year old;
- 30% children in custody have been in the care of their local authority; and
- 75% of all under 18 year olds released from custody are reconvicted within a year.

Yet the PRT study found that in the UK for every £1 spent on drug treatment for juvenile offenders, £3 is saved in the criminal justice system.[19]

The survey also found that 75% of the public surveyed wished to see better mental health care treatment in prison for juveniles and 88% wanted improved parental supervision and constructive activities to prevent juveniles getting into conflict with the law. 82% wished to see an increase in drug and alcohol treatment programmes[20]; only 6% surveyed supported the current minimum age of criminal responsibility (MACR) of 10 years as being an acceptable age to imprison a child.

Two studies in 2010[21] both called for an increase in the Minimum Age of Criminal Responsibility to 12 in the UK.

Case studies

At the beginning of November 2010, Google news reported a case from Canada that illustrates all that is wrong about the treatment of juvenile offenders with mental health problems in custody. And it comes from a country that is generally seen as humane in its treatment of offenders. The report is of an inquest into the suicide of a teenager who died in federal custody in 2007. The report states that Ashley Smith suffered from untreated bipolar disorder—

> *Initially taken into custody at the age of 15 for breaching probation, Ms Smith's subsequent inability to contain her feelings of fury—at being tasered, gassed, shackled, drugged and isolated—resulted in additional sentences and increasingly harsh conditions. In the year she spent in federal custody, Ms Smith was transferred 17 times, forcibly injected, and denied access to counsel, advocates and her family. She was left in a bare cell, with nothing to do for months on end.*

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16 UNODC Handbook on Prisoners with Special Needs. P 12

17 Goobic D. The Art of New Jersey Developmentally Disable Offenders Program www.arcnj.org

18 UNODC Handbook on Prisoners with Special Needs p 14-15

19 Drug misuse treatment and reduction in crime—findings from the national treatment outcome research study 2005, as cited in 2008 PRT briefing *Criminal Damage: Why we should lock up fewer children., 1034 adults were sampled using an online survey of those aged 18+ 14th – 16th December 2007.*

20 Ibid.

21 by the Charity Barnardos *Playground to Prison* and PRT *Punishing Disadvantage.*

There is still much to do

In the UK, on 21 March 2000, the day Zahid Mubarek, aged 19, was due to be released from Feltham Young Offenders Institute (YOI) in England, Robert Stewart also aged 19—a racist psychopath with whom he had shared the cell for 6 weeks—clubbed him around the head with a wooden table leg in a vicious, unprovoked attack. Zahid died on 28 March 2000 from cardiac arrest brought on by his injuries. Stewart had formally been diagnosed with personality disorder but had never been seen by a doctor in Feltham YOI and his medical records were never highlighted. His cell was not searched and his letters which displayed virulent racism were never read by prison staff.

On November 1st 2000 Stewart was found guilty of murder and sentenced to life imprisonment. On Thursday 29 April 2004 the Government established a public enquiry into the circumstances surrounding the murder. The enquiry report was published in 29 June 2006.

The Chairman of the inquiry made 88 recommendations, including a number specifically related to the detention of mentally disordered prisoners including:

- inmate mental health assessments should address the risk which an individual poses to staff and other inmates;
- a referral to a mental health professional should take place in cases of self-harming;
- a referral should also be triggered where the prisoner's behaviour is such that the healthcare officer completing the questionnaire considers it desirable; and
- Staff training should be escalated to improve mental health awareness.

The inquiry also argued for the end of cell-sharing for mentally disordered prisoners and ensuring that such prisoners are adequately occupied with work, education or behaviour programmes and that a personal officer, fully aware of their background, should be appointed for such prisoners.

The recommendations set out what should be accepted good practice to ensure that there is an integrated approach to dealing with juvenile offenders with mental health problems.

Good practice examples in the UK—the Prisons Inspectorate

Her Majesty's Inspectorate of Prisons (HMIP) is an independent inspectorate that reports on conditions in and treatment of those in prisons, Young Offenders Institutions and Immigration Detention Centres. HMIP reports directly to the UK government.

It comprises six inspection teams throughout the UK, which each specialise in inspecting a certain kind of institution, including one specialising in YOIs. A team includes healthcare inspectors, drug inspectors, researchers and administrative staff. It works alongside other inspectorates.

Expectations 2009 is a revised edition of *HMIP's 2005 Juvenile Expectations*—a body of best practice developed by a specialist juvenile inspection team, embodying both domestic and international human rights standards. It sets out criteria for assessing the treatment and conditions for children and young people held in prison custody. Guidelines include—

- directions on reception screening;
- regular provision of healthcare, including mental health care services;
- training for prison officials in identifying mental health concerns;
- suicide prevention strategies;
- care plans for young people who self harm or are at risk of self harming;
- training to assist young people in maintain contact and good relations with family and friends and sensitivity to give further assistance to young people with learning disabilities or mental health problems.[22]

There are a number of good examples of diversion schemes where children in conflict with the law are dealt with outside the criminal justice system. This is important, as evidence shows that the further the child goes into the formal criminal justice system, the higher the chances of re-offending. Most successful schemes place an emphasis on prevention—for example, support for parents or intensive foster care. A restorative approach can assist a young offender to accept accountability for his or her actions and find a way to make amends that involves the victim or community; and the most effective interventions use an integrated approach involving health services, schools, families and social workers/probation officers.

[22] http://www.justice.gov.uk/inspectorates/hmi-prisons/docs/children_and_young_people_e1.pdf

PRI's experience

PRI's work places considerable emphasis on juvenile justice reform and ensuring that the treatment of children in conflict with the law conforms to international Human Rights Standards. Activities focus on diverting children from the adult justice system and improving conditions of detention. It programmes in five countries of the Middle East and North Africa region to develop a restorative approach to juvenile justice that refers children in conflict with the law to community resolution of the problem rather than the formal court system. Specialised police centres are being developed to refer children away from the courts. In Georgia, a juvenile probationer support service was established to educate juveniles in skills, including life skills and strengthening ties with their families.

Concluding thoughts and observations

Services for youth with mental health and substance abuse problems should be focused on treatment in the community. Those involved in the juvenile justice system should also address culture, race, gender and sexual orientation issues. The needs of girls are, for example, different from those of boys.

Routine and regular mental health screening is also very important. [23] Individualised assessment and treatment is essential. For juveniles being treated for mental health problems the transition between juvenile and adult detention facilities is very important. Clear arrangements must be put in place to facilitate the continued treatment and health care for juveniles who upon reaching 18 are transferred from the young persons' secure estate to an adult setting. In the transition period maintaining care can be difficult and the emotional context may increase the need for further treatment.

Continuation of treatment after release back into the community must also be monitored and adequate planning in place involving schools family and social services organisations as well as probation and medical services.

Ms Alison Hannah, Executive Director, Penal Reform International. United Kingdom.

This talk was first given at The International Juvenile Justice Observatory (IJJO) 4th International Conference: *Building integrative juvenile justice systems: Approaches and methodologies regarding mental disorders and drugs misuse,* Rome 9 and 10 November 2010.

[23] See http://www.buildingblocksforyouth.org/mentalhealth/factsheet.html (last accessed 08/10/10)
Mental Health Services provision in Prisons in England and Wales

Florida Juvenile Justice Model— Miami-Dade County, Florida, USA

Wansley Walters

The Miami-Dade County, Florida Juvenile Services Department (JSD) led the effort to reform a dysfunctional juvenile justice system in the largest county in South Florida and create an evidence-based, community supported juvenile justice model in the late 1990s.

The goal was to use diversion programmes for juveniles in conflict with the law as much as possible. In ten years, juvenile arrests have decreased by 41% and the detention population dropped 66%. The most significant result has been a 78% reduction in re-arrest.

These impressive results have been achieved through a collaborative effort of juvenile justice partners and national researchers who have assisted in the development of a benchmark continuum of care including five innovative, targeted, and customized diversion programmes. By first utilizing a variety of gender and age specific evidence-based screening and assessment tools, we have achieved a system that allows us to organize and manage the population and thus a juvenile and his/her family to be treated as individuals.

Further, through the recent implementation of the Civil Citation Initiative, troubled youth have the opportunity to attain complete treatment services outside of the systems that currently exist and without the shame of a criminal record. The Miami-Dade County Juvenile Justice Model has been so successful that the White House (ONDCP) and the US Department of Justice (OJJDP) hosted a national summit in May 2008 to recognize this national model.

