

## CHRONICLE CHRONIQUE CRÓNICA

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**World Congress, Geneva, January 2015**

The World Congress on Juvenile Justice put on by the Swiss Federation and Terre des homes (Tdh) was a big success and an invigorating experience as our 25 member participants- half of whom took part as speakers, moderators, panel members- will attest. I am therefore very grateful to **Fabrice Crégut\***, Conseiller Justice Juvénile at Tdh, who was much involved in the Geneva Congress under the leadership of **Bernard Boeton\***, for working with me in preparing samples of the high level of Geneva presentations, published in this Chronicle. Fabrice has written a thorough guide to them in an introductory overview which follows this editorial.

**Progress in Juvenile Justice**

The National Council for Youth and Family Judges (NCJFCJ) in the USA is an affiliated organisation much involved in many reinvigorating approaches to youth offending. **Judge David Stucki\***, Council member and former president of NCJFCJ describes the changing climate surrounding the punishment of offenders. Systems are moving away from a punitive orientation to robust diversion programmes with strong decision making protocols based on sound research. The presentation was first given at the 19th Crime Prevention Congress in Karlsruhe, Germany in May 2104. **Dr Shawn C Marsh** co-authored the article. Diversion was a strong theme in Geneva with Justice Renate Winter leading the way!

Mediation too is playing an increasing role in the approach to young offenders and their offending behaviour. **Judge Lise Gagnon\*** describes how criminal mediation is formulated in Quebec, the path that mediation takes, the role of the court and the crucial place of the victim in that formulation.

An important and far reaching new strategy for dealing with juvenile offending is in place in Sierra Leone where **Olayinka Laggah** is the Commissioner at the Children's Commission in Freetown. The co-author of the article, **Joshua Dankoff**, spent 2103 and 2014 in the country as a UNICEF Child Protection Specialist. As we know, there is an overlap between children in need of care and protection and those who are offending. One of the aims of the 2014-2018 strategy is to help policymakers in this area.

**Nikhil Roy**, Programme Development Director at Penal Reform International (PRI), reminds us that international standards bind states to uphold certain principles and that children are likely to respond to rehabilitative interventions such as diversion and mediation and cease offending. Nikhil illustrates those points by reference to six countries where promising ways of responding to children who commit violent and serious offences are being employed.

I am always really pleased to be able to publish an article written by a young person so I welcome the contribution of **Zoie Sneddon** who, along with three other young people, served a modern apprenticeship under the guidance of the Scottish Children's Reporters Association. Their task was to discover if any changes were needed to improve the Hearing experience for children and young people so that they could confidently participate- a key element in child friendly justice- in their Hearings before the Children's Panel.

**25 years of the CRC****Leiden Conference, November 2014**

You will remember that last November was the 25<sup>th</sup> anniversary of the introduction of the Convention on the Rights of the Child and that, to mark the occasion, a conference was held at the University of Leiden where Ton Liefwaard\* is the UNICEF Professor of Children's Rights. I am pleased to be able to bring you part of the conference's introductory lecture given by **Professor Julia Sloth-Nielsen\***. In it the Professor examines the evolution of the Convention, the research into children's rights that it generated and looks at the challenges faced by the CRC Committee.

In addition, lawyer **Carina du Toit\*** of the University of Pretoria has written an overview of the conference. She reports that speakers emphasised that children still need to be empowered and protected, even more so in these times because of the sexual violence experienced by children both at home and across borders.

**Defence for the Child International (DCI)**

The January 2015 issue of the Chronicle published DCI's call for a Global Study on Children Deprived of Liberty. In June 2015 at the 29th session of the Human Rights Council, DCI was able to make a statement, included in this issue. It calls for the independence of judges and lawyers and specialisation in youth justice systems, both themes of the Geneva Congress.

**News from members**

I welcome the report from **Judge Patricia Klentak\***, President of the Argentine Association, of a recent conference on child friendly justice. The conference will be followed by an international conference on the topic in September 2015.

**Book news**

This issue of the Chronicle brings news of a book entitled *Women and Children as Victims and Offenders* edited by Professor Helmut Kury, Slavomir Redo and Evelyn Shea. The 30 papers in the book cover the United Nations Basic Principles for Crime Prevention . Treatment of Women and Children+, The Early Development of Children+, and The Importance of Education+.



**Bernard Boeton**

Bernard Boeton of Terre des hommes, who has always actively maintained Tdh's affiliation to our Association, retires this summer. I am sure that you will join with me in thanking Bernard for his lifelong service to improving the lives of countless children and to wish him a long, healthy and happy retirement.

**Chronicle January 2016**

In the next edition I hope to focus on mental health and children in contact with the courts. Please contact me if you would like to contribute or suggest someone who would.

May I wish those of you in the Northern hemisphere a happy summer blessed by good weather and those in the Southern hemisphere a short, not too cold winter.

**Avril Calder**

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## An introductory overview to the Geneva Congress on Juvenile Justice, January 2015

Fabrice Crégut



The World Congress on Juvenile Justice attracted more than 850 participants from 94 countries in Geneva, Switzerland during five snowy days of January 2015 (26<sup>th</sup> to 30<sup>th</sup>). This international event was co-organized by the Swiss Confederation and the NGO Terre des hommes Foundation. It aimed to bring together juvenile justice professionals and States' representatives to share good practice, innovations and practical tools that help to make juvenile justice systems more compliant with international standards and norms. The presentations provided by the different experts and country representatives were very rich in content and meaning. A selection of them are presented in this issue of the Chronicle starting, unusually, with the final **evaluation of contemporary juvenile justice in relation to the discussions held during the World Congress** by **Jean Zermatten\***, former President of the Committee on the Convention of the Rights of the Child and of IAYFJM.

Jean Zermatten starts from the observation that during the 20<sup>th</sup> century children have too often been the victims of violent and repressive justice systems despite an evolution by trial and error in approaches to juvenile justice. He reminds us that behind each case, there is a child with his or her own story that we need to understand before we try to provide justice. Solutions exist that do not involve the deprivation of liberty. But these require a change of mind-set that takes into consideration its negative effects.

**Alexandra Martins** from the UN Office on Drugs and Crimes highlighted the **linkages between juvenile justice reform and global justice reform from a developmental perspective**. Her statement highlights the different challenges faced by States in reforming juvenile justice. This reform is, however, essential to achieve a sustainable development of societies. A systemic approach is the key to achieving such a development, and to maintaining both society's interests and the integration of children in conflict with the law into society.

In her official declaration, **Anne-Li Ferguson**, from the Norwegian Ministry of Justice, presented **the position of the Norwegian Government in relation to juvenile justice**. The Norwegian Government has built a strong strategy in favour of diversion, restorative justice and multidisciplinary collaboration. It enacted a bill in 2011 that introduced a new diversion scheme based on a restorative justice mechanism, in order to reduce the incarceration of children, with the ultimate goal of reducing child-rights violations and violence against them in the criminal system.

**Liliane Galley**, from the Swiss Youth & Violence Prevention Programme described **the evolution of youth violence in her country and gave us a picture of the key components of prevention policies in Switzerland**. An overall reduction in youth violence has been observed at Federal level since 2009, most certainly as a result of the new policies, and despite some exceptions regarding some categories of crime. The organization of prevention in Switzerland is largely localized and under the supervision of the Cantons (states). The role of the Federal Government is to provide a national framework, to collect and share scientific knowledge and to organize exchanges between and coordination of the various actors.

The **Swiss juvenile justice system** was presented during the Congress by **Dr Bernardo Stadelmann** from the Swiss Federal Office of Justice. Through an historical approach, he showed how the Swiss system evolved from a monist system enacted in the first juvenile justice law in 1942 to the current dualist system that allows the juvenile judge to pronounce both protection measures and sanctions for children in conflict with the law. The criminal procedure for children also evolved during that time from uncoordinated cantonal legislation to a harmonized federal scheme. The Swiss system, even though centred on an educational approach, faces challenges that challenge both practitioners and Swiss legislators.

**Mr Ma Xinmin** from China explained that **the new specialized justice system for children** was introduced in Shanghai (China) in 1984 to protect them within the judicial system and reduce delinquency. The new law put a strong emphasis on the protection of the judicial guarantees in a country that has no fewer than four levels of jurisdiction and over a thousand courts for juveniles. The legal process is organized to facilitate the participation of the child through the work of the psychosocial teams. This system is oriented towards the education of the child and has shown very positive effects on recidivism.

**Principal Youth Court Judge Andrew Becroft\*** from New Zealand explored **the implication of the family in the New-Zealand juvenile justice system**. The country takes a broad view of the concept of family and the criminal response+both builds on the relationship between the children and their families to rehabilitate them and aims at strengthening the families in their supervisory role of the child. Rather than court, most of the children arrested will be dealt with in the excellent diversion scheme implemented by the Police Youth Aid Workers. Families can also be involved at different stages of the procedures. The best example is probably the Family Group Conference, a restorative process that is mandatory in most of the cases and runs in tandem to the court procedure.

In its **evaluation of the placement measures of young people in Switzerland** (10-19 y.o.) **Dr Klaus Schmeck** explained that more than 70% of them have been diagnosed with a traumatic experience or mental health related issues. The mental health tools used are now very efficient and can help to support the different vulnerabilities of children concerned. Those tools can be complemented with other social skills

questionnaires, notably the Goal Attainment Scaling that is simple to implement and enables accurate evaluation of the therapeutic accompaniment.

**Marie Wernham** took the very original option of putting her feet into the shoes of children in conflict with the law to give the participants a **synthesis of the Congress workshops**. This unique point of view gave a clear understanding of the adaptations that justice systems should carry out to meet boys and girls' needs. This must-read presentation will surely change our understanding as adults on the way that children need to be treated.

The **Final Declaration to the World Congress on Juvenile Justice** offers a synthesis and comprehensive overview of the legal principles promoted by international standards and norms ratified by the members of the international community. It recalls notably the education goal of a juvenile justice system and the principle of restorative juvenile justice. The Final Declaration lists a series of priorities to guide decision makers and practitioners. It was supported by more than 850 participants to the World Congress and 94 country delegations and will remain as one of the main outcome of this event.

**Fabrice Crégut\***

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## World Congress on Juvenile Justice, Geneva 2015---Concluding Evaluation

Jean Zermatten



Evaluation ought to mean giving an assessment of the work that each of us has done over the last five memorable days of this Congress, although I doubt whether that is what the organisers of this magnificent event are looking for. All the same, I cannot but give the highest marks to each and every one- from the speakers to the volunteers, the organisers, interpreters and the team from TdH and so on. The overall result was that this important event was exceptional and its achievements quite out of the ordinary.

Actually, I think that our friend Bernard Boeton- the conductor of our symphony orchestra- is hoping that I will talk about the current state of affairs in juvenile justice in the light of our work and discussions together during these five days. So I will take on this delicate assignment, while making it clear that I claim to be neither exhaustive nor dispassionate and that I will be guided solely by the public interest.

### 1. Toing and froing with a lot of suffering

For centuries, the unvarying, systematic response to criminal offences committed by young people was one of severity on the part of government (Ministries of Justice and the Interior and the corresponding judicial authorities) which was, unfortunately, made manifest in **violence perpetrated by the State** against young offenders, by means of capital or corporal punishment or the deprivation of liberty for long, medium or short periods of time in prison or institutions.

Only recently- say within the last hundred years- have the authorities- those who exert the power of the State in judging and dealing with crime- recognised that they have a **responsibility** towards young people in conflict or contact with the law and they have begun to act in a less violent way, have questioned their approach and sought to show **compassion, paternal care, support and good will**.

During that time, judicial systems have oscillated between retribution / repression and protection, swinging between the justice model and the protectionist model, depending on the political, ideological or humanitarian imperatives and the trends (not to say, fashions) of the moment. Accordingly, the 20<sup>th</sup> century saw a long gyration between these two poles, driven by media sensationalism or the pretext of concern for public safety, on the one hand, and the need to protect the most vulnerable, on the other. A common outcome was social exclusion and the fatalistic conclusion: *'nothing works'*!

At this present juncture in the history of juvenile justice, all of us- whether we are acting on behalf of the state (as police officers, prosecutors, magistrates, social workers, prison officers,õ ) or as private individuals (doctors, psychiatrists, lawyers,õ ) or on behalf of society or NGOs (especially those who run open or closed institutions on behalf of the state or charitiesõ )- must recognise that for a very long time we have been groping along by trial and error and that we have not acted in ways that were best for young people. **We must own up to our mistakes.**

I want to emphasise that behind every situation, every case, every file, there is a child--a little boy or girl, or an adolescent--in other words a human being of flesh and feelings with their own histories, sadness and misfortune, who have had experiences whose outcomes we can see but whose suffering we cannot truly appreciate. Even if we try to get inside his or her skin, we cannot truly be that child.

Unfortunately, all too often we make juvenile justice abstract. We talk about *cases, records, files* and represent the reality of the child as a *number* or a *set of initials*. We use unsatisfactory, stigmatising vocabulary- *minors, delinquents, dangerous, violent, deviant*- and we penalise a whole range of children who have committed no more than peccadilloes without considering or thinking through the consequences. I too plead guilty.

**Yet we have to sit in judgement** on children in conflict with the law, hear witnesses and protect and compensate victims somehow or other. We have to understand the children as well as we can, be sensitive to the signals they are sending, interpret their messages, and find solutions that will not stifle their development but rather nurture their physical, mental, social, family, economic and spiritual growth and encourage their inclusion not their exclusion.

Inclusion means that juvenile justice systems must incorporate answers that can be tailored to each child and not formulaic, automatic responses that merely repeat the mistakes of the past and can only lead to children being excluded.

It is our greatest challenge

## **2. Some observations**

These five days of reflexion and discussion have shown us plenty of good things and some less good. We have seen advances, we have seen some questionable approaches, we have seen some pioneers, visionaries and dare-devils who have been opening up new avenues or building bridges. Dare-devils, because you must get vertigo when you're building a bridge.

Let us begin by accepting that we know all about legislation and regulatory frameworks, international standards, the different justice models with their pros and cons, the general guidelines, the regional guidelines and national documents. We have not learnt anything new in this area, except to be reminded that juvenile justice must conform to the Convention on the Rights of the Child, that the child should be seen as a person with dignity and a personality worthy of respect and that the principle of *non-discrimination*, which applies to all human beings, means that **children must not be treated worse than adults**.

But what happens when we do not accord children in the justice system the same rights and guarantees as adults? This remains, sadly, all too often the case, under the pretext that the child is not capable or not competent, particularly when he disregards the law and demonstrates characteristics of adolescence: yelling, extremely risky behaviour, provocation, gratuitous violence against others and himself, and law-breaking.

In common with many others, we must deplore the fact that the answers and systems that are implemented are based more on preconceptions and approximations, on *approaches* in today's jargon, than on figures, data, statistics, research, indicators and evaluation.

I am not fanatical about numerical data, but I observe that the swings of the pendulum between protection and repression depend more on feelings of fear or warmth towards adolescents than on findings from expert investigations, research or studies. Without wishing to upset some of the experts and academics here today, who have also been among the trail-blazers, I note that academia is not greatly interested in juvenile justice and that only recently has it been realised that juvenile delinquency is not just inevitable or a danger, but a phenomenon that should be considered from the perspectives of several disciplines (criminology, psychology, sociology, education, medicine, law, etc) to determine the exact scope, uncover the causes and devise methods of intervention whose effectiveness can then be assessed.

So let us hope that very soon projects will blossom with researchers falling over themselves not just to repeat the past but to break new ground!

We do not need figures for figures' sake; we need data to justify our responses to young people when they are in difficult situations and in conflict with the law or when they are victims of offences committed by other young people or by people (adults) who should be protecting them. Only on the basis of serious studies, objective data and clear results can media frenzy and politically regressive views be countered. Data collection seems to be a problem everywhere and, even when figures do exist, comparisons with neighbouring areas remain difficult.

Current reports about the drift into sectarianism, ideology, dogmatism or aggression show that thousands of children and adolescents are being drawn into criminal activity, as combatants or shields or as different kinds of logistical support in civil conflicts or war. In my view, that shows that governments have failed to foresee what would happen and have made a very poor attempt at putting in place the first line of defence, which is the provision of decent living conditions, support to the most vulnerable and disadvantaged and giving young people a vision of the future. This is not a difficult issue. A change of mind-set is needed so that the **conditions** in which families, children and their communities live are considered properly. Prevention of this kind is a precious investment in the protection of society and the economy.

We should certainly consider the role of the media, but not simply to attack journalists who promote the market over concern for human rights and to bemoan the fact that media professionals appear insensitive to issues of juvenile justice. The *Riyadh Guidelines* maintain that it is the media's responsibility to avoid inflaming situations through the use of inappropriate language--especially by labelling and stigmatising--and that it is their duty, through objective reporting, to guide public opinion towards an understanding of the difficulties that a substantial number of young people face.

One of our participants told the Congress: **Change the words and change the world!** That puts it in a nutshell.

The persistence of negative attitudes in the so-called gutter press and among social media websites should make us think about why these communication channels continue on their path of disinformation and sensationalism. Are there concealed interests that lead to demands for zero tolerance, repressive measures and the use of an iron fist against young people and that continue to insist on measures of social exclusion that reject the weakest, poorest, most vulnerable, defenceless and voiceless children? Without falling into paranoia, it is legitimate to raise this issue.

The deprivation of liberty was at the centre of our discussions this week, because it remains controversial. Can we manage without prison? I am not talking about life sentences without the possibility of release--the ban on these is not negotiable--but about the deprivation of liberty through short or medium-term prison sentences or committing to institutions. I am thinking particularly about the automatic conveyor-belt rule of the three Ps- **Police, Prosecutor, Prison!**

Yes, we can!

But for that to happen, we will have to alter our mind-sets and recognise the harmful long-term effects on the physical well-being and social adjustment of those who stay in places like that, where for most of the time they are repressed but not looked after and are given little in the way of education or preparation for their release. *They come in as little rascals and leave as big delinquents.*

And reverting to an earlier point, children who are locked up are also denied necessary links to their families, schools, their friends and community--the four pillars that help children avoid offending, re-offending or long-term criminal behaviour.

We all agree that an extremely serious crime--where the child needs to be made aware of the consequences and accept responsibility, and where there is a need to protect the public (not an imaginary need, but one that has been objectively assessed)--does meet the case for prison; and the CRC recognises this. But only under strict conditions--age, safeguards, procedures, proportionality, no overcrowding, separation from adults, review of decisions, legal aid, the maintenance of links to family and friends, educational support and training.

### **3. Some ways forward and reasons for hope**

Participants in the Congress believe that the principle and practice of any form of punishment should be grounded in the objective of inclusion--strengthening social bonds as the only way of keeping young offenders within a reasonably normal orbit and avoiding their exclusion. **In not out!**

That means that we need to find answers that integrate, educate and heal. That is not only the job of the judge, but of all the services that work with the judge, particularly youth protection, educational psychology, staff of residential institutions--whether open or closed--as well as detention centres. It has been said time and time again that success depends on everyone **working together** and on **coordination** of their efforts. Working in silos is futile; and working alone is risky.

No-one in the field can have any doubt that expensive measures that simply look like retribution and exclusion and reinforce the young person's feelings of injustice and disaffection do not prepare him to take on responsibility and independence. Economically and socially these measures represent a very poor deal. (Young people are probably all too familiar with the impatient expressions of the adults who are dealing with them and their attitude of *do everything all at once*.) If we try to solve our problems by locking our children up, we are in effect excluding them--it's one and the same!

That brings us to the central theme of our discussions: **a restorative, healing and reintegrating justice**. I think I can say that most participants in the Congress supported the idea that restorative justice has--by taking account of victims and bringing them within the ambit of juvenile justice--introduced an educational aspect and increased respect for the rights of the child, because the young person has to take an active role in the process, work out how to respond and become involved in facing up to what he has done and recognising--completely, partially or symbolically--what the result was.



## INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

Not only can this lead to the adolescent taking responsibility, but the calm environment also allows him to repair or renew the social bonds that his offending has stretched or broken. These are the obvious benefits of this approach which takes into account both the interests of the child (*child-centred*, to use an expression that regularly came up in our discussions) and the interests of the victim, whether individual or collective (society, in general).

Another strand that I would like to mention is the importance (as Justice Winter showed) of using diversion or remission to avoid the justice system getting involved in minor offences, pre-delinquent behaviour or mere peccadilloes. This is a good way of avoiding stigmatising, exclusion and labelling. We should not deny ourselves this route. There are many professionals who are better able than the criminal justice system to deal with actions that stem more from rudeness, poor behaviour or the adolescent temperament. Let us leave to the heavy machinery of the state only those offences that are really serious and, following this idea, take a different approach to a large proportion of the clients now caught up in the official system of justice.

In something of a caricature, the formal justice system is sometimes contrasted to **customary justice** and one instinctively distrusts the latter. I believe that this comparison needs to be reconsidered in the light of some significant contributions--in the fields of education, culture and integration into the community--from some long-standing approaches in many different regions of the globe. In my view, children's rights do not invalidate these practices: they are a source of inspiration. What should be banned without exception are those practices that do not recognise that children have rights, that do not allow them to express themselves or get involved, or even involve harmful actions (such as corporal punishment or exclusion). Let us be more open to some of the remarkable things that have been done in a number of places, arising out of customary law and let us draw on them, provided that we put these approaches within the framework of the rights of the child.

I would like to conclude by talking about the **training of professionals** of all professionals and their **specialisms**. By its nature, juvenile justice is different from other forms of justice. So it is essential that those involved are trained in the specifics and learn the right actions to take. This training should be interdisciplinary and intense, given what is at stake for the clients of those who are being trained. There was general agreement on the need for training, which was seen as the key to bringing about change.

Expressions that cropped up frequently during the week were: *a change of mind-set; a paradigm shift*. Yes, indeed. But to change our attitudes and what we do, we have to learn and accept guidance. Clearly, to set up training we need political drive, the necessary resources and availability of experts and practitioners to train the trainers. These will be the criteria for success.

I cannot finish this overview without mentioning the most vulnerable groups of children in conflict with the law:

- ◆ **girls** who continue to be discriminated against by the juvenile justice system: their small numbers mean that they are often denied a satisfactory response;
- ◆ **migrants (whether accompanied or not)** who not only flood into some countries but are often exposed to crime and consequently are represented disproportionately in the criminal justice system. They have very special needs;
- ◆ children in **situations of conflict or humanitarian crisis** who, as a result of their exposure to many dangers, are drawn into criminality often under pressure. They also deserve justice.

My final remarks are in support of the world-wide UN survey of the deprivation of liberty and the hope that an independent expert will be appointed very soon. The excellent outcomes of the previous world-wide studies (on children in armed conflicts and on violence against children) demonstrate the value of that kind of world-wide approach.

A great deal has been accomplished in a little under a century of juvenile justice. But much remains to be done to promote a juvenile justice that is thoughtful, benevolent and restorative and that respects children and their rights, even when they are in conflict with the law. That is our responsibility and I wish us all good fortune in carrying it out!

**Jean Zermatten\*** President IAYFJM (1994-1998), Member of the UN Committee on the Rights of the Child (2011-2013) and President of the Committee (2013-2015). Director of the International Institute for the Rights of the Child, Sion, Switzerland (1995-2014).

[www.childsrights.org](http://www.childsrights.org)

**The place of juvenile justice in global justice reform from a development perspective**

**Dr. Alexandra Martins &  
Dr. Mario Hemmerling**



Dr Alexandra Martins

**1. Introduction<sup>1</sup>**

All children should have the opportunity to grow up in a peaceful and non-violent environment in which their rights to survival, development and well-being are fully respected. Despite significant progress achieved so far by a number of countries in establishing and strengthening their juvenile justice systems, 25 years after the adoption of the Convention on the Rights of the Child, a lot of work still remains to be done. Too many children around the world still live without the full protection of the law, are unfairly treated or suffer from violence. This holds particularly true for those children who are in contact with the justice system.

The United Nations Office on Drugs and Crime (UNODC) has at the core of its mandate the promotion of fair, effective and humane juvenile justice systems. To this end, the work of the Office aims to ensure that children are integrated into the broader rule of law and development agendas with access to fair, transparent, and child-sensitive justice systems through which they can enforce and protect their rights.

This article was prepared as a basis for a presentation delivered by UNODC at the World Congress on Juvenile Justice, held in Geneva, Switzerland from 26 to 30 January 2015. It outlines some of the key challenges faced by many countries in the area of juvenile justice, highlights the linkages between justice reform and development, and points out some reasons of why states should invest in juvenile justice reform. In conclusion, it suggests the adoption of a systemic approach for the promotion of sustainable and effective juvenile justice reform.



Dr Mario Hemmerling

**2. Key challenges faced by many countries in the world in the area of juvenile justice**

Countries all over the world face similar challenges related to promoting the rights of children in the administration of justice and in strengthening their juvenile justice systems.

A critical challenge is the lack of Governmental commitment to fulfil the rights of children who are in contact with the justice system. Oftentimes, adequate budget and policies are absent and, as a result, institutions and professionals dealing with children are insufficiently equipped with regard to human and financial resources. The lack of Governmental commitment is, in many instances, also reflected in the non-ratification of international instruments and non-implementation of international standards and norms related to juvenile justice.

Having in place a legislative framework which defines the legal boundaries of the juvenile justice system is essential. Any juvenile justice measure applied must have a clear foundation in national law, as well as in its supplementary policies and regulations that support its implementation in order for it to be fully effective. However, it remains a challenge in many countries that existing national legislation is not in compliance with international standards and norms and, even where it is in compliance with the international legal framework, it is very often not properly enforced.

<sup>1</sup> The views expressed herein are those of the authors and do not necessarily reflect the views of the United Nations.

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Linked to the lack of Governmental commitment is the lack of specialized institutions and unqualified and poorly remunerated justice professionals dealing with children who are contact with the justice system. Many of the professionals working with these children lack adequate knowledge of child care practices, applicable national and international human rights law and do not receive adequate remuneration for their work.

In many instances, these children end up being dealt with by the ordinary criminal justice system that often does not provide for mechanisms and procedures which enable them to benefit from child-friendly measures.

It is also a worrying trend that, way too often, punitive approaches for children in contact with the justice system are applied rather than restorative justice approaches. This trend leads to an increase in the number of children who are being drawn into the juvenile justice system. Available data at national level indicates that, regarding the profile of those children, the majority is charged with petty crimes, are first-time offenders, or are awaiting trial. Many of these children belong to groups that should not be dealt with by the justice system, such as children with mental and substance abuse problems, and those living and working in the streets. These children are in need of care and protection and should not be dealt with by the criminal justice system as it often happens.

Despite the fact that deprivation of liberty should be a measure of last resort, and even though studies show that investing in alternative measures to detention is more cost-effective and results in saving money, the overreliance on deprivation of liberty worldwide is a pressing matter of concern. Frequently, judges prefer not to apply alternative measures due to social pressure they feel that, by not institutionalizing a child, they are not providing society with an effective response to crime. Also, very often, there is a simple lack of mechanisms, institutions and procedures to apply or to effectively supervise the application of alternative measures to detention.

Furthermore, many countries in the world face similar challenges when it comes to the conditions of detention and the treatment of children who are deprived of their liberty. In times of fiscal austerity, it is simply not a priority for many states and considered not worth spending tax payers money on refurbishing existing detention facilities and providing children with the services they are in need of and entitled to when deprived of their liberty. As a consequence, children are sometimes detained in facilities that are run down, overcrowded and lack appropriate hygiene installations. It is also common to see that children are kept in detention with no access to clean water and food, with very poor sanitation and sometimes kept in cells with no ventilation and light.

Many children in detention are still subject to corporal punishment and torture and are kept in solitary confinement cells for many days and are sometimes even deprived of food as a disciplinary measure. Also, in many countries, children are not separated from adults and suffer from peer violence. Oftentimes, no or poor education and vocational training is provided that does not suffice in preparing the child for the time after his or her release and for his or her successful rehabilitation and reintegration into society. Generally speaking, countries face challenges related to providing services in detention facilities that are conducive to and aimed at the rehabilitation and social reintegration of the child.

Another common challenge in many countries is the lack of inter-institutional coordination among relevant actors within the juvenile justice system. Even where functioning juvenile justice systems are in place, it can oftentimes be observed that adequate coordination, communication and cooperation mechanisms between different Government, child protection and justice institutions are missing. It is not surprising to hear from prosecutors that they do not cooperate well with the police, to hear from judges that they do not manage to establish an effective working relationship with child protection agencies and to see different governmental institutions competing for financial resources. As a result, delays in the processing of juvenile justice cases occur and children who are already in contact with the justice system are kept within that system longer than they should be.

Closely related to the overreliance on the application of punitive approaches, is another challenge which is overcoming violence against children who are in contact with the justice system, as these children, and in particular those deprived of their liberty, face a high risk of becoming victims of violence as a mere result of being in contact with that system.<sup>2</sup> Violence against children within the justice system remains frequently invisible, unrecorded, unprosecuted and unpunished. It can occur in all phases of the justice process and be perpetrated by justice professionals who deal with these children, peers or the child him or herself as a result of self-harm.<sup>3</sup>

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<sup>2</sup> See the two reports commissioned by the United Nations in 2006 and 2012: Pinheiro, Paulo Sérgio, *World report on violence against children*, United Nations Secretary-General's study on violence against children, New York, 2006, Chapter V; *Joint report* of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (A/HRC/21/25), 27 June 2012.

<sup>3</sup> Pinheiro, Paulo Sérgio, *World report on violence against children*, United Nations Secretary-General's study on violence against children, New York, 2006, Chapter V, p. 187; *Joint report* of the Office of the High Commissioner for Human

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Children should be considered as actors in their own protection through the use of knowledge of their rights. However, very often children and their families lack respective skills and knowledge and frequently do not have the capacity to participate effectively in the juvenile justice process. In this regard, too often legal aid schemes for children are inefficient or simply not available. In order to achieve full access to justice for children it is crucial to provide effective and prompt legal aid, so that these children can claim their rights vis-à-vis the justice system. Many States have not yet enacted respective laws or created the necessary institutions to comply with this provision.

The children's families and communities play a critical role in the protection of the children who are involved in crime. It is thus essential to ensure the involvement of families and communities in the juvenile justice process to support positive practices, such as diversion, alternative measures and restorative justice. The same applies to the engagement of the media and civil society in promoting open discussion and positive change.

A last challenge worth mentioning is the lack of data and statistics on crimes committed by and against children and on the performance of the justice system. This deficiency results in the development of policies and programmes that are not evidence-based and thus likely to be ineffective. This also entails the inability to measure progress of Government interventions.

