



CHRONICLE CHRONIQUE CRÓNICA

Contents	Page
2018 WORLD CONGRESS ON JUSTICE FOR CHILDREN	
28th May Plenary session	
Congress opening speech	Avril Calder* 4
Justice for Children - Reforms in Georgia	Thea Tsulukiani 6
Dangerous childhood or dangerous children?	Renate Winter 8
Radicalisation of minors- research from France	Madeleine Mathieu 10
A Yazida girls' experience of ISIS	Farida Abbas Khalaf 11
Children recruited by terrorist and violent extremist groups	Alexandra Martins 13
Neuro-developmental maturity, trauma and violence:	Huw Williams 17
Preventing engagement in violence and extreme behaviour	Manfred Nowak 21
Preventing engagement in all forms of violence	Agnes Callamard 24
Extremism, terrorism and the rule of law	Madan B Lokur 27
28th May Workshops	
The challenges of Child Protection on the DarkNet	Chafica Haddad 30
Keeping children and youths out of the system - Brazil	Daniela Murata 33
Juvenile restorative justice - Argentina	Mercedes Buratovich 40
Children in a war zone - Yemen	Adel Dabwan 43
At the crossroads of state law and customary justice	Baudouin Dupret 45
Neuroscience, policy and law	Shauneen Lambe 49
29th May Plenary session	
Minors allegedly associated with Boko Haram--Niger	Jean Etienne Ibrahim 54
Getting behind the wire	Dennis Edney 58
Juvenile Justice in a counterterrorism context	Naima Muller 63
Child participation - listening to children and young people at J4C2018	Young people 65
Closing Address . Kofi Annan Foundation	Fatima Zaman 67
Paris Declaration, 30 May 2018	69
Jurisprudence	
Comparative Law and IAYFJM's website	Andrea Conti 72
Association Treasurer's column, Contact corner, Chronicle, Council	AC Hatt, A. Conti, A. Calder 74-78
Save the date: University of Leiden	79

**Strengthening justice for children--
challenges, including disengagement from violent extremism
XIX World Congress, UNESCO House, Paris 28, 29 and 30 May 2018**

This is my final edition as Editor in Chief and it focuses entirely on the recent World Congress. As those of you who attended and those of you who have taken a keen interest will know, there were 900 participants from 97 countries. The Consortium of six NGOs¹, led by IAYFJM, Terre des hommes and Penal Reform International (Middle East and North Africa) in partnership with the Information for All Programme (IFAP) of Unesco was extremely pleased. The feedback from participants has been wholly rewarding and shows what working together can achieve. This was a first for IAYFJM as was the inclusion of Arabic as a fourth language in all plenary sessions and in several workshops.

This introduction to the contents of this edition follows the format of the days and speakers, starting with the first plenary day, covering a sample of the workshops on the second day and finishing with speeches from the third plenary day.

28th May Plenary session

The first and final speeches that I gave emphasised the need to see things from the child's point of view and expressed my thanks to all concerned. It was a great honour to begin the proceedings.

The Minister of Justice for Georgia, **Thea Tsulukiani**, demonstrates how taking the bull by the horns and replacing zero tolerance policies with a forward looking new Juvenile Justice Code in line with the UN Convention on the Rights of the Child has met with acclaim and success in its operation. Significantly, mechanisms have been put in place for those under the age of 14 years, which is the age of criminal responsibility in her country. Many of you know that our former President, **Justice Renate Winter** has been active in Georgia for some years. Her rousing speech followed that of the Minister and described, only too clearly, how children, often victims, are demonised as dangerous rather than their voice being heard through participation in all proceedings affecting them to effect better long-term outcomes. Justice Winter gave a stark warning about the unwelcome return of retributive systems in some parts of the world.

The results of a notable, and possibly unique, piece of research carried out in France into the radicalisation of young people. 133 cases were examined. were presented by **Mme Madeleine**

Mathieu of the Ministry of Justice. It is extremely interesting and led Mme Mathieu to advocate case management practices that, more than ever, lead to a tailored response for each child or young person.