History and Development of the Juvenile Services Department

In the middle 1990s, the arrest process for juveniles in Miami-Dade County, Florida was so dysfunctional that organized crime was using juveniles as its labour force and coaching them on how to provide false information. That prevented law enforcement and officials from knowing if this child was already in the juvenile justice system. In an urban community of over two million, juvenile arrests hit 20,000 in 1995 with dire increases predicted. High profile and violent juvenile offences were discouraging visitors from all over the world, jeopardizing Miami's largest industry, tourism. In an era where information holds the key, the only information that authorities in Miami-Dade County had about the juvenile arrest population was the actual number of arrests. Even that information was difficult to obtain, with over thirty municipal law enforcement agencies processing arrested juveniles independently of each other without coordination.

At this time, the Florida Legislature created language in the state statutes that established the concept of Juvenile Assessment Centers (JACs). These facilities represent arrest-processing centers that coordinate the different agencies that interface with arrested youth. Miami-Dade Juvenile Assessment center (JAC) opened in late 1997 as a community partnership under the leadership of the Miami-Dade Police Department (MDPD).

While the MDPD and the Florida Department of Juvenile Justice provided the resources, all juvenile justice stakeholders were invited to be a member of the JAC Partnership.

These partners included, among others:

- *Florida Department of Juvenile Justice*
- *Florida Department of Children and Families*
- *Miami-Dade State Attorney's Office*
- *Miami-Dade Public Schools*
- *Miami-Dade Department of Corrections*
- *Miami-Dade Department of Human Services*
- *Miami-Dade Administrative Office of the Courts*
- *Administrative Juvenile Judges*
- *Miami-Dade Clerk of the Court*

All partners were active participants in the planning and implementation of all processes. The first year of operation was dedicated to the huge task of defining a new way of doing business.

While contending with procedures, jurisdictional disputes, and the sometimes difficult implementation of advanced technology, the collective agencies at the JAC achieved unprecedented efficiencies.

Previously, the complete process of arresting a juvenile that could take up to six weeks for a non-detainable juvenile offender, could now take less than two hours. Police officers, formerly spending an average of six hours processing juveniles, are in and out of the JAC in an average of 15 minutes. This includes a pre-file conference with prosecutors, which used to occur days or even weeks after the arrest, holding up case filing decisions.

For the first time in the United States, Live-Scan fingerprint technology was implemented for juveniles. This was paired with a multi-tiered identification process to tell us whether or not this is a juvenile's first arrest, which is a critical piece of information in juvenile justice. Previously, it was impossible to determine if a child was in the system particularly if he gave incorrect personal information. The JAC also allows for the administration of assessments to 100% of juveniles entering the system, which was not previously possible.

We are connected by technology to the Courts which allows each case to be created in the JAC and placed on the Judge's calendar. Lastly, the complete cooperation of all law enforcement agencies through the Dade County Chiefs of Police permits this JAC to be the centralized point of entry into the system. This allows the Miami-Dade JAC to collect critical information on the complete juvenile arrest population.

In October 2002 the Miami-Dade Juvenile Assessment Center (JAC) became an independent County department, and in 2005, the department was renamed the Miami- Dade County Juvenile Services Department (JSD).

National Demonstration Project

During the first year of operation, as efficiencies were achieved, two very important observations were made.

First, the overall arrest population could be broadly categorized into three groups:

- kids behaving in a typical delinquent way, i.e. loitering, shoplifting, school fights, etc.
- kids acting out on serious issues in their lives, i.e. substance abuse, family and school problems, etc; and
- serious, habitual, and potentially dangerous juvenile offenders.

Second, there was a great deal of quality research being conducted throughout the United States in the area of juvenile justice. Unfortunately, no instruction was given on how to apply the principles of the different areas of research in a system that was processing a diverse and complex population of children.

This was the basis that led the JAC to propose the National Demonstration Project and receive funding from the United States Congress and the United States Department of Justice that would partner researchers and operational staff in the reform of an active, functioning system. This project has been ongoing since 1999. It has allowed Miami-Dade County to develop the foundation needed to effectively plan and strategically apply specialized, research proven interventions and programs based on the needs of the children in the system.

This project is in great part responsible for the design and programme development which has resulted in the JSD becoming a successful service provider in the community and a systemic change model in the field of juvenile justice.

Diversion Programs

As part of its innovative programming, Miami-Dade County offers qualifying youthful offenders an opportunity to be diverted from the traditional juvenile justice system by completing one of six diversion programs available through the Juvenile Services Department. Placement in a diversion program is based on the type of offence, the juvenile's criminal background, and results of the evidence-based screening and assessment instruments administered by JSD staff.

Each diversion program is characterized by varying levels of engagement and requirements. Further, juveniles participate in an individualized collection of community-based programmes as part of their diversion services. Participants may be referred to diversion programmes upon arrest or by the courts. These programmes are monitored and supervised by a trained clinical team. The cost of diversion services is remarkably effective in assisting children to receive treatment: diversion services cost only $1,749 per juvenile while detention cost $3,491 per juvenile. Civil Citation (below) costs only $1,280 per juvenile.

Juvenile Alternative Services Sanctions (JASS)
The JASS provides delinquency prevention services to non-violent, misdemeanour offenders. JASS individualized client needs-assessments provide the basis for the development of treatment plans. Programme services include

- case management services;
- victim/offender mediation;
- restitution coordination;
- community work service; and
- referrals to—psycho-educational groups, substance abuse counselling, and family and individual counselling.

JASS actions are monitored by means of home, school and field visits, as well as collateral contacts.

Juvenile Alternative Services Program (JASP)
The JASP is a juvenile diversion program offering an alternative to judicial processing for first referral eligible felony and violent misdemeanour offenders. It provides

- individualized client needs assessments;
- alternative sanctions and treatment plans;
- case management services;
- community service work;
- coordination of restitution payments;
- social skills enhancement;
- victim/offender mediation; and
- referrals to—family and individual counselling, psycho educational groups, substance abuse treatment.

Referrals are received from the State of Florida Department of Juvenile Justice (DJJ), the State Attorney's Office (SAO), and Juvenile Court. The program utilizes a vast network of service agencies, coordinating closely with Miami-Dade County Public Schools, and the State Attorney's Office. Services are provided in three office locations, as well as through home, school and field visits.

Intensive Delinquency Diversion Services (IDDS)
The IDDS Program provides a cost-effective alternative to judicial handling for young people under 15 years of age who have been charged with an offence which, if committed by an adult, would be a criminal act. All youth served by this program have been assessed by the Department of Juvenile Justice as being at high risk of becoming serious, chronic offenders, based on factors identified by the book.

The program provides intensive supervision and programme services to forty-five high-risk diversion-eligible juveniles, six days per week—including after school hours—for a period of five to seven months.

Programme supervision includes weekly

- face to-face contacts with each youth;
- parental contact;
- school contact; as well as
- contact with each service provider involved in the youth's individualized treatment plan.

These contacts are made in the youth's home, school, and various other community sites.

Post Arrest Diversion Program (PAD)
The PAD is an alternative arrest processing programme that has allowed the JAC to keep juveniles arrested for the first time for minor offences from entering the traditional juvenile justice system.

This program also provided a format for applying the best research practices at the earliest point of entry, identify risk factors and apply a personalized diversion program that addresses the issues of the child—including the family—and not only the offence.

JSD was successful in getting Florida State Statute language passed to allow juveniles successfully completing the program an opportunity to eliminate their arrest record.

From 2000 to 2007, the National Demonstration Project diverted 10,548 arrested juveniles from entering the state juvenile justice system with the PAD Programme.

Miami-Dade County documented a saving to the community of $47 million by keeping these 10,548 juveniles out of the juvenile court system with the PAD Programme.

Young Offenders Process (YOP)
The Problem—Juvenile justice research has uncovered important information regarding children arrested under the age of 12. From 1998 to 2007 in Miami-Dade County, there were 7,443 arrests involving children in this age group. In a report from OJJDP under principal investigator Dr. Barbara J. Burns, young offenders—

> *are two to three times more likely to become tomorrow's serious and violent offenders*

Unfortunately, most diversion programmes are currently designed to address adolescents, and the assessment instruments being used were not designed for this age group.