### **3. The linkages between justice reform and development**

Equity, empowerment and sustainability form the key components of human development, which is about expanding people's choices,<sup>4</sup> and are fundamental for social and economic growth. They can, however, only be achieved when jointly considered with the demand for justice,<sup>5</sup> as justice forms a pre-requisite for the achievement of sustainable development. This requires that justice institutions are inclusive, participatory, and accountable to the people while at the same protecting human rights and fundamental freedoms.<sup>6</sup>

It is a well-known fact that unfair and inefficient justice systems represent an obstacle to the achievement of sustainable development as they weaken the rule of law, lead to human rights abuses and foster inequality.<sup>7</sup> They suppress to a great extent economic growth, hamper financial investment and have direct impact on the quality of people's life encouraging corruption, organized crime, and insecurity.

It is most likely that people who suffer from the consequences of injustice will stay socially deprived, poor, in bad health and without the opportunity to actively participate in society and enjoy their human freedom. Their future attitude towards justice institutions will be coined by disengagement along with disinterest in public life. Eventually, this will fuel social discontent and trigger social unrest and violence. Children who experience unfair treatment or violence when undergoing the justice process, or who do not receive tailored juvenile justice responses to their involvement in crime, are also at a high risk of losing their faith or discontinue investment in the justice system.

On the other hand, fair, effective and humane justice systems with accountable and responsive justice institutions can serve as the main avenues to claim for rights and overcome social deprivation, exclusion and denial of entitlements. Accountable and inclusive justice institutions contribute to equity and poverty alleviation, protect the socially weak and promote the distribution of opportunities in society.<sup>8</sup> Fostering an enabling environment with fair effective and humane justice institutions will thus lead to sustainable development, including sustained and inclusive economic growth, social development, and the eradication of poverty and hunger.<sup>9</sup>

The international community is currently developing the post-2015 sustainable development agenda as the Millennium Development Goals<sup>10</sup> that at the beginning of the 21<sup>st</sup> Century had redefined human security<sup>11</sup>, come to a conclusion at the end of 2015. It will contain 17 sustainable development goals (SDGs) with SDG that reads: 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all

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Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (A/HRC/21/25), 27 June 2012, para. 8.

<sup>4</sup> See: UNDP Human Development Report 2011, *Sustainability and Equity, A Better Future for All*, p.1.

<sup>5</sup> See: The World Bank, 2011 World Development Report: *Conflict, Security and Development*.

<sup>6</sup> See in this regard: A/69/700, Report of the Secretary-General on the post-2015 sustainable development agenda, *The road to dignity by 2030: ending poverty, transforming all lives and protecting the planet*, 4 December 2014, para. 77.

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<sup>7</sup> See: statement of the UN Secretary-General, on 9 December 2013 at: <http://www.un.org/apps/news/story.asp?NewsID=46691#.VME5iv7F-Qo>.

<sup>8</sup> World Bank Report 1994, *Governance: The World Bank's experience*, Washington, World Bank, p.23.

<sup>9</sup> See A/RES/66/288, *The future that we want*, 11 September 2012, para. 10.

<sup>10</sup> See A/RES/55/2, *United Nations Millennium Declaration*, 18 September 2000.

<sup>11</sup> Former Secretary-General Kofi Annan in his autobiography, *Interventions – A Life in War and Peace*, p. 209.



levels.<sup>12</sup> This includes fair, effective and humane juvenile justice systems that are shaped by a human rights based approach.

#### **4. Reasons to promote juvenile justice reform**

While the linkages between justice and development have been well established, it is essential to understand why it is important to promote juvenile justice reform. In times where punitive approaches to the involvement of children in crime are becoming more and more popular, particularly in times of economic crisis, it is of utmost importance to flag out some of the reasons why states should invest in juvenile justice reform and create a protective environment framework for children who are in contact with the justice system as alleged offenders.

##### **i) Investing in juvenile justice means complying with international human rights law**

Fair, effective and humane juvenile justice system entail the respect for international human rights law. The Convention on the Rights of the Child and other relevant international standards and norms in the area of juvenile justice provide a compelling legal framework. Respecting this international legal framework means that States are both aware of their obligations and commitments under international law and are serious in their efforts to promote the rights of children. While the incorporation of the international legal framework on juvenile justice into national law can only be seen as a first step in establishing fair, effective and humane juvenile justice systems, it is certainly an indispensable one.

##### **ii) Investing in juvenile justice means investing in the future of children**

Justice systems can be powerful tools in breaking the cycle of poverty. Children living in poor households or in highly unequal societies are the most vulnerable to be involved in crime. They are, in fact, more prone to get involved in criminal activities or exploitation. Therefore, investing in mechanisms which strengthen juvenile justice systems is key for the significant reduction of poverty and social exclusion, and will eventually contribute to providing a brighter future for children in which they are effective agents of their own protection.

##### **iii) Investing in juvenile justice means saving money**

Studies show that investing in measures to promote fair and efficient juvenile justice systems saves tax payers money and results in return of investment. Studies have also shown that in many countries, community-based and restorative justice programmes for children have proven to be more cost-effective than deprivation of liberty.<sup>13</sup> Indeed, taking a comprehensive child rights based approach towards reforming juvenile justice systems, rather than relying on punitive approaches and detention as the primary solution, will help save resources while, at the same time, it is in line with international human rights law.

##### **5.) Adopting a systemic approach for effective and sustainable juvenile justice reforms**

Although considerable progress has been achieved to date by many countries in strengthening their juvenile justice systems, quite often, juvenile justice reforms have been implemented through the adoption of fragmented approaches. For example, in many countries, the focus lies exclusively on the development of new legislation and new policies without paying due attention to the need to enhance capacities of juvenile justice professionals. It can also be observed that countries that have invested a lot of resources in building the capacity of juvenile justice professionals and at the same time neglect the establishment of specialised institutions and the provision of resources for training professionals in order to effectively perform their duties. Also, where adequate juvenile justice legislation and policies have indeed been implemented and institutions and procedures are put in place, it is common that not enough attention is paid to foster inter-institutional coordination and collaboration between the relevant juvenile justice institutions and all other stakeholders involved, such as non-state actors. Generally speaking, it is a regular phenomenon that countries willing to reform their juvenile justice systems invest in the %supply side+ of juvenile justice, by strengthening juvenile justice institutions. However, there is an equally important need to strengthen the %demand side+ of juvenile justice which means to create conditions for children and families to claim and exercise their rights and to promote access to inclusive and accountable justice institutions.

<sup>12</sup> A/68/970, Report of the Open Working Group of the General Assembly on Sustainable Development Goals, 12 August 2014, Goal 16.

<sup>13</sup> See for example: Petteruti, A., Velázquez, T. and Walsh, N., *The Costs of Confinement: Why Good Juvenile Justice Policies Make Good Fiscal Sense*, 2009, (Justice Policy Institute, May 2009), unnumbered page; Terre des hommes: <http://www.justiciajuvenilrestaurativa.org/experiencia.php>.



If States aim to promote effective and sustainable juvenile justice reform, it is crucial to change the current paradigm and shift away from fragmented responses to a systemic approach<sup>14</sup> to juvenile justice reform.<sup>15</sup> Only through the adoption of a systemic approach, the wide range of complex and inter-related factors associated with juvenile justice can be accurately identified and addressed in a sustainable manner. Juvenile justice reform should be embedded in processes of long-term institutional and policy reforms and be child-rights based with a strong emphasis on promoting crime prevention measures and the accountability of justice institutions.

Countries need to strengthen their child protection systems and foster coordination between child protection, health, education and justice systems. Coordination and collaboration should be promoted not only between Governmental and justice institutions but also between State and non-State actors. Communication and advocacy measures aimed to promote the engagement of media and civil society in the juvenile justice process are also essential in promoting positive change. Finally, formal and informal mechanisms should be instituted for children to participate in the development and implementation of laws, policies, and programmes aimed to promote juvenile justice reform.

### **6. Conclusion**

The year 2015 marks a momentous year for the international community. With the Millennium Development Goals concluding by the end of 2015 and the introduction of the post-2015 development agenda, Member States will have the opportunity to manifest their commitment to democracy, good governance and the rule of law. Global juvenile justice reform and the integration of juvenile justice as part of the overall rule of law efforts through the development and implementation of comprehensive juvenile justice laws, policies and institutions in line with international standards and norms forms part of this commitment. The United Nations Office on Drugs and Crime will continue to support Member States in their endeavours to achieve the ambitious goal of sustainable development by supporting them in strengthening their juvenile justice systems.

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<sup>14</sup> See in this regard in particular the UNICEF Child Protection Strategy, E/ICEF/2008/5/Rev.1 of 20 May 2008 Strategy.

<sup>15</sup> See also: Guidance Note of the Secretary General of the United Nations approach on Justice for Children, New York, 2008, p. 2.

## Prevention—the Norwegian experience

Anne-Li Ferguson



It is a true honour to be here today; to share with you some of the Norwegian experiences on this crucial issue; which has, unfortunately, been much neglected.

Last year we were celebrating the 25th anniversary of the Convention on the Rights of the Child (CRC) and significant achievements have been accomplished since 1989. Children perceived to be in conflict with the law, have, however, always been the unwanted child of the Children's rights movement<sup>1</sup>.

Albeit the United Nations Convention on the Rights of the Child, is frequently described as the most ratified human rights convention in the world, it is lamentably also the most violated<sup>2</sup>. Despite the obligation to ensure that the detention of children shall be used only as a measure of last resort and for the shortest appropriate period of time contained in article 37 (of the CRC), children are continuously being illegally, arbitrarily and unnecessarily detained<sup>3</sup>. More than 1 million children are deprived of their liberty at any given time<sup>4</sup>.

Children perceived to be in conflict with the law meet an array of risks of violence within the justice system and children in contact with the law run a high risk of revictimisation<sup>5</sup>. The UN Secretary-General's Study on Violence Against Children of

2006 found that children in care and justice institutions are at higher risk of violence than virtually all other children<sup>6</sup>. In the newly launched report on a Childhood free from Corporal Punishment<sup>7</sup>, it is stated that 71 states still allow corporal punishment to be used in penal institutions for children and 39 states still use corporal punishment as a sentence in criminal, religious and/or traditional systems of justice. This is not acceptable.

Offending - seriously or repeatedly - by children is often a sign that growing up has involved facing challenges that were not properly met, whether it is poverty, insufficient parental care, lack of assistance from public bodies such as school, child welfare - or health services or other problems. A difficult childhood does, however, not exempt children from responsibility. Nonetheless, it does require special qualities of the follow-up to promote rehabilitation, as well as avoiding intimidation and a public perception of them being antisocial.

Imposing punishment on people found guilty of violating criminal statutes has been an integrated part of the basic structure of any society at all times. Notwithstanding, neither the gravity and nature of the individual criminal act; nor the victim's possible claim for revenge, should not be the sole decisive basis when a sanction is to be chosen - especially as regards children.

Research and many years of experience have demonstrated that imprisonment has few, if any, positive effects on young offenders. Recidivism is high and many offenders develop a criminal career while serving a prison sentence. Hence, the focus should instead be on the young offender's need for assistance and support to stop his or her criminal activity. A key factor in this respect is to strengthen the young person's resources and will to confront and deal with his or her criminal behaviour and, thus, make a re-entry - or maybe even the first entry - into society.

Combating youth crime is a social responsibility which demands close collaboration across administrative boundaries and with prevention as a starting point. Extensive cooperation between the justice system and child welfare -, health - and school services, and interaction between different relevant institutions, as well as between the public - and civil sectors, are necessary pre-requisites to this end.

<sup>1</sup> Juvenile Justice: The Unwanted Child: Why the potential of the Convention on the Rights of the Child is not being realized, and what we can do about it BRUCE ABRAMSON (Jan. 31, 05)

<sup>2</sup> Muncie, John (2008). The punitive turn in juvenile justice: cultures of control and rights compliance in western Europe and the USA. *Youth Justice*, 8(2) pp. 107. 121.

<sup>3</sup> Toward a World free from Violence - Global Survey on Violence Against Children, Office of the UN Special Representative of the Secretary General on Violence against Children (2013).

<sup>4</sup> Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, (A/HRC/13/39/Add.5), p. 63, para. 236.

<sup>5</sup> The Joint report of the Office of the High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system (A/HRC/21/25).

<sup>6</sup> Report of the independent expert for the United Nations study on violence against children (A/61/299)

<sup>7</sup> Childhood free from corporal punishment . changing law and practice - A special progress report prepared for the high-level conference hosted by Sweden's Ministry of Health and Social Affairs in Stockholm, June 2014, celebrating the 25th anniversary of the adoption of the CRC and the 35th anniversary of Sweden's pioneering ban on all corporal punishment of children

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When prevention fails, and crime has been committed by a minor, the same multi-agency co-operation has to take place throughout the juvenile criminal case; from the first intervention by the police, until after a sentence has been served and reintegration is about to take place.

Having realised these facts, the Norwegian Government initiated an ambitious and consistent strategy in search of more functional measures; based on diversion, multi-disciplinary collaboration and restorative justice. And . encouragingly enough . changing governments continued to embrace this commitment. There has - in fact - been surprisingly little political divergence, but, instead, a strong common will to achieve better solutions; more compatible with contemporary science and human rights standards and norms.

On this background, the Government proposed a bill regarding juveniles in conflict with the law in 2011. The bill was adopted by a unanimous Parliament the same year. It introduces a new diverting sanction for young offenders between 15 and 18 years of age, who have committed serious and/or repeated crime.

This alternative to a custodial sentence is based on a restorative process and is implemented by the Mediation Boards; instead of the correctional services. The offender's consent is a requirement. The offender's private network; as well as different public bodies and institutions, such as school, the child welfare - and health care services, will be involved and the follow-up plan will be individually tailored for each offender; according to his or her special needs. The victim may also part-take in the Conferencing Meeting; if he or she so wishes. The ambition is to increase the offender's apprehension of the effects of the crime committed, and, for the victim, to experience some kind of closure; as a restorative element. The victim is usually relieved by the opportunity to confront his offender directly with his frustrations, like fear and anger, and - possibly . also prevent further conflicts between the parties. The impact on many young offenders is overwhelming and might be the starting point for taking some responsibility for his or her own actions by changing attitudes and behaviour. As a part of the follow-up plan, the offender will be obliged to work actively to abstain from committing crime; as well as from using alcohol and drugs. Thus, the sanction is, to a large extent, much more demanding for the offender than a prison sentence. Well-functioning multi-agency cooperation is a vital pre-condition for a successful outcome in this regard. This cooperation will be guided by a so-called 'Juvenile Coordinator'. The duration is set by the court and is normally 2 years.

After a trial-project, the use of the said sanction entered into force in July last year. We consider this to be (tertiary) 'prevention' since it aims at stopping the young offender's criminal career and getting him or her on the right track.

Despite the fact that the Norwegian Government has made it their policy that prison should be a measure of last resort, some minors are still being imprisoned. Although the figures are quite low, Norway has been criticised by regional and international monitoring organs various times because minors are not being segregated from adult prisoners.

In order to prevent children from being imprisoned together with adults and to ensure better detention conditions for this group, a trial project is being conducted in which separate prison units are being established for young offenders. In these units the juveniles are, to a much greater extent than in normal prisons, able to partake in the prison community. Close follow-up is being provided both during and after serving a prison sentence. To be able to offer this type of follow-up, special multi-disciplinary teams have been set up.

Additionally, several law proposals aiming at improving the conditions for imprisoned minors were also adopted in 2011:

- Isolation of minors will, with a few exceptions, be prohibited unless it is in the best interest of the child;
- Measures to ensure contact between prisoners under the age of 18 and their families have been implemented;
- And a special set of regulations regarding treatment of imprisoned minors will be enacted.

Yet, it is our sincere hope that the introduction of the new non-custodial sanction for juveniles will curtail the number of imprisoned minors.

With the aim to prevent violence and violations of the rights of children in conflict with the law and to make juvenile justice more child-sensitive, a whole range of law amendments regarding juveniles in conflict with the law were enacted by the Norwegian Parliament simultaneously with the adoption of the said non-custodial sanction. Let me mention a few of them briefly:

~ To be able to remand a minor in custody, it has to be compellingly necessary;

The minor has the right to legal counsel and free legal aid;

~ The minor has to be brought before the court as soon as possible and at the latest the day following the arrest. The limits for transfer of minors from police cells to regular prisons have been reduced accordingly;

~ The conditions for remanding a child in custody must be reviewed at least every two weeks;

~ A minor cannot be placed in solitary confinement and he or she has the right to contact with his or her family;

~ The police have a duty to notify the municipal child welfare services if a person under 18 years of age is to be remanded in custody and a representative of the child welfare services must

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attend the remand hearing and provide information as to the necessary measures.

The aspiration is to improve the position of juveniles in conflict with the law by strengthening their rights. Further, the suggested amendments represent a step to better fulfill the obligations incumbent on the State Members to the CRC and other human rights standards and norms.

There is, however, no time for complacency. The situation in Norway for juveniles in conflict with the law is not perfect. The adoption of the said amendments does, however, represent a huge leap forward in the struggle to achieve a change in the common mind-set as to how juveniles in conflict with the law should be treated; and thereby towards a more child-sensitive justice.

Whereas the aim of juvenile justice is first of all rehabilitation of children and not their punishment, there are still considerable differences between states as to the purpose of imprisonment and the main objective for the penal system. Nevertheless, I believe that we all have one aspiration in common: namely to reduce crime. . If this is the case, should we not all look to measures that reduce recidivism; rather than to measures which seem to increase it?

- -And if serving the sentence in prison is necessary, is it not - for the same reasons - in the best interest of the society as a whole to do whatever it takes to promote rehabilitation and reintegration; rather than the opposite?
- -And in these times of austerity: should there not be a stronger focus on the effectiveness of the sanctions used?
- -And in a world where states have to deal with a constantly growing prison population and severe over-crowding is becoming more and more common, maybe this is a good starting point?
- If we can agree on the urgency to reduce the number of children that are being imprisoned and to develop legislation, policies, and programmes which place the child's rehabilitation and reintegration in the centre, safeguards the rights of the child and prevents violence and recidivism, we have, indeed, come a long way. This can, however, only be achieved if we join forces and work together on this common enterprise.

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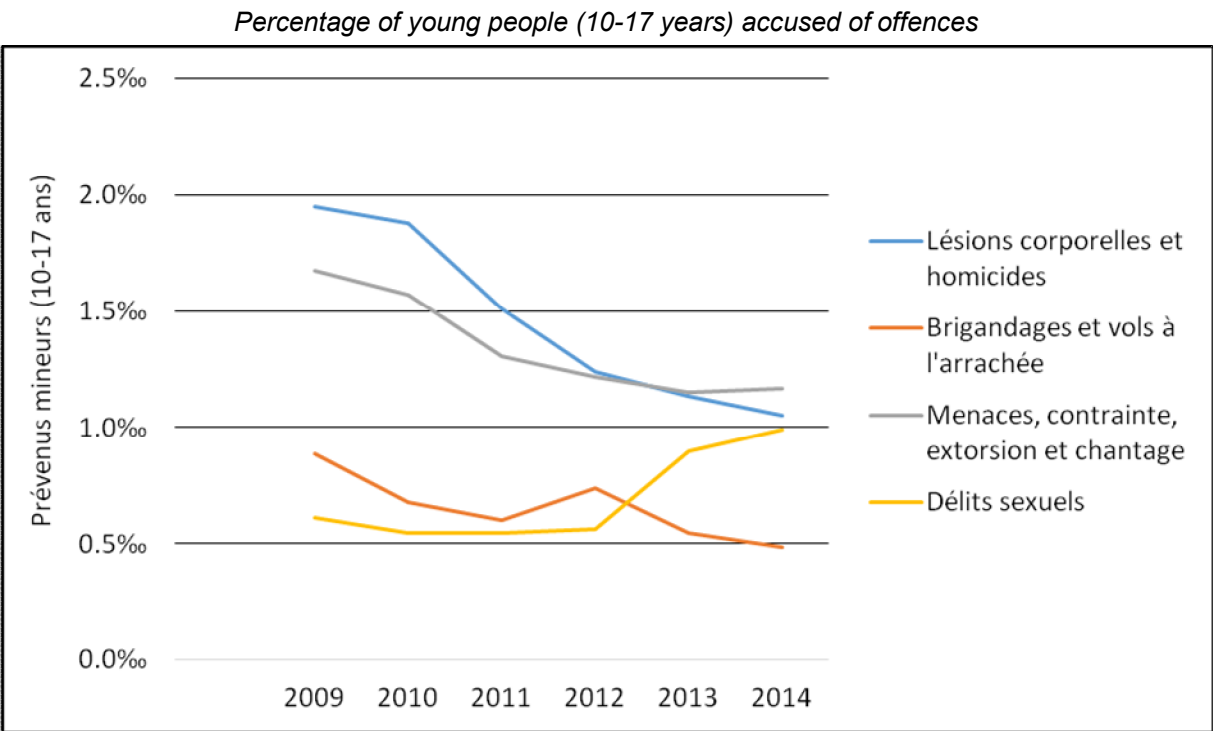
Prevention of Youth violence in Switzerland

Liliane Galley



**Current trends in Switzerland—falling numbers**  
In Switzerland, violence among young people between 10 and 25 years of age is falling overall. After a continually rising trend from 1990 to 2006-07, the figures from all sources are currently falling: both the official statistics of acts of violence known either to the police (see diagram III.1) or to the justice system (see III.2) or surveys undertaken directly with young people.  
A report giving unofficial estimates of violence among young people derived from surveys undertaken in the Vaud and Zurich cantons is due to be published in the summer of 2015.

Diagram III.1: Trends in violence among young people (10-17 years old) 2009 to 2014  
Police crime statistics



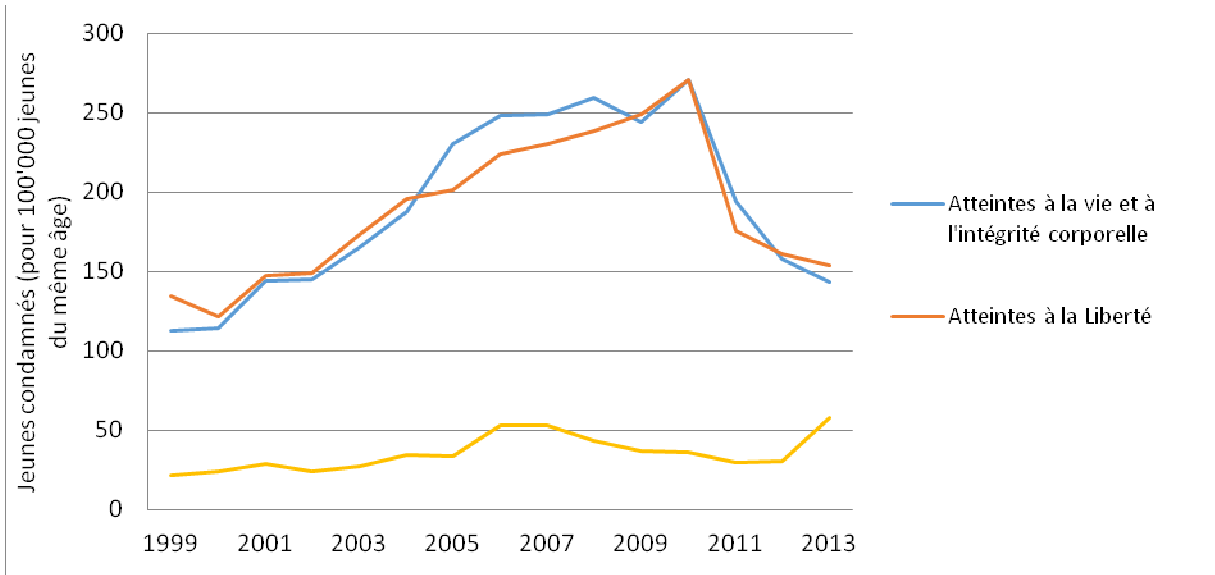
<http://www.bfs.admin.ch/bfs/portal/fr/index/news/publikationen.html?publicationID=6355>

- personal injury & homicide
- robbery, bag snatches etc.
- threats, coercion, extortion & blackmail
- sexual offences



Diagram III.2 Trends in violence among young people  
Criminal Justice statistics

Conviction rate (per 100,000 young people of the same age)



<http://www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/04.html>

Source : Office fédéral de la statistique (OFS)

----- attacks on life & personal injury; ----- attacks on freedom; ----- sexual attacks

This overall reduction is welcome and suggests that measures that have been taken almost everywhere in Switzerland are bearing fruit. These data should, however, be seen in context. In the police figures, the reduction in the number of recorded instances of life-threatening crimes or assaults against the person has occurred in parallel with a fall in the number of complaints made. Thus the large fall in the number of attacks shown in the official statistics may not necessarily reflect the situation as it is on the ground. In practice, the police and judicial authorities only get to know about one side of any act of violence. On the other hand, it should be noted that the number of violent offences is at a higher level than the average for the last twenty years. According to unofficial surveys on violence among young people in the canton of Zurich, one in three on average has been a victim and one in five has been a perpetrator. Sexual violence within the 15-17 age-group is of particular concern<sup>1</sup>, not only because of the growth in the number of victims, but because of the devastating long-term consequences. Attention also needs to be given to harassment and cyber-bullying in the light of the enormous increase in the use of digital media. Finally, there has been an increase in violence in public among young males aged between 15 and 24<sup>2</sup>.

**How prevention is organised in Switzerland : diversity and proximity**

In the Swiss federal framework, it is the cantons, towns and communes that have the power to undertake measures to prevent violence. The Federal Government can act in support by undertaking those tasks which are best done at Federal level, such as developing and disseminating knowledge, for example on the national strategy, but it plays only a subsidiary role.

The cantons play a fundamental role in deciding the strategic framework and implementing measures in their local plans. As a result, prevention can vary considerably from one canton to another and depends to a great extent on political will and the importance of the problem. Municipalities and communes play an equally important role in developing and implementing measures in respect of the cantons' strategy and directives. At the end of the 2000-10 decade, the Federal Government was also involved in this field in developing and then implementing the national programme *Young People and Violence* in cooperation with the cantons, municipalities and communes.

This division of responsibilities has the virtue of enabling local needs to be taken into account and offering solutions tailored to fit the context. However, it is difficult to have an overall view of the measures that are in force in different areas and there is no coordination in their application.

In addition to there being three national languages and different cultures, this structure gives rise to important needs for communication, cooperation and coordination both vertically, between different levels of government, and horizontally, between the various agencies.

<sup>1</sup> UBS Optimus Foundation (2012)

<sup>2</sup> Ribeaud (2013)

### **'Young people and violence', a national preventative programme**

In its 2009 report on young people and violence<sup>3</sup>, the Federal Council found a lack of expert knowledge and a need for dialogue between those working in the field. In response, the Federal Government, cantons, municipalities and communes decided to put in train an action plan, designed to last five years from 2011 to 2015, called *Young People and Violence*<sup>4</sup>. This programme was aimed at improving the quality and effectiveness of the prevention of violence in Switzerland. It had four dimensions:

- To establish a base of scientific knowledge;
  - To popularise and disseminate this knowledge to workers in the field;
  - To strengthen the communication and networks of those working on the national plan; and
  - To improve the coordination of prevention through intervention and supervision.
- Once the current position in respect of the strategic/political framework, the structures, organisations and current approaches had been identified in each canton<sup>5</sup>, the programme focused on identifying good practice in order to see which approaches were effective in addressing the problem.

#### **Good practice**

The programme has produced two reference manuals to help determine effective approaches to reducing violence among young people and to provide criteria to help choose projects and get them working. Both manuals are available in French, German and Italian.

Conceived as a working tool, *Criteria determining good practice*<sup>6</sup> sets out the main factors that determine effective measures of prevention. It lists 26 good practice criteria for use in the family, in school or in society generally. It provides concrete help to professionals and politicians with responsibility in the field to choose between current approaches and to review them and view them afresh.

Unique of its kind, the report *Effective Prevention of Violence*<sup>7</sup> presents concise insights into 26 approaches to the prevention of violence with the conditions and factors that affect their working. The approaches cover the following aspects: individuals, families, school, society in general and help to victims of violence.

### **Messages and principles for prevention**

It is possible to elicit some basic principles from our current state of knowledge on the prevention of violence. Adopting these principles assures a basic minimum quality in any measures taken. These principles are, as follows:

#### **It is never too soon or too late for prevention**

Prevention should not be directed solely at young people who have already committed an offence, but should begin much earlier and should also involve parents and teachers. According to OMS, those measures that involve families and children from a very early age (even in the womb) are among the most promising for the long-term reduction of violence among the young.

#### **Prevention in the family, at school and in public**

Because violence has many different causes (education, learning difficulties, poor school attendance, alcohol abuse, etc) it is essential to operate on several levels in order to strengthen the effects of prevention.

Within the *family*, it is important to put measures in place to give encouragement and support for education to parents of children at an early age. These measures anticipate numerous problems, such as violence, the use of dangerous substances, problems of integration, mental health issues, etc. The rapid recognition of problem behaviour by children and young people and the offer of support has proved indispensable. Approaches such as cognitive-behaviour therapy and multi-system interventions have shown their value in helping young people with a disposition towards violence.

Effective prevention *at school* depends first of all on establishing a favourable learning environment and the good management of the school and the class. In Switzerland, social workers and mediators are active in the majority of schools to offer pupils in difficulty individualised support. Specific measures involve the prevention of bullying of one pupil by another. For example, in Geneva a pilot project<sup>8</sup> aims to give secondary school pupils in years I and II and their teachers an awareness of the issues. Programmes to develop social skills need to be given from the outset for the duration of schooling and should systematically involve parents.

In *social interactions* (activities outside school, leisure time, work in the neighbourhood etc) it is important to get the active involvement of key players in analysing the situation and choosing options. Approaches to prevention are varied and complement each other: making available adequate out-of-school activities, measures to reduce alcohol consumption, effective policing of public spaces and mentoring programmes to support vulnerable young people. For young people who have already committed an offence, restorative justice approaches have proved of value.

<sup>3</sup> Federal Council (2009)

<sup>4</sup> [www.jeunesetviolence.ch](http://www.jeunesetviolence.ch)

<sup>5</sup> Landert / Panchaud (2013)

<sup>6</sup> Fabian et al (2014)

<sup>7</sup> Averdijk et al (2014)

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<sup>8</sup> <http://www.jeunesetviolence.ch/fr/projects/projects-pilotes/cyber-harcelement.html>

### Make use of expert knowledge and evaluate outcomes

Before developing methods and using resources on prevention, it is essential to look at existing knowledge (recent studies) to avoid repeating ineffective or even counterproductive approaches. The quality of preventative measures depends partly on the professionalism of those undertaking them, but also on a clear structure for the different phases of the project<sup>9</sup>: analysis of the situation, definition of the aims and desired outcomes, choice of actions, implementation and documentation of the project and outcomes. The evaluation phase is especially important to check the project's effectiveness, to bring out any problems and to make the necessary changes.

### Prioritise measures towards groups at risk

Preventative measures should correspond to needs and priorities. According to the 70-25-5 rule:

- 70% of young people in each age-group do not exhibit any behavioural problems, 25% do, but not in any serious or persistent way, unlike the remaining 5%<sup>10</sup>

This remaining 5% cause over 80% of the acts of violence and often exhibit several risk factors at the same time. Prevention therefore needs to guard its resources carefully and concentrate them on the families and young people most at risk. One good line is to approach this group early on, rather than waiting until they need support. The Family Education Association of the canton of Fribourg<sup>11</sup> has developed some very interesting approaches in this area, such as cafés for parents in shopping centres and displays of educational material in doctors' waiting rooms. However, dealing with frequent offenders remains a real challenge.

### Coordination of professionals and actions

Juvenile violence has many different causes and so needs a cross-cutting approach. Prevention has to address not only childhood and adolescence, but also engage in issues of social politics, family, health public education, sport, management of public spaces, integration and equality as well as policing and justice. Prevention needs good coordination between all those involved in understanding the family, school, health and social workers as well as the police and members of the judiciary.

### Create enduring strategies and review the measures

Prevention of violence is a continuing responsibility which has to be reinvented for each new generation of young people by adapting to changes in society and new sources of problems. Prevention has to be for the long-term and built in to support structures for families (eg training in parenting, organisations providing counselling to parents) those for schools (eg training for teachers and school administrators,

educational social workers) and the public arena (eg development of social-cultural activities, and of community social workers, and the formation of cadres of young people in the police force).

### Conclusion

Collaboration between the three levels of government which is a feature of the Youth and Violence programme has brought a better structure to the field of prevention in Switzerland, created a useful and accessible knowledge base for those working in the field and has established links and the sharing of good practice at national level. A good number of cantons, municipalities and communes point to work carried out within the framework of the national programme to develop their own strategies and approaches.

To be effective, measures aimed at preventing violence must start as early as possible in life and be focused on the groups most at risk. A multi-targeted approach, aimed at families, schools and social organisations, provides a satisfactory way of dealing with a problem with many roots.

Recent years have certainly seen a great deal of development in the prevention of violence, but much remains to be done in Switzerland to establish effective prevention on a large-scale. That will come about through undertaking work and developing skills for the long-term together with a more systematic evaluation of measures that have been implemented.

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<sup>9</sup> Fabian et al. (2014) pp17-28

<sup>10</sup> Averdijk et al (2014) p13

<sup>11</sup> L'association pour l'éducation familiale:

[www.educationfamiliale.ch](http://www.educationfamiliale.ch)

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## Strengthening the juvenile justice system -- Switzerland Dr Bernardo Stadelmann



### Development and improvement of laws and procedure in juvenile justice

I am pleased to present to you an outline of the Swiss Criminal law for Minors and hope to share with you the valuable lessons we have learned. I will begin by briefly presenting the political structures of Switzerland and the genesis of the laws in force. Then, I will address the specifics of criminal and procedural law, and finally, I will discuss some current problems.

#### 1. The Swiss federal system

Switzerland is a federal State comprising three levels. The 2352 municipalities are the smallest political entity. They are spread out amongst 26 cantons, which each have their own Parliament (legislative power), their own Government (Executive power) and their own courts (judiciary).

The Federal Constitution defines the tasks entrusted to the Swiss Confederation and the cantons. It assigns to the Confederation the competency to develop criminal legislation and procedure including the criminal laws pertaining to minors. The cantons are responsible for the criminal prosecution of jurisdictional issues (including the organization of the authorities) and for the execution of sentences and measures.

#### 2. Criminal law for minors

##### a) Genesis

The first Swiss penal code entered into force in 1942. A few articles of this code included specific provisions for minors. Adult criminal law was then centred on the offence, that is, the type and severity of the penalty depended on the seriousness of the facts of the offence. Criminal law applicable to minors was centred on the minor for educational reasons. This means that the reaction of the justice system to offences committed by minors was determined by the personality of the minor and his needs. The penal code distinguished minors threatened in their development from those who were not. The first should be subject to educational measures. The

latter were punished. This law centred on the minor, in the spirit of legislative monism; it was designed so that the judge could only mete out sentences for minors not threatened and measures for minors who were threatened in their development. As for criminal liability, the minimum age for criminal responsibility was set initially at the age of six and raised to seven in the course of a partial revision in 1971.

During the first decades of enforcement of the law, criminal law for minors had positive effects on minors in the second category, i.e. those who were not subject to educational measures. The use of means such as reprimands, fines, or hours of detention were all beneficial warnings. For the other category of minors, approaches aimed at encouraging young people by use of educational measures was also considered successful, especially when they benefited from educational support in the context of their families.

However, when institutional measures were ordered the necessary institutions were frequently found lacking and often focused on pure discipline. Educational homes were criticized for using harsh methods of education including corporal punishment, isolation, food deprivation and head shaving. This situation gave rise, in the 1980s, to a comprehensive reform of homes: some schools have closed, others have been fundamentally transformed, with additional staff resources, including people trained in social pedagogy, and encouraged to use appropriate teaching methods.

This short digression on the execution of measures shows us that good legal bases are not worth much if there are no suitable instruments to ensure their application.

##### b) The development of a specific law governing the criminal status of minors

In the 1980s, a total revision of the general part of the Swiss penal code, which also included criminal law for minors, was undertaken. The main element of the revision of criminal law was the reorganization of the system of sanctions for adults for the better protection of society.

During this work, it became immediately clear that criminal law for minors should be included in appropriate legislation, as is the case in many other States. This clear separation from adult criminal law was also justified by the very different nature of the provisions relating to minors, which are closer to civil law than criminal law.

Also, the monist system was the subject of severe criticism, due to the strict separation between sentences and measures. When a measure failed, it was impossible to then impose a sentence. In addition, the maximum penalty of one-year imprisonment was problematic in the rare cases of serious violence.



A first bill, developed between 1983 and 1986, was focused more on the facts of the case than on the author and proposed indexing the penalty on the gravity of the act, as is the case in adult criminal law. Consultations raised many objections, based largely on the fact that the principles governing the existing rules had proven effective and there was a desire to keep the right focus on the author. Finally, the major change of the project was to establish the principle of vicarious dualism and to increase the maximum custodial sentence for serious crimes by one year to four years. The new juvenile penal law was adopted by Parliament in 2003 and came into force in 2007.

### **c) Specificities of criminal law for minors.**

I would now like to go into further detail about some peculiarities of our juvenile criminal law, looking first at the focus on the minor. Switzerland continues to apply a model based on education, in which the goals of special prevention dominate. This means preventing offenders from committing new offences, imposing penalties appropriate to their age and subjecting them to educational and therapeutic measures. The sanctions adopted are primarily dependent on the personal needs of the child or the young person concerned and not the seriousness of his act or negligence.

Secondly, it is a special criminal law, which only applies to children and adolescents who have committed offences between 10 and 18 years of age, and constitute a group of minors defined on the basis of age.

Thirdly, the vicarious dualistic system allows for the pronouncement of both sentences and measures. When the judge orders a measure against a minor, he must also impose a penalty if he committed an offence. Sentencing is adjourned to allow the measure to take effect. Preventive measures have primacy. This means that if a minor is considered to be threatened in his/her development, the judge prioritizes a measure of protection. If an institutional measure fails, time spent undergoing that measure is deducted from the duration of the deprivation of liberty.

Protective measures may be ambulatory (e.g. personal follow-up by a social worker or therapeutic) or institutional (e.g., assignment to an educational home).

Penalties range from reprimand to loss of liberty passing through a fine and community service. But the deprivation of liberty is not equivalent to that of adults because, while detained educational goals remain a priority: this is, also, to encourage juveniles using educational measures.

You may have been surprised to learn that criminal responsibility begins in Switzerland at the age of 10 years. It is indeed a young age by international standards. But I want to clarify that sentences are staggered according to age: financial penalties (fines) and custodial sentences are applicable from the age of 15 only; custodial

sentences of more than one year can be applied from 16 years of age and only for certain serious offences. Moreover, this system allows for relatively early intervention for minors who have committed offences, are threatened in their development and require educational support.

### **d) Evaluation of criminal law for minors**

The new law was first assessed in 2013. This evaluation confirmed the applicability and effectiveness of the law. However, there are some problems with the principle of vicarious dualism, which mixes deprivation of liberty and institutional measures. While for adults, these two penalties are equally weighted; in juvenile sentencing custodial sentences are much shorter than educative measures. Some young people attempt to shorten the length of their punishment; through unacceptable behaviour they try to undermine protective measures, because they know that the lifting of a measure leads to the execution of the penalty, which is much shorter. Educational institutions are faced with the arduous task of making minors understand that following a measure successfully will significantly improve their prospects and that it is an opportunity not to be missed.

Following the evaluation, the legislature has provided that institutional measures shall be terminated when the person concerned reaches the age of 25 years, instead of 22, to enable him/her to benefit from them longer and increase the chances of success in very serious cases.

The assessment revealed yet another issue, which should be given particular attention. It is that of communication. So that the criminal law for minors can perform effectively as a preventive measure, it is crucial that communication is intensive, tailored to the needs of the different stakeholders and especially that it promotes clarity. Efforts to achieve this goal lie at three levels:

- ◆ The accused and relatives: the reasons for the decision or judgment shall be communicated wherever possible orally and in a language that the young person understands. Written procedures without contact with the criminal authorities for minors should be reserved for milder cases. In particular, explanations regarding the rights of the defendant and possibilities for appeal should be delivered in language easily understood by non-lawyers rather in legal jargon.
- ◆ The victim and the injured parties: in current practice there is a lack of transparency for the victim, who often has the impression that his/her interests come after those of the accused. To remedy this, it is important to provide information on the criminal law for minors and associated penalties.



- ◆ The public: given that the population in general shows a tendency towards repression and that, in the media, emphasis is instead placed on penalties, a communication effort is needed to better inform the public about the goals and resources of the criminal justice system for minors. Protection measures must be the subject of further explanations regarding their purpose, their nature and duration (e.g. the fact that they can entail a deprivation of liberty and that they can extend over several years).

Our authorities are also concerned about the sense of insecurity of the population and focus on prevention. As this theme has already been covered in this Congress, I will mention the national "youth and violence" programme only briefly.

Developed jointly by the Confederation, the cantons, cities and municipalities, it was implemented from January 2011 for a period of five years. Its goal is to sustainably prevent violence within families, schools and society. The behaviour of young people should become less violent in the long term causing a fall in insecurity felt by the general population. A network of cantonal and communal stakeholders for the prevention of violence was set up with the support of the Confederation. The Organization of national conferences ripples out in circles. There are also training courses and seminars and support for such initiatives. The evaluation of the programme will be available in late 2015.

### **3. Criminal procedure for minors**

#### **a) Genesis**

Since the inclusion of provisions concerning juveniles in the penal code entered into force in 1942, criminal prosecution and case law have evolved differently depending on the Canton. Each canton has established its own criminal procedure for minors. Two models dominated:

- the model of the judge for minors, mainly in Latin Switzerland, and
- the model of the prosecutor for minors, mainly in German-speaking Switzerland.

The entry into force in 2007 of the Federal Act governing the criminal status of minors concluded the revision of the substantive criminal law applicable to minors, but the criminal procedure for minors was meanwhile not yet unified. This is why the aforementioned Act also included basic provisions on procedure and execution. One rule, for example, prohibited isolating a youth from other young people for more than seven days. The Federal law on criminal procedure applicable to minors, adopted in 2009 and entered into force in 2011, now includes all rules of procedure; the cantonal laws were repealed.

#### **b) Particularities**

The Act establishes the strict separation of investigating authorities and judicial authorities dealing with adults and minors.

The cantons continue to govern the organization of the authorities. I would like to raise in this regard a first peculiarity of the criminal procedure applicable to minors.

At the beginning of parliamentary debates, it was intended that only the prosecutor model be included, and applied throughout Switzerland. But through a lack of consensus on the issue, both models have found their place. Each canton continues to determine if it wants to apply the model of the juvenile judge or the prosecutor for minors.

According to the model of the juvenile judge, the judge is deemed competent at the outset of the criminal prosecution. He manages the case and judges milder cases. If heavy sanctions are expected, the juvenile tribunal (of which the juvenile judge is a member) makes the judgement collectively.

According to the model of the prosecutor for minors, it is the juvenile district attorney who runs the proceedings. Juvenile prosecutors decide on lighter penalties, which make up the bulk of the sanctions. The juvenile criminal court comes into play when heavy sanctions are requested. The prosecutor for minors submits and supports the charge.

Both models are sometimes criticized doctrinally. The overlapping of competencies, for some, violates the right to have the case decided by an independent and impartial judge. On the contrary, others point out that the combination of these two models is favourable to minors, because it allows the courts to process and classify the many less serious cases in the shortest time. The law moreover provides that the minor defendant can ask, without motivation, that the juvenile judge who led the case not participate in the procedure before the juvenile court. The two models appear in any case to work very well in practice, as shown in the fact that there are very few appeals.

The criminal procedure applicable to minors requires a defence lawyer for minors who incur certain sanctions (e.g., deprivation of liberty or placement). If they are not able to fund it themselves, a lawyer is assigned. Practice has shown that criminal defence for minors requires understanding educational goals. This is why opportunities for training and continuing education in criminal law for minors are increasingly becoming available to lawyers in Switzerland.

The principle of non-publicity is another characteristic of the criminal procedure applicable to minors. The hearings take place generally in closed proceedings to protect young people and their families and avoid exposing them to stigma.

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The Act also contains new means, such as mediation or reparation, to avoid criminal proceedings. Evaluations have shown that the costs of mediation were not higher than the costs of trial (approx. 600 francs per case) and that the victims were often more satisfied with the outcome of the case in the event of mediation.

It should be noted that the law allows the courts to delegate the execution of sentences and measures to institutions managed by private providers. These work in conjunction with public institutions. Institutional treatment possibilities are therefore very broad and specialized. They are often financially supported by the Confederation, which ensures a higher standard of professional training.

### **3. Conclusion**

I would like to finish firstly with a positive observation: Switzerland has for decades pursued a coherent educational approach to criminal law for minors. Criminal law focused on the minor has demonstrated its effectiveness, both for those who must go through measures and for those who are not threatened in their development. This can be seen, among other things, by looking at convictions, since only one third of youth commit further crimes. This is a very low proportion by international comparison.

With regard to critical elements, the increase in the maximum sentence from one to four years for deprivation of liberty has seemed to some, at first, to be a disproportionate leap. But in practice, since the entry into force of these provisions there have only been three to six instances of sentences over one year. Insofar as these custodial sentences were modified in favour of an institutional educational measure, all concerned young people are currently in such an establishment.

In matters of procedure, the maintenance of two models of organization of the criminal prosecuting authorities proved to be less problematic than expected by some critics. Both models work very well in practice and this solution allowed the courts take into account the cultural characteristics of the cantons.

I have also addressed the concerns related to the vicarious dualistic system, which requires the duration of measurement to be deducted from the duration of the deprivation of liberty. What might the legislature do to remedy this? Is it possible to give the Court the opportunity to impose measures without penalty? The issue is already a challenge for practitioners and, in the future, perhaps for the legislature.

Since its entry into force, the criminal law for minors has often been criticized in the media and by politicians as too mild and too expensive. Some want to replace the educational measures by a more repressive approach. Others claim that adult criminal law should be applicable to minors; ask for a lower age at which one could be sentenced to deprivation of liberty; ask for a higher maximum duration of incarceration. Parliamentary interventions in this direction have so far not gathered a majority. However, specialists are unanimous on the fact that a simple tightening of sanctions would have no positive effects in terms of general prevention or in terms of special prevention.

However, we must remember, it is important to listen to the need for security expressed in our society. And respond nationally with information on the mechanisms and objectives of criminal law for minors which are adapted to each target group. Therein lies the importance of Congresses like this.

**Mr Bernardo Stadelmann**, Vice-Director, Federal Department of Justice and Police, Federal Office of Justice and Head of Criminal Law Division, Switzerland

## Promoting the roles of Family and School in the Prevention Juvenile Delinquency -- China

Deputy Director General  
Mr Ma Xinmin



China has long attached importance to the roles of both the family and school in juvenile education. As an old Chinese saying goes

*'To feed one's child without educating him is the parents' fault. To educate one's student without strict discipline, is the fault of a lazy teacher'.*

China has taken the path of making full use of both the family and school in preventing juvenile delinquency; experience has shown the approach to be successful. Today, I should like to share with you China's related legislation and practice in taking this path.

**Firstly, it is necessary to clearly define the legal obligations of both the family and school in preventing juvenile delinquency.**

In order to protect a juvenile's physical and mental health, to cultivate a good character and to prevent juvenile delinquency, both the Chinese national legislature and local legislatures, have passed comprehensive laws and regulations that clearly define the legal obligations of both the family and school.

The national legislature enacted a special law, *the Law on the Prevention of Juvenile Delinquency (LPJD)*. The purpose of this law is to tackle juvenile delinquency in a comprehensive way; so while the obligations of family and school are clearly defined so are the corresponding legal consequences for violating them. Thus the law provides firm legal backing for supervising the family and school and urges both to shoulder their obligations in preventing juvenile delinquency.

In addition, the national legislature enacted *the Law on the Protection of Minors (LPM)*, a comprehensive law concerning the protection of minors' legal interests. The law clearly stipulates

that the Government shall give special attention and priority to protecting minors according to the characteristics of minors' physical and psychological development. The law clearly defines the shared obligations of the government, society, school and family in jointly protecting the interests of minors, and the respective responsibilities of school and family for education, so as to fully leverage their roles in preventing juvenile delinquency.

Preventing minors from recidivism is one of the most important tasks in preventing juvenile delinquency. Therefore, a third law, *the Criminal Procedure Law (CPL)* includes a special chapter on the **rules** governing criminal procedure for minors. This law stipulates that, in dealing with cases involving minors who have committed crimes, education shall be used as the primary means of reforming and rehabilitating them while punishment is a supplementary means to those ends. This law also established a series of institutions whose aim is to prevent minors from committing crimes again. For example, minors who are detained or arrested or who are serving sentences shall be housed, managed and educated separately from adults.

As for local regulations, legislatures of all 31 provinces of China have enacted such regulations according to the *LPM* and in the light of local circumstances. Legislatures in Guangdong, Tianjin and 5 other provinces, for example, have also formulated local regulations to implement the *LPJD*. All of the existing local regulations define the due roles of parents and schools in the prevention of juvenile delinquency so as to ensure the implementation of the *LPM* and the *LPJD* in all those places.

**Secondly, strengthening the role of families.**

Family education is the key to strengthening the first line of defence in the prevention of juvenile delinquency. I would like to say a few more words about what China has done to give full play to the role of family in preventing juvenile delinquency through **legislation, legal practice and accountability.**

1. With regard to **legislation**, China enacted the *LPM* and the *LPJD*, which set out the family's obligations of protection and prevention.

Thus, according to Article 10 of the *LPM*, parents shall

*'create a good and harmonious home environment and fulfil their responsibility of guardianship and their obligation to bring up juveniles in accordance with the law'.*

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Article 16 of the LPJD prescribes that

*'whoever allows a juvenile to stay at his or her place at night shall obtain permission of parents or other guardians in advance, or inform them within 24 hours'.*

Article 19 prescribes that

*'parents or other guardians shall not allow juveniles under age of 16 to reside separately from them'.*

It is also prescribed by the LPM as well as the LPJD that

*'parents should take measures to keep the from misbehaving, committing crimes and recidivism'.*

Article 11 of the LPM prescribes that

*'parents shall pay attention to juveniles' physiological and psychological states and habits, and prevent and stop misbehaviour by juveniles'.*

Article 10 of the LPJD prescribes that

*'parents shall take direct responsibility for giving legal education to juveniles'.*

Article 14 prescribes that

*'parents shall advise juveniles not to play truant, carry controlled knives, take part in gambling, fighting, or other kinds of misbehaviour that seriously run counter to social morality'.*

According to the Article 17 of the same law, when juveniles are spotted organizing or joining organized groups that are delinquent,

*'parents should stop them promptly and when organized groups are spotted committing criminal acts, parents should report them to the police'.*

In addition, unfortunate events in family life usually have negative effects on minors. In order to prevent such effects, the LPJD has special rules for minors' education in divorced families.

According to the Article 17 of the LPJD

*'where the parents of juveniles are divorced, both parents shall have the duty to educate their children'.*

Article 22 prescribes that

*'stepparents and adoptive parents shall perform the duty of education for the minors they are supporting so as to prevent criminal behaviour'.*

2. As for **legal practice**, China has established parent schools which carry out ~~%~~parenting skills programmes+designed to encourage and support parents in improving their parenting skills. According to the LPM and the LPJD,

*'relevant state organs and social organizations shall provide guidance to parents on parenting skills', and*

*'schools shall introduce efficient education methods for parents. They shall show parents how to effectively prevent, rectify and treat juveniles' delinquency'.*

Since 2004, education departments, primary and middle schools, and communities have worked together to open parent schools to promote family education and develop parenting skills. There are more than 600,000 parent schools in China.

3. The mechanism of **accountability**. We have set up statutory intervention mechanisms for cases where parents refuse to perform their legal obligations as guardians, or they go against the LPM or the LPJD.

In order to ensure performance of their duties, the aforementioned laws clearly define the legal responsibilities of parents who fail in them as well as the intervention(s) that authorities may make when necessary.

Such interventions may be categorized into four kinds:

- the first one is for relevant communities to admonish such parents or prevent their wrong doings.
- the second one is for public security officials to issue administrative penalties in accordance with the law.
- the third one is for the courts to issue an order to remove guardianship from parents upon application to the court.
- the fourth and most severe one is to hold them criminally responsible for their offences.

### **Thirdly, supporting and enhancing the role of schools.**

School plays a fundamental role in building the second line of defence in the prevention of juvenile delinquency. The Chinese government has enhanced its role through ensuring the right to education for juveniles, promoting legal education at school, and fostering synergy between family and school in the education of the young.

1. The Chinese government fully ensures the realization of the **right to education** for school-age juveniles in order to support and enhance the role of schools in the prevention of juvenile delinquency.

The right to education is a minor's legal right. In order to protect such a right, the LPM stipulates that parents shall

- respect a minors' right to education,
- provide school-age minors adequate access to complete compulsory education at school, and
- prevent minors from dropping out of school.

In recent years, the Chinese government has increased its financial investment in education, especially for schools in rural areas. Up to now, expenditures for compulsory education in rural areas have been completely covered by the government. Even for secondary vocational education which is beyond compulsory education, a free tuition policy is applicable, not only for students from rural areas, but also for urban



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students who major in agriculture-related areas. 80% of children who travel with their parents from small towns to urban cities to make a living, have access to tuition-free government-run schools to continue their compulsory education.

All the above-mentioned measures have laid a foundation for the role of schools in the prevention of juvenile delinquency.

2. The Chinese government requires that **legal education** be part of the school curriculum.

Legal education is vital in increasing minors' awareness of the law, improving their judgement skills and enhancing their abilities to avoid misconduct and or crime.

The *LPJD* stipulates that juveniles who have reached the age for compulsory education should be educated about preventing the commission of crimes. Schools should hire full-time or part-time teachers for legal education and carry out education-focused activities to prevent juvenile delinquency. Besides, schools should strengthen education and management of delinquent juveniles and not discriminate against them. Teachers, administrators or workers at school who do not meet the qualifications of education staff, shall be dismissed or discharged.

In practice, primary and secondary schools have set up lessons on legal education, incorporated legal education into their teaching plans and hold, in association with local courts, various forms of legal education activities taking into account the physical and psychological characteristics of the juveniles. For example, since 2011, courts of Henan province have carried out *one judge one school+* programme-centred activities to popularize legal education and now legal education covers all middle and primary schools throughout Henan Province.

On 28th May 2014, the People's Supreme Court held an open day themed *"the law is around you – protecting the children"*. 130 primary and secondary school students visited the court in a solemn atmosphere. Minors learned about the sanctity of the law and increased their legal awareness through this activity.

3. The Chinese government adopts a two-pronged approach of school and parental education which makes a **joint force** to prevent and to change minors' misconduct.

We encourage schools to strengthen their cooperation with parents while educating juveniles at school in order to better advance education in the prevention of juvenile delinquency. Currently, a **"school-family communication app"** is commonly used in most primary and middle schools in China. Through the app, parents not only have access to the record of a student's performance at school and information about the curriculum and extra-curricular activities, but also can keep direct contact with teachers and get instant education advice.

The cooperation between family and school helps to identify risks of misconduct in advance and enables certain measures to be taken in the light of circumstances to best prevent juvenile delinquency.

### **In conclusion**

The prevention of juvenile delinquency is vital to the future of juveniles and that of all countries. China is ready to step up mutual learning and cooperation with other countries to prevent and reduce juvenile delinquency and bring about a bright future for our younger generation and make our world a better place.

**Mr Ma Xinmin** is Deputy Director-General, Department of Treaty and Law, Ministry of Foreign Affairs, People's Republic of China.



## It's All Relative: The Absolute Importance of the Family in Youth Justice from a New Zealand perspective Judge Andrew Becroft



We know that there are many, often culturally based, definitions of what a family is. What a family ought to be is a value judgement beyond the scope of today's talk which will focus on the following aspects:

1. Three imperatives for involving the family and ensuring family participation in youth justice.
2. Why is it so hard to deliver family participation, especially for our most serious young offenders?
3. The New Zealand approach to ensure family involvement, including the Family Group Conference and its advantages.

### 1. "The Threefold Imperative for Involving the Family"

There are at least **three Imperatives** for involving the family and ensuring family participation in Youth Justice

I. The International Covenants/Instruments demand it.

- The Beijing Rules requires it.
- UN Rights of the Child applies it.

II. There is a strong relationship between family based risk factors and adverse life outcomes, including youth offending. Early life experiences associated with youth offending include:

- not being cared for as a child;
- having a young parent and parents separated or living apart;
- showing signs of psychological disturbance from a young age;

- the family having little money and/or living in many places;
- parental criminality and involvement in the use of drugs;
- harsh physical punishment, physical, sexual and/or emotional abuse;
- witnessing family violence or bullying;
- the family not knowing where their children were when they went out, or not supervising children's leisure activities; and
- the child not having a relationship with their father.

Family factors are one of the big four risk factors: Home; School; Friends; Community. Effective interventions in the life of a young offender cannot avoid their families.

III. Family is the best location for enduring interventions that will work.

### • Our aim: Mobilise the family!

Of course, questions are posed about families being actively involved in helping to determine the appropriate response to their young person's offending. Questions such as *'Should they be involved to ensure accountability and address the causes of offending? And "do families generally know best?"* arise. Perhaps the most searching question, typically, is *'Are families the cause of most of the problems in a young offender's life and if in fact they may be the prime reason for the offending, why on earth would we treat them as part of the solution and enlist them in decision making about the young offender?'* The New Zealand experience is that families should definitely be involved. They must be. Even though we recognise that some of these families are amongst the hardest to reach in any community.

### 2. Why is family participation in Youth Justice so hard to achieve?

- most families of serious youth offenders are hard to reach and live on the margins of the community
- these families are fractured and disadvantaged
- the families of recidivist offenders are the problem, not the solution and so we think there is little point in involving them
- but, there are wider family members who can become responsibly involved and who can almost always be found. It is hard work, but usually worth the effort
- professionals think they know best and too easily take over and exclude families, often without meaning too or realising

## INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

- families feel alienated . with %state+ solutions imposed upon them
- working with families of serious young offenders is usually very hard and time consuming

So how is family participation achieved in the NZ Youth Justice system?

### 3. Family Participation in the NZ YJ System

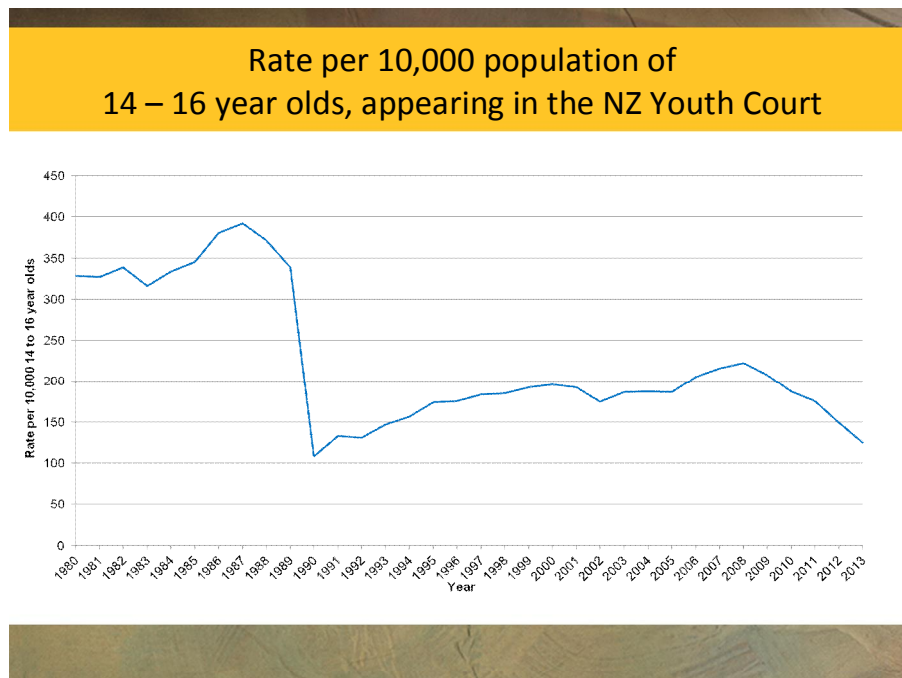
**Firstly, 80% young offenders are not charged** and so are not brought to Court. They have the following characteristics:

- they are %adolescent only+offenders- who will %age out+ of offending with firm, prompt community/family based interventions
- they are facing issues with cannabis, poor choice of friends or family stress
- they are usually from relatively stable and co-operative families who are willing to become

involved in the rehabilitation of their young offender

These young offenders are dealt with by NZ's specialist %Youth Aid+ division of the NZ Police which enlists family participation in %alternative resolutions+. We recognise that charging these young people is counterproductive and detrimental. Families are usually %up for the task+ with these young offenders

The graph below shows the massive reductions in appearances before the NZ Youth Court after the passing of the Children and Young Persons and Family Act (1989). A major principle of this legislation is that a young person should **not** be charged, unless the public interest demands it, if there is an alternative means of dealing with the offending.