Farida Abbas Khalaf, as a young Yazida girl, was captured by ISIS. Her understated description of the terrible things that happened to her and her whole village, brought the Congress to its feet.

Recruitment of children as terrorists is a path well understood by many including **Dr Alexandra Martins**², who details how recruitment of innocents has a wider reach that ever before across countries, religions, politics and ideologies. In her article she advocates sound approaches and addresses the argument of community safety versus violence with insight and clarity.

Dr Huw Williams, an expert on brain development in children, reminds us, graphically, how early traumatic injury to the brain (TBI) has devastating effects. A UK Parliament Select Committee recognised that those who persist in criminal behaviour into adulthood are more likely to have neuro-psychological deficits. [often due to] traumatic brain injury. Over half those imprisoned have indeed suffered TBI.

The Global Study of Children Deprived of their Liberty has been a constant feature of the Chronicle. Therefore, it gave me great pleasure to welcome the leader of the study **Dr Manfred Novak**, of the Ludwig Boltzman Institute in Vienna. Dr Novak sees implementation of Art 37 of the CRC as a first step to preventing radicalisation with the highest possible standards of education, health care and sports as a second step, normalising as far as possible, life behind bars.

Agnes Callamard, UN Special Rapporteur on extrajudicial, summary or arbitrary executions, tells us of changes in El Salvador where the Government has moved away from repressive measures when dealing with violent criminal behaviour and is trying a new way. I welcomed the attention she gave to girls, who are, all too often, the victims of gangs. Agnes also sets out her concern that, as far as terrorism is concerned, a new legal space with extra-ordinary powers and a flurry and flexible definitions is being opened up between anti-terrorist laws and ordinary penal law.

¹ The Belgian Judges Training Institute (IGO-IFJ), Child Rights International (CRIN) and Defence for the Child International (DCI) made up the total of 6.

² Crime Prevention and Criminal Justice Officer at UNODC, Vienna.

The **Hon. Justice Madan Lokur**, of the Supreme Court of India relates the history of terrorism from the insurgency against British rule, through the left-wing extremists of the last half century to the present-day attacks on the population in the name of Islam. In India, the Supreme Court rejected the appointment of counterinsurgency vigilantes (so called special police officers) to deal with terror, because it was against the Constitution. An echo there of the new legal space being pushed back?

29th May Workshops

The **challenges of child protection on the DarkNet** were addressed by several speakers, the first of whom was our partner, **Chafica Haddad**, IFAP Chair. IFAP works for all those on the wrong side of information. It has pursued a steady path towards improving information about the DarkNet where anonymity is commonplace, and where children and young people are not equipped to deal with it. Indeed, there is a 2017 UNESCO/IFAP study entitled 'Youth and violent extremism on social media: Mapping the research'³ which suggests actions and solutions to UN Member States.

The **Ibero-American Forum** examined juvenile justice in general. **Judge Daniela Murata** of Brazil and **Mercedes Buratovich** of Argentina explain to us, in clear terms how the justice systems set about their work. In Brazil, secure children's units have social workers, offer very good all-round care including education, health care and extra-curricular activities, but the environments children face on release are the same as those faced everywhere and so recidivism is a challenge for all. In Argentina there is a strengthening of access to justice for children, Restorative Justice is strongly evident as are the rights of child.

The suffering of children in **Yemen**, a war zone, were brought into sharp relief in a workshop by **Adel Dabwan**, who heads the Social Defence Department at the Ministry of Social Development.

Baudouin Dupret spoke at the **customary justice** workshop from a child rights aspect. His contribution to this Chronicle sheds much light on how, in many countries, state law and customary justice sit alongside and influence each other.

In the workshop on **neuroscience and child justice**, Barrister **Shauneen Lambe** describes just how the science, the policy makers and litigation are co-related illustrating with cases from North America, the United Kingdom and the European Court of Human Rights.