Our Solution—The Young Offender Project (YOP) implements new assessment, processing and casework protocols for the under 13 age group. We have enlisted the assistance of a team of experts who specialize in working with younger children to train the staff who work with this age group and to implement age-appropriate assessments and processing methods. Further, JSD worked with researchers to develop appropriate case management protocols for this group, regardless of whether the offender is diverted or under the jurisdiction of the court.

Achievements—

- a 78% reduction in individual children arrested; and
- a 94% reduction in repeat offenders from 1998 to 2007.

Future Goals—We are currently working with law enforcement and juvenile justice partners to pursue local legislation not to arrest any child under 12 years of age. Referral and specialized teams will focus on the family surrounding the child who has committed the offence.

Civil Citation

Troubled children in Miami-Dade County who commit a minor offence will have the opportunity to attain complete and targeted treatment services without the baggage of an arrest. Civil Citation reforms the protocol on how police and the community address juvenile first-time misdemeanour offenders. Rather than issuing an arrest, officers will refer all eligible children to attain the same level of evidence-based, customized, and proven services available to arrested youth.

Why Civil Citation?—Too often juveniles between the ages of 12 and 17 years of age are being arrested for non-serious crimes, exposing them unnecessarily to the juvenile justice system. Furthermore, even if the juvenile is able to successfully complete a diversion programme or expunge his/her record, external databases are able to maintain a record of the arrest, disqualifying the juvenile from some jobs, scholarships, school admissions, and other involvement.

How it works—All eligible young people will have the opportunity to participate without being arrested. All local police departments are committed to refer eligible children to JSD where they will receive an assessment and application of appropriate, targeted interventions. Case management service is provided in addition to referrals to family, group and/or individual and substance abuse counselling, school interventions, and other services.

Eligibility Criteria—All first-time misdemeanour offenders are eligible to participate. All second misdemeanour offenders are also eligible if the first referral is closed and the youth is not under the supervision of another entity. Youths charged with battery, assault, weapon possession cases not involving firearms, and animal cruelty are eligible with approval of the victim/family and State Attorney's Office (SAO). Misdemeanours involving possession of firearms, exposure of sexual organs or other related sexual behaviour and offences related to gang activity are ineligible.

Benefits and Results-

- addresses disproportionate minority contact, as 95% of participants are minorities;
- recidivism rate is only 3%;
- successful completion rate is 84%;
- intake and screening process time reduced by over 60%;
- paperwork significantly reduced, resulting in savings of time and money;
- Court fees are eliminated because no court appearance is required;
- immediate savings by avoiding the cost of the arrest; and
- Civil Citations are responsible for a 15% reduction in arrests when compared to the previous year.

Great Expectations

Community-based service programs should provide adolescents with relevant and applicable solutions. The Miami-Dade County community has been designing and implementing programmes to target problems which are identified through the Juvenile Services Department's (JSD) data gathering and analysis process. To complete the Diversion process, a juvenile may participate in any combination of over 50 community-based programmes. A customized plan including those services which are most appropriate for the individual is designed by a case manager based on a review of the juvenile's background and the results of the screenings and assessments. By referring children to the "right" service provider that offers the "right" solution, the likelihood of re-offending is reduced.

We fully expect to reduce our current arrests by an additional 10% in the next year. Our long-range goal is to see current juvenile arrests reduced by 50%. That would represent an overall reduction of 70% in slightly over 15 years. We may still work with the same number of children we see now, or even more. But it will mean that we can save our community millions of dollars by serving them outside the systems that currently exist. More importantly, we can help these troubled children move into adulthood as productive citizens without the shame of a criminal record.

Ms Wansley Walters, Secretary, Florida Department for Juvenile Justice, has been actively involved in child advocacy for over 25 years and was previously the Director of the Miami-Dade County Juvenile Services Department. She developed and heads a National Demonstration Project with the U.S. Department of Justice—Office of Juvenile Justice and Delinquency Prevention (OJJDP) and national researchers in the field of juvenile justice.

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What is Restorative Justice? Ted Wachtel and Paul McCold

Ted Wachtel President of IIRP

Adjunct Professor Paul McCold

The social science of restorative practices is an emerging field of study that enables people to restore and build community in an increasingly disconnected world**.** It offers a common thread to tie together theory, research and practice in seemingly disparate fields, such as education, counseling, criminal justice, social work and organizational management.

The restorative practices concept has its roots in *restorative justice*—a new way of looking at criminal justice that focuses on repairing the harm done to people and relationships rather than on punishing offenders (although restorative justice does not preclude incarceration of offenders or other sanctions). Originating in the 1970s as mediation between victims and offenders, in the 1990s restorative justice broadened to include communities of care as well, with victims' and offenders' families and friends participating in collaborative processes called *conferences* and *circles*.[1].

For the last decade the International Institute for Restorative Practices (IIRP), which grew out of the Real Justice program[2], has been developing a comprehensive framework for practice and theory that expands the restorative paradigm beyond its origins in criminal justice[3].

The fundamental unifying hypothesis of restorative practices is disarmingly simple—

> *that human beings are happier, more cooperative and productive, and more likely to make positive changes in their behavior when those in positions of authority do things with them, rather than to them or for them.*

This hypothesis maintains that the punitive and authoritarian *to* mode and the permissive and paternalistic *for* mode are not as effective as the restorative, participatory, engaging *with* mode. If this restorative hypothesis is valid, then it has significant implications for many disciplines.

For example, contemporary criminal justice and educational disciplinary practices rely on punishment to change behavior. As the number of prison inmates and excluded students grows unabated, the validity of that approach is very much in question. In a similar vein, social workers doing things for and to children and families have not turned back the tide of abuse and neglect.

Meanwhile, individuals and organizations in many fields are developing innovative models and methodology and doing empirical research, unaware that they share the same fundamental hypothesis. In social work, *family group conferencing* or *family group decision making* processes empower extended families to meet privately, without professionals in the room, to make a plan to protect children in their own families from further violence and neglect[4]. In criminal justice, *restorative circles* and *conferences* allow victims, offenders and their respective family members and friends to come together to explore how everyone has been affected by an offence and, when possible, to decide how to repair the harm and meet their own needs[5].

[1] For a useful summary of restorative justice theory, go to www.realjustice.org/library/paradigm.html

[2] see www.realjustice.org

[3] McCold and Wachtel, 2003

[4] American Humane Association, 2003

[5] McCold, 2003

In education[6], circles and groups provide opportunities for students to share their feelings, build relationships and problem solve, and when there is wrongdoing, to play an active role in addressing the wrong and making things right[7].

In the criminal justice field these innovators use the term *restorative justice*[8]; in social work they advocate *empowerment*[9]; in education they talk about *positive discipline*[10] or *responsive classrooms*[11]; and in organizational leadership they use terms like *horizontal management*[12]. All of these phrases are related to a similar perspective about people, their needs and their motivation. But in all of these fields, the implementation of this new thinking and practice grows at only a modest rate.

Restorative practices is the science of building social capital and achieving social discipline through participatory learning and decision-making. Through the advent of restorative practices, using its common perspective and vocabulary, there is now the potential to create much greater visibility for this way of thinking, to foster exchange between various fields and to accelerate the development of theory, research and practice.

The social discipline window (Figure 1) is a simple but useful framework with broad application in many settings. It describes four basic approaches to maintaining social norms boundaries. The four are represented as different combinations of high or low control and high or low support. The restorative domain combines both high control and high support and is characterized by doing things *with* people, rather than *to* them or *for* them.

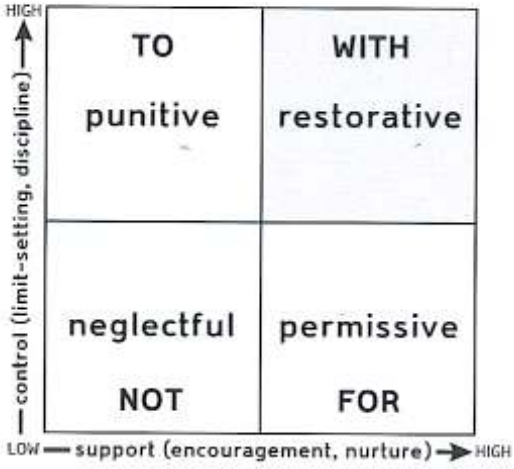

Figure 1: Social Discipline Window

Restorative practices are not limited to formal processes, such as restorative and family group conferences or family group decision making, but range from informal to formal. On a restorative practices continuum (Figure 2), the informal practices include affective statements that communicate people's feelings, as well as affective questions that cause people to reflect on how their behavior has affected others. Impromptu restorative conferences, groups and circles are somewhat more structured but do not require the elaborate preparation needed for formal conferences.