**Secondly, the 20 % who are the most serious offenders, often referred to as “life course persistent offenders” or “early onset offenders”** are dealt with in the following ways by using the **Family Group Conference as the prime, mandatory, decision making mechanism:**

◆ When Police wish to charge but cannot arrest a young person (powers to arrest young people are limited) an %attention to Charge+FGC **must** be convened to determine if charges should be laid or if the matter can be better dealt with in some other way, such as through completion of an FGC plan.

◆ If a young person appears in Court and does not deny the charge, or if the charge is subsequently proved, an FGC is **mandatory**. No

formal admission is required; so long as the charges are not denied (a curious and difficult double negative to explain to a young person) an FGC must occur. There is no numerical limit to the number of FGCs that can be held.

◆ The **FGC determines** whether the charge is admitted and if it is, a **plan** to hold the offender to **account** and to address the **causes of offending** is formulated and brought to the Youth Court which almost always agrees to the plan. If the approved (or court modified) plan is eventually and successfully completed a young person may be granted an absolute discharge, as if the charge was never laid.

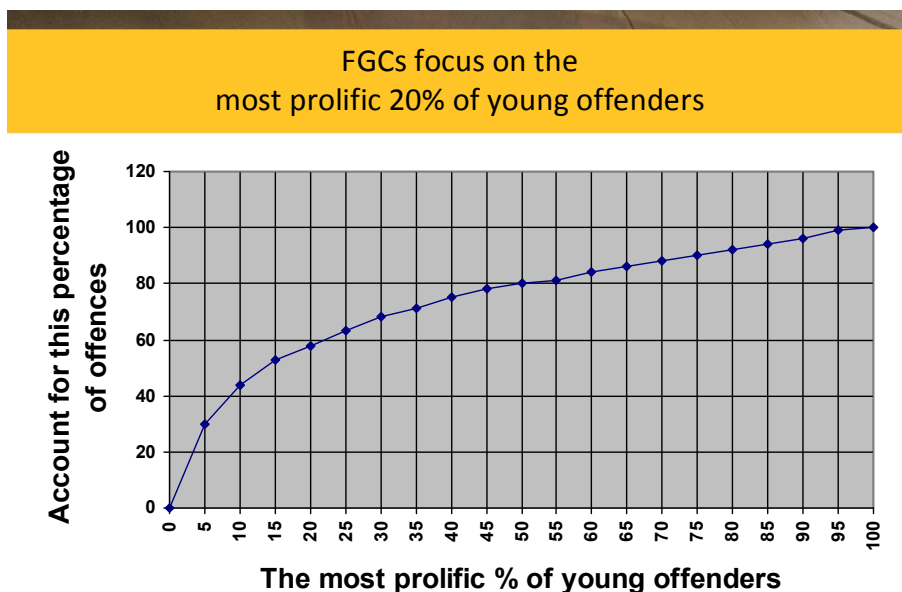
◆ If the offending is **very serious**, or if there is no agreement (seldom), or if the FGC plan is not completed, the Youth Court imposes formal

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orders, which in 2013 included prison in 10 cases, and about 150 instances of a youth residential sentence of up to six months being imposed. Sometimes an FGC realises and accepts that prison or custody is inevitable

The graph below shows the importance of dealing effectively with our most serious 20% of young offenders. These offenders may commit up to 60% of all youth offences

(including very serious offences). It is imperative that interventions that work are employed for these offenders. FGCs, when well prepared for and conducted have in them the seeds of genius both to hold a young offender accountable and to address the causes of offending.



How may **Family Group Conferences** be described? Briefly the following features may be noted:

- there is (partial) delegated decision making from the state to families and victims, in all cases except murder and manslaughter.
- they may be considered ~~overkill~~ for more minor to moderate offending- which is why they are reserved for (approx) the most serious 20-22% of cases.
- they are not explicitly a prescription for restorative justice, but practiced according to restorative justice principles. They were originally conceived as a family decision making mechanism and to ensure family centrality in decision making about young offenders.
- the FGC model is not an indigenous, Maori model, but parts of the process are consistent with Maori cultural approaches.

- family members who can contribute can always be found...somewhere
- FGCs are not expensive. They require good facilitators and need to have good information at hand. But primarily a FGC requires the presence of (relatively) willing human beings.

As we know, being genuinely sorry for offences committed, harm done and pain caused is a challenge for many serious youth offenders. I finish with the story of Heemi (not his real name) who was involved as a party in a very serious aggravated robbery, which he did not deny. The resulting FGC took many hours to complete and involved over 30 people including many family members who had been found and mobilised from around the country. A small part of his comprehensive FGC plan was to apologise to the victim . which he did so in the words of this song that he composed and wrote (and played) entirely by himself. It speaks for itself.

I'm sorry for all the pain that I caused  
Putting your family through something I could  
never have stopped  
And now I'm staring at the stars thinking of what I  
have done  
Something stupid of course what was I thinking of  
Looking for my mentality but that was lost  
Back in the days BC I'd be pinned to a cross  
But instead I'm writing this rhyme because you  
gave me a chance  
So in the words that I write  
You should know that they came from my heart  
You opened my eyes despising what I had done  
Look above and find the strength to carry on .

The stupid things I've done in my life  
Creating enemies that want to bring a lot of strife  
We'll fight  
On the streets  
Is probably where you would see me  
Drugged out struggling to breath  
But now I'm down on my knees  
With a million apologies  
Please time freeze wish I could turn back the time  
Rewind but it's all over and done  
A new era begun  
The sun has risen  
And it's shining through  
This song I compose is dedicated to you.

**Judge Andrew Becroft\*,**  
Principal Youth Court Judge for New Zealand;  
Te Kaiwhakaw Matua Te Kooti Taiohi



**Evaluation of placement measures in  
Switzerland**

**Professor Klaus Schneck**



I am very grateful for this opportunity to present some of the results of a large epidemiological study that we have conducted in Switzerland between 2007 and 2011 with the support of the Swiss Federal Office of Justice.

Let me start with the statement that I am very aware of the fact that the people of Switzerland live on a kind of island in comparison with most other countries of the world. The amount of money that we can spend for many things, including the topic of today<sup>1</sup>, is far beyond the potential of many other countries. So I will try not to be naïve and will present evaluation procedures that cannot only be applied in wealthy countries.

I am very much convinced that we need good assessment or screening procedures if we want to improve the situations of juveniles who are sentenced to prison or any other kind of penalty. Why that? I will use the results of our epidemiological study aimed at evaluating the effects of residential care in Switzerland to explain this statement.

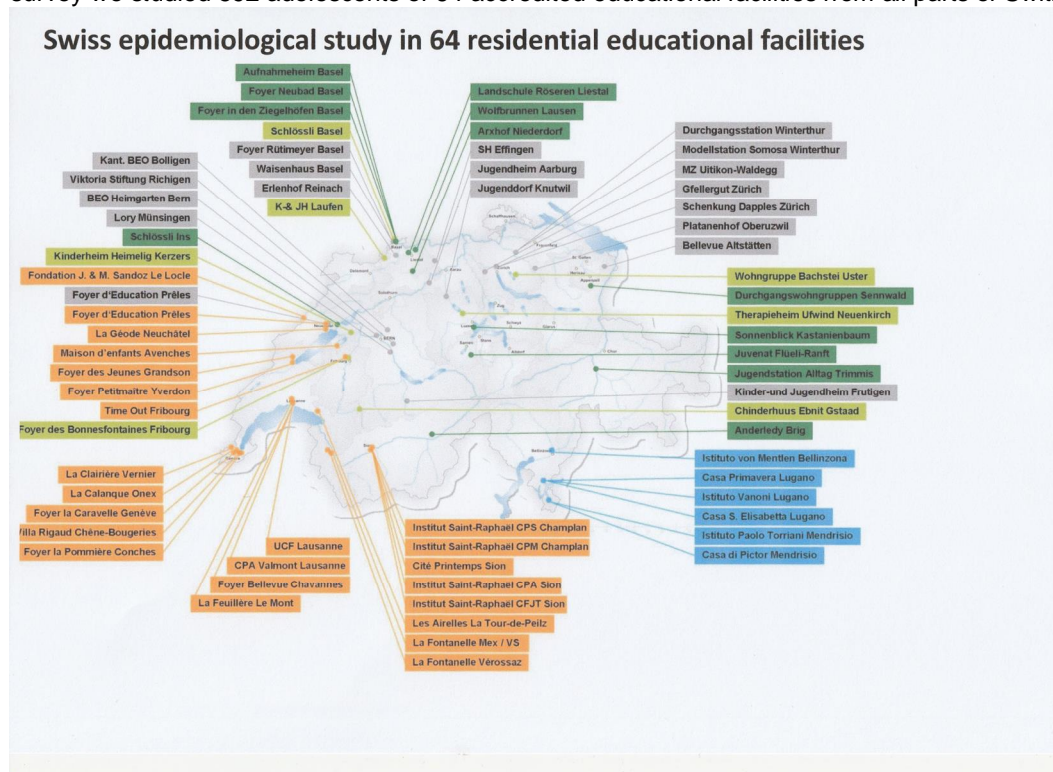
In Switzerland, delinquent children and adolescents are placed in institutions where they live in mixed groups together with other children and adolescents who have not been placed there by penal law measures. Until 2013 there was no prison for juveniles in Switzerland. Swiss institutional care is characterized by the fact that young people who are convicted for delinquent behaviour often live in the same residential groups as those adolescents institutionalized for youth welfare reasons. These institutions are formally approved by the Federal Office of Justice if they fulfill certain standards allowing penal measures to be carried out. The aim of the juvenile criminal law is not to punish but to strengthen the personal development of the young person and to support his ability to participate in age-appropriate social activities in the expectation that reoffending will be decreased. The Federal Office of Justice grants subsidies of 70 million Swiss Francs a year to 174 residential educational facilities for children, adolescents and young adults. Social workers and pedagogues work with small groups of adolescents. Vocational issues are addressed as well. In some institutions psychologists are integrated in the team and child psychiatrists support with liaison work.

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<sup>1</sup> Good practices in implementation Thursday 29<sup>th</sup> January 2015

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In our survey we studied 592 adolescents of 64 accredited educational facilities from all parts of Switzerland.



Two third were boys, one third girls. The age range was mostly between 10 and 19 years, mean age 16, with some participants being younger and some being up to 25 years. 90% had committed one or more crime.

We all know that many juveniles, not all, but many, who commit severe crimes, are brought up in disastrous environments, where neglect or abuse are part of their daily life. In our study in Switzerland 80% of the juveniles had experienced a traumatic life event, 49% reported even 3 or more traumatic experiences during their childhood and adolescence.

Bearing this in mind one cannot be surprised about one of the main outcomes of our study: most of the juveniles suffer from severe mental problems! 74% of all children or adolescents in our study had one psychiatric diagnosis, 44% two or even more diagnoses. This is in line with other international studies that have presented similar data. For example, Cauffman and co-workers studied an American juvenile prison population of more than 18,000 youth. 70% of the male and 81% of the female inmates suffered from severe psychiatric problems that included, beside others, severe post-traumatic stress disorders.

Why should we take notice of that, beside the fact that this means a lot of suffering for the juveniles? The answer is quite simple: If we don't address their special needs there will be a high chance for a negative outcome and high rates of recidivism

over the course of their life, a fact that we know from numerous empirical studies. And a neglect of their needs does not only lead to personal suffering or a life in prison, it also leads to enormous societal costs. Investment in juvenile inmates is highly cost effective in the long run, as you all know!

I have stated that it is essential to take care of the special needs of these juveniles. How can we get an idea what those special needs are? In our Swiss study we have used a whole battery of instruments to assess many aspects of the personality, psychopathology and life history of these juveniles. This was very time consuming and is impossible to integrate in a daily routine in a juvenile justice facility, especially in countries with limited resources. Therefore I want to focus my talk on some instruments with the following qualities: They have to be

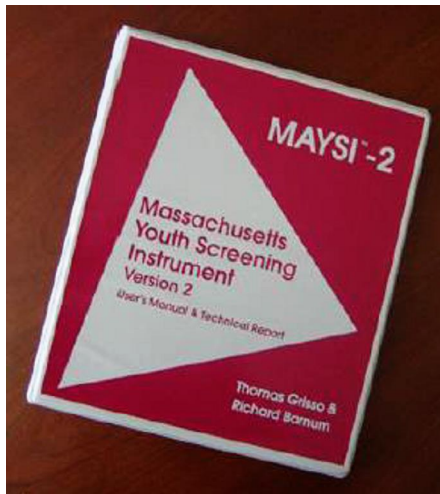
checked for their psychometric properties, that is to say for their scientific quality,

be time-economical and

easy to administer,

they exist in many international languages and

they yield meaningful results for both juveniles and caretakers.



Let me first start with the MAYSI-2<sup>1</sup>, the Massachusetts Youth Screening Instrument, that was designed to identify youths who report symptoms of distress or feelings and behaviours that might require immediate intervention such as suicide prevention or who might be in need of further assessment to determine whether they have a psychiatric disorder that needs treatment. The MAYSI-2 is not a diagnostic instrument. Instead it serves as a screening tool for decisions about the possible need for immediate intervention, at an early time when little other information about a youth is available. It requires less than 10 minutes to administer and can be used as a self-report given by the juvenile. Thus the MAYSI is feasible for use by non-clinical staff at pre-trial detention admission, or at reception into a state's youth authority facilities.

The MAYSI-2 provides information of 7 areas:

- Alcohol or Drug Use
- Angry or Irritable Mood
- Depressed or Anxious Feelings
- Somatic Complaints
- Suicide Ideation
- Thought Disturbance and
- Traumatic Experiences

This easy to administer instrument is able to detect the prevalence of psychiatric problems more efficiently than longer questionnaires or interviews. With the results of the MAYSI, staff members of juvenile correctional institutions are able to decide if there is a need for immediate interventions or for longer lasting support by a psychologist or psychiatrist.

There is another screening instrument that we have used in our study, the Child Behavior Checklist CBCL<sup>2</sup>. The CBCL is a truly international instrument that exists in more than 100 languages. With 118 items this questionnaire is able to identify problem areas such as:

- Being Withdrawn or
- Anxious-Depressed,
- Having Somatic Complaints,
- Social Problems,
- Thought Problems,
- Attention Problems,
- Delinquent Behaviour or
- Aggressive Behaviour

The Child Behavior Checklist can be used in different age groups across the life span and is, from an international perspective, the most widely used questionnaire worldwide in mental health services, schools, medical settings, child and family services or public health agencies. Its use is supported by extensive research on service needs and outcomes, prevalence of problems, medical conditions or treatment efficacy. In our study we have used the CBCL for two reasons: first to identify mental health problems and second to identify improvements of juveniles during their stay.

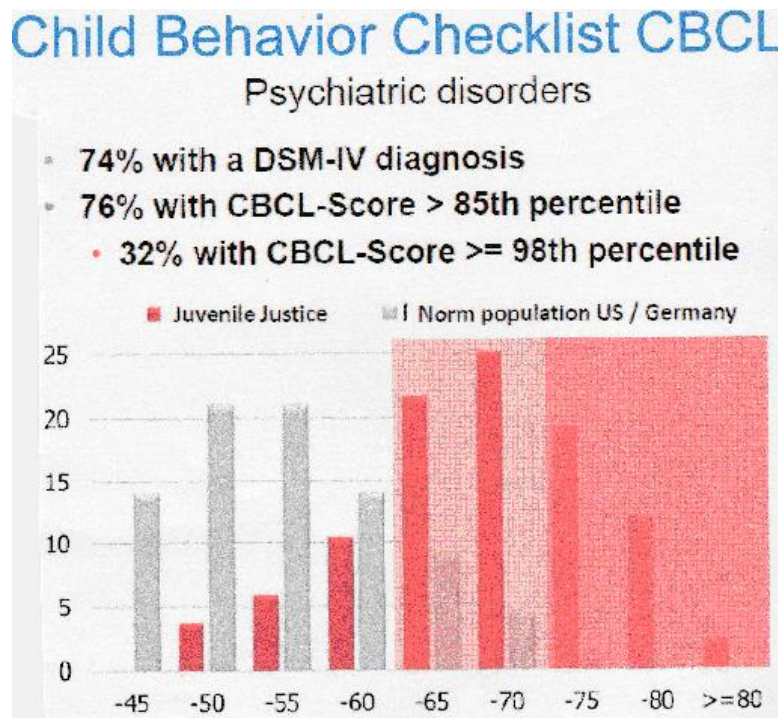
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<sup>1</sup> **MAYSI-2:** [www.modelsforchange.net/publications/447/Training\\_ModuleMental\\_Health\\_Screening\\_with\\_the\\_MAYSI2\\_for\\_Juvenile\\_Probation\\_Power\\_Point\\_Slides.pdf](http://www.modelsforchange.net/publications/447/Training_ModuleMental_Health_Screening_with_the_MAYSI2_for_Juvenile_Probation_Power_Point_Slides.pdf)

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<sup>2</sup> **Child Behavior Checklist (CBCL):** [www.aseba.org/](http://www.aseba.org/)





Even if the CBCL takes double the time of the MAYSI it has the enormous advantage of being applicable in nearly every language. I don't know any other instrument with such an international distribution.

Let me come to another point: If we want to evaluate whether placement measures are successful and how they work it is of course not enough to focus on mental problems even if they have a substantial impact on the course of juvenile delinquency. In other words: we should not only look for deficits, we also have to look for strengths or competencies.

This can be done by using the so called Strengths and Difficulties Questionnaire SDQ<sup>1</sup>, a brief behavioural screening questionnaire for children and adolescents that is translated into 80 languages.

But, if we really want to focus on social competencies we have to use a different scientific approach that is called Goal Attainment Scaling<sup>2</sup>. Such a scaling is developed in a mutual process between adolescent and caretaker who discuss, on the background of the juvenile's

delinquent behaviour, about strengths and problems of the juvenile. As a result of this discussion, they define certain areas of behaviour that are of high relevance for this special adolescent to reach the goal of becoming a person with a mature personality who stays away from criminal activities.

- Goal Attainment Scaling is an easy to administer and economical evaluation technique that can be used to track multiple goals. Most importantly, these goals can be prioritized and differentially weighted to reflect the special situation of this individual. This goal-oriented approach is very motivating for the adolescents and the care-takers at the same time which often results in better outcomes. In our Swiss study the Goal Attainment Scaling was the most attractive assessment procedure for both juveniles and staff. For us it was the best instrument to demonstrate the effectiveness of the educational and therapeutic work that was done in the 64 institutions of our study. We defined common goals and individual goals. The common goals were
- Ability to communicate
- Conflict management
- Expression and handling of feelings
- reliability
- autonomy
- keeping to rules

<sup>1</sup> Strengths and Difficulties Questionnaire (SDQ): [www.sdqinfo.com/](http://www.sdqinfo.com/)

<sup>2</sup> Goal Attainment Scaling: Kiresuk, T.J., Sherman R.E. (1968). "Goal Attainment Scaling: A General Method for Evaluating Comprehensive Community Mental Health Programs". Community Mental Health Journal 4 (6): 443. 453.



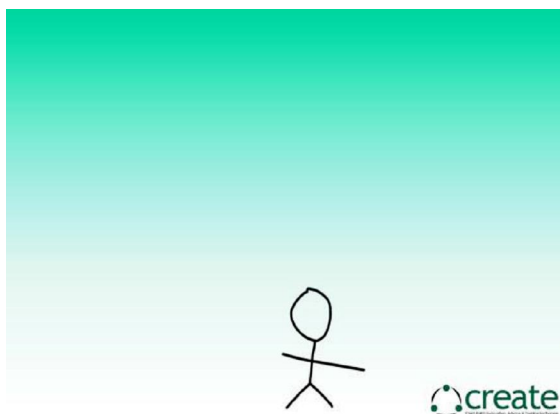
- relational capacity
- Empathy
- Staying away from illegal drugs
- Confrontation with the previous wrongdoing

For each goal, adolescent and caretaker define both current performance and target performance as well as the measures to reach these goals. Every month the adolescent and his caretaker talk about the progress or the setback concerning these goals. After one year the adolescent's status concerning the goal attainment is defined and can be used as an objective measure to evaluate the effectiveness of the placement measure.

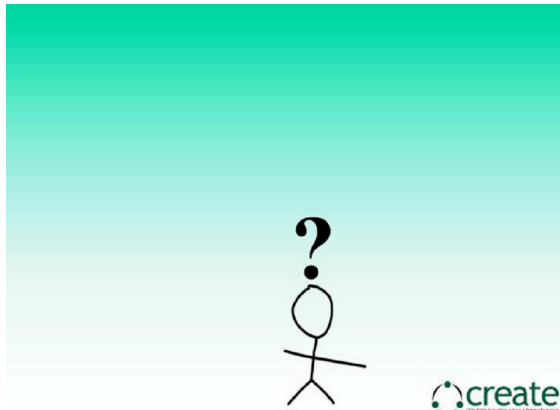
**Let me summarize my talk in a few words:**

1. Children and adolescents in the juvenile justice system are a very loaded population with extremely high rates of traumatising and mental health problems.
2. Therefore they have special needs that are not adequately addressed if we only look at the troubles that we have with these youngsters instead of taking serious the problems they have.
3. There are screening instruments that can easily be used to assess mental health problems of juveniles.
4. Goal Attainment Scaling can be used as an economical evaluation technique and enables assessment of outcome.
5. A thorough evaluation of placement measures helps juvenile justice officials to decide which measures have the highest chance for a successful outcome.

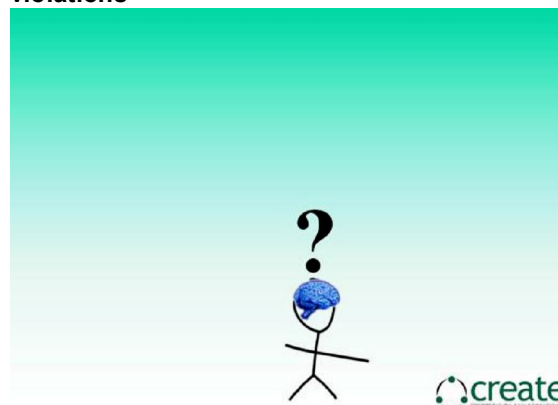
Professor Dr (Medicine) Klaus Schmeck is Head of the Psychiatric Department, University Hospital, Basel

**Synthesis of Congress workshop findings****Marie Wernham**

*I am a child. My name is Marie, Marietta, Amal, Fabrice, John, Joao, Xinmin, Béatrice, Bolaji...*

**1. Gender and children in street situations**

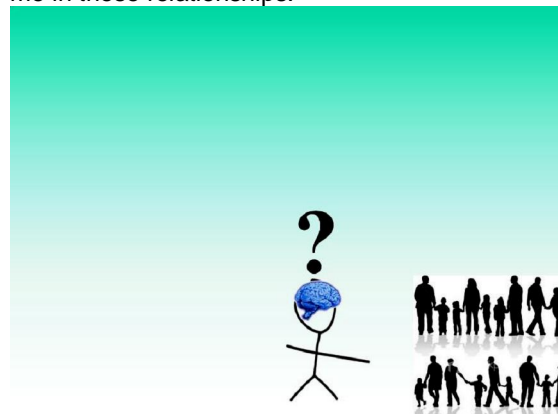
Am I a boy? Am I a girl? Am I an ethnic or sexual minority? Am I indigenous? Am I living or working on the streets? Do you even care? Do you understand? As a boy or as a minority or as a street child, I am over-represented in the justice system. As a street-living child I miss out on your clever diversion and restorative justice measures. There's nobody to pay my bail or call a lawyer and I don't want to tell you where my family is for a family group conference because I ran away in the first place. Spare a thought for me in your projects and plans. As a girl it is apparently my fault for being sexually abused and I should be criminalised and even locked up - for my own protection, for my word not being strong enough against his, for being forced to sell myself just to make it through the day. As a boy nobody talks about the sexual abuse I suffer. It is taboo.

**2. Brain research / child development / worst violations**

My brain is still developing. I take risks. I overestimate reward and I underestimate risk. I'm sometimes like a car with only the accelerator pedal and no brake. I can become a remarkable person, filling the world with music and love and a cure for cancer, but my reasoning skills need help to develop. I need to learn how to take responsibility. I need to learn from my mistakes. Please don't kill me for them. Don't lock me away for life, for life without parole, for an indeterminate time or at the pleasure of the President. A year for me is like six or seven years for you grown-ups. My perception of time is time is different. I experience isolation and torture differently. Please help me, don't hurt me. I've already been hurt enough in my life. In some ways I may look and act older than I am, but it's only on the outside. I have to act tough to survive. Please raise the minimum age of criminal responsibility. If you're not sure of my age, if I can't prove it, give me the benefit of the doubt. Assume I'm a child. I certainly am on the inside.

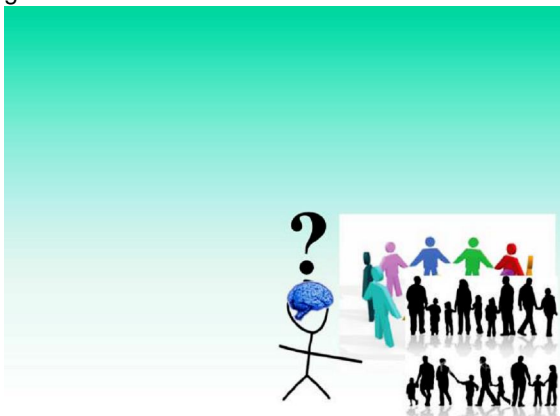
**3. Culture, family and community ties**

Understand where I come from. Who I am. My culture, family, extended family, friends and community. Understand what helps me and harms me in these relationships.

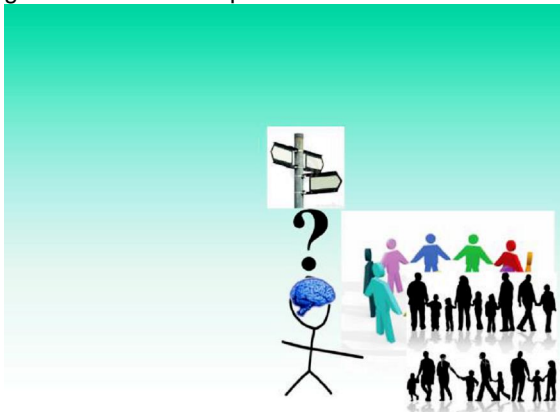


#### 4. Role of professionals and the justice system / sensitising public opinion

Whether you are a judge, a lawyer, a police officer, social worker, psychologist, probation officer, doctor, NGO worker or anyone else . protect me, become a part of my support network, help me grow.



Understand my past, help me in the present and guide me towards a positive future.



Work strategically with the media and social media to sensitise everyone about my situation, rights and needs . families, communities, professionals and the general public. Make sure these messages reach right into the deepest, remotest rural areas.

#### 5. Training / capacity building / case management / victims/survivors and witnesses

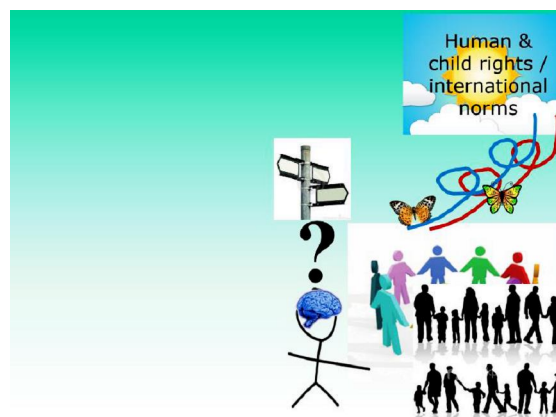
To do this you will need to work together, as a team, be trained together, have the same goals, have codes of conduct you comply with, have mutual respect for each other and for me, whatever my contact with the law . whether I am an offender or victim. After all, let's face it, I am usually both. Learn not only about the technical stuff with your head, but change the attitudes in your heart and put it into action through your hands. Make your systems as efficient and smooth as possible so you can spend more time helping me and less time on paperwork. Please don't make me keep telling my story again and again, moving me from place to place. I am confused and vulnerable enough already.

Provide me with a one-stop shop where I feel safe and listened to. I need you to be professional, accountable, but above all human.

#### 6. Traditional and non-formal justice



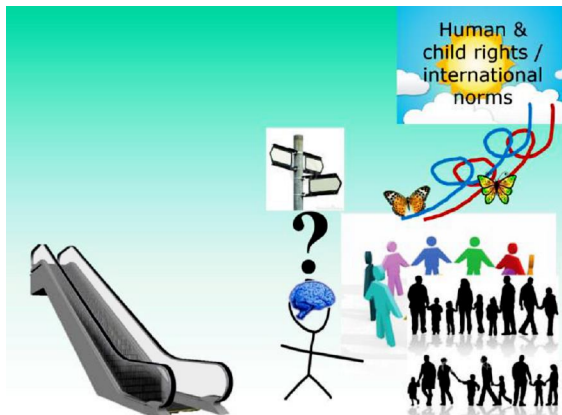
I have a vision that one day I . and all the children in the world like me - will be treated fairly, sensitively and compassionately, with the same high standards that they call international human rights, standard and norms. I have a vision that the processes that I have to go through, and the people that I meet at this difficult time will be child-friendly.



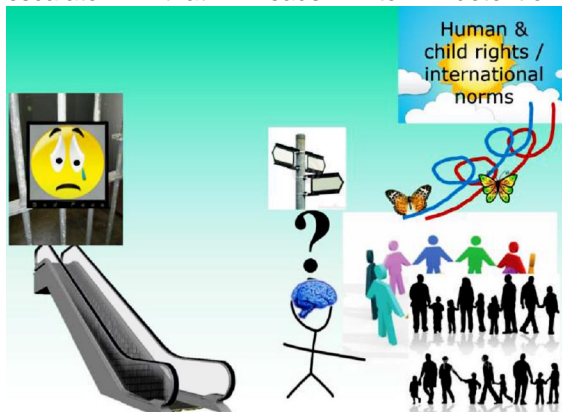
I have a vision that to get to this wonderful, warm place, different justice systems will work together in clever and innovative ways. That the good bits of the traditional justice systems of my village and of my people will be acknowledged and integrated into modern systems. Traditional and formal systems need to work together towards the same vision. They both need to leave behind the practices which aren't compatible with this vision, like a butterfly shedding its cocoon. You might find it useful to better define what you mean by traditional customary non-formal and informal justice. But maybe this isn't so important seeing as we want to create something integrated and new. Just make sure the time you spend on your theories doesn't take you away from my realities. The butterfly is still beautiful, no matter what it is called. I know this will take time, but . for my sake . please make sure that, step by step, wing-beat by wing-beat, you keep moving forward in the right direction.

## 7. Prevention and diversion

I hope I never get to meet people like you, as lovely as you are. I hope that you can get political will on your side and improve my social, economic, educational and cultural situation and that of my family and friends so I never have to come into contact with this scary thing that I don't understand, laughingly known as the so-called justice system.



Please, please, do all that you can to keep me away. Primary or universal prevention as you would say. Get better at identifying and reaching me when I'm particularly at risk. your secondary or targeted prevention. If you fail in this. and believe me, it will be a failure. then reach me quickly the first time I make a mistake, to stop me doing it again. your tertiary or specific prevention. Above all, please, please help keep me away from the escalator that leads to my life being further damaged or even ruined: the escalator that leads to detention.



Divert me whenever and however you can to restorative processes and outcomes. If you can't keep me away altogether, then make sure your system is flexible and that your measures and interventions don't automatically have to lead one way only, regardless of my particular circumstances.

## 8. Role of the police

If I get into trouble or someone hurts me, the first person I see will probably be a police officer. I can't ignore him or her, and neither should you. Please make sure they know how to act. Just 30 minutes ago they were arresting a man with a knife or gun, adrenaline pumping, maybe scared for their own lives.



You can't expect them to suddenly act differently with me unless you show them how and help them. Don't pressure them to get a confession at all costs and then be surprised when I complain of torture. Hold them accountable, yes, with systems in place, but work with them and support them before blaming them for everything. Although some of my cousins live in urban areas and slums, I live in a village hundreds of miles away from your specialised police units. They're no good to me out here, although they're great if you have them nearby. Specialisation is important, but *all* your police need initial and ongoing training about how to engage with me. and I do mean engagement, not enforcement as a first step. They need both competence and compassion. My meeting with them should be an opportunity to help me, not a problem. I am all the risk factors you've been looking for. Make the most of it.

## 9. Detention



If you've done your jobs well then in nearly all cases I shouldn't end up in detention at all. You should make it as hard as possible to put me here, particularly before, but also after sentencing. Detention has to be the most difficult and



complicated, awkward and annoying thing for professionals to apply to me. It really shouldn't be so easy, in law or practice. It must be the absolute rare exception, not the default norm.



But even if that's the case, even in the ideal, warm future I imagine, there will still be some of us children who end up there because we are so troubled and our problems are so complicated that we have done truly terrible things to others. In these relatively tiny, few extreme cases, these facilities should be small and intimate, with a good ratio of experienced, compassionate, patient, well-trained staff, and mental health care professionals. Separate me from adults and older children. Don't put me in detention within detention . isolation, segregation. Help me maintain contact with my family, friends, people. Have well-resourced independent monitoring mechanisms to check on me, and safeguards so I can talk to prison monitors without being beaten in reprisal. If this doesn't happen I will continue to be humiliated, raped, beaten, staring at a blank wall, alone, isolated, rocking myself towards a sleep that doesn't come, killing myself or being killed . all in the name of your beloved detention. If this doesn't happen, then continue to cry and weep at the photos of me in the lobby [Congress photo exhibition] . in your rich countries, as well as the poor. End this culture of repression and impunity. For God's sake . sound the alarm.

You want to count me. You need better data. Just be sure what you're counting and why. Is it in my best interests? Will it ultimately help me and protect my rights? Don't try to compare your own numbers with those in other countries. We children have been counted in such different ways that it's not useful. If you're just starting on the data journey, then learn from the mistakes of others who've already been down this road. I hear there's going to be a Global Study [on Children in Detention]. It sounds good. Try and contribute to it if you can.

Youqe spending an awful lot of money to turn me into a criminal by scaring, degrading, humiliating and even torturing me. Youqe giving me excellent vocational training - in crime, my apprenticeship

supervised by the best inmates the criminal justice system has to offer. Stop. Review your spending. Move your money away from detention and invest more, much more in prevention, diversion and restorative justice. They tell me there is a far off country called Peru where I can find some clever software . a concrete tool for State planning of juvenile justice budgets. That sounds useful!

The world is changing. I'm getting more and more mobile, migrating within and across borders, in search of better opportunities, with or without my family, or displaced by conflict and disasters. It may not be my own government that needs to take responsibility for me. The international community needs to take responsibility as well. I'm so vulnerable. If I get into trouble, please keep me with my family and friends and work hard to find a solution in my best interests. International instruments exist but they need to be ratified by more countries. In crisis situations, work towards at least the minimum standards . things that can be put in place on the spot, like guidelines for security forces on simple restorative justice. Try to better prepare countries before it reaches a crisis situation. Protect me from revenge once the conflict is over.

I am sorry if I've upset you. I didn't mean to bring you down. After all, you're here. You came from all over the world. You're listening to me and to each other. The bad and the sad things which have happened to me, which are happening to me and which will happen to me in the future . it doesn't have to be that way. Focus on the butterflies. Share my vision of international norms and standards. Many of you have already helped me so much. Every day. In so many ways. Thanks to you I found a way forward. Thanks to you, I am one of the few who never got on the escalator, who turned their life around. Mine is a message of hope and of thanks. Let us be inspirational and visionary. Let us show the world what is possible.



*I am a human being. I believe, like the Universal Declaration of Human Rights, that we are all born equal in dignity and rights. That we are endowed with a spirit of conscience and reason and that we should act towards one another in a spirit of brotherhood and sisterhood.*

*I am a human being. I am a child. I deserve the best you have to give. I am a child. My name is Bernard, Fabrice, Amal, Marie, Jo.....and, with your help and guidance, I fill the world with music, love and a cure for cancer.*

**Marie Wernham<sup>1</sup> on behalf of the Synthesis committee**

Friday 30 January 2015

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[www.createsolutions.org](http://www.createsolutions.org)

## WORLD CONGRESS ON JUVENILE JUSTICE—FINAL DECLARATION



The World Congress on Juvenile Justice was organised by Switzerland and the Foundation Terre des hommes and held in Geneva, Switzerland from 26-30 January 2015. About 900 participants from over 80 countries including government officials, members of the judiciary and experts of law enforcement, representatives of United Nations agencies and programmes, child rights expert bodies, other international and regional organisations, civil society, non-governmental organisations, and organisations of professionals working with or for children, and attended the World Congress to discuss different aspects of juvenile justice given its importance for their respective societies and guided by the objectives set for the World Congress.

1. The World Congress on Juvenile Justice (hereafter: World Congress) was convened with the objectives to:

- i) reaffirm and strengthen the implementation of applicable juvenile justice standards, for children in conflict with the law . covering children alleged as, accused of, or recognized as having infringed the law - as well as child victims and child witnesses;
- ii) serve as a forum for dialogue to facilitate the exchange of good practices that respect the rights of the child in the implementation of judicial proceedings, including the social reintegration of children in conflict with the law; and
- iii) promote international cooperation and follow-up in this area.

2. The Participants in the World Congress recognized that the main challenge is effective implementation of existing international norms and standards in the field of the administration of justice in relation to juvenile justice at the national level, including the mobilization of adequate resources and capacity-building. They equally recognized the importance of ensuring comprehensive policies in juvenile justice that prevent and respond to juvenile delinquency while protecting children in conflict with the law, child victims and child witnesses, and that is non-discriminatory, takes into account the best interests of the child, and respects the child's right to life, survival and development as well as respecting the child's participation and his/her dignity.

3. The Participants in the World Congress recalled the Universal Declaration of Human Rights and all relevant international treaties, including the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child and its three optional Protocols.

4. The Participants in the World Congress further recalled the numerous other international norms and standards in the field of the administration of justice, in particular of juvenile justice, including the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), the Basic Principles for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines"), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the "Havana Rules"), the Guidelines for Action on Children in the Criminal Justice System (the "Vienna Guidelines"), the

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Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, as well as the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.

5. The Participants in the World Congress acknowledged the important role of the Committee on the Rights of the Child in reviewing the implementation by States Parties to the Convention on the Rights of the Child of their obligations under the Convention, including in the field of juvenile justice.

6. The Participants in the World Congress noted the work of the Committee on the Rights of the Child including its adoption of General Comment No. 8 on ~~the~~ the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), General Comment No. 10 on ~~children's~~ rights in juvenile justice, General Comment No. 12 on ~~the~~ the right of the child to be heard, General Comment No. 13 on ~~the~~ the rights of the child to freedom from all forms of violence, and General Comment No. 14 on ~~the~~ the right of the child to have his or her best interests taken as a primary consideration.

7. The Participants in the World Congress acknowledged with appreciation the work of the Interagency Panel on Juvenile Justice and its members, including the United Nations Office on Drugs and Crime, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Human Rights, the United Nations Development Programme, the Department of Peacekeeping Operations, the Committee on the Rights of the Child and various non-governmental organizations, in particular their coordination in providing technical advice and assistance in juvenile justice, and the active participation of civil society in its respective work, as well as the work of the Special Representative of the Secretary-General on Violence Against Children, and welcomed the joint UNODC/UNICEF Global Programme on Violence Against Children in the Field of Crime Prevention and Criminal Justice as a concrete step to protect all children who are in contact with the justice system from violence.

8. The Participants in the World Congress affirmed that important aims of juvenile justice are to promote the child's rehabilitation, reintegration, and assuming a constructive role in society, while also contributing to reducing recidivism.

9. The Participants in the World Congress noted that States promote, to this end, the establishment of laws, procedures, authorities and institutions specifically designed for children in conflict with the law, the establishment of a minimum age of criminal responsibility at not too low an age level, bearing in mind the emotional, mental and intellectual maturity of the child, and, whenever appropriate and desirable, measures for dealing with these children without resorting to judicial proceedings while ensuring that human rights and legal safeguards are fully respected. Every child alleged as, accused of or recognized as having infringed the criminal law must receive fair treatment and fair trial, and must have adequate legal assistance during every crucial stage of the legal proceeding. In order to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence, States should make available a variety of dispositions, such as care, guidance and supervision orders, counselling, probation, foster care, educational and vocational training programmes and other alternatives to institutional care.

10. The Participants in the World Congress expressed support for the objective of promoting the establishment of prevention, support and caring services as well as justice systems specifically designed for children, taking into account the principles of restorative juvenile justice and fully safeguarding children's rights and providing specially trained staff to promote children's reintegration in society.

11. The Participants in the World Congress defined restorative juvenile justice as a way of treating children in conflict with the law with the aim of repairing the individual, relational and social harm caused by the committed offence and which contributes to the child's rehabilitation and reintegration into society. This entails a process in which the child offender, the victim (only with his or her consent) and, where appropriate, other individuals and members of the community participate actively together in the resolution of matters arising from the offence. Restorative juvenile justice takes the child's responsibility seriously and by doing so it can strengthen the child's respect for and understanding of the human rights and fundamental freedoms of others, in particular of the victim and other affected members of the community. The Participants in the World Congress recognized that there are many models for practicing this restorative juvenile justice approach, but also the importance that such models are in line with relevant international obligations and commitments and respect children's rights and the rights of the victims.



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12. The Participants in the World Congress underlined that the implementation of a comprehensive approach to crime prevention and criminal justice, including juvenile justice, includes, *inter alia*, data collection and research, information management systems, laws and policies in line with States' international obligations and commitments, strengthening the capacity of relevant institutions and actors, awareness raising, coordination amongst relevant actors, and child-friendly procedures.

13. The Participants in the World Congress noted that:

- o It is key that criminal responses to offences committed by children take into account their age, their level of maturity and their individual needs;

- o Prevention of violence and of delinquency programmes are among the most efficient and cost-effective approaches to reducing youth involvement in crime;

- o Institutions, laws and procedures applicable to juvenile justice should be specifically adapted to children, to the greatest extent feasible;

- o The best interest of the child is a primary consideration in all decisions concerning deprivation of liberty and, in particular, that depriving children and juveniles of their liberty should be used only as a measure of last resort and for the shortest appropriate period of time, in particular before trial, and the need to ensure that, if they are arrested, detained or imprisoned, children should be separated from adults, to the greatest extent feasible, unless it is considered in the child's best interest not to do so;

- o Education plays a key role and should be an essential component of any measures directed at children in conflict with the law;

- o Close cooperation between juvenile justice sectors, different services in charge of law enforcement and the social welfare, education and health sectors is essential in order to promote the use and application of alternative measures to deprivation of liberty;

- o Restorative justice measures should be considered at all appropriate stages of the legal procedure;

- o Specialized training for professionals is important to strengthen the capacity of judges, prosecutors, lawyers, social workers, correction officers, police officers and other relevant professionals on international standards relating to juvenile justice, children's rights in the administration of justice, and the available measures for dealing with children in conflict with the law;

- o Whenever appropriate, the family should be involved and supported throughout the legal procedure.

14. The Participants in the World Congress noted that States should ensure that, under their legislation and practice, neither capital punishment nor life imprisonment without the possibility of release nor corporal punishment is imposed for offences committed by persons under 18 years of age, and encouraged States to consider repealing all other forms of life imprisonment for offences committed by persons under 18 years of age;

15. The Participants in the World Congress underlined that all appropriate measures, including legal reform where necessary, must be taken to prevent and respond to all forms of violence against children within the criminal justice system, including juvenile justice system, including by ensuring that children deprived of liberty can lodge complaints, that these complaints are investigated and that regular and accountable inspections of facilities where children are deprived of liberty are undertaken;

16. The Participants in the World Congress recognized the importance of continued regional and cross-regional efforts, the sharing of best practices, the development of networks and the provision of technical assistance in the field of juvenile justice, including restorative juvenile justice, and encouraged States to make use of technical advice and assistance provided by the relevant United Nations agencies and programmes, as well as civil society actors, in order to strengthen national capacities and infrastructures in the field of the juvenile justice.

17. The Participants in the World Congress welcomed the decision taken by the United Nations General Assembly to invite the United Nations Secretary-General to commission an in-depth global study on children deprived of liberty, and reiterated the call on relevant United Nations agencies and offices, States, civil society, academia and children, to contribute to the study.

Geneva, Switzerland, 30 January 2015

## The Role of the National Council of Juvenile and Family Court Judges in the Current Reform Process--USA

Hon. David Stucki &  
Dr Shawn C Marsh



Honorable David Stucki\* (Ret.)

### 1. Introduction

This article describes the Role of the National Council of Juvenile and Family Court Judges (NCJFCJ)<sup>1</sup> in the Current Reform Process<sup>2</sup>.

The juvenile justice system<sup>3</sup> in the United States has a long history of struggling to balance its social welfare foundations with social control demands. In 2014, we now see our system edging away from the punitive orientation of the last several decades. One example of this important change can be seen in recent U.S. Supreme Court decisions . such as eliminating life without parole as a disposition for juveniles. This move back toward rehabilitation and restoration as guiding principles is likely a result of scientific advances in areas such as understanding adolescent brain development, healing after trauma and improving substance abuse treatment. For many, continuing to craft a developmentally appropriate juvenile justice system that appreciates %adolescence as a mitigating factor+ remains a priority goal for system reform.

### 2. Current Reform Efforts

There are several components of current reform efforts that illustrate this move toward a developmentally appropriate juvenile justice system:

<sup>1</sup> The National Council of Juvenile and Family Court Judges (NCJFCJ) was formed in the U.S. in 1937 by a group of judges committed to improving outcomes for children in the justice system. Headquartered at the University of Nevada, Reno, the NCJFCJ remains the oldest judicial membership organization in the U.S., and is devoted to providing education, technical assistance, research, and policy support to judges and courts to improve the administration of justice and outcomes for some of the nation's most vulnerable populations. It is affiliated to IAYFJM/AIMJF.

<sup>2</sup> First published in: Coester, Marc / Marks, Erich (Eds.): *International Perspectives of Crime Prevention 7. Contributions from the 8th Annual International Forum 2014* within the German Congress on Crime Prevention, Forum Verlag Godesberg GmbH, 2015, p. 213-218.

<sup>3</sup> The first designated juvenile court in the U.S. was formed in 1899 in Chicago, Illinois.



Dr Shawn C. Marsh

1. For example, research has established that mixing low-risk youth (e.g., runaways) with high-risk youth (e.g., armed robbers) results in worse outcomes for the low-risk youth compared to very limited or no intervention.

2. In the context of detention and similar institutions, this dynamic has been called %deviancy training+. and points to the need for robust diversion systems and strong structured decision-making protocols.

### 2.1 The Juvenile Justice and Delinquency Prevention Act (JJDP)<sup>4</sup>

#### 2.1.1 Alternatives to Detention

Our understanding of this phenomenon is perhaps most strongly demonstrated through the JJDP that includes criteria about not using detention in cases of status offenses (e.g., truancy). Coupled with widespread support for elimination of the Valid Court Order exception in the pending reauthorization of the JJDP . which is fully supported by the NCJFCJ . we are now seeing jurisdictions working to develop alternatives to detention that keep lower risk kids engaged in their community versus locked up in unhealthy environments.

#### 2.1.2 Keep Kids in School and out of Court

Diversion programs are only one part of efforts to **ensure the least restrictive options are used across the juvenile justice system**. There is a large push, in general, to %keep kids in school and out of court+ by dismantling what some have termed the %school to prison pipeline+. This approach seeks to return discretion and authority back to schools to deal with student behavior via %teachable moments+ and other methods without the confines of zero tolerance policies. The flow of cases to court for low-level offenses occurring at school is cut off, preventing children from becoming ensnared in the justice system and being put at risk for unnecessary, ineffective, or even harmful interventions.

<sup>4</sup> Juvenile Justice Delinquency and Prevention Act (JJDP). (2002). Public Law 107. 273, 42.

Also see <http://www.ojdp.gov/about/legislation.html>

### 2.1.3 Decriminalization

Another prong by which reform efforts are seeking to reduce the number of children that come before the court and placed at risk for unnecessary involvement in the juvenile justice system is re-defining what, exactly, constitutes an offense. For example, underage victims of commercial sexual exploitation are increasingly being dealt with as dependent versus delinquent youth. In treating these children as victims versus offender (i.e., prostitute), they can avoid harmful stigmatization and receive supportive services, treatment, etc. that often are not available through the juvenile justice system. Indeed, eliminating trafficking of children for sexual purposes is a priority issue in the USA. The NCJFCJ, along with partners such as Human Rights for Girls, are working to develop tools to support judges and courts to effectively identify and appropriately intervene with these victims.

### 2.1.4 Incarceration as Last Resort

Another example of current reform efforts is how we treat those relatively few youth that must be incarcerated due to serious and violent offenses. Although some in the United States have called for the complete elimination of secure confinement with youthful offenders (i.e., children 18 years of age or younger), this is not likely a realistic goal, or perhaps not even a wise goal. Rather, it is more realistic well-educated and broadly competent juvenile court judges work to ensure that:

- incarceration is only used with the most serious youth offenders (by some estimates, only about 20% of delinquent youth will continue on to a life of criminal activity . of which only a small percentage would be considered serious/violent offenders requiring incapacitation); and
- conditions of confinement are humane and rehabilitative.

## 3. Current Trends in Juvenile Justice

### 3.1 Understanding of Trauma

Perhaps one of the most promising current trends in juvenile justice is incorporating our understanding of the impact of trauma on human development into practice and policy. Courts are working to do this by first conceptualizing then putting into practice what it means to be trauma-informed. For many, being trauma-informed means acknowledging that, by definition, the majority of people that come before the court will be injured in some way. Embracing this assumption then means implementing universal precautions in practice to help promote perceptions of safety, agency, and connectedness . the three domains to promote healing of those injured. Efforts such as these to become increasingly trauma-informed are not just centered within the court . but throughout the juvenile

justice system and include treatment providers, probation, and detention.

Although this work is still in early stages, we are leveraging prior work by the *National Child Traumatic Stress Network* on trauma-informed systems, and are already seeing improvements in outcomes. For example, a juvenile detention facility in Ohio, United States that initiated trauma training for staff and changed how it approached children when they are %acting out+ reduced the use of seclusion and restraints.<sup>5</sup> On the horizon for reform efforts in juvenile justice are a number of emerging trends; topics and issues that will likely be on the center stage of work over the next 3-10 years.

### 3.2 Sanctuaries

One of these trends builds upon the trauma-informed work just mentioned and involves creating %sanctuaries+ for youth involved in the juvenile justice system. Based on the sanctuary model developed by Dr. Sandy Bloom and colleagues,<sup>6</sup> this approach seeks to develop environments and practices . across systems of care . to be havens that encourage a sense of safety, control, and connectedness. In turn, these are the conditions that promote healing in those injured (e.g., those experience traumatic stress reactions). Given individuals with traumatic histories are often in a state of hyper-arousal that involves constantly scanning for threats . developing environments in detention, courts, etc. that limit unnecessary and counterproductive arousal is critical.

### 3.3 Changes in Treatment of Juvenile Sex Offenders

In the next few years, we will see substantial changes in how juvenile sexual offenders are treated.

Juvenile sexual offenders are often considered the most difficult group of offenders with whom we work, and mandatory registration requirements highlight the degree to which society views them as a threat to community safety. Historically, treatment of these youth has focused on incapacitation to ensure community safety, then working with the offender to manage deviant arousal and put in place a safety and supervision plan.

<sup>5</sup> Monique T. Marrow, Kraig J. Knudsen, Erna Olafson & Sarah E. Bucher (2012): The Value of Implementing TARGET within a Trauma-Informed Juvenile Justice Setting, *Journal of Child & Adolescent Trauma*, 5:3, 257-270

<sup>6</sup> Bloom, S. L. (2013). *Creating sanctuary: Toward the evolution of sane societies*. Routledge.

Research over the last decade, however, suggests this approach to treatment of juvenile sexual offenders is misguided. Rather, current research suggests that the majority of juvenile sexual offenders will not reoffend, and in fact have some of the lowest recidivism rates for any offense type.

Further, research suggests that atypical or deviant sexual interests is relatively rare in this group, and that many offenses are more likely related to poor boundary issues, age, education, etc.

To that end, current thinking about the treatment of juvenile sexual offenders is that the majority can be handled in the community and are best served through modalities such as Multi-Systemic Therapy (MST) and education regarding healthy sexuality.

### **3.4 Further Professionalization of the Juvenile Justice Field**

Further Professionalization of the juvenile justice field is another emerging trend. Much like similar efforts in the field of social work, it is likely we will see juvenile justice careers framed by standards of education and training. It is probable we will be seeing degree programs specializing in working with youth in the justice system. We will likely see increased numbers of certification and licensure opportunities. In working toward professionalizing this field, the NCJFCJ and others such as the National Juvenile Court Services Association and the Justice Management Degree Program at the University of Nevada, Reno, are indeed honoring the value we place on our youth and those working with all youth to ensure safe and productive citizens.

### **3.5 Restorative Practices**

In the coming years, it is anticipated we will see a return to the use of restorative practices in the juvenile justice field. This will likely involve us continuing to turn to other systems and cultures, such as tribal courts, for practices like peacemaking and healing circles that can be used in juvenile courts and the juvenile justice system.

## **4. The Impact of Research in the Juvenile Justice Field**

### **4.1 Specific Studies and Research**

In the next decade, researchers will strive to identify evidence-based practice with groups not often studied (i.e., non-white / non-male). Research must be expanded to include specific studies on females, cultural differences, rural versus urban, LGBT etc. as developmental and intervention needs are not always universal. That is to say that what works for a 16 year old white male very well might not work for anyone who is not a 16 year old white male.

### **4.2 Disproportionate Minority Contact/Implicit Bias**

In the thinking about the near future, one of the most vexing problems in the juvenile justice system will receive a substantial increase in attention: disproportionate minority contact (DMC). Despite decades of work to reduce DMC in the juvenile justice system, very little progress has been made and/or maintained.

Recent conversations initiated by the Office of Juvenile Justice and Delinquency Prevention<sup>7</sup> with juvenile justice system stakeholders in the U.S. indicate reducing DMC will be a priority in the coming years, and an effort that will likely be led by public / private partnerships in working with states. As part of this work, researchers and practitioners alike will need to develop strategies to not just reduce institutional bias, but reduce bias in individual decision-making. The most difficult aspect of reducing individual bias is testing and implementing interventions to reduce implicit bias. Implicit bias operates outside of our awareness and has been linked to biased behavior in many different populations (e.g., police officers, physicians, etc.). Although implicit bias is linked to normative information processing in humans, its effects on decision-making cannot be underestimated, and successful attempts to reduce DMC will almost certainly need to include consideration of being human+ in working with others not like ourselves.

### **4.3 Establishing 18 Years as Age of Jurisdiction**

Lastly, we will likely see resurgence in establishing the age of jurisdiction (i.e., age at or under which offenses are heard in juvenile court versus criminal court) as 18 years across all states. In some states, the age of jurisdiction can be quite low for some offenses (e.g., 14 years). This again is inconsistent with our founding principles of our Juvenile Justice System. Consistent with research findings regarding the adolescent brain as a work in progress+ and not fully formed until approximately 23 years of age, the NCJFCJ has taken the position that all states should recognize the age of jurisdiction as 18 years. Indeed, this shift alone might be the largest indicator of progress toward building a truly developmentally appropriate juvenile justice system.

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<sup>7</sup> See [www.ojjdp.gov](http://www.ojjdp.gov)



#### 4.4 Epigenetics

In terms of the more distant future of juvenile justice, it is difficult to anticipate what major development will occur outside of those outlined here that we hope will come to fruition. That said there is one area of science that holds much promise for working with children and families. This is the science of epigenetics. %Epi+ means to act upon, and refers to the process by which chemical markers control gene expression without modifying the actual gene.

To illustrate this, I will use a library as an example. In thinking about epigenetics, it is helpful to think of your genes as a vast library of books-some of which are easily read and others that are not (e.g., they are stuck behind other books, are on a very high shelf, etc.).

One factor that can facilitate access to all of the books in your library is a librarian (i.e., chemical markers). If the librarian is stressed, he or she might not be as adept in locating books. On the other hand, if everything is running smoothly, he or she can make accessing books much more efficient and productive.

Research suggests the same dynamic applies in terms of chemical markers responding to toxicity or stress in the environment. When there is stress on an organism, markers might suppress or express genes as a result. What is interesting with epigenetics is that the organism under stress may or may not show symptoms related to gene expression (e.g., anxiety).

However, the expression can be passed on to future generations, and under the right circumstances, that offspring would be at higher risk of developing symptoms of the trauma experienced by the parent or grandparent or great grandparent, etc. This, in part, could help explain historical trauma and why %just get over it just isn't enough+.

Researchers today are working to understand how we might be able to manipulate various chemical markers to shut off or turn on genes that prior environmental stress impacted negatively in some way. Obviously much work remains to be done to achieve this goal . but the potential this science holds for improving well-being and interrupting intra and inter-generational suffering is impressive.

#### 5. Conclusion

As a Judge, David Stucki says:

I have a unique vantage point in the broader system. From my perspective as a decision maker, I have only one guiding principle:

***Is what I am doing making a positive difference for this child and this family standing in front of me?***

I have always found this approach to be helpful. Even as we look at the many issues discussed here on a Macro level, I encourage you to also look at the Micro level:

***Is what I am doing making a positive difference for this child and his family?***

This is an exciting time to be a professional in the Juvenile and Family Justice System in the United States. I am sure it is also true for all of my colleagues worldwide who are dedicated to make the Juvenile Court System and the outcomes for our Children every day a little better and %child friendlier+than it was yesterday.

Much remains to be done in the United States. Achieving these goals will require a substantial change in laws, screening instruments, research funding, etc. . as well as a fundamental shift in how our society perceives the value of youth and the effectiveness of punishment and deterrence.

**David Stucki\*** was a Senior Judge of the Juvenile and Family Court in Stark County, Ohio and immediate Past-President of the NCJFCJ. He is currently an Ohio Judge by Special Assignment of the Chief Justice of Ohio throughout the entire State of Ohio Judge Stucki is a Council member of IAYFJM/AIMJF

NCJFCJ is affiliated to IAYFJM

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**Mediation in criminal cases—a promising way forward for young offenders and victims**

**Judge Lise Gagnon**



**Introduction**

Since its adoption in 2003, the law governing the juvenile criminal justice system (LJCJS) has recognised the role of restorative justice in Canadian society<sup>1</sup>. From that point on, legislation has supported the active involvement of victims and offenders both within and outside judicial processes.

The new legislation is consistent with the 2003 view of the Law Commission of Canada :

« One of the basic tenets of restorative justice is that all conflict is unique when the circumstances, the people involved and the consequences for each one are taken into account. One should not seek a rigid set of rules as a way of achieving a fair outcome.

Although the Commission accepts that this system is not applicable in all cases, it believes that this approach, based on dialogue and the search for agreement, will prove to be a useful tool for resolving conflicts and that it should be used more often than it has been up to now. Restorative justice requires all parties to get involved voluntarily in open discussions and negotiations.

It is essential that each set of proceedings should take local conditions and each person's circumstances into consideration. »<sup>2</sup>,

The process has subsequently been amended. Victims are told about the procedures surrounding the offence and are given the opportunity to make known the effect that the offence has had on them. If they wish, they can also take part in a discussion with the offender in order to obtain compensation, while being under protection at all times.

When the victim gets more directly involved in the judicial process in this way, the offender is brought closer than before to the true consequences of what he has done.

Although demanding, the participative approach helps everyone to emerge more content. This is mainly because the causes of the offender's actions and the consequences experienced by the victim can be articulated and understood by everyone. The dialogue often leads to a more satisfying outcome for the victim and a better appreciation by the offender.

Since the legislation encouraging us to adopt the new approach, experience in Quebec and elsewhere has demonstrated increasing benefits<sup>3</sup>.

For over thirty years, Institutions for Alternative Justice (IAJ) in Quebec have argued for victims and young offenders to be involved when an offence has been committed and they have played a major role in implementing the new law in compensation arrangements for victims, voluntary work, financial reparation to the community and development of social skills.

For more than twenty years, the IAJ have undertaken mediation in criminal cases. This form of mediation has shown its value within the implementation programme of extra-judicial [diversionary] procedures introduced under the LJCJS. Building on these positive developments, mediation now appears a worthwhile approach for the court when deciding on sentencing.

At present there are about one hundred IAJ accredited mediators practising criminal mediation in Quebec under the LJCJS.

<sup>2</sup> Law Commission of Canada « On restorative justice: an approach focused on people and human relationships », 2003, « *Sur la voie de la justice participative. Une approche centrée sur les personnes et les rapports humains* »

<sup>3</sup> UMBREIT, M.S., COATES, R.B. et B. VOS, « *The impacts of Restorative justice Conferencing : A Review of 63 Empirical Studies in 5 Countries* », (2002), Center for Restorative Justice & Peacemaking; LATIMER, J., DOWDEN, C. et D. MUISE « *L'efficacité des pratiques de la justice réparatrice : Méta-analyse* » (2001) Ottawa, ministère canadien de la justice, division de la recherche et de la statistique (série sur les méthodologies).

<sup>1</sup> In the Canadian legal framework, the term « restorative justice » « *justice réparatrice* » is used interchangeably with the term « participative justice » « *justice participative* »

### 1. What is criminal mediation?

The Quebec guide to mediation puts forward the following definition :

« Today, mediation is recognised as a valuable and effective method for resolving differences between two people. The process allows the people involved to say what they think about the situation, to be listened to, to express their feelings and emotions and to ask questions. It also lets them say what should be done to resolve the conflict, to repair, reduce or make good the wrong or simply to turn the page on an unpleasant event. »<sup>4</sup>

Criminal mediation is a method of negotiation and involvement that sits right at the heart of the adversarial system of the Canadian criminal justice system. Given this background, it is essential for mediators to explain the legal framework to people involved in mediation<sup>5</sup>.

### 2. The IJA mediation style in Quebec

The IJA style of mediation is termed « relational ». This form of mediation looks at the conflict more from the point of view of the effects than the causes of the offence. It encourages the human aspects of the conflict to be shared, even those that are highly charged with emotion. Contrary to popular belief, mediation is not restricted to minor offences. Mediation can be of value in all crimes, even the most serious. It all depends on the needs of the people involved. A minor offence can have a very considerable effect on one victim, while an objectively more serious offence may not affect another victim to the same extent. Things need to be looked at case by case.

The relational approach gives equal weight to the young person's experience and to the victim's (symmetry). In this style of mediation, dialogue between the parties is more important than eventually signing off an agreement. This needs the parties to be well prepared and to have thought through in advance what they are expecting from the meeting. Each participant should think about what is motivating the other. To be prepared, each party should be able to envisage how the other will react.

Before setting up a meeting, the mediator must be certain that the parties will interact constructively and that they will benefit from their exchange. Without this assurance, no discussion can take place. A dialogue is set up only when the mediator is sure that the parties will engage constructively and there is no risk of a harmful outcome for anyone involved.

Mediation does not always involve a face-to-face meeting. It can be done by the mediator communicating with the parties alternately, by letter, over the telephone, by video or through videoconferencing etc.

### 3. How mediation unfolds

The mediation starts off with some initial communication. The mediator sees the young person and victim separately. These preparatory meetings help establish what each person is aiming for and the feasibility of holding any discussion.

At the following mediation meeting, each of the parties takes turns to describe their experience. This allows each person to express their views, feelings and emotions. Questions can be asked and comments made.

Once this stage has been reached, each participant can put forward proposals for dealing with the consequences of the offence and they can negotiate an agreement which will be put in writing by the mediator.

The agreement can take the form of financial compensation for the victim or compensation in kind. It can also contain oral or written apologies and so on. It can also simply record a summary of the discussion when the victim and young person agree that a description of their respective experiences is enough. As the Mediation Guide, referred to above, puts it :

« The aim of mediation is to achieve a meeting with both sides able to share their experiences. This sharing may guide them to a solution and a means of compensation that is just and fair to both sides. The success or otherwise of mediation can be measured by the degree of justice and equity felt by the people concerned. »<sup>6</sup>

Whatever the result or solution put forward, there are benefits all round if the two sides emerge with the feeling that they have been in control of the process and that the outcome is fair. The young person has made amends and the victim is content that the harm done to him or her has really been understood by the person who inflicted it.

Moreover, society gains a more lasting form of protection. It has been shown that diversionary approaches that stimulate an awareness of the effect on victims and the community through a process of participation lead to changes in offenders' behaviour<sup>7</sup>. Going further, recent studies have shown that mediation has an effect on adolescent recidivism.

<sup>6</sup> See footnote 4, above.

<sup>7</sup> BAZEMORE G. and O'BRIEN S. (2002). « *The quest for a restorative model of rehabilitation: theory-for-practice and practice-for-theory* », in L. Walgrave (ed.) *Restorative Juvenile and the law*. Devon, William publishing, p. 31-68.

<sup>4</sup> REGROUPEMENT DES ORGANISMES DE JUSTICE ALTERNATIVE DU QUÉBEC (ROJAQ), *Guide de médiation*, Montréal, 2004.

<sup>5</sup> *ibid*

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Under some programmes, there was a 50% reduction in the probability of a young person re-offending<sup>8</sup>. One could put forward the hypothesis that if a young person is aware of the effect of his offending, he is less likely to offend again.

### 4. The legal framework for mediation in criminal cases

Canadian law provides two ways in which restorative justice, including offender mediation, can be applied: diversionary measures and judicial sentencing.

#### 4.1 Diversionary measures

Application of the Quebec programme of diversionary measures under the LCJS is to a large extent in the hands of the *Directeur des Poursuites Criminelles et Pénales* (the Prosecutor) and social workers under the Provincial Director (called "youth workers").

When a police officer has completed his inquiry, he sends the file to the prosecutor for a decision to be made on whether to launch criminal proceedings against the young person. If there is enough evidence, the prosecutor considers whether to send the file to a youth worker for the application of diversionary measures<sup>9</sup>. This discretionary authority is generally used for a first offence by a young person and, more generally, for less serious crimes.

If the prosecutor decides that diversionary measures are appropriate, he forwards the file to a youth worker who goes to meet the young person and his parents. The youth worker checks whether the young person recognises his responsibility and is willing to make amends. At the same time, staff from the IJA get in touch with the victims to provide information and answer any questions, as the law requires<sup>10</sup>. The victims can describe what they have suffered and what they need. This is the opportunity for them to say whether they want to have a discussion with the young person.

Since 2001, staff at the IJA and youth workers have agreed on several principles for the application of diversionary measures<sup>11</sup>:

- a teenager's sense of responsibility will be improved if he puts right the harm he has caused;
- putting things right is the best form of education;

- dialogue between the young person and victim remains the best way of achieving restitution;
- victims need to be involved in resolving conflicts;
- the procedure must make room for the victim's concerns; and
- restitution must meet the expectations of the community and be in line with the social norms and values that the offender has breached.

The agreement also sets out a hierarchy of sanctions, starting with restitution for victims (mediation or a proposal from the victim) then restitution to the community (community service and a financial contribution) and lastly social rehabilitation (training, re-integration and support).

This hierarchy seeks the sanction best suited to the young person, the victims and the community. It also promotes the young person's education, while compensating the victim.

If the victim agrees and the young person is eligible for the diversionary programme, the youth worker entrusts the IJA with the creation of a measure of compensation for the victim. This is then discussed by the parties during the mediation process.

If a victim is unwilling to take part in the procedure, but wants compensation, the youth worker can decide on the appropriate level.

The framework of diversionary measures therefore allows negotiations on compensation to occur in the presence of an impartial third party – the IJA mediator.

Once the mediation is over, the agreement encapsulates the reparation accorded to the victim. This is overseen by IJA. When this is complete, the mediator reports to the youth worker, taking care to include the views of the victim and the young person<sup>12</sup>.

When mediation is carried out under the LCJSJ, the agreement is limited to the penalties and punishments prescribed by law. For example, the young person cannot be required to undertake more than 120 hours of community service either for the victim or the community<sup>13</sup>. While agreements struck between the parties can be creative, they must abide by the law.

In most cases, the requirements placed on young offenders are orientated towards restitution. About 20% are direct restitution to the victim, while 50% are to the community. The remainder are a variety of measures designed to increase the young person's awareness and make him think about his behaviour.

<sup>8</sup> Government of Canada, *Restorative justice and recidivism*, Public safety, Research summary, Volume 8 no.1, January 2003

<sup>9</sup> Decree P-34, r.2.1, *Programme de mesures de rechange autorisé par le ministre de la justice et le ministre de la santé et des services sociaux*, 7 January 1994

<sup>10</sup> Article 3 (1) (d) (iii) of the LCJSJ

<sup>11</sup> ASSOCIATION DES CENTRES JUVENESSE DU QUEBEC ET REGROUPEMENT DES ORGANISMES DE JUSTICES ALTERNATIVES DU QUÉBEC (2001). *La concertation au profit des jeunes et des victimes. Entente cadre sur le programme de mesures de rechanges*. Montréal.

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<sup>12</sup> See footnote 11 above.

<sup>13</sup> See footnote 9 above.



If the agreement is not fulfilled, the youth worker reports to the prosecutor who may inform the tribunal.

## **4.2 Judicial sanctions**

### **4.2.1 Appearance before the tribunal**

At this stage the accused is presumed innocent. The appearance is mainly for the prosecutor to show the weight of evidence.

There is no point in suggesting mediation at this stage, because statements that the accused might make are not privileged as they are in the diversionary programme<sup>14</sup>.

### **4.2.2 Conviction and sentence**

The accused has been found guilty. The tribunal must now decide what sentence to impose.

There are three options : the judge can decide the sentence then and there following submissions from counsel; or the judge can order a pre-sentence report to provide better information about the crime and the situation of the offender and victim; or the judge can decide that mediation should be undertaken to indicate the appropriate penalty.

### **4.2.3 Sentencing without a pre-sentence report**

In this situation, counsel and the Tribunal are in agreement that a pre-sentence report or mediation are unnecessary or inappropriate for the kind of offence involved--for example, straightforward possession of narcotics.

However, when a victim has been affected by the crime, there is some point in assessing the appropriateness of using mediation prior to sentencing and getting the prosecution to set it up. This is something to be dealt with case by case. In these cases, the victim statements contained in the Court's files provide a guide on whether or not to attempt mediation.

### **4.2.4 Sentencing after a pre-sentence report may include mediation**

When the compilation of a pre-sentence report is ordered, a youth worker will contact the victim who may express their wish for compensation and willingness to take part in mediation.

If the victim expresses a willingness to take part, the youth worker will request the IJA to set up mediation. Ideally, the mediation can be done while the pre-sentence report is being prepared.

The mediator writes a report on the outcome of the mediation and includes any agreement that has been reached between the offender and the victim. This report goes to the youth worker who includes the recommendations in the pre-sentence report. This is submitted to the Tribunal with the invitation to pass a sentence that reflects its conclusions, including the result of the mediation.

If the Tribunal considers that the agreement reached between victim and offender is appropriate to the circumstances, it can translate its terms into the sentence. In that case, the sentence will be supervised by the youth worker or the IJA mediator, according to their respective areas of responsibility.

During the mediation, it is very important for the young person to be told about the corresponding judicial requirements- for example, that, for it to be endorsed by the Tribunal, any agreement must conform to the sentencing provisions of the law.

Including a summary of the mediation in the pre-sentence report means that the Tribunal promotes restorative justice at a key stage in the proceedings, namely that preceding sentencing. It is an opportunity for the victim and the young person to see their discussions embodied in whole or in part in the sentence, giving more meaning to the procedure.

### **4.2.5 Sentencing and mediation without a pre-sentence report**

If one of the lawyers or the Tribunal itself believes that mediation would be useful, but that a pre-sentence report is not needed to determine the sentence, there is nothing to stop the Tribunal, with the agreement of the parties, from postponing sentence until mediation has been undertaken.,

The request for mediation is sent direct to IJA by the youth worker who acts as liaison between IJA and the Tribunal. The IJA then conveys the results of any agreement to the Tribunal through the youth worker, in the form of recommendations.

Some judges, who are aware of the benefits of mediation, are making increasing use of this approach.

### **4.2.6 Probation when one of the conditions involves a victim**

#### **4.2.6.1 Meetings between young offender and victim**

Tribunals sometimes issue probation orders that envisage a meeting between the victim and offender. These meetings, labelled *conciliation* or *mediation* or simply *a meeting* enable the parties to talk and sometimes for the young offender to apologise- which seems to be the end in view.

However, there are risks attached to these meetings. For example, if the meeting leads to an agreement, this cannot be endorsed by the Tribunal, thus depriving the process of a formal outcome (sentence), and meaning that the parties do not enjoy the full benefits of taking part

Apart from that the young person risks incurring another sentence beyond anything the Tribunal has already imposed. For example, the Tribunal might have imposed 40 hours of community service and a probation order with other conditions, but the victim and young offender might agree to compensation or a charitable donation. In a case like that, the young person

<sup>14</sup> Articles 9 and 10 of the LCJSJ.

can tell the victim what the Tribunal has already imposed, but that limits the extent of any reparation for the victim.

Finally, if a victim is involved in mediation with a young person as part of a diversionary procedure, while his accomplice is sentenced by the Tribunal without mediation, the victim faces two separate processes which are often inconsistent. Thus for the same offence, the victim is faced with one young person with whom he can try to find answers and a fair restitution and with another where that is not possible.

Integrating mediation under the LJCJS into the set of judicial procedures brings coherence to juvenile justice, while leaving the Tribunal with its judicial discretion.

#### **4.2.6.2 A letter of apology to the victim**

In Quebec, Tribunals regularly make offenders write a letter of apology to their victims under the terms of a probation order. The idea is that, at the very least, the offender should apologise.

While this may be enough for many victims, if they have not been consulted beforehand, they may feel that their needs have been ignored. For some the apology may not go far enough, while for others, who doubt that the apology is sincere, it may constitute a further affront.

It is hard to be sure that these letters will entirely satisfy victims if they have not had the opportunity to voice their needs or make proposals for restitution. One might hope, therefore, that an apology will be ordered only after the victim has been consulted, if only to ensure that they are content to receive it.

Ideally, this approach should be embedded in a broader process of mediation which would allow victim and offender to take part openly in discussions that take account of their individual circumstances.

When a victim is unwilling to take part in mediation, but is open to receiving a letter of apology, possibly with an explanation, the youth worker can include that as a recommendation in the pre-sentence report. In this way, the victim can see that he has been given an opportunity to take part and can make a clear choice.

#### **Conclusion**

Restorative justice helps to clarify situations where wrong has been done: from the victim's side, by calming the situation and allowing restitution to be made; from the young person's side, by raising awareness, giving him responsibility and enabling him to repair the damage caused.

Mediation generally increases the victim's and the community's sense of security, through better information and more involvement.

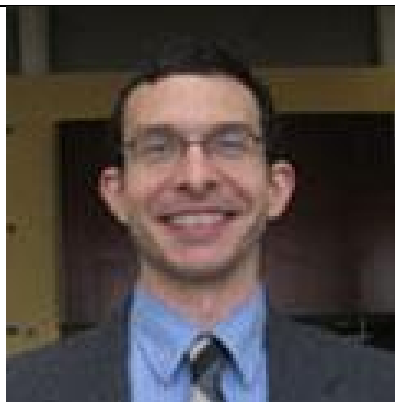
It is routinely observed that when a young person takes part in mediation his perception of his behaviour changes. The teenager, who initially thought nothing of his actions and ignored the consequences for his victim, comes to a better understanding of the reality and the seriousness of what he has done. For the victims, after feelings of fear and anger, they in turn can come to an understanding of what it is like for young people and overcome their fears of the unknown offender. Victims' fears are often overcome when they meet the offender in person, not the one they had been imagining.

Contact between victim and offender encourages a new relationship to develop, which is more human, more positive and more harmonious. In summary, while it is not a panacea, mediation in criminal cases can lead to fairer justice for those immediately involved, with positive repercussions for the whole of society. Why not use it?

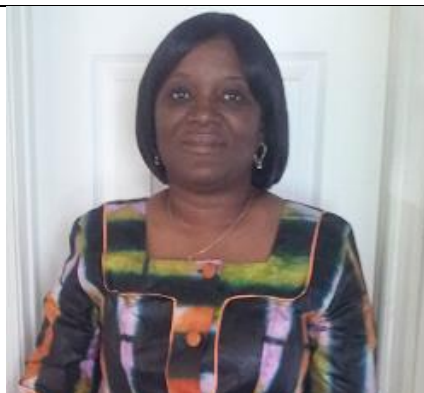
**Lise Gagnon\*** is a judge in the Court of Quebec

## Sierra Leone's Child Justice Strategy— A Realistic Planning and Strategic Tool for Systemic Improvement

Joshua Dankoff &  
Olayinka Laggah



Joshua Dankoff



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### 1. Introduction

This article details the development and substance of Sierra Leone's Child Justice Strategy 2014-2018, which was launched in April 2014. Despite delays in implementation of the Strategy due to Ebola, the Child Justice Strategy provides an innovative and down-to-earth plan for improving the manner in which government, non-government, and international organizations can address the needs of children in contact with the justice system. As the country moves haltingly toward Ebola containment and eradication, attention and resources will again be invested in non-Ebola related child protection issues, and the Child Justice Strategy will be a useful tool for policymakers at the intersection of child protection and justice sector reform. The Strategy also proves valuable for policymakers outside Sierra Leone as a model for both process and substance in bringing coherence to what is often an under-resourced area of policy and practice. The Strategy incorporates diversion away from the formal justice system as one of five major outcomes, and acknowledges a role for non-state actors, including traditional (or primary) justice mechanisms.

The Child Justice Strategy 2014-2018 recognizes the range of challenges facing children in conflict with the law, as well as child victims and witnesses. The Child Justice Strategy was developed through a broad participatory process involving key stakeholders at the national and sub-national level. Under the guidance of the Technical Working Group, the Justice Sector Coordination Office (JSCO) and Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) took the lead in the development of the Strategy.

The Child Justice Strategy for Sierra Leone is available online at the link in the footnotes.<sup>1</sup>

### 2. Major Issues Concerning Child Justice in Sierra Leone, Legal/Policy Framework and the former (2006) Child Justice Strategy

*"With approximately half of the population under the age of 18, the way children are treated by national justice systems is integral to the achievement of the rule of law and its related aims."* – Child Justice Strategy for Sierra Leone

#### 2.1 Child Justice Context

Children in contact with Sierra Leone's justice system, whether as accused of wrongdoing or as a victim of a crime, face a number of challenges to achieve justice. The formal justice system remains inaccessible to the majority of the population, and has limited reach beyond the main towns and cities. The ability of the Judiciary, Sierra Leone Police and the MSWGCA to deliver timely, quality justice services is hampered by limited infrastructure and resources, weak institutional capacity, staff shortages, low motivation among staff and the lack of basic logistics.

#### 2.2 Legal and Policy Framework

*Sierra Leone has adopted two justice-sector wide reform plans, the first in 2008 and the second covering the years 2011-2014.<sup>2</sup> The more recent document aims to make justice accessible, expedited, and ensure accountability and respect of rights.*

*Sierra Leone's legal framework for children has seen some important improvements over the previous decade. In 2007, the Child Rights Act (CRA) was enacted, dealing primarily with children in need of protection. The CRA increased*

<sup>1</sup> This article draws from original language from the Child Justice Strategy. The Strategy is available at <http://bit.ly/1IWm3w9>.

<sup>2</sup> See Justice Sector Reform Strategy and Investment Plan (JSRIP) I and II.

the age of criminal responsibility to 14, and established family courts to deal with matters of custody, maintenance and access. The family court has recently put in place the Western Area. The CRA also created Child Panels for 'quasi-judicial adjudication' of children accused of wrongdoing.<sup>3</sup> However, since 2007, Child Panels have not been actualized, and both the government and international actors have looked beyond these panels to other diversion options. In 2012, a Sexual Offences Act was passed by Parliament, which strengthened the response to child and adult victims of sexual offences. The main law governing children in conflict with the law is the 1960s era Children and Young Persons Act (Cap 44), and there remain gaps in the legal framework for children in conflict with the law.

### 2.3 The 2006 Child Justice Strategy

In 2006, the government introduced a five-year National Child Justice Strategy aimed at ensuring commensurate, fair, effective and efficient justice for every child in contact or at risk of contact with the criminal justice system. The Strategy had four strategic goals:

- **Strategic Goal One** concerned prevention, ensuring that society is aware of what constitutes abuse, can adequately identify, respond, and prevent abuse of children as well as limit the scope of children committing crime.
- **Strategic Goal Two** initiated interventions to ensure that children do not face the formal justice system.
- **Strategic Goal Three** focused on ensuring that children are given fair and speedy trials in line with international standards.
- **Strategic Goal Four** addressed the need to enhance the capacity of human resources as well as improve systems and structures to realize an effective and efficient judicial process for the children of Sierra Leone.

While some progress was made to strengthen the child justice system the 2006 strategy could not be effectively implemented. However, the 2014-2018 Child Justice Strategy reflects different initiatives meant to guide future interventions for children in line with existing realities, national laws and international norms and standards.

### 3. Process of developing CJS<sup>4</sup>

The Child Justice Strategy was developed through a broad participatory process involving key stakeholders at the national and sub-national level. Under the guidance of the Technical Working Group, the Justice Sector Coordination Office (JSCO) and Ministry of Social Welfare, Gender and Children's Affairs (MSWGCA) took

the lead in the development of the Strategy. The Technical Working group was formed with representatives from the MSWGCA, JSCO, the Judiciary, the Police (Family Support Unit (FSU) and Criminal Investigation Division), UNICEF, Defence for Children International, Prison Watch and Timap for Justice.

The process for the development of the National Child Justice Strategy started with a desk review of existing laws, studies, and statistics relating to children and the justice system. This was followed by a series of technical workshops to reflect on the progress that was made under the initial Child Justice Strategy, and identified good practices and key outstanding challenges, with a view toward the way forward.

The JSCO and MSWGCA also organised a broad process of consultation with key stakeholders at the regional level. Four consultative meetings were held (Western Area, Northern, Southern, Eastern regions) with representatives from all the districts attending. Participants were drawn from all key child justice stakeholder groups, including police, probation officers, court clerks, magistrates, justices of the peace, Chiefs, and civil society groups. Separate consultations were also held with children.

At each stage of the process, the judiciary was briefed as they wanted to ensure that all recommendations in the strategy were in line with existing legislations, court procedures and standards. The Consultant Master and Registrar and a senior Magistrate represented the judiciary in the Technical Working Committee.

The development of the Strategy was fully funded by UNICEF and the JSCO managed the resources. An international consultant developed tools for the review and consultations and consolidated all findings and recommendations into a first draft. The Technical Working Group under the leadership of the JSCO and MSWGCA undertook the finalisation of the document.

### 4. The Child Justice Strategy for Sierra Leone 2014-2018

The Child Justice Strategy addresses issues facing both children accused of wrongdoing, as well as the justice system's treatment of child victims and witnesses of crimes.

#### 4.1 Background

The Strategy opens with a Background section, which describes the Sierra Leonean context, describing child justice in the larger justice system context, and provides a brief legal and policy framework. The Background section then describes arrest, investigation and pre-trial detention, as well as trial and sentencing of children in conflict with the law. Importantly, the background includes a section outlining how children are handled in informal justice mechanisms, and discusses the potential value of diversion from the formal system. This theme is

<sup>3</sup> The CRA was analyzed in depth in this publication in 2012 by Hon. Justice Bankole Thompson, Ph.D. in a piece entitled 'Rights of the Child: The Sierra Leone Model.'

<sup>4</sup> This section draws primarily from the Child Justice Strategy 2014-2018.



taken up later in the Strategy. The background section also discusses the existing rehabilitation and reintegration possibilities, largely the Approved School in Wellington, run by the MSWGCA.

#### 4.2 Guiding Principles

The Child Justice Strategy articulates that reforms will be guided by the following ten general principles.

Promoting Juvenile Specialisation, which acknowledges that children experience the justice system differently from adults, and responding appropriately to their needs requires specialised skills and a different set of principles and approaches.

Integration with Broader Justice Sector Reforms, which advocates for child justice reforms to be aligned with national justice sector priorities and reform strategies.

Targeted and Incremental Reforms, which describes that the Child Justice Strategy is based on a gradual and incremental process of change and expansion at a pace that is realistic. The Strategy recognises that gaps cannot all be addressed at the same time nor uniformly throughout the country.

Minimising Children's Contact with the Formal Criminal Justice System, which recognizes that engaging in risk-taking and acting out against authority, including committing minor offences, is part of the normal maturation process, and most young people will stop offending of their own accord (approximately 80% of children commit one-off+ minor offences). Research has shown that over-intervening with these children can have negative impacts, including increasing the risk of re-offending. The Strategy therefore looks for opportunities for minor offences committed by children to be diverted from the formal system at the earliest possible opportunity, ideally at the initial arrest stage.

Holding Children Accountable While Promoting Rehabilitation and Reconciliation, which looks for a balance between holding children accountable for the offences they commit, and ensuring that responses to children in conflict with the law are appropriate, proportionate and aimed at reconciliation and rehabilitation.

Avoiding Detention Wherever Possible, which recognizes that subjecting children to deprivation of liberty, either at the pre-trial stage or as a sentence, can have long-term negative consequences.

- **Strengthening Families and Community Connections**, acknowledging that the family is the core institution for raising children, for protecting them from harm, for instilling a sense of identity, discipline and respect, and for making amends within the community for their wrongdoings, and that wherever possible minor offences committed by children should be addressed at the community level through diversion or community-based responses.
- **Partnerships and Community Engagement**, recognizes the necessity of coordination between government, the non-government sector, and the community.
- **Access to Justice for Child Victims and Witnesses** sets out that special measures are needed at all stages of the investigation and trial process so that children are able to fully exercise their right to justice.
- **Evidence-based Policy Development**, the Child Justice Strategy is grounded in an evidence-based approach to policy development, and will focus on assessing the impact and effectiveness of reform initiatives.

#### 4.3 Strategy Goal, Purpose, Outcomes, and Activities

After identifying a goal and purpose, the Strategy next identifies key strategic outcomes to be achieved in the coming years, and sets out a concrete set of activities needed for incremental reform of the national child justice system, in line with the government's broader justice sector reform plans.

The Child Justice Strategy Goal is a Sierra Leone where there is access to justice for all children. The purpose is to develop an efficient and accountable child justice system centered on prevention, rehabilitation and reintegration.

The Child Justice Strategy identifies five key outcomes:

- **Outcome 1:** Measures to prevent juvenile delinquency and violence, abuse and exploitation of children are developed and enhanced
- **Outcome 2:** Formal justice system is more responsive to the needs of children
- **Outcome 3:** Children in conflict with the law are diverted from the formal justice system
- **Outcome 4:** Children are supported in their rehabilitation and reintegration
- **Outcome 5:** Legislative framework for child justice strengthened
- 

*Specific outputs associated with outcomes are discussed below, though this brief account will not get into the detail of activities. The Strategy includes an activity plan that identifies which state and non-state entities are to take the lead for implementing each of the 40 activities.*

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*The first outcome concerns prevention of delinquency through community based programmes, crime prevention awareness, and improvement of the educational system.*

*The second outcome calls for the system to be more responsive to the needs of children through the development of child justice guidelines and standardised training manuals, better collaboration, enhanced capacity of the police's Family Support Units to handle children's cases, and the implementation of an effective family tracing network. Further, this outcome identified the need to develop flexible residential alternatives for remand, improved legal representation for children, the assurance that special measures be available for child victims and witnesses, and improved access to data about the system.*

*The third outcome concerns diversion of children away from the formal justice system, and outputs include the development of a diversion policy (along with memoranda of understanding between key entities), the piloting of a diversion model based on existing primary (i.e. traditional) justice mechanisms, along with training for primary justice actors in more effective handling of children's cases.*

The fourth outcome ensures that children be supported in their rehabilitation and reintegration. It calls for an improvement of probation units, that children subject to non-custodial sentences receive appropriate community supervision, addressing the unique needs of children under the minimum age of criminal responsibility (under 14 year of age in Sierra Leone, per the Child Rights Act), and improved support for reintegration for children leaving state institutions.

The final outcome concerns the strengthening of the legislative framework for child justice, and calls for a specific review of the CRA and Children and Young Persons Act (CAP 44) with revisions in line with national priorities and international standards. It is noteworthy that diversion be piloted before updating the legal framework, as the current legal framework includes the never-implemented Child Panels. A log frame was developed with measurable indicators, baselines, and targets for each outcome.

### **5. Challenges with implementation and Summary**

The Child Justice Strategy, like any policy document, does not implement itself. While it includes key outcomes and activities with a timeline, it is only with commitment from and partnership between multiple government agencies and non-governmental organizations that successful implementation can be achieved.

It should be noted that since the outbreak of Ebola beginning in mid-2014, Sierra Leone recorded an unprecedented increase in the number of abuses against children. For example, the FSU has a record of 2124 reported cases of sexual penetration as compared to 1417 in 2013. Further, during 2014 and 2015 to date, efforts were also made to divert children who committed minor offences from the formal justice sector to reduce overcrowding in police cells and the remand home.

Overall, the multi-sectoral Child Justice Strategy for Sierra Leone represents a grounded, inclusive approach to policy-making in a low-resource country. The document is a helpful policymaking tool because of the wide consultative process of its development (ensuring buy-in from many stakeholders), and an end product that includes (1) primary justice actors, (2) diversion, and (3) has a log frame with targets. As Sierra Leone moves towards recovery from Ebola, the implementation of the Child Justice Strategy provides an opportunity to positively address issues facing children in conflict and contact with the law.

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Since July 2014, **Olayinka Laggah** has been the Commissioner at the Children's Commission in Freetown Sierra Leone.

## When the crime overshadows the child - Appropriate responses to serious offending by juveniles

Nikhil Roy



### Background

In 2012, the terrible gang rape of a student in New Delhi sparked protests across India. The subsequent revelation that one of the assailants was under the age of 18 provoked fierce debate in the country about the treatment of juvenile offenders who commit serious violent crimes. Following the arrest, a wide variety of stakeholders and members of the public demanded more punitive treatment. This included the proposition of legislation to lower the age of criminal majority to allow a 16-year old to be tried in adult courts.

However, this kind of incident and backlash is not confined to India. Across the world, there have been instances where a single case of a juvenile committing a grave offence has sparked a national debate and led to years of increased punitive attitudes toward children in conflict with the law.<sup>1</sup> Despite this, there is little evidence that these increased punitive responses are effective at reducing violent juvenile crime. Therefore, it is felt that the time is ripe for a wider, global debate on what appropriate responses are available for children accused, suspected or convicted of serious and violence offences such as rape and murder.

### Introduction

It has widely been acknowledged in principle, legislation and practice that a separate system of justice for those under the age of 18 is necessary and desirable. Children are considered to have lesser culpability for their offences as they differ from adults in their physical and psychological development, and their emotional and educational needs.<sup>2</sup>

In addition, their age and state of development means that children are more likely than adult offenders to respond to rehabilitative interventions and cease offending.

International standards bind states to uphold certain principles regarding children who come into conflict with the law, regardless of the severity of the offence, which include guaranteeing that responses to offending are focused on rehabilitation and reintegration rather than punishment and retribution. However, guidance to States on ways to address serious offending by juveniles has not been addressed by the international community and many justice systems therefore respond differently to children who commit serious or violent offences.

It is important to note that the overwhelming majority of children in conflict with the law are charged with non-violent offences such as theft or with minor or status offences such as begging or loitering. Only a very, very small minority are responsible for serious offences such as robbery, rape or murder. These children are often excluded from protections given to children charged with less serious offences such as diversion measures and hearings held in private in specialised children's courts. They are often punished severely with lengthy sentences of imprisonment. Ved Kumari describes this as a process whereby the psychological, social and legal construction of childhood can be lost, understated, ignored or overshadowed by the notion of crime.<sup>3</sup>

During the past year, PRI has been researching this issue and looking at available examples of good or promising practice in terms of what responses work in addressing serious or violent offending by juveniles as well as examples that are proven to be ineffective and / or in violation of child rights. In particular, PRI has been using this information in India, working with UNICEF India and partners, to advocate against proposed legislation which would allow children of 16 and 17 to be tried as adults and receive more retributive and punitive sanctions.

### Examples

Initial research has highlighted some examples of good practice from various States as options for how to respond to children who commit violent and serious offences.

<sup>1</sup> This was also seen in the UK case of the murder of James Bulger by two 10 year old boys in 1993 which subsequently led to increased punitive policy toward juvenile offenders.

<sup>2</sup> UN Document CRC / C / GC / 10 (25 April 2007)

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<sup>3</sup> Ved Kumari is Chairperson of Delhi Judicial Academy, Delhi, and Professor of Law at University of Delhi, Delhi. A revised version of her thesis has been published by OUP as *Juvenile Justice System in India: From welfare to rights* (2nd edition: 2010).

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### United States of America

While a large number of practices responding to children in conflict with the law are seen as harmful and ineffective, such as the transfer of juvenile cases to adult courts, detention in adult facilities and a low age of juvenile criminal majority, some small state-based initiatives are being implemented which appear to be promising practices of responding to violent offences by juveniles.

Across the US, a number of jurisdictions are using **Multi-Systemic Therapy**, or MST, to intervene in child offenders' lives (including those convicted of serious offences) to address the causes of violence and reduce offending. MST is an intensive family-and community-based treatment programme that focuses on all aspects of chronic and violent juvenile offenders' lives - their homes and families, schools and teachers, neighbourhoods and friends. MST works with children who have chaotic backgrounds. Key elements of MST programmes are:

- MST specially trained clinicians / therapists go to where the child is and are on call 24 hours a day, seven days a week;
- they work intensively with parents and caregivers to put them in control;
- the therapist works with the caregivers to keep the adolescent focused on school and gaining job skills;
- the therapist and parents/caregivers introduce the youth to sports and recreational activities.

MST has been proven to work and produce positive results with the toughest children. It blends the best clinical treatments - cognitive behavioural therapy, behaviour management training, family therapies and community psychology - to reach this population. Research indicates that MST can:

- keep children in their home;
- keep children in school;
- reduce re-arrest rates;
- improve family relations and functioning;
- decrease adolescent psychiatric symptoms;
- decrease adolescent drug and alcohol use.<sup>4</sup>

### Sweden

In Sweden, as well as in other countries, a similar intensive intervention has been implemented called **Functional Family Therapy** (FFT). Functional Family Therapy (FFT) is a family-based prevention and intervention programme that has been applied successfully in a variety of contexts to treat a range of high-risk youths and their families.

This approach draws on a multi-systemic perspective in its family-based intervention efforts. FFT targets youth between the ages of 11 and 18 from a variety of ethnic and cultural groups, but also provides treatment to younger siblings of referred adolescents as a juvenile delinquency prevention measure. FFT is a short-term intervention - including, on average, eight to 12 sessions for mild cases and up to 30 hours of direct service (eg, clinical sessions, telephone calls, and meetings involving community resources) for more difficult cases. In most cases, sessions are spread over a three-month period.<sup>5</sup>

### Canada

The Youth Criminal Justice Act (2003) in Canada took a rehabilitation- and reintegration-based approach to child offending. It established youth justice courts for all those under 18 (and over 12) and emphasised that sentences imposed on a young offender must:

- be the least restrictive option possible;
- be the sentencing option most likely to rehabilitate and reintegrate the young person; and
- promote in the young person a sense of responsibility and an acknowledgment of the harm done by the offence.

Unfortunately, in 2012, amendments to the Act by the Safe Streets and Communities Act have included more punitive and deterrent elements to sentencing, reversing some of this progressive practice.

However, still functioning and established under the 2003 Act is the Intensive Rehabilitative Custody and Supervision (IRCS) programme which is available for young people convicted of a serious violent offence and who suffer from a mental illness, psychological disorder or an emotional disturbance. The maximum sentence under the IRCS is ten years for first degree murder (made up of 6 years in secure custody and four years of conditional supervision). If a child has been identified as having a disorder through an assessment, their province or area is eligible to receive \$100,000 from the federal government per year to pay for intensive and specialised treatment and rehabilitative services in their local area. Although the programme represents good practice and a progressive approach, unfortunately, uptake of the service has been slow.

<sup>4</sup> Penal Reform International, *Protecting children's rights in criminal justice systems*, 2013 <http://www.penalreform.org/wp-content/uploads/2013/11/Childrens-rights-training-manual-Final%20ADHR1.pdf> ; MST Services website - [www.mstservices.com](http://www.mstservices.com)

<sup>5</sup> European Crime Prevention Network, *A Review of good practices in preventing juvenile crime in the European Union*, 2006 . in Penal Reform International, *Protecting children's rights in criminal justice systems*, 2013, p31



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### Northern Ireland

In 2003 in Northern Ireland, the Youth Conference Service . a system of restorative justice conferencing for juvenile offenders . was piloted and since 2006 has operated across Northern Ireland. It is a mandatory intervention used for children who have committed either minor or serious offences; the only exclusion being offences which are eligible for a life sentence.

The system relies upon the use of youth conferences at which the victim and victim's supporters (or victim representatives) are brought together with the offender and the offender's supporters in a structured meeting facilitated by professionals in order to fully discuss the offence and its repercussions, and to agree on an action plan for the offender. The child must admit to the offence and give their consent to participate; however, it is mandatory for a court to refer a child to youth conferencing following conviction in *all* cases, except those carrying a life sentence.

For serious offences, the process is overseen by a Priority Youth Offender Team. The child is intensively supervised, with contact up to seven days a week, and helped to complete their restorative plans through an approach known as 'circles of support and accountability'. Research carried out in Belfast on people's experience of the Youth Conferencing Service found that, while the system was not seen to be perfect, it had a victim satisfaction rate of 96 per cent and a 96 . 98 per cent rate of compliance by offenders with their conference plans.<sup>6</sup>

Chief Executive of Northern Ireland's Youth Justice Agency, Paula Jack, has stated that it is well recognised that if it is not on a statutory footing, [restorative justice] can be underused. She added that by putting it on a statutory footing, we could embed it at the heart of the youth justice system. She believes that conferencing had increased public confidence in the youth justice system and that it is not seen as a soft option, because of the menu of activities that can come with it, right up to the custody cycle.<sup>7</sup>

### South Africa

The 2008 Child Justice Act (effective from 2010) aims to provide safeguards to limit the exposure of children to the harmful effects of prosecution and detention. Under the law, sentencing is intended to encourage the child to understand the implications of their offence and be accountable for it; providing individualised responses which strike a balance between the circumstances of the child, the nature of the offence and the interests of society; promote reintegration of the child; and the use of imprisonment as a last resort and for the shortest appropriate period of time.

Section 53 of the Act outlines diversionary measures depending on the offence, some of which are available for serious offences. For these (which include murder, arson, sexual offences etc), diversion options include:

- compulsory attendance at a specified centre or place for a specified vocational, educational or therapeutic purpose, which may include a period or periods of temporary residence;
- referral to intensive therapy to treat or manage problems that have been identified as a cause of the child coming into conflict with the law, which may include a period or periods of temporary residence; and
- placement under the supervision of a probation officer on conditions which may include restriction of movement without the prior written approval of the probation officer.

South African courts have declared that certain minimum sentences do not apply to children. In 2009, the Constitutional Court held that the Criminal Law Amendment Act 105 of 1997, which made certain minimum sentences (including life imprisonment) applicable to 16 and 17 year olds for certain offences constituted an unjustifiable infringement of children's constitutional rights, particularly their rights to imprisonment as a last resort and for the shortest period of time.<sup>8</sup>

The Court also pointed out that custodial sentences may sometimes be the only appropriate sentence, but even then the Bill of Rights mitigates the circumstances in which such imprisonment can happen:

*'The principle of 'last resort' and the 'shortest appropriate period' bear not only on whether prison is a proper sentencing option, but also on the nature of the incarceration imposed. If there is an appropriate option other than imprisonment, the Bill of Rights requires that it be chosen... But if incarceration is unavoidable, its form and duration must also be tempered, so as to ensure detention for the shortest possible period of time.'*<sup>9</sup>

<sup>6</sup> House of Commons Justice Committee, *Seventh Report: Youth Justice* (February 2013)

<sup>7</sup> *Ibid.*

<sup>8</sup> The Centre for Child Law v Minister of Justice and Constitutional Development, 2009 (2) SACR 477 (CC); 2009 (6) SA 632 (CC); 2009 (11) BCLR 105 (CC).

<sup>9</sup> *Ibid.*

## Finland

Children are only rarely detained in Finland . there were only six children in detention in 2008, three in 2007 and just two in 2002.<sup>10</sup> The age limit for criminal liability in Finland is 15 and cases of offenders younger than this are dealt with by the child protection authorities. At the same time crime rates are low.

A recent analysis by Pitts<sup>11</sup> reveals a complex picture in which large percentages of children and young people in Finland are placed in secure settings but settings that are welfare based rather than labelled as custody or imprisonment. Pitts finds that in Finland there is:

*'...a low priority afforded to offending per se, which emerges as a 'symptom' of deeper disorders like addiction, depression, family violence, learning difficulties etc., the treatment of which is, apparently, given a far higher priority than programmes which address offending behaviour.'*

Finland is able to successfully avoid criminalising and incarcerating its youth, instead taking a rehabilitation- and treatment-based approach to offending by young people, which can however, include removal from their homes into specialised psychiatric units, detox clinics, shelters, or foster care.

## Concluding remarks

This initial exploration of the substantive aspects of responding to serious offending by children has shown that children . including those charged with serious or heinous offences . respond most effectively to a tailor-made child-friendly justice system, which takes into account their emotional and intellectual maturity and which focuses on lasting rehabilitation and social reintegration. Given the substantial and often irreversible effects of imprisonment on a child, a juvenile justice system that uses detention only as a last resort and for the shortest appropriate period of time is in the interests of both child offenders and of society.

Based on this preliminary research, Penal Reform International is developing a paper on appropriate responses to serious offending by children which will provide background on the international standards, international best practice examples and case studies of juvenile justice systems from around the globe, as well as bring together information and examples on the types of different interventions used in response to serious offending by those under 18 and their effectiveness.

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<sup>10</sup> Justice Policy Institute, *Finding Direction: Expanding Criminal Justice Options by Considering Policies of Other Nations* (April 2011); J. Muncie, *The 'Punitive Turn' in Juvenile Justice: Cultures of Control and Rights Compliance in Western Europe and the USA* (The National Association for Youth Justice, 2008); T. Kuure, *Reducing Custodial Sentencing for Young Offenders: Low Custody in Finland* (2002).

<sup>11</sup> J. Pitts, *Needs or Deeds? Youth Justice in Finland and England and Wales* (2011) 197 Prison Service Journal 15.

## Children's Hearings System in Scotland – How the involvement of young people as Modern Apprentices led to improvements in service delivery

**Zoie Sneddon**



I started in SCRA<sup>1</sup> when I was only 16 years old. This was my first Modern Apprenticeship, it was an exciting new experience where I would gain an SVQ 2 in Business and Administration. The Modern Apprenticeship started off with six months worth of training on subjects like confidentiality and data protection. During the training period we met with staff across the organisation and spoke at SCRA's staff conference. I also carried out a short placement in reception at a Hearings Centre, greeting children and families coming to their Hearings.

After we had completed our training, the four Modern Apprentices had a meeting with the Information and Research team, who presented us with the idea of inspecting Hearings Centres across Scotland. The aim of the inspections was to see if any changes were needed to improve the experience for children and young people and to help them feel more comfortable and confident about participating in their Hearings. This was well overdue as in 2009-10, 43,416 Children's Hearings were held in Scotland. We decided we would look at the waiting rooms, Hearings rooms and reception areas. We created a checklist based on our own experiences of going to Children's Hearings.

The checklist was kept on a secure drive which only the Modern Apprentices could access. After each inspection we would upload the findings onto Survey Monkey.

After inspecting 23 Hearings Centres, we used Survey Monkey to collate all the data and analyse our observations. Another Modern Apprentice and I also looked through all of the comments we had made about each Hearings Centre. This analysis helped us to identify what needed improved and what our recommendations should be.

Our report, *Fit for Use* was published in 2011 on SCRA's website<sup>2</sup>. Another Modern Apprentice and I presented the findings and made recommendations to SCRA's Board. The recommendations included: add more colour to Hearings and waiting rooms; make a separate budget for toys and magazines; make waiting and Hearings rooms more private; and have information leaflets available in all waiting rooms. The Board agreed with our recommendations. The Scottish Government also supported our findings and provided SCRA with additional funding to help improve Children's Hearings Centres. This funding went towards buying televisions for four of the larger Hearings Centres, installing water coolers and leaflet racks in all waiting areas, and having twenty Hearings Centres decorated in bright colours. In addition, SCRA created a budget for age and gender appropriate toys and magazines to be available in waiting rooms. *Your Rights* cards and posters were created and placed in all waiting and Hearings rooms so that children and young people would know what their rights are<sup>(2)</sup>. I think the progress SCRA has made in implementing the Modern Apprentices' recommendations has improved the experiences of children and young people going to Children's Hearings, although some improvements are still on-going.

After carrying out the *Fit For Use* report, SCRA recognised that I enjoyed doing research and they honoured this by allowing me to complete my Modern Apprenticeship in the Information and Research team.

<sup>1</sup> [Scottish Children's Reporter Administration](#) SCRA provides a statutory administrative and professional decision making service for vulnerable children and young people, who may require compulsory measures of supervision via referral into the Children's Hearing System--Editor

<sup>2</sup>

[www.scra.gov.uk/cms\\_resources/Fit%20For%20Use%202011.p  
df](http://www.scra.gov.uk/cms_resources/Fit%20For%20Use%202011.pdf)

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Over the past few years there has been a lot of research carried out with young people asking the same question: How can we make the Hearings System better? Although all this research is being carried out nothing seems to change. This is why I decided to carry out a review to pull together five of these research reports to summarise the findings and make one final report with recommendations.

I began by identifying the five pieces of research I wanted to review. These were .

- ◆ Fit for USq;
- ◆ Children's Hearings Reform . The views of children by the Scottish Children's Parliament ;
- ◆ Hearing Scotland's Children by Who Cares? Scotland ;
- ◆ The Children's Hearings System: understood and making a difference by SCRA ; and
- ◆ The views and experiences of children and families involved in the Children's Hearings System in Scotland by SCRA

After reading through all of the research, I started to highlight the themes, which I then used to make my framework. The seven themes were:

1. social work;
2. Children's Panel Members;
3. service providers;
4. Children and young people's feelings;
5. Hearings Centres;
6. SCRA staff behaviours; and
7. SCRA staff listening to children and young people.

I then went through the reports again and began to put the children and young people's comments under each theme. I identified the six main issues that children and young people were facing. These were

1. listening and being respected,
2. trust,
3. contact with family,
4. attitudes and behaviour,
5. language used; and
6. privacy / confidentiality.

I did this by colour-coding each comment and theme in the same colour and this showed me the main issues. Then I began to write up my findings for each theme. For example, for the social work theme the three most common issues were young people not feeling listened to, not being able to trust their social worker and the social worker's attitudes towards them and their family. I also made recommendations to help social work, Panel Members and SCRA be better in their communications and interactions with children and young people.

The report was published in 2012. It was sent to SCRA's partner organisations and to Panel Members, and there was a positive response from them to the report.

I completed my SVQ 2 in 2011 and started on my SVQ 3 in Business and Administration. I completed my Modern Apprenticeship and SVQ 3 in October 2012 and SCRA offered me a secondment for two years as Trainee Research Assistant. This was a great opportunity to enhance my knowledge and skills which I would be able to use throughout my career.

SCRA recruited four new Modern Apprentices in February 2013. After they had finished their training, I had a meeting with them to talk to them about re-doing the Hearings Centre inspections to see if improvements had been made since our Fit for Us report.

The new Modern Apprentices reviewed the checklist and added some new questions of their own about confidentiality and facilities in Hearings Centres. They then inspected 27 Hearings Centres including 11 outreach Centres. Their report, It's All About Change<sup>3</sup> was published in June 2013<sup>3</sup>.

The Modern Apprentices found that most of the outreach Hearings Centres they inspected were not suitable for Children's Hearings. They also found that there weren't always leaflets and up to date magazines in the waiting rooms. The report went to SCRA's Board and one of the Modern Apprentices presented their findings and recommendations. The findings from the report are getting looked into more closely and actions will follow.

I carried out another piece of research to review some of SCRA's information materials through focus groups with looked-after young people. These materials had not been looked at before from a young person's point of view.

I identified the materials I wanted to review. These were All About Me form, SCRA's website, the DVD on going to a Hearing, an idea for an SCRA APP and if there is any other help/support young people need. I looked at each of the materials and thought about what SCRA wanted to find out from the young people. I then created a question sheet which I would use for the focus groups.

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<sup>3</sup> SCRA (2013). It's All About Change. This report covers: reception areas, waiting rooms, Hearings rooms and phone call inspections.  
[http://www.scra.gov.uk/cms\\_resources/Its%20All%20About%20Change.pdf](http://www.scra.gov.uk/cms_resources/Its%20All%20About%20Change.pdf)



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I made the questions open so the young people could answer openly and honestly. I then approached a number of organisations and existing groups working with young people to see whether they wanted to take part. This proved to be difficult. However, I did carry out four focus groups--in Glasgow, West Lothian, Aberdeenshire and Dumfries and Galloway, and twenty young people took part in them altogether.

I took copies of the materials and the DVD along to each focus group as visual reminders. This was to see whether the young people had seen/used the materials and whether they thought they were useful.

After the focus groups were finished I collated and analysed what the young people said by using the framework approach<sup>4</sup> I wrote about each type of material separately to keep everything clear and simple. The report was published in October 2014<sup>4</sup>. This report has made SCRA think about their information materials and they are in the process of reviewing the All About Meqform and the DVD<sup>q</sup>

My secondment has finished and I am now working part-time as a Support Assistant (Information) in SCRA, while I attend university.

I think this experience as a Modern Apprentice has come with its ups and downs but I have learned a lot about working and it has helped me decide what I want to do as a career.

I have enjoyed getting to know the staff at SCRA and learning how to collate and analyse data, which I have found useful in university. Also in writing research reports and gaining confidence in presenting the findings to different audiences.

I have had many achievements while here in SCRA: I achieved my SVQ 2 and 3 and a Higher National Certificate (HNC) qualifications; and in 2012 I received the award for the Scottish Modern Apprentice of the Year (Service Category).

I am proud to have been part of improving the Hearings System for children and young people. Also being able to support the new Modern Apprentices to do the inspections was one of the highlights of completing my own Modern Apprenticeship as it felt like an achievement and I enjoyed getting to know them.

**Zoie Sneddon** served a modern apprenticeship under the guidance of the Scottish Children's Reporters Association and is now studying for a degree at university.

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<sup>4</sup> 2SCRA (2014). How SCRA Communicates with Young People & young people's feedback.  
[http://www.scra.gov.uk/cms\\_resources/How%20SCRA%20communicate%20with%20Young%20People.pdf](http://www.scra.gov.uk/cms_resources/How%20SCRA%20communicate%20with%20Young%20People.pdf)  
JULY 2015 EDITION

## Global, regional, sub-regional? Prospects and pitfalls for children's rights in the future

**Professor Julia Sloth-  
Nielsen\***



### Introduction<sup>1</sup>

My address is situated within the context of the 25th anniversary of the Convention on the Rights of the Child, the first binding framework for an internationally agreed charter of children's rights. It is, of course, well known that the CRC was not only the treaty which entered into force the most rapidly, but it enjoys equal fame for its near universal ratification (with only three outstanding states to ratify), and even non-state signatories such as Palestine.

### The CRC after 25 years

There can be no doubt that children's rights have come of age; the CRC gave birth to an entirely new terrain of legal and allied endeavours, much as the invention of the motor car spawned parking garages, Formula 1 racing, and traffic lights. The initial formulaic citation of pruned down Convention rights by scholars has developed and deepened over time. It has been replaced by detailed and authoritative expositions of specialised areas, each one worthy of comprehensive study. One thinks here of topics such as children and armed conflict, child victims

of exploitation, the rights of refugee children, and birth registration. Each was accorded one substantive Convention article, but now requires stand-alone and comprehensive elaboration to determine the required legal response.

It must be recalled that the CRC was initially intended chiefly to be a collation of rights previously found in different human rights treaties, just tailored and elaborated to meet children's specific needs and interests. At the time of drafting, there were relatively few clearly recognised child focused standards, in terms of hard law, in particular. Despite the universal character of the two Covenants, the ICCPR<sup>2</sup> and the ICESCR<sup>3</sup>, it was not clear that children were automatically beneficiaries of most of the rights they contained. Hence, the fact that agreement could be reached on the fundamental rights and freedoms applicable to children in the final text of the CRC, with the addition of several groundbreaking innovations such as recognition of the evolving capacities of the child, the primacy of her best interests, and restrictions on certain forms of punishment and deprivation of liberty, were critical achievements. They laid the basis for a consensus generating movement.

Commentators of that era noted the extraordinarily comprehensive nature of the treaty, whilst lauding its lack of categorisation of rights into traditional categories: civil and political, social economic and cultural. From this derived the now famous grouping of Convention rights into the 3 Ps - protection, provision and participation, as Nigel Cantwell wrote in 1992 in his preface to Sharon Detrick's invaluable work on the Travaux Préparatoires to the CRC<sup>4</sup>. This laid the ground for emphasis on the indivisibility, equal importance and mutual reinforcement of Convention rights. This mutuality of rights is reflected, too, in the well known 4 pillars of the CRC identified by the CRC Committee: non-discrimination, best interests, right to life, survival and development and the child's right to express views. This bedrock of principle, around which all other rights, freedoms, vulnerabilities and exclusions are clustered, remains intact after 25 years.

<sup>2</sup> International Covenant on Civil and Political Rights adopted by UN general Assembly on 16.12.1966. Entered into force 26.03.1976

<sup>3</sup> International Covenant on Economic, Social and Cultural Rights adopted by UN 16.12.1996. Entered into force 03.01.1976

<sup>4</sup> <http://www.unicef-irc.org/CRC/directory/browser/?tema=1&sezione=1&categoria=2&subCategoria=16>

<sup>1</sup> This article reproduces part of an inaugural lecture given by Professor Julia Sloth-Nielsen at the University of Leiden in November 2015

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The achievements of the CRC and the CRC Committee are variously described in rather glowing terms: 'Remarkable progress', 'enormous success' and 'an ideological fortress'.

Beasley<sup>5</sup> et al ascribe one of the successes of the CRC as being the impetus it gave to rights-based research with children. This was occasioned by the submission of the first reports to the CRC Committee in 1996, which illustrated that available data was insufficient to monitor progress towards implementation of CRC rights (outside of health and education). They conclude that two and a half decades of rights-based research has transformed our understanding of the diversity and lived experience of childhood, not to mention that it continues to 'provide a scientific basis for policy and action which also genuinely recognises children's experiences and priorities'.

Prof Michael Freeman<sup>6</sup> alludes to another benefit: the CRC has brought children's lives out from the private sphere of the family, and into the spotlight. This was initially inspired by the diligent attention paid in the CRC to children in vulnerable situations: exploited children, children deprived of alternative care, victims of child labour, sexually abused children, etc. The spotlight fell on the numerous children not growing up in the ideal nuclear family with 2.2 children and a minimum floor of access to socio-economic goods and services. The rendering of the private lives of children as visible has become more pronounced in recent years: the latest data indicates that 'an estimated 70 million girls aged 15 to 19 report being victims of some form of physical violence while around 120 million girls under the age of 20 have experienced forced intercourse or other forced sexual acts.' The October 2014 UNICEF publication 'Hidden in Plain Sight' details that the primary perpetrators of physical violence against girls were parents and care-givers. In others, it was educators at school. We are only now grappling with the pervasive violence that children experience at the hands of adults. Responses encompass legislative reform, reporting systems and toll free hotlines, establishing local child protection committees, instituting specialised police and investigative units, and committing to 'Do No Harm': the message of the safeguarding children movement.

The international children's right movement has rightly been described as one of the most powerful social movements of the twentieth century. The recognition of the child's right to participate and have views taken into account brought into being a new social contract, one which has required profound adjustment. Children's participation has arguably had considerable transformative impact on the way that young people are perceived in many societies. It has transformed legal institutions and decision-making about children, and driven the creation of a host of new institutions, such as ombuds for children, Children's Parliaments, and national observatories. It has reshaped our understanding of children's testimony, and on how to elicit their views.

However, the supranational children's rights movement faces not inconsiderable challenges.

First, at the conceptual level, it is evident that the CRC must be treated as a 'living document'. New issues have come to light over the last two and a half decades, such as the displacement of the inter-country adoption industry to Africa, the growth of commercial surrogacy in India<sup>7</sup>, and the phenomenon of child-headed households occasioned by HIV/Aids. In addition, interpretative ambiguities enjoy increasing scholarly attention: what is kinship care, for instance, and is it family care or does it constitute alternative care? An answer is not merely academic- it would determine the applicability of the UN Guidelines on Alternative Care and whether state support, both material and psycho-social, must be provided. Another example: what is the 'highest attainable standard of health' in article 24 of the CRC? How does this right translate into a definite set of measurable standards which cover such varying contexts as Highly Indebted Poor Countries (HIPC)s and other much more well off parts of the earth? A last example: deprivation of liberty for the shortest appropriate period of time; for some this can be a maximum sentence of 3 years (Uganda), whereas for others who still defend their legislation as CRC compliant, it can be as long as 20 years or more (South Africa). There is no uniform consensus at this point. Thus, although the CRC provisions seem cast in stone, textual clarification, interpretation and standard setting remain a work in progress, with fresh norms and guidance in many spheres emerging at a steady rate.

<sup>5</sup> Professor Annmarie Beasley, Consumnes River College, Sacramento, California, USA. *International Journal of Children's Rights*.

<sup>6</sup> Professor Freeman, University College, London. Founding Editor of the *International Journal of Children's Rights*; profile <http://iris.ucl.ac.uk/iris/browse/profile?upi=MDAFR97>

<sup>7</sup> See Surrogacy in India articles Anil Malhotra\* January 2011 and January 2014 Chronicles (Editor)

## INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

Moreover, the variety and complexity of children's rights is expanding. Globalisation and technology are placing new frontiers before us (think of massive increases in mobility and migration, and the growth of digital technologies, which impact on children's exercise of their rights in ways unforeseen even a decade ago). Even in the developing world, the emergence of children as a consumer class is rapidly expanding: markets are moving into spaces where children live. These examples illustrate that whilst the CRC may have been groundbreaking at the time, some standards are too simplistic and pared down to take children's rights to the next level. As Philip Veerman<sup>8</sup> has said, the Convention is aging, and we need to put our heads together creatively to imagine directions for future development, and potential risks yet to come.

Linked to an extent are recurring debates around cultural relativism. Take the question of early marriage: a formidable array of INGOs and others have aligned themselves behind a concerted effort to end marriage for all children under 18. On the other hand, asserting the child's right to empowerment, the recent General Comment of the CRC Committee (No 18) permits, exceptionally, marriage from the age of 16. Another area where the cracks have begun to show, is in current debates about infant male circumcision and circumcision as a preventive measure to combat HIV/Aids. Claims based on the universality of children's rights which dismiss culture and religion as aberrations overlook the extent to which these are still contested, despite the consensus-building function that the CRC has admittedly served.

Second, at the practical level, the burden on the CRC Committee occasioned by the extensive ratification of the CRC soon became apparent. Under the leadership of Jaap Doek<sup>9</sup>, the Committee developed a plan to augment the number of members from 10 to 18, and then to split into two chambers to expedite the consideration of state party reports. This provided a temporary reprieve. As Doek notes, 'the problems of the CRC Committee are increased because it monitors the implementation of the two optional protocols (each ratified by more than 145 countries) in addition to the implementation of the Convention in 193 countries, which is already many more than other committees'. There is now again a delay in the consideration of reports which, once submitted, are scheduled for dialogue

years rather than months hence. It has been observed, furthermore, that the Committee lacks the capacity to follow up reports on its concluding observations.

In April 2014, the CRC's 3rd Optional Protocol<sup>10</sup> entered into force, paving the way for the Committee to receive individual communications about violations. The first admissible communications will probably not reach the Committee soon, since the rule of exhaustion of local remedies applies. However, it is predictable that once the communications procedure becomes embedded in litigation practice, it could potentially increase the workload of the Committee exponentially. For one, the receipt of communications is not linked to a time bound 5 yearly reporting framework, but is potentially a 'free for all' at any time. Second, the consideration of complaints could involve a more elongated process, as the Rules contemplate the possibility of oral hearings, and the receipt and consideration of a variety of documents emanating from a vast array of sources; the Committee can also get its hands wet (as it were) with the possibly time consuming process of negotiating a friendly settlement. Even after a friendly settlement or a decision on the merits, the Rules provide for the continued involvement of the Committee in monitoring and follow up, with the necessary reports, visits, and requests to states parties for information. Thus the extension of the CRC Committee's jurisdiction could well be a double edged sword: it may detract from the Committee's other responsibilities and become overwhelming.

Outside of its mandate to consider periodic state reports, the role of the Committee is quite limited. The Convention permits the Committee to recommend to the General Assembly to appoint special representatives to undertake specific studies on its behalf. Two such studies have been commissioned, the Machel<sup>11</sup> study on Children in Armed Conflict in 1996, and the Pinheiro<sup>12</sup> study on Violence against Children of 2006. Both have led to the appointment of special mandate holders, the Special Representative on children in armed conflict<sup>13</sup>, and the Special Representative

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<sup>10</sup> See OP 3 January 2014 Chronicle ..Editor

<sup>11</sup> The Machel study 1996 by Graça Machel, expert of the Secretary-General and former Minister of Education of Mozambique  
<https://childrenandarmedconflict.un.org/mandate/the-machel-reports/>

10 year strategic review  
[www.unicef.org/.../Machel\\_Study\\_10\\_Year\\_Strategic\\_Review\\_EN\\_030...](http://www.unicef.org/.../Machel_Study_10_Year_Strategic_Review_EN_030...)

<sup>12</sup> Paulo Sérgio Pinheiro independent expert for the United Nations secretary-general's study on violence against children  
<http://www.unicef.org/violencestudy/1.%20World%20Report%20on%20Violence%20against%20Children.pdf>

<sup>13</sup> Leila Zourrugui (2012)  
<https://childrenandarmedconflict.un.org/mandate/leila-zerrugui/>

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<sup>8</sup> Dr Philip E Veerman, Psychologist with Bouman Mental Health Services (Rotterdam) and independent expert of the juvenile courts, Den Bosch, the Netherlands. Author of *The Ageing of the UN Convention on the Rights of the Child*. Member IAYFJM Board 1982-1986

<sup>9</sup> Jaap E. Doek, emeritus professor of Law (Family and Juvenile Law) at the VU University (Vrije Universiteit) in Amsterdam. He was Chairperson of UN Committee CRC 2001-2007



on violence against children<sup>14</sup>. The special mandate holders have arguably been able to provide a more direct response mechanism, and they have de facto increased the capacity of the supranational children's rights architecture meaningfully.

The CRC provides the platform for the Committee to make general recommendations on children's rights issues. Since 2001, the Committee has issued 18 General Comments, which have become ever more concrete and specific, and hence of substantive value domestically. For instance, I know that General Comment (no 3) on HIV Aids has had a meaningful impact on legislative developments in several African countries, and that General Comments have been cited with authority in South African jurisprudence, as Ann Skelton<sup>15</sup> discusses in her chapter in the book *Mitigating Children's Rights* edited by Prof Ton Liefwaard<sup>16</sup> and Prof Jaap Doek that will be launched during the forthcoming conference<sup>17</sup>.

But the CRC Committee lacks an express mandate which provides for independent powers of investigation; it does not have the legal ability to commission studies of its own accord, and to undertake investigative missions outside of the state party reporting process. Doek refers to the possibility of urgent actions in serious situations, but notes that this had not yet occurred. The Committee does not seem to have the function to initiate campaigns itself, although it can contribute to other's campaigns. Campaigns do fall within the purview of special mandate holders, an example being the campaign *Children, Not Soldiers*, launched in March 2014 by the Special Representative of the Secretary General on Children and Armed Conflict.

In short, the Committee is somewhat hamstrung as regards fulfilling a proactive and forward looking role, though this is through no fault of its own. Both the legal mandate in the Convention, and the part time appointment of Committee members, render these types of functions difficult to contemplate.

A final point concerns the Committee's concluding observations. Spronk<sup>18</sup> in her dissertation on children's rights to health notes that responses to states as diverse as the Netherlands, Iran, Lebanon, Bosnia and Columbia, countries with

different levels of development, highly divergent cultures and geographic characteristics, were identically worded. The tendency to supply stock recommendations, whilst understandable in the context of voluminous material the Committee peruses, does point to something of a distance between Geneva and affected states parties.

Writing in 2000, Prof Michael Freeman opined that the UN Convention is a beginning. Near universal ratification is a major accomplishment. A proliferation of regional and international investments in its wake is significant.+

## 6. Conclusion

There can be no doubt that the first 25 years of the CRC has laid the basis for implementation of children's rights across the globe at the national level. Moreover, the CRC Committee which monitors state parties reports has made noteworthy strides and elaborating general comments, highlighting emerging areas of concern through convening days of general discussion, and the way has now been forged for individual complaints of violations of children's rights to be adjudicated. The next 25 years is going to be shaped (amongst other ways) by changes being contemplated in the UN reporting system generally, to alleviate the reporting burden on both states parties and on the various treaty bodies. It will likely become more focussed, sharpened and attuned to recommendations previously made in the reporting cycle. Implementation will become key, as this is where most effort still needs to be made to impact the lived realities of childhood.

**Professor Sloth-Nielsen\*** is Dean of the Faculty of Law at the University of the Western Cape in South Africa, vice chair of the African Committee of Experts on the Rights and Welfare of the Child and part-time Professor of *Children's Rights in the Developing World* at Leiden Law School. In the latter role she focuses on the meaning of children's rights in low-income countries, among others, the African continent

<sup>14</sup> Marta Santos Pais (2009)  
<https://srsg.violenceagainstchildren.org/srsg>

<sup>15</sup> Professor Ann Skelton is currently the Director of the Centre for Child Law, University of Pretoria, South Africa  
<http://www.centreforchildlaw.co.za/>

<sup>16</sup> Professor Dr Ton Liefwaard\* UNICEF Professor of Children's Rights, Leiden University, Netherlands <http://law.leiden.edu>

<sup>17</sup> See Chronicle January 2015 (Editor)

<sup>18</sup> Sarah Ida Spronk, Leiden University  
[https://www.youtube.com/watch?v=p\\_6MISCO80](https://www.youtube.com/watch?v=p_6MISCO80)

## Leiden International Conference: -- “25 Years of the CRC”

Carina du Toit



The 25<sup>th</sup> Anniversary of the United Nations Convention on the Rights of the Child (CRC) was celebrated by over 300 academics, professionals and students at the International Conference “25 Years CRC”, hosted by the University of Leiden. The conference took place from 18 to 19 November 2014 and formed part of the Leiden *Children’s Rights Week* from 17 to 21 November 2014. The conference provided an extraordinary opportunity for young professionals, academics and students to engage with and listen to the reflections and experiences of the most well-known child law experts in the world, including the experiences of those experts involved in the drafting of the CRC. For many participants, the conference was a reunion of old friends and colleagues where they could reconnect and share their experiences over the last 25 years.

As a pre-conference kick-off, conference delegates attended the inaugural lecture of Prof Julia Sloth-Nielsen\* who holds the Leiden Chair of Children’s Rights in the Developing World on Monday 17 November 2014. Prof Sloth-Nielsen’s address was a thought provoking and critical reflection on the implementation of the CRC as a supranational treaty and the work of the CRC Committee. In particular, she focussed on the role of regional children’s rights and human rights treaties and treaty bodies and the potential for more impactful enforcement of children’s rights principles through regional structures. The inaugural address firmly set the stage for the presentations and discussions that followed at the conference.

The first plenary session of the conference was opened with a keynote address by Professor Michael Freeman, who reminded delegates that children still need empowerment, even 25 years after the advent of the CRC. Prof Freeman’s presentation forced the audience to confront a

vision of children’s rights in 2039 and asked what we would see looking back fifty years. Prof Freeman strongly advocated for greater citizenship rights for children, including the rights to vote, and proposed that at least children who have reached the age of criminal responsibility should be given the right to vote. He had the audience chuckling with his most tweeted comment that: “Somalia has not ratified the CRC because they do not have a government. The US has not ratified the CRC because they do.”

Prof Vitit Muntarbhorn from Chulalongkorn University in Thailand ended the first plenary session with his presentation: *A Voyage with Child Rights: 25 Years of the Convention on the Rights of the Child and Beyond*. Prof Muntarbhorn discussed that the significance of the CRC as an instrument for change and addressed the importance of domestic legal mechanisms to support and enforce the CRC.

The second plenary session on 19 November 2014 focussed on the interaction between the CRC and other relevant international instruments. In his keynote address, Dr Hans van Loon, former Secretary General of the Hague Conference on Private International Law, discussed the interaction between the CRC and the Hague Children’s Conventions and the protection of children across borders. Dr van Loon emphasised the complementary nature of the Hague Children’s Conventions in relation to the CRC and called for an integrated approach to the implementation and practical operation of the Hague Children’s Conventions.

The final keynote address of the conference was by the Dutch National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, Ms Corinne Dettmeijer-Vermeulen\*. Ms Dettmeijer-Vermeulen examined the legal challenges and strategies for combating online sexual violence against children. Her paper revealed the constant new challenges to protect children against child pornography such as sexting and online bullying. Her presentation ended with a clear message:

*“No matter where or when, every child has a right to protection against any type of sexual violence, analogue and digital.”*

In addition to one plenary session, each day provided delegates with an opportunity to listen to experts sharing their experiences in more informal arm chair sessions and to participate with their own presentations at the parallel sessions. The first day of the conference was aimed at reviewing the past 25 years and taking stock of where we are with children’s rights to day whilst the second day focussed on developing an agenda for the future of children’s rights.

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The first arm chair session drew together experts involved in the drafting of the CRC, Nigel Cantwell, Sjaak Jansen, Robert Schwartz and Maria Herczog. This provided a fascinating insight into the negotiations and the real political limitations and realities of drafting the convention. The second arm chair session moved away from the past to contemplate the future of children's rights. Experts on the panel included Lene Steffen, Regina Jensdóttir, Godfrey Odongo, Andrew Mawson, Margaret Tuite, Ann Skelton and Anne-Sophie Lois. The discussion centred mainly on *how* rather than *what* indicating that the focus of children's rights work in the future will be on effective practical implementation of rights rather than legal recognition of rights.

Each day of the conference provided an opportunity for presentations by delegates at morning and afternoon parallel sessions with ten separate sessions running parallel during each session. The theme for the first day was *Taking stock after 25 years CRC* and were divided into five different thematic areas: Embedding the CRC at the domestic level . the jurisprudential *value added* Interdisciplinarity and children's rights; Monitoring children's rights . international and domestic mechanisms; Visibility of children . children's participation and enforcement of their rights; and Juvenile Justice.

The focus of the second day's parallel sessions was *New frontiers of children's rights for the future* with the thematic areas: Child protection systems; Children and the global development agenda; Children's rights and the digital era; Research for 2040; The interrelationship between children's rights and the broader human rights system; and Children's rights and migration.

Over the course of two days, approximately 150 participants delivered their papers during the parallel sessions and shared their research or professional experiences with the audience. The conference provided an invaluable opportunity to make new connections and was a resounding success, in respect of content and organisation.

In addition to the conference, the University of Leiden Law School also hosted the first International Children's Rights Moot Competition as part of the 25 Year CRC celebrations. The facts for the Children's Rights Moot centred on the rights of a child soldier detained as an unlawful combatant or terrorist in the fictional matter of *AW v Landia*. Fifteen teams from 9 countries participated in the competition. Arguments were heard over two days from 18 to 19 November 2014 and the final was held at the Child Rights Home in Leiden on Wednesday 20 November 2014. Each team was required to argue four times, twice for the Applicant, the child detainee, and twice for the Respondent, the country detaining the child. The winning team was the Law Society of Ireland who also won the prize for making the best arguments as Respondent. Barry Connolly from the Law Society of Ireland won the prize for Best Oralist. The University of Pretoria won the prize for best arguments as Applicant. The Children's Rights Moot provided a unique opportunity to expose students to child law and to familiarise them with the international instruments relating to children's rights, in particular, the CRC.

**Carina du Toit\* is a lawyer at the Centre for Child Law at the University of Pretoria, South Africa.**

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<b>Interactive Dialogue with the Special Rapporteur on the Independence of Judges and Lawyers.</b>	<b>Defence for Children International (DCI)</b>
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**The statement below was made by DCI during the 29th session of the Human Rights Council**

**17 June 2015**

Thank you Mr President,

We share the Special Rapporteur's emphasis on the importance of investing in child-sensitive justice. We further emphasize the need for effective implementation of international juvenile justice standards to protect the rights of children deprived of liberty.

Under article 37 of the United Nations Convention on the Rights of the Child, deprivation of liberty is to be a last resort and used for the shortest possible period of time. Deprivation of liberty has negative consequences for the child's harmonious development, exposing children to increased risks of violence, social discrimination, and denial of their human rights. Society is affected at large as deprivation of liberty tends to increase social exclusion, recidivism, and public expenditure. With the ongoing post-2015 development agenda, we remind member states that investing in children is key to the success of the Sustainable Development Goals.

We commend the Special Rapporteur's recommendation to properly educate judges, prosecutors, and lawyers to embrace a child-sensitive justice and to always consider alternatives to detention first and foremost. However, in cases where alternatives to detention are not employed, independent monitoring mechanisms are to be established to ensure the effective implementation of international standards. Contrary to existing facilities for adults, there are no guidelines on visiting and monitoring juvenile detention centres, jeopardizing the coordination of practices and hampering the obtainment of comparable information on the concrete situation of these children.

In order to bridge this gap, the Belgian section of Defence for Children International has launched the 'Children's Rights Behind Bars+' project alongside fourteen European countries. This project aims to evaluate the monitoring systems of child detention centres, and will culminate next January in the publication of a practical guide to be used by monitoring bodies.

Last year, Defence for Children International also led a campaign calling for a Global Study on Children Deprived of Liberty to address the lack of data, research, and verified information on the situation of child detention. The Study, which was officially requested through a resolution of the UN General Assembly in December 2014, will collect and analyze comprehensive data on all forms of child detention, assess how international standards are being implemented, and identify recommendations and best practices.

Defence for Children International would like to make the following recommendations here today:

- First, integrate child-specific training and capacity-building initiatives for all judges, lawyers, and prosecutors in order to sensitize them to the human rights of children involved in the justice system;
- Second, ensure adequate review and protection mechanisms even after sentencing, using a specific child-focused approach;
- Finally, we encourage all member states to establish a specialized legal system for children at the national level, and ensure that all judicial proceedings comply with international human rights standards, always prioritizing the best interests of the child.

Thank you.



## Justice adapted for children Ajunaf Conference report--Argentina

**Judge Patricia Klentak**



On 18 and 19 June, 2015, the Argentine Association of Youth and Family Judges (AJUNAF) celebrated a congress to debate about a justice adapted for children (child friendly justice).

The President of AJUNAF, Magistrate Patricia Klentak, opened the meeting by expressing the need for a system of justice that guarantees every child

- , social, economic and cultural rights to the highest level possible and
- a system of justice focused on the human rights of children, with child-friendly practices that acknowledge their status as subjects of rights, bearing in mind their opinions, needs, their growing autonomy and their abilities.

In that sense, the President said that to achieve a system of justice specially adapted for children we have to propose concrete actions that favour:

- ◆ the best interests of the child
- ◆ the participation of young people and the community,
- ◆ non-judicial treatment of cases,
- ◆ protection against discrimination
- ◆ protection against violence,
- ◆ access to justice and legal assistance
- ◆ due legal process, *as well as being proactive in*

- setting the criteria for the selection of magistrates and justice professionals,
- the training of all professionals who work with children in the justice field.
- the legislative area, and
- in institutional management including the budget,

Prestigious lecturers gave their opinions : Dra. Mary Beloff, Dra. Marta Pascual, Dr. Norberto Liwski, Dr. Gustavo Moreno, Dr. Elbio Ramos, among others.

The Deputy President, Magistrate César Jiménez spoke mainly about the importance of the protection of children across frontiers, stressing the fraternity of the countries of this region regarding the importance of representing the rights of the most vulnerable.

This meeting generated a rich interchange of knowledge and experiences.

AJUNAF hopes to continue with this subject from a worldwide perspective in the international conference, that will take place on 24 and 25 September 2015 in Buenos Aires, Argentina

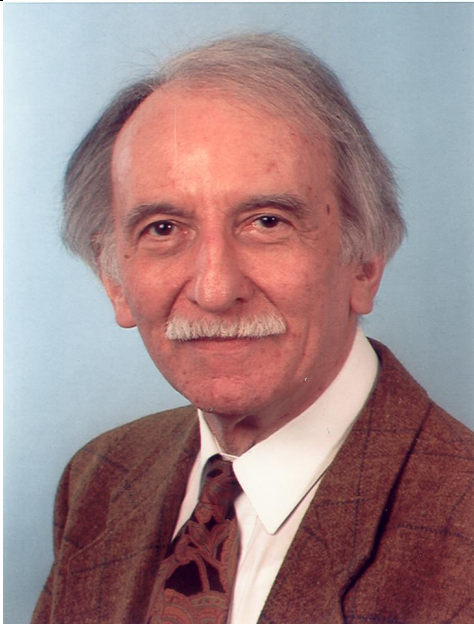
**Judge Patricia Klentak\*, President AJUNAF**



## New Books

### **Women and Children as Victims and Offenders: Background, Prevention, Reintegration. Suggestions for Succeeding Generations**

**edited by Helmut Kury, Slawomir Redo and Evelyn Shea**



Professor Helmut Kury

Since the beginning of history, women and children have been among the more defenceless members of society and have thus at all times and everywhere run a greater risk of victimisation. Empirical criminological research of the last decades has increasingly and on an international level pointed out the damages of severe victimizations of these groups, especially of children, often with disastrous consequences for the remainder of their lives. Yet this should not make us forget that both women and children can also become active perpetrators of crime, even if on a lesser scale than men. This book brings together 63 chapters from authors across the globe, presented in 7 parts. The papers have been written both by university scholars and specialists from the United Nations, combining their expertise to present a rich and varied analysis of different aspects of the problem, including crime policy. Particularly impressive is the wide span of papers from over 30 countries that also include societies we may know less about, for instance China, India, Iran or the former Soviet States. All have in common a strong emphasis on the importance of crime prevention and the promotion of a culture of lawfulness.



Evelyn Shea

Part I of the book with round about 1.500 pages deals with %United Nations Basic Principles for Crime Prevention . Treatment of Women and Children+. The papers describe the impact and potential of international human rights law as part of the efforts made to prevent and redress violence against women and children. Part II concentrates on %The Early Development of Children+, and brings together results about the early education of children and the effect on their further development, for instance the teaching of fairness and justice as a central element of moral development, the role of pre-school education in the social behaviour of children, or children's understanding of social norms and social institution. Other chapters centre in on early deviant behaviour and the important role of family-based interventions. Also discussed is the problem of women's substance abuse and its impacts on children's early development and deviant behaviour and the question how far biological factors might play a role. Part III brings together chapters on %The Importance of Education+. In developing countries there often is still not sufficient access to education for children and women. Yet education is essential for a better and more equal future, for access to information and for a more critical assessment of political developments.

## INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

Topics range from attacks on education in conflict, post-conflict and non-conflict settings, international strategies for building a culture of peace through access to good education, to the importance of an education for justice for the internalization of non-delinquent values. Interesting are also the results of the second round of the International Self-Report Delinquency (ISRD2) study that show again the importance of education and social learning, particularly for 12 . 15 year olds. Part IV presents papers about %Children/Juveniles and Women as Victims and Offenders+. It begins with international comparative research results about criminal victimization of children and women and global homicide mortality trends by gender. Several texts deal with the sexual abuse of women and children from a comparative and international perspective, a topical subject particularly in some Western countries like Germany and the US because of recurrent news of misuse of children in religious institutions. Of particular interest is also a chapter that looks at sexual abuse in families in the context of the intergenerational transmission of victimhood and offending. 6 chapters from countries we usually we often know less about give us important and new information about family violence and sexual abuse, two from Iran, two from India, one from Serbia and one that addresses in particular the problem of juvenile delinquency of minors in Eastern Europe. Part V presents results about Crime Prevention, comparing the effects of punishment, imprisonment and alternative sanctions, such as mediation and restorative justice. Discussed are also the effects the imprisonment of a parent can have on children. In part VI, the "Effectiveness of Different Treatment Programs in Crime Prevention" is discussed with the positive conclusion that there are meanwhile many effective re-socialisation measures available to

reduce the chances of recidivism. Part VII, summarizes in a "Final Discussion" the most important results of the different chapters and presents ideas about the next important steps, especially against the backdrop of the United Nations post-2015 sustainable development agenda and education in a culture of lawfulness.

In short, the book gives a broad overview of the problems of women and children as victims and offenders, showing that these groups are much more often victims than perpetrators of (severe) crimes. The effects of these victimizations can be disastrous, not only for the individual victims but for society as a whole. The costs are immense. Many chapters present therefore concrete proposals how to reduce both the victimization and the offending of these two vulnerable groups.

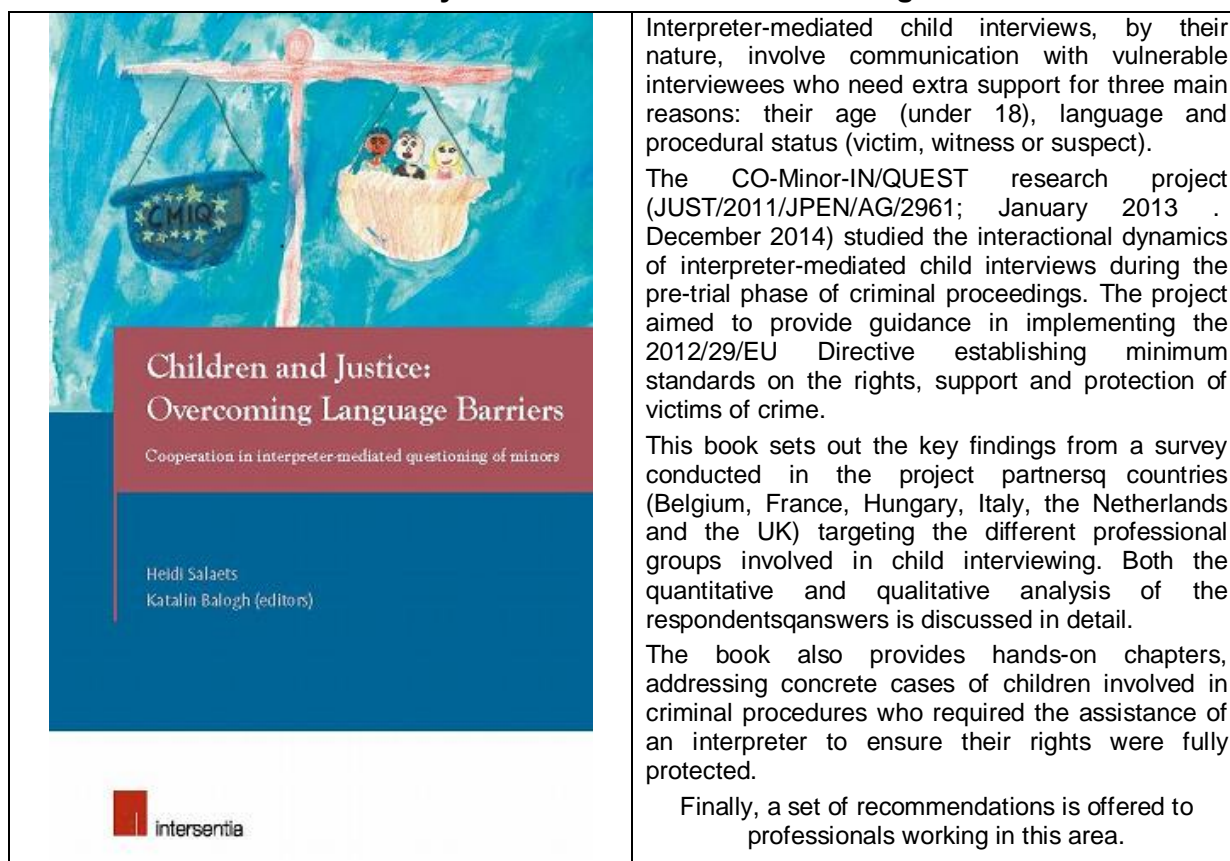
**Professor Kury** is a Criminologist and Forensic Psychologist, Professor at the University of Freiburg/Germany, First Director of the Criminological Research Institute of Lower Saxony, research in crime prevention, treatment of offenders, fear of crime and punitiveness.

**Dr Evelyn Shea** LLD is a criminologist whose main interest lies in the role of work in prison and the rehabilitation of prisoners.. She is an independent researcher and currently a prison visitor in Zurich, Switzerland.

%Women and Children as Victims and Offenders: Background, Prevention, Reintegration. Suggestions for Succeeding Generations+. Springer: ISBN: 978-3-319-08379-1.

## Children and Justice: Overcoming Language Barriers

Edited by Heidi Salaets and Katalin Balogh





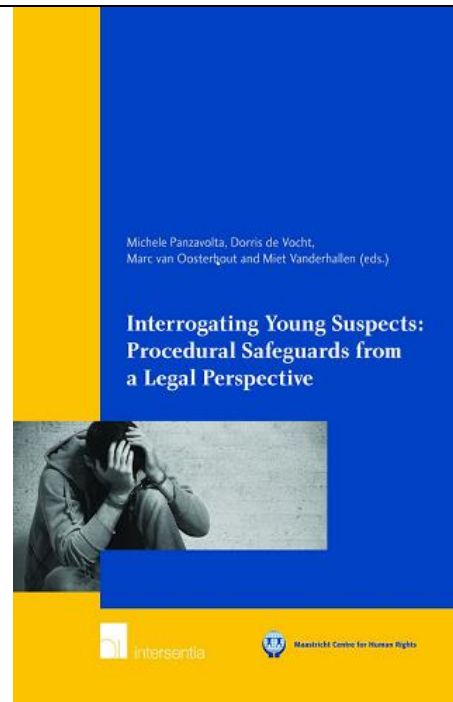
## Interrogating Young Suspects: Procedural Safeguards from a Legal Perspective

Edited by Michele Panzavolta, Dorris de Vocht, Marc van Oosterhooft and Miet Vanderhallen

The vulnerability of juvenile suspects concerns all phases of proceedings but is probably greatest during interrogations in the investigation stage. These early interrogations often constitute the juvenile suspects' first contact with law enforcement authorities during which they are confronted with many difficult questions and decisions. Therefore, the juvenile suspect should already at this stage be provided with an adequate level of procedural protection.

The research project 'Protecting Young Suspects in Interrogations' underlying this volume, sprung from the observation that the knowledge of the existing level of procedural protection of juvenile suspects throughout the European Union is limited. More specifically, there is very little knowledge of what actually happens when juvenile suspects are being interrogated. The research project aims to fill at least part of this gap by shedding more light on the existing procedural rights for juveniles during interrogations in five EU Member States representing different systems of juvenile justice (Belgium, England and Wales, Italy, Poland and the Netherlands). In doing so, it intends to identify legal and empirical patterns to improve the effective protection of the juvenile suspect. The project is a joint effort of Maastricht University, Warwick University, Antwerp University, Jagiellonian University and Macerata University in cooperation with Defence for Children and PLOT Limburg.

The present volume contains the results of the first part of the research project: a legal comparative study into existing legal procedural safeguards for juvenile suspects during interrogation in the five selected Member States. The country reports incorporated in this volume provide for an in-depth analysis of the existing rules and safeguards applicable during the interrogation of juvenile suspects.



On the basis of these findings a transversal analysis is carried out in the final chapter, which is dedicated to the identification of common patterns with a view to harmonising the systems and improving the protection of juvenile suspects' rights. Part 2 and 3 of the research project (empirical research consisting of observations of recorded interrogations and focus group interviews) and a final merging of the legal and empirical findings resulting in a proposal for European minimum rules and best practice on the protection of juvenile suspects during interrogation will be published in a separate, second volume ('Interrogating Young Suspects: Procedural Safeguards from an Empirical Perspective').

*The book is intended for academics, researchers, practitioners and policy-makers working in the area of juvenile justice and interrogation.*

**Treasurer's column**

**Anne-Catherine Hatt**

**Subscriptions 2013**

I will soon send out e-mail requests for subscriptions to individual members (GBP 30; Euros 35; CHF 50 for the year 2015 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 of the [IAYFJM](http://IAYFJM). 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 email address is [treasurer@aimjf.org](mailto:treasurer@aimjf.org) or

3. by **cheque** 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 email 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.

**Anne-Catherine Hatt**

**Contact Corner****Avril Calder**

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 us have similar links for future editions.

<b>From</b>	<b>Topic</b>	<b>Link</b>
Child Rights Connect	A global child rights network connecting the daily lives of children to the UN. Speak up for your Rights OP3 CRC Child friendly leaflet <a href="http://www.national-coalition.de/pdf/1_09_2013/OP3_CRC_Child_friendly_leaflet_EN.pdf">http://www.national-coalition.de/pdf/1_09_2013/OP3_CRC_Child_friendly_leaflet_EN.pdf</a>	<a href="#">Find it here</a>
	<b>Committee on the Rights of the Child</b> Working methods for the participation of children in the reporting process of the Committee on the Rights of the Child. Word document CRC_C_66_2_7576_E.doc at <a href="http://tbinternet.ohchr.org">http://tbinternet.ohchr.org</a>	
CRIN	Website	<a href="#">Find it here</a>
The Child Rights Information Network	Email See Toolkit on the OP CRC for a complaints mechanism here: (Also available in Arabic, French, Russian and Spanish forthcoming)	<a href="mailto:info@crin.org">info@crin.org</a> <a href="#">Find it here</a>
Defence for Children International	Website Campaign success: Global Study on Children Deprived of Liberty-read the full press release in <a href="#">EN</a>   <a href="#">FR</a>   <a href="#">ES</a>   <a href="#">AR</a>	<a href="#">Find it here</a>
European Schoolnet	Transforming education in Europe Skype e.milovidov Contact <a href="mailto:elizabeth.milovidov@eun.org">elizabeth.milovidov@eun.org</a> <a href="#">ENABLE</a> project information	<a href="#">Find it here</a>
IAYFJM	Website	<a href="#">Find it here</a>
IDE	Website	<a href="#">Find it here</a>
International Institute for the Rights of the Child	Conference November : 18, 19 & 20 2015 Topics : <b>Evolution of the status of the child</b> : in law, protection, education health, family, migrations, sports...and play Accepting applications for <b>Certificate of Advanced Studies in Children's Rights 2015-2016</b>	
	Contact	<a href="#">Find it here</a>
IJJO	Website	<a href="#">Find it here</a>
International Juvenile Justice Observatory	Newsletter	<a href="#">Find it here</a>
OHCHR Office of the High Commissioner for Human Rights	Website	<a href="#">Find it here</a>
PRI Penal Reform International	PRI is an international non-governmental organisation working on penal and criminal justice reform worldwide. PRI has regional programmes in the Middle East and North Africa, Central and Eastern Europe, Central Asia and the South Caucasus. To receive the Penal Reform International (PRI) <b>monthly newsletter</b> , please sign up at <a href="#">find it here</a>	<a href="#">Find it here</a> <a href="#">Find it here</a>
Ratify OP3 CRC TdH Fondation Terre des Hommes	Campaign for the ratification of the OP3: Website Newsletter	<a href="#">Find it here</a> <a href="#">Find it here</a> <a href="#">Find it here</a>
UNICEF	Website	<a href="#">Find it here</a>
Washington College of Law, - Academy on Human Rights and Humanitarian Law	The situation of human rights of girls and adolescents in Latin America and the Caribbean. Login here: <a href="http://kausajusta.blogspot.com/2014/10/american-university-la-situacion-de-los.html">http://kausajusta.blogspot.com/2014/10/american-university-la-situacion-de-los.html</a> Source American University: <a href="http://www.wcl.american.edu/">http://www.wcl.american.edu/</a>	

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## Chronicle Chronique Crónica

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

### Editorial Board

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## Voice of the Association

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:**

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