30th May Plenary session

Jean Etienne Ibrahim, former Judge and currently Deputy Secretary General in the Ministry of Justice tells us how his country, Niger, met the challenge of **Boko Haram**. The justice system had many weaknesses including inappropriate legislation for

the problems faced and a lack of trained Magistrates. Matters were turned around by, among other factors, amending the penal code to address suspected terrorism offences and implementing training for Magistrates encouraging them to listen carefully to the experiences of the children.

Below is a sentence I could not leave behind when I read **Dennis Edney's** account of his part, as the defence lawyer, in the life of Omar Kadhr, a Canadian juvenile detained at Guantanamo Bay.

I recall my promise that I would not walk away from him. Had I walked away from Omar, I would have had to lie to myself that he would be taken care of.

Other cases are also reported. The totality of his speech, setting out as it does the violations of rights and the importance of the rule of law, brought a standing ovation from the Congress.

What is terrorism? **Naima Müller**, brings to our attention the **Neuchâtel Memorandum** (2016) which addresses juvenile justice in a counter terrorism context. Naima explains its origin, its four main points. For example there is no clear line between victim and perpetrator and that children's rights go hand in hand with public safety. Switzerland and other States are now implementing the Memorandum.

The closing ceremony brought contributions from young people. Firstly from young people who brought to the stage their comments, not only from their workshop, but also from their participation in the Congress, thus demonstrating their strength of purpose for the voices of children and young people to be heard. And secondly from **Fatima Zadan**, who, while on her way to school, witnessed the July 7 2005 bombings in London. Fatima recalls the lasting effect that has had on her as she fulfils her role as a Kofi Annan Foundation Young Leader.

Closing remarks and thanks

The World Congress was a great success not least because of you, our members, and the supporters of the Consortium. My sincere thanks to you all.

And finally, I say Goodbye to the Chronicle, after 24 editions and over one million words in each of our three languages. I have loved every minute of it and have been fortunate to have made good friends of my colleagues along the way, including Judge Eduardo Melo who I am delighted to say is taking over from me. (See page 77).

The Editorial Board has trusted me, members have contributed widely and wisely, helpers such as Dr Briony Horsfall and Andrea Conti have unstintingly given their time and energies, and, a lady I have yet to meet, Judge Ginette Durand Brault of Quebec, a published author, has, for many years, rigorously and kindly proofread the French. I am deeply grateful. **Avril Calder, Editor in Chief**

³ <http://unesdoc.unesco.org/images/0026/002605/260532e.pdf>

Opening and closing speeches World Congress 2018

Avril Calder*



Opening address

Assistant Director General, Mr Moez, Chakouk, representing her Excellency Ms. Audrey Azoulay, Director-General of UNESCO

Ministers,

Ambassadors,

Distinguished Guests, Ladies and Gentlemen and young people: On behalf of the Consortium and Organising Committee it is my great honour and pleasure to welcome you to this World Congress on Strengthening Justice for Children and to thank most warmly Mme Azoulay and her UNESCO colleagues for making these splendid and historic premises available for the three days of our debates and discussions.

As many of you know I am the President of the International Association of Youth and Family Judges and Magistrates and this is our XIX World Congress. However, this is our Association's first venture into holding a World Congress with other organisations and I am pleased that our aims and interests have coincided and complemented each other to develop what I believe is an exciting and stimulating programme.

Over the next three days we will be hearing about the many difficulties and threats that face far too many of our children and young people today. We shall also hear about many interesting and exciting developments designed to improve child justice, child protection and reintegration. How can we assess and value these proposals in the context of the society we each live in and would like to improve?

I suggest that a key is always to try to see what it is that the child or young person sees- looking outwards from his or her perspective. This is not at all an easy task. With the accelerated changes in technology and the ways technology is adapted and used, with growing inequality within many countries, rapid globalisation, never-ending armed conflict, large-scale movement of people,

trafficking of people and substances, it is difficult to conceive what the child sees, what the child apprehends or what the child fears and what drives his or her response. To understand a child's point of view takes a lot of information, a lot of imagination and a significant capacity for empathy and the ability to listen to and hear what children and young people are saying.