Figure 2: Restorative Practices Continuum

Moving from left to right on the continuum, as restorative practices become more formal they involve more people, require more planning and time, and are more structured and complete. Although a formal restorative process might have dramatic impact, informal practices have a cumulative impact because they are part of everyday life.

6 For more about restorative practices in schools go to www.safersanerschools.org

7 Riestenberg, 2002

8 Zehr, 1990

9 Simon, 1994

10 Nelsen, 1996

11 Charney, 1992

12 Denton, 1998

The most critical function of restorative practices is restoring and building relationships. Because informal and formal restorative processes foster the expression of affect or emotion, they also foster emotional bonds.

The late Silvan S. Tomkins's writings about psychology of affect[13] assert that human relationships are best and healthiest when there is free expression of affect—or emotion—minimizing the negative, maximizing the positive, but allowing for free expression. Donald Nathanson, director of the Silvan S. Tomkins Institute, adds that it is through the mutual exchange of expressed affect that we build community, creating the emotional bonds that tie us all together[14].

Restorative practices such as conferences and circles provide a safe environment for people to express and exchange intense emotion.

Tomkins identified nine distinct affects (Figure 3) to explain the expression of emotion in all human beings.

Figure 3. The Nine Affects
(adapted from Nathanson, 1992)

Most of the affects are defined by pairs of words that represent the least and the most intense expression of a particular affect. The six negative affects include anger-rage, fear-terror, distress-anguish, disgust, *dissmell*—a word Tomkins coined to describe "turning up one's nose" at someone or something in a rejecting way—and shame-humiliation. Surprise-startle is the neutral affect, which functions like a reset button. The two positive affects are interest-excitement and enjoyment-joy.

Shame is worthy of special attention. Nathanson explains that shame is a critical regulator of human social behavior. Tomkins defined shame as occurring any time that our experience of the positive affects is interrupted[15]. So an individual does not have to do something wrong to feel shame. The individual just has to experience something that interrupts interest-excitement or enjoyment-joy[16]. This understanding of shame provides a critical explanation for why victims of crime often feel a strong sense of shame, even though the offender committed the "shameful" act.

Figure 4. The Compass of Shame
(adapted from Nathanson, 1992)

Nathanson[17] has developed the *compass of shame* (Figure 4) to illustrate the various ways that human beings react when they feel shame. The four poles of the compass of shame and behaviors associated with them are:

- *Withdrawal*—isolating oneself, running and hiding;
- *Attack self*—self put-down, masochism;
- *Avoidance*—denial, abusing drugs, distraction through thrill seeking;
- *Attack others*—turning the tables, lashing out verbally or physically, blaming others.

Nathanson says that the *attack other* response to shame is responsible for the proliferation of violence in modern life. Usually people who have adequate self-esteem readily move beyond their feelings of shame. Nonetheless we all react to shame, in varying degrees, in the ways described by the compass. Restorative practices, by their very nature, provide an opportunity for us to express our shame, along with other emotions,

[13] Tomkins, 1962, 1963, 1991
[14] Nathanson, 1998
[15] Tomkins, 1987
[16] Nathanson, 1997
[17] Nathanson 1992, p132

and in doing so reduce their intensity. In restorative conferences, for example, people routinely move from negative affects through the neutral affect to positive affects.

Because the restorative concept has its roots in the field of criminal justice, we may erroneously assume that restorative practices are reactive, only to be used as a response to crime and wrongdoing. However, the free expression of emotion inherent in restorative practices not only restores, but also proactively builds new relationships and *social capital*. Social capital is defined as the connections among individuals[18] and the trust, mutual understanding, shared values and behaviors that bind us together and make cooperative action possible[19].

For example, primary schools and more recently, some secondary schools use circles to provide students with opportunities to share their feelings, ideas and experiences, in order to establish relationships and social norms on a non-crisis basis. Businesses and other organizations utilize team-building circles or groups, in which employees are afforded opportunities to get to know each other better, similar to the processes used with students. The IIRP's experience has been that classrooms and workplaces tend to be more productive when they invest in building social capital through the proactive use of restorative practices. Also, when a problem does arise, teachers and managers find that the reaction of students and employees is more positive and cooperative.

When authorities do things with people, whether reactively—to deal with crisis, or proactively—in the normal course of school or business, the results are almost always better. This fundamental thesis was evident in a *Harvard Business Review* article[20] about the concept of *fair process* in organizations. The central idea of fair process is that

> *…individuals are most likely to trust and cooperate freely with systems—whether they themselves win or lose by those systems—when fair process is observed.*

The three principles of fair process are:

- *Engagement*—involving individuals in decisions that affect them by listening to their views and genuinely taking their opinions into account;
- *Explanation*—explaining the reasoning behind a decision to everyone who has been involved or who is affected by it;
- *Expectation clarity*—making sure that everyone clearly understands a decision and what is expected of them in the future.

Fair process applies the restorative with domain of the social discipline window to all kinds of organizations, in all kinds of disciplines and professions[21]. The fundamental hypothesis that people are happier, more cooperative and productive, and more likely to make positive changes in behavior when authorities do things *with* them, rather than *to* them or *for* them expands the restorative paradigm far beyond its origins in restorative justice.

Ted Wachtel, President International Institute for Restorative Practices (IIRP)

Paul McCold, Adjunct Professor, Simon Fraser University, School of Criminology, Vancouver, Canada

This explanation of restorative practices is adapted from "From Restorative Justice to Restorative Practices: Expanding the Paradigm," by Ted Wachtel and Paul McCold, a paper presented at the IIRP's 5th International Conference on Conferencing,Circles and other Restorative Practices, August, 2004, Vancouver, Canada.

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[18] Putnam, 2001

[19] Cohen and Prusak, 2001

[20] Kim and Mauborgne, 1997

[21] O'Connell, 2002; Costello and O'Connell, 2002; Schnell, 2002

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Bringing Restorative Justice into Youth Justice—Youth Conferencing Northern Ireland

David O'Mahoney

Introduction

The introduction and mainstreaming of restorative interventions into the youth justice system in Northern Ireland signals a radical departure from previous responses to youth offending. While there has been considerable growth in restorative justice and restorative interventions worldwide, Northern Ireland and New Zealand are currently the only jurisdictions that have incorporated a statutory restorative justice scheme as an integral part of their juvenile justice sentencing process. In Northern Ireland the restorative justice based system of Youth Conferencing was introduced following recommendations from the Criminal Justice Review Group (2000) that

> *…restorative justice should be integrated into the juvenile justice system in Northern Ireland'*[1].

The new youth conferencing system was introduced within a growing climate of restorative justice which saw the development of a number of community-based restorative schemes[2]. However, the youth conferencing scheme is based in statute[3] and fully integrated into the formal justice system[4].

The conferencing model introduced in Northern Ireland is very different from restorative initiatives developed elsewhere in the United Kingdom[5]. It places restorative principles at the heart of the youth justice system and uses conferencing as the main avenue for dealing with young offenders. By comparison, in England and Wales the only similar restorative-based measure available is the *referral order*. While these are mandatory for first-time offenders, and may be used for serious offences such as robbery, they are largely restricted to less serious offences. The extent to which the referral order can be described as 'restorative' is questionable. Research has shown that referrals have minimal victim involvement and the extent to which they deliver 'restorative' outcomes is questionable[6].

Conferences

The new measures in Northern Ireland provide for two types of disposal, *diversionary* and *court-ordered* conferences. Both types of conference take place with a view to a youth conference co-ordinator providing a plan to the prosecutor or court on how the young person should be dealt with for their offence.

1. *Diversionary* conferences are referred by the Public Prosecution Service and are not intended for minor first time offenders—normally dealt with by the police by way of a warning or police caution delivered restoratively. Rather, they are intended for young offenders who would normally be considered for prosecution in the courts, but are deemed suitable for disposal by way of a restorative conference, thus avoiding a court appearance and criminal conviction (if the agreed conference plan is successfully completed). For the prosecutor to make use of the diversionary restorative conference the young person must admit to the offence and consent to the process[7].

2. *Court ordered* conferences, on the other hand, are referred for conferencing by the court and again the young person must agree to the process and they must either admit guilt, or have been found guilty in court. An important feature of the legislation is that the courts *must* refer all young persons for youth conferences, except for offences carrying a mandatory life sentence. The court *may* refer cases that are triable by indictment only or scheduled offences under the Terrorism Act. In effect, the legislation makes

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1 Criminal Justice Review Group 2000, Review of the Criminal Justice System in Northern Ireland. Belfast: The Stationary Office p 205

2 Mika and McEvoy 2001. Restorative Justice in Conflict: Paramilitarism, Community, and the Construction of Legitimacy in Northern Ireland, *Contemporary Justice Review* 4(3, 4): 291-319.

3 Justice (Northern Ireland) Act 2002

4 O'Mahony and Campbell, 2006 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing' In *International Handbook of Juvenile justice*, New York: Springer

5 Ibid n4

6 Dignan 2006 Restorative Justice in Criminal Justice and Criminal Court Settings' in G. Johnstone and D. Van Ness (eds) *Handbook of Restorative Justice* (Cullompton, Willan Publishing)

7 Ibid n4.

conferencing mandatory except for a small number of very serious offences. Another important distinction of the court ordered conference is that it is not a diversionary intervention, it is actually a core part of the sentencing process. Following the restorative conference, the conference plan is sent to the youth court and if approved, it then becomes a sentence of the court, with penalties for any breach.[8] The mandatory nature of referrals and the integration of the conferencing process into the sentencing practice in the youth court highlights the intended centrality of conferencing to the new youth justice system.

The format of the Youth Conference itself bears similarity to the general model used in New Zealand[9]. It normally involves a meeting, chaired by an independent and trained youth conference facilitator (employed by the Youth Conferencing Service), where the young person will be provided with the opportunity to reflect upon their actions and offer some form of reparation to the victim. The victim, who is encouraged to attend, is allowed to explain to the offender how the offence affected them, in theory giving the offender an understanding of their actions and allowing the victim to separate the offender from the offence. Following a dialogue a 'youth conference plan' or 'action plan' will be devised which should take into consideration the offence, the needs of the victim and the needs of the young person. The young person must consent to the plan, which can run for a period of not more than one year and which usually involves some form of reparation or apology to the victim. Ideally the plan will include elements that address the needs of the victim, the offender and the wider community, so as to achieve a restorative outcome[10]. Plans are compulsory and often require the offender to complete reparation or compensation to the victim, they may include requirements to participate in specified activities and programmes designed to address offending behaviour, or may even place restrictions on the young person's conduct, or where they may go. The conference plan may also include a recommendation that the court exercise its powers by imposing a custodial sentence on the young person.

Evaluation

The youth conferencing scheme has been subject to a major evaluation in which the proceedings of 185 conferences were observed and personal interviews were completed with 171 young people and 125 victims[11]. This research allows us to reflect not only on the extent to which the scheme has been successful in achieving its aims but also the extent to which it renders the justice system more accountable and responsive to the community as a whole.

The research findings were generally very positive concerning the impact of the scheme on victims and offenders and found that it operated with relative success. Importantly, the research showed that youth conferencing considerably increased levels of participation for both offenders and victims in seeking a just response to offending. The scheme engaged a high proportion of victims—69% of conferences had a victim in attendance, which is high compared with other restorative based programmes[12]. Of these 40% were personal victims and 60% were victim representatives—eg where there was damage to public property or there was no directly identifiable victim. Nearly half of personal victims attended as a result of assault, whilst the majority (69%) of victim representatives attended for thefts—typically shoplifting—or criminal damage.

Victim evaluation

Victims were willing to participate in youth conferencing:

- 79% said they were actually 'keen' to participate;
- 91%) said the decision to take part was their own and not a result of pressure to attend;
- 79% said they attended 'to help the young person;
- many said they wanted to hear the young person's side of the story—'I wanted to help the young person get straightened out';
- 55% said they attended to hear the offender apologise;
- 86% wanted the offender to know how the crime affected them;

[8] A breach of the order may result in; it being allowed to continue; being amended; the imposition of additional penalties; or the order may be revoked and the individual re-sentenced.

[9] Maxwell and Morris, 1993 **Families, Victims and Culture: Youth Justice in New Zealand**. Wellington: Social Policy Agency and Institute of Criminology, Victoria University of Wellington

[10] O'Mahony and Campbell, 2006 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing' In *International Handbook of Juvenile justice*, New York: Springer

[11] Campbell, Devlin, O'Mahony, Doak, Jackson, Corrigan and McEvoy. 2006 *Evaluation of the Northern Ireland Youth Conference Service*, NIO Research and Statistics Series: Report No. 12. Belfast: Northern Ireland Office.

[12] See for example, Maxwell and Morris, 2002 Restorative Justice and Reconviction. *Contemporary Justice Review,* 5(2), pp. 133-146; O'Mahony and Doak, 2004 'Restorative Justice: Is more better?' *Howard Journal*, 43: 484.

- victims were not driven by motivations of retribution, or a desire to seek vengeance. Rather it was apparent that their reasons for participating were to seek an understanding of why the offence had happened; they wanted to hear and understand the offender and to explain the impact of the offence to the offender.
- 83% of victims were rated as 'very engaged';
- 92% said they had said everything they wanted to during the conference while 98% of victims were observed as talkative
- 88% of victims said they would recommend conferencing to a person in a similar situation to themselves. Only one personal victim said they would not recommend conferencing to others.

Clearly, victims reacted to and engaged well during the conference—their ability to actively participate was strongly related to the intensive preparation they had been given prior to the conference. 20% of victims were observed to be visibly nervous at the beginning of the conference, but this usually faded as the conference wore on and nearly all reported that they were more relaxed once the conference was underway. By contrast 71% of the offenders were nervous at the beginning.

Overall it was clear that the conference forum was largely successful in providing victims with the opportunity to express their views and feelings and to meet the young person face to face. Though 71% of victims displayed some degree of frustration toward the young offender at some point in the conference, the vast majority listened to and seemed to accept the young person's version of the offence either 'a lot' (69%) or 'a bit' (25%) and 74% of victims expressed a degree of empathy towards the offender. Also, the overwhelming majority (93%) of victims displayed no signs of hostility towards the offender at the conference. Nearly all victims (91%) received at least an apology and 85% said they were happy with the apology. On the whole they appeared to be satisfied that the young person was genuine and were happy that they got the opportunity to meet them and understand more about the young person and why they had been victimised. It was apparent, that the victims interviewed had not come to the conference to vent anger on the offender. Rather, many victims were more interested in 'moving on' or putting the incident behind them and 'seeing something positive come out of it'.

Offenders

For offenders it was evident that the conferencing process held them to account for their actions, for example, by having them explain to the conference group and victim why they offended. The majority wanted to attend and they gave reasons such as, wanting to 'make good' for what they had done, or wanting to apologise to the victim. The most common reasons for attending were—

- to make up for what they had done,
- to seek the victim's forgiveness, and
- to have other people hear their side of the story.

Only 28% of offenders said they were initially 'not keen' to attend. Indeed many offenders appreciated the opportunity to interact with the victim and wanted to 'restore' or repair the harm they had caused. Though many offenders who participated in conferences said they did so to avoid going through court, most felt it provided them with the opportunity to—

- take responsibility for their actions,
- seek forgiveness and
- put the offence behind them.

Youth conferencing was by no means the easy option and most offenders found it very challenging. Generally offenders found the prospect of coming face to face with their victim difficult and were nervous. Despite this, observations of the conferences revealed that offenders were usually able to engage well in the process, with 98% being able to talk about the offence and the overwhelming majority (97%) accepting responsibility for what they had done.

The direct involvement of offenders in conferencing and their ability to engage in dialogue contrasts with the conventional court process, where offenders are afforded a passive role—generally they do not speak other than to confirm their name, plea and understanding of the charges—and are normally represented and spoken for by a legal representative throughout their proceedings.[13]

[13] In England and Wales magistrates are engaging directly with young people, so the young people cannot hide behind their lawyers during proceedings. In Northern Ireland young people are usually legally represented when they appear in the courts, but, not in conferences, where they are expected to speak for themselves.

Similarly, victims were able to actively participate in the conferencing process and many found the experience valuable in terms of understanding why the offence had been committed and in gaining some sort of apology and / or restitution. This too contrasts with the typical experience of victims in the conventional court process where they often find themselves excluded and alienated, or simply used as witnesses for evidential purposes if the case is contested[14].

Youth conference plans

Nearly all of the plans (91%) were agreed by the participants and victims were, on the whole, happy with their content. Interestingly, most of the plans agreed to centre on elements that were designed to help both the young person and the victim—such as reparation to the victim, or attendance at programmes to help the young person. Few plans (27%) had elements that were primarily punitive—such as restrictions on their whereabouts—and in many respects the outcomes were largely restorative in nature rather than punitive. The fact that 73% of conference plans had no specific punishment element was a clear manifestation of their restorative nature. But more importantly, this was also indicative of what victims sought to achieve through the process. Clearly, notions of punishment and retribution were not high on the agenda for most victims.

Overall indications of the relative success of the process were evident from general questions asked of victims and offenders. When participants were asked what they felt were the best and worst aspects of their experience a number of common themes emerged. For victims, the best features appeared to be related to three issues—

- helping the offender in some way;
- helping prevent the offender from committing an offence again; and
- holding them to account for their actions.

The most positive aspects were clearly non-punitive in nature—most victims seem to appreciate that the conferences represented a means of moving forward for both parties, rather than gaining any sense of satisfaction that the offender would have to endure some form of harsh punishment in direct retribution for the original offence. Victims and offenders expressed a strong preference for the conference process as opposed to going to court and only 11% of victims said they would have preferred it if the case had been dealt with by a court. On the whole they considered that the conference offered a more meaningful environment for them.

While 11% of victims would have preferred court, identifying conferencing as 'an easy option', this view was not held by the offenders. The offenders identified the most meaningful as well as the most difficult aspect of the conference as the opportunity to apologise to the victim, a feature virtually absent from the court process.

Longer-term impact and recidivism

A qualitative study by Maruna et al (2007) of the longer-term impacts of youth conferencing process on young offenders in Northern Ireland has found—

> *many of the post-conference outcomes were positive*

and an independent report produced by the Criminal Justice Inspectorate in 2008 corroborated those findings. This is not to suggest that the integration of restorative justice within criminal justice through youth conferencing works effectively all the time and in all cases.

Both the Campbell et al and Maruna et al studies note difficulties in the practice of delivering restorative conferences effectively. Some cases are not suitable for conferencing, such as where the young person is unwilling to actively participate. These cases can be dealt with through the normal court and sentencing process. However, the research evidence evaluating youth conferencing[15] has been largely positive and there is now a considerable international body of research evidence demonstrating some of the advantages of integrating restorative justice within criminal justice for offenders, victims and the broader community[16].

In particular there is growing research evidence that shows that the youth conferencing system in Northern Ireland is having positive impacts in terms of reducing re-offending rates. Figures that compare the re-offending rates of young people given a range of sentences in Northern Ireland, including those given restorative youth conferences demonstrate that those given restorative conferencing have a relatively low level of re-offending[17]. Much of the difference in re-offending rates across disposal types can largely be explained by differences in the characteristics of offenders and the types of offences for which they are convicted.

[14] Zehr, 1990 *Changing Lenses: A New Focus for Crime and Justice.* Waterloo, Ontario: Herald Press

[15] Campbell et al 2006; O'Mahony and Campbell 2006; Maruna et al 2007; Criminal Justice Inspectorate NI 2008

[16] see Sherman and Strang 2007 *Restorative Justice: The Evidence* London, Smith Institute

[17] Lyness 2008 Northern Ireland Youth Re-offending: Results from the 2005 Cohort. Northern Ireland Office, Research and Statistics Bulletin 7/2008. Belfast: Northern Ireland Office

The research shows that those given court ordered youth conferences have a lower level of re-offending (45%)[18] than those given community based sentences (54%)[19] or custodial sentences (68%)[20]. These findings are supported by recent research[21] which has found that the vast majority of the restorative programmes examined had a positive effect in reducing recidivism and remarkably this success appears to be most pronounced for more serious crimes. This echoes the findings of the randomised experiments conducted in the Australian Canberra RISE project[22] where the largest effect of restorative justice interventions on recidivism was found for violent crime as well as echoing the findings from Sherman and Strang (2007). Evidentially, the studies strongly support the development of restorative justice measures within criminal justice.

Conclusions

The new restorative youth conferencing arrangements in Northern Ireland mark an important development in the use restorative justice in youth justice. Notably, it is unlike many other restorative based schemes for young offenders, which have been largely directed towards minor offences, first time offenders or used as a diversionary method, to keep young people out of the criminal justice system. The Northern Ireland youth conferencing scheme is integrated into the criminal justice system and places restorative principles at its heart using conferencing as the main avenue for dealing with young offenders.

The mandatory nature of referrals and the integration of the conferencing process into the sentencing practice in the youth court highlights the intended centrality of conferencing to the new youth justice system.

The research evidence shows that the new youth conferencing scheme has been positive for both victims and offenders with considerably increased levels of participation for both in the process of seeking a just response to offending. A high proportion of both victims and offenders expressed satisfaction, especially compared with the traditional court process and there was a clear endorsement of victims' willingness to become involved in a process which directly deals with the individuals that have victimised them.

There are encouraging indications that levels of re-offending are lower. This is not to suggest that this scheme is some 'silver bullet'. It is not suitable for all offenders and all circumstances, nor is it without its own problems. However, it does show that restorative justice can be integrated much more directly within youth justice systems and used effectively for more serious offenders and offending than has previously been the case.

David O'Mahony is Reader in Law and Director of the Centre for Criminal Law and Criminal Justice at Durham Law School, Durham University, 50 North Bailey, Durham, England, DH1 3ET

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[18] Lyness and Tate 2011 Northern Ireland Youth Re-offending: Results from the 2008 Cohort. Northern Ireland Office, Research and Statistics Bulletin 2/2012. Belfast: Northern Ireland Office

[19] Ibid n18

[20] Ibid n18

[21] Bonta, Jesseman, Rugge and Cormier 2008 'Restorative Justice and Recidivism: Promises Made, Promises Kept?' in D. Sullivan and L. Tifft (eds), *Handbook of Restorative Justice* Abingdon: Routledge; Sherman and Strang 2007 *Restorative Justice: The Evidence* London, Smith Institute

[22] Ibid n16

Green Papers on Child Friendly Justice—IJJO	Dr Francisco Legaz Cervantes, Cédric Foussard, Cristina Goñi

Dr Francisco Legaz Cervantes

Cristina Goñi

Cédric Foussard

The *European Council for Juvenile Justice (ECJJ)* is a European think-tank on Juvenile Justice—set up by the European section of the IJJO—and composed of European Experts, who analyse the situation of children in conflict with the law and develop corresponding strategies and recommendations.

Through European research, the ECJJ gathers quantitative and qualitative information on the situation of children, adolescents and young people in conflict with the law and publishes Green Papers. It develops programmes of specific advocacy for European Institutions in general and for National authorities that request them. The ECJJ has the following sections:

- **Public Administration Section:** composed of 27 representatives from public state bodies in charge of the administration of juvenile justice, mainly representatives of Ministries.
- **Academic Section:** bringing together 27 representatives of European Universities; Faculties and Departments of Law, Criminology, etc.
- **NGO Section:** 27 experts who represent not-for-profit organizations at national level, with a common commitment to the protection and defence of and intervention with minors and young people in conflict with the law.

Recently, relying on the experts of the ECJJ, the International and European Juvenile Justice Observatory supported the preparation and drafting of three Green Papers, all aimed at improving juvenile justice systems throughout the world. Though focusing on three different issues, they all agree on the need for fairer and improved youth justice systems, not only in underdeveloped countries but across the entire world.

Each Green Paper focuses on a particular issue—the reintegration of young offenders, the implementation of international standards and the promotion of alternatives to detention—and was drafted by a specific division of the European Council for Juvenile Justice.

Social reintegration of young offenders

The NGO section worked on *The social reintegration of young offenders as a key factor to prevent recidivism* and produced a Green Paper under the aegis of Séverine Jacomy-Vité, a child-protection specialist at UNICEF.

This Green Paper explores the usefulness of social reintegration in preventing young offenders reoffending. It examines the orientation and scope of young offenders' reintegration efforts across Europe to highlight perceived challenges and good practice developed by NGOs in each Member State.

The aim was to emphasize the importance of reintegration and the need for any period of detention—even if short—to be well-planned, in order to ensure a positive impact. Even though detention should always remain a last resort, positive outcomes can be fostered during detention by offering education or training—particularly the latter—to ensure a better and brighter future for the young people, giving them the tools to pursue their education, gain employment and turn their life around. This greatly helps prevent detention becoming a springboard for more a socially excluded life.

In addition to emphasizing the value of reintegration as a continuous and often long-term objective, in which education and training play an important role, the Green Paper also makes a series of recommendations to Member States. These provide a response to the needs and gaps highlighted throughout the paper and, if implemented, could positively influence the development of standards and programmes at European level.

Implementation of international standards

The Public Administration section decided to focus on the equally important topic—*Evaluation and implementation of International standards in national Juvenile Justice systems.*

This Green Paper, written with the help of Dr. Ineke Pruin, a lawyer and research associate at Greifswald University (Germany), starts with an overview of the basic principles of international standards for Juvenile Justice before discussing the question of their binding character. It is a crucially important question whether or not Member States have to comply with a given standard and helps to explain why International Juvenile Justice standards have not been implemented to the same extent across the world or, to a lesser extent, throughout the European Union.

In fact, within the European Union, the *UN Convention on the Rights of the Child* (CRC), the *European Convention on Human Rights* and the *EU Charter of Fundamental Rights* are the only binding Juvenile Justice standards. Every other standard, from the UN General Comments to the CRC numbers 10 and 13 to the Council of Europe's Guidelines on child-friendly justice, is respected by Member States only as far as they wish. Unfortunately, in the field of Juvenile Justice, the will to guarantee young people the best juvenile justice system possible varies greatly from one Member State to another.

The present Green Paper presents an EU-wide snapshot of compliance with international standards, focusing on the proper implementation of relevant topics—such as the minimum age of criminal responsibility, the introduction and use of alternative sanctions and measures to detention, and the nature of prison regimes for young offenders.

The research identifies existing tools and instruments that are effective in the evaluation of Juvenile Justice systems both at an international and at a national level, thereby emphasizing the great value of mechanisms such as the UN Committee on the Rights of the Child, UNICEF's set of fifteen core indicators for Juvenile Justice, and national evaluation systems such as the Finnish, Hungarian and Maltese ones.

The IJJO Indicators in Juvenile Justice were also examined as a possible tool to monitor juvenile justice systems in Europe. They could be used as a scientific basis for reinforcing and unifying tools and procedures among legal professionals, regardless of the differences between penal systems in the EU.

Finally, the Green Paper draws conclusions and makes recommendations in the hope that they will be subject to further discussion and development and help improve European Juvenile Justice systems.

Measures of deprivation of liberty for young offenders

The Academic section studied *Measures of deprivation of liberty for young offenders*, produced by Dr. Ursula Kilkelly, senior Law Lecturer at University College Cork (Ireland) and decided to concentrate on ways of enriching international standards in Juvenile Justice.

The Green Paper first considers international standards—especially with reference to detention and its alternatives—in order to provide a baseline of information as well as the legal framework most commonly used in these two related and yet distinct areas. It also examines each Member State's level of compliance with these standards, putting the focus on the development and impact of specific measures and topics—separation of children from adults in detention; rights, conditions and treatments in detention; training and specialization, etc.—instead of on the existing situation in each Member State.

Secondly, the research identifies what support or assistance the EU might provide to further the implementation of international standards. The paper ends with a series of recommendations that aims to narrow the gap between the theory of international standards and the practice observed in Member States, including action that could be undertaken by the European Commission itself.

Promotion of EU Child Friendly Justice policies

The three sections of the ECJJ all proposed changes in the field of youth justice and made recommendations to European institutions and to Member States.

Each section came up with very specific advice linked to the topic they had decided to consider. Thus, the NGO section advocates the development of an EU directive that would guarantee the individualization of education, work options and outcomes for young offenders during and after custody. The Public Administration section calls, at the governmental level, for identifiable people to be in charge of and responsible for the monitoring of the juvenile justice system.

Finally, unlike the other sections, the academics consider that attention should be given to setting up a juvenile justice agency at EU level that would ensure the implementation, quality control and independent evaluation of international standards at national level. According to them, this could play a particularly important role in drawing together the inspection reports on the detention of children and would make it easier to track progress and to disseminate evidence of best practice. Furthermore, they consider it would lead to other beneficial changes and would constitute a driving force for the improvement of youth justice throughout the European Union.

Despite having worked on very different issues, the three sections sometimes come to the same conclusions and advocate the same changes and improvements. Thus, both the NGO and Academic sections advocate a more interdisciplinary approach, the NGO section wanting the creation of a European platform caring for the social reintegration of young offenders, and encouraging a more systematic share of good practice throughout the EU; while the Academic section is in favour of a network gathering specialist judiciary, probation officers, lawyers, social workers, police officers, academics, etc. in order to share information better, exchange ideas and disseminate best practice.

Both the Academic and Public Administration sections agreed that there is a lack of data on youth justice and that measures should be taken to improve matters. The Public Administration section especially emphasizes the need for better analysis of existing data and the uselessness of setting up new ways of gathering information if the existing ones are not properly examined and discussed. The absence of up-to-date data on the operation of youth justice systems is often frustrating as it prevents meaningful analysis and makes it difficult, if not impossible, to track trends and compare jurisdictions. Thus the existing data should be better used but also updated more often.

The same point can be applied to international standards—according to the Academic section, the problem is not so much a lack of international standards on Juvenile Justice as a lack of implementation of the existing ones. Therefore, the academics advocate Member States' wider compliance with existing standards, even with those that are not legally binding.

Finally, the Public Administration and the Academic sections also agreed that more attention should be paid to training. The Public Administration section calls for the provision of training for all practitioners working in the field of juvenile justice and for consciousness-raising of the general public. The academics suggest that the Commission should actively support EU-wide training on international standards, best practice, children's rights and child development for all those working for and with children in juvenile justice.

Thus, even though they were working on different topics of youth justice, the members of the European Council for Juvenile Justice found common ground when it came to the changes and improvements that should be undertaken at EU or national level to improve youth justice across the European Union. These IJJO Green papers on child friendly justice can be consulted on line at www.ijjo.org.

Dr Francisco Legaz*, Clincal forensic psychologist, founder and Chairman of IJJO

Cédric Foussard* MA, Director, International Affairs, IJJO

Cristina Goñi, psychologist, Executive Secretary, IJJO and Leader European Monitoring Centre for Juvenile Justice

Polish Association of Family Court Judges—report from the 13th Congress

Dr Magdalena Arczewska

The 13th Congress of the Polish Association of Family Court Judges entitled *The Family in the Era of Open Border*' was organized in Zakopane in September 2011. The event enjoyed the honorary patronage of Justice Stanisław Dąbrowski—the first President of the Supreme Court. The participants were honoured to receive as guests Honorary Judge Joseph Moyersoen, President of the International Association of Youth and Family Judges and Magistrates (IAYFJM), and Magistrate Avril Calder, Treasurer of IAYFJM. As in previous years, the Congress was attended by representatives of the department of social services responsible for the administration of the system which assists the child and the family as well as specialists in the field.

The meeting in Zakopane coincided with a development of central importance for family judges in Poland. On 12 September Bronisław Komorowski, Poland's President, signed the amended Law on the System of Common Courts under which District and Regional Courts would, by statute, include criminal and civil divisions only. As a consequence, family courts, which have more than 30 years of history in Poland, will disappear.

In recent years the proposal for such a change has come under criticism from judges, probation officers and barristers as well as experts in family law and the Department of Social Services responsible for the administration of the system providing assistance for the child and the family. In their view, the change in the system will soon lead to the elimination of the family judge, a profession of public trust, and the deterioration of the quality of rulings on the cases involving children and family issues.

Although the Ministry of Justice considers the change to be rational and justified for economical reasons, it is hard to find a practitioner that would endorse it.

Thus, it came as no surprise that this issue caused a stir among the Congress participants and dominated the two opening speeches given by Justice Stanisław Dąbrowski, and Justice Ryszard Pęk, Vice President of the National Council of the Judiciary in Poland.

The participants warmly welcomed the presentations made by foreign guests—Hon. Judge Joseph Moyersoen and Magistrate Avril Calder—who spoke about the legal and practical issues related to the migration of families. Additionally, Magistrate Calder read a letter to the participants written by Lord Justice Mathew Thorpe, who was unable to attend the Congress. Interesting contributions were also made by Justice Dr Hanna Bzdak, who described the conflict of laws with regard to the marriage and the family, Justyna Chrzanowska, who spoke about family case proceedings before the European Court of Human Rights in Strasbourg, and Dr Magdalena Arczewska, who focused on the concern for the image of the family judge in the light of media publications.

On the final day, the participants heard a lecture on the provisions of the Code of Civil Procedure and the Press Laws in the context of relations with the media (Justice Dr Jolanta Misztal-Konecka), and took part in the workshop on self-presentation and contacts with the media held by Anna Kurzępa from Polish television. Both contacts with the media and the activities aiming to protect the image of the family judge are extremely important as the reports on specific family cases are increasingly more common in the Polish media (especially ones related to the disagreement between the parents on how to regulate the contacts with the child or the inability to enforce contacts by one parent as well as the cases concerning the court order which requires the child return to the place of permanent residence abroad under the provisions of the Hague Convention). Because the cases described in these publications involve an element of drama and, often, emotional deprivation of the child entangled in the conflict between his or her parents, they make an interesting material for numerous publishers. Unfortunately, however, controversial issues are usually presented in a one-sided way and the competencies of the judges ruling on the cases described are deprecated, thereby undermining the authority and impartiality of the justice system, a practice which should be categorically opposed.

The Congress was also an opportunity to exchange views during informal conversations. It also enabled a broader group of family judges from Poland to learn about the activities of IAYFJM of which the Polish Association of Family Court Judges is a member.

Dr Magdalena Arczewska*, lawyer & lecturer at the Institute of Applied Social Sciences and Resocialization, Warsaw University and an expert at the Institute of Public Affairs, Ministry of Work & Social Policy.

Treasurer's column — Avril Calder

Subscriptions 2012

In February 2012 I will send out e-mail requests for subscriptions to individual members (GBP 30; Euros 35; CHF 55 for the year 2012 as agreed at the General Assembly in Tunis in April 2010) and to National Associations.

May I take this opportunity to remind you of the ways in which you may pay:

1. by going to the website at www.aimjf.org —click on membership then subscribe to pay online, using PayPal. This is both the simplest and cheapest way to pay; any currency is acceptable. PayPal will do the conversion to GBP;

2. through the banking system. I am happy to send bank details to you of either the account held in GBP (£) or CHF (Swiss Francs) or Euros. My e-mail address is treasurer@aimjf.org .

3. if under **Euros 70**, by **cheque** (either in GBP or euros) made payable to the International Association of Youth and Family Judges and Magistrates and sent to me. I will send you my home address if you e-mail me.

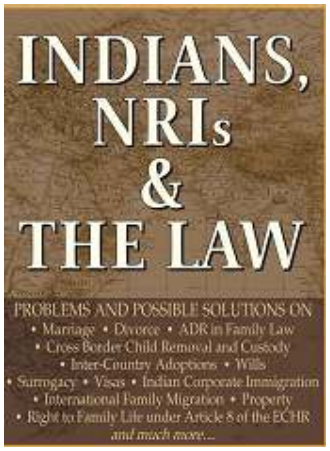
If you need further guidance, please do not hesitate to e-mail me.

It is, of course, always possible to pay in cash if you should meet any member of the Executive Committee.

Without your subscription it would not be possible to produce this publication.

Avril Calder

Book information



Members who deal with non resident Indians in their Family Courts may well be interested in the recent publication of ***Indians. NRIs & the Law*** by two of our members—and Ranjit Malhotra—

Anil Malhotra and Ranjit Malhotra, ***Indians, NRIs And The Law,*** Universal Law Publishing Company, New Delhi (India), 2012 edition, Pages 452 and i-xxiv. Price Rs. 795 or $75.

Contact Corner — Eduardo Rezende Melo

We receive many interesting e-mails with links to sites that you may like to visit and so we are including them in the Chronicle for you to follow through as you choose. Please feel free to let me have similar links for future editions. **ERM.**

From	Topic	Link
WHO (World Health Organization)	WHO Report on Disabilities	http://www.who.int/disabilities/world_report/2011/en/index.html
Prison Fellowship International Centre for Justice and Reconciliation (restorative justice on line)	Ministry of Justice New Zealand Re-offending Analysis of Restorative Justice Cases: 2008 and 2009	http://www.restorativejustice.org/10fulltext/ministryofjusticenewzealand2011/view
United Nations Human Rights Council	Report of the Special Representative of the Secretary-General for Children and Armed Conflict Children and Justice During and in the Aftermath of Armed Conflict Resolution on sexual orientation and gender identity Optional Protocol to the Convention on the Rights of the Child— a complaints procedure, UN General Assembly December 2011 —see President's letter page 3	http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/443/70/PDF/N1144370.pdf?OpenElement http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1957.pdf http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G11/141/94/PDF/G1114194.pdf?OpenElement and http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/G11/148/40/PDF/G1114840.pdf?OpenElement http://www.crin.org/NGOGroup/childrightsissues/ComplaintsMechanism/
IDE Seminar	International Conference 'Climate Change: Impacts on Children and on their Rights' will be published April 2012	www.childsrights.org
Bernard Boeton* Fondation Terre des Hommes (TdH)		newsletter@tdh-childprotection.org
ISPCAN International Society for Prevention of Child Abuse and Neglect 22 January 2012	12th Annual ISPCAN Global Institute Preventing Child Exploitation and Abuse working with Children and Families affected and displaced by disasters.	http://www.ispcan.org/events/event_list.asp
Chadwick Center for Children and Families 23 – 26 January 2012	26th Annual San Diego Conference on Child and Family Maltreatment.	www.chadwickcenter.org
Centre for the Study of Childhood and Youth, University of Sheffield, UK 16 May 2012	Exploring Childhood Studies in the Global South:- Africa in Focus	http://www.cscy.group.shef.ac.uk/events/index.htm
The Child Rights Information Network (CRIN)	CRIN's website offers child rights resources which include information in four languages (Arabic, English, French and Spanish).	Email: info@crin.org www.crin.org
Interagency Panel on Juvenile Justice (IPJJ)	Newsletter	newsletter@juvenilejusticepanel.org
International Juvenile Justice Observatory (IJJO)	Website	http://www.ijjo.org

Council Meeting in Sion, October 2011

Back row: Renate Winter Joseph Moyersoen; **Front row**: Oscar d'Amours Sophie Ballestrem Petra Guder Avril Calder Daniel Pical

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The immediate Past President, Justice Renate Winter, is an ex-officio member and acts in an advisory capacity.

Chronicle Chronique Crónica — Voice of the Association

The Chronicle is the voice of the Association. It is published bi-annually in the three official languages of the Association—English, French and Spanish. The aim of the Editorial Board has been to develop the Chronicle into a forum of debate amongst those concerned with child and family issues, in the area of civil law concerning children and families, throughout the world

The Chronicle is a great source of learning, informing us of how others deal with problems which are similar to our own, and is invaluable for the dissemination of information received from contributions world wide.

With the support of all members of the Association, a network of contributors from around the world who provide us with articles on a regular basis is being built up. Members are aware of research being undertaken in their own country into issues concerning children and families. Some are involved in the preparation of new legislation while others have contacts with colleagues in Universities who are willing to contribute articles.

A resource of articles has been built up for publication in forthcoming issues. Articles are not published in chronological order or in order of receipt. Priority tends to be given to articles arising from major IAYFJM conferences or seminars; an effort is made to present articles which give insights into how systems in various countries throughout the world deal with child and family issues; some issues of the Chronicle focus on particular themes so that articles dealing with that theme get priority; finally, articles which are longer than the recommended length and/or require extensive editing may be left to one side until an appropriate slot is found for them

Contributions from all readers are welcome. Articles for publication must be submitted in English, French or Spanish. The Editorial Board undertakes to have articles translated into all three languages—it would obviously be a great help if contributors could supply translations. Articles should, preferably, be 2000 - 3000 words in length. 'Items of Interest', including news items, should be up to 800 words in length. Comments on those articles already published are also welcome. Articles and comments should be sent directly to the Editor-in-Chief. However, if this is not convenient, articles may be sent to any member of the editorial board at the e-mail addresses listed below.

Articles for the Chronicle should be sent directly to:

Avril Calder, Editor-in-Chief,
chronicle@aimjf.org

Editorial Board