CHRONICLE CHRONIQUE CRÓNICA

Contents **Page**

Editorial — Avril Calder

International Jurisprudence

Dr Maria Fernanda López Puleioôs article deals with both international jurisprudence and the role of the Public Defender in the Americas. The article makes a powerful case that positive discrimination is sometimes required in order to avoid discrimination against members of a vulnerable group and illustrates this principle in the case of Sebastian Furlan of Argentina at the Inter-American Court of Human Rights. This provides a fitting introduction to a collection of articles on childrenôs mental health

Mental Health and young offenders

What approaches from babyhood onwards stand the best chance of preventing the development of poor mental health and all that entails for life chances? **Lorraine Khan** examines the evidence for doing things differently to achieve better outcomes for children as well as the ways to accomplish those aims.

Dr Marcel Abei explains the emotional numbing that repeated adverse experiences have on brain functioning, why punishment alone will not be sufficient to prevent offending youths from being repeat offenders and how different therapies aimed at improving the psychosocial functioning of these youths are showing promise.

In the USA it was found that Zero tolerance policies towards offending led to behaviour, once dealt with by schools, being dealt with (often disproportionately) by the criminal justice system. The National Center for Mental Health and Juvenile Justice has focused on ways of diverting children with mental and substance use disorders from the juvenile justice system at the earliest points of contact. And some Counties such as Clayton County, Georgia have implemented policies to halt the óschool to prisonô pipeline. **Dr Joe Coccoza, Karli J. Keator; Kathleen R. Skowyra; Jacquelyn Greene** set out the facts behind the story.

Study tour

An exciting opportunity has arisen for a small group of members to make a study tour of US Counties which have been successfully implementing policies to interrupt the ópipelineô

I should be grateful if you would let me know as soon as possible if you would like to be included. The tour would be in 2017 and I would be helped by IAYFJMôs Council member Judge David Stucki* of the National Council for Juvenile and Family Court Judges.

I am grateful to two judges from New Zealand and Australia **Judges Tony Fitzgerald*** and **Jennifer Bowles*** for their articles on how to deliver justice to young offenders with neuro-disabilities. Judge Fitzgerald argues that the a juvenile court must always identify and address the causes of offending behaviour and Judge Bowlesô who made a study tour of three European countries and New Zealand to look at different systemsô is concerned about children who do not respond to court ordered treatment. Both Judges address the issue of fitness to stand trial.

There have been few studies of the mental health of detained young male offenders. In Germany **Professor Dr Denis Köhler** and colleagues have been responsible for two of them. The Professor, **Romina Müller** and **Hanna Heinzen** look at how mental disorders are diagnosed and the finding of the studies undertaken.

Dr Catherine Laurier points out that research shows that young offenders are highly likely to have been victims of violence and have difficulty in avoiding such violence. Research also revealed that between 20% and 70% of imprisoned young offenders presented at least one mental health disorder and it is unlikely that they will ever have been professionally diagnosed.

Argentinian lawyer, **Romina Tanus**, explains how the Lawyerôs Unit for Minors is active in overseeing hospitalisations of children for mental health reasons and intervenes to prevent such hospitalisations for reasons unrelated to mental health.

The voice of the child

As you know the Universal Declaration of Human Rights, article 3, states that every human being has the right to life. Following the view expressed in 2015 by the Dutch Association of Paediatrics that children who are terminally ill and suffer unbearably should be accorded the right to die and noting that Belgium is the only country in the world where a child, in certain exceptional circumstances, can be allowed the option of active life-ending treatment, **Professor Dr Charlotte Phillips*** analyses whether a child---who has the right to be heard under Article 12 of the Convention on the Rights of the Child (UNCRC))--ównsô the right to dieô

Dr Briony Horsfallôs research in Victoria, Australia, shows that childrenôs participation rights in child protection proceedings have deteriorated. Legislative amendments have reduced compliance with the UNCRC Article 12 and future litigation for redress may result.

An Ombudsman is a person who acts on behalf of others. There can be no better role than acting on behalf of children as **Anne Lindboe** does for Norwegian children. Together with her colleague **Frøydis Heyerdahl** we learn from their article the specific roles and responsibilities of the office, the first of its kind when established in 1981. Especially important is dialogue with children so that their voice is heard by government and society.

Juvenile Justice

Fitness to plead is a question that will arise in proceedings from time to time. It is a serious issue examined in meticulously in this edition by English barrister **Kate Aubrey-Johnson**.

The Deputy Chief Constable for Sussex, England, **Olivia Pinkney** is the lead police officer for the policing of children in the UK. Her article describes her role in ensuring that police officers across the country dealing with childrenô offenders or otherwise-- understand and implement the articles of the UNCRC.

As we know, there is a significant risk of violence to children who lose their liberty. **Anna Tomasi**, of Defence for the Child International (DCI) enlightens us on the discussion which took place in Geneva last September about this important topic.

DCIôs coordinator for the Middle East is **Sukhaina Khalawi.** She reports how DCI is working with the League of Arab States to develop child-friendly justice systems based on the UNCRC and international law.

In the autumn of 2015 I travelled to both Poland and Argentina to speak at the conferences of their affliated national associations of Judges. The President of the Argentinian Association, **Judge Patricia Klentak** has written a full report on ôGood practices for a specialised juvenile justice systemô and itôs pleasing to be able to publish the winning essay by **Judge Monika Pawlak** from Poland entitled ôThe profession of a family judge ï a trade or vocation?ô

Book review

A very interesting book about interrogating young suspects has been published. **Judge Margreeth Dam** of the Netherlands has contributed an excellent review of it which I am sure will lead many of us to read it too.

Obituary:

Professor Dr Horst Schüler Springorum

As you will know, Professor Horst Schüler Springorum was for many years our Honorary President, so it is with sadness that I report his recent death. Both Justice Renate Winter and Jean Zermatten knew him well and have paid tribute to him in the words they have written about him. May I, as the current President, and on your behalf, extend our sympathies to his family.

Avril Calder

chronicle@aimjf.org

Skype account: aimjf.chronicle

Study tour to examine the programmes implemented to interrupt the 'school to prison pipeline' in Ohio, USA and Clayton County, Georgia, USA Spring/early summer 2017

Judge David Stucki--- Past President of the National Council for Youth and Family Court Judges in the USA and a Council member of IAYFJM---- and **I** would like to organise and lead a Study tour to two of the counties mentioned in Joe Coccozaôs article *'Breaking the School to Prison Pipeline: The School Based Diversion Initiative for Youth with Mental Disorders'* (see page 21)

The tour would be for 3 or 4 days and take place in May/ June 2017.

Once we have an idea of the likely numbers, we will be able to draw up a more detailed plan including likely costs to be met in the USA.

So, Judge Stucki and I would be grateful if you would let us know as soon as possible and no later than March 31st if you would like to be included. Please reply to us **both** via judgestucki@gmail.com and president@aimjf.org

Avril

Discrimination and Access to Justice in the Inter-American Human Rights System

Dr Maria Fernanda López Puleio

The relationship between the principles of equality and non-discrimination and access to justice

The Inter-American Public Defender.

Like other international treaties, the American Convention on Human Rights (ACHR) sets out straight from its first article that the States Parties undertake to respect the rights and freedoms of all persons and to ensure their exercise, ñwithout any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.ò

Discrimination may be in law or in fact, and in both cases may occur through action or inaction. Moreover, there are rules and even seemingly neutral practices that may affect different vulnerable groups in various ways. On the other hand, so-called *structural discrimination* specifically refers to ñthe vulnerable situation of the group, the difficulties it has faced in the full exercise of its rights, and the overall lack of consideration of the groupôs particularities upon the adoption of rules or policies of general application.ò[1]

The truth is, whether the rights violation is caused by action or inaction, by the absence of protective measures or lack of affirmative actions to limit and remove obstacles preventing the enjoyment of rights, or by the existence of discriminatory rules or judicial and administrative proceedings, our States commit or tolerate discriminatory actions and practices on a daily basis.

The prevalence of the universal principle of equality and non-discrimination as a cornerstone of the system of human rights protection has an impact on all provisions or actions emerging from the various national levels, but here I intend to highlight in particular the situation of those persons who are subject to structural discrimination and its connection with the access (or non-access) to justice. This structural discrimination arises in the context of ethnic origin, nationality, gender, poverty, childhood or disability, and the known difficulties faced by the members of these groups, who are restricted in the full exercise of their rights or the specific consideration of their needs when public policies of general application are adopted.

Thus, their belonging to one or more vulnerable groups makes them more susceptible to greater discrimination, not only by action but mostly by the Stateôs inattention to their most pressing problems. The prolonged inattention to these not only individual but group realities has resulted in the invisibility of the systematic discrimination of disadvantaged groups. So, by way of a vicious circle, the Stateôs inattention has caused further discrimination, indifference and even violence.

Clearly, making these urgent realities visible responds to a conceptual enhancement of the ñclassicalò view of equality. This is because, in the traditional position, the lack of analysis of these circumstances has been a determining factor of the systematic discrimination of disadvantaged groups.[2]

This (re) conceptualization of equality and non-discrimination also explains the reason for the adoption of international anti-discrimination conventions for certain groups, as a response to the need to increase their level of protection and safeguard.

The structural discrimination has an obvious impact on access to justice, understood in its most generic aspect, not just access to the courts, but as the effective enjoyment of recognized rights. This is evidenced by the lack of opportunities for the members of these groups to know their rights and how to exercise them, or to obtain satisfactory and timely answers from government agencies or the courts. It is also evidenced by the almost non-

[1] Courtis, Christian, *Dimensiones conceptuales de la protección legal contra la discriminación*, International Commission of Jurists, working paper, Geneva, 2008, at http://iidh-webserver.iidh.ed.cr/multic/UserFiles/Biblioteca/IIDH/2_2010/XXVICurso_Interdisciplinario_en_Derechos_discursos_y_ponencias/3.%20C.Courtis.pdf.

[2] In this respect, Nash, Claudio and David, Valeska, *Igualdad y no discriminación en el Sistema Interamericano de Derechos Humanos,* in Nash, Claudio and Mujica. Ignacio (Ed.), *Derechos Humanos y Juicio Justo*, Inter-American Network of Training in Governance and Human Rights, COLAM ï School of the Americas, Inter-American Organization for Higher Education, Lima, Peru, 2009.

existent possibility they have of promoting legal rules to address the groupôs specific problems so that they do not recur, and if they are enacted, to have them enforced.

If we could reduce the situation to one sentence, it would be: *where there is greater vulnerability there is greater need of protection, and where there is less protection, there is more discrimination*.

This issue then deals with the removal of the obstacles that prevent or limit access to justice for vulnerable sectors, generally requiring affirmative action by States. Inter-American jurisprudence, despite some zigzags, has established major guidelines in this direction, both for litigation and advisory issues.[3]

These guidelines promote the understanding that not all differences in treatment involve a breach of the principle of equality and non-discrimination. On the contrary, in many cases, in order to ñprevent discriminationò it is a requirement that, instead of promoting identical treatment, persons who are in different conditions should be treated differently. Thus, some of the inequalities that have historically affected certain groups or special conditions endured by particularly vulnerable individuals can be reversed only through affirmative action so that everyone is treated as equally worthy. It is then clear that for certain social groups or in relation to particularly vulnerable individuals, mere equal treatment leads to unequal enjoyment of rights.[4]

This is a principle that the Inter-American Court of Human Rights (I/A Court H.R.), based in Costa Rica, has repeatedly pointed out, as in its Advisory Opinion on the human rights of the child in 2002. It is based on the idea that not all differences in treatment involve a breach of the principle of equality and non-discrimination. Instead of promoting identical treatment to persons in diverse situations what is actually needed is that they receive differentiated treatment in view of their vulnerability. Also, the historical inequalities of certain groups can only be reversed by promoting special protection actions, never through *laissez faire*, because it is clear that mere equal treatment would lead to unequal enjoyment of rights. ñThere are certain factual inequalities that may be legitimately translated into inequalities of juridical treatment, without this being contrary to justice. Furthermore, said distinctions may be an instrument for the protection of those who must be protected, taking into consideration the situation of greater or lesser weakness or helplessness in which they find themselves.ò[5]

There is another important new circumstance in the action before the I/A Court H.R., subsequently established in the proceedings before the Inter-American Commission on Human Rights (IACHR), based in Washington, which also meets the objective of crystallizing the principle of equality and non-discrimination in the Inter-American system, but which has no relation with litigious or advisory jurisprudence. It involves the implementation of a tool to enforce the right of access to justice by particularly vulnerable sectors, giving the victims that are in the Inter-American system without legal counsel the possibility of having a free public defender, as advocate, provided that certain conditions are met.[6]

Unlike what happens in Europe, in Latin America there is a deeply rooted structure, even recognized by the Constitution, of public defense offices acting as state institutions that provide the service of legal counsel by lawyers (both staff members or from private practice) to people who cannot have access to it for various reasons. They provide comprehensive coverage in quite different areas, giving priority to vulnerable sectors. In many Latin American countries, public defenders deal with a vast percentage of the cases, reaching and even exceeding 90% of the total number of cases processed in the system, such as in criminal justice. Moreover, as they are qualified to bring cases to the Inter-American System of Human Rights under its rules of jurisdiction, there has evolved a practice of legal representation of cases with paradigmatic patterns of rights violations. These cases, led by public defenders in the national justice system, have not always

---

[3] See particularly Dulitzky, Ariel, *El principio de Igualdad y no discriminación. Claroscuros de la jurisprudencia interamericana*, in Caicedo Tapia, Danilo and Porras Velasco, Angélica (Ed.), *Igualdad y no discriminación. El reto de la diversidad*, Ministry of Justice, Human Rights and Religious Affairs. Undersecretary of Policy Development. Quito, Ecuador, 2010.

[4] Statement made by the United Nations Human Rights Committee on its *General Comment No. 18*, 10 November 1989.

[5] See, *inter alia*, I/A Court H.R., *Juridical status and human rights of the child*, Advisory Opinion OC-17/02, 28 August 2002. Series A No. 17, para. 46. At http://www.corteidh.or.cr/docs/opiniones/seriea_17_esp.pdf.

[6] The figure of the Inter-American Defender was introduced with the reform of the Rules of the I/A Court H.R. in 2009. The main purpose of this reform was to give greater prominence to the litigation between victims and the respondent State, assigning to the I/A Court H.R. the place of an organ in the Inter-American system. This involved changes to its powers regarding the production of evidence and the filing of proceedings before the I/A Court H.R.: they no longer begin with a claim from the Commission but with the submission of its substantive report as provided in Article 50 of the American Convention on Human Rights (ACHR). In this new scheme, the representation of victims by a lawyer becomes relevant. More so if they have are unable to appoint any one. Article 2.11 of the Rules of Procedure of the I/A Court H.R. defines the Inter-American defender as ñthe person whom the Court designates to undertake the legal representation of an alleged victim that has not designated and advocate on his or her own accord.ò Then, Article 37 provides: ñ[i]n cases where alleged victims are without duly accredited legal representation, the Tribunal may, on its own motion, appoint an Inter-American defender to represent them during the processing of the case.ò

gained the attention of the non-governmental organizations that litigate before the Inter-American System. This was especially so in the cases of persons sentenced to death in Guatemala and minors sentenced to life imprisonment in Argentina.

However, international representation has been pursued on varied matters.[7]

The Inter-American Public Defender who is assigned to a specific case is chosen by a weighted mechanism from about twenty public defenders in the continent, previously selected by the members of the Inter-American Association of Public Defender Offices (AIDEF in its Spanish acronym), according to their expertise on human rights and international litigation. For this purpose AIDEF has concluded two Memorandums of Understanding with the Inter-American Court of Human Rights and the General Secretariat of the Organization of American States (OAS), through the Executive Secretariat of the I/A Court H.R.[8]

As most cases managed by public defenders in the continent involve persons in vulnerable situations or from traditionally discriminated groups, an ever increasing intervention of public defenders in the Inter-American System of Human Rights should be expected, at least of defenders from public defense offices with functional and financial autonomy in their countries. On the other hand, as legal representation is not required to make a petition to the Inter-American Commission on Human Rights (it is required if the case eventually reaches the I/A Court H.R.), when a case before the Commission passes the admissibility report, the petitioner who lacks the financial resources to hire a lawyer and is within the ñselection criteriaò[9] may have an Inter-American defender assigned by the AIDEF, regardless of the his/her nationality or whether the institutions in his/her country are represented in the AIDEF or not.

Furthermore, if during the proceedings before the IACHR the person had legal counsel but lost it when the case was submitted to the I/A Court H.R., the Court may appoint a defender to assist him/her during the proceedings to be heard before it.[10]

In Ibero-America, the *100 Brasilia Regulations Regarding Access to Justice for Vulnerable People* define vulnerable people as those who, due to reasons of age, gender, physical or mental state, or due to social, economic, ethnic and/or cultural circumstances, find it specially difficult to fully exercise their rights before the justice system as recognized to them by law. Indeed, these particular *Regulations* ï issued by those who at the same time are obliged to comply with them- admit that for groups in vulnerable conditions, the guarantee of access to justice must overcome many obstacles to be fulfilled, becoming the means to enforce rights and guarantees against facts, acts or omissions involving discrimination.[11]

Discrimination against persons with disabilities

In relation to persons with disabilities, it should be noted that the ñ*Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities*ò has provided since 1999 the obligation of the States to adopt the legislative, social, educational, labor-related or any other measures needed to eliminate discrimination and promote their full integration into society and access to justice. However, it

---

[7] See my work: López Puleio, María Fernanda, *La puesta en escena del Defensor Público Interamericano* in *Anuario de Derechos Humanos* No. 9, Center for Human Rights, Faculty of Law, University of Chile. Santiago de Chile. 2013 http://www.anuariocdh.uchile.cl/index.php/ADH/article/viewFile/27038/28636.

[8] Cf. *Memorandum of Understanding between the Inter-American Court of Human Rights and the Inter-American Association of Public Defenders*, 25 September 2009, www.corteidh.or.cr/convenios/aidef2009.pdf, and *Memorandum of Understanding between the General Secretariat of the Organization of American States, through the Executive Secretariat of the Inter-American Commission on Human Rights and the Inter-American Association of Public Defenders*, 8 March 2013, http://www.mpd.gov.ar/articulo/downloadAttachment/id/3021.

[9] The requirement of lack of sufficient financial resources to access an Inter-American defender applies during the processing of the case before the IACHR, but it is not exclusively required for intervention before the I/A Court H.R., which makes the ultimate decision. On the other hand, according to the *Memorandum of Understanding* AIDEF/IACHR, the cases that may be subject to the intervention of Inter-American defenders before the Commission, in addition to being in the substantive stage, should be encompassed by the following primary selection criteria: a) involving complexity to the alleged victim or relating to new aspects for the protection of human rights in the region, b) involving violations of the rights to life, personal integrity, personal freedom, judicial guarantees and protection, among others, and c) regarding alleged victims belonging to vulnerable groups.

[10] All according to the requirements of the *Rules of Procedure* of the I/A Court H.R. and the IACHR, the *Memorandums of Understanding* AIDEF / I/A Court H.R. / IACHR and the internal rules of AIDEF: AIDEF. *Reglamento para la actuación de la AIDEF ante la Corte IDH* http://www.mpd.gov.ar/articulo/downloadAttachment/id/2435; AIDEF: *Manual para la asignación de casos a los Defensores Públicos Interamericanos* http://www.mpd.gov.ar/articulo/downloadAttachment/id/2442.

[11] Cf. *Brasilia Regulations Regarding Access to Justice for Vulnerable People,* approved by the Plenary Assembly of the 14th Ibero-American Judicial Summit, held on 4, 5 and 6 March 2008 in Brasilia, Federal Republic of Brazil, Regulation No. 3. These Regulations are unique as they are an international instrument without the characteristics of a treaty but with an apparent binding force because of certain conditions of context, including the circumstance of setting rules to be respected and duties to be fulfilled by the same institutions that issue them: Supreme Courts, High Courts of Justice and Judicial Councils. This is one of the most direct ways to grant effect to a right; cf. Claudio Nash, *100 Reglas de Brasilia y el Sistema Interamericano de Derechos Humanos*, University of Chile, 2010. See also Federico Andreu-Guzmán and Christian Courtis, *Comentarios sobre las 100 Reglas de Brasilia sobre Acceso a la Justicia de las Personas en Condición de Vulnerabilidad*, AIDEF, Buenos Aires, 2008.

should also be mentioned that with almost 25 years of existence, in terms of compliance Latin American states still have too many outstanding debts, which are not only resulting from the tolerance of discriminatory acts and behavior by individuals and by the State, but basically due to the non-implementation of measures to promote the enjoyment of rights and access to justice.

In this area, the I/A Court H.R. has established important jurisprudence in two paradigmatic cases with their judgments and imposition of new reparation measures against two South American states, *Ximenes Lopes v. Brazil*[12], 2005, and *Sebastián Furlan and Family v. Argentina*[13], 2012, referring to the special duties required of States regarding individuals with special protection; it is not sufficient that they abstain from violating rights, it is imperative that they implement affirmative actions, to be determined according to each need.[14]

The case *Ximenes Lopes* dealt with the inhumane hospitalization conditions of persons with mental disability in Brazil, whose abandonment and violence were the cause of the death of Mr. Ximenes Lopes. The lack of investigation of the case was a sign of the apathy and impunity present in many of the cases where the victims are members of the most vulnerable groups.

But it was in the case *Furlan v. Argentina* where the Court placed fundamental emphasis on the relationship of discrimination of the most vulnerable (barriers to access to justice), as this case concerns the violation of the reasonable time-frame of a civil action. It showed in the fullest terms the indolence and indifference of the judges who heard this claim for damages where the main victim was a child with mental disability.

In my capacity as Inter-American public defender, I represented Sebastián Furlan and his family in this case before the Inter-American Court.[15] In 1988, at the age of 14, he had an accident in a field of the Argentinean Army which left him with disabling neurological and motor after-effects. His low-income family went to court for compensation to address his immediate rehabilitation and care. In the process, fundamental judicial guarantees towards the child were violated. For example, there was never a hearing in which he could take part by himself or through a representative. Even worse, the judge realized that they had ñforgottenò to give the mandatory notice to the childôs defender, when Sebastián Furlan reached legal age (21 years old at that time). The judicial process lasted for almost ten years, with two more years for the administrative execution, as the compensation was established to be paid in bonds of Argentine debt to be fully settled in 2016.

This was the first case where the I/A Court H.R. has applied the United Nations Convention on the rights of persons with disabilities and its model of social approach. It is a leading case on the difficulties of access to justice by persons in vulnerable situations (in this case, a context of childhood, poverty and person with disability). When referring in ñFurlanò to Sebastiánôs aggravated vulnerability, the I/A Court H.R. pointed to the responsibility of the Argentinean State for the failure to conduct a judicial process with diligence, special protection and ñreasonable adjustmentsò (as provided by Article 13 of the United Nations Convention), particularly in relation to the rehabilitation need, establishing the violation of other conventional rights according to the specific characteristics of the case. But it also imposed obligations related to the right to health and social security benefits as inherently related to the right to information (both the certification of disability and the pension that Sebastián Furlan was entitled to receive from the time of the accident were equally subjected to unreasonable time-frames: first 20 years to receive the money, and 22 for the second).

In addition to ordering the training of several government officials on this matter, under the principle of active transparency, the I/A Court H.R. required the development of a charter of rights, and how to exercise them, to be provided to any person or his family who is diagnosed with serious problems or after-effects related to disability, ñthat summarizes, in a concise, clear and accessible manner, the benefits contemplated in the aforementioned rules, the standards for the protection of persons with mental disability established in this Judgment and other related public policies, as well as the institutions that can provide assistance in demanding the fulfillment of their rightsò[16].

It should be remembered that the I/A Court H.R. established in 1990 that if a personôs economic status prevents him from affording a defense lawyer or the costs of the proceedings, the person is being discriminated against by reason of his economic status[17]. In *Furlan*, the Court held that people with disabilities are often subject to discrimination because of their condition, highlighting that ñappropriate access to justice plays a fundamental role to address these types of discrimination.ò[18]

[12] I/A Court H.R., case Ximenes Lopes v. Brazil. Judgment of 4 July 2006. Series C No. 149.

[13] I/A Court H.R., case Furlan and Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs.

[14] Judgment of 31 August 2012. Series C No. 246, para. 269.

[15] Together with Inter-American defender Andrés Mariño (Uruguay) and pursuant to the provisions that had been set forth.

[16] Para. 295.

[17] I/A Court H.R. Advisory Opinion ***OC-11/90*** of 10 August 1990. Series A No. 11.

[18] Para.135.

As an indication of the total absence of special protection required of the trial judge considering Sebastián Furlanôs triple vulnerability, it suffices to say that the first time a family member could talk face to face with a judge was in the audience held before the Inter-American Court in San José, Costa Rica, 24 years after the fact.

Thus, the Court held that ñwhen vulnerable persons are involved, as in the case of a person with disabilities, it is imperative to take the pertinent actions, such as ordering the authorities to give priority to addressing and settling such cases, in order to avoid delays in their processing so as to ensure a prompt decision and execution thereof.ò

Finally, more than one common thread can be drawn from this tour of jurisprudence, but what matters is that all vulnerable persons and groups should receive special protection. In this sense, the distinction in treatment is not only not violating the principle of equality but it is required in order not to be contrary to it.

Dr María Fernanda López Puleio, Public Defender, National Public Defense Office of Argentina and Inter-American Public Defender before the Inter-American Court of Human Rights (I/A Court H.R.)

A life course approach to promoting healthy behaviour

Lorraine Khan

Severe and persistent behavioural difficulties are our most common, costly, and overlooked childhood mental health problem. All children go through stages of challenging behaviour and for most it is merely a phase. However, some children get stuck in unhelpful and damaging cycles of poor behaviour. Such severe problems emerge from complex interactions over time between genetic and environmental risk. The more risks a child accumulates, the greater the likelihood that a childôs mental health will be compromised and poor outcomes will persist into adult years. Severe and persistent behavioural difficulties not only affect childrenôs outcomes, they can also impact on others around them causing stress to families, prompting victimisation of peers, affecting community safety and storing up significant societal costs over time.

There is now good evidence on what can be done to reduce the chance of behavioural difficulties developing in the first place and on what interventions make the biggest difference to childrenôs recovery and progress once behaviour escalates into unhealthy ranges on the behavioural spectrum. There is also growing evidence of the protective factors which help reverse accumulating risk over a childôs life course. However, there is also evidence that we still wait too long for problems to fester and multiply leaving the justice system and courts to deal with resulting behavioural crises at much too late a stage.

This paper will make the case for a systematic life course de-escalation and diversionary strategy to reducing costly, damaging, severe and persistent behavioural problems in children and young people. It will consider the evidence on what has the strongest chance of changing negative behavioural trajectories and poor mental health right from the first spark of life and right up to young adult years exploring the commissioning implications, current opportunities and finally the threats and challenges of doing things differently.

Cumulative risk, accessing help and early intervention

Childhood mental illness is common and damaging. One in ten children aged 5- 16 will have a diagnosable mental illness rising to 1 in 5 in adolescent years. Severe and persistent behavioural problems (or conduct disorders) represent the most common childhood and youth mental illness affecting 8% of children and young people - mainly boys (Green, et al., 2005). Risk factors for conduct problems include:

- Family structure (Green, et al., 2005)
- Harsh parenting or poor parental sensitivity or supervision (Lennox & Khan, 2013)
- Exposure to trauma and maltreatment (Lennox & Khan, 2013)
- Location in societies with higher income inequalities (Yoshikawa, et al., 2012)
- Exposure to multiple stressors and risks over time - there is now strong evidence that cumulative risk is toxic for neural, cognitive, child and mental health development (Appleyard, et al., 2005).

Evidence tells us that some children are at much higher risk of childhood mental illness than others. So children:

- in Local Authority Care are at least 4 times as likely to experience diagnosable mental illness (mostly severe and persistent behavioural problems); those in residential settings are at least 7 times more likely to present with diagnosable conduct problems (Ford, et al., 2007)
- under 18 year olds in the youth justice system (both in the community and in custody) are at least 7 times as likely as other children to have diagnosable level conduct problems (Fazell, 2008) (Stallard, et al., 2003).
- 90% of 16-20 year olds in custody have a mental illness; 80% will have more than diagnosable mental illness (Singleton, et al., 1998).
- Between half and three quarters of homeless young people have diagnosable level mental health conditions (Hodgson, et al., 2013).

- Nearly three quarters of sexually exploited young women have diagnosable mental health conditions (Department of Health, 2013).

Most parents of a child with a diagnosable behavioural problem will seek advice; yet still only 25% of children get any help (Green, et al., 2005). Furthermore, on average we know there is a 10 year delay between first experiencing symptoms of mental illness and seeking help (Wang, et al., 2005). Such delays are of concern because there is strong evidence that the longer the duration of mental illness during teenage years and the more frequent those episodes, the more likely the young person will face prolonged impairment from mental illness during adult years (Patton, et al., 2014).

Delays in getting help occur despite the existence of a range of interventions across the life course with potential to intervene early and effect positive change.

In general, evidence suggests that earlier intervention to change the trajectory of risk in a childôs life course is better ï however, there are still effective interventions that are effective quite late in a young personôs pathway to adult years and in this respect it is also never too late to link young people up with effective help (Washington State Institute of Public Policy, 2015).

Intervening early can mean:

- intervening early in life to build strengths in a child or in his/her environment thereby preventing problems emerging
- It can also mean intervening early in the course of illness ï when the very first signs emerge. It is particularly important to quickly restore good mental health in childhood thereby preventing the escalation of potentially damaging further risks (e.g. school underperformance, social exclusion, social exclusion).

Taking all of this evidence into account, the Centre for Mental Health advocates that local areas adopt a preventative strategy to promote and maintain healthy behaviour and outcomes right from the first spark of life.

From the first spark of life

There is now growing neuroscientific evidence that untreated maternal mental illnesses such as depression and anxiety can over expose the foetal and infant brain to excessive amounts of cortisol (the fight or flight hormone) and over stimulate stress response systems - even in the womb. This exposure can lead to children facing long standing difficulties in regulating emotion and behaviour later on (Zeanah, 2012) ï difficulties which often lie at the heart of most common child and adolescent mental health problems including child and young conduct problems.

Furthermore, if maternal illness is not swiftly and effectively treated, it can also undermine maternal-infant sensitivity and the quality of parent/child attachment in crucial months following birth - both of which are critical for jump-starting cognitive and emotional development and buffering a child against excessive environmental stresses (e.g. maltreatment, chronic deprivation, exposure to violence etc.) (Zeanah, 2012).

At present, in the UK, only half of mothers with maternal mental illness get identified and hardly any get early treatment that can help their recovery (Bauer, et al., 2014). Expertise in identifying such vulnerabilities and good quality services are inconsistent across England (Maternal Mental Health Alliance, 2014). Embarrassment and shame also stop mothers seeking help (Khan, 2015a). A recent report noted that better identification and evidence based treatment had the potential to save significant costs to society with most savings emerging from reductions in poor later child mental health ï particularly diagnosable conduct problems (Bauer, et al., 2014). Early identification and treatment of mothers during the perinatal period should be seen as an essential diversionary starting point to reduce the prevalence and associated costs of youth conduct problems.

Early starting childhood behavioural problems

Early starting behavioural problems are our most common diagnosable mental health condition affecting around 5% of children under secondary school age - mainly boys (Green, et al., 2005). They result from a childôs inability to self-calm, self soothe or regulate emotions or behaviour ï as detailed earlier, challenges which can be prompted by exposure to early environmental risks (Zeanah, 2012). Behaviour is also how children communicate distress, developmental frustration, or fear. Yet such problems are frequently misinterpreted, ineffectively responded to and get overlooked by many in contact with children during early childhood with three quarters missing out on effective early help (Green, et al., 2005). In a study completed by the Centre for Mental Health, parents often took many years to get heard after voicing initial concerns about their childôs behaviour ï even when these behaviours were exceptionally severe (Khan, 2014). Some specialist Child and Adolescent Mental Health Services also actively excluded children with behavioural problems from their services (Centre for Mental Health, 2012). This is of concern in that we know from many longitudinal studies tracking children from birth to young adult years that children with early severe and persistent behavioural difficulties under secondary school age have a greater chance of some of the very worst outcomes and life chances (see Figure 1) (Fergusson, et al., 2005).

Without early intervention, fifty percent of these early starters will continue to experience multiple poor outcomes as adults.

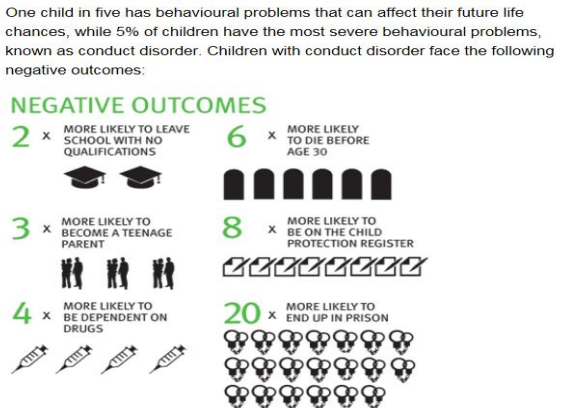


Figure 1: long term negative outcomes associated with early starting severe behavioural difficulties

Some of the most effective interventions exist for children with early behavioural problems (National Institute for Health and Care Excellence, 2013). These Positive Parenting Support programmes help parents pick up critical techniques to help settle their childôs behaviour. Programmes are most effective for children with the most severe behavioural problems often helping them move back into healthy behavioural ranges (Centre for Mental Health, 2012). These programmes (such as Triple P, Families and Schools Together and Incredible years) are also very good value (Parsonage, et al., 2014). Economic analysis of their effectiveness shows that they can result in savings of three pounds for every pound invested with the greatest benefits and savings emerging for the later justice system (Parsonage, et al., 2014).

At the present time, availability of such programmes in England rarely matches likely scale of need for this age group. In Scotland, there has been a concerted public health through the Psychology of Parenting Project (PoPP) to rollout early years screening to track when children move outside healthy behavioural ranges matched with engaging early support into positive programmes from nursery school onwards.

Effective school based programmes

There is good evidence that some whole school universal mental health promoting approaches such as the Good Behaviour Game have the ability significantly to reduce later conduct problems through supporting childrenôs ability to self-regulate emotions and behaviour. The Good Behaviour Game has produced consistent positive results in the US and has also more recently been tested out in the Republic of Ireland replicating good early outcomes (Washington State Institute of Public Policy, 2015) (Morgan & O'Donnell, 2015).

Economic analysis of the programmeôs effectiveness indicates that for every pound invested in this programme in schools, savings of £27 are produced for society. Again, most of the benefits and costs savings are produced in the justice system.

The age of criminal responsibility onwards

As children move into teenage years, the prevalence of diagnosable conduct problems rises to 8% (Green, et al., 2005). By this time, those children who missed out on effective early intervention have often accumulated multiplying risks becoming more entrenched in unhealthy behaviours. Others may join this higher risk group due to the combined effect of peer mimicry and increased tendencies for sensation seeking/risk taking and non-consequential thinking linked with dramatic neural pruning taking place between the ages of 13 and 25 years (Johnson, et al., 2009). For those developing later starting behavioural problems, offending often re-settles as the brain matures by age 25 years and as young people settle into adult responsibilities and relationships (Centre for Mental Health, 2009). For those with earlier starting problems (for example those in early contact with the police, those excluded from primary school, those running away from home, gang involvement, early substance users, those involved in severe early bullying etc) the prognosis is poorer. It is important, therefore, that those with early starting behavioural difficulties are prioritised for evidence-based help early on in their contact with the youth justice system. At this later adolescent stage, interventions tend to be much more complex and expensive (although still largely cost effective). Such interventions include:

- Multi Systemic Therapy: this approach takes a whole family and system-wide problem solving approach to helping familiesô move forward and has been shown to have good effectiveness with a saving of around £3 for every pound invested;
- Functional Family Therapy which also involves working with the family to support improved behaviour and reduced crime (Khan, et al., 2015);
- Multi-dimensional Foster Treatment: for children who are unable to remain with their families. Highly trained and supported foster parents produce much better outcomes in terms of reducing offending compared with residential group homes or custodial and remand units which remain highly expensive and overall limited in effectiveness (with some regimes actually making things worse) (Washington State Institute of Public Policy, 2015) (Khan, et al., 2015).

- Aggression Replacement Therapy. This is rarely available in the UK but has proven record of reducing violence and offending behaviour in United Statesôtrials. This should be a standard offer for children on the edges of the Youth Justice System (YJS) and for those on statutory Youth Offending Team caseloads (Khan, et al., 2015).
- Family Nurse Partnerships: for young women in the YJS who are also teenage parents: this has shown particularly positive outcomes for mothers themselves and for their childrenôs later criminal activity when outcomes were tracked over many decades. Criminal justice outcomes were particularly improved for female offspring (Eckenrode et al, 2010). In fact improved inter-generational outcomes were across many domains with particularly high reductions in maltreatment, with better rates of school attainment, higher life time salaries, reduced substance abuse etc (Washington State Institute of Public Policy, 2015).

Childhood trauma, maltreatment and attachment difficulties can be major triggers for later severe behavioural problems, aggression and criminal behaviour (Zeanah, 2012). Stress response systems and behaviour which may once have been functional helping children survive in highly unsafe and stressful family or community circumstances, can often lead children to respond inappropriately or explosively or over react even when threat levels are much lower ï sometimes with very damaging consequences for victims and communities. For this reason, there should be systematic assessment of trauma and attachment difficulties in young people in contact with the YJS and good pathways (particularly for young women and Black and Minority Ethnic (BME) young people who have been noted with higher rates of Post Traumatic Stress Disorder, PTSD, symptoms) (Chitsabesan et al, 2006) to engaging trauma based interventions such as **Eye Movement Desensitisation and Reprocessing (EMDR)** and trauma based cognitive behaviour both of which are gaining proof of efficacy for this age group (Washington State Institute of Public Policy, 2015).

Finally, highly engaging and well implemented **mentoring** (replicating programmes such as Big Brother, Big Sister in the United States) is now gaining evidence of effectiveness in supporting better outcomes, behaviour and life chance for those most at risk (Washington State Institute of Public Policy, 2015). Such mentoring opportunities help foster more trusting, pro social and healthy attachments for young people going forward and provide practical coaching with aspirations and life goals. In England, third sector organisations such as The Integrate Movement and Safer London have used these approaches with early promise for girls and young men in the justice system and in gangs in England.

Point of arrest identification and diversion

For many years there has been inadequate identification of health vulnerabilities as young people entered the YJS in England and Wales. As already outlined, point of arrest screening should not be the starting point of any strategy to improve outcomes and reduce community victimisation; rather it should form part of a pathway seeking to promote healthier behaviour right from the start of life. Point of arrest screening and support is, however, a useful safety net to catch those who have been missed as part of any early intervention strategy and as importantly those who start to develop symptoms of poor mental health for the first time during adolescence. This is important as, particularly with diagnosable mental health difficulties, adolescent and young adult years represent the peak time for the emergence of early adult mental illnesses with 50% of lifetime mental illness starting by the age of 14 years (Kessler, et al., 2005) and three quarters showing first symptoms by the mid-twenties (Kessler, et al., 2007) and there is good evidence that effective treatment can change the likely impairment and trajectory of these conditions (Knapp, et al., 2011) (Patel, et al., 2007).

It is important to note that many young people in the justice system also face other multiple health and social challenges which often remain under the radar for many years. For example:

- 6 out of 10 will have moderate to severe speech and language difficulties (Bryan, 2007)
- 6 out of 10 screened in custody also had acquired brain injury (impairment following a historic blow to the head and subsequent loss of consciousness). Such impairment has been associated with higher levels of violence and higher risk of suicide and may be associated with historic child abuse, past car accidents and other violent victimisation (Williams, et al., 2010)
- Many will have higher risk of suicide, attempted suicide and self-harm (Lennox & Khan, 2013) (Youth Justice Board, 2012).
- Many will also have histories of abuse, victimisation and maltreatment (Khan, et al., 2013)

Recent health developments affecting children and young people in the youth justice system (YJS) in England and Wales

The recent development and introduction of a detailed and robust Health Assessment Tool (the Common Health Assessment Tool or CHAT) by the Department of Health in the custodial estate in England and Wales (and its more recent piloting in some community Youth Offending Teams) has now improved the focus on health issues which

we know are over represented in young people in the Youth Justice system.

Furthermore, point of arrest screening for health issues affecting both children and adults has now been rolled out across 50% of England by NHS England through the All Age Liaison and Diversion programme (NHS England, 2015). This initiative aims to improve integration between health and justice activity, improving early identification and support for mental health problems, learning disabilities and other vulnerabilities. Young people can be referred to Liaison and Diversion teams:

- From the point that a young person first has contact with the police through ôout of court disposalsô such as restorative justice or cautions
- Through routine screening in police custody by Liaison and Diversion workers
- and as a result of referrals from court for those missed at earlier points

Local areas build up good knowledge of a range of Childrenôs Services, youth services, parenting support, voluntary sector, health and mental health provision (addressing both routine and urgent needs), substance misuse and school support pathways (such as resources for special educational needs and school counselling resources). For those at an early stage of contact with the YJS, Liaison and Diversion workers help young people link to local community services. For those at a later stage in the youth justice pathway (in police custody, facing remand or entering court) practitioners can begin early work to inform police, Crown Prosecution Service and YOT decision making to ensure early health screening feeds into reports, informs intervention proposals and advises the court when ôreasonable adjustmentsô are required to facilitate improved participation in the justice process. For all young people in the Youth Justice System, the design of any service is critical as they need help and solutions which are co-produced, based on reliable and positive attachments and relationships, trauma informed and which are outreaching (rather than clinic-based) placing a high priority on delivering effective help in a warm and engaging way.

The Crisis Concordat

Support for young people on the edges of or in the criminal justice system has also been enhanced by a national drive for local areas to develop multi sector Crisis Concordat Agreements to support children and adults in mental health crisis (Department of Health, 2014). The Concordat sets out how local agencies can work together to deliver high quality responses when people with mental health problems need help.

This Concordat expects that, in every locality in England, local partnerships of health, criminal justice and local authority agencies will agree and commit to local Mental Health Crisis Declarations. These consist of commitments and actions at a local level to deliver services that meet the principles of the national Concordat. In some areas, this has helped clarify better quality Mental Health Section 135[1] and 136[2] Mental Health Act Place of Safety placements for young people and adults who the police suspect to be significantly unwell in the community and who they believe need a place of safety for assessment and for their own/other peopleôs safety. In the absence of clearly identified Section 135/136 bed places for children and young people, unwell children were often being held for lengthy periods inappropriately in police custody suites as an attempt to keep them ôsafeô The Concordat has also sometimes improved gateways for urgent mental health referrals and it has helped identify gaps in the mental health system compromising childrenôs safeguarding. In some areas, it has also led to the development of ôStreet Triageô teams where mental health practitioners and police work in close partnership at the frontline to respond to those identified with vulnerabilities in the community. In one area, where Street Triage teams were introduced, around a quarter of those picked up on the streets were vulnerable young people in crisis ï the majority with Local Authority Care histories.

The Child and Adolescent Mental Health Service (CAMHS) Taskforce

In 2015, as a result of growing concerns about the quality, accessibility and scale of funding for Child and adolescent mental health services in England, a national review and subsequent Taskforce was mobilised to address challenges. The resulting report, ôFuture in Mindô provided a broad set of recommendations that, if implemented, would facilitate greater access and standards for children and young people, greater system coordination and a significant improvement in meeting child and adolescent mental health needs (Department of Health, 2015). A key area of focus was the needs of particular groups of children with higher risk of severe and persistent mental health difficulties such as children in local authority care, those with early starting behavioural difficulties and children in the youth justice system. There was recognition that many children needed more outreach work and less clinical feeling forms of help.

[1] This section allows the police to remove people from their home

[2] This section allows the police to remove people from a public place

Ongoing challenges

However, despite these positive developments, some significant challenges remain on the horizon. For example, over the last five years there have been persistent and incremental cuts affecting Children's Services, Youth Services, the voluntary sector and specialist CAMHS services in England and Wales. This in turn led to a reported pattern of disinvestment in all but essential/crisis services with rising thresholds to access help. Although significant new money has been promised following English CAMHS Taskforce recommendations, it is as yet difficult to assess whether the scale of promised re-investment compensates for recent cuts. Such cuts also have the potential to undermine the benefits of point of arrest screening. Without an effective diversionary infrastructure surrounding point of arrest work, identification of need can become a fruitless activity. Fiscal pressures can also result in critical breaks in the 'chain' of early intervention across the child developmental course. These breaks occur because historical funders of very early intervention (often health or children's services) rarely see concrete benefits from early years' prevention activity (benefits which generally emerge much later and in the field of criminal justice). For this reason, at times of high budgetary pressure, it is easy for early years' commissioners to consider such services 'a luxury' as they seek to prioritise management of ongoing crises and balance the books. Yet such disinvestment in preventative services then stores up problems upstream resulting in higher likelihood of young people ending up in costly crisis settings such as Accident and Emergency units, children's homes, inpatient settings or custody. Although Police Crime Commissioners in England and Wales might benefit most from early intervention, they would not routinely see early intervention services as a core part of their current commissioning responsibilities. Neither would they systematically partner with early years or CAMHS providers to jointly commission such support.

Finally, most Children's Services and YOTS in the UK do not have routine and reliable access to the league table of interventions considered most effective in addressing crime and improving severe and persistent behaviour difficulties (see pages 4 and 5).

Conclusion

In summary, right from the first spark of life, evidence provides a strong steer on the chain of proven early interventions and activity required to promote healthy behavioural and emotional regulation in children thus reducing the likelihood of children developing persistent and damaging behavioural problems later on. Evidence also highlights the folly, damage and expense associated with approaches that merely wait to respond to young people's behavioural crises reinforcing the importance of intervening early ï early in life and also early in terms of responding to the first sign of persistent behavioural deterioration. However, early deterioration in children's behaviour is frequently missed and commissioning remains fragmented across the life course and across sectors focussed on short term book-balancing and sector 'survival' This paper advocates for a different, life course (conception to 25 years), joined up and integrated commissioning pathway founded on evidence, prevention and early intervention. Such an approach has the potential to reduce the numbers drifting into behavioural crises with the youth justice system and courts acting as a safety net for those young people missed at earlier stages in the system ï rather than the starting point for any strategy of diversion.

Lorraine Khan. Associate Director, Children and Young People, Centre for Mental Health.

November 2015

References

Appleyard, K., Egeland, B., van Dulmen, M. H. M. & Sroufe, A., 2005. When more is not better: the role of cumulative risk in child behavior outcomes. *Journal of Child Psychology and Psychiatry,* 46(3), p. 235ï 245.

Bauer, A. et al., 2014. *The costs of perinatal mental health services,* London: LSE and Centre for Mental Health.

Bryan, K. e. a., 2007. Language and communication difficulties in juvenile offenders.. *International Journal of Language and Communication Disorders,* pp. 42, 505-520..

Centre for Mental Health, 2009. *Chance of a lifetime,* London: Centre for Mental Health.

Centre for Mental Health, 2012. *A Chance to Change: delivering effective parenting programmes to transform lives,* London: Centre for Mental Health.

Chitsabesan et al, 2006. Mental health needs of offenders in custody and in the community.. *The British Journal of Psychiatry,* pp. 188: 534-540.

Department of Health, 2013. *Health Working Group Report on Child Sexual Exploitation: An independent group chaired by the Department of Health focusing on: Improving the outcomes for children by promoting effective engagement of health services and staff,* London: Department of Health.

Department of Health, 2014. *Mental Health Crisis Care Concordat Improving outcomes for people experiencing mental health crisis,* London: Department of Health.

Department of Health, 2015. *Future in Mind: promoting, protecting and improving children and young people's mental health and well being,* London: Department of Health.

Eckenrode, J., Campa, M., Luckey, D. W., Henderson, C. R., Cole, R., Kitzman, H., Anson, El. Sidora-Arcoleo, K., Powers, J., and Olds, D. (2010). Long-term effects of prenatal and infancy nurse home visitation on the life course of youths: 19-year follow-up of a randomized trial. Archives of Pediatrics & Adolescent Medicine, 164, 9-15.

Fazell, D., 2008. Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and metaregression anlaysis of 25 surveys. *Journal of the American Academy of Child and Adolescent Psychiatry,* pp. 47 (9) pp1010-1019.

Fergusson, D., Horwood, J. & Ridder, E., 2005. Show me the child at seven: the consequences of conduct problems in childhood for psychosocial functioning in adulthood. *Journal of Child Psychology and Psychiatry, 46:8,,* pp. 837-849.

Ford, T., Vostanis, P., Meltzer, H. & and Goodman, R., 2007. Psychiatric disorder among British children looked after by local authorities: Comparison with children living in private households. *The British Journal of Psychiatry,* 190(4), p. 319ï 325.

Green, H. et al., 2005. *The mental health of children and young people in Great Britain 2004,* Basingstoke, Hampshire: Palgrave.

Hodgson, K. J., Shelton, K. H., van den Bree, M. B. M. & J, L. F., 2013. Psychopathology in Young People Experiencing Homelessness: A Systematic Review. *American Journal of Public Health,* 103(6), pp. 24-37.

Johnson, S., Blum, W. & Giedd, J., 2009. Adolescent maturity and the brain: the promise and pitfalls of neuroscience research in adolescent health policy. *Journal Adolescent Health,* 45(3), pp. 216-221.

Kessler, R., Angermeyer, M., Anthony, J. C. & al., e., 2007. Lifetime prevalence and age-of-onset distributions of mental disorders in the World Health Organization's World Mental Health Survey Initiative.. *World Psychiatry,* 6(3), pp. 168-176.

Kessler, R. et al., 2005. Lifetime Prevalence and Age-of-Onset Distributions of DSM-IV Disorders in the National Comorbidity Survey Replication.. *Archives of General Psychiatry,* Volume 62, pp. 593-602.

Khan, L., 2014. *Wanting the Best for my children:parents voices,* London: Centre for Mental Health.

Khan, L., 2015a. *Falling through the gaps: perinatal mental health and general practice,* London: Centre for Mental Health.

Khan, L., Brice, H., Saunders, A. & Plumtree, A., 2013. *A need to Belong: what leads girls to join gangs,* London: Centre for Mental Health.

Khan, L., Parsonage, M. & Stubbs, J., 2015. *Investing in Children: A review of evidence on the costs and benefits of increased service provision,* London: Centre for Mental Health.

Knapp, M., McDaid, D. & Parsonage, M., 2011. *Mental Health Promotion and Prevention: the Economic Case..* [Online]
Available at: http://www.pssru.ac.uk/index.php. [Accessed 22nd February 2011].

Lennox, C. & Khan, L., 2013. Youth Justice. In: *Annual Report of the Chief Medical Officer 2012: Our children deserve better: prevention pays.* London: Chief Medical Officer's Report, pp. 200-214.

Maternal Mental Health Alliance, 2014. *Everyone's Business.* [Online]
Available at: http:// www.everyonesbusiness.org.uk/wp-content/uploads/2014/07/UK-Specialist-Community-Perinatal-Mental-Health-Teams-current provision. [Accessed 21 December 2013].

Morgan, M. & O'Donnell, M., 2015. *Evaluation of the PAX Good Behaviour Game Pilot Study in Ireland,* Dublin: Northside and Midlands Area Partnership.

National Institute for Health and Care Excellence, 2013. *CG158 Antisocial Behaviour and Conduct Disorders in Children and Young People. Recognition, intervention and management. National Clinical Guideline Number 158.,* London: NICE.

NHS England, 2015. *Liaison and Diversion.* [Online]
Available at: https://www.england.nhs.uk/tag/liaison-and-diversion/
[Accessed November 2015].

Parsonage, M., Khan, L. & Saunders, A., 2014. *Building a Better Future: the Lifetime Costs of Childhood Behavioural Problems and the Benefits of Early Intervention,* London: Centre For Mental Health.

Patel, V., Flisher, A., Hetrick, S. & McGorry, P., 2007 . Mental health of young people: a global public-health challenge.. *The Lancet,* 369 (9569), pp. 1302-1313.

Patton, G. C. et al., 2014. The prognosis of common mental disorders in adolescents:a 14-year prospective cohort study. *Lancet,* Volume 383 , p. 1404ï 11.

Singleton, N., Meltzer, H. & Gatward, R., 1998. *Psychiatric morbidity among prisoners in England and Wales,* London: Department of Health.

Stallard, P., Thomason, J. & Churchyard, S., 2003. The mental health of young people attending a Youth Offending Team: a descriptive study. *Journal of Adolescence,* p. 26 33ï 43.

Wang, P. S. et al., 2005. Failure and Delay in Initial Treatment Contact After First Onset of Mental Disorders in the National Comorbidity Survey Replication. Volume 62, pp. 603-613.

Washington State Institute of Public Policy, 2015. *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes,* Washington: WSIPP.

Williams, H. et al., 2010. Self-reported traumatic brain injury in male young offenders: A risk factor for re-offending, poor mental health and violence?. *NEUROPSYCHOLOGICAL REHABILITATION,* pp. 20 (6), 801ï 812.

Yoshikawa, H., Aber, J. L. & Beardslee, W. R., 2012. The effects of poverty on the mental and emotional and behavioural health of children and young people: implications for prevention. *American Psychologist,* pp. 273-284.

Youth Justice Board, 2012. *Youth Justice Statistics 2010/11 England and Wales Youth Justice Board / Ministry of Justice Statistics bulletin,* London: Youth Justice Board.

Zeanah, 2012. *Handbook of Infant Mental Health.* Third Edition ed. New York: Guilford Press.

Crime burned into memory? The impact of trauma exposure and maltreatment on juvenile offenders

Dr Marcel Aebi

Abstract

Scientific research provides strong evidence to indicate that a specific subgroup of juvenile offenders have been severely maltreated and/or have experienced physical, sexual and/or emotional abuse over a sustained period of time throughout their childhood. Persistent and repeated adverse experiences have a serious impact on brain functioning, as well as influencing a child's psychological development. In addition to psychiatric disorders such as posttraumatic stress disorder (PTSD), traumatised youth were found to have elevated rates of cognitive and emotional dysfunction, which may increase the risk of aggressive and delinquent behaviours manifesting later. Maltreated youths frequently display forms of affect dysregulation or symptoms of emotional numbing. Furthermore, they often hold dysfunctional cognitive concepts and beliefs that are associated with aggressive behaviours.

Punishment alone will not be sufficient to prevent these youths from committing further crimes. New treatment approaches, such as narrative exposure therapy and schema therapy are showing promise. They aim to increase the psychosocial functioning of these youths and also to prevent society from being subjected to further criminal activities.

In this article, findings conducted by the current research team and from other studies on trauma and maltreatment of juvenile offenders will be presented. Theories of psychological mechanisms that explain the relationship between exposure to trauma or maltreatment and criminal offending will be briefly highlighted. Finally, some recommendations will be advanced for managing these youths from forensic psychology and research perspectives.

What do we know about trauma history amongst juvenile offenders?

In a recent study carried out by the current research team, youths in a detention centre in Vienna (Austria) reported traumatic childhood experiences. These events were linked with their current psychopathology and subsequent criminal offending[1]. While the majority of the detainees did not experience trauma, or only reported mild forms of abuse (seventy-four percent), two groups of juvenile offenders endured severe and multiple trauma. Of these, eighteen percent had been subjected to physical and emotional abuse, while eight percent experienced physical, emotional and sexual abuse. Not only did traumatised youths display extremely high rates of psychiatric disorders, they were also at risk of further offending following release from detention. Further studies conducted in the United States found comparable or even higher rates of trauma and psychopathology in juvenile detention settings[2, 3]. In addition, studies based on clinical samples of abused children and on school samples confirmed a strong association between those who experienced trauma and who subsequently committed acts of delinquency and violence[4, 5]. Specifically, a correlation between sexual abuse experiences and sexually coercive behaviours was tested in a representative school sample in Switzerland. The study found that sexually abused youths had a four to five times higher risk of committing sexually coercive acts, compared to non-abused adolescents[6]. However, it is important to recognise that only a small minority of maltreated and abused adolescents will later display violent or sexually abusive behaviours. To date, it is unclear as to precisely why some maltreated youths become involved in criminal activities, while others do not. Some individuals appear to be more vulnerable because of their genetic predisposition[7]. There is further evidence that emotional and cognitive deficits mediate and explain the link between trauma exposure and delinquent behaviours.

Psychological mechanisms that link trauma or maltreatment and juvenile offending

In the diagnostic systems produced by the World Health Organization (International Classification of Diseases, ICD-10)[8] and the American Psychiatric Association (Diagnostic and Statistical Manual of Mental Disorders, DSM-5)[9], trauma-related disorders were addressed as a separate diagnostic category. These include acute stress reactions, adjustment disorders and PTSD. Whereas acute stress reaction and adjustment disorders refer to short-term and less severe psychopathological reactions to current stressors, PTSD is a more severe psychiatric disorder as a result of direct or indirect trauma exposure. PTSD is characterised by specific symptoms, such as increased emotional arousal, avoidant behaviours and a re-experiencing of the traumatic event (for example, in the form of flashbacks or repeated nightmares). The symptoms of PTSD are the result of stress-induced changes in brain structure and functions. A number of effective treatment approaches for PTSD have been developed, such as trauma-focused cognitive behavioural therapy, narrative exposure therapy and eye movement desensitization and reprocessing (EMDR) therapy. All these methods adopt a common approach by focusing on a cognitive reorganisation of the traumatic memory, using structured and psychologically guided exposure to trauma reminders or memories and affects[10].

The diagnosis of PTSD was originally developed for adults who had suffered a single traumatic event, such as a violent assault or a natural disaster. In contrast to adults, children commonly suffer from chronic trauma, for example, family violence, maltreatment and a disruption in attachment to their primary caregiver. Frequently, it is the child's caregiver who has instigated this trauma. The diagnosis of PTSD does not take into account how a childôs development is impaired by chronic abuse and maltreatment. Many children not only show symptoms of PTSD, but they also experience further difficulties related to emotional regulation and social functioning (for example, difficulties in social bonding or in building trusting relationships with other people).

A number of empirically supported theories endeavour to explain the link between experiencing a trauma and subsequent involvement in delinquency[11]. These theories refer to irritability as a form of dysregulated affect, emotional numbing and acquired callousness, and the development of dysfunctional cognitive schemas. It is important to understand that criminal behaviour is not ñcausedò by any single factor, such as the experience of abuse.

Other risk factors (for example, personality, genetic influences, intellectual ability, family and school factors) may also increase the risk of aggressive and delinquent behaviours in youths. However, based on the authorsô personal experiences, being cognisant of the role of trauma and maltreatment is crucial in order to understand why a group of very serious juvenile offenders exhibit persistent criminal behaviours.

Affect dysregulation and irritability

Trauma interferes with a childôs ability to cope with intense emotions and to regulate his or her mood. As a result, traumatised youths have not learned effective strategies for managing negative emotions such as shame, fear, anxiety or sadness and consequently they may act out in an aggressive and delinquent manner. Parents may play an important role in the development of a childôs emotional regulation skills, as well as in his or her recovery following trauma. Their presence and interaction with the child will assist the young person to regulate their emotions. However, if parents are absent or traumatised themselves, then they will be unable to perform these tasks. Furthermore, when the trauma is chronic and pervasive (for example, child maltreatment) the development of emotional regulation capacities may be impaired in the long-term. Persistent high levels of stress and negative child-parent interactions may increase behavioural problems in the child, leading later to antisocial behaviours and drug use.

Emotional regulation in the human brain takes place in the amygdala. This region of the brain aids the processing of emotions and it is also associated with fear responses. Trauma appears to increase activity in the amygdala. Traumatised youths exhibit increased activity in this area in response to stimuli that are connected to their traumatic experiences, as well as to emotional stimuli in general. Accordingly, when confronted with emotional or trauma-related perceptions or memories, traumatised youths were flooded with (negative) emotions[12]. As they do not possess adequate strategies to cope with these intense and overwhelming affects, traumatised children and adolescents tend to exhibit impulsive behaviours such as temper outbursts, damage to property and other aggressive behaviours towards others. In a recent study conducted by this research team of detained male adolescents, the role of irritability (associated with symptoms of anger, emotional tetchiness and temper tantrums) was analysed to establish if it was a predictor of criminal recidivism. Results indicated that current irritability is a strong predictor of violent re-offending following release from detention, even when controlling for previous delinquent behaviours[13].

Emotional numbing and acquired callousness

It has been suggested that emotional numbing and acquired callousness may be another psychological mechanism linking trauma exposure and juvenile delinquency. An early fictional description of the experience of emotional numbing was advanced by Virginia Woolf in her depiction of the sufferings of a war veteran in her novel ñMrs. Dallowayò[14]. Emotional numbing may be defined as when an individual is not emotionally present and operates merely at an intellectual level, displaying no emotional connection with others. Some young people who were exposed to trauma develop this kind of emotional detachment as a method of coping with overwhelming distress[15]. They feel emotionally distant from others and are not be able to display empathy, thus increasing the probability that they will act aggressively and lower their threshold to commit delinquent behaviours. In line with these considerations, a recent study found that trauma-related emotional numbing in high school students was related to all forms of self-reported delinquency[16].

Emotional numbing following exposure to trauma may also add to the understanding of psychopathic and callous-unemotional traits in delinquent youths. These personality features were defined as a: 1) lack of remorse or guilt having done something wrong; 2) lack of empathy and indifference to the feelings of others; 3) lack of concern for school or work performance; and 4) shallow or deficient affect[9]. Whereas early studies of psychopathy suggested that these callous-unemotional personality traits were inherent (and not changeable), some recent studies found that psychopathic traits in abused juvenile offenders may also result from adverse childhood experiences[17, 18]. In line with these findings, it was proposed that there was a need to distinguish between two kinds of psychopathy: Primary psychopathy, resulting from genetic influences, and secondary psychopathy, characterised by emotional numbing and acquired callousness as a result of persistent maltreatment or trauma.

Dysfunctional cognitive schemata and appetitive aggression

Further findings from psychological research has led to the emergence of a theory on cognitive information processing to explain aggressive and delinquent behaviour in children and adolescents. This theory suggests that by being exposed to violence, a child acquires and maintains dysfunctional aggressive schemata. A schema can be described as a mental structure of preconceived ideas or as a framework representing some aspect of the world. Schemata influence attention and the perception of new information. Individuals are more likely to attend to things that conform to their schema, rather than to modify their schema to accommodate new knowledge.

Dysfunctional schemata play an important role in various psychiatric disorders, including depression and anxiety disorders. In maltreated youths, aggressive and hostile schemata are acquired and maintained through both observational and enactive learning processes, based on experienced verbal and physical aggression. When these hostile schemata are activated, they tend to bias the information processing mechanisms and to increase aggression and delinquent behaviours. Maltreated and traumatised youths are more readily inclined to interpret ambiguous cues in their social environment as hostile. Eye contact, for example, becomes easily misinterpreted as antagonistic or provocative and is accompanied by feelings of anger and aggression. In their seminal study in 1990, Dodge, Bates and Pettit showed that abused and maltreated youths display deficits in encoding social information and biases, as well as errors in over-attributing hostile intent to others[19]. The hostility bias was able to explain the link between past experiences of maltreatment and current aggressive behaviours.

If an adolescent starts to believe that aggression and criminal behaviour is acceptable, he or she enters a vicious cycle that may become difficult to stop. Dysfunctional cognitions and schemata, aggressive behaviours and experiences of violence all mutually reinforce one other, promoting further destructive and criminal behaviours. If uninterrupted, this vicious cycle can be expected to continue into adulthood, maintaining aggressive and antisocial behaviour throughout the life span. Furthermore, a reactive aggression (in response to a previous provocation or frustration) may result in traumatised youths perceiving the perpetration of violent acts as thrilling, fascinating and arousing. They start acting with appetitive aggression, which is defined as a hedonic, intrinsically motivated form of aggression. Maltreated youths may feel empowered when assaulting or coercing other people. This intrinsic violent behaviour was found to decrease symptoms of trauma-related disorders[20].

Based on the authorôs clinical experience, violent and hostile attitudes and beliefs are present in most juvenile violent offenders. This was demonstrated in a case study example of a former patient, a seventeen-year-old boy, who had experienced prolonged family violence during childhood and had committed several violent assaults against peers during his adolescence. He explained that, ñshowing physical violence is the only way to be respected by othersò and ñif I do not act violently, I would become a victim of othersò From a therapeutic perspective, it becomes crucial not to judge or refute such statements hastily without first understanding them in the context of the youthôs (traumatic) life story.

Psychological assessment and treatment of traumatised and maltreated juvenile offenders

The findings presented above on the relationship between trauma history and criminal behaviours in juvenile justice populations may influence policy makers and the clinical practices of those working with juvenile offenders. The compilation of a trauma history may help to explain why an adolescentôs offending behaviour has developed and can also inform the risk assessment process in identifying later and persistent delinquency[21]. Social workers and juvenile justice collaborators should systematically review the adolescentôs family history and screen for possible trauma and abuse experiences. Where there is evidence of abuse and maltreatment, then a comprehensive psychological forensic assessment is warranted.

Some new and promising treatment approaches for offenders with trauma history have been developed. Yet, most of these interventions were not specifically designed for adolescent offenders in Western society. Nevertheless, some experienced child and adolescent psychotherapists may be able to adapt these treatment programmes for use with juvenile offenders.

Narrative exposure therapy for forensic offender rehabilitation (FORNET)

Narrative exposure therapy for forensic offender rehabilitation (FORNET) aims to both reduce symptoms of traumatic stress and to control readiness for aggressive behaviour[22]. FORNET was developed as a cognitive behavioural treatment programme following the same logic as the previously published and evidence-based treatment programme for trauma patients, the narrative exposure therapy (NET). Using a biographic lifeline (for example, symbolised by a cord), the therapist guides the client through his or her traumatic experiences, as well as through past violent behaviours in chronological order, linking the negative and positive emotions associated with these events. According to the FORNET authors, ñthe therapist helps the client to anchor the whole range of sensory and bodily experiences, cognitions, and emotions to the contextual cuesò[22]. Finally, the client develops a perspective based on a non-delinquent future. FORNET was found to be an appropriate and effective intervention with adolescent combatants and street children in Congo and Burundi. FORNET significantly reduced PTSD symptoms, appetitive aggression, drug use and criminal offenses[22].

Schema therapy for aggressive offenders

Schema therapy was specifically developed as a treatment for personality disorders such as antisocial, narcissistic or borderline personality disorders in adult offenders[23]. Although personality disorders are seldom diagnosed in adolescents because of their age, traumatised juvenile offenders frequently demonstrate symptoms of this condition, such as difficulties in affect regulation and social relationships with others. They are at risk of developing a personality disorder later in life. Schema therapy for aggressive offenders is designed as a long-term therapy (up to three years). It focuses on the therapeutic relationship by addressing the difficulties in forming secure attachments, emphasises the reprocessing of childhood trauma and uses experiential techniques that focus on emotions, in order to remediate affective difficulties. In schema therapy, the therapist addresses maladaptive schemata from early adverse childhood experiences and identifies relevant forensic schema modes, such as anger or predator. The therapist also uses cognitive and behavioural approaches, as well as other methods such as imagery, to trigger and change schemata. Preliminary findings of a study conducted in a forensic inpatient facility in the Netherlands, comprising thirty participants, supported the effectiveness of schema therapy when working with aggressive adult offenders.

Conclusion

Punishment alone will not be sufficient to avert maltreated youth away from involvement in further criminal activities. Improved collaboration between different professions and institutions will be necessary to prevent ñcrime from being burned into the memory of traumatised juvenile offendersò High risk and persistent offenders generate very substantial costs. An early intervention model which steers young people away from a pathway to crime is ultimately most economical. Psychotherapeutic interventions for traumatised juvenile offenders were found to be cost-effective and protect society from the risk of further harm. However, in most countries resource allocation is biased more favourably towards adult offender programmes.

Marcel Aebi, PhD, Department of Child and Adolescent Psychiatry, University of Zurich, Switzerland; Child and Youth Forensic Psychiatry, Department of Forensic Psychiatry, University Hospital of Psychiatry, Zurich: Clinical Psychology for Children/Adolescents and Couples/Families, Department of Psychology, University of Zurich

Correspondence:
Marcel Aebi, PhD
Clinical Psychology for Children/Adolescents and Couples/Families,
Department of Psychology,
University of Zurich
Attenhoferstrasse 9, 8032 Zurich
Switzerland
Phone: +41 79 915 74 22

E-Mail: marcel.aebi@uzh.ch

References

1. Aebi, M., Linhart, S., Thun-Hohenstein, L., Bessler, C., Steinhausen, H.C., and Plattner, B., Detained male adolescent offender's emotional, physical and sexual maltreatment profiles and their associations to psychiatric disorders and criminal behaviors. Journal of Abnormal Child Psychology, 2015. 43(5): p. 999ï 1009.
2. Ford, J.D., Grasso, D.J., Hawke, J., and Chapman, J.F., Poly-victimization among juvenile justice-involved youths. Child Abuse and Neglect, 2013. 37(10): p. 788ï 800.
3. King, D.C., Abram, K.M., Romero, E.G., Washburn, J.J., Welty, L.J., and Teplin, L.A., Childhood maltreatment and psychiatric disorders among detained youths. Psychiatric Services, 2011. 62(12): p. 1430ï 1438.
4. Ogloff, J.R.P., Cutajar, M.C., Mann, E., and Mullen, P., Child sexual abuse and subsequent offending and victimisation: A 45 year follow-up study. Trends and Issues in Crime and Criminal Justice, 2012. 440: p. 1ï 6.
5. Widom, C.S., Child abuse, neglect and violent criminal behavior. Criminology, 1989. 27: p. 251ï 271.
6. Aebi, M., Landolt, M.A., Mueller-Pfeiffer, C., Schnyder, U., Maier, T., and Mohler-Kuo, M., Testing the "sexually abused-abuser hypothesis" in adolescents: A population-based study. Archive of Sexual Behavior, 2015. Early online version: doi: 0.1007/s10508-014-0440-x
7. Caspi, A., McClay, J., Moffitt, T.E., Mill, J., Martin, J., Craig, I.W., Taylor, A., and Poulton, R., Role of genotype in the cycle of violence in maltreated children. Science, 2002. 297(5582): p. 851ï 854.
8. World Health Organization, The international classification of diseases and related health problems. Tenth revision (ICD-10). 1992, Geneva, Switzerland: World Health Organization.
9. American Psychiatric Association, Diagnostic and statistical manual of mental disorders. Fifth edition. 2013, Arlington, VA: American Psychiatric Association.
10. Foa, E.B., Keane, T.M., Friedman, M.J., and Cohen, J.A., Effective treatments for PTSD, Second edition: Practice Guidelines from the International Society for Traumatic Stress Studies. 2009, New York: Guilford Press.
11. Kerig, P.K., Ward, R.M., Vanderzee, K.L., and Arnzen Moeddel, M., Posttraumatic stress as a mediator of the relationship between trauma and mental health problems among juvenile delinquents. Journal of Youth and Adolescence, 2009. 38(9): p. 1214ï 1225.
12. Elbert, T. and Schauer, M., Burnt into memory. Nature, 2002. 419(6910): p. 883.
13. Aebi, M., Barra, S., Bessler, C., Steinhausen, H.S., Walitza, S., and Plattner, B., Oppositional defiant disorder dimensions and subtypes among detained male adolescent offenders. Journal of Child Psychology and Psychiatry, 2015. Early online version doi: 10.1111/jcpp.12473.
14. Woolf, V., Mrs. Dalloway. 1925, London: Hogarth Press.
15. Kerig, P.K., Bennett, D.C., Thompson, M., and Becker, S.P., "Nothing really matters": Emotional numbing as a link between trauma exposure and callousness in delinquent youth. Journal of Traumatic Stress, 2012. 25(3): p. 272ï 279.
16. Allwood, M.A., Bell, D.J., and Horan, J., Posttrauma numbing of fear, detachment, and arousal predict delinquent behaviors in early adolescence. Journal of Clinical Child and Adolescent Psychology, 2011. 40(5): p. 659ï 667.
17. Krischer, M.K. and Sevecke, K., Early traumatization and psychopathy in female and male juvenile offenders. International Journal of Law and Psychiatry, 2008. 31(3): p. 253ï 262.
18. Poythress, N.G., Skeem, J.L., and Lilienfeld, S.O., Associations among early abuse, dissociation, and psychopathy in an offender sample. Journal of Abnormal Psychology, 2006. 115(2): p. 288ï 297.
19. Dodge, K.A., Bates, J.E. and Pettit, G.S., Mechanisms in the cycle of violence. Science, 1990. 250(4988): p. 1678ï 1683.
20. Weierstall, R., Hinsberger, M., Kaminer, D., Holtzhausen, L., Madikane, S., and Elbert, T., Appetitive aggression and adaption to a violent environment among youth offenders. Peace and Conflict: Journal of Peace Psychology, 2013. 19(2): p. 138ï 149.
21. Becker, S.P., Kerig, P.K., Lim, J.Y., and Ezechukwu, R.N., Predictors of recidivism among delinquent youth: Interrelations among ethnicity, gender, age, mental health problems and posttraumatic stress. Journal of Child and Adolescent Trauma, 2012. 5: p. 145ï 160.
22. Hecker, T., Hermenau, K., Crombach, A., and Elbert, T., Treating traumatized offenders and veterans by means of narrative exposure therapy. Frontiers in Psychiatry, 2015. 6: p. 80.
23. Keulen-de Vos, M., Bernstein, D.P., and Arntz, A., Schema therapy for aggressive offenders with personality disorders, in Forensic CBT: A Practitionerôs Guide, R.C. Tafrate and D. Mitchell, Editors. 2014, Wiley Blackwell: Chichester, UK.

Breaking the School to Prison Pipeline--

The school-based diversion initiative for youth with mental disorders

Dr Joseph J. Cocozza
Karli J. Keator
Kathleen R. Skowyra
Jacquelyn Greene

Joe Coccoza

Karli J. Keator

Kathleen R. Skowyra

Jacquelyn Greene

Background

In the 1990s, when public fear of youth violence was at its peak, schools across the U.S. began adopting zero tolerance policies that imposed strict punishment for breaking a rule, regardless of extenuating circumstances. While these policies were originally designed to handle the most serious offenses, they gradually broadened in scope to include disruptive behaviors, often minor in nature that would have, in years past, been handled by school staff. These policies frequently result in a call to police or the school resource officer, an arrest and involvement in the juvenile justice system, criminalizing much behavior that had formerly been addressed by school disciplinary processes. Thus, zero tolerance policies shifted the responsibility of school discipline from schools to the juvenile justice system, with schools soon becoming an ever increasing source of referrals to the juvenile justice system[1]. This practice became so widespread across the United States that it has come to be known as the ñschool-to-prison pipeline.ò

Unfortunately, justice system contact has been shown to be a significant predictor of future school-related problems, including negative academic and behavioral outcomes, leading to greater entrenchment of school difficulties for children who are labeled as delinquent[2].

In fact, unnecessary contact with the juvenile justice system contributes to many children getting worse, not better[3]. Zero tolerance policies also create a significant workload and financial strain for schools, law enforcement, and the juvenile justice system. In recognition of serious concerns being raised around the criminalization of misbehavior, efforts are currently underway to mitigate the flow of youth from schools to the juvenile justice system. One such effort is based on the work of Judge Steven Teske and colleagues[4], a collaborative approach that has led to a significant decrease in court referrals, improvements in police officer and student relations, and an increase in graduation rates in Clayton County, Georgia and has achieved similar success when replicated in other states[5]. Other efforts have focused on developing specialized programs to address issues of disproportionality among youth caught in the school-to-prison pipeline.

Established in 2001, the National Center for Mental Health and Juvenile Justice[6] (NCMHJJ) at Policy Research Associates, Inc. provides a national focal point aimed at improving policies and programs for youth with mental health disorders in contact with the juvenile justice system.

---

1 American Psychological Association Zero Tolerance Task Force. (2008). Are zero tolerance policies effective in the schools?: An evidentiary review and recommendations. *American Psychologist*, 63(9), 852-862.

2 Fowler, T., Lifford, K., Shelton, K., Rice, F., Thapar, A., Neale, M.C., et al. (2007). Exploring the relationship between genetic and environmental influences on initiation and progression of substance use. *Addition,* 102, 413-422.

3 Dishion, T. J., McCord, J., & Poulin, F. (1999). When interventions harm: Peer groups and problem behavior. *American Psychologist*, 54, 755-764.

4 http://safequalityschools.org/pages/clayton-county-ga

5 Clayton County Public Schools. (2007). Blue Ribbon Commission on School Discipline: A Written Report Presented to the Superintendent and Board of Education. Available at http://www.clayton.k12.ga.us/departments/studentservices/handbooks/BlueRibbonExecutiveReport.pdf.

6 www.ncmhjj.com

Research has consistently demonstrated that the vast majority of youth in contact with the juvenile justice system not only have diagnosable mental or substance use disorders, but that many meet criteria for both as well as trauma-related disorders[7,8,9]. The NCMHJJ has focused on developing, evaluating, and disseminating models of best practice and policy aimed at diverting children with mental and substance use disorders from the juvenile justice system at the earliest points of contact.

Mental disorders can alter the way children learn, behave, and develop ï all of which will have a profound effect on their life chances[10]. An estimated 14 to 20 percent of children in the United States are experiencing a mental disorder with some level of functional impairment each year[11], and approximately 11 percent of these children have significantly impaired functioning[12]. Unfortunately, less than half of these children receive treatment or have access to appropriate mental health services[13,14,15]. Not surprisingly, the school-to-prison pipeline captures a large number of children with underlying ï often undiagnosed and untreated ï mental and substance use disorders.

Too often, when children display disruptive behaviors in schools, authority figures respond without fully addressing the underlying problem. Many schools marginalize children with behavioral challenges through policies that disrupt their education, such as suspensions, expulsions, and even arrests.

A report from the American Psychological Association (APA) in 2008[16] concluded that zero tolerance policies have failed to improve school safety or student behavior, and have resulted in a disproportionate number of children with mental disorders ending up in the juvenile justice system. Zero tolerance policies have contributed to the overrepresentation of minorities involved in the juvenile justice system, and are disproportionately applied to students with special educational needs[17]. A recent study found that nearly three-quarters of students who qualified for special education services were suspended or expelled[18] and students identified as having an emotional disturbance were especially likely to be suspended or expelled. This same study also found that children who are suspended or expelled are more likely to become involved in the juvenile justice system in the subsequent year.

Focus on Youth with Unmet Mental Health Treatment Needs

Reflective of emerging trends, the John D. and Catherine T. MacArthur Foundation (ñMacArthur Foundationò) established the Models for Change initiative[19]. The goal of this initiative is to accelerate the reform of juvenile justice systems across the country by using the experiences of a select number of states and communities to help create sustainable, effective, and research-based reform models. Four states were initially selected to participate in this effortð Pennsylvania, Illinois, Louisiana, and Washington. These states were strategically chosen, using criteria such as leadership, commitment to change, geography, and opportunities for reform. In their effort to bring about juvenile justice reform, consistent concerns were raised by these four states regarding the growing crisis surrounding the large numbers of youth with mental disorders in the juvenile justice system, and the lack of policies and practices for effectively identifying and treating these youth.

---

7 Shufelt, J.L. & Cocozza, J.J. (2006). *Youth with mental health disorders in the juvenile justice system: Results from a multi-state prevalence study.* Delmar, NY: National Center for Mental Health and Juvenile Justice.

8 Teplin, L.A., Abram, K.M., Washburn, J.J., Welty, L.J., Hershfield, J.A., & Dulcan, M.K. (2013). *The Northwestern Juvenile Project: Overview*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

9 Wasserman, G.A., McReynolds, L.S., Schwalbe, C.S., Keating, J.M., & Jones, S.A. (2010). Psychiatric disorder, comorbidity, and suicidal behavior in juvenile justice youth. *Criminal Justice and Behavior, 37*(12), 1361-1376.

10 Breslau, J.; Lane, M.; Sampson, N.; Kessler, R. C. 2008. Mental Disorders and Subsequent Educational Attainment in a US National Sample. *Journal or Psychiatric Research,* 42, 708-716.

11 O'Connell, M. E., Boat, T., & Warner, K. E. (Eds.). (2009). *Preventing mental, emotional, and behavioral disorders among young people: Progress and possibilities*. National Academies Press.

12 Anglin, T. M. (2002). Mental health in schools. Handbook of School Mental Health: Advancing Practice and Research, *Issues in Clinical Child Psychology,* 89-106.

13 Green, J. G., McLaughlin, K. A., Alegría, M., Costello, E. J., Gruber, M. J., Hoagwood, K., & Kessler, R. C. (2013). School mental health resources and adolescent mental health service use. *Journal of the American Academy of Child & Adolescent Psychiatry*, 52(5), 501-510.

14 Greenberg, M., Weissberg, R., OÕBrien, M., Zins, J. E., Fredericks, L., Resnik, H., & Elias, M. J. (2003). Enhancing school-based prevention and youth development through coordinated social, emotional, and academic learning. *American Psychologist*, 58(6/7), 466-474.

15 Merikangas K. R., He J. P., Brody D., Fisher P. W., Bourdon K., & Koretz D. S. (2010) Prevalence and treatment of mental disorders among US children in the 2001ï 2004 NHANES. *Pediatrics*. 125(1), 75ï 81.

16 American Psychological Association Zero Tolerance Task Force. (2008). Are zero tolerance policies effective in the schools?: An evidentiary review and recommendations. *American Psychologist*, 63(9), 852-862.

17 Skiba, R. J., Michael, R. S., Nardo, A. C., & Peterson, R. (2002). The color of discipline: Sources of racial and gender disproportionality in school punishment. *Urban Review*, 34, 317ï 342.

18 Fabelo, T., Thompson, M.D., Plotkin, M., Carmichael, D., Marchbanks III, M.P., & Booth, E. A. (2011). *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*. The Council of State Governments Justice Center: New York, NY.

19 www.modelsforchange.net

In response, the Mental Health/Juvenile Justice Action Network was created to develop, test, and disseminate best practices to address these concerns. Four additional statesð Colorado, Connecticut, Ohio, and Texasð were selected to join the effort. The goal of the Action Network was to work with the eight states to establish a leadership community of states at the forefront of mental health and juvenile justice reform that would collaboratively develop, implement, and evaluate new models and strategies for addressing common problems that could be sustained, expanded, and replicated in other jurisdictions. The NCMHJJ led and coordinated this Action Network.

Teams from each of the eight states participating in the Action Network identified diversionð specifically, the need to create more opportunities for youth with mental health needs to be appropriately diverted to community-based services and supports at the earliest points of contact with the juvenile justice system. Three key contact points were chosen ï schools, probation-intake and law enforcement. Working under the leadership of the NCMHJJ, two states ï Connecticut and Ohio ï focused specifically on stemming the flow of children with mental disorders from schools into the juvenile justice system. Based on existing knowledge and expertise, the approach developed was the School Responder Model (SRM)[20]. This program model is based on *WrapAround* Milwaukeeôs Mobile Urgent Treatment Team Model[21] (MUTT), which at its core, uses mental health clinicians/practitioners to respond to school-based incidents involving youth with a suspected mental disorder who are at risk of referral to juvenile court or to the police. The core components of the SRM are:

- Collaboration among schools, law enforcement, courts and behavioral health. Cross-systems coordination and collaboration, built around a common vision statement for reform efforts are critical to the overall success of the program.
- Cross-systems training. Training for all school staff on the signs and symptoms of mental, substance use, and trauma disorders is key, as is providing cross-systems training on the diversion model so that all collaborators ï schools, law enforcement, and behavioral health providers ï know each otherôs roles and responsibilities.
- Availability of a ñresponderò able to provide timely assistance. For diversion to work, school personnel must have access to an alternative to law enforcement that can provide a timely crisis or behavioral health response.
- Cooperative agreements with community-based behavioral health service providers. Beyond having a ñresponderò to address the immediate crisis, children and their families must have access to community services and supports. To facilitate referrals, schools and behavioral health services providers should enter into agreements that prescribe how referrals will be made and handled.
- Establishment of revised school protocols to replace zero tolerance policies. In order for school personnel to respond differently, policies and procedures must be revised to allow for a mental health response rather than a punitive response to children acting out in schools.

Implementing the School Responder Model

The SRM specifically target children who have come to the attention of school disciplinary staff, such as administrators and school resource officers. The problem might be one or more specific incidents involving disruptive or threatening behavior, such as bullying or fighting, or an ongoing problem like chronic tardiness or truancy. Instead of referring a youth to law enforcement officials, responders work with school personnel to help better identify mental health needs in students, and to link children and their families with treatment and case management services. Strong linkages between the schools and the mental health system, as well as training and support for school staff on how to recognize the signs and symptoms of mental illness among youth, create a new ñprocessò for responding to these youth. Both Connecticut and Ohio implemented school responder programs with this core structure, with only minor variations to allow for local circumstances and accommodations for structural differences.

Connecticut. Connecticut created their SRM, known as the School-Based Diversion Initiative (SBDI), to provide mental health crisis teams in schools. The goal of SBDI is to build capacity and skills among teachers and school staff to recognize and manage mental health crises in the schools instead of contacting the police. The local Emergency Mobile Psychiatric Services team (EMPS) serves as the ñresponderò to calls from the schools and provides in-school crisis stabilization, brief intervention, and referral and linkage to ongoing services and supports. SBDI offers school personnel a high level of training, both in adolescent mental health and behavior and in understanding and accessing local resources. The program also works with the schools to help them develop more effective disciplinary policies.

[20] Weiss, G. & Skowyra, K. (2013). *Schools turn to treatment, not punishment, for children with mental health needs*. Chicago, IL: John. D. and Catherine T. MacArthur Foundation, Models for Change.

[21] http://wraparoundmke.com/programs/mutt/

SBDI has been collecting data that allows them to assess changes in rates of arrest, suspension, expulsion, and referral to EMPS. Among the findings: EMPS use in SBDI sites increased by 64 percent in 2012-2013, a rate that is eight times higher than the statewide average; school-based court referrals are down 29 percent on average since program inception, with some schools demonstrating reductions as high as 92 percent from the year prior to implementation; and analyses indicate that over time, children initially served by EMPS are less likely to experience subsequent court referrals compared to students who initially experience a court referral[22]. These differences remain significant even when controlling for age, gender, race/ethnicity, and prior court referrals.

Ohio. Ohio created their SRM, known as the Responder Program, to promote early intervention, improve school attendance and performance, and to divert children with mental disorders out of the juvenile justice system to appropriate, community-based mental health services. Responders, based out of the Juvenile Courtôs Family Resource Center in Summit County, answer calls from the schools concerning incidences involving students believed to have unmet mental health needs and whose behavior puts them at risk for referral to the juvenile justice system. A team approach that brings in relevant school staff and any providers already serving the child is used. Working with the team, the Responder provides in-school intervention services and case management. They conduct mental health screens, arrange for full assessments when needed, and work with families to develop a service plan and link them to community resources. The Responder Program also works with Mental Health America to provide parent peers who support and advocate for families referred to the program.

During the 2011-13, 124 youth were referred by the school to the program[23]. Results of the MAYSI-2[24], a research-based mental health screening tool, was used to screen the youth for mental disorders. Based on results from the diagnostic assessment, nearly 90 percent of the students were linked to local mental health providers. Nearly two-thirds of the participants had no involvement with the juvenile court in the year following their referral into the Responder Program.

To help ensure the success of the program, school personnel receive training in how the program works, the types of behaviors that might indicate mental disorders in children, and how to make referrals to the Responder Program. Feedback from schools, parents, and the juvenile court has been overwhelmingly positive, and the Responder Program has expanded steadily. The program now reaches 15 schools, including three elementary schools, nine middle schools, and three high schools in Summit County.

Sustainability and Diffusion of School-Based Diversion

The school-based diversion programs have proven to be very helpful and effective in both Connecticut and Ohio, across a variety of urban, suburban, and rural communities. These programs were begun with a relatively small amount of seed money, and over a short period of time ï about three years ï both states have shown they can sustain and grow their programs and find independent sources of funding.

Although research is continuing to assess how school-based diversion is changing the long-term outlook for children and families, some general statements about the value of the programs can be made. Both states have:

- Reduced school-based arrests and subsequent court referrals
- Increased mental health and related services for children and families.
- Established good working partnerships among schools, service providers, law enforcement, and the juvenile justice system.
- Demonstrated success in introducing school staff to the model and helping them to feel comfortable with it.
- Shown that professionals and the public see value in and are willing to support effective strategies that increase access to needed mental health services while also decreasing the unnecessary involvement of youth in the juvenile justice system.

These findings have led to the expansion of the SRM within both states. In Connecticut, a partnership among four state agencies ï the State Department of Education, the Department of Children and Families, the Court Support Services Division of the stateôs Judicial Branch, and the Department of Mental Health and Addiction Services ï has not only sustained this program in the original three schools but has supported the programôs expansion into 21 schools in 10 districts. In 2015, Connecticutôs Governor was successful in adding $1 million for each of the next 2 years in the stateôs budget to provide ongoing support for the School-Based Diversion Initiative. This funding will allow for expansion of the program- with the goal to reach an additional 40 to 50 schools over the next two years and support expanded evaluation activities.

[22] Bracey, J. & Vanderploeg, J. (2013). Annual Report 2012-13: Hartford Public Schools, Waterbury Public Schools, and New Britain High School. Child Health and Development Institute: Farmington CT.

[23] Kretschmar, J. (2014). Personal communication.

[24] See Prof K Schmeck, Chronicle July 2015 p35 Editor

The Child Health and Development Institute of Connecticut (CHDI), responsible for overseeing the program, has developed a comprehensive school training curriculum and an SBDI manual to guide project replication and dissemination throughout the state.

In Summit County, Ohio, following the initial grant, the program has been sustained by a combination of state and local funding. The Family Resource Center of the Juvenile Court has helped to support its continuation. To guide replication and dissemination, a School Responder program manual was developed and is widely available for download. Jackson County, Ohio successfully replicated the model, as Teen Talk, which provides responders for grades 6-12. Teen Talk now reaches all schools in the county. Its success led one of the few mental health providers in the county to expand its small satellite clinic into a full-scale behavioral health clinic. This clinic is now the official responder for Teen Talk and is committed to supporting and expanding the program.

Since 2011, with joint funding from the MacArthur Foundation and the federal Substance Abuse and Mental Health Services Administration (SAMHSA), the NCMHJJ has coordinated an effort to further disseminate diversion policies and programs for youth in contact with the juvenile justice system with behavioral health disorders. Sixteen states have been competitively selected to participate in this initiative. Six of these states have focused on expanding school-based diversion opportunities ï Minnesota, Nevada, New York, South Carolina, West Virginia, and Wisconsin. Given the process by which the SRM was developed ï multiple states working together to identify core components of an effective school-based strategy, while allowing flexibility to account for local and regional differences ï initial replication efforts look to be successful. In fiscal year 2016-17, the Minnesota Governorôs budget included funding to support both implementation and evaluation of the model throughout the state. The roll-out of this model represents a unique collaboration between Minnesotaôs Department of Human Services Childrenôs Mental Health division, the Minnesota Chiefs of Police Association, and select schools, local law enforcement, and the county attorneyôs office. This new approach is ñdesigned to assist schools and their partners to become more selective about making referrals to the juvenile justice system and develop school-and community-based alternatives for addressing student behavioral incidentsò (budget doc March 2015).

This drive to reduce the flow of youth through the school to prison pipeline is also being addressed at the national level. Three federal agencies, the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), Department of Education, and SAMHSA entered into a partnership to ñenhance collaboration and coordination among schools, mental and behavioral health specialists, law enforcement and juvenile justice officials at the local level to ensure adults have the support, training, and a shared framework to help students succeed in school and prevent negative outcomes for youth and communitiesò[25]. Their joint efforts culminated with the funding of a project entitled ñSchool Justice Partnership Project: Keeping Kids in School and Out of Court.ò This project is being coordinated by the National Council of Juvenile and Family Court Judges (NCJFCJ)[26]. The NCMHJJ is one of the key partners in this initiative. Through this project, jurisdictions around the country will have the opportunity to replicate models with demonstrated evidence for better responding to children with unmet mental health needs, including the SRM.

Lessons Learned

There are a number of critical lessons from these school-based diversion efforts that can be capitalized on by other jurisdictions seeking to implement reforms to stem the flow of children with behavioral problems from schools to the juvenile justice system.

1) Collaboration is a critical component to any effort aimed at addressing the school-to-prison pipeline. Not only must there be meaningful involvement of education, behavioral health providers, law enforcement and the juvenile justice system but all must share a common vision and understanding of the work.

2) Cross-systems training on the need for an alternative response as well as on adolescent development, mental and substance use disorders, trauma, and crisis response techniques must be provided. It is just as critical that all school personnel receive additional training on how to recognize mental health needs among children, how to respond appropriately to a child in crisis, and who to call for additional support.

3) Diversion policies and protocols should be put in a manual to guide the response in a uniform manner when a child is identified as in need, to increase the likelihood for sustainability within a community when staff turnover occurs, and to support replication in other jurisdictions seeking to address the same issue. Additionally, stakeholders should enter into formal agreements that specify who is eligible for diversion and how the process will work.

[25] https://schooljusticepartnership.org/about-the-project

[26] Judge David Stucki, past president of NCJFCJ is a Council member of IAYFJM Editor

4) For any alternative response to be used by school personnel, a ñresponderò must be able to provide timely assistance. School personnel recognize that law enforcement will always respond and, depending on the severity of the situation, will respond quickly when called. A mental health response must be just as reliable and should aim to provide support to school staff within a reasonable and agreed upon period of time.

5) Data must be collected and analyzed on a routine basis to evaluate the program effectiveness at achieving the stated goals. This will not only allow for ongoing adjustments to the model in order to increase overall effectiveness, but will provide the necessary support to advocate for ongoing resources to maintain and replicate school-based diversion efforts.

The efforts in Connecticut and Ohio, as well as in new states, demonstrate that a mental health response to disruptive behaviors in schools by children can disrupt the school-to-prison pipeline. By diverting these children from the juvenile justice system to community-based services and supports, these communities are improving the lives of children with mental and substance use disorders by providing a link and access to necessary treatment while maintaining continuity of educational services that are ultimately necessary for them to live healthy and productive lives

Joseph J. Cocozza, PhD, is the Director of the National Center for Mental Health and Juvenile Justice, NCMHJJ located within Policy Research Associates. A leading national expert on juvenile justice and mental health, he established the Center in 2001 to improve policies and programs for youth with behavioural health problems in the juvenile justice system. He works with the major relevant national organizations, state juvenile justice and mental health leaders, and key local stakeholders across the country on a number of initiatives aimed at improving the treatment of these youth.

Karli J. Keator, MPH, is the Division Director for Juvenile Justice at Policy Research Associates. In this role, Ms. Keator is responsible for oversight of all projects related to juvenile justice and behavioral health, including operation of the NCMJJJ. She has extensive experience working with tribes, states and localities with policy and program planning and implementation, in particular around early diversion strategies for youth with mental, substance use, and trauma related disorders.

Kathleen R. Skowyra, is the Associate Director of the NCMHJJ. Ms. Skowyra has served as lead author for a number of cornerstone publications on juvenile justice and mental health, oversaw the Mental Health/Juvenile Justice Action Network through which a school-based diversion model was developed and pilot tested, and is now responsible for the NCMHJJ's Mental Health and Juvenile Justice Collaborative for Change.

Jacquelyn Greene, JD, is a Senior Associate with the NCMHJJ. She oversees initiatives geared toward state-level systems improvement, including the Center's current efforts to disseminate and replicate models for school-based diversion developed through the Models for Change Mental Health/Juvenile Justice Action Network.

www.**ncmhjj**.com/

Neurodisabilities and youth offending—New Zealand

District Judge Tony Fitzgerald*

Introduction

Law has not been keeping pace with science. Perhaps it never has. In the 4th century BC, Plato, the great scientist and thinker, observed;

> ñWhat is happening to our young people? They disrespect their elders and disobey their parents. They ignore the law. They riot in the streets inflamed with wild notions. Their morals are decaying. What is to become of them?

Despite the implicit recognition in that statement, that there were particular features of young peoplesô behaviour that distinguished it from adults, it was not until the late 19th century that most western nations stopped convicting and punishing children in adult courts for their errant behaviour.

Now that neuroscience confirms what Plato saw, no one could sensibly suggest that we not cater for those differences by providing a separate system of justice for young people. To do so is fair for them given that most will outgrow the immature, impulsive, risk-taking behaviour that leads them into the youth justice system. It is also fair for society at large because we know that responding to such behaviour without ñcriminalisingò the young person greatly reduces rates of recidivism.

Today it is well established in the scientific world that brain damage affects behaviour in a way that predisposes those young people with an impairment to enter the youth justice system and, once there, be vulnerable to becoming deeply entrenched in it. However, despite widespread scientific recognition of this issue, it does not yet seem to have gained traction in the youth justice systems of most countries.

However, the very same logic that applies to catering for the differences between young people and adults must surely be applied to catering for the differences between those young people with a neurodisability and those without, for the following reasons.

The vast majority (80%) of young offenders will grow out of crime, but they will not all do so at the same rate. Some are more likely to desist than others.[1] The small number of young offenders who will persist with their offending into adulthood are responsible for a disproportionate amount of crime.[2] For these ñpersistersò the documented wisdom that young people tend to grow out of crime does not apply. Age, therefore, is too blunt an instrument for determining responses to offending. This is supported by neuroscience and genetics, which point to neurological variation, not only between young people and adults, but also within any given age group. A child with a Fetal Alcohol Spectrum Disorder (ñFASDò) for instance, is less capable than a child without FASD to regulate emotions, link cause and effect, or perceive the consequences of his or her actions.[3] Treating brain-damaged children in the youth justice system in the same way as neurologically typical offenders of the same age is analogous to responding to youth offending in the same way we respond to adult offending. The science on this issue is so solid that one author has suggested it is now intellectually dishonest to treat individuals as being equally free to ócchooseôor ócchoose notôto offend when significant evidence refutes this idea.[4]

Identifying and responding to neurodisability is about delivering justice for all concerned. The young person is the blameless victim of the neurodisability, whatever the origin of it, and should receive a response that takes that into account when their deeds and their needs are addressed by the Court. By the time the youngperson reaches an age when he or she is criminally liable for behaviour, the interests of victims and the community must also be considered.

---

1 Kelly Richards, ñWhat makes juvenile offenders different from adult offenders?ò in *Trends & issues in crime and criminal justice No. 409* (Australian Institute of Criminology, February 2011) at 2; Resource 48, at 19.

2 Richards, above n 42, at 2.

3 Diane K Fast, Julianne Conry and Christine A. Loock,ñIdentifying Fetal Alcohol Syndrome Among Youth in the Criminal Justice Systemò (1999) 20(5) Developmental and Behavioral Pediatrics 1 at 1.

4 Matthew Jones ñOvercoming the Myth of Free Will in Criminal Law: The True Impact of the Genetic Revolutionò (2003) Duke Law Journal 103 at 1047.

Society at large should expect that the true underlying cause of the offending will be identified and properly addressed so as to reduce, if not remove, the risk of further offending.

Traditional assumptions

One major challenge to delivering justice in this respect is overcoming some current and traditional attitudes toward offending. Another related issue is that the presence of a neurodisability will most likely be invisible to the untrained because the behaviour characteristic of a neuro-disability parallels that typical of offenders without one. Many young offenders have disengaged from education, are in the care and protection system, lack good judgment, engage in impulsive, thrill-seeking behaviour, abuse substances, and have mental health concerns. Not all will necessarily have a neurodisability. In all likelihood a large percentage will. The important thing is to recognise the signs, check and respond appropriately.

Yet another challenge is that the behaviour of those with a neurodisability is easily mistaken as evidence of disobedience, non-compliance or aggressiveness. Rather than recognising that the actions of those with a neurodisability flow from their impairment, many assume them to be determined, recidivist offenders who lack remorse and fail to comply with court-imposed conditions due to a bad attitude and disrespect for the justice system.

With that primitive, punitive mindset, it is assumed that it is only bad people who offend and really bad ones who continue to do so, especially after being provided with the opportunity to attend good, evidence based therapeutic programmes, albeit ones that cater for young people without any disability, from which a brain-impaired youth will be able to derive little or no therapeutic benefit. It is then the really, really bad people who not only continue to commit crimes in such circumstances, but when they are before the court, they show their disrespect by repeatedly failing to attend appointments, turn up on time or comply with curfews, even if the reason for that is a cognitive inability to manage simple organisational tasks or to understand the abstract concept of time. For such behaviour, increasingly more severe sanctions are imposed but that is not based on a scientific understanding of human behaviour but simply provides the quickest, easiest, most convenient means of dealing with the problem.

It is important to recognise that a person does not grow out of a neurodisability; it is a lifelong affliction. This is apparent when one looks at the profile of the adult criminal population. In one study of adult male offenders, 31% had been identified in childhood as having a learning disability. The same study found learning disabilities, Attention Deficit Hyperactivity Disorder (ñADHDò) and Traumatic Brain Injuries (ñTBIò) are indicators which can be used to predict general recidivism.[1] Evidently the connection between offending and neurodisability extends into adulthood.

If we identify neurodisabilities, and intervene appropriately at an early stage, we have the opportunity to turn young people from the path of criminality. Ideally, when the issue is properly recognised and managed, appropriate supports and interventions would be provided early enough to prevent most young people with neurodisabilities from ever entering the Youth Justice system at all.

Prevalence

So, what sort of numbers are we talking about? In New Zealand, at least, we do not really know because prevalence studies have not been carried out here. However, the opinion of some who are qualified to comment[2] is that rates here would not differ significantly from those found in a study carried out by the office of the Childrenôs Commissioner for England.[3]

This was an extensive, structured literature review of research from a variety of relevant academic disciplines, as well as evidence published by key health and justice organisations, and central government departments. The report primarily examined studies involving youth offenders in custody. Such studies were largely from overseas jurisdictions including the United Kingdom, United States of America and Scandinavia. The following table sets out the results of that research;

---

[1] Ron Langevin & Suzanne Curnoe ñPsychopathy, ADHD, and Brain Dysfunction as Predictors of Lifetime Recidivism Among Sex Offendersò (2011) 55 Int J Offender Ther Comp Criminol 5 at 5,7,13 and 15.

[2] I am grateful to Dr Russell Wills, the New Zealand Childrenôs Commissioner, Dr John Crawshaw, the Director of Mental Health Services Ministry of Health and Dr Ian Lambie, Associate Professor of Psychology, Auckland University for their advice on this paper.

[3] Nathan Hughes and others *Nobody made the connection*; *the prevalence of neurodisability in young people who offend* (Office of the Childrenôs Commissioner for England, October 2012).

ñNobody made the connection: The prevalence of neuro-disability in young people who offendò

Report of Childrenôs Commissioner, England, October 2012

Å Neurodevelopmental disorder	Young people in general population	Young people in custody
Å Learning disabilities	2 ï 4%	23 ï 32%
Å Dyslexia	10%	43 ï 57%
Å Communication disorders	5 ï 7%	60 ï 90%
Å Attention deficit hyperactive disorder	1.7 - 9%	12%
Å Autistic spectrum disorder	0.6 - 1.2%	15%
Å Traumatic brain injury	24 - 31.6%	65.1 - 72.1%
Å Epilepsy	0.45 ï 1%	0.7 - 0.8%
Å Foetal alcohol syndrome	0.1 ï 5%	10.9 - 11.7%

These results show a striking relationship between the identified neurodisabilities and offending. Other research that illustrates the extent of the problem includes a large scale study that found approximately 60% of adolescents and adults in the FASD population had been in trouble with the law.[1] Engagement with the legal system was found to be problematic for this population, their numerous (and often invisible) deficits placing them at a significant disadvantage.[2] The observation was made that, in the absence of early identification and the necessary support, individuals with FASD typically get caught in the justice systemôs revolving door.

It is important to note as well that co-morbidity of different neurodisabilities is common. In some cases co-morbidity may be explained by the fact that individual symptoms do not fit neatly into one diagnostic category. In others, co-morbidity of distinct conditions may be the result of shared risk factors such as genetic vulnerability, pre or post-natal complications or disadvantage. In other cases, one neurodisability may increase the risk of developing another neurodisability. For example there is a strong link between traumatic brain injury and the presence of other neurological disorders such as ADHD. TBI increased the risk of developing other neurodisabilities such as a learning disability and communication disorders.

The New Zealand context

Only about 20% of young people suspected of committing offences in New Zealand are charged and brought to Court. Generally they are either facing serious charges and/or are repeatedly offending. Many have a complex range of issues underlying their offending including neurodisabilities. The other 80% are diverted away from the Youth Court by the police taking alternative action. That high rate of diversion, together with the Family Group Conference (ñFGCò) as the primary decision making process, sets the New Zealand Youth Court apart from any other court in the world.

The Judges, lawyers, lay advocates, and personnel from the various agencies involved in the Youth Court, are all specially qualified and trained. Amongst other things, the Court is required by statute to ensure that a young personôs needs, and the underlying causes of his or her offending, are addressed (in addition to being held accountable and having the victimôs interests considered).

[1] Ann P Streissguth and others *Understanding the Occurrence of secondary disabilities in clients with foetal alcohol syndrome (FAS) and foetal alcohol effects (FAE)* (final report, Centres for Disease Control and Prevention, Grant No R04/CCR008515, August 1996) at 4.

[2] Timothy E Moore and Melvyn Green (ñFoetal alcohol spectrum disorderò) (FASD): ña need for closer examination by the criminal justice systemò(C2004) 19 CR 99 at 99.

In recent years there has been growing awareness of the range and complexity of needs that young people coming before the Court have, as well as the issues underlying their offending. This in particular includes neurodisabilities and the implications they have for young people in the Youth Justice context.

There is also a statutory obligation on judges and counsel to explain to young people what is happening in the proceedings in a manner and language they can understand and to be satisfied they do understand. Judges and counsel must also encourage and assist young people to participate in the proceedings. In this respect we also recognise the obligations we have under the international conventions to which we are a party. That includes the UN Convention on the Rights of Persons with Disabilities[3] (ñthe Disabilities Conventionò), ratified by New Zealand on 30 March 2007. Article 7 of the Disabilities Convention requires state parties to ensure that all children with disabilities have the right to express their views freely on all matters affecting them on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right. Article 12 requires that those with disabilities have legal capacity on an equal basis with others and that they receive the support required to exercise their legal capacity. Article 13 requires effective access to justice by providing procedural and age appropriate accommodations in legal matters.

Given the prevalence of neurodisabilities and what we now know about the associated learning disabilities and communication disorders, effective practical steps must be taken to comply with these obligations. To that end work is now underway to review all of the means by which the Youth Justice system, including the Youth Court, facilitates communication with young people. To begin with, it will require efficient and effective methods of screening and assessing for the presence of such disabilities and disorders. Training is required for judges, lawyers, police officers, social workers and various other professionals dealing with or interviewing young people. The content, language and style of documents and forms used must be revised. Enabling appropriate and effective verbal communication with young people is necessary. The layout of courtrooms and other places where young people are required to engage needs to be considered. Providing suitably qualified and accredited communication assistants or intermediaries for young people who require such help will be essential. This must extend beyond the courtroom to other forums in which young people are required to participate, such as the FGC.

Fitness to stand trial

For young people with neurodisabilities at the high end of the range, fitness to plead and stand trial will be an issue. The extent of the problem in this respect has become apparent in New Zealand over the past decade as a result of a law change that took effect on 1 September 2004. Until then, the only basis on which a person could be found unfit to plead or stand trial was if he or she had a mental disorder.

The Criminal Procedure (Mentally Impaired Persons) Act 2003 (ñCP(MIP) Actò) and the Intellectual Disability (Compulsory care and rehabilitation) Act 2003 (ñID(CCR) Actò) came into force on 1 September 2004. Section 4 of the CP(MIP) Act defines a person as being unfit to stand trial if he or she is unable, due to mental impairment, to conduct a defence or instruct a lawyer to do so and includes someone who, due to mental impairment, who is unable to plead, adequately understand the nature, purpose or possible consequences of proceedings or communicate adequately with counsel for the purposes of conducing a defence.

The term ñmental impairmentòis not defined in the CP(MIP) Act. It includes a mental disorder which is defined,[4] in relation to any person, as meaning an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it ï

- Poses a serious danger to the health or safety of that person or others; or
- Seriously diminishes the capacity of the person to care for him or herself.
- We also know it includes an intellectual disability which is defined in the ID(CCR) Act[5] as a being a permanent impairment that;
- Results in an IQ of 70 or less (with a confidence level of not less than 95%);and,
- Results in significant deficits in adaptive functioning; and,
- Became apparent before he or she turned 18.

As the law has developed over the past decade we also know that ñmental impairmentòincludes a range of other impairments that do not satisfy the definitions of mental disorder or intellectual disability but nonetheless render a young person unfit to plead or to stand trial.

[3] United Nations Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007, entered into force 3 May 2008).

[4] Section 2 Mental Health (Compulsory Assessment and Treatment) Act 1992.

[5] Section 7 ID(CCR) Act.

Another significant group to emerge are those young people who are found fit to stand trial, but still have significant disabilities. This group make up one of the most challenging cohorts for the Court and other agencies involved. They make up a large portion of the recidivist offenders. Most also have other vulnerabilities which typically include care and protection status, dislocation from education, and abuse of substances.

Since the 2004 law change, I have heard many cases in the Youth Court where a young personôs fitness to stand trial has been raised. Very few have involved young people with a mental disorder. Only marginally more have had an intellectual disability. In fact the number of cases where a young person has had either a mental disorder or an intellectual disability is so small they could easily be counted on the fingers of both hands. By contrast, I have well and truly lost count of the number of severely impaired young people, whose profile did not tick the diagnostic boxes for mental disorder or an intellectual disability, but were still very impaired and in need of significant supports and services. Many have had neurodisabilities. Some were found fit, others were not. Whatever the outcome was in that respect, the problem has been the same in all cases; there was no access to funding, care or rehabilitative support to cater for their needs nor to address the primary underlying cause of their offending.

The barrier preventing most young people with neurodisabilities from being found intellectually disabled under the ID(CCR) Act, is the requirement to have an IQ of 70 or more. If a young person has an IQ even marginally over that threshold, they are not eligible for the supports or services provided for the intellectually disabled even if their adaptive functioning scores are very low.[6] A study involving 62 adults with FASD found that only 34% had an IQ score below 70 but 81% required a moderate to high level of care indicating severe deficits in adaptive skills. Other studies looking at the IQ and adaptive skills of individuals with FASD have also noted the gap between the two.

There is also the question as to whether immaturity in some young people might be regarded as a mental impairment for the purpose of fitness proceedings. There has been academic writing on the issue[7] but no case that has specifically dealt with it as such. However, it is in reality an underlying feature of many cases, particularly when fitness is in issue, and predominantly in those cases where other vulnerabilities are present.

Findings made in a recent study of young peoplesô fitness to stand trial in the New Zealand Youth Court[8] tend to bear out these issues and concerns. The study carried out in Auckland over the year from February 2012 to February 2013, involved a total of 366 young people aged between 12 and 17 years who were referred to the Regional Youth Forensic Service. Formal reports were requested in 119 cases. The findings included;

- Only a small number were opined unfit to stand trial (14) and the most common diagnosis amongst them was mental retardation (in two thirds of those cases).
- Comorbidity, substance abuse, dislocation from family and educational structures was common amongst youth referred to forensic services for assessment.
- Only one evaluee had a primary diagnosis of a psychotic condition. In that context the report refers to other studies[9] which have found that most juveniles found unfit did not have a mental illness and that mental retardation is an important factor in undermining competence to stand trial in youth.
- The population of youth referred for assessment regarding their competence to stand trial in Auckland NZ is predominantly male, of Maori or Pacific Island heritage, poorly engaged with education and accused with a broad range of offences. The factors that may undermine the trial competence of young people include developmental immaturity, which does not lend itself to either of the approaches available to the Court to deal with those determined to be unfit. This presents particular difficulties for assessors and the courts in responding appropriately to those youth whose inability to participate meaningfully in proceedings against them stems from developmental and cognitive immaturity.

Conclusion

Plato also said, ñScience is nothing but perceptionò and that ñNo law is mightier than understanding.ò

True understanding of behaviour that results from brain damage is now possible with the perception science provides. As law catches up with what science tells us about the connection between neurodisabilities and offending, greater justice for all concerned becomes possible.

Judge Tony Fitzgerald * sits in the District Court in Auckland, New Zealand

---

6 Clark and others, above n157, at e 22.

7 Sophie Klinger, *Youth Competence On Trial,* [2007] N.Z.L Review. 235 2007

8 Caleb Armstrong MBChB & Susan Hatters Friedman MD (2015): Fitness to Stand Trial in the New Zealand Youth Court; Characterising Court-Ordered Competence Assessments, Psychiatry, Psychology and Law, DOI: 10.1080/13218719.2015.1081314

9 Baerger, Griffin, Lyons & Simmons, (2003). Competency to stand trial in preadjudicated and petitioned juvenile defendants. *Journal of the American Academy of Psychiatry and Law, 31,* 314-320.

Young people suffering mental illness/substance abuse – What can be done?

Judge Jennifer Bowles*

Introduction

'What can you do? I am watching my son die before my eyes.' These were the desperate words spoken by the caring mother of Greg[1], a 17 year old appearing before me in the Criminal Division of the Children's Court of Victoria, Australia.

Greg had a significant dependence on cannabis and vanilla essence.[2] He had psychotic episodes and was ultimately diagnosed with paranoid schizophrenia. He had a very supportive family. He had never appeared before a court prior to turning 17. His offending initially consisted of repeated thefts of bottles of vanilla essence. The frequency of his offending resulted in him being remanded for short periods. On a number of occasions, he attended a 7 day residential detoxification facility but he could not remain for more than a couple of hours because of his dependency and mental health issues. He would relapse and be admitted to hospital due to alcohol toxicity or admitted to a psychiatric ward or remanded in custody for reoffending. Following an incident involving an assault and criminal damage an intervention order was taken out by the police and he was excluded from the family home. Greg's mother's words were poignant and confronting. Her son had become homeless. He was not engaging in treatment. He did not meet the criteria to be admitted as an involuntary patient under the *Mental Health Act 2014*. My only options were to bail him, sentence him or remand him in custody.

There are many young people appearing before the Children's Court like Greg with complex needs who are not engaging in treatment in the community.

Young people with cognitive disabilities, mental illness and drug/alcohol abuse are disproportionately represented in the criminal justice system. Different models have been adopted throughout the world to deal with young people who ôoffend.ô

In 2014 I travelled on a Churchill Fellowship to Sweden, England, Scotland and New Zealand to observe their legal systems and treatment options. Specifically, I was seeking to ascertain whether if the Court could mandate treatment for young people it could be effective.[3]

This paper provides an overview of the youth justice system in Victoria and compares the approaches of the countries I visited. I summarise the features of the vulnerable young people in the criminal justice system and the procedure adopted in Victoria for the most vulnerable, being those unfit to stand trial or who have a mental impairment. I conclude by summarising the recommendations I have made for the expansion of treatment options for those appearing before the Court with drug/alcohol/mental health issues who are not accessing treatment in the community.

Jurisdiction of the Children's Court of Victoria

Australiaôs population is approximately 24 million.[4] Victoria is the second most populous State or Territory with a population of almost $5.9 m.[5] In 2009-2010 there were 548,340 young people aged 10 ï 17 in Victoria.[6]

The Children's Court of Victoria (the Court) was established in 1906. The governing legislation is the *Children Youth and Families Act 2005* (CYFA). Children charged with criminal offences and aged between 10 and under 18 at the time of the alleged offence, have their matters heard in the Criminal Division of the Court. The Family Division of the Court deals with child protection proceedings concerning children under 17[7] and applications for intervention orders in which children are under 18 when the application is made.

[1] Name has been changed.

[2] Vanilla essence has a very high alcohol content. (approximately 35%).

[3] https://www.churchilltrust.com.au/media/fellows/Bowles_J_2014_Treatment_for_young_people_suffering_substance_abuse_and_mental_illness.pdf

[4] Australian Bureau of Statistics ôPopulation Clock.ô

[5] Australian Bureau of Statistics.

[6] Sentencing Children and Young People in Victoria, Sentencing Advisory Council (SAC) Report April 2012 page 12.

[7] If a child protection order is in force, it continues until just before the personôs 18th birthday.(s3(1) CYFA)

The age of criminal responsibility in Victoria is 10.[8] From 1 July 2005 the criminal jurisdiction of the Court was extended to include 17 year olds.[9] There is a rebuttable common law presumption that a child under 14 is incapable of committing a criminal offence (*doli incapax*).

The Court has jurisdiction to hear and determine all summary offences and summarily determine all indictable offences, except those in which a death results.[10] In rare cases, the Court may decline to hear a matter over which it would otherwise have jurisdiction if there are exceptional circumstances.[11] Regard would be had to such matters as the seriousness of the alleged offending, any criminal history and the maximum sentence the Court can impose.[12]

Sentencing in the Children's Court of Victoria

The sentencing principles of the Children's Court emphasise rehabilitation and wherever possible, for the young person to remain in the community.[13] They include the need to strengthen and preserve the relationship between the child and the child's family; the desirability of allowing the child to live at home and allowing education, training or employment to continue without interruption; the need to minimise the stigma to the child resulting from a court determination; the suitability of the sentence to the child; if appropriate, the need to ensure that the child is aware that he or she must bear a responsibility for any action by him or her against the law and if appropriate the need to protect the community, or any person, from the violent or other wrongful acts of the child. A sentence of detention may only be imposed if all other sentences are inappropriate. General deterrence is not relevant when sentencing children and young people.[14] Victoria continues to have the lowest detention rates of 10-17 year olds in Australia.[15]

The sentencing principles in the Court can be distinguished from those in the adult jurisdiction[16] in which whilst rehabilitation is relevant, regard must also be had to the principles of punishment, general and specific deterrence, denunciation of the conduct and protection of the community.[17]

Justice models

Traditionally the ówelfare modelô and the ójustice modelô have been the jurisprudential models underlying juvenile justice systems.[18]

'The welfare model is 'needs' based offering treatment and rehabilitation rather than punishment. It is based on the premise that offending is the product of influences external to the individual rather than free moral choice. Under the welfare model, young offenders are to be dealt with in an informal manner, away from the public eye and separate from adult offenders.'[19]

ó Under the justice model, young offenders are considered rational, responsible and accountable. As offending is the result of free choice and therefore personal responsibility, the correct legal response is the imposition of a sanction appropriate to the seriousness of the crime. This model is based on responding to past deeds, contrasted with the welfare model, which is future-oriented.'[20]

Legal systems throughout the world vary in their responses to children who óoffendô Different ages of criminal responsibility, for example, range from - India and Singapore (7 years), Scotland (8), UK (excluding Scotland), Australia and New Zealand (10), Canada, Ireland (12) and the Scandanavian countries (15).

It may have been thought that the age of criminal responsibility is an indicator as to which model has been adopted. However, the age of criminal responsibility is not necessarily an indicator as to when young people may be charged with a criminal offence and appear before a court. In Scotland, despite the age of criminal responsibility being so young, it is éextremely rareô[21] for a child under 16 to be prosecuted. It requires the instructions of the Lord Advocate. Rather than being prosecuted, offending by young people is generally dealt with in the Children's Hearing System. However upon turning 16 young people will be subject to the adult criminal justice system.

---

8 Section 344 CYFA.

9 All of the States and Territories have 10 as the age of criminal responsibility and the upper age for a person to be dealt with as a child or young person as 17, except for Queensland (16 years).

10 The offences are murder, attempted murder, manslaughter, child homicide, defensive homicide, arson causing death and culpable driving. (s.356 CYFA).

11 Section 356(3) CYFA. Such matters have included terrorism charges; three charges of importation of a commercial quantity of heroin; charges of intentionally causing serious injury and aggravated burglary when young person stabbed a publican 13 times causing life threatening injuries, he was on parole and had a significant criminal history. *Victoria Police v CB* [2010] V Ch 3 (Judge Grant)

12 Maximum sentences of detention: child under 15 ï one offence ï 1 year; more than one offence ï 2 years; child 15 and over ï 2 years; more than one offence ï 3 years.(s.410 ï 413 CYFA)

13 Section 362(1) CYFA

14 *CNK v The Queen* [2011] VSCA 228

15 SAC Report op cit, page 163 Figure 70. (116 detention beds).

16 *R v Evans* [2003] VSCA 223

17 Section 5(1) *Sentencing Act 1991 (Vic).*

18 The Australian Law Reform Commission ôhas suggested that a third model ï based on restorative justice principles ï is emerging in the area of juvenile justice.ôSAC Report op cit, page 23.

19 SAC Report op cit, page 22 (Freiberg, Fox and Hogan óSentencing Young Offenders Sentencing Research Paper No. 11 1988 [163]).

20 Ibid, [165]

21 Mr Boyd McAdam, National Children's Hearing Convenor 27 October 2014.

In New Zealand, if a young person aged 10 ï 13 commits an offence it is dealt with as a welfare concern in the Family Court. For those aged 14 ï 16, their cases are dealt with in the Youth Court unless their offending is so serious that it is transferred to the District or High Court. Family Group Conferences[22] (FGC) are conducted. Compliance with a FGC Plan may result in the matter not proceeding in the Youth Court or, if it does proceed, compliance may result in a discharge.

In Sweden, the police and public prosecutor may refer those young people over 15 and under 18 who may be involved in criminal activity to social services rather than have the charges proceed before the court.

The Sentencing Advisory Council (SAC) noted that in Victoria, ó*a large number of young people processed by police are not proceeded against in court, but are diverted from the criminal justice system via cautions or other diversionary measures …. 40.9% of all young people processed were not proceeded against in court.*ô[23]

ó*Fox and Freiberg describe the legislation (CYFA) as 'a compromise between these two models (welfare and justice)'.*ô[24]

ó*Freiberg has argued that this 'needs vs deeds' debate has become 'increasingly sterile' as courts face the enormous challenges presented by drug and alcohol use, poverty, mental illness and unemployment, requiring courts 'to not simply adjudicate a dispute between parties but to attempt to address the underlying problems.'*[25]

The complexities in Gregôs life included the challenges referred to by Freiberg. These complexities are not unique to Greg. Each year the Annual Report of the Youth Parole Board publishes details of the characteristics of the young people in Victoria under the age of 18 in detention (sentenced and on remand) on a certain date.

Characteristics	9/10/2013 [26]
Previous or current child protection order	**59%**
Victims of abuse/trauma or neglect	**60%**
Presented with mental health issues	**27%**
History of self harm or suicidal ideation	**26%**
Issues concerning intellectual functioning	**22%**
Registered with disability services	**11%**
History of drug and alcohol misuse	**89%**
Offended whilst under the influence of drugs and alcohol	**78%**
Were parents	**13%**
Previously suspended or expelled from school	**56%**

The statistics confirm the vulnerabilities of those in detention. The range of cognitive impairments and mental health disorders are extensive and include intellectual disability, acquired brain injury, foetal alcohol syndrome, neurological disorders, autism spectrum disorders, serious thought disorder, being psychotic, delusional and experiencing hallucinations. Studies in New South Wales have confirmed the over representation of intellectual disability and mental health disorders of young people in detention.

In ó*At-Risk Youth in Australian Schools and Promising Models of Intervention*'[27] Cumming, Strnadova and Dowse state

ó*..three per cent of the Australian population has an intellectual disability and by comparison, 17% of juveniles in detention in Australia have been found to have an IQ below 70, with this group also known to be at a significantly higher risk of recidivism than other juveniles*[28] *…. mental health disorder is also known to be over-represented among juveniles in detention compared with those in the community…. The majority (87%) of respondents in the 2009 Young People in Custody Health Survey conducted in NSW Australia were found to have at least one psychological disorder, with only 13% of the population having no psychological diagnosis present. Nearly three in four (73%) young people had two or more psychological disorders present. The two most common psychological disorders*

22 A FGC is ó*a mediated formal meeting between family members and other officials such as social workers and police in regards to the care and protection or criminal offending of a child or adolescent.*ôWikipedia

23 Pages 8 and 12 SAC Report op cit, In 2009/2010 ï 14556 young people processed, 2.7% of 10 to 17 year olds; 5957 not proceeded against in court.

24 SAC page 23 Fox and Freiberg Sentencing: State and Federal Law in Victoria (1999) 828.

25 SAC page 22 Freiberg Sentencing Young Offenders (Paper presented at the International Association of Youth and Family Judges and Magistrates xvi World congress Melbourne 28/10/2002 2-3.

26 134 males and 4 females

27 International Journal of Special Education Vol 29 No. 3, 2014 at page 2

28 Ibid at page 2 referring to Frize, et al (2008) *Journal of Intellectual Disability Research* 52(6), 510 ï 519.

were attention or behavioural disorders (70%) and substance use disorders (64%).[29]

Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (CMIA)

In the criminal justice context unfitness to be tried and mental impairment may need to be determined.

A new legislative regime commenced in Victoria from 31 October 2014 following a review by the Victorian Law Reform Commission (VLRC) of the operation of the CMIA 1997[30]. The Court continued to have the power to determine mental impairment and was given the power to determine the fitness of an accused to stand trial; except in the case of summary offences.[31]

A child is presumed to be fit to stand trial[32] and presumed not to have been suffering from a mental impairment.[33] Supervision Orders (custodial and non-custodial) may be made if a child is unfit to stand trial or the defence of mental impairment has been established.[34]

A child is unfit to stand trial for an indictable offence, if because the childôs mental processes are disordered or impaired, the child is or at some time during the hearing in the Court will be unable to understand the nature of the charge, or to enter a plea or to understand the nature of the hearing or to follow the course of the hearing or to understand the substantial effect of any evidence that may be given in support of the prosecution or to give instructions to his or her legal practitioner.[35] A child will not be unfit to stand trial only because of memory loss.[36] If the Court finds the child not fit to stand trial but determines that the child is likely to become fit within the next 6 months, the Court must adjourn the matter for the period the child is likely to be fit to stand trial.[37]

Since 31 October 2014 there have been three young people found unfit to stand trial and placed on non custodial supervision orders for 6 months. One of those orders has been extended for a further 4 months and one has been revoked and a 5 month custodial supervision order has been made. There are two pending matters in which the issue of fitness to stand trial is under consideration.

The defence of mental impairment is established for a child charged with an offence if, at the time of engaging in the conduct constituting the offence, s/he was suffering from a mental impairment that had the effect that s/he did not know the nature and quality of the conduct, or that the conduct was wrong, (that is, that s/he could not reason with a moderate degree of sense and composure about whether the conduct as perceived by reasonable people, was wrong).[38]

If the defence of mental impairment is established, the child must be found not guilty because of mental impairment.[39] If the child is found not guilty because of mental impairment of a summary offence, the court must discharge the child.[40] If the offence was an indictable offence determined summarily, the court must declare the child liable to supervision or release the child unconditionally.[41] Since the amendments, one young person has been found not guilty by reason of mental impairment and the charges were dismissed. There are a number of other matters pending.

The VLRC recommended that a specialist youth forensic facility be built for those young people on custodial supervision orders to receive treatment. To date, such a facility has not been built.

Current treatment system

Apart from the very limited situations in which compulsory treatment or containment may be ordered for children who meet the criteria prescribed in the *Disability Act 2006*, *Mental Health Act 2014, CYFA*[42] and the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (CMIA),* when a young person appears before the Court who is abusing substances or has mental health issues, there is a voluntary model of treatment.

If the young person has committed offences, the Court can require the young person to attend for counselling or treatment by requiring them to follow all lawful directions of Youth Justice or by including treatment/counselling conditions on a court order. However, subject to orders being breached and the young person being resentenced, it is ultimately up to them whether they attend.

The treatment and counselling conditions generally involve seeing a drug and alcohol counsellor or psychiatrist once per week for approximately one hour. For the troubled young people before the Court, who are often not living at home ó*attending once per week is a drop in the ocean … it isn't*

---

29 Ibid at page 2 referring to Indig, et al, 2009 *NSW Young People in Custody Health Survey: Full Report. Justice Health*

30 LRC Report June 2014. Prior to 31/10/2014 the Court could determine mental impairment but not fitness to plead. Instead a committal would be conducted and a jury in a higher court would be empanelled to determine the issue. Refer to *CL (a minor) v Tim Lee and Ors and the Children's Court of Victoria at Broadmeadows* [2010] VSC 517 (Lasry J ï upheld by the Court of Appeal [2011] VSCA 227

31 Magistrate Power discusses this issue ï www.childrenscourt.vic.gov.au Refer to Research Materials ï *Publication 'Children's Court Mental Impairment and Unfitness to be Tried Proceedings.' page 1 [C]*

32 s.38L(1) CMIA

33 s.38ZB(1) CMIA

34 A diagram which illustrates the CMIA procedure is located at page 195 of CMIA.

35 Section 38K(1) CMIA

36 Section 38K(2) CMIA

37 Section 38R(2) and 38Q(3)(b) CMIA

38 Section 38ZA (1) CMIA

39 Section 38ZA (2) CMIA

40 Section 5A (3) CMIA

41 Section 38ZD(1) CMIA

42 173(2)(b), 263(1)(e), 264(2), 267(2)(c) (20 beds child protection, maximum 21 days and extension of upto 21 days).

going to work.ô[43] Whilst there are very good services, most young people even with the best will in the world, have trouble turning up or remaining at a facility. In addition to neurological immaturity, there are many distractions which impact on them attending, including negative peer group influence, substance misuse, mental health issues and trauma. These factors militate against a young person making reasoned, rational decisions regarding treatment.

The most prevalent drugs used by young people in Australia and in the countries I visited were alcohol and cannabis. There is then a divergence with crystal methamphetamine (ice) being the next most prevalent drug in Australia and legal highs (synthetics or internet spice) in the countries I visited. The urgency of the problem is highlighted by the adverse health impacts substances have on young people. Using ice for example, depletes the dopamine in the brain and in long term use, this depletion results in a syndrome similar to Parkinsonôs disease. Further, early poly drug use including methamphetamine, increases the rate of psychosis 11 fold. *'So if you take a population of teenagers, those who don't use methamphetamine and those who do, and you follow them up over time, 11 times the number in the methamphetamine group will have had contact with psychiatric services with a diagnosis of a drug psychosis, a psychosis or schizophrenia.'*[44]

Proposed model

My view was that Greg required intensive treatment in a contained residential therapeutic facility. Following from my observations overseas, I recommended that residential therapeutic facilities be established and that the Court have the power to require young people who are not engaging in treatment in the community to be placed in a secure therapeutic residential facility to receive intensive support and treatment.

Whilst children and young people in England, Wales, Scotland and New Zealand may be contained and receive treatment in hospitals and/or secure homes,[45] Sweden has the most extensive model of compulsory youth care in the countries I visited. There are 24 closed and more open home sites. Orders are made by the Administrative Court or the District Court. There are 491 beds for those young people placed by child protection and 56 beds for those undergoing sentence.[46] One third go on to lead productive lives and one third have an improved quality of life.[47]

The staff ratios are high at the sites and include psychiatrists, psychologists, social workers, behavioural therapists and teachers. Each facility with young people at school age has a registered school on site. For those with drug/alcohol issues, detoxification can take place on site. A number of detailed assessments are conducted and reviewed. Individual treatment plans are devised.

As a result of my overseas observations, I have recommended that both Divisions of the Court be provided with the power to make Youth Therapeutic Orders (YTO) when there are serious drug/alcohol/mental health concerns which are not being addressed. Such orders would entail an initial period of containment in a secure residential therapeutic facility which could include detoxification. It is a 'step downô model which would include a transition as soon as possible to an open unit on site enabling continuity of staff working with the young people. There would be specialist, high quality clinical staff on site. Detailed assessments of the young people would be undertaken. There would be a registered school. Culturally appropriate facilities are required to redress the over representation of Aboriginal young people.[48] There would be an effective planned transition to the community in which appropriate accommodation and support would be provided. The essential element is that there must be a therapeutic environment which is homely and inviting. I was able to observe such settings in closed units in Sweden,[49] England[50] and Scotland[51] and in residential facilities which were not secure, in England[52] and New Zealand.[53]

---

43 Dr Sasha Hvidsten Psychiatrist, Huntercombe Hospital Stafford, England. 6 November 2014.

44 'Methamphetamine ï 'Ice' ô Psychiatric Perspectives' Dr Danny Sullivan, Assistant Clinical Director, Victorian Institute of Forensic Mental Health (Forensicare).10 October 2014 Magistrates' Court of Victoria Conference.

45 Secure homes - England and Wales ï 298 beds; Scotland ï 90 beds; New Zealand ï 58 beds (child protection only).

46 Her Honour Judge Egelin, Stockholm District Court, observed that such offences could include murder, manslaughter and rape.

47 Ola Karlsson Ruhmkorff Head of Business Intelligence National Board of Institutional Care, Sweden 14/10/2014.

48 Aboriginal children are 13 times more likely to be in detention and 16 times more likely to be in out of home care. Commission for Children and Young People Annual Report 2013-2014 pp 17 and 37.

49 Sundbo, Fagersta and Lovsta, Vagnharad.

50 Huntercombe Hospitals at Maidenhead and Stafford (eating disorder units).

51 The Good Shepherd, Bishopton, Glasgow.

52 Glebe House Cambridgeshire.

Critically there must be external scrutiny and oversight. The Mental Welfare Commission in Edinburgh, Scotland provided an excellent example of external scrutiny. In making the recommendations I have had regard to the human rights and freedoms of young people. The placement of a young person in a closed facility involves a restraint on a young person's liberty. There are fundamental human rights as detailed in the *UN Convention on the Rights of the Child* and *The Charter of Human Rights and Responsibilities Act 2006 (Vic).* Article 6 of the Convention provides for children to have the right to live a full life and for governments to ensure that children survive and develop healthily. Of particular significance is Article 33 which provides that governments should provide ways of protecting children from dangerous drugs. Article 36 provides that children should be protected from any activities which could harm their development. Section 25(3) of the Charter provides that a child charged with a criminal offence has the right to a procedure which takes account of his or her age and the desirability of promoting the child's rehabilitation.

Unlike orders placing young people in secure facilities overseas, the YTO would not be a sentencing order because once sentenced there is a risk that the environment will be punitive. Instead the young person could be bailed to the facility which may assist in providing motivation for them to address their complex issues. Progress reports would be provided to the Court. When sentencing, the Court would have regard to the extent of the young person's engagement in treatment. Improved rehabilitative prospects could result in the young person not being sentenced to detention. A young person would not however be penalised for not engaging. The YTO could also be made in the Family Division and after engaging in treatment, child protection may cease involvement or the young person may be placed with a lead tenant or in independent accommodation.

Conclusion

'A nation's greatness is measured by how it treats its weakest members'.[54] The most vulnerable children and young people in our communities are over represented in our criminal justice systems. Despite the different approaches adopted in the countries to which I have referred, rehabilitation remains a central theme and priority. There is a need for constant vigilance to ensure that our legal systems are responsive to and provide the optimal opportunity to assist the most vulnerable members of our community to lead productive and fulfilling lives.

Judge Jennifer Bowles* sits in the Children's Court in Victoria, Australia

[53] Odyssey Auckland (adult and youth residential), Odyssey Christchurch.

[54] Mahatma Gandhi

Mental health of imprisoned male offenders in Germany

Denis Köhler, Romina Müller & Hanna Heinzen

Hanna Heinzen and Denis Köhler

Romina Müller

Introduction

In German politics, society and everyday life common thinking, there seems to be a strong tendency to think in categories of ‘right’ and ‘wrong’ or ‘healthy’ and ‘sick’ Although the causes and origins of this tradition have not been empirically investigated yet, one could think of a number of advantages that may be connected to thinking in clear-cut categories. For example, in the political context dichotomous thinking might help secure the support of voters by making arguments seem less complicated. It can clearly be assumed that health insurance companies and the pharmaceutical industry strongly benefit from this simplified way of looking at offenders (mentally ill or healthy). For physicians looking at a person’s health in terms of ‘sick’ and ‘healthy’ may help to legitimate treatment approaches When discussing the problem of delinquency, categorizing delinquent people according to a normative approach into ‘sick’ or ‘healthy’ may also give some simple explanations for a complex phenomenon. However, this approach will always result in an oversimplification and make it impossible to illuminate the problem of criminality and its trajectories. For a more comprehensive understanding of the mental health of offenders, this article will give some brief insights into the German legal system and the definition of mental disorders according to the ICD-10. Moreover, empirical findings on mental health levels of detained young people and adolescents in Germany will be presented. Finally, the findings will be discussed critically.

German Juvenile Justice

German criminal law provides special procedures and sanctions for juvenile offenders, which are regulated in the Juvenile Court Act (JGG). According to § 1 para. 2 the JGG is applied when an offender is older than fourteen and younger than eighteen years of age when he committed the crime. Between the ages of eighteen and twenty a person counts as a young adult (“*Heranwachsende*”). At that age, whether the JGG is used or not is an individual decision of the court. The juvenile justice system is meant to be educational instead of punitive and aims primarily at reducing future crimes. The adult criminal law, however, focuses on punishing the offender. Educative and disciplinary interventions in the JGG come in the form of interventions, which are intended to have a positive educational effect. If those educative interventions are not sufficient and youth custody is not appropriate, a young adult can be treated with disciplinary interventions. Disciplinary interventions of the juvenile court constitute a warning, the imposition of conditions in detail - and in accordance with § 16 JGG--youth detention. If so-called ‘harmful tendencies’ (§17a para. 2 JGG) are suspected and/or if a juvenile has committed a serious crime and has been assessed as criminally responsible (§3JGG), a youth sentence can be imposed (with or without probation). The maximum length of a youth sentence in Germany is 10 years. If a juvenile offender is not held responsible for his actions due to a serious mental disorder (§§20, 21, 63, 64) and if he or she is expected to commit further crimes, he can be admitted for treatment in a forensic psychiatric hospital. Thus there are two different forms of closed institutions in the German justice system: juvenile detention (“arrest”) and juvenile prison.

Mental disorders according to the ICD-10 and methodological problems in the context of juvenile delinquency

Every known mental disorder is defined in the diagnostic manuals ICD-10 and the DSM5 according to certain symptoms. A mental disorder is present when a person presents a minimum number of symptoms from the respective list. Moreover, the offender needs to show a significant and clinically meaningful impairment in affective, cognitive and motivational functioning. In order to be diagnosed a person has to suffer or experience limitations in psychosocial functioning because of his symptoms. Hence, not only the presence of symptoms but also their effect on psychosocial functioning is required for a clinical diagnosis. In contrast to common belief, exclusively focusing on the presence of criteria and applying a cut-off would be an over-simplification. These are consensus decisions and therefore social structures that influence the development and range of mental disorders. For this reason, the symptoms of mental disorders vary widely, depending on the disorder and the circumstances as well as other factors. (because the various mental disorders give rise to a variable number of typical symptoms) and they have different cut-off values. Clinical symptoms may also be very heterogeneous. For example, they may refer to inner psychological aspects (e.g. time; feeling of sadness or suicidal thoughts) or to behaviour (e.g. criminal or aggressive behaviour). Most common symptoms are associated with behaviour, since behaviour can be observed more reliably.

Since many symptoms of mental disorders refer to behavior deviancies, criminal, deviant and aggressive behaviours often appear as indicators for mental disorders. Therefore, it does not seem surprising that offenders are often diagnosed with psychological stress and mental disorders (conduct disorder, ADHD), since the list of symptoms for these disorders include behaviour deviancies associated with delinquency. This kind of symptom-overlap is known as artificial co-morbidity. The tautological assumption that behavioural deviancies equal diagnostic symptoms of a disorder has to be considered since it may result in elevated prevalence of certain disorders in offender populations. We will elaborate on this problem in one of the following sections.

Psychological health of detained juveniles and adolescents in Germany

Since the introduction of the Juvenile Court Act over 50 years ago only one study has been published. Köhler et al., 2012a[1] examined the mental health of young adults accommodated in youth arrest. The lack of empirical studies in this area must be considered a (major) failure, since the effectiveness of educational and therapeutic sanctions of the juvenile justice system crucially depend on their fit to the clientele. Likewise, very few studies on the mental health of juvenile offenders in German prisons are available (cf. Köhler et al., 2012b[2]. The largest sample was examined by Köhler et al. (2009)[3]. This low number of studies published on this important issue in Germany is in strong contrast to the current international state of research.

When comparing the findings of studies from other countries, it becomes apparent that researchers have used different diagnostic procedures and methods as well as diagnostic classifications (e.g. point prevalence, Lifetime prevalence, six-month month prevalence or one year prevalence).

Therefore, the comparability of results is limited and only a brief overview is given in this section. In general, it is necessary to distinguish between psychological stress, which may lead to a range of subclinical symptoms and an actual mental disorder according to the diagnostic manuals. The latter requires a much more significant severity of symptoms that are present over a longer period of time and that result in decreased psychosocial functioning. However, it is crucial to mention that not every depressed mood or symptom associated with depression amounts to a diagnosis of clinical depression. Unfortunately, in some studies clinical diagnoses are not made according to these standards which results in very high prevalence rates of mental disorders.

Adolescent detainees often show a very impaired psychosocial development where many risk factors are present (see Köhler et al., 2012b)[4].

---

1 Köhler/Bauchowitz/Weber/Hinrichs, Die Psychische Gesundheit von Arrestanten. Praxis der Rechtspsychologie 2012a, 1, 90-112

2 Köhler/Bauchowitz/Müller/Hinrichs, Psychische Auffälligkeiten bei straffälligen jungen Menschen, 2012b, 387-406. In: DVJJ (Hrsg.). Achtung (für) Jugend!. Praxis und Perspektiven des Jugendkriminalrechts. Dokumentation des 28. Deutschen Jugendgerichtstages vom 11.-14. September 2010 in Münster. Mönchengladbach: Form Verlag Godesberg.

3 Köhler/Heinzen/Hinrichs/Huchzermeier, The prevalence of mental disorders in a German population of male incarcerated juvenile delinquents. International Journal of Offender Therapy and Comparative Criminology. 53(2) (2009), 211-227.

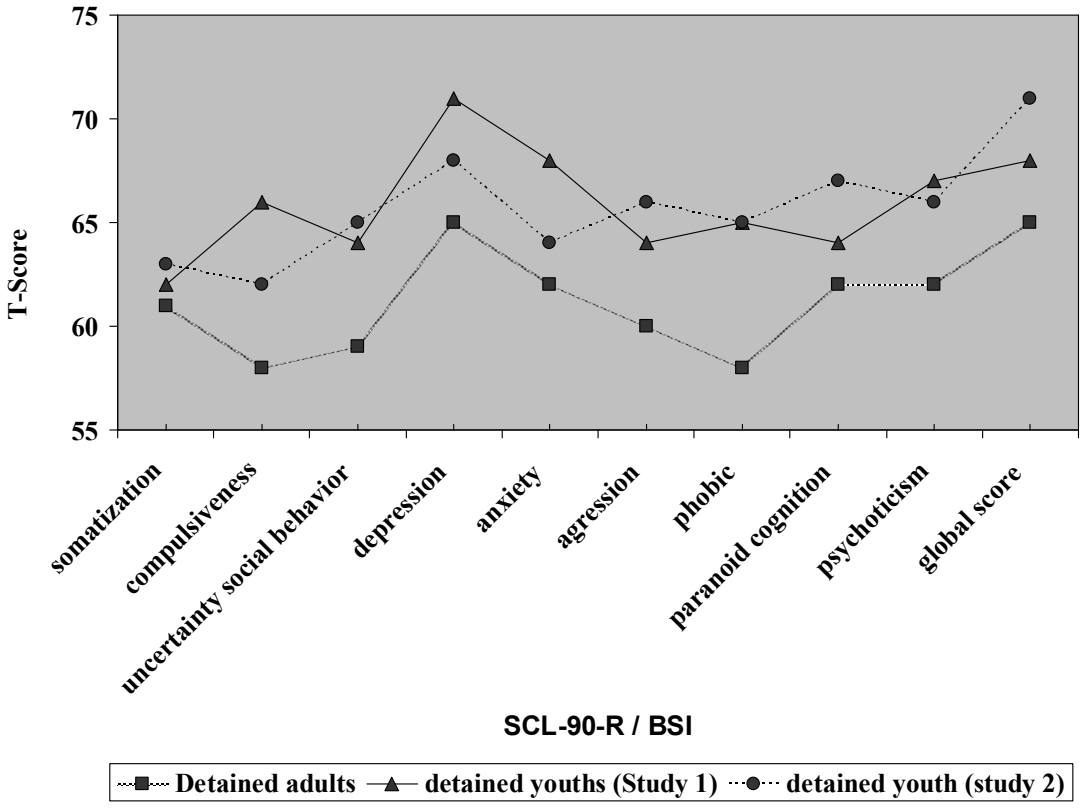
4 Köhler/Bauchowitz/Müller/Hinrichs (Fn. 2), Psychische Auffälligkeiten bei straffälligen jungen Menschen, 2012b, 387-406. In: DVJJ (Hrsg.). Achtung (für) Jugend!. Praxis und Perspektiven des Jugendkriminalrechts. Dokumentation des 28. Deutschen Jugendgerichtstages vom 11.-14. September 2010 in Münster. Mönchengladbach: Form Verlag Godesberg.

For this reason, these detainees often show significantly more mental disturbances. Moreover, being imprisoned is generally a stressful and mentally challenging situation where young offenders often show physical and psychological reactions. However not all of these individuals manifest a mental disorder.

Nevertheless, pedagogical and psychological treatment should be offered to young offenders. With respect to the legal protection of the rights of children and adolescents in Germany, it is irrelevant whether detainees have a mental disorder or if they suffer from psychological distress. In both cases, an intensive facilitation under preventive aspects is necessary. In figure 1 results from two studies in adolescent populations are shown in comparison to one study conducted in an adult population. It is evident that inmates of juvenile prisons show a higher level of psychological distress compared to the general population and to the adult offender population.

Fig 1 Current psychological stress of male inmates of juvenile prisons compared to adult detainees

SCL-90-R = Symptom Checklist 90 Revised, BSI = Brief Symptom Inventory; GSI = Global symptom severity index (see Köhler et al, 2012b).



Since imprisoned young offenders tend have problematic histories, it can be expected that detainees in juvenile detention centres carry significantly higher psychological burdens than juveniles from the community. Respectively, it can be assumed that these offenders may have a higher prevalence of mental disorders than adult convicts and young people from the general population. This hypothesis has been confirmed by studies investigating the population of imprisoned young offenders in Germany (see Köhler et al, 2009;. Köhler et al, 2012a / b)(*) International studies show high levels of drug misuse and addiction among inmates, which are far higher than those numbers found in the general population. We also find high occurrences of conduct disorder. Anxiety disorders and affective disorders, including depression, however occur significantly less. Prevalence rates have been described as up to 20%. ADHD also seems to appear rarer than conduct disorder. However, it is crucial to point out that the comparability of these results is limited due to methodological differences and differences in the selection of samples (e.g. open prisons or secure accommodation).

(*)Köhler/Heinzen/Hinrichs/Huchzermeier (Fn. 3), The prevalence of mental disorders in a German population of male incarcerated juvenile delinquents. International Journal of Offender Therapy and Comparative Criminology. 53(2) (2009), 211-227; Köhler/Bauchowitz/Weber/Hinrichs (Fn. 1), Die Psychische Gesundheit von Arrestanten. Praxis der Rechtspsychologie, 1 (2012a), 90-112; Köhler/Bauchowitz/Müller/Hinrichs (Fn. 2), Psychische Auffälligkeiten bei straffälligen jungen Menschen, 2012b, 387-406. In: DVJJ (Hrsg.). Achtung (für) Jugend!. Praxis und Perspektiven des Jugendkriminalrechts. Dokumentation des 28. Deutschen Jugendgerichtstages vom 11.-14. September 2010 in Münster. Mönchengladbach: Form Verlag Godesberg.

Table 1: Comparison of the prevalence rates of psychological stress and mental disorders in the general population, with prisoners under ‘arrest’ and detainees of juvenile prisons (see Köhler & Bauchowitz, 2012) (*)

	Köhler et al. (2012b)		(Köhler et al., 2012a)
Mental disorders	**Prevalence: general population**	**Prevalence: incarcerated youths**	**Arrested youths**
Anxiety	0,5-10%	21-24%	Emotional symptoms about. 12%
Affective disorders	3-18%	3-23%	
ADHD	3-7%	1-42%	27-41%
Conduct disorder	3-7%	41-93%	About 41%
Substances consumed	0,8-20%	41-86%	0-51% (depends on substance and pattern of consumption)
Any mental disorder	12-49%	27-98%	about 32%-> 60% (global psychological stress)

Note: For clarity, the different prevalence data (point, six-month, twelve-month and lifetime prevalence) are not listed separately; the exact details of the original contributions can be taken from Köhler et al.

(*) Köhler/Bauchowitz, Was wissen Psychologen und Sozialarbeiter eigentlich über Arrestanten? Zur psychischen Gesundheit, Diagnostik und Behandlung von Arrestanten. Zeitschrift für Jugendkriminalrecht und Jugendhilfe, 3 (2012), 272-280.

Conclusion

In spite of the designated diagnostic, methodological and statistical problems that arise when comparing the available studies on mental health of imprisoned young offenders it becomes apparent that this population is affected by diverse and significant psychological problems in addition to their problematic psychosocial development. However, this does not appear to be a particularly new or significant finding. A simplified and maybe even provocative way of summarizing this would be to conclude that many young offenders habitually and frequently misuse drugs, behave abnormally and break the rules. But who did not already know that?

Depression, anxiety or other disorders occur much less frequently. Considering criminal behaviour as a criterion would allow us to diagnose a disorder more easily. This is exactly what happens when diagnosing conduct disorder where oppositional, defiant and criminal/norm breaking behaviour is included as a criterion. In

these cases, we are pathologizing crime. The question that emerges is whether we want that in our in society? That does not imply that offences and the consequences for the victim should be underrated or that the mental health of young offenders should not be considered an important issue. It does imply however that if we apply a tautological methodology when diagnosing young offenders, high prevalence rates of mental disorder is not a valid finding. The question we need to ask is whether this approach can be considered legally, educational or psychologically sensible. It appears to be helpful for our practical work with imprisoned juvenile offenders to assign a malfunction but the described procedures lead to an oversimplification that is often accompanied by the impression that youth criminality is getting worse and that delinquent behaviour in juveniles is always a result of a mental disorder.

Incarcerated juvenile offenders show high prevalence rates of mental disorders. Furthermore, they show many signs of high psychosocial stress and often profound psychosocial problems preceded by a problematic biographical development and background. Therefore, it is necessary to offer adequate resources for psychological, therapeutic and educational programs to support these offenders. For this, staff have to be educated and trained accordingly, including psychologists, psychiatrists, teachers etc. The goal would be a positive and caring approach to young offenders. It is not enough to amend the law if there is no follow through. If we want young detainees to be reintegrated into society and participate in social life after having served their sentence, substantial steps have to be taken to implement the written word into the prison environment This approach would require monetary and political resources. Its positive effects can, however, only be enjoyed in the long run (improvement of mental health, lower relapse rates, etc.). In the context of the current political environment in Germany, however, the strategic focus seems to be on immediate and short-term solutions. This approach appears easier, but it is certainly not scientifically reasonable.

Professor Dr Denis Köhler, Professor of Psychology, University of applied Sciences, Düsseldorf

Romina Müller, BSc., University of Applied Sciences Düsseldorf

Dr Hanna Kroon-Heinzen, Phd., MSc. Psychology, Center of Integrative Psychiatry, University of Kiel

References

Köhler, D., Heinzen, H., Hinrichs, G. & Huchzermeier, C. (2009). The prevalence of mental disorders in a German population of male incarcerated juvenile delinquents. International Journal of Offender Therapy and Comparative Criminology. 53(2), 211-227.

Köhler, D. & Bauchowitz, M. (2012). Was wissen Psychologen und Sozialarbeiter eigentlich über Arrestanten? Zur psychischen Gesundheit, Diagnostik und Behandlung von Arrestanten. Zeitschrift für Jugendkriminalrecht und Jugendhilfe, 3, 272-280.

Köhler, D., Bauchowitz, M., Weber, K. & Hinrichs, G. (2012a). Die Psychische Gesundheit von Arrestanten. Praxis der Rechtspsychologie, 1, 90-112.

Köhler, D., Bauchowitz, M., Müller, S. & Hinrichs, G. (2012b). Psychische Auffälligkeiten bei straffälligen jungen Menschen. 387-406. In: DVJJ (Hrsg.). Achtung (für) Jugend!. Praxis und Perspektiven des Jugendkriminalrechts. Dokumentation des 28. Deutschen Jugendgerichtstages vom 11.-14. September 2010 in Münster. Mönchengladbach: Form Verlag Godesberg.

Young Offenders and Mental Health-- background and results from recent research

Dr Catherine Laurier

Young offenders form a group that is particularly at risk of suffering from a range of developmental disorders, including mental health problems. We also know that young offenders are not immune to victimisation. Indeed, these young people are both perpetrators and victims of the violence for which they are blamed[1]. They are more frequent victims of violence than other teenagers and young adults[2]. The correlation between delinquency and victimisation is more or less directð the more delinquent behaviour young people adopt, the more likely they are to become victims of violence[3]. As a result of their antisocial behaviour (being restricted by the law and with problems at school, dropping out and difficulty in finding a job) young offenders may face adverse consequences for themselves and their place in society and also for their physical and mental development.

More specifically, being a victim of violence in adolescence significantly increases the risk of suffering depression or anxiety. These internal disorders are sometimes difficult to spot because they show themselves in less obvious ways than the externalised behaviour which brings young people within the justice system. Yet young people with external problems are seven times more at risk of also suffering from an internal disorder.

Sadly, these young people all too often come from environments where violence is frequent and life is stressful. It is known that living in a stressful environment increases the likelihood of both internal and external disorders. As a result of their antisocial behaviour, young offenders are less able to avoid being subjected to violence and its psychological consequences. Nevertheless, the majority of inmates in young offender institutions have never had a psychiatric diagnosis. Furthermore, when they do present problems there is no systematic referral to mental health services. In a study where 30% of young offender inmates showed at least one mental health problem, only 5% had had such a referral[4]. In another study[5], only 16% of those assessed as needing mental health services had received them within their first six months in detention.

Several studies bring out the correlation between serious behavioural problems and mental disorders. Depending on the assessment methods used in the studies, between 20% and 70% of inmates of young offender institutions presented at least one mental health disorder although they may not have received a professional diagnosis[6]. Post-traumatic stress appeared to be of particular concern, affecting 11.2% of young offender inmates[7].

Against this background, we undertook a study[8] comparing young offenders involved in street-gangs with those who were not. The data collected in the course of this research allow us to throw light on the prevalence of mental health problems among young offenders in custody in Quebec and to understand the links to these problems better. For the purpose of this article, we will ignore the distinction between members and non-members of street-gangs and focus on mental health issues.

[1] Burton, Foy, Bwanausi, Johnson, & Moore (1994); Taylor, Freng, Esbensen, & Peterson (2008).

[2] Chen (2009)

[3] ibid

[4] McReynolds et al. (2008)

[5] Teplin, Abram, McClelland, Washburn, & Pikus (2005)

[6] Cocozza & Skowyra (2000); McReynolds et al. (2008); Teplin, Abram, McClelland, Dulcan, & Mericle (2002); Teplin et al. (2005); Townsend et al. (2010)

[7] Vermeiren, Jespers, & Moffit (2006)

[8] *Évaluer pour prévenir : les caractéristiques de la personnalité et les risques pris par les jeunes contrevenants associés aux gangs de rue*-- Laurier, Guay, Lafortune, & Toupin (2015).

Methodology

Participants

The 212 participants in this study were recruited from two pools of offenders under the responsibility of the Directorate-General of Correction Services (DGCS) and Quebec Youth Centres[9]. To take part in the research, the teenagers and young adultsð aged between 14 and 25 at the time of recruitmentð had to be under the care of the Youth Centres or the Correctional Services of Quebec.

Conduct of the research

The study was part of a project[10] which collected data over the period from June 2011 to December 2013. The protocol required two interviews with an average length of two hours. Questionnaires were administered using IT support to minimise the risk of data transcription errors. For participants in custody or detention, the two interviews were held either in the office for rehabilitation or the detention centre ; for those in the community they were held in the case-workersô office. All participants (or a parent in the case of a minor) signed a form of consent and they received a payment of Can$ 30 for each interview.

Instruments

We used self-completion questionnaires in structured interviews. The main socio-demographic data--age, place of residence, ethnic origin of the participant and his parents, academic attainment, etc--were collected in a questionnaire derived from those used in surveys by Health Quebec.

Mental health disorders were assessed with the help of the Massachussetts Youth Screening Questionnaire (MAYSI-2)[11]. It consists of a self-completion questionnaire containing 52 items used specifically with young offenders in more than 2,000 sites in 47 US states. MAYSI-2 contains scales for the following topics : use of alcohol and drugs ; anger / irritability ; depression / anxiety ; somatic disorders[12] ; suicidal thoughts ; thinking disorders ; and traumatic experiences. On each scale, participants could be classified as *normal* , *at risk* or *in danger* . The *danger* zone corresponds to the 10% of young offenders with the most disturbed scores on the scale while the *at risk* zone covers the next 30%. A French version which has been validated by a Swiss team was used in a form suitable for Quebec.

The Mini International Neuropsychiatric Interview (MINI) also allows mental health disorders to be assessed. It consists of a structured interview which aims to identify psychiatric disorders according to the diagnostic criteria of the DSM-IV-TR[13]. This diagnostic protocol has the merit of having been used in many studies and the French version was validated several years ago[14]. Some regrouping of headings was made for the analysis in the present study, which considered number of diagnoses, indication of a mood disorder, of an anxiety disorder or post-traumatic stress. It is important to note that in the present study we prefer to talk of diagnostic indicators, rather than diagnoses, because the assessmentð although rigorousð has not been made by a mental health professional, but rather by researchers trained in a psychosocial discipline (criminology or psychology).

Analysis

This article presents only statistics on the prevalence of mental health problems detected by MAYSI-2 or identified with the help of MINI. In order to assess the factors that contribute to an indication of one or more mental health disorders, we undertook logistic regression taking the presence or absence of an indicator as the dependent variable. Statistical analysis was undertaken with the help of SPSS 21.0.

Results

The results obtained from MINI on mental health revealed that half (49.5%) the young offenders exhibited diagnostic indicators for at least one psychiatric disorder in the anxiety or mood category. In detail, 18.2% met the criteria for a major episode of depression and 22.5% for generalised anxiety. A quarter of participants (25.7%) were dependent on alcohol, 55.6% met the criteria for dependence on one or more drugs, while 27.7% showed indications of post-traumatic stress disorder. A post-traumatic stress disorder arises when, following an extremely traumatic event in which an individualõs life has been in danger or they feared for their life or that of someone close to them, reverberations appear in the individualõs thoughts and affect his or her general ability to function[15].

---

9 Direction générale des services correctionnels (DGSC). Centres jeunesse du Québec. More specifically, the offenders under the care of DGCS were recruited from two places of detention (Saint-Jérôme and Montréal) ; while the four Youth Centres involved were Centre jeunesse de Montréal ï Institut universitaire (CJM-IU), Centre jeunesse de Laval (CJL), Centre jeunesse des Laurentides (CJ Laurentides) et Centres jeunesse de Lanaudière (CJ Lanaudière).

10 The project was approved by the Research Ethics Committees of: Centre jeunesse de Montréal--Institut universitaire (CJM-IU), du Centre jeunesse de Québec ï Institut universitaire (CJQ-IU) et de la Faculté des arts et des sciences de lõUniversité de Montréal.

11 Grisso, Barnum, Fletcher, Cauffman, & Peuschold (2001)

12 A mental disorder characterized by physical symptoms that suggest physical illness or injury--Editor

13 Association (2000)

14 Sheehan et al. (1998)

15 See DSM-IV-TR for the specific diagnostic criteria used in this study.

The results from MAYSI-2 were similar, even though they are not based on diagnostic criteria like MINI but rather on the behaviour and attitudes that participants reveal. The highest proportion of *at risk* or *danger* (58.3%) scores occurred under the alcohol / drug heading. For depression / anxiety 30.3% of the young people were *at risk* and 9.0% fell into the *danger* zone. Anger / irritability also painted a disturbing picture. Only half (51.9%) put themselves in the *normal* zone, while 7.6% were in the *danger* zone.

To understand the factors associated with the presence of diagnostic indicators of mental disorder, we undertook logistic regression using other characteristics assessed in the study[16]. These analyses suggested that emotional and sexual abuse experienced during childhood of the kind revealed by these young offenders were predictive of mental health disorders. Moreover, anxiety as a personality trait was a strong predictor of mental health problems consistent with the main mental health disorders found in this study in the anxiety grouping.

In order to improve our understanding of the effect a traumatic event can have later on, we looked at how young offenders who had been exposed to a trauma differed in terms of their mental health from those who had not. It turned out that, according to MINI, 56.5% of young offenders who reported exposure to a traumatic event presented some diagnostic indicators for at least one anxiety or mood disorder. Moreover 25% of young offenders reporting trauma presented a suicide risk, compared to 10% of those who had not had such an experience. These figures demonstrate that young offenders who have experienced a traumatic event present significantly more mental disorders than those who have not.

Discussion

This study of the psychological impact of violence experienced by young offenders identifies important aspects that need to be considered if these young people are to be treated effectively in a way that recognises the reality of their situation. A deeper understanding and focus on mental disorders and the potentially harmful effects of traumatic events on young offenders will lead to changes in the way they are handled. A better understanding of what young people experience, either in their childhood or during their period of delinquency, can only improve our treatment of them.

Currently, the main rehabilitation programmes for young offenders in Quebec concentrate on reducing, and then stopping, delinquent behaviour by developing a range of social skills (anger and stress management, developing empathy and moral judgement, etc). The results of this research highlight some aspects that should now be included in the process. Thus, as a general rule, young offendersô mental health problems should be detected and treated early (especially in members of street-gangs) in parallel with existing efforts to rehabilitate and reintegrate them socially. This would help reduce the risks they pose both to themselves and to the public at large. Taking account of exposure to trauma, indeed identifying the existence of post-traumatic stress, can greatly improve treatment, because the factors that may influence its effectiveness (specifically, receptiveness) are then properly taken into account. Programmes that bring together treatment of delinquency (rehabilitation and social reintegration) with the treatment of developmental problems and mental health disorders lead to a more thorough-going change in the young person once he has completed the programme and can therefore significantly reduce the risk of re-offending.

Although great care was taken at each stage of the project, a few methodological limitations should be mentioned. One is to do with the nature of the sample. As it was mainly drawn from young males in custody or detention, care is needed in generalising the results to all young offenders in Quebec. The results apply to young offenders who have received the most severe, restrictive sentences. A second limitation, connected to the first, concerns the measurement of delinquency through self-reporting within a population under detention. Because the aim was to assess delinquent behaviour during the twelve months prior to the study (or the twelve months prior to custody or detention in the case of detainees) an especial effort of recall was required from the participants and that could affect the data obtained.

Need for further research

More work should be done on the prevalence of mental disorders among young offenders, both to see how disorders develop and also to get a better understanding of what brings them on. Research of this kind would enable better strategies to be developed for rehabilitating and reintegrating young offenders. Work is also needed to establish a more systematic approach to detecting young offendersômental disorders. As this research has demonstrated, young offenders are particularly vulnerable to mental illness, but at present there are too few attempts to develop diagnosis and treatment tailored to their specific mental health needs.

Catherine Laurier has a Ph.D in psychology and is a researcher at the Centre de recherche Jeunes en difficulté du Centre-Sud-de-l'Île-de-Montréal (CIUSSS) and has been an Associate Professor at the School of Criminology at the University of Montreal since 2009.

[16] Laurier et al. (2015)

References

Abram, K. M., Teplin, L. A., Charles, D. R., Longworth, S. L., McClelland, G. M., & Dulcan, M. K. (2004). Posttraumatic Stress Disorder and Trauma in Youth in Juvenile Detention. *Archives of General Psychiatry, 61*, 403-410.

Association, A. P. (2000). *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR)*.

Burton, D., Foy, D., Bwanausi, C., Johnson, J., & Moore, L. (1994). The relationship between traumatic exposure, family dysfunction, and post-traumatic stress symptoms in male juvenile offenders. *Journal of Traumatic Stress, 7*(1), 83-93.

Chen, X. (2009). The Link Between Juvenile Offending and Victimization. *Youth Violence & Juvenile Justice, 7*(2), 119-135.

Cocozza, J. J., & Skowyra, K. R. (2000). Youth with Mental Health Disorders: Issues and Emerging Responses. *Juvenile Justice, 7*(1), 3-15.

Grisso, T., Barnum, R., Fletcher, K. E., Cauffman, E., & Peuschold, D. (2001). Massachusetts Youth Screening Instrument for Mental Health Needs of Juvenile Justice Youths. *Journal of the American Academy of Child & Adolescent Psychiatry, 40*(5), 541-548.

Laurier, C., Guay, J. P., Lafortune, D., & Toupin, J. (2015). Évaluer pour prévenir: les caractéristiques de la personnalité et les risques pris par les jeunes contrevenants associés aux gangs de rue. Fonds de recherche Société et Culture Québec.

McReynolds, L. S., Wasserman, G. A., DeComo, R. E., John, R., Keating, J. M., & Nolen, S. (2008). Psychiatric Disorder in a Juvenile Assessment Center. *Crime & Delinquency, 54*(2), 313-334.

Sheehan, D. V., Lecrubier, Y., Sheehan, H. K., Amorim, P., Janavs, J., Weiller, E., Dunbar GC. (1998). The Mini-International Neuropsychiatric Interview (M.I.N.I.): The development and validation of a structured diagnostic psychiatric interview for DSM-IV and ICD-10. *Journal of Clinical Psychiatry, 59*(20), 22-33.

Taylor, T. J., Freng, A., Esbensen, F. A., & Peterson, D. (2008). Youth gang membership and serious violent victimization: the importance of lifestyles and routine activities. *Journal of Interpersonal Violence, 23*(10), 1441-1464. doi: 10.1177/0886260508314306

Teplin, L. A., Abram, K. M., McClelland, G. M., Dulcan, M. K., & Mericle, A. A. (2002). Psychiatric Disorders in Youth in Juvenile Detention. *Archives of General Psychiatry, 59*(12), 1133-1143.

Teplin, L. A., Abram, K. M., McClelland, G. M., Washburn, J. J., & Pikus, A. K. (2005). Detecting mental disorder in juvenile detainees: who receives services. *American Journal of Public Health, 95*(10), 1773-1780. doi: 10.2105/ajph.2005.067819

Townsend, E., Walker, D. M., Sargeant, S., Vostanis, P., Hawton, K., Stocker, O., & Sithole, J. (2010). Systematic review and meta-analysis of interventions relevant for young offenders with mood disorders, anxiety disorders, or self-harm. *Journal of Adolescence, 33*(1), 9-20.

Vermeiren, R., Jespers, I., & Moffit, T. (2006). Mental Health Problems in Juvenile Justice Populations. *Child & Adolescent Psychiatric Clinics of North America, 15*(2), 333-351.

Access to justice "Rights of children hospitalised for mental health reasons."

Romina Tanus

In the Argentinian Republic, jurisprudence and Law 26.657 on Mental Health have raised awareness of certain problems related to the **access to justice** of girls, boys and adolescents (hereafter referred to as children) hospitalised for mental health reasons.

This article aims to provide some insight into the matter based on cases highlighted by the Public Ministry of Defence-General Defender´s Office of the Argentinian Republic in its publication ñAccess to Justice of girls, boys and adolescents hospitalized for mental health problems and addictionsò, 2012-2014[1].

For that I will make reference to certain issues of special interest considered by national jurisprudence and developed by the study mentioned above, namely:

a. Admission conditions and their judicial oversight;
b. The consent of thegchildren;
c. The Defender´s performance and the process of discharge;
d. Referrals to health centres;
e. Discharging children and social issues.

a) **Admission conditions** and their judicial oversight.

Hospitalisation is considered to be a restrictive therapeutic resource and will only take place when it provides greater therapeutic benefits than family, community and social interventions would.

Hospitalization should:

- Maintain bonds, contacts and communications of the persons committed
- Be as short as possible bearing in mind interdisciplinary therapeutic criteria
- Be based on a multidisciplinary diagnosis
- Have the informed consent of the patient or of her/his representatives when applicable
- Be an exceptional measure where there is certain and imminent risk to the patient or others.

The **Lawyers' Unit for Minors** intervenes in hospitalisations that have occurred since 1 June 2012 and takes over the defence of a child if a private lawyer has not been appointed.

In addition, the Lawyersô Unit for minors has applied for the rejection of hospitalisations in some cases where children did not need mental health treatment but needed a quick resolution of a social or housing problem. Such petitions were favourably received by the courts, which also highlighted the need for such oversight not only when hospitalization (committal) is ordered for a mental health case, but in other types of cases where a child may be removed from its family.

b) The **consent** of the girls, boys and adolescents**:**

Under Law 26.657 hospitalization of children does not require their consent, because it is regarded as involuntary (compulsory). However, it is always important to consider the childôs view. The article analysed emphasises that:

ñé *consent must be granted by the child according to paragraph 26.061, article 26, of Law 26.657, but in any case hospitalization will be deemed involuntary so that all the rights of the child are guaranteed."*[2]

Even when the children have given their consent it is still deemed ñinvoluntaryò so that periodical reviews and medical examinations are also guaranteed.

Bearing in mind the progressive autonomy and physical, mental and emotional development that a child acquires over time, decisions concerning their consent may change greatly.

Finally, in addition to their consent, their clinical file should also contain their parentsô or guardian´s opinion. From this we may deduce that childrenôs and adolescentsô consent does not comply with reality, but it helps with their history and is recorded in their treatment.

[1] Source: Publication ñAccess to justice of boys, girls and adolescents hospitalized for mental health or adictionsò, Public Ministry of Defense, General Defenderôs Office, Buenos Aires, 2015

[2] Acceso a la Justicia de Niños, Niñas y Adolescentes internados por Salud Mental o Adiccionesò, Ministerio Público de la Defensa, Buenos Aires, 2015, página 99

c) The **Defender´s** performance and the process of discharge**:**

The paper we are analyising makes reference to the role of the defender in hospitalizations which are **not** judicially validated

It should be emphasised that in the case of minors the intervention of the defender begins when the hospitalization starts, whether or not it has been consented to by the young person.

Where there has been no judicial validation and given that the process of discharge of hospitalisation may take a long time, the intervention of the defender is of vital importance and continues until discharge is granted.

National Legislation on Mental Health foresees that, once an involuntary hospitalization has been decided upon, it is within the power of the judge to authorize it if the conditions and legal requirements are met, or, if they are not, to refuse it and discharge the young person in the shortest time possible. The oversight envisaged by this law must be regular and hospitalization may be terminated at any time if it becomes no longer necessary.

From the work analyzed it is clear that the health team taking part in the process is the one that grants the authorization for the hospitalization and then submits this decision to immediate judicial overview for the purpose of evaluation.

In the face of an involuntary hospitalization which lacks the legal requirements a jurisdictional act of non-validation must follow. The Lawyers Unit for Minors and other institutions cooperate to achieve a fast release in the best possible conditions.

d) **Referrals** to health centres**:**

Although there is not an exact statement in the National Law on Mental Health on referrals to health centres, the compendium analyzed states that the context of articles 7, 21 ap. C, 24 and 30 from Law 26.657, and principle 9.1 of UN principles for the protection of the mentally ill and for improving mental health care[3], imply that judges have a duty to ensure that decisions comply with legal requirements *and* they also have to validate hospitalization in a specific institution where treatment is to be given.

Thus, a judge should oppose any committal to an institution that may be unsuitable in whatever way for the treatment of a child including the place chosen not being within the judge´s jurisdiction.

e) **Discharging** children and social issues**:**

A very different subject is the one that involves children that when hospitalized did not come from conventional homes but from establishments that take care of them for different reasons (family abandonment, family troubles, etc.). This makes discharge a difficult matter.

The article in the study mentions that frequently the establishments from which these children came refuse to have them back using several excuses that subtly stigmatize them.

It may happen that the children do not want to go back to those establishments or that returning to them may lead to negative outcomes, so each case has to be evaluated on its own merits.

For an institution that denies re-admission of a child, there is jurisprudence indicating that measures must be taken, including extra-judicial measures and keeping the child's place available in the institution until final discharge.

However, refusing to have children back may also be to avoid prolonging hospitalisation when the need for it has passed.

The desire to increase the rights of children in situations of special vulnerability regarding their health is a big step forward.

Romina Tanus is a lawyer specialising in juvenile justice in the Province of Buenos Aires, Argentina

[3] http://www.un.org/documents/ga/res/46/a46r119.htm

Do children 'own' the right to die?

Professor Charlotte Phillips

If the right to die is an inviolable human right, does it necessarily – automatically, even – follow that children 'own' this right?

Introduction

In June 2015, the Dutch Association of Paediatrics expressed itself in favour of a rather controversial change in the law. According to the Association, children who are terminally ill and suffer unbearably should be accorded the right to die. To date, Belgium is the only country in the world where a child, unhampered by age restrictions - in exceptional situations and under very strict conditions ï can be allowed the option of active life-ending treatment. In this article the right to die will be discussed from a children's rights perspective.

1. Right to life

The right to life is a moral principle universally endorsed by humankind. It is the most important and fundamental human right incorporated in many a declaration, convention and covenant; to name but one: the Universal Declaration of Human Rights, which provides in article 3 that every human being has the right to life. According to the Human Rights Committee, derogation from this right is not permitted under any circumstances. Furthermore, the right to life should not be interpreted restrictively and requires States to take positive measures, for instance with regard to the reduction of child mortality, malnutrition and epidemics. In addition, States should refrain from acts of war and (mass) violence or other use of force which leads to the loss of human lives.[1]

Although the Declaration of Human Rights applies to all humans - adults and children - it has long been recognised that children are particularly vulnerable and need special protection in certain circumstances; this conception has led to the development of a range of separate treaties specifically aimed at the rights of children.[2] The UN Convention on the Rights of the Child (CRC) ï which has been ratified by all nations apart from the United States of America ï provides in article 6 that every child has the inherent right to life and that State Parties are obliged to ensure, to the maximum extent possible, the survival and development of children. Other, regional, documents relating to children's rights, such as the African Charter on the Rights and Welfare of the Child, contain similar provisions. The right to life cannot be seen in isolation from other rights; to simply keep a child alive is not only insufficient, but also morally repugnant.

Children have the right to physical and intellectual development, adequate healthcare, education and to special protection. Children also have the right to express their own opinions about matters which affect them directly and their views should be given due weight in accordance with the age and maturity of the child in question.[3] Despite the fact that the responsibility for children ultimately lies with adults, we cannot and should not ignore the fact that children are ï depending on their capability and skills ï quite capable of forming their own ideas with regard to what is in their best interests. Which brings me to the following question: what if a child expresses a wish to die? With regard to children's right to life, the moral correctness or the validity of this right is indisputable; however, does this extend to the right to die?

2. Right to die

The paediatrician, children's advocate and author Janusz Korczak (1878 ï 1942) was a great believer in child participation. He went as far as creating a Children's Republic in the orphanage he ran in the ghetto of Warsaw during World War II, consisting of a Children's Court, a Children's Parliament and a special orphanage newspaper.[4] Korczak formulated numerous children's rights, including the right of the child to die. This concept was born out of the idea that adults may be so focussed on the child staying alive - *coûte que coûte* - that their fear of losing that child effectively

[1] Human Rights Committee, General Comment no. 6 (1982), HRI/GEN/1/Rev.9 (Vol. I).

[2] *Cf.* the Janusz Korczak's Declaration of Children's Rights, one of the first unofficial codifications of children's rights, the 1924 Geneva Declaration of the Rights of the Child, the 1959 UN Declaration of the Rights of the Child and the 1989 UN Convention on the Rights of the Child.

[3] Article 12 Convention on the Rights of the Child.

[4] G. Eichsteller, *Janusz Korczak – His Legacy and its Relevance for Children's Rights Today*, International Journal of Children's Rights 17 (2009), p. 382 ï 383.

denies the child a worthy life. Although Korczak did not actively endorse childhood suicide, he was of the opinion that a childôs right to a self-determined life may include death. It was his belief that when a child is deprived of the right to die, he is essentially deprived of the right to control his own life.[5]

In most countries, the right to die is not recognised in that suicide is considered to be unethical and euthanasia is illegal, as is assisting somebody to take his own life. There are many definitions of the term euthanasia in use ï from ómercy killingô to the ôact of killing someone painlesslyô ï but in legal terms it is best defined as: intentionally terminating life by someone other than the person concerned, at the expressed request of the latter.[6]

In April 2002, the Netherlands became the first country to legalise euthanasia,[7] followed by Belgium in that same year.[8]

The Dutch Termination of Life on Request and Assisted Suicide Act allows for the termination of life on request when the following due care criteria have been fulfilled:

- the patientôs request is voluntary and carefully considered;
- the patientôs suffering is unbearable and there is no prospect of improvement;
- the attending physician has fully informed the patient about his diagnosis and prognosis;
- physician and patient have come to the conclusion that there is no reasonable alternative in the light of the patientôs situation;
- the physician has consulted at least one other, independent, doctor who has to have examined the patient and given a written opinion on the due care criteria referred to above;
- the termination of the patientôs life or assistance with suicide is carried out with due medical care and attention by the attending physician.[9]

In the event that a patient is no longer able to express his own will, but has drawn up a written request for the termination of his life while still capable of determining his own best interests, the attending physician may comply with said request; the aforementioned due care criteria apply *mutatis mutandis*.[10] The physician must report every instance of euthanasia or assisted suicide to a Review Committee for assessment. Should the Committee find that the due care criteria were not adhered to, the case will be handed over to the Public Prosecution Service for closer scrutiny.[11]

The 2002 Belgian Act on Euthanasia contains similar provisions, which are more explicit and elaborate. For instance, the patientôs request for euthanasia is described as voluntary, well-considered and repeated, and not the result of any external pressure.[12] Also, when the physician is of the opinion that the patient is not likely to die in the near future, he has to ï in addition to the consultation of a second, independent, physician ï consult a psychiatrist or specialist in the disorder the patient is suffering from.[13]

Luxembourg became the third country to decriminalise euthanasia in 2009; the Law on euthanasia and assisted suicide is comparable to both the Dutch and Belgian system.[14]

In Switzerland, euthanasia is forbidden by law.[15] However, persuading or assisting somebody to commit suicide is permitted as long as the assistance or persuasion was not inspired by ñselfish motivesò, such as financial gain or other consequences that would benefit the actor.[16]

In France and Germany, euthanasia is illegal but there are special provisions in place which allow a physician to discontinue a patientôs treatment under specific circumstances. In 2005, France adopted the Leonetti law,[17] which allows doctors to refrain from treatment that is ñuseless, disproportionate or only aimed at artificially keeping patients alive"[18] and instead provide a terminally ill patient with palliative care which ï as a side effect ï may lead to his death.[19] In Germany doctors may cease treatment on similar grounds.

---

5 Ibid, p. 386.

6 *Cf.* the definition of euthanasia in the Belgian Act on Euthanasia 2002, section 2.

7 Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding (Termination of Life on Request and Assisted Suicide Act).

8 Belgian Act on Euthanasia 2002.

9 Article 2 subsection 1 Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding (Termination of Life on Request and Assisted Suicide Act).

10 Article 2 subsection 2 Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding (Termination of Life on Request and Assisted Suicide Act).

11 Articles 8 ï 10 Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding (Termination of Life on Request and Assisted Suicide Act).

12 Section 3 subsection 1 Wet betreffende de euthanasie (Belgian Act on Euthanasia 2002).

13 Section 3 subsection 3 Wet betreffende de euthanasie (Belgian Act on Euthanasia 2002).

14 Loi du 16 mars 2009 sur lôeuthanasie et lôassistance au suicide.

15 Article 114 Schweizerisches Strafgesetzbuch 1937 (Swiss Criminal Code).

16 Article 115 Schweizerisches Strafgesetzbuch 1937 (Swiss Criminal Code).

17 Loi n°2005-370 du 22 avril 2005du 22 avril 2005 relative aux droits des malades et à la fin de vie.

18 Article 1 Loi n°2005-370 du 22 avril 2005.

19 Article 2 Loi n°2005-370 du 22 avril 2005.

In five US states, assisted suicide is no longer illegal for terminally ill patients with less than six months to live and who are of sound mind; at their request, doctors may prescribe life-ending medication.[20]

3. Children's right to die

With regard to the question as to whether children have the right to die, a number of other children's rights should be taken into consideration.

As set out above, article 12 CRC – the right to be heard – provides that children have the right to form their own opinions about matters which affect them and that their views be given due weight in line with their age and maturity. In General Comment 12, the Committee on the Rights of the Child elaborates on the right to be heard. An important aspect of this right is that no age limit should be imposed and countries are discouraged from introducing age limits in law or in practice which would restrict the child's right to be heard.[21] Furthermore, the Committee emphasises that a child should be heard in all matters which affect him – without exception – when he is capable of expressing his own views on the matter in question.[22] Of crucial importance is the clause that views of the child must be "given due weight in accordance with the age and maturity of the child". The Committee stresses that the biological age of children should not be the benchmark, as children's levels of understanding differ due to experience, environment, social and cultural expectations, and levels of support. Therefore, the views of children should be assessed by means of a case-by-case analysis. The individual capacity of a child, as well as his ability to understand and assess the implications of a particular issue, determine his maturity.[23] The Committee also considers that a child, irrespective of age, should be included in decision-making processes with regard to his health, in a manner consistent with his evolving capacities. A child should be provided with information about all treatments, including the effects and outcomes of same.[24] Furthermore, the Committee strongly recommends that – where consent legally transfers to a child at a certain age – when a younger child is able to demonstrate the ability to form and express an informed view regarding his treatment, this view be seriously taken into consideration.[25]

According to article 3 CRC, the best interests of the child should be a primary consideration in all actions concerning children. With regard to the best interests principle, the Committee on the Rights of the Child issued a General Comment in 2013, which presents an analysis of the deeper meaning of this provision. The Committee stresses that this principle refers to all decisions, acts, conduct, proposals, services, procedures and other measures which affect a child, as well as any omission or failure to act.[26] Furthermore, determination of what is in a child's best interests should be assessed on an individual basis and the child's personal context (age, maturity, experience), situation and needs should be taken into consideration at all times.[27] In order to ascertain the best interests of a child, his right to be heard is of vital importance. The Committee considers that the more a child matures, thus the more weight should be given to his views and opinions.[28]

The evolving capacities of children play an important role as well. Besides article 12 CRC, in which this aspect of a child's development is highlighted, article 5 CRC (the right to parental guidance) and article 14 paragraph 2 CRC (the right to freedom of thought, conscience and religion) state that the child should be given parental direction in exercising his rights consistent with his evolving capacities.

In all these provisions, the self-determination of the child is promoted and Korczak's belief that children who are competent and capable have the right to control their own lives, has been firmly incorporated into the Convention on the Rights of the Child. This leads to the conclusion that, in all matters concerning a child – including the right to die – the self-determination capability of the child should be a primary consideration.

In most of the countries discussed above, the rules and regulations on euthanasia and assisted suicide apply exclusively to adults. However, in Belgium and the Netherlands provisions specifically aimed at children are in place as a measure of last resort.

Since the Belgian Act on Euthanasia came into force in 2002, children aged 15 and older can request euthanasia if they are "legally emancipated". An amendment to the Act in 2014 removed this age restriction and now the option of euthanasia is open to all minors deemed capable of understanding their medical condition and the consequences of their request for euthanasia. There are very strict rules and guidelines in place though; the child must be terminally ill, be suffering unbearably, which suffering cannot be alleviated by treatment[29] and the full consent of

[20] California, Montana, Oregon, Vermont and Washington.

[21] Committee on the Rights of the Child, General Comment no. 12 (2009), CRC/C/GC/12, paragraph 21.

[22] Ibid, paragraph 27.

[23] Ibid, paragraphs 28 – 30.

[24] Ibid, paragraph 100.

[25] Ibid, paragraph 102.

[26] Committee on the Rights of the Child, General Comment no. 14 (2013), CRC/C/GC/14, paragraphs 17 – 18.

[27] Ibid, paragraph 32.

[28] Ibid, paragraph 44.

[29] Section 3 subsection 1 Wet betreffende de euthanasie (Belgian Act on Euthanasia 2002, after amendment).

the childôs parents is required.[30] Furthermore, an assessment must be carried out to determine whether a child is mentally mature enough to make such a pivotal decision; this is done on a case-by-case basis and the biological age of the child is not a factor. In addition to the consultation of a second physician, a third specialist ï an independent paediatric psychiatrist or psychologist ï must be consulted; the latter has to examine the child, study his medical file and assess the maturity of the child.[31]

An important argument in the deliberations on the amendment of the Belgium Act on Euthanasia, was the acknowledgement that children ï however hard to accept ï may also find themselves in the extremely difficult situation that life is no longer bearable and that their suffering should be ended actively, rather than passively awaiting death. Children who are confronted with life-threatening illnesses and imminent death, are known to develop a maturity way beyond their biological age, which allows them to reflect and express themselves on their remaining life in an informed manner.[32]

In the Netherlands, legislation allows for children to request euthanasia from the age of 12 onwards. Between the ages of 12 and 16, a physician must assess the childôs competence in fully understanding the implications of his request. In addition, full parental consent is required.[33] With regard to children aged 16 or 17 and deemed capable of making a reasonable appraisal of their own interests, the attending physician may comply with such request without prior parental consent, but the childôs parents (or guardians) must have been consulted in the matter.[34]

In addition, a separate protocol has been drawn up which contains guidelines for life-ending treatment of newborns who are seriously ill and suffering severely without any hope of improvement in the future. The protocol contains the following five criteria:

- the childôs suffering must be so severe that there are no prospects of a viable future and there is no cure or alleviation available through medication or surgery;
- parental consent is obligatory;
- the physician has fully informed the parents regarding diagnosis and prognosis and together they have come to the conclusion that there are no other options open to them;
- an independent physician has been consulted and has examined the newborn;
- the deliberate ending of life must be carried out meticulously and according to accepted medical standards.[35]

Between 2002 and 2014, a total of five cases of euthanasia on minors were reported to the Review Committees. In one instance, the child was 12 years old, while the other children were 16 or 17; in all cases the childôs family understood and fully supported the decision.[36]

The Dutch Association of Paediatrics has recently raised the issue of the applicable age limit in the Netherlands. The Association has called for the age limit to be removed, in line with Belgian legislation. For terminally ill children who are able to express their own will, the right to die should be an option and the childôs opinion should be given due weight. In addition, when a child is deemed incapable of making a reasonable appraisal of his own interests, the decision on euthanasia should lie with the physician and the childôs parents.[37] This is an elaboration of Belgian legislation, where the childôs ability to express his own will is the deciding factor.

Conclusion

The childôs right to life is a universally accepted principle; in addition, it is acknowledged that life denotes more than just being (kept) alive and involves observance of numerous other rights. However, is a childôs right to life inextricably linked with the right to die?

The right to die is best explained from the point of view that every human being has the right to self-determination and should therefore have the autonomy to decide when and how to end his life, should circumstances warrant such discussion. It is not the authorôs intention to advocate legalising euthanasia or assisted suicide and how this should be effected. The observations below are based on the assumption that discussion about the regulation of the termination of life of a human being is not by definition ruled out. History shows that issues about which dialogue was unthinkable in the past are now fully accepted and with this in mind, the author hopes that the reader is willing to take heed of the conclusion to this article.

The Convention on the Rights of the Child contains a number of articles which promote a childôs self-determination. A child ï who is capable of forming and willing to form his own opinion ï should be heard with regard to all matters which

30 Section 3 subsection 4 Wet betreffende de euthanasie (Belgian Act on Euthanasia 2002, after amendment).

31 Section 3 subsection 2 Wet betreffende de euthanasie (Belgian Act on Euthanasia 2002, after amendment).

32 Report of the 5th session of the Belgian Chamber of Representatives, DOC 53 3245/004.

33 Article 2 subsection 4 Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding (Termination of Life on Request and Assisted Suicide Act).

34 Article 2 subsection 3 Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding (Termination of Life on Request and Assisted Suicide Act).

35 Groningen Protocol 23 June 2005.

36 Code of Practice, Regional Review Committees Euthanasia, 2015.

37 Dutch Association of Paediatrics, 19 June 2015.

concern him and his views should be given due weight in accordance with his maturity. Furthermore, when ascertaining a childôs best interests, his opinion should seriously be taken into consideration. The consequences of the childôs evolving capacities are such that the more aptitude a child gains, the more he should be allowed responsibility for decisions which affect his life.

Legislation in both Belgium and the Netherlands contains provisions concerning child euthanasia. In Belgium there is no age restriction, but a child must be deemed competent to fully understand his situation, whereas in the Netherlands the minimum age is currently fixed at 12 and requests for euthanasia from children under the age of 12 are inadmissible. The death of a child is one of the most devastating events imaginable and arouses immense sadness, anger and feelings of injustice. It is not inconceivable though that for a child who lives in horrendous pain and who ï due to a life-threatening illness or medical condition ï will continue to suffer unbearably for the remainder of his life, death could be considered more humane than sustained life.

In the Preamble of the CRC, it is recognised that a child should grow up in a family environment, in an atmosphere of happiness, love and understanding. When factors arise which interfere with these aspirations, there are safeguards in place. For instance, article 9 CRC provides that a child has the right to live with his parents, unless this is not in his best interests. In that case, the child needs to be separated from the parents and the State has to provide him with alternative care, such as a foster family, or care provided by next of kin (article 20 CRC).

When confronted with the ï exceptional and extremely difficult ï situation that the suffering of a child has become unendurable and there is no prospect of improvement, the child in question should also be provided with special safeguards in order to protect his best interests. If a child is deemed mentally competent, he should have the right to refrain from exercising his right to life and be given the alternative of a request to have his life ended; a child who is not capable of making such a request, should have his best interests assessed and determined by his parents and one or more physicians, who on his behalf may come to the conclusion that ï as a measure of last resort ï the child has the right to an end to his life.

Professor Charlotte Phillips LL.M, Ph.D is a judge, law lecturer and author based in Amsterdam. She also holds the position of Extraordinary Professor in the College of Law and Governance Studies at Addis Ababa University, Ethiopia, where she is responsible for design and delivery of the courses *Children's Rights* and *Refugees, IDPs and Migration Law* in the LL.M in Human Rights programme. She has written several textbooks on diverse legal subjects and has published articles in English, Dutch and Belgian journals.

website: www.charlottephillips.org

e-mail: mail@charlottephillips.org

Current status of children's participation rights in child protection proceedings--Victoria, Australia

Dr Briony Horsfall

Overview

This article provides an overview and critique of children's participation rights in child protection proceedings in Victoria, Australia. I provide insights from research that I have undertaken. The deterioration of children's participation rights is evidenced and discussion had as to recent legislative amendments that substantially reduce the powers and functions of the Children's Court. These amendments further *reduce* compliance with the UNCRC Article 12. Current civil litigation in the UK and USA is described as indicative of future redress that may be required.

The Victorian child protection system

In Australia, child protection comes under the jurisdiction of states and territories. The Children's Court of Victoria has two main divisions: a Family Division responsible for child protection matters, including family violence intervention order powers, and a Criminal Division for youth justice. Two further divisions involve a specialist Koori Court within the Criminal Division for justice matters involving Indigenous children and young people and a Neighbourhood Justice Division. The Children's Court of Victoria has been an independent legal institution since 2000. Prior to independence, the Children's Court provided specialist hearings since the *Children's Court Act 1906 (Vic)*.

In Victoria the Department of Health and Human Services (DOHS) is responsible for child protection and initiates proceedings in the Family Division of the Children's Court of Victoria (the Court) under the *Children, Youth and Families Act 2005* (Victoria) (*CYFA*). Children's best interests are paramount under this Act. The Court determines children's best interests with reference to 18 principles, one of which is "the child's views and wishes" (s.10(3)(d)).

Despite the presence of a specialist Children's Court, there is fragmentation of the child protection legal system in Victoria. The Court is distinct from the Victorian Civil and Administrative Appeals Tribunal (VCAT). The Children's Court does not have power to intervene in case planning decisions made by the Department, including the type of out-of-home care placement and if siblings live together or not[1].. VCAT deals with appeals made by parents, or children and young people against the Department's case planning decisions. A range of conditions limit their access to an appeal with VCAT, most particularly, the Department must have first conducted an internal case planning review before a review can be undertaken by VCAT. Children do not usually have access to an independent advocate for reviews. VCAT is not a specialised institution for child protection decisions and legal representation is not usually available to parents and children, and rarely funded by Victoria Legal Aid. The split between the Children's Court, VCAT, and Department causes fragmentation across the child protection legal system and excludes children from consistent access to participation rights.

Scope of this doctoral research

I conducted two large research studies as part of a PhD project analysing participation rights in decisions about children's best interests in child protection proceedings. Part one of my research involved a case file analysis of magistrates' unreported judgements in contested proceedings between July 2010 and June 2011 (findings not published as yet). Part two of my research involved an ethnography using participant observation of lawyers who represented children. Further detail about the ethnography findings is explored in Horsfall (2013). Victoria Legal Aid funded these lawyers, either as employees or by way of grants to private practitioners. Lawyers are specialised in child protection and youth crime via a panel registration process. Data were collected on a sample of 50 cases between July 2011 and March 2012. A total of 37 lawyers participated. Fifty-six children were observed with their lawyer, 43% were between six and 10 years old and 57% were 11 years and older. Almost all children were represented on an instructions basis. There were very few appointments for best interests representation (discussed below), reflecting the application of exceptional circumstances from the legislation. The high frequency of instructions representation was also indicative of a stronger culture of participation rights at the time.

[1] DOHS v B siblings; H siblings [2009] VChC 4

Participation rights for children and young people

Legal representation was, and continues to be, the only means for children to participate and have their views put independently to the Court in this jurisdiction. At the time of my research, lawyers were required to act in accordance with a childôs direct instructions (express wishes or views as one would with an adult) when children were considered mature enough to be appointed representation, ñso far as it is practicable to do so having regard to the maturity of the childò[2].

Alternatively, if a Magistrate determines there are óexceptional circumstancesô, he or she can order representation for a child not considered mature enough to give instructions on the best interests model of representation. However, there is no definition or guidelines as to what might constitute exceptional circumstances in the *CYFA* and as a consequence, appointment occurs rarely. The Childrenôs Court (2010, p.61) reported there had been just 33 cases in three (3) years since 2007, compared to the hundreds of children represented each year on the direct instructions model of representation. Such best interests lawyers may be appointed, for example, when a child of an age of 9 years has a significant physical or mental disability. The *CYFA* provides scant guidance to the magistracy and lawyers about the conduct of the best interests model of representation, requiring only that the lawyer ñact in accordance with what he or she believes to be in the best interests of the childò and communicate any instructions given or wishes expressed by the child to the extent that it is practicable to do so[3].

Participation rights before and after 2013

Practice in the Childrenôs Court, as supported and funded by Victoria Legal Aid at the time of my fieldwork, was for children aged seven years (plus or minus one year, depending on maturity) to be permitted the opportunity to have a lawyer on the direct instructions model. This practice had a long history in the jurisdiction. It dated back to the mid-1970s when lawyer Joe Gorman, a strong advocate for the rights of children who continues to represent children today, established the specialised legal aid service for children in both the Youth Justice and Family Divisions of the Childrenôs Court. Advice from the specialist Childrenôs Court Clinic also informed the practice. The former *Children and Young Persons Act 1989 (Vic)* had similar broad wording to the *CYFA* that further accommodated this practice. A protocol between the Legal Aid Commission and government child protection department at the time formalised the practice in the 1990s.

In 2013, amendments to the *CYFA* meant there is now a presumption against a child having capacity to instruct a lawyer unless a child is 10 years of age or older. No alternative form of legal representation has been implemented for all children younger than 10 years, save for the exceptional circumstances criteria best interests model of representation. Almost all children younger than 10 years of age have no legal representation now compared to the previous practice that meant most children six years and younger were unrepresented.

In contradistinction to the creation of the 2013 presumption of incapacity of younger children to instruct a lawyer, my research found that lawyers engaged with children and young people on an individual basis to initially determine the suitability of representation. I also documented how lawyers óscaffoldedô participation over time according to the needs of a child and changing context of the case[4]. Maturity to instruct a lawyer was therefore not presumed. Instead, I found that lawyers would have an informal meeting to gain some understanding about a child or young person and establish the possibility of rapport. As well, they would seek information from multiple sources who knew a child personally (for example, a grandparent or older sibling) and information about the circumstances of the application. The combination of age, maturity, and context was an advantage of this approach to implementing the appointment of a lawyer on an instructions basis. The Supreme Court of Victoria later endorsed this practice when reinstating representation for two children who had been denied the opportunity to provide further instructions to their lawyer by a magistrate[5].

A further narrowing of participation rights for children occurred in the Victoria child protection system under the 2013 legislative changes. The Court can now determine a child is not mature enough to instruct with regard to ñthe childôs ability to form and communicate the childôs own viewsò and in relation to their ability to give instructions on ñthe primary issues in disputeò[6]. This legislation undervalues the practices of flexibility that I observed occurring behind the scenes between lawyers and children that sustained their participation rights[7]. These practices included:

- managing confidentiality and safety concerns with children by forming an agreed strategy about what was to be said publically and how it was said;
- adapting to changes in the extent they wished to participate over time;

[2] *CYFA* s.524(2) and (10)

[3] *CYFA* s.524(11).

[4] Horsfall, 2013

[5] see [2012] VSC 589

[6] s.10(2)(1A)(1B

[7] Horsfall, 2013

- supporting changes in children's views as their experiences of care changed over time;
- forming partial instructions;
- hierarchies in instructions; and
- making submissions on strong instructions, including when the child protection department and parents were in agreement about a matter but a child was not.

In the Supreme Court decision referred to above, the practice of partial instructions was also endorsed as a legitimate form of participation that did not diminish children's right to instructions representation. This meant it was valid for a child to give instructions on one or more matters but not necessarily all matters in a case.

Decision-making & court processes

Very few child protection cases proceed to a final contest hearing (when evidence is heard) in the Victorian jurisdiction. The Children's Court (2011, pp. 17– 19) has previously estimated that fewer than 3% of protection applications reach the point of requiring a contested hearing. Most cases resolve by negotiation. This was reflected in my ethnography research. Similar to Pearce, Masson, and Bader (2011) in the UK, I observed a majority of decisions to be reached through informal, shuttle-style, multilateral negotiations between the child protection department, parents (represented and unrepresented) and children with their lawyer. An agreement was reach this way in 21% of my ethnography cases. Matters requiring direct judicial oversight and determination (i.e., through court time) were uncommon. Thirteen cases were observed with submissions on at least one occasion and five cases had a contested hearing.

An advantage of reaching decisions via negotiations was that children could participate through their instructions with a lawyer without having to speak directly for themselves or be placed in a conflicted position with either parent or child protection department. This was also a benefit of children being present at the Court because their participation status could be maintained without disruption and instructions updated as the negotiations unfolded. Both parents and the Department could change their position during the course of negotiations and new information would frequently become available that shifted the possible outcomes. Children's participation rights could not have been fairly implemented in these circumstances without independent legal representation. They would have been placed in a conflicted position to express their views with either parent or the child protection department or left without an opportunity to participate at all, as occurred for younger siblings.

Other qualities of direct instructions representation

Another important beneficial element of the direct instructions model of representation, which I observed in practice, speaks to the broader function of support that lawyers provided to children and young people. Lawyers provided child-appropriate information to their child clients about what was happening, why, the outcomes, and what might happen in the near future – they had no vested interest other than the child's rights. Hence, lawyers became a source of neutral support and independent advice for children and young people in circumstances where few alternative sources were available exclusively to them. This reflects the implementation of Article 12 under the UN General Comment (2009). Furthermore, lawyers functioned as a legitimising medium of a child's perspectives about, and experiences of, child protection intervention.

Parents or other family members would often be emotionally unavailable or perpetrators of abuse or violence. Nor could the Department be relied upon for consistent, independent support for a range of reasons[8], as recorded in my observations:

- a high turnover of child protection practitioners and cases being unallocated made it impossible to sustain a relationship with a practitioner;
- distrust between the Department and a child or young person from early on in proceedings, particularly after experiencing emergency removal from a parent;
- distrust after longer periods of Department involvement when care experiences had further deteriorated; and
- children and young people who experienced harm and abuse in out-of-home care.

Therefore, some lawyers clearly saw their role as being an independent source of vital support for children as well as being their advocate. This reflects the concept of lawyers as being 'passage agents' in children's experiences of child protection intervention and private family law proceedings[9].

Overall, the legislation and policy for representation of children were not a perfect approach to participation rights in Victoria but the situation has worsened. Not all children had a lawyer because of the conditions requiring maturity to instruct or exceptional circumstances for best interests' representation. Consequently, the UNCRC Article 12 was only partially fulfilled in my research but this situation has since deteriorated. However, where direct instructions representation was available, a stronger compliance with Article 12 was possible.

[8] Victorian Ombudsman, 2011, 2010, 2009

[9] Douglas et al., 2006; Ross, 2013

Court orders and the redistribution of care between parents and the State

At the time of my research, a range of different types of orders and progressive levels of intervention were available to the Children's Court under the *CYFA*. These orders ranged from endorsing agreements and supervision of parental care while children remained at home (lower level orders), orders for out-of-home care with parents retaining guardianship/parental responsibility (intermediate level orders), and both care and guardianship transferring to the State or carer (highest level orders).

The Children's Court has some power to attach conditions to orders except where the Department held guardianship. These conditions included frequency and supervision of contact between parents and children, Departmental provision of and parental compliance with therapeutic services, and counselling for children. Children and young people with legal representation were able to participate in these decisions through instructions. My case file research found that care arrangements (where children lived) and contact with parents were the most frequent matters that they gave instructions about. Notable was that just under half of children gave instructions that meant they were not opposed to out-of-home care for a range of complex reasons. Their views could therefore not be presumed to align with the Department or either parent.

The previous approach to orders with progressive levels of intervention had been in place since the Victorian *Child Welfare Practice and Legislation Review* (1984), also known as the Carney Review, and subsequent *Children and Young Persons Act 1989 (Vic)*. At the time of the Carney review, all children in out-of-home care were under both the care and guardianship of the state child protection service. Known as Wards of the State under long-term guardianship orders, the care of children was not subject to any regular judicial review. The Carney review revealed serious deficits and abuses in the care of children in the absence of regular independent oversight.

Recent legislative changes in 2014 take the Victorian jurisdiction back to the pre-Carney review era. These substantial legislative amendments are the *Children, Youth and Families Amendment (Permanent Care and Other Matters)* 2014. Once again, all children living in out-of-home care will come under both the day-to-day care and parental responsibility (guardianship) of the Department, with the exception of a short-term interim order. Care and parental responsibility with the Department even applies under a type of order that is supposed to be intended to support reunification of families (Family Reunification Orders). An intermediate level of intervention will no longer available.

This also means children who were previously under intermediate level orders and all children who will enter out-of-home care in the future, have lost the right to participate in decisions about their care and contact with family via their lawyer. These decisions are now rendered outside the Children's Court jurisdiction.

The Children's Court has also lost a broad range of powers about the length and conditions of orders and accountability of the Department with the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Bill 2014* (Law Institute of Victoria, 2014). There will no longer be a minimum two-year judicial review for children under guardianship orders as they will again be Wards of the State until 18 years of age. This removes children's participation rights with their lawyer where under the previous legislation they would have opportunities to meet with their lawyer and raise any concerns about their experience of out-of-home care. It was under these provisions that severe sexual and physical abuse of children in out-of-home care was revealed during 2014[10]. The Australian *Royal Commission into Institutional Responses to Sexual Abuse* has also launched an investigation[11]. Victorian out-of-home care services have been repeatedly criticised in the literature and official inquiries for failing to meet basic needs of care and protection[12]. The experiences of some children and young people in my study add further to the failings of the Department to fulfil their responsibilities and duty of care.

Legislative changes to Victoria's child protection legal system are occurring at a time when the very quality of care experienced by children and their families is deteriorating. Recent figures from the Australian Productivity Commission (2015) show 2013-2014 to be the single largest increase in children entering out-of-home care in Victoria since 2004, with Aboriginal children severely overrepresented by a rate of 62.7 per 1,000 children. At the same time, the number of early intervention support services provided to families has fallen. Instability of children's placement in out-of-home care is the worst in Victoria of any other State or Territory by a large margin of frequency. Out-of-home care presents wholly the management of care by the Department. As I reported above, the Children's Court does not have power to direct the Department's case planning decisions and the Court will be further impeded in its oversight functions under the new legislation.

[10] Oakes, 2015, 2014a, 2014b

[11] Oakes, 2015

[12] Bessant et al., 2012; Victorian Ombudsman, 2010

A sign of what's to come in child protection law?

Recent events in the United Kingdom High Court and in the United States District Courts of Arizona and South Carolina may well be an indication of future litigation required to hold governments and their agencies to account for the mismanagement and abuse of children in out-of-home care. On the 30th January 2015, the UK High Court found in favour of a child and awarded £17,000 in damages for breaches in quality of care provided by the Northamptonshire County Council[13]. The class action in Arizona has been lodged on behalf of children in state foster care custody. Amongst the concerns raised in the complaint are:

- abuses in care;
- lack of contact with family;
- lack of adequate and safe placement, including children being placed in shelters;
- failure to ensure access to education; and
- deprivation of mental health and medical care.

The South Carolina class action alleges similar failings by the State. As well as abuse in care, the complaint documents:

- high placement instability,
- use of detention centres because of foster care shortages,
- lack of access to education, mental health care and medical care; and
- children being denied opportunities to maintain family relationships, including with siblings.

Civil litigation may be necessary to compel a reinstatement of children rights and force States to lift the quality of out-of-home care where repeated inquiries, reports, and reviews have not been successful in doing so. Victoria, Australia, will likely be a jurisdiction in which such litigation will ensue given the chronic problems with the quality of out-of-home care experienced by so many children and the forthcoming legislative changes that further erode their rights.

Conclusion

At a time when many child protection jurisdictions around the world are seeking to improve participation rights of children and young people, the previous Victorian government and its statutory agencies have taken these rights backwards. These fiscally and ideologically conservative changes have occurred under the guise of children's best interests. The long-term negative consequences of these changes will be lived by the very children whose rights are supposed to be enshrined in this jurisdiction.

The long-term negative consequences will likely include, as it has for generations, so unfortunately, continued abuse and neglect of such children in state care. Such abuse will be even less likely to be uncovered over time given the legislative changes in Victoria. Accountability for this will likely take the form of civil action, as we are currently witnessing in the UK and USA. It also appears that governments have not truly internalised the reasons for the apologies finally given to the Australian Stolen Generation and Forced Adoption generations so recently.

Dr Briony Horsfall is from Swinburne University of Technology, Victoria, Australia. Her PhD thesis investigated participation rights of children in child protection legal proceedings. She has also been a researcher at the Australian Institute of Family Studies in family law, child protection, and family violence research.

The author acknowledges the advice of Fleur Ward, solicitor, from the Children and Youth Issues Committee of the Law Institute of Victoria, in the preparation of this article.

[13] ([2015] EWHC 199 (Fam)

Briony Horsfall: References

Bessant, J., Emslie, M., Watts, R., 2012. In defense of Victoriaôs Childrenôs Courtz: Its value and role in the child protection system. Alternative Law Journal 37, 244ï 248.

Childrenôs Court of Victoria, 2010. Response to the Victorian Law Reform Commission Review of Victoriaôs Child Protection Legislative Arrangements. Childrenôs Court of Victoria, Melbourne.

Childrenôs Court of Victoria, 2011. Submission to the Protecting Victoriaôs Vulnerable Children Inquiry. Childrenôs Court of Victoria, Melbourne.

Child Welfare Practice and Legislation Review, 1984. Report: Equity and Social Justice for Children, Families and Communities. Victoria, Australia.

Douglas, G., Murch, M., Miles, C., Scanlan, L., 2006. Research into the Operation of Rule 9.5 of the Family Proceedings Rules 1991 Final Report to the Department for Constitutional Affairs. Cardiff Law School, Cardiff.

Horsfall, B., 2013. Breathing Life Into Childrenôs Participation: Empirical Observations of Lawyer-Child Relations in Child Protection Proceedings. New Zealand Law Review 429ï 444.

Law Institute of Victoria, 2014. Submission to Jenny Mikakos, Shadow Minister for Community Services, Shadow Minister for Children, Shadow Minister for Seniors & Ageing, Parliament of Victoria: Children, Youth and Families Amendment (Permanent Care and Other matters) Bill 2014. Victoria, Australia.

Oakes, D., 2014a. Paedophile gangs targeting children in state care for sexual abuse [WWW Document]. ABC News. URL http://www.abc.net.au/news/2014-03-11/criminal-gangs-enticing-children-in-state-care-into-prostitution/5313632 (accessed 2.1.15) .

Oakes, D., 2014b. Siblingsô sexual abuse highlights flaws in ñmegligentò state care [WWW Document]. ABC News. URL http://www.abc.net.au/news/2014-07-02/siblings-sexual-abuse-highlights-flaws-in-victorian-state-care/5566378 (accessed 2.1.15).

Oakes, D., 2015. Government departments ordered to hand over 10 yearsôworth of child sex abuse records [WWW Document]. ABC News. URL http://www.abc.net.au/news/2015-01-15/child-abuse-inquiry-turns-focus-to-exploitation-in-state-care/6019660 (accessed 2.1.15).

Pearce, J., Masson, J., Bader, K., 2011. Just following instructions? The representation of parents in care proceedings. Bristol, England.

Productivity Commission, 2015. Report on Government Services [WWW Document]. URL http://www.pc.gov.au/research/recurring/report-on-government-services (accessed 3.9.15).

Ross, N., 2013. Different Views? Childrenôs Lawyers and Childrenôs Participation in Protective Proceedings in New South Wales, Australia. International Journal of Law, Policy and the Family 27, 332ï 358.

United Nations Committee on the Rights of the Child, 2009. United Nations Committee on the Rights of the Child, ñGeneral Comment No 12: The Right of the Child to be Heard.ò United Nations, New York.

Victorian Ombudsman, 2009. Own motion investigation into the Department of Human Services Child Protection Program. Victorian Ombudsman, Victoria, Australia.

Victorian Ombudsman, 2010. Own motion investigation into Child Protection - out-of-home care. Victorian Ombudsman, Victoria, Australia.

Victorian Ombudsman, 2011. Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region). Victorian Ombudsman, Victoria, Australia.

Giving children a voice: The Norwegian Ombudsman for Children's Role in Implementing Children's Rights

Frøydis Heyerdahl & Dr Anne Lindboe

Frøydis Heyerdahl

Dr Anne Lindboer

Since its establishment as the world's first Ombudsman for Children, the Norwegian Ombudsman has worked on the frontlines of child rights protection. Established by the Norwegian Parliament to monitor and protect children's rights, the institution has an important position in Norwegian society as a spokesperson for children's interests. One of the aims is to influence policy makers and practitioners to take greater account of the rights of children. Moreover, as a spokesperson for children's interests, the institution may be seen as a channel of communication between children and government, and other parts of society.

This article gives an introduction to the historical and political development of the Norwegian Ombudsman for Children and similar institutions. The article gives a brief overview of international standards for these kinds of institutions, and shows how the standards are reflected in the Norwegian experience.

The term "Ombudsman"

The term "Ombudsmanò originates from the Scandinavian languages and means a person who acts on behalf of others. An ombudsman's office has its roots in the constitutional practice and the systems of government in the Nordic countries. The first ombudsman office to be established was the Swedish Ombudsman for Justice.

As the system of such institutions has spread to other countries ï "ombudsmanòhas been retained in several other languages. However, the English term "commissionerò is often used instead of "ombudsmanò, such as the Children's Commissioners in England, Scotland and Wales.

On an international level, the role of the ombudsman has been coupled with the development of so-called National Human Rights Institutions, or Human Rights Commissions, whose roles are elaborated in the "Paris Principlesò that were adopted by the UN General Assembly in 1993.[1] These institutions play an important role in monitoring the implementation of human rights treaties on a national level.

History of the Ombudsman for Children and similar institutions

Norway was the first country to establish an ombudsman with statutory rights to protect children's interests.[2] The intention to establish an Ombudsman for Children in Norway can be traced back to 1969 when law professor Anders Bratholm proposed the establishment of an Ombudsman for Children. The impetus behind this proposal was the fact that children constitute a group that is large, but vulnerable, without any organisation or any other effective voice to plead their case.

The debate that followed showed that many people, politicians included, were against the concept of an Ombudsman for Children. However, there was no disagreement about the need to strengthen children's rights. The United Nations' International Year of the Child in 1979 was an important contributing factor in that regard. In March 1981, by a narrow majority, the Norwegian Parliament finally decided to establish an

[1] The UN Principles Relating to the Status of National Institutions, Adopted by General Assembly resolution 48/134 of 20 December 1993

[2] In this article, the term Ombudsman for Children is used to represent both the appointed person and the office of the Ombudsman.

independent national body for safeguarding the rights and interests of children. The world's first Ombudsman for Children, Målfrid Grude Flekkøy, took office on the 1st of September, 1981.

In 1995, an independent committee was asked by the Government to evaluate the concept of the Ombudsman for Children in Norway. The committee concluded that, to a large extent, the institution had lived up to its expectations and fulfilled its objectives. The Ombudsman was seen as having put children on the political agenda. Moreover, the committee observed that there was now a greater acceptance of children's rights and entitlements, and that the Ombudsman had been instrumental in this development. The Ombudsman had also played a key role in helping make legislation more effective.

Since the establishment of the Norwegian Ombudsman for Children, there has been rapid growth in the numbers of Ombudspersons or similar institutions. Today, there are more than 70 countries throughout the world which have an Ombudsman for Children, commissioners or other independent human rights institutions for children.[3] This reflects the increased global understanding that this kind of institution is beneficial for a society and its government to ensure children's rights.

Why an Ombudsman for Children?

The near universal ratification of the UN Convention on the Rights of the Child (CRC) indicates that governments are willing to commit to improving the situation for children. Nevertheless, children's rights are violated all over the world, every day. Invisible in most societies, children have no vote, voice or avenues to demand their rights. Their interests are rarely represented in political processes or decision making, and despite rhetoric to the contrary, children are not a high priority in policy making or in the allocation of budgetary and other resources.

Moreover, children have limited access to complaint mechanisms and the judicial system. Hence, children need a force that can magnify their voices, so that their views and interests are effectively represented to the government and the broader society. The developmental state of children makes them particularly vulnerable to human rights violations. Therefore, special measures are needed to ensure the effective promotion and protection of children's rights. An Ombudsman for Children or similar bodies can play an important role in bridging the gap between children and society ï and serve as a tool to ensure the implementation of the Convention.

According to Article 4 of the CRC, governments must undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the convention.

The UN Committee on the Rights of the Child, the body set up to monitor the CRC, has stressed the importance of such institutions in order to ensure the implementation of the Convention. The Committee considers the establishment of such bodies to fall within the commitment made by State parties upon ratification.[4]

Different models

A common definition of independent human rights institutions for children is often that of a public body with an independent status, whose mandate is to monitor, defend and promote children's rights; yet, they can take many forms. Some countries have institutions that focus only on children's rights, such as ombudsmen or child commissioners; whereas other countries have general human rights institutions whose broader mandate includes children's rights.

In 2012, UNICEF launched a report, «*Championing Children's Rights: A global study of independent human rights institutions for children*»[5], which provides a comprehensive review of existing independent human rights institutions for children. Importantly, it also suggests some core elements that contribute to their institutional success.

The UNICEF report indicates that the structure of the institution can influence its success and capacities, such as accessibility to children. However, there is no ñone-solution fits allò Each country must find its own solution. The most important element is that the institution has the capacity to operate in its environment.[6]

Although the UN CRC Committee indicates a preference for separate, specialized independent monitoring bodies such as ombudsmen for children, the committee also acknowledges that due to a country's financial situation, a broad-based National Human Rights Institution, which includes a specific focus on children, may constitute the best approach.[7] In that case, the institution should have an identifiable commissioner specifically responsible for children's rights, or a specific division responsible for children's rights. Regardless of structure, the institution should ensure accessibility to children and involve children in its work. Moreover, it is crucial that the institution have the status and ability to influence child rights policies.

[3] UNICEF Innocenti Publications (2012), ñChampioning Children's Rights: A global study of independent human rights institutions for childrenòpage 1

[4] CRC General Comment No 2, CRC/GC/2002/2

[5] UNICEF Innocenti Publications (2012), ñChampioning Children's Rights: A global study of independent human rights institutions for childrenò

[6] See note 3, page 75

[7] CRC General Comment No 2, CRC/GC/2002/2, para 6

In Norway, it is seen as a great advantage that the Ombudsman for Children can exclusively focus on challenges facing children, rather than having to place the rights of the child in competition with other agendas or concerns. Another advantage is that the Ombudsman can be a clear spokesperson for childrenôs interests and be more easily recognised among children. Over the years, the Ombudsman for Children in Norway has been a very visible figure in society, instrumental in promoting the interests of children in the public debate.

International standards – key elements

Even though there are differences both with regard to structure, mandate and working methods, independent human rights institutions for children have some minimum standards that they should fulfil. The Paris Principles and the General Comment no. 2 by the UN CRC Committee formulates some criteria which include, among others:

a) A clear mandate and power

The institution should have a clear mandate and power, and be established by law, preferably through a constitutional mandate. Its mandate must be linked to the CRC with a clear aim to supervise the statesô performance in relation to treaty obligations. Moreover, the institution should be able to investigate, issue reports, give statements and be consulted in order to provide for the effective fulfilment of its mandate. The investigative mandate should also have the authority to ask for and obtain any information or documentation necessary for assessing situations that fall within the institutionôs mandate.

b) Independence

The independence of the Ombudsman for Children is imperative for the effectiveness of the institution. There are a number of factors that contribute to, and mutually enforce, such independence. This includes a transparent, open and appropriate appointment process. The institution should not be controlled by authorities and must be free to set its own agenda and determine its own activities. In addition, the Ombudsman for Children must be appointed for a fixed term in order to allow the Ombudsman to freely plan and execute its mandate. It is also crucial that the Ombudsman have financial autonomy and be provided with sufficient resources. In some countries, it is a challenge that the institutions are funded by donors whose support is project-based and does little to secure national ownership.[8] The independence of the institution relies on the integrity and diplomatic skills of the Ombudsman and the office. Its work must be based on solid legal and professional knowledge.

c) Accessible for children

One of the most important roles for the Ombudsman for Children is to include the views of children in its work. Hence, it is essential to communicate with children through various channels. The accessibility of the Ombudsman institution is important for this process. The UN CRC Committee emphasises both the actual geographic and physical access to the office.[9] Furthermore, the institution must ensure that it has direct contact with children and that children are appropriately involved and consulted, particularly the most vulnerable and disadvantaged children.

The Norwegian Ombudsman for Children

a) Mandate and power

The Ombudsman for Children in Norway is established by law, and its tasks and duties are regulated by the Act Relating to the Ombudsman for Children. According to the Act, the duties of the Ombudsman are to promote children's interests to public and private authorities and to follow up the development of conditions under which children grow up. The objectives of the Ombudsman can be briefly summarized as follows:

- Promote childrenôs interests to public and private authorities
- Encourage policy makers and practitioners to take greater account of childrenôs rights
- Act as a spokesperson for children and a watchdog for childrenôs interests
- Monitor the development of conditions under which children grow up
- Propose measures that can strengthen legal guarantees for children
- Ensure that legislation relating to the protection of childrenôs interests is respected, which includes monitoring the implementation of the CRC
- Ensure that sufficient information on the situation for children is available.

The Ombudsman has the power to investigate, criticise and publicise matters important to improve the welfare of children and youth. The power of the Ombudsman lies in the institutionsô reputation and integrity, and that the Ombudsmanôs statements and activities are seen as instrumental in improving the conditions of children.

According to the Ombudsman Act, the institution shall have free access to public and private institutions for children. With some limitations, government authorities and public and private institutions for children shall give the Ombudsman the information needed to carry out the duties of the institution pursuant to the Ombudsman Act.

[8] See note 3) page 35

[9] CRC General Comment No 2, CRC/GC/2002/2

This means that the office can visit prisons, police stations and child welfare institutions without asking for permission.

There are some limitations as to what the Ombudsman can do. As the Ombudsman has no formal power, it cannot by law reverse administrative actions or revoke administrative decisions, nor does the Ombudsman have the power to instruct other agencies. The Ombudsman cannot intervene in the legal process of the court, and cannot handle cases belonging to the jurisdiction of other Ombudsmen. Moreover, the institution shall not handle individual conflicts within the family. Yet the staff are not prevented from giving general advice to the many parents, children and others who seek such advice from the office.

b) Organization

Following an open appointment process which involves a panel of children and young people that interview the candidates, the Norwegian Ombudsman for Children is appointed by the King in Cabinet, The Ombudsman is appointed for a fixed term of six years and cannot be reappointed. Currently, the Ombudsman for Children has a staff of 18 employees, with backgrounds in law, medicine, social science, child welfare, political science, communication and financial matters.

The Parliament allocates resources to the Ombudsman for Children, and the funding is channeled through the Ministry of Children, Equality and Social Inclusion. Furthermore, the Ombudsman is administratively attached to the Ministry, which means that the Ombudsman reports to the Ministry annually.

As mentioned, one of the core elements of the concept of an Ombudsman is that the institution must be independent. Even though the Norwegian Ombudsman for Children is linked to the Government in several ways, the institution is considered to be an independent body. This is due to the fact that the Ombudsman cannot be instructed in any matter and is free to set its own agenda and determine focus areas and activities. The Norwegian Ombudsman has full freedom of speech, even if this entails criticism of the Ministry, Cabinet or Parliament. Neither the Norwegian Parliament nor the Government has the power to direct the Ombudsman. As an additional guarantee, the media and civil society play a crucial watchdog role, and will react if the Government tries to instruct or control the Ombudsman, or if the Ombudsman misuses its mandate.

c) Working methods

The Ombudsman for Children takes on the role of an advocate on behalf of children in order to improve their lives in general, but in particular, to improve the lives of children in vulnerable positions. The Ombudsman may act on his or her own initiative or at the request of others, such as media, NGOs or professionals. It is up to the Ombudsman to decide which cases and issues he or she wants to look into.

Moreover, the office will on its own initiative analyse existing legislation, policy and practice. Through its reports, letters or meetings with the Government or politicians, the Ombudsman will suggest amendments where it seems necessary to improve the situation for children.

As a spokesperson for children, the office is well aware that a strong media presence is vital, given that the media play an important role in drawing attention to issues that affect childrenôs interests.

The Norwegian Ombudsman for Children combines advocating for children as individuals and as a group, however, the institution places emphasis on working as a general spokesperson for childrenôs interests. The office does not have the mandate to handle individual complaints; nevertheless, the mandate gives the Ombudsman the opportunity to investigate and comment on individual cases. The office also functions as an adviser for children and parents, as well as other persons who are concerned about a child. The advisory function includes assisting children and adults who contact the office for help and referring them to the relevant agency.

d) Focus areas

The Norwegian Ombudsman has ñall of childhoodò as its working area. From this vast area, the Ombudsman must prioritize. In its work over the last few years, the Ombudsman has placed particular focus on vulnerable children and has concentrated on the following areas: Protection of children from domestic violence and sexual abuse, children with divorced parents, access to health care, disabled children, juvenile justice, childrenôs access to justice, issues related to minorities and immigrants, bullying at school, and childrenôs right to participation.

As an example, the Ombudsman for Children has been instrumental in promoting the prohibition of corporal punishment in Norway. Since the term of the first Ombudsman for Children, the institution has advocated for better legal protection of children who are exposed to violence. This culminated in lobbying the Parliament to vote for a total ban on corporal punishment. The office has continued its efforts to raise awareness of the consequences of domestic violence and has proposed measures to improve how Norwegian society assists children who have been exposed to violence and abuse.

e) Dialogue with children

As a spokesperson for children, it is especially important to promote a childôs right to be heard. The office is in contact with children in multiple ways. Many children write to the Ombudsman through a childrenôs hotline on the Ombudsmanôs homepage. In 2014, about 1500 children contacted the Ombudsman through this hotline. To be more accessible to children, the Ombudsman upgraded its webpage in 2013. Now the main focus group for the website is children, and the language is child-friendly.

Unfortunately, many children in Norway do not know about their rights and what to do if their rights are violated. One of the Ombudsmanôs goals is that children should know their rights and where to seek help if needed. Therefore the Ombudsman regularly visits schools to talk about childrenôs rights.

The Ombudsman also holds expert meetings to learn from children with different experiences. The experts ï the children ï give advice to the Ombudsman on what kind of recommendations the Ombudsman should make to better help children in similar situations. When the Ombudsman writes about specific topics, the childrenôs experiences and recommendations are an important part of the Ombudsmanôs reports.

Conclusion

The Convention on the Rights of the Child clearly gives children individual rights. The challenge lies in the implementation. The UN CRC Committee emphasises that independent national human rights institutions, such as the Ombudsman for Children, are an important mechanism for promoting and ensuring the implementation of the Convention. Moreover, the Ombudsman for Children plays a vital role in putting childrenôs rights onto the social and political agenda, and thereby fosters positive change in the lives of children.

Norway has come a long way in developing the Ombudsman institution, and in ensuring childrenôs rights. However, there are many challenges that still lie ahead. Hence the Ombudsman for Children will continue to propose measures that can improve the situation for children and challenge society to accept the child as a full member of society with a voice that needs to be listened to.

Frøydis Heyerdahl, Senior Adviser at the office of the Norwegian Ombudsman for Children

Anne Lindboe is the Norwegian Ombudsman for Children

References:

- The UN Principles Relating to the Status of National Institutions, Adopted by General Assembly resolution 48/134 of 20 December 1993
- General Comment No 2, CRC/GC/2002/2 ñ*The role of independent national human rights institutions in the promotion and protection of the rights of the child*ò
- UNICEF Innocenti Publications (2012), ñ*Championing Children's Rights: A global study of independent human rights institutions for children.*ò Available at: http://www.unicef-irc.org/publications/669
- The webpage of the Norwegian Ombudsman for Children: www.barneombudet.no/english/

Fitness to plead-- Do vulnerable children in England and Wales deserve specialist criminal lawyers?

Kate Aubrey-Johnson

In recent years, the numbers of children going to criminal courts in England and Wales has been steadily decreasing.[1] This has largely been the result of early diversion and greater use of out of court disposals. Whilst it is a positive development that children are being diverted out of the criminal justice system, it also means that those children going to court have an increasing level of need. As the size of the cohort of children in the criminal justice system decreases, those who remain are increasingly likely to have complex vulnerabilities and there will be a higher proportion with mental health needs.

Child defendants

- ñThe high proportion of young offenders with speech, language and needs and/or a learning disability face enormous difficulties in understanding court proceedings, which may jeopardise their right to a fair trial.ò
- Justice Select Committeeôs Report of Youth Justice[2]

We know that the majority of child defendants have speech, language and communication needs.

Research published by the Childrenôs Commissioner for England in 2012[3] showed that 60-90% of children going through the criminal justice system have significant problems with speech and language or other communication difficulties (the comparable figure within the general population is 1-7%). The Children Commissionerôs report, ôNobody made the connection: the prevalence of neurodisability in young people who offendô highlighted the high levels of young people in secure settings with undiagnosed neurodevelopmental conditions which have directly contributed to their offending behaviour. The numbers of children in the criminal justice system with mental health needs are also worryingly high.[4] Just for Kids Lawôs own experience bears this out. .A survey of our clients with experience of the criminal justice system over three years revealed that 42% had a mental health problem. 31% of a sample of 13 to 18-year-old offenders in custody and the community were found to have mental health problems, compared to 10% of the wider population[5].

Effective Participation

Children and adults have the right to ôeffective participationô as part of the fair trial guarantees under Article 6 of the European Convention on Human Rights.[6] This means a child must understand and be involved in what is happening in their criminal case. The court process can be intimidating and difficult to understand, even for adults, and the European Court of Human Rights has recognised that children are less likely to be able to effectively participate in criminal proceedings because of their age, level of maturity, intellectual and emotional capacities.

"é it is essential that a child charged with an offence is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings."[7]

[1] In 2013/2014, there were 126,809 children (10-17 years old) arrested and 27,854 first time entrants to the youth justice system, a 67% decrease since 2002/3. [source: MoJ/YJB Youth Justice Statistics; Carlile Inquiry]

[2] Recommendation 6, p.64, Justice Select Committeeôs Report of Youth Justice (2013)

[3] Hughes, N., Williams, H., Chitsabesan, P., Davies, R., & Mounce, L. Nobody made the connection: The prevalence of neurodisability in young people who offend, October 2012, Childrenôs Commissioner for England, page 9.

[4] See for example, ñI think I must have been born badò Emotional wellbeing and mental health of children and young people in the youth justice system, Office of the Childrenôs Commissioner (June 2011)

[5] Jacobson, J. Bhardwa, B. Gyateng, T. Hunter, G. and Hough, M. (2010) Punishing disadvantage: a profile of children in custody, London: Prison Reform Trust, p.68

[6] Article 6, European Convention on Human Rights as incorporated by the Human Rights Act 1998

[7] T v UK, V v UK (2000) 30 EHRR 12 at paragraph 84

More recently, in SC v UK,

ñ[E]ffective participationô presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake, including the significance of any penalty which may be imposed; if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, the accused should be able to follow what is said by the prosecution witnesses *and, if represented, to explain to his own lawyers* his version of events, to point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence..ó[8]

In England and Wales, the domestic courts have considered what is required to effectively participate in a criminal case. In R(TP) v West London Youth Court,[9] the High Court set out the minimum requirements for a fair trial, that a child defendant is able to:

- Understand what it is said they have done
- Show that they understood, when they were doing it, that it was wrong
- Understand any defence(s) that may be available to them
- Explain their version of events, answer questions, make representations
- Give proper instructions to their lawyer, suggest questions and answer questions relevant to a defence both before trial and during the trial

In theory, the criminal courts should be well equipped to meet the needs of vulnerable, child defendants including those with mental health needs. Children will usually appear before a youth court. Youth courts are specialist tribunals designed for children, intended to make it easier for children to understand what is happening and feel less intimidated by their surroundings. Hearings are held in private and, where possible, everyone is seated on one level. Language should be simplified and children encouraged to speak directly with the judge or magistrates.

In practice, however, children describe going to court as very confusing, one young person described it as ñeveryone speaking a lot of Latinô Another said, ñThey use long wordsé you just want to know if you are going to prison, you are listening outé you just have to put two and two together.ô

For children with mental health needs, attending appointments and court appearances, understanding the complexities of legal terminology and concepts, recall of past events, explaining their version of events will mean that many will struggle to fulfill any, or all, of the requirements (outlined above) that would enable them to participate meaningfully in criminal proceedings.

We know a great many children are not able to effectively participate in proceedings, but without reform to this area of law, the remedy for children who are found to be unable to effectively participate in their trial is that proceedings should be stayed (brought to an end). It is very rare for courts to stay proceedings and the High Court has ruled that a trial court should be reluctant to use it and should use other remedies rather than stopping the proceedings.[10]

Fitness to plead

Given that we know so many children entering the criminal justice system will have complex needs it is remarkable that the courts, and the youth court in particular, do not have the clear mechanisms to assess competency or deal with children with such complex needs. In the youth court there is no legal framework for dealing with fitness to plead.

The current test to decide whether a defendant is ñfit to pleadô originates from case law of 1836 and therefore it fails to reflect the scientific development of modern psychiatry and psychology.

In practical terms ñeffective participationô much more closely reflects the challenges faced by vulnerable children going to court. However, in Crown Courts in England and Wales, fitness to plead has a statutory framework and is therefore more widely used.

In the Crown Court, an adult court where children charged with serious offences or with an adults can be sent, the ñfitness to pleadô procedure[11] is that at least two medical practitioners prepare reports about the defendant. The prosecution can also instruct their own expert. The judge will then decide if the defendant is fit to plead, the experts will often be expected to give evidence and be cross examined in court. If the judge decides a defendant is unfit to plead, then a jury will be asked to decide if the defendant did the act or acts the prosecution are claiming they have done. If the defendant is found to have done the act or omission they do not receive a criminal conviction but can be given a hospital order, supervision order or an absolute discharge.

[8] SC v UK (2005) 40 EHRR 10, at paragraph 29

[9] R(TP) v West London Youth Court (2005) EWHC 2583 (Admin) at paragraph 7

[10] R (TP) v West London Youth Court [2005] EWHC 2583 (Admin)

[11] Section 4 and 4A, Criminal Procedure (Insanity) Act 1964.

To be able to be fit to plead a defendant must be able to do all of the following:

- Understand what it is said they have done
- Understand the charge(s) (the crime they are said to have done)
- Decide whether to plead guilty or not guilty
- Follow the course of proceedings
- Instruct a lawyer
- Challenge a juror (understand the evidence that is inconsistent with what they have said happened)
- Give evidence in his/her own defence[12]

Remarkably, in the youth court (and magistratesô court) there is no equivalent statutory framework. This means that in the youth court, where most children with mental health needs will have their cases heard, there is no formal procedure to decide fitness to plead. A hybrid procedure has been developed using a combination of statutory provisions.[13] Mental health provisions allow youth courts to consider medical evidence relating to a defendantôs physical or mental condition. The court may then, if they find a defendant did the act or made the omission charged, make a Guardianship Order (if 16 or over) or Hospital Order without convicting the defendant. If neither is appropriate then the court must issue an absolute discharge.

The consequence is the mechanism for dealing with fitness to plead is inadequate for most child defendants. Guardianship orders are only available for those aged 16 years and over, there is no option for courts dealing with children aged 15 years old and younger who have a disability but not a treatable medical condition. This situation arose in a recent case of R(TP) v Derby Youth Court[14] where the youth court recognised that having found a 13 years old unfit to stand trial on the basis of a psychiatric report that explained TP ñhas a mental age much younger than his actual age, shows indications of autism spectrum disorder and has significant learning, cognition and other issuesò they had no option but to issue an absolute discharge.

The Law Commission, a statutory independent body established to keep the law under review and to recommend reform where it is needed, has undertaken two consultations in recent years recognizing the need to reform the law in this area and their final report is due to be published in early 2016.

ñThe legal test for unfitness to plead needs to be reformed so that it achieves a fair balance between protecting vulnerable defendants who may be unable to defend themselves properly in a criminal trial, and ensuring that the rights of victims and the security of the general public are properly addressed.ò[15]

Practical advice for lawyers

There are practical steps that lawyers representing children can take. Firstly, it is important to explore a childôs personal circumstances and background and take a full medical and educational history. This will often provide sufficient information to decide whether an expert assessment, carried out by a psychologist or psychiatrist is needed. Any defence lawyer should always consider whether a child defendant capable of effectively participating in criminal proceedings. If concerns are raised, the first step would be to ask the court for an adjournment to get more information about the child from an expert, such as a psychologist or psychiatrist.[4] Public funding can be sought to instruct an expert.[16] The expert report should be asked whether the child can effectively participate in proceedings (and if so what adaptations or modifications could be made to ensure that participation is effective)? The expert report should also be asked to consider whether the defendant is unfit to plead.

Adapting the court process

There are steps that can be taken to modify or adapt the court process, to enable effective participation of children and vulnerable defendants including those with mental health needs. Some of these are set out in the Criminal Practice Directions,[17] providing guidance on how to support vulnerable defendants. The Advocates Gateway, hosted by the Advocacy Training Council, also has a number of helpful toolkits including ôAdvocates Gateway: Effective Participation of Young Defendants, Toolkit 8ô[18] to assist advocates. There are a number of adaptations that may assist children with mental health needs, including:

- Taking the defendantôs needs into consideration
- Taking extra time to explain what is happening in court
- Explaining the charge and the different elements of the offence
- Explaining possible outcomes and sentences
- Taking regular breaks

12 R v Pritchard (1836) 7 C&P 303

13 Section 37(3) Mental Health Act 1983 and section 11(1) the Powers of Criminal Courts (Sentencing) Act 2000, R(P) v Barking Youth Court (2002) 2 Cr App R 294; [2002] EWHC Admin 734 (approved in R (Varma) v. Redbridge Magistrates Court [2009] EWHC 836 (Admin), at paragraph 24)

14 *R (on the application of TP) v Derby Youth Court [2015] EWHC 573 (Admin)*

15 *www.lawcom.gov.uk/project/unfitness-to-plead/*

16 Prior authority is sought using a CRM4 form.

17 *Para 3D, 3E & 3G Criminal Practice Directions [2013] EWCA Crim 1631*)

18 www.theadvocatesgateway.org

- Speaking slowly and clearly, using concise and simple language
- Using simple (not compound) questions and closed (not open) questions
- Giving evidence by live link
- Using an intermediary to help communication

The increased profile and availability of intermediaries has been an important step forward in terms of assisting the effective participation of child defendants.[19] Intermediaries should be considered in every case involving a child defendant.[20] An intermediary[21] is a communication specialist who facilitates two-way communication between a vulnerable person and the other participants in the legal process. Intermediaries provide impartial assistance to those with communication difficulties, learning difficulties or mental health problems. Their duty is to the Court not to the parties involved.

Public funding can be sought to obtain an intermediary report, to enable an intermediary to assess the communication needs and abilities of the vulnerable person and advise how best to communicate with the individual. Courts can then grant an intermediary and fund an intermediary to facilitate the defendantôs complete, accurate and coherent communication.

The need for youth justice specialists

The complex needs of child defendants require lawyers (and a judiciary) who have received specialist training. Anyone who practices regularly in the youth court in England and Wales knows how different the law, practice and procedure is for children.

- The need for practitioners working in youth justice to be specialists is recognised internationally, by the UN Committee on the Rights of The Child[22] and the Council of Europe.[23] In England and Wales, a number of reviews of youth justice have made this recommendation:
- ñAll defence lawyers appearing in youth and Crown Court proceedings should complete specialist youth training before they are allowed to practiceò[24]
- ñWe propose ï as a matter of principle é that those who work in the youth justice system should be purpose-trained specialistsé We propose that lawyers, magistrates, District Judges and Crown Court Judges who work in the Youth Court should be trained to a high level of specialist expertise.ó[25]
- ñWe recommend that all legal practitioners representing children at the police station and practising in youth proceedings be accredited to do so.[26]
- ñLegal training bodies should introduce mandatory training for all advocates who practise in youth proceedingsé ..A youth justice licensing or accreditation system should be developed.ó[27]

If nothing changes, children will continue to be represented by practitioners who are unaware of the particular vulnerabilities of children in the criminal justice system--lawyers who do not ensure children with mental health needs are diverted out of the criminal justice system or given the extra help and adaptations to the court process they need and deserve. Without specialist representation children are being unnecessarily criminalised and incarcerated every day in courts throughout England and Wales.

The current position is stark, the least qualified and inexperienced advocates represent children in our youth courts. Even in the most serious cases, where children and young people appear in Crown Courts, experienced barristers are unlikely to have any expertise or training in representing vulnerable children with complex needs. The youth court, partly because of its informality, is often seen from the outside and wrongly, as dealing with the least serious and least complex cases[28] where children rarely end up in custody and so is considered a training ground for lawyers. Children may be represented by experienced lawyers, either barristers or solicitors, but, regrettably, are quite often represented by ópupilsô trainee barristers, whose training will not have taught them about children with complex needs and they will have received a limited overview of the criminal law relating to children during their training.

---

19 Doing justice to speech, language and communication needs: Proceedings of a Round Table on Speech Language and Communication Needs in the Youth Justice Sector ï November 2014, The Communication Trust at page 11

20 Advocates Gateway, Toolkit 16: Intermediaries Step by Step Guide, page 1

21 See Prof Penny Cooper and Adel Puk, Chronicle July 2014 p32

22 UN Committee on the Rights of the Child (2007) General Comment No 10: Childrenôs Rights in Juvenile Justice

23 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, ñ(39)ò

24 ñRules of engagement, changing the heart of youth justiceò, Centre for Social Justice (2012)

25 The Independent Commission on Youth Crime and Antisocial Behaviour, chaired by Anthony Salz (2010)

26 Independent Parliamentariansô Inquiry into the Operation and Effectiveness of the Youth Court Chaired by Lord Carlile of Berriew CBE QC, June 2014

27 Youth Proceedings Advocacy Review (CiLex, Institute of Criminal Policy Research, Bar Standards Board, Nov 2015, p. X)

28 All cases start in the youth court and only those cases where it is thought that a sentence in excess of two yearsô custody should be available to the court are sent up to the Crown Court

By contrast, family practitioners in England and Wales representing children are specialists. The Children's Law Panel, a Law Society accreditation scheme, ensures children are represented by solicitors who have undertaken specialist training and have completed an assessment and agree to abide by a code of practice. This training embeds the concept of children's welfare and best interests at the heart of their approach to family law.

Conclusion

We recognise that the criminal law relating to children is complex and that children with mental health needs require lawyers who have specialist knowledge or expertise. In recognition that children deserve better, Just for Kids Law has set up the Youth Justice Legal Centre to be a centre of excellence in youth justice law. We have a website (www.yjlc.uk) with resources and legal materials on youth justice law for lawyers, the judiciary and youth justice professionals as well children and their families. We provide training and we have a team of specialist youth justice lawyers who provide advice and assistance to any lawyer in England and Wales representing children in criminal proceedings. Parents and other professionals are also able to access our specialist advice service.

The Youth Justice Legal Centre aims to improve the understanding of youth justice law and achieve recognition that children need specialist lawyers. There is a pressing need for specialist training and accreditation for all youth justice lawyers (much as already exists for family law practitioners representing children). In the meantime, our website will provide comprehensive information on youth justice law, practical guidance and resources to start improving the representation of children.

Kate Aubrey-Johnson is a Barrister and Director of the Youth Justice Legal Centre (YJLC) set up by Just for Kids Law in 2014 as a centre of excellence on youth justice law. (www.yjlc.uk). She is the author of Making Mediation Work For You (LAG, June 2012). Lord Woolf, former Lord Chief Justice, describes her "excellent book" as "breaking new ground".

Treating children as children-- England & Wales

Deputy Chief Constable Olivia Pinkney

"it is crucial that in all encounters with the police those below the age of 18 should be treated as children first"

In the UK we have 43 individual forces that are responsible for policing in their areas. We have a National Police Chiefôs Council who have chief officers from across all forces who lead on various areas of policing. I am delighted to be the National Police Chiefsô lead for the policing of Children and Young People. It is a daunting task. There are over 12 million children and young people living in the UK and Northern Ireland and finding a way to provide direction to effectively police them is a challenge.

I was fortunate in the timing of taking over the portfolio, in that the All Parliamentary Group for Children, which is one of a number of groups across Government, were coming to the conclusion of their 18 month enquiry into the policing of Children and Young People. They had identified 4 key areas and I therefore felt that it made absolute sense to continue with the work across those key areas, namely,

- stop and search,
- custody, detention and criminalisation of young people,
- children in care and
- the relationship and engagement with children and young people.

I have since developed a National Strategy; with an action plan in order to support this work and have a network of strategic and operational leads in every force in order to share good practice and ideas. Our ambition within the strategy is to improve the quality of policing for children and young people by acknowledging their differences, recognising their vulnerabilities and meeting their needs. We then have some key principles, and one is that in all encounters with the police, in line with the United Nations Convention on the Rights of the Child (UNCRC) those who are children should be treated as children first. This key principle is fundamental in helping officers understand that protecting children and young people from threat, risk and harm is at the core of policing.

One of the areas of focus is on the young people who offend. In the UK the criminal age of responsibility is 10. Policing is the gateway into the criminal justice system and in recent years, across the country, forces have made a lot of progress in using alternatives to arresting young people, particularly for minor offences. We know that early involvement in the criminal justice system can be extremely damaging to a young personôs life opportunities. We need to be clear that arresting a young person for the first time can be a very traumatic experience; they often feel like they are being treated like a criminal and being judged as one. As a service we believe in giving young people a second chance, so we need to treat them as though that is the case, and make sure that all our officers understand that perspective.

We need to make every possible attempt to divert a young person away from committing crime. We canôt do this alone, and need strong local partnerships to provide early help to young people and their families in order to prevent crime being an often predictable outcome of a sometimes chaotic and unstable living environment.

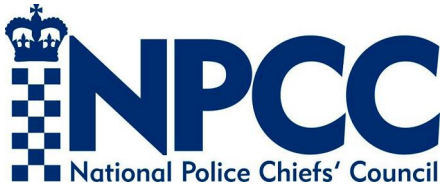
We understand so much more about the impact of early childhood trauma on young people, and providing support to young people living with challenges is crucial if we want to further reduce those young people entering the criminal justice system. We need to be sophisticated enough to offer a range of responses to children and young people, they are not mini ï adults and we need to have flexibility in our systems.

It does mean that those young people who continue to offend, often have complex and challenging needs. There are a small group of young people who are often causing havoc to communities and committing serious crimes. We need to work together to find new ways of tackling this, often the root causes of offending are deep routed and challenging within communities, and require a coordinated approach to addressing them.

Finally I want to mention a cohort of young people who worry me, and that is children in care and especially the children in children's homes. Across the country the police are often called to deal with minor incidents, and officers feel that they have little choice but to arrest. I am aware of some shocking tales from my own force, of young people who have been criminalised for basically what amounts to getting angry in their own home. I know that we are not the only force where that happens, but I am keen to look at what can be done to change this. I really welcome Lord Laming's review[1] to look at the criminalisation of children in care, and am pleased that we are able to support the review team. The latest figure of 38% for young people in youth offending institutes are children in care is a shocking reminder that we need to do more to get this right. We need to avoid the unnecessary criminalisation of children and young people and make sure that the police role within that is understood and addressed.

There is lots to do, but I feel privileged to be in a position where I can make a difference and want to provide leadership in this wide ranging and challenging area of policing.

Olivia Pinkney is Deputy Chief Constable (DCC) for Sussex Police, responsible for delivering the Crime Commissioner's Operational Plan for the County.



[1] http://www.communitycare.co.uk/2015/06/23/lord-laming-review-high-proportion-children-care-end-prison/

Violence against Children in Detention

Anna Tomasi

Side-event to the thirtieth regular session of the United Nations Human Rights Council in Geneva, held on 16 September 2015 in Geneva, Switzerland.

During the thirtieth session of the United Nations Human Rights Council, a side-event on the issue of violence against children in detention was held to discuss and raise awareness among member states, civil society organizations and academia. The event, held on 16 September 2015, was organized by Penal Reform International (PRI) and Defence for Children International (DCI), and included the participation of the Office of the Special Representative of the Secretary General on Violence against Children (SRSG/VAC), Ms. Ann-Kristin Vervik; PRI, Regional Director in Central Asia, Mr. Azamat Shambilov; DCI Advocacy Officer, Ms. Anna D. Tomasi; Permanent Representative from the Permanent Mission of Norway to the United Nations in Geneva, Mr. Paul Oystein Bjordal; and ï via video message ï the United Nations Special Rapporteur on Torture, Mr. Juan Mendez.

Global picture of violence and abuse

Whether in pre-trial detention, administrative detention or detention as a sentence, there is a significant risk of violence that arises simply from being deprived of oneôs liberty.[1] Nevertheless, violence against children in detention remains invisible, under-reported and under-researched. In addition, there is a popular perception that a large proportion of crimes are committed by children, although in fact children are not dominant in criminal statistics.[2] The vast majority (95%) of children in detention are in fact charged with minor or petty crimes, and are most often first time offenders.[3] Very few have committed violent offences and many have committed no offence at all. In fact, approximately 60% of children are actually held in pre-trial detention (so they have not yet been tried before a competent authority) for extensive periods of time.[4] There are many cases where pre-trial detention even goes beyond the maximum sentence for the offence allegedly committed.[5] Thus, beyond the violations that occur once detained de jure, basic procedural rights, such as prompt access to legal assistance, right to challenge legality, prompt decision, etc., frequently remain violated.[6]

Adding to this situation is the high unpopularity of juvenile delinquency, a perceived threat by society which is driving a ñget tough on crimeò response.[7] Such response includes the handing down of harsher sentences, increasing rates of detention, lowering the minimum age of criminal responsibility (MACR). DCIôs national section in Brazil, for example, submitted a stakeholders report to the United Nations Committee on the Rights of the Child, as their review was scheduled this September. The report highlighted that between 2010 and 2011 there was a 10% growth in children being detained. Furthermore, the report highlights the issue of the lowering of the MACR and how in a census carried out in 2007, the majority of respondents (87%) claimed that children should receive the same punishment as adults. Robbery (a petty offence) still represents the most committed act of law infraction, and there has actually been a decrease in serious offences (such as murder, rape, etc.), this data actually contradicts the mediaôs consistent message of increased severity of offenses. Furthermore, the report from Brazil includes 73 cases of homicide in criminal justice system (including cases of suicide).

---

1 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. 11.

2 Office of the Special Representative of the Secretary on Violence against Children, 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, 2012, p. 7.

3 Office of the Special Representative of the Secretary on Violence against Children, 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, 2012, p. 7.

4 United Nations Childrenôs Fund, ôChildren in Detention: Calculating global estimates for Juvenile Justice Indicators 2 and 3ö, Programme Division,
UNICEF, New York, 2007 (internal document)

5 World report on Violence against Children, Paulo Sergio Pinheiro, 2006, p. 191

6 United Nations Convention on the Rights of the Child, article 37

7 Promoting Restorative Justice for Children, Marta Santos Pais, 2013 p.35

So why are so many children in detention? It is a large systematic problem: violence in the family, chronic poverty, as well as lack of care and adequate systems, which causes children to end up on the street, robbing (theft and property crimes are most common), involved in prostitution, etc. We must remember that child offenders are often those who have been victims themselves, so there is a causal role in their troubled behaviour. Furthermore, media attention and even political agendas often increase social pressure for the criminalization of children, pushing for this "tough on crime" approach. Simultaneously, the criminal justice system is often used as a substitute for care and protection systems. For example, victims of sexual or economic exploitation or alleged perpetrators of "honour crimes" are frequently detained in what has earned the name "protective custody", where girls who have been sexually assaulted are detained to protect them from the family which would have to preserve the family honour or marry their rapist.[8]

Even when offences were actually committed, criminality remains symptom to a larger cause. The root of the problem must be addressed, including the lack of financial resources and/or political will with regard prevention mechanisms, as well as adequate rehabilitation and reinsertion systems. Between 50-70% of offenders are re-arrested within two years after their release, so clearly detaining children is ineffective[9]. There is a need to shift the dynamics and move from retribution to restoration and rehabilitation, following a restorative justice paradigm.

The United Nations General Assembly established the mandate of the **Special Representative of the Secretary General on Violence against Children (SRSG/VAC)** in 2009, as an independent global advocate for the prevention and elimination of all forms of violence against children – based on the recommendations put forward by the UN Study on Violence against Children of 2006. Since her appointment, the SRSG has been strongly committed to mobilizing action and political support to maintain momentum around this agenda and to achieve steady progress across the world. In her report "Prevention and Responses to Violence against Children within the Juvenile Justice System" (2012), the SRSG highlights the importance of prevention, as the fewer children in the criminal justice system, the lower the risk of their exposure to violence. To this end, the SRSG lobbies for States to avoid the criminalization and penalization of children and reduce the number of children deprived of liberty. Measures which the SRSG/VAC encourages States to adopt include: decriminalizing status offences; establishing adequate protection systems (particularly for children with mental health and drug abuse problems); raising the minimum age of criminal responsibility to a minimum of 12 years and continue to increase it; as well as to resort first and foremost to non-custodial measures. The SRSG has also published an important report on "Promoting Restorative Justice for Children" (2013), examining the potential of restorative justice programmes to facilitate conflict resolution and provide appropriate protection to children. Restorative justice applies to the justice system, whether children are victims, offenders or witnesses, but it also applies in a range of other contexts, including at school, in residential care units, in social welfare settings and in the community. Furthermore, in her latest report on "Safeguarding the rights of girls in the criminal justice system" (2015), the SRSG underlines the double challenge girls face based on their age and gender.

In the latest report to the Human Rights Council (A/HRC/28/68), **United Nations Special Rapporteur on Torture (SRT)**, Mr. Juan Mendez, focused on children deprived of liberty. The report highlighted that "detention of children, including pre-trial and post-trial incarceration as well as institutionalisation and administrative immigration detention, is inextricably linked with the ill-treatment of children, owing to the particularly vulnerable situation in which they have been placed that exposes them to numerous types of risk".[10] Detention remains a further occasion for the mistreatment of children, also due to the many situations of overcrowded prisons and centres. Furthermore, there are reported cases where drugs are used to keep boys calm while they are detained, which is a serious issue as it creates dependency on medication. Girls often suffer sexual abuse and even when girls are protected from sexual abuse a lot of times they are mistreated by female prison guards. In his report, the SRT notes that children are particularly vulnerable to certain human rights violations and that the United Nations Convention on the Rights of the Child, in its article 37 (c), establishes the obligation to take into account the age-specific needs of children. The United Nations Human Rights Committee, the European Court of Human Rights and the Inter-American Court of Human Rights, have also recognized the need for States to provide special measures or heightened "due diligence" to protect the personal liberty and security of every child.[11]

Violence also occurs as a form of **sentencing**, such as stoning, amputation, and the death penalty. The extreme case of the death penalty

[8] Ibid. 5, p.191

[9] Ibid. 5, p. 200

[10] A/HRC/28/68, p. 15

[11] Human Rights Committee, general comments No. 17, para. 1 and No. 35, para. 62; European Court of Human Rights, Z and Others v. United Kingdom, paras. 74-75; Inter-American Court of Human Rights, Gonzales v. USA, final observations, 24 March 2008, pp. 64-67

constitutes a violation of jus cogens, yet despite this customary law, children continue to be sentenced to death. [12] Other sentences such as life imprisonment can amount to cruel, inhuman or degrading treatment or punishment. The SRT continuously stresses that life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child. Life sentences or sentences of an extreme length have a disproportionate impact on children and cause physical and psychological harm that amounts to cruel, inhuman or degrading punishment.[13] The same treatment when considered degrading for adults can be considered torture for children; solitary confinement can be a legitimate measure of discipline to adults, but even a few hours of isolation of children it is considered torture, because the effects of this on children can be more serious and more lasting than when applied to adults. The threshold must to be lower for children. The SRT insists that children must be subject to sentences that promote rehabilitation and re-entry into society and therefore calls on States to prohibit laws, policies and practices that allow children to be subjected to adult sentences and punishments, and to prohibit the death penalty and life imprisonment in all its forms.[14]

PRI's report "Voice of the Child" presents the findings from a survey of 274 children detained in closed institutions across Kazakhstan, Kyrgyzstan and Tajikistan, demonstrating the high prevalence of violence in these institutions (68% said they were treated badly by the police in Kyrgyzstan, 55% in Kazakhstan, and a third in Tajikistan, for example). The report estimates that there are more than 30,000 children deprived of liberty across these countries. Moreover, these children are often held in custody longer than the law permits (12% were held for longer than five days in Kyrgyzstan for example although the limit is 72 hours). Many children do not receive legal assistance at a police station (only 37% said they had received assistance in Tajikistan, for instance). Children in detention centres or special schools also report experiencing verbal and/or physical abuse by staff. Staff feel underpaid and badly supported to deal with the children in their care. The PRI report calls for the use of violence to be eliminated as a matter of urgency, and that laws and policies be adopted to concretely instate the international obligations on this regard, in particular the need to make use of alternative, non-custodial measures and prevent children coming into detention facilities in the first place.

Strategies, measures, solutions

Within the international arena, there seems to be a growing awareness around the issue of violence against children deprived of liberty: it has been specifically addressed in recent reports by the United Nations Special Representative on Violence against Children[15] and the Special Rapporteur on Torture[16], as well as the Special Rapporteur on the independence of judges and lawyers in her report to the Human Rights Council this June[17], and there are reports about the situation at regional or country level such as the aforementioned report published by PRI. However - and it seems agreed[18] - an overall picture of what is effectively happening on the ground, actual data on the specific number of children being detained, is tremendously lacking. In order to address this gap, and bridge rights with reality, DCI launched a campaign in March 2014, calling on the United Nations to carry out a **Global Study on Children Deprived of Liberty - GSCDL** (taking from the previous Global Studies: Children and Armed Conflict of 1996 and Violence against Children of 2006). The campaign gained the support of many stakeholders, including over ninety NGOs (ñthe NGO Panel for the GSCDLò), receiving a formal request through the United Nations General Assembly (UNGA) child rights resolution 69/157 (paragraph 51.d). The Study is to collect - once the technical requirements are defined - sorely needed data and statistics from across regions on the number and situation of children in detention, as well as share good practices, and formulate recommendations for effective measures to prevent human rights violations against children in detention and ultimately reduce the number of children deprived of liberty. The Study will be broad in scope and take into account deprivation of liberty in *all* its forms, including: children in conflict with the law; children confined due to physical or mental health or drug use; children living in detention with their parents; immigration detention; children detained for their protection; national security; etc. The implementation of the Study, which should arch

[12] The imposition of the death penalty on children is forbidden under international law and has been accepted so universally as to reach the level of a jus cogens norm (A/67/279, para. 62)

[13] Ibid. 8, p. 16

[14] Ibid., p. 20

[15] Prevention of and responses to violence against children within the juvenile justice system (2012); Promoting Restorative Justice for Children (2013); Safeguarding the rights of girls in the criminal justice system (2015).

[16] Ibid. 8

[17] A/HRC/28/26

[18] United Nations Children's Fund, Progress for Children, A report card on child protection, No. 8, September (2009); United Nations Secretary-General's Study on Violence against Children (2006); Administrative detention of children: a global report, Children's Legal Centre, University of Essex & UNICEF (2011); Joint report on prevention of and responses to violence against children within the juvenile justice system (2012), Special Representative of the Secretary General on violence against children, the Office of the High Commissioner for Human Rights (OHCHR) and United Nations Office on Drugs and Crime (UNODC); UNCRC General Comment No.10 (2007); Report of the UN Special Rapporteur on the Human Rights of Migrants (A/HRC/20/24).

from early 2016 to October 2017, is to follow a collaborative approach so as to include the participation of all stakeholders (the UN, States, civil society organizations, academia and children). Since the UNGA resolution, the Study continues to be strongly supported in many important occasions and documents, such as the World Congress on Juvenile Justice, the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, the United Nations Human Rights Council, the Council of Europe, inter alia.

The **United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice** (A/RES/69/194), in its part three, focus specifically on ópreventing and responding to violence against children within the justice systemô The Strategies, which are an important means in providing practical and effective solutions for States, are essentially aimed at improving the effectiveness of the criminal justice system in preventing and responding to violence against children, as well as protecting children against any violence that may result from their contact with the justice system. To this end, the Model Strategies promote the following overarching measures for States to implement within their domestic systems on the issue: reduction of the number of children in contact with the justice system (by promoting the increase of the minimum age of criminal responsibility, diversion measures, restorative justice programmes and the use of non-coercive treatment and education programmes as alternative measures to judicial proceedings); prevention of violence associated with law enforcement and prosecution activities; assurance that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time; prohibition torture and other cruel, inhuman or degrading treatment or punishment; prevention and response to violence against children in places of detention; protection of children victims of violence as a result of their involvement with the justice system as alleged or sentenced offenders; strengthening accountability and oversight mechanisms.

Another important instrument to address to situation of children deprived of liberty is highlighted by the report ñPromoting Restorative Justice for Childrenò (2013) of the SRSG/VAC. **Restorative justice** means to restore justice within families, schools, communities, organizations, civil society and the State, providing peaceful conflict resolution and contributing to cohesive and democratic societies - shifting justice for children from retributive to restorative. This re-examined model (which is actually not new at all, but based on ancient forms of community justice, practiced around the world[19]), provides a unique opportunity for childrenôs rights to be realized. Rather than assess how much punishment is inflicted, restorative justice measures how much harm is repaired or how much recurrence of violence is prevented through an effective process of reintegration of young offenders into society. There are some examples of countries where this measure has been very positive (such as Indonesia for example). Restorative justice brings different sectors together: youth follow up teams (police, teachers, parents, friends, social workers, health workersé) who then sit down with the children and plan how they are going to work together in order to help the child.

Lastly, the United Nations **Human Rights Council** in Geneva has an important role in preventing and addressing violence and abuse against children in the criminal justice system, and must continue to fulfil its mandate in promoting human rights, addressing situations of violations and putting forward recommendations to States (particularly through the Universal Periodic Review). Through its mandate, the Council will play a key role in ensuring States are effectively fulfilling the recently adopted Sustainable Development Goals (SDGs). It is essential that there be constant follow-up as well as increased collaboration and coordination among the different entities involved in the work and impact of the Council (the special procedure mandate holders, civil society engagements, etc.). To this end the establishment of a Child Rights Unit within the Office of the United Nations High Commissioner for Human Rights (OHCHR) would prove crucial, as it would better ensure child rights remain permanently on agendas and would better steer and coordinate child rights issues and initiatives, in particular the annual full day meeting on the rights of the child (which takes place annually during the March session), and also assist in the coordination of important enterprises such as the realization of the SDGs, the Model Strategies and the Global Study on Children Deprived of Liberty, for example.

Anna Tomasi has worked as the Advocacy Officer for the International Secretariat of Defence for Children (DCI) in Geneva, Switzerland since 2012. Previously she worked for the Italian Ministry of Foreign Affairs in Buenos Aires, Argentina. Anna holds a LLM in International Human Rights Law (University of York, United Kingdom), a Postgraduate Certificate in Child Rights (Universidad de Buenos Aires, Argentina) and a LLB in European and Transnational Law (Università degli Studi di Trento, Italy). anna.tomasi@defenceforchildren.org

[19] Promoting Restorative Justice for Children, SRSG on Violence against Children (2013)

Children in the Middle East--DCI

Sukaina Khalawi

Children across the Middle East and North Africa (MENA) region are frequently deprived of the basic rights afforded to them by the Convention on the Rights of the Child (CRC)and international law. This is particularly alarming and reprehensible for children within the juvenile justice system, regardless of whether they are in conflict with the law.

Across the region, laws relating to children are outdated, and enforcement of children's rights is too often weak or nonexistent. Many countries lack a comprehensive juvenile justice system that can appropriately respect and handle children's rights. Shockingly, governments in some countries are simply unable or unwilling to adequately protect children.

Across the MENA region, human rights organizations are campaigning for change as they provide and strengthen key services. However, these organisations face their own difficulties, handicapped by restrictions on freedom of expression, and physical attacks on activists.

DCI MENA Desk, established in 2011, is improving the situation for children across the region by supporting organizations that work for children's rights. By working closely with the League of Arab States and creating a strong regional network, we promote basic protections for children, and we seek to develop child-friendly justice systems based on the UN Convention on the Rights of the Child and international law.

DCI felt the urgency to grow the movement across the Middle East and North Africa to address the high protection risks that exist for children. In 2011, DCI's International Executive Council gave the Palestine section the mandate to establish DCI sections in the Arab world. DCI Palestine partnered with leading local, independent civil society organizations from Egypt, Iraq, Lebanon, Libya, Mauritania, Morocco, Tunisia, and Yemen, each eventually becoming a member of the DCI movement in their own right. While DCI made significant progress toward welcoming a Sudanese partner to the fold, the relationship dissolved late in 2014 as the organisation struggled to sustain its operations amid political turmoil.

The focus of the regional programme is to enhance the interaction and engagement by Civil Society Organizations (CSOs) with the League of Arab States (LAS). LAS builds on experience gained and lessons learned from engagement with international mechanisms and the African Charter. It is important to study the experience of other regional mechanisms to use lessons for the development of LAS; LAS has played little role in the past with regards to important human rights situations in the Arab countries. The current structure of LAS does not bring victims of violations directly into contact with the organisation (for example through special procedures or through complaints mechanisms). Linking LAS bodies with victims of human rights violations will be important in future strategies; therefore, future work should not only aim at strengthening the engagement of CSOs with LAS, but also aim at changing the rules of engagement of LAS with civil society. There is a need for CSOs to understand how LAS and its bodies work in order to develop appropriate strategy for engagement

All ten of these organizations have since sought to engage the Arab League specifically, as well as the United Nations and other international bodies, to bolster protection mechanisms for children in the Arab world. Here, the DCI movement found its focus. The ten sections want the Arab League to set a clear child rights agenda. One that revises the Arab Charter on Human Rights to ensure children's rights are in line with international standards, reforms the Arab Human Rights Committee and the Arab Commission on Human Rights to strengthen their mandate, and allows greater interaction and consultation with civil society organizations. A major role for the DCI sections lies in drafting a comprehensive guideline on child friendly justice and advocating for the Arab League member states to adopt the document. The guideline deals with laws and their application that affect children in conflict or in contact with the law and child victims of violence. The document offers best practices to law enforcement personnel, judges, lawyers, prosecutors, protection and probation officers, parliamentarians, and other stakeholders that take into account the child's well-being during all legal procedures.

Through the advocacy component of the programme the involved CSOs --ñ10 DCIôs section in the 10 identified countriesò--will call for a more structured Arab Leagueôs mechanisms with focus on the following:

1. To urge the Arab League to set a clear strategic **Child Rights Agenda**; whereby promotion and protection of child rights are seen as the guiding principle of the organization. This should be elaborated through a collaborative and consultative effort among CSOs and between them and LAS.

2. To revise **the Arab Charter on Human Rights, especially in relation to child rights:** The Arab Charter on Human Rights falls below international standards which is in conflicts with international law in some places, and it fails to recognize important standards at other places.

3. To r**eform the human rights bodies:** including mandate, role, and rules of procedures of the main human rights bodies of LAS, including the Arab Human Rights Committee and the Arab Commission on Human Rights in order to strengthen their protection mandate, and to give easier access to CSOs to these mechanisms.

4. To **widen its interaction and consultation with CSOs:** CSOs must be enabled to engage in consultation prior to any decision-making process on country situations and other such major matters, for example when discussing and elaborating model laws, human rights education plans, new treaties.

Work strategies:

Intervention Strategies in Each Country

1. Legal representation for girls in conflict with the law.
2. Receiving complaints from girls whose rights are violated (or from their families).
3. Regular monitoring visits to children in detention.
4. Capacity-building for JJ professionals.
5. Case studies, legal reports and research on JJ.
6. Networking, coordinating, referrals and follow-up with governmental institutions and NGOs through national child protection networks, international organisations and child protection committees.
7. Participation in preparing JJ-related legislation.

Joint Regional Intervention Strategies

Regional Coordination: Build an Arab network of JJ-focused institutions, such as the Motherhood and Childhood Unit within the Arab League, the Arab Network for Child Rights, regional child rights organizations, etc.

Exchange of International Experience: Participate in relevant international events, e.g. by submitting reports/ complaints to international bodies such as the CRC, Universal Periodic Review, Committee against Torture, etc. Applicant and partners will seek DCI-IS support and attend DCI-organised trainings/events in Geneva or elsewhere.

Awareness-Raising Activities

- Web platform prepared as a forum for information exchange among DCI sections and for JJ stakeholders.
- Two regional reports published on relevant JJ issues (e.g. age of criminal responsibility, custodial violence against girl children, torture, etc.).

Capacity Building Activities

- Two international training courses (once a year) during HRC sessions on how to access UN bodies/mechanisms, submit reports to mechanisms like the CRC Committee; CEDAW committee organisations will receive a training course and be able to lobby UN bodies and Permanent Missions (side-events, statements, round-tables, etc.).
- Two regional ñtraining of trainersò courses, led by DCI-PS and involving a trainer from DCI-IS and other experienced DCI sections, targeting 20 representatives from the DCI sections in the project.
- Subsequent national training sessions for justice professionals, police, religious or traditional leaders, social workers, etc.
- Three regional workshops toward developing regional guidelines on specific issues relating to the protection of children in conflict with the law and victims of rights violations.
- Regional/national guidelines prepared on alternative measures, restorative justice and diversion (developed by a regional task force of partners).
- Two exchange visits to DCIôs regional desks in Latin America and Africa: visits to detention centres, protection/ juvenile centres, meetings with local partners, stakeholders, etc. In Africa, partners will meet with the African Child Policy Forum regarding the African Guidelines on Juvenile Justice in cooperation with DCI-Uganda.

National/Regional Lobbying and Advocacy

- Lobby UN Committee on the Rights of the Child and special procedures mandate-holders to pressure governments to implement international JJ standards.
- Share relevant information with members of the Interagency Panel on Juvenile Justice to make joint statements on abuses committed in project countries (DCI-IS).
- Lobby/advocate with Geneva-based permanent missions and UN institutions.
- Issue two joint regional annual reports on children in conflict with law in the Arab region (especially on institutional violence in the justice systems against female children).
- Establish National Observatory on Juvenile Justice to gather data on children in conflict with the law.

DCI Members:

- DCI-Egypt- The Egyptian Foundation for Advancement of Childhood Conditions, founded in 2000, promotes children's welfare, advocates against their exploitation and abuse, and advances protections for those in conflict with the law. EFACC provides free legal aid to children in distress.
- DCI-Iraq - South Youth Organization, founded in 2005, raises awareness of human rights and works to achieve greater protections for them. SYO documents and exposes grave violations against children, specifically focusing on abuse of women and girls, sectarian violence, and discrimination issues.
- DCI-Libya-The Libyan Association for Children's Rights, founded in 2000, promotes children's rights through monitoring and documenting abuses, raising government and public awareness of protection gaps, and advocacy efforts aimed at bringing existing legislation in line with the Convention on the Rights of the Child.
- DCI-Lebanon- Connect Children Now, founded in 2014, works to protect children from violence, abuse and exploitation, with a focus on child refugees and workers. CCN provides psycho-social support and offers recreational activities for these vulnerable groups to mitigate the effects of trauma and overcome challenges.
- DCI-Mauritania - The Mauritanian Association for the Health of Mother and Child (AMSME), founded in 1999, protects and advances the rights of women and children in the areas of health, education, and social care. AMSME focuses on reducing maternal and child mortality rates, combating HIV and AIDS, and exposing violence against women and children.
- DCI-Morocco- Bayti, founded in 1995, works on protecting children, with a focus on those living on the streets, from all forms of violence. It provides them with rehabilitation services and psycho-social support, and assists their reintegration into the family home, school, and community.
- DCI-Palestine- Defense for Children International Palestine, founded in 1991, investigates, documents and exposes grave human rights violations against children. It advocates at the international and national levels to advance access to justice and protections for children. DCIP also provides direct legal aid to children in distress.
- DCI-Tunisia- The Tunisian Association for Children's Rights, founded in 1997, raises awareness of children's rights in the areas of health, education, and participation. TACR also provides mobile health care units and offers recreational activities to children living in rural areas and refugee camps.
- DCI-Yemen- Democracy School, founded in 2001, exposes violations against children, provides legal and social aid to children in distress, and raises government and public awareness of children's rights. Democracy School operates the Children's Parliament, which allows child participants to directly impact policies that affect them.
- Affiliated DCI partner– Jordanian Women Union, the JWU is a democratic, non-governmental organization that seeks to improve the status of women within Jordanian society. Established in 1945, it has strong regional and international ties with other women's rights organizations and has operated continuously since 1990.

Sukaina Khalawi is regional coordinator of the Middle East and North Africa (MENA) Desk at Defence for Children International (DCI).

The DCI-MENA desk has very recently published a regional report entitled **Overview of the Child Rights Situation in Arab Countries.** To read the report, please click this link: http://www.dci-palestine.org/overview_of_child_rights_situation_in_arab_countries.

Good Practices for a specialized juvenile Justice system

Judge Patricia Klentak

Patricia Klentak

Avril Calder & Marta Pascual

International Conference, Buenos Aires, Argentina

September 24-25 2015

Last September the Argentine Association of Magistrates, Officers and Professionals of Justice for Childhood, Adolescence and Family (AJUNAF) together with the Office for support of the Council of Youth Justice Magistrates of the City of Buenos Aires organized an international conference *Good Practices for a specialized Justice*

The International Conference was supported by the United Nations Fund for Children (UNICEF) and the International Association of Youth and Family Judges and Magistrates (IAYFJM), whose President Avril Calder honoured us with her presence.

Prestigious national and international lecturers participated: Avril Calder, Jean Trépanier*, Monique Anderson, Eugenio Zaffaroni, María Fernanda López Puleio, Alejandro Morlacchetti, Patricia Klentak, Raúl Calvo Soler and Carla Cavalieri, amongst others.

Jean Trepanier*

Marta Santos Pais

The Special Representative of the United Nations General Secretary on ñViolence against childrenò Marta Santos Pais opened the event through a video message highlighting that

:ðé the subjects to be dealt with at the conference were particularly timelyò being linked to the new Global Agenda of Development of the United Nations General Assembly which includes amongst its objectives, building peaceful and inclusive communities with progress in access to justice for everyoneò

The meetings fostered a rich interchange of knowledge and experience.

AJUNAF concluded that the following subjects and actions are a priority for the development and improvement of Juvenile Justice:

1- A structure for Juvenile Justice that, in accordance with General Comment number 10 of the International Committee on the Rights of the Child, includes the following items:

- prevention of juvenile delinquency
- diversion
- special standards to protect young peopleôs rights, taking account of their age

- short judicial processes with no delay
- alternative measures to the deprivation of liberty
- participation of youth and their family in the processes.

2- Juvenile Justice as a specialism, based on children as people in the process of physical, mental, emotional and moral development.

Specialism requires:

- specialized laws, procedures, authorities and institutions
- multidisciplinary approaches
- specialized judicial approaches
- a justice system that is focused on children with appropriate child-friendly practices that:
  - 1) recognizes children's rights and
  - 2) takes into account children´s opinions, needs, progressive independence and autonomy and their skills.

3- Access to justice understood as obtaining jurisprudence that gives effect to, amongst other things, the rights of girls, boys and adolescents to life, to play, health, education, nourishment, culture, dignity, and to the right to live with his/her family in his/her community.
Looking forward to this, we propose:

- Improve implementation of rights
- a strong focus on girls, boys and adolescents who belong to groups in highly vulnerable situations
- promotion of worldwide adherence to the Optional Protocol of the Convention on the Rights of the Child on Procedures of Individual Communications

4- Restorative Justice is a process aimed at involving, if possible, all those affected by a particular offence and identifying and collectively making good damage, and meeting needs and obligations stemming from the offence, with the purpose of healing and mending the damage in the best way. Restorative Justice originates from a criminological paradigm motivated by the principle of a humane approach to:

- the concepts of criminal law
- the judicial process
- criminal policy from a constitutional perspective
- the deprivation of liberty, punishment and sanctions

Building restorative communities for girls, boys and adolescents.

Interventions that involve adolescents in the penal process should be fashioned from objectives characteristic of juvenile justice, whose first aim is to encourage the peaceful and constructive inclusion in their communities of adolescents who are in conflict with the criminal law. Juvenile Justice should be seen as part of the national development process of every country and should be administered within the framework of social justice.

The main objectives of Juvenile restorative justice are:

- to contribute to social peace trying to lessen the high degree of social conflict that girls, boys and adolescents may become involved in
- to encourage the development of social skills in young people for the peaceful resolution of conflicts
- to promote whole development and social inclusion.
- We consider the following as important aspects for the construction of a model of intervention in juvenile restorative practices:
- the development of adolescent identity and the roles of the agents of socialization
- the mental structure of girls, boys and adolescents
- the social context
- the progressive development of young people's independence of thought so they can build up the capacity to decide against violence
- the process of emotional maturation that the adolescent has to go through to be able to take responsibility for his or her actions (to be able to answer for their choices and decisions) and make possible the reparation of the damage caused
- the social, intellectual and cultural capital of the young, their families and their communities
- the participation of young people in the building of **safe and inclusive** communities
- programmes of juvenile restorative justice should be put in a wider frame of reference which, beyond the reparation of damage caused by crime, aims to achieve the social inclusion of the young people who take part of the programme.

5- The dignity of adolescents in conflict with the law.

Girls, boys and adolescents in contact with systems of justice should be treated with care, attention, sensitivity, equity, impartiality and respect during the whole process or treatment of the case and in a way that promotes their dignity. A dignified life also involves their whole development which should be promoted in every intervention.

The human dignity of girls, boys and adolescents requires acknowledgement of their specific differences, bearing in mind their age and their individuality. These must all be taken into account in each approach.

In the case of adolescents in conflict with the criminal law subjects of special concern are, as follows:

- an improvement in lodging conditions
- the permanent monitoring of lodging conditions
- continuing to support the initiative driving forward the accomplishment of the Global Research on Children Deprived of their Liberty
- the preventive deprivation of liberty during the process should be exceptional, provisional, for the least time possible and subject to periodic review
- during commital they will receive medical, psychological and social assistance, and school integration and vocational training will be facilitated
- detention will take place in institutions or sectors specific to minors and in conditions that guarantee their rights
- the response to crime will always be proportional not only to the circumstances and gravity of the crime but to the specific condition and needs of the child
- enforcement of the disciplinary regime of the institution will respect due process with previous legal counselling, judicial oversight, clear and precise reporting of the facts and the right to appeal
- any disciplinary measures that involve, cruel, inhuman or degrading treatment--including corporal punishment, confinement in dark cells or isolation, punishment with reduction of nourishment, restriction or denial of contact with family members or any other punishment that might endanger the physical and/or mental health of the minors are forbidden
- work in places of detention should always be designed as an instrument of education, as a means to promote self-respect or as preparation for their reinsertion into the community. Work should never be imposed as a disciplinary sanction
- punishment by the deprivation of liberty will be shorter than that applicable to adults given that the adolescents are easier to mould to modify behaviours in the short term and their perception of time is different from adultsô
- in institutions for the deprivation of liberty adequate measures will be taken to reduce violence among adolescents, self-inflicted injures and suicides

Judge Patricia Klentak*
President, AJUNAF

The profession of a family judge – a trade or vocation?

Judge Monika Krajka-Pawlak*

Every human has a natural need and right is to seek happiness and, unquestionably, one way to achieve it is to enter into a variety of interpersonal relations. Life in solitude is not only against human nature but, above all, extremely sad. Fear of loneliness had led humans to create communities where families made fundamental units, which resulted in the need to regulate the arising relations.

Currently, the family law must deal with a number of issues caused by social changes, in particular those related to the stereotypes popular so far, the perception of a family and a liberal approach to moral standards. These are extremely complex matters, which makes adjudication on family cases truly difficult as the facts of each case as well as the problems related to them may be very diverse. Hence, it is hard to imagine a situation in which incompetent individuals deliver verdicts on family cases.

According to my understanding, oneôs vocation is a gift, an internal conviction about being predisposed to perform a specific action, achieve an aim or practice a profession. Thus, it should be assumed that the source of oneôs vocation comes from oneôs inside, not external circumstances, although they may become the breeding ground for a vocation.

I am certain that the relations in the family in which I had grown up and the people I met over the years, which shaped me as a person and a judge, were the determining factors in choosing the career of a family judge, the profession I have been practicing for over 8 years now. I feel obliged to describe them briefly as they are the key to understand how my vocation, whose pursuit is one of the components of my personal happiness, was born.

I was raised in a complete family. My parents still have a happy relationship. I have a brother and sister with whom I have firm and close bonds. My mother is a family judge with 40 years of professional experience. When I watched her as a child, the last thing I wanted to do in life was to become a judge, in particular a family judge. Her work would always be linked with permanent reading of case files and imposing limits on my teenage freedom, which I blamed on her profession. The child-rearing system practiced by my parents was markedly different from the one experienced by my peers. In our home, it was based on creating for me and my siblings the space to discuss every subject and express our own views, even in uncomfortable situations, which, I must admit, I was happy to take advantage of in my puberty years when I offered my parents an opportunity to experience a wealth of emotions and thrills. My maternal grandmother, a strong and charismatic woman, played an extremely important role in my life as she had an exceptional talent to tone down tension and consolidate the family, which made us feel unconditionally accepted and loved regardless of the circumstances. It so happened that I had not been admitted to medical studies, something I had always dreamt about, which is why I decided to study law on the principle that ñbetter the devil you knowò One year before graduation I became a mother and got married. My parents, grandmother, brother and even my sister, who was 11 years old at that time, helped me to take care of my daughter so that I could finish university. As one of very few graduate students, I had the privilege to write my MA thesis under the supervision of Professor Mirosđaw Nesterowicz who picked the subject for me. It was ñParental Authorityò and he wittily remarked that as a mother I must know more than the rest of childless, at that time, MA students. One year after graduation I began my legal training, which would not have been possible, either, without the support of my family as I would not have had the time to study. In that period I was discovering the beauty of motherhood day by day, which, despite its hardships, gave me a lot of satisfaction. I was very lucky as a trainee because my tutors, by and large, were judges by vocation. Let me mention here Justices Wojciech Andruszkiewicz, Alicja Jđdrkowiak and Piotr Nowacki, all of whom I value not just as outstanding specialists but, above all, as good people who treat defendants with attention, respect and class. In retrospect, I can say that they just liked people. I try to emulate them as superior role models.

Passing the exam to become a judge was again a success that I owed not just to myself but also to my family members as without them I would not have been able to combine studying with being a mother.

Waiting for a vacancy in the court I became a complaints investigator and, again, was fortunate to find myself working in the same room as Joanna Chmielewska, Justice of the Regional Court and an inspecting judge for family matters at that time, who, in one of our numerous conversations, said that in order to work in the family court you needed to have not just a vocation but a feeling of mission, too. At that time I already knew that the only position of interest for me was at the family division. On the basis of my personal experiences as a mother, daughter, granddaughter and sister I was convinced that the most important value in my life was the family, interpersonal relations and shaping these relations through oneôs own behaviour. The period of traineeship at the family division only strengthened this conviction as I confirmed my belief that working as a judge one may be close to man.

I understand the vocation of a judge as an incentive to evaluate the facts of the case in an insightful and solid way in order to look for optimal solutions taking into account fundamental and paramount values which are the guiding principles of not just the family law but the entire legal system. What I have in mind here, includes, above all, the right of respect for human dignity, whose derivative is child welfare protection, the fundamental aspect of family cases. The existence of a vocation replaces other conditions necessary to be fulfilled in order to adjudicate well at the family division, i.e. mindfulness, empathy, striving for the truth, the ability to verify your own views and striving for excellence in the sense of both professional and personal development.

Currently, family judges must deal not just with legal issues, but, above all, with life problems related to the cases they examine. We adjudicate in the time of the existence of or struggle for specific freedoms which are limited by the legal regulations adopted and what is often casual understanding of moral values. Marriages are being replaced by partner relationships, families are falling apart, sexual minorities are fighting for the right to legalise their relationships and, in a shorter or longer term, the right to adopt children. The age of sexual initiation continues to decrease, young people are becoming more and more demoralised as they are deprived of the attention of their parents, regardless of the familyôs material standing, in the name of money which is seen as the most important value in itself. Technological progress and the tools that accompany it interfere with the ability to communicate in a direct way.

This is just the ñtip of an icebergò I think that each and every one of us has dealt with cases we will never forget because of their complexity and no guidance as to how to adjudicate could be found in the existing jurisdiction or comments. Every family judge takes moral responsibility for the decisions made as there is no other category of cases where your direct impact on human lives is so great.

It goes without saying that the profession of a family judge is also a trade, although the term does not seem to be the most adequate one to me. Performing any job, regardless of its kind, has its technical aspects. For any judge, not just the one specialising in family cases, they are definitely related to the need of life-long learning and raising qualifications, which can be done thanks to direct access to the most recent jurisdiction and professional literature as well as a broad range of training courses. This makes both sides comfortable as they may be convinced that the matter which is key for someone will be examined by an expert. Technological progress has also forced judges to take advantage of the tools it offers, such as electronic communicators, IT systems and the most recent invention - an audio and video system which enables recording of court sittings. I think that we have to move with the times and take advantage of the solutions offered although it is not always simple to change your routine. For me, the trade-related aspect of this profession also involves developing strategies of how to manage your own department. Sensible planning of sittings according to the size and type of workload is crucial to obtain a satisfying outcome, not just for the parties but for the judge too, and, as a result, makes it possible to achieve a good level of effectiveness on a monthly basis. This is not easy in the time when family divisions are understaffed, departments must deal with several hundred cases simultaneously, many of them defined as urgent require prompt examination and there is no objective possibility to plan your work considering the frequency of the so-called ñemergency casesòwhich require instant response.

Thus, in order to pursue his or her vocation, a family judge must have adequate professional skills. Good knowledge of the law, in particular the civil procedure, provides us with a broad spectrum of possibilities to finish proceedings as quickly as possible because the worst decision is no decision at all. Regular and well-planned work in your own department enables you to control the situation in it. Excessive workload for departments, understaffed clerk offices and pressure on taking more extensive efforts to achieve judgments quicker do not make our work calm or peaceful. But Ăticking offò case numbers may not be an aim in itself as every case is related to a different problem, level of difficulty and emotional load.

I do not feel competent to evaluate whether I am a good family judge. But I am convinced that this profession requires from us to maintain an equilibrium between a vocation and trade. You cannot possibly resolve matters solely on the basis of your experience, regardless of evidence, divorced from the provisions of the law, without maintaining procedural guarantees for both parties. But I think that the current legislation creates a framework for adjudicating on cases within their limitations but still in the name of universal values. I am deeply convinced that practicing this trade well is rooted in oneôs internal imperative to perform the task you have been entrusted with in a diligent way, which, in turn, comes from respect for other human beings as a consequence of respect for oneself, which reflects internal balance. In other words, a vocation is a source of performing oneôs trade well. And a good trade is conductive to the pursuit of oneôs vocation.

A vocation involves certain costs, too, which in this case include, above all, limited freedom in planning your free time and less time spent with your family. Excessive concentration on your professional duties will never be conductive to the pursuit of your vocation and must be evaluated as a trade only, especially if it is related to the negligence of your family and yourself. Respect for oneself is the starting point of respect for others. Loss of balance between oneôs personal and professional life will always have a negative impact on the family judgeôs ability to evaluate family relations in the cases examined as it changes the perspective on interpersonal relations, skewing it by his or her own mistakes.

Therefore, the key to attain satisfying personal and professional life is to maintain an equilibrium on a number of platforms. Obviously, everyone of us may experience disturbances of this balance but such incidents are part of life balance in a broader sense.

Judge Monika Krajka-Pawlak* Is a judge in the District Court, Gdañsk Poånd

Book review by Judge Margreeth Dam, Netherlands

Interrogating Young Suspects: Procedural Safeguards from a Legal Perspective,

edited by Michele Panzavolta, Doris de Vocht, Marc van Oosterhout and Miet Vanderhallen,

The book represents the first part of a larger research project financed by the European Commission. It concerns a legal comparative and empirical study that attempts to shed more light on the field of procedural rights for juveniles in the pre-trial phase and to identify legal and empirical patterns to improve the protection of juveniles. This part concerns a legal comparative study into the existing legal procedural safeguards that provide protection for juvenile suspects during interrogation in five Member States that represent different systems of juvenile justice (Belgium, England and Wales, Italy, Poland and the Netherlands). The second part of the project comprises empirical research consisting of observations and focus group interviews. The third part consists of 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.

The editors considered five countries to be an adequate compromise in order to accommodate the need for proper in-depth empirical research with sufficient representation of European trends. England and Wales and the Netherlands were chosen as countries that are closer to the ójusticeô end of the ójustice-welfare spectrumô in which all juvenile justice systems try to find a balance. England and Wales embodies the common law experience, while the Dutch system is a representative of the continental culture. Belgium and Poland are examples of a more welfaristic approach, with Poland being a country where these arrangements intertwine with the neoliberal trends of post-Soviet countries. Italy was chosen as a country in the middle of the justice-welfare spectrum.

The book consists of seven chapters. After the introduction (chapter 1) each country report is given a chapter. In chapter 7 the information from the five counties is evaluated by highlighting the similarities and differences and trying to discover general patterns between them.

Each country report consists of a general overview of its juvenile justice system, with background-information and information about the structure and main characteristics. I understand that a general overview of each country is necessary to comprehend the way of interrogating young suspects in the different countries, but found the overviews rather detailed and sometimes wondered if it was all necessary to understand the procedural safeguards concerning the interrogation of juveniles. In my view a rather impatient reader who wants to put his sole focus on the differences and similarities in interrogating young suspects between the five countries can do with reading the chapters one and seven. If you want to have a broader view and learn some of the origins of the different systems and their approaches you should read every paragraph. I would recommend the last, because the book shows there is a lot to learn and understand. This book can also be used as a reference book for professionals who are confronted with juveniles from one of the five countries, as we in the Netherlands sometimes are with juveniles from Belgium or Poland.

Personally, I found the general information about Poland the most interesting and revealing. Poland seems to have a rather unique juvenile justice system with a strong welfaristic approach. The emphasis on the principle to do well for the juvenile (in the Netherlands we call this the *bestwil-criterium*) seems to be connected with its history as a post-Soviet State. The use of the term ódemoralisationô (measures can be imposed upon juveniles who show signs of demoralisation) also seems to point in that direction. Although the introduction explained that Poland was chosen

because of its recent history as a Soviet satellite state I missed a direct link with and explanation about the consequences of more then 40 years of communism for the juvenile justice system in the general part of the country report. For that I kept wondering if the Polish system is typically Polish or typical of former Soviet satellite States.

After the general overview each country report concentrates on procedural safeguards for the interrogation of juveniles. In general it strikes that there arenôt many formalised safeguards and that most of them apply to adults as well as to minors. The countries with a more welfarastic approach tend to treat their minors more as a juvenile, whereas the countries with an emphasis on justice end of the tend to treat them more as a suspect. At first sight a system closer to the justice spectrum seems not to be in the best interest of the juvenile, but it turns out that it offers them more (formal) safeguards. On second thoughts, the theory is quite logical; who needs procedural safeguards when the aim of the system is to act in the best interest of the juvenile.

In the Netherlands the emphasis seems to be more on matters of substantive law, such as sanctions and not on the early phase of police interrogations, while in England and Wales this early phase seems to have more safeguards with an (active) appropriate adult (almost) always present at police interrogations and the recording of these interrogations. In Italy the legal framework for the interrogation of juvenile suspects seems to offer the best protection by providing for both defensive rights and psychological and educational support. It will be interesting to see if Italy keeps this ónumber one positionôafter the second part of the project.

The welfare-justice approaches described can give an impression of juvenile justice systems functioning in very different ways. But that is not what I have learned from this study. For one reason the balancing in the justice-welfare spectrum implies that the system is influenced by both approaches with an emphasis on one of them. Countries closer to the welfare spectrum can still allow their juveniles to take part in criminal proceedings. For instance the Belgium juvenile system consists of both protection under the Youth Protection Act and punishment under normal criminal proceedings when the act committed by a juvenile requires such a response. The same is true for the Netherlands where the juvenile justice system consists of criminal (youth) courts for juveniles, but also of civil (youth) courts which has brought some courts to organise sessions in which matters of both civil and criminal law are decided upon simultaneously in one individual case, the so called *combi-zittingen*.

The other reason is that all states respond to criminal, immoral or anti-social behaviour of their juveniles--some with criminal proceedings others with civil. Juveniles and their parents will often not see the difference between these responses for understandable reasons. For them it feels the same and according to the ECtHR it sometimes is the same in a judicially material way (see *Adamkiewicz v. Poland).* In 2010, as the country report informs us, the ECtHR found Poland violating article 6 because it did not consider a correctional proceeding to be a criminal one with accompanying safeguards.

Nevertheless harmonising the juvenile justice systems of the EU-member states still seems quite a challenge. After reading this book, in my view the focus should be on harmonising the material position of juveniles taking part in legal procedures, criminal as well as civil. Principles such as a right to legal assistance, swift procedures and placing in youth (detention) institutions should be guaranteed regardless of the kind of procedure the juvenile is participating in.

Furthermore I would like to know the opinions of the juveniles concerned and learn from their experiences. Are fundamental issues lacking in the system in their view and what could they do without? Hopefully the second part of this project will also make them part of its research.

Judge Margreeth Dam*

Leiden/Netherlands/11.2015

Interrogating Young Suspects: Procedural Safeguards from a Legal Perspective*[1]*, Editors Michele Panzavolta, Doris de Vocht, Marc van Oosterhout and Miet Vanderhallen, Maastricht Series in Human Rights, May 2015, ISBN 9781780682990.

The second volume from the same editors was published in January 2016ð Editor.

Interrogating Young Suspects

This second volume contains the results of the empirical research conducted in the five Member States consisting of focus group interviews and observations of recorded interrogations. These country reports are followed by an integrated analysis and a **set of guidelines**.

Author(s): Miet Vanderhallen, Marc Van Oosterhout, Michele Panzavolta, Dorris de Vocht
Series: Maastricht Series in Human Rights
Volume: book | published | 1st edition January 2016 | ISBN 9781780683010 | xxx + 464 pp. | paperback

[1] The flaptext for this publication appeared in the July 2015 edition of theChronicle--Editor

Treasurer's column — Anne-Catherine Hatt

Subscriptions 2016

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 IAYFJMð 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. directly to the following bank accounts:

   GBP: to Barclays Bank, Sortcode 204673, SWIFTBIC BRCGB22, IBAN GB15 BARC 2046 7313 8397 45, Account Nr. 13839745

   CHF: to St.Galler Kantonalbank, SWIFTBIC KBSGCH22, BC 781, IBAN CH75 0078 1619 4639 4200 0, Account Nr. 6194.6394.2000

   Euro: to St. Galler Kantonalbank, SWIFTBIC KBSGCH22, BC 781, IBAN CH48 0078 1619 4639 4200 1, Account Nr. 6194.6394.2001

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.

Thank you very much in advance!

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.

From	Topic	Link
Child Rights Connect	A global child rights network connecting the daily lives of children to the UN. Child Rights Connect General Assembly 2016: Briefing on the revised UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): 04.02.2016 UN Voluntary Fund for Indigenous Peoples-Call for applications:12.02.16 Engage with the Human Rights Council - upcoming 31st session:29 03.16 Call for examples of good practice: child-participatory budgeting initiatives	Find it here
CRIN	Website	Find it here
The Child Rights Information Network	Email https://www.crin.org/en/home/what-we-do/crinmail/week-childrens-rights-crinmail-1463	info@crin.org Find it here
Defence for Children International	Website http://www.defenceforchildren.org/events/final-conference-childrens-rights-behind-bars/---Brussels, Belgium, 15 February 2016	Find it here
European Schoolnet	Transforming education in Europe Skype e.milovidov Contact elizabeth.milovidov@eun.org ENABLE project information	Find it here
IAYFJM	Website	Find it here
IDE	Website	Find it here
International Institute for the Rights of the Child	http://www.childsrights.org/en/news/editorials/916-parents-children-and-the-proof-of-the-swiss-prison http://www.childsrights.org/en/news/editorials/906-parental-abduction-a-breach-of-the-child-s-integrity Contact	 Find it here
IJJO	Website	Find it here
International Juvenile Justice Observatory	Newsletter http://www.oijj.org/en/european-research-on-restorative-jj	Find it here
OHCHR Office of the High Commissioner for Human Rights	Website	Find it here
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) **monthly newsletter**, please sign up at find it hereʒ	Find it here Find it here
Ratify OP3 CRC	Campaign for the ratification of the OP3:	Find it here
TdH	Website	Find it here
Fondation Terre des Hommes	Newsletter	Find it here
UNICEF	Website	Find it here
Washington College of Law,- Academy on Human Rights and Humanitarian Law	http://www.wcl.american.edu/	

In memoriam Professor Dr Horst Schüler Springorum

Two past Presidents of IAYFJM, Renate Winter and Jean Zermatten, pay tribute to the life of our Honorary President

I was indeed very nervous when I learned that I would meet the Legend.

If you are preparing to meet a Legend, you ask yourself if you would ever be accepted as interlocutor by the Legend, if you would be able to meet the standards of the Legend, if the Legend would condescend to speak to you at all, if your purpose would just mean to the Legend that you are stealing his time é

I met the Legend, the Honorary President of the IAYFJM, Prof. Dr. Horst Schueler ï Springorum, eminent researcher, university professor with extremely high reputation concerning child rights and co- drafter of and expert advisor to the UN on several crucial UN documents concerning these rights.

I met a kind, soft-spoken, patient, highly knowledgeable, friendly man who scrupulously answered every question, was ready to help out with any information, ready as well to draft recommendations on the spot, to consider travelling to unpopular, even difficult countries to assist in the establishment of a decent juvenile justice system, a man as well who diplomatically, but strongly advocated for the right thing to do, a man who wouldnôt bend under pressure, politically or otherwise, a man who stood his ground firmly to protect the rights of children, even if this was ñout of trendò or against the trend.

I had the privilege to travel with him to Beirut where he assisted in the explanation and implementation of the first juvenile justice code of this country, where his good advice and great expertise contributed more than anything else to the success of this code.

I had as well the honour to have him participating in a small group of experts for discussions with politicians and judges about a new law on juvenile justice, a ffirstò in Iran. I learned what generosity means as he, a convinced Christian, presented his own, miniature, gold imprinted Koran as a gift to one of the leading Ayathollas who had invited us. He smiled as he related that he was born in Tehran and the ice around us melted immediately.

Horst died on the 5.9.2015 surrounded by his family.

We will miss his kindness, his assistance, his expertise, his advice, his humanity.

We miss him. We miss him.

Renate

I first met Horst Schüler-Springorum in 1981 in Amsterdam when, as a young, recently appointed judge, I was a member of the Associationõs committee making preparations for the World Congress on *The Social Context of Juvenile and Family Justice* that was to be held there the following August.

I was intrigued by this person whose name everyone mentioned with a degree of reverence ; I was also intrigued by the name itself with its combination of German and Latiné And the meeting was not a disappointmentð far from it--for it is from that point that I date my attachment to our Association and my involvement with what it stands for. Horst Schüler-Springorum was one of those people to whom no-one can be indifferent, impressive in his bearing, in his wisdom and in the respect which he accorded his colleagues. He treated me, a young, inexperienced judge, as an equal -- a great demonstration of modesty and humility !

For he was extremely knowledgeable. After the second world war, he studied political science at Baltimore and then law at Frankfurt and Marburg, where he submitted his thesis on international public law to gain the degree of D.LL. There followed a very rich academic career :

- he gained accreditation, first as a lecturer later as Professor of Criminal Law, at the University of Hamburg in 1967 ;
- next he taught criminal law at the University of Göttingen;
- in 1971 he took the chair of criminal law and criminology, juvenile justice and the administration of justice at Ludwig-Maximilian University in Munich; and finally
- his academic career was crowned by an invitation to a chair at the Catholic University at Eichstätt-Ingolstadt.

At the same time, Horst Schüler-Springorum got involved in many professional associations, at a local, national and international level and advised a wide range of organisations, including those connected to the UN. He took a leading role in producing the 1985 Beijing Rules on the administration of juvenile justice. This was well in advance of the UN Convention on the Rights of the Child and at a time before juvenile justice enjoyed its current fashionable status.

He also undertook countless missions to different countries to give of his wisdom and experience, assess programmes and advise governments. In all of that he leaves behind the memory of a deep humanity and strong ethical conscience. He disliked depriving young people of their freedom and punishments that stigmatised or led to social exclusion. He made this widely known and has left a corpus of important writing on these issues and on the need to reintegrate young offenders into society.

He leaves us with a host of unforgettable memories of his contributions to a spectrum of conferences, congresses and seminars. He was generous with his time and his friendship. There are many who will mourn his passingð a great teacher and, beyond that, a great human being.

Our thoughts and sympathy go out to his family and to our members. We have lost a fatherly guide and friend.

Jean Zermatten

Meeting of the Council, 22 October 2015, Paris

Viviane Primeau, Theresia Höynck, Avril Calder, Andréa Santos Souza

Margreeth Dam, Pierre Rans, Anne-Catherine Hatt, Hervé Hamon

David Stucki and Aleksandra Deanoska

Patricia Klentak and Gabriela Ureta

Bureau/Executive/Consejo Ejecutivo 2014-2018

President	Avril Calder, JP	England	president@aimjf.org
Vice President	Judge Marta Pascual	Argentina	vicepresident@aimjf.org
Secretary General	Andréa Santos Souza, D.A.	Brazil	secretarygeneral@aimjf.org
Vice Secretary General	Judge Viviane Primeau	Canada	vicesecretarygeneral@aimjf.org
Treasurer	Anne-Catherine Hatt, Magistrate	Switzerland	treasurer@aimjf.org

Council—2014-2018

Presidentð Avril Calder (England)	Marie Pratte (Canada)
Vice-presidentð Marta Pascual (Argentina)	Gabriela Ureta (Chile)
Secretary Generalð Andrea S. Souza (Brazil)	Hervé Hamon (France)
Vice Sec Genð Viviane Primeau (Canada)	Theresia Höynck (Germany)
Treasurer—Anne-Catherine Hatt (Switzerland)	Laura Laera (Italy)
Patricia Klentak (Argentina)	Aleksandra Deanoska (Macedonia)
Imman Ali (Bangladesh)	Sonja de Pauw Gerlings Döhrn (Netherlands)
Godfrey Allen (England)	Andrew Becroft (New-Zealand)
Eduardo Rezende Melo (Brazil)	Carina du Toit (South Africa)
Françoise Mainil (Belgium)	David Stucki (USA)

The immediate Past President, Hon. Judge Joseph Moyersoen, is an ex-officio member and acts in an advisory capacity.

Meeting of the European section, Paris 22, 23 October 2015

Our members at the Court of Appeal and Magistrates' training centre

Speakers

Faker Korchane : Key Concepts of Islam

M° Joseph Hazan, M° Sophie Gascon-Rey Barristers at the Paris Bar

A critical look at the judicial policy of the struggle against terrorism

Jean-Pierre Laffite magistrat, Public policy on the prevention of radicalisation

The speeches will appear in the July 2016 Chronicle

Chronicle Chronique Crónica — Voice of the Association

The Chronicle is the voice of the Association. It is published bi-annually in the three official languages of the Associationð English, French and Spanish. The aim of the Editorial Board has been to develop the Chronicle into a forum of debate amongst those concerned with child and family issues, in the area of civil law concerning children and families, throughout the world

The Chronicle is a great source of learning, informing us of how others deal with problems which are similar to our own, and is invaluable for the dissemination of information received from contributions world wide.

With the support of all members of the Association, a network of contributors from around the world who provide us with articles on a regular basis is being built up. Members are aware of research being undertaken in their own country into issues concerning children and families. Some are involved in the preparation of new legislation while others have contacts with colleagues in Universities who are willing to contribute articles.

A resource of articles has been built up for publication in forthcoming issues. Articles are not published in chronological order or in order of receipt. Priority tends to be given to articles arising from major IAYFJM conferences or seminars; an effort is made to present articles which give insights into how systems in various countries throughout the world deal with child and family issues; some issues of the Chronicle focus on particular themes so that articles dealing with that theme get priority; finally, articles which are longer than the recommended length and/or require extensive editing may be left to one side until an appropriate slot is found for them

Contributions from all readers are welcome. Articles for publication must be submitted in English, French or Spanish. The Editorial Board undertakes to have articles translated into all three languagesð it would obviously be a great help if contributors could supply translations. Articles should, preferably, be 2000 - 3000 words in length. ðItems of Interestò including news items, should be up to 800 words in length. Comments on those articles already published are also welcome. Articles and comments should be sent directly to the Editor-in-Chief. However, if this is not convenient, articles may be sent to any member of the editorial board at the e-mail addresses listed below.

Articles for the Chronicle should be sent directly to:

Avril Calder, Editor-in-Chief,

chronicle@aimjf.org

Editorial Board

Judge Patricia Klentak	infanciayjuventud@yahoo.com.ar
Judge Viviane Primeau	vicesecretarygeneral@aimjf.org
Dra Magdalena Arczewska	magdalena.arczewska@uw.edu.pl
Prof. Jean Trépanier	jean.trepanier.2@umontreal.ce
Dra Gabriela Ureta	gureta@vtr.net