L P Hartley, an English novelist, famously wrote:

The past is a foreign country, they do things differently there.

But it is also true that the present can be another country. Children and young people share the same space with us, but at the same time they live in a very different world with its own ways of doing things, rewards, threats and punishments. In order to help them, we have to try to see what they see, feel what they feel and understand what they fear. If we can do that we may be able to develop approaches and ways of doing things that will help them to be good citizens of what is, after all, the society that we all share.

It is wonderful to see so many people here in this hall. Now I am looking forward to three days of enlightening discussion during which I hope to meet as many of you as possible.

Concluding words of thanks (30 May)

When I addressed you on Monday morning, I expressed, on behalf of the Consortium, thanks to Mme Azoulay and her UNESCO colleagues for making this splendid venue available to us. Today, after three days of intensive work by all of us, may I say by name some of Mme Azoulay's colleagues who have made the running of this World Congress go smoothly. I refer to Mme Chafica Haddad, President of UNESCO's Information for all Programme, who three years ago placed her faith in us. Chafica, our heartfelt thanks for all that you have done to make this World Congress the success it has undoubtedly been. And supporting Mme Haddad, Dr Boyan Radyokov who was always available to us and spared time to talk with us and guide us every time we held a meeting here. May I also say thank you to Mme Marie Christine Botte, the Secretary whose kindness was inexhaustible. Thank you to you all.

Perhaps I might mention a couple points that I found compelling during our three days. The key points arising out of the excellent report presented by Professor Liefwaard speak to me of the need for child participation in all proceedings related to them and that we must be ever mindful of the fact that

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

while children are on their way to being adults, they are not adults; and should always be afforded the protection of international instruments specifically drawn up for them. May I add that, in this regard, I very much hope the Guidelines on Children in Contact with the Justice System, published by the Association during the years in which I have been proud to be President will be a resource much used by all of you as you return to your professional work.

So, may I thank everyone for your attendance here and active engagement in the penetrating and informative discussions and wish you all a safe journey home.

We hope to see you again in 2020!

***Avril Calder**, Immediate Past President IAYFJM, former Magistrate, Youth and Family Courts, London, UK

Justice for Children - reforms in Georgia: success stories and ways forward

Thea Tsulukiani



Distinguished Delegates, Ladies and Gentlemen,
I am deeply honoured and privileged to be here with you today at this important plenary of the World Congress on Justice for Children.

Georgia has been successful in the process of reforming the Juvenile Justice system and I am happy to share with you our experience and the future plans.

For a considerable time, it was wrongly believed in Georgia that the only way to reduce the crime rate was to toughen the criminal policy. Such repressive thinking manifested itself in the previous Government's so-called "zero tolerance" policy towards, inter alia, juveniles in conflict with law, which eventually led to no significant results other than placement of the country in the top 5 in the world in terms of the number of prison population. In 2008, the number of convicted children reached 1,116 as opposed to 459 in 2003.

This approach in criminal law policy was radically changed after the new Government came to power in 2012 and embarked on overall liberalisation of the criminal justice system. Starting with implementing a number of preventive programmes by various state agencies (together with international organizations), the culmination was to reform the policy altogether. As of today, the number of convicted juveniles is less than 100.

Adoption of the Juvenile Justice Code of Georgia

The Ministry of Justice, in close cooperation with UNICEF and EU, after more than a year of preparatory work elaborated the first ever standalone Juvenile Justice Code of Georgia. The Code was adopted in June, 2015. The aim of the Code is to fully incorporate into the Georgian law the best interests of the child and other principles of juvenile justice enshrined in the UNODC Model Law of the Juvenile Justice Convention on the Rights of the Child and other relevant international

standards, to expand the alternatives to criminal prosecution, such as diversion and mediation, and to diversify the sanctions available for the judge to ensure that detention and imprisonment are used only as measures of last resort against juveniles.

Based on the various international instruments in this field the code introduced a number of progressive approaches in the juvenile justice system.

The key principles of the code are as follows:

In the juvenile justice procedure, first of all the best interests of a juvenile must be considered;

Any measures taken against a juvenile in conflict with the law must be proportionate to the committed act, relevant to personality of a juvenile and corresponding to his or her educational, social and other needs;

- In all cases priority must be given to alternative measures to prosecution (including diversion) while using imprisonment as a last resort;
- Juvenile justice procedures must be administered only by professionals specialized in juvenile justice;
- The right to privacy of a juvenile must be respected at all stages of juvenile justice;
- The Criminal record of a juvenile must be expunged immediately from the moment the sentence is served. Information on previous conviction of a juvenile is confidential and no personal data of a juvenile may be published in any form;
- Participation of a juvenile at any stage of legal proceedings must be guaranteed and juvenile justice procedure must be conducted without any unjustified delay;
- In any decision making-process an individual approach to each juvenile must be upheld. Individual circumstances of a juvenile such as age, level of development, conditions of life, up-bringing and development, education, state of health, family situation and other circumstances, must be taken into consideration;
- The prison for juveniles has been reformed. It is now the rehabilitation establishment of juveniles where the rights and guarantees (including the right to harmonious development) for juveniles in custody are significantly higher with more educational and other programmes available to help them rehabilitate and reintegrate into the society.

Implementation of the Juvenile Justice Code

The Government of Georgia with the support of the UNICEF, the European Union (EU) and other international partners carried out intensive work to ensure the proper implementation of the code. This included numerous specialised educational courses for relevant professionals ensuring that only persons with authorized certificates would be able to work on juvenile cases. Special units have been assigned to ensure the continuous development of relevant professionals.

Although the code has been praised by our international partners the Government of Georgia did not consider the work to be complete, therefore Juvenile Justice Reform has continued. In 2015, immediately after adopting the Juvenile Justice Code, the Multidisciplinary Working Group consisting of relevant state agencies and civil society as well as international organizations representatives was created. The purpose of the group was to monitor the implementation of the Code and find out any challenges or discrepancies in the process. After two years of monitoring and intensive inter-agency cooperation the working group elaborated the report on challenges revealed in the implementation of the code. Based on the document the Ministry of Justice elaborated legislative amendments to the code in order to further improve the rights of juveniles and ensure clarity and better implementation of the code. The respective legislative amendments were recently approved by the Government and sent to the parliament for adoption.

Referral mechanism for children under 14

The Government of Georgia realises that effective crime prevention policy means having operational mechanisms for children who have not reached the age of criminal responsibility to avert them from unlawful activities and help them grow into functional members of society. With this purpose the Government of Georgia with the help of the UNICEF, EU and other partners has established Inter-Agency Working Group which after intensive cooperation and analysis prepared the Concept Note on the Referral mechanism for children under 14. The concept note was presented to the Criminal Justice Reform Council members and other interested parties on 10 May, 2018. In the document all relevant state agencies have identified challenges and agreed upon a common approach which covers following main elements:

- timely and correct identification of a child;
- individual assessment of an identified child and referral to the relevant programmes/services;

- monitoring and assessment of the referral programmes/services.

The referral mechanism will provide an institutional and complex outcome-based approach, ensure re-socialization of the children identified in an illegal act or having challenging behaviours and their prevention from unlawful acts or challenging behaviours in the future.

To ensure the effectiveness of the mechanism the Government of Georgia is planning to establish a so-called Child Referral Centre which will improve inter-agency cooperation, management of a central database, implementation of family support programmes etc. It is worth mentioning that the Child Protection Referral Mechanism regarding all types of violence against children has existed in Georgia since September, 2016; however, this Child Referral Centre and respective mechanism, as explained above, will go beyond violence against children.

Additional Information regarding children in street situations

- Beyond that, we pay particular attention to the protection of the children in street situations.

- In August 2016, the Government of Georgia simplified the legal procedures to provide identification documents to homeless children and child victims of violence. The documents are free of charge and make education, healthcare, social security and other government services available for them. As from April, 2018 children were provided with temporary identification documents, one with an Identity Card and five with Biometric Passports;

- In order to promote and reinforce this process, the Ministry of Justice continues public outreach activities via grant projects to raise the awareness of the Georgian population to the risks of child trafficking among homeless children and threats related to street begging.

Conclusion

To conclude, Georgia's present policies, strategies and action plans in juvenile justice are aimed at the liberalization of the criminal legal and practical framework with the focus on prevention, early intervention and rehabilitation. The Government is working to continuously improve the system and deal with challenges based on international and national experience.

Thea Tsulukiani is Minister of Justice, Georgia.

Dangerous childhood or dangerous children?**Renate Winter***

Some 6000 years ago the wise King Hammurabi created the first written code including penal matters, most probably to secure peace in his society. One of the articles stipulated in short: if a tile falls down from your roof and kills the neighbour's son, he can kill your son. Rather intelligent, isn't it, in order to prohibit a continuation of revenge incidents! A pity only that the children in question, victims of this brilliant solution, were not asked their opinion. They would have hardly agreed if anyone would have bothered to find out about their point of view.

We of course, nowadays, treat our children correctly, we do everything in their best interest, give them every chance to have a decent life at least, listen to them, discuss with them. We just only have to be careful with those children who are dangerous, as, of course, we cannot risk our security and that of our societies!

A 25 year old father killed his baby because his baby cried and disturbed him when watching a football match. His older, seven year old son, being present and being present as well when the police came to arrest the father, was heavily traumatized. Traumatized? Being the son of this father, having witnessed the events, not speaking for days, he for sure became a danger for society! Therefore he was sent to an institution, to be monitored and supervised, of course as well for his own sake!

A 15 year old girl, raped by her stepfather was accused by her mother to have seduced her husband and brought to an institution for misbehaving girls. There, as all the other misbehaving girls, she was rented out to «customers», beaten, and called names. When she and the other girls, 40 of them, revolted, they were closed in for three days in a room, without food, water or toilet. After three days, in desperation, the girl set her mattress on fire. The girls were not allowed to leave and all 40 burned to death. The guardians, interrogated, said that what they always

had said was now proven: that these girls were dangerous.

A 16 year old boy, a nephew of a high level prosecutor, stabbed another boy to death. The prosecutor got him out of the reach of the police and argued that the victim was a danger for his boy, because he was jealous about power and money and would have harmed his son. This way the son learned that not to be a danger for society means to be powerful and rich.

A 12 year old mentally challenged girl was sexually harassed by an older man. The judge during trial at court didn't grant her witness status, arguing that she was mentally sick and thus would not be able to tell the truth, therefore becoming a danger for the justice system.

A 14 year old girl objecting to her education to be a good mother and wife, ran away from home, as she wanted to marry a hero, travelled to Iraq, was married there, captured and put in prison after the war. Her home country doesn't want her to return arguing that she became by far too dangerous to be kept in a national prison.

The situation was even worse for a 17 year old child-fighter who, after his return to his home country, was kept for quite some time in isolation to prevent «contamination» of the other inmates.

And think of all the unaccompanied minors coming from God knows what country, being a real threat for the security of a whole continent, any continent that would accept them!

Of course, these are all exceptional cases, aren't they? The large majority of our children are well cared for!

I am certainly not going to bore you with numbers, especially because we certainly have been told so often and know them all, thus I will not mention the roughly 300,000 child soldiers, not to speak about children fighting with terrorists, not about the millions of slave children, sold by their family or trafficked, not about these six out of ten girls sexually abused including by their own family, not about the seven countries still using the death penalty for children, not about life long sentences without parole for children in many more countries, not about torture and ill treatment of children in closed settings.

I will rather speak of those really nasty children we have to deal with: those bullying, sexting, gang raping, assaulting, stealing, killing, robbing and fighting, even with the police!

These children must really be depraved already at birth behaving this way! They have certainly never seen a horror movie, have never felt violence at home at school or at work, have no knowledge of videogames where the winner is the one with the most killings in the shortest period of time, they were never in cyberspace with access to porno, including sadist and child pornos, they were always

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

informed about the right way to live, could always consult their caregivers who would be ready for them any time. They must be really, really bad and dangerous, having invented all that behaviour by themselves!

Is that so?

There is of course a way to try to solve such problems, if one wants to find one.

The already well known but not regularly used restorative justice system allows not only, but mandates listening to children, giving them a (second) chance and protecting them from recidivism because the child is included in solving his/her problems from the smallest to the most difficult ones.

We know it, indeed. But the pendulum swings in these times from a more liberal system back to a retributive one.

That is understandable, isn't it, as only the hardest survive, because children must be fit for competition (only a defeated competitor is a good one!), because children have to contribute, not to cost, especially not to cost time, because they have to be educated to be kept at bay!

You do not agree? You want assistance? Please find the International Association of Youth and Family Judges and Magistrates' Guidelines on children in contact with the justice system. They are in English, French, Spanish and Arabic. They might help to find solutions, legal ones, procedural ones, psychological ones.

But beware: These Guidelines have been written by experts *pro bono*. Can people who don't understand even the basics of modern profit-oriented economy, do good work?

*** Justice Renate Winter**, President, Committee on the Rights of the Child, Geneva

Research in France on radicalization of minors	Mme Madeleine Mathieu
---	------------------------------

To gain better knowledge of the subject and food for thought on the management of how best to manage situations where young people have been radicalised, Mme Madeleine Mathieu, Director of the Directorate for the Protection of Young People (PJJ) commissioned Laurent Bonelli and Fabien Carrié, researchers at the University Paris West Nanterre, to carry out research into the phenomenon of the radicalisation of minors. After 18 months of research, the study was published at the beginning of 2018.

The research is a qualitative and sociological analysis of the situations of radicalised minors identified by the PJJ in *"Commitment, rebellion, religiousness. Understanding radicalisation in the teenagers managed by the DPJJ"*, which complements the quantitative census.

This work was drawn from:

- The examination of 133 juvenile cases identified by the PJJ for offences related to radicalization. Thus:

- all minors indicted for criminal conspiracy with a view to a terrorist undertaking (Association de malfaiteurs en vue d'une entreprise terroriste - AMT) since 2014,
- some minors prosecuted for advocating terrorism, and
- a few minors followed in ordinary criminal cases and whose behaviours appeared worrying to professionals.

These files mainly concern cases related to violent Islamism but there were also some files relating to Basque nationalists, Corsican and right-wing activists.

- 57 interviews with professionals

- The observation of 6 hearings of minors prosecuted for AMT

The richness and variety of this material makes this survey one of the most important conducted to date on the issue, both in France and abroad.

The analysis shows how difficult it is to put forward one decisive explanatory factor and shows that a multitude of vulnerability factors leads to difficulties in designing a strategy of prevention. There is not one type of radicalism but several.

By looking at the different ways of constructing a typology of radicalism and the social conditions that produce them, this research identified 4 types of radicalism; rebellious, soothing, agonistic and utopian. The researchers found that a particular type, utopian radicalism, emerged from the other

three. So, it became clear that there were two groups - the group of **committed radical utopians** and the group of **revolted agonistic radicals**, both rebellious and soothing.

It is noted that the **revolted group** is composed of minors whose profile is very similar to the group of minors that is usually followed by the PJJ. These are minors with the most chaotic social and family trajectories and are those closest to the world of gangs and delinquency. Notably they are singularly absent from the most serious offences related to radicalisation (for example departure to the Syrian-Iraqi zone, attempted terrorist attacks). They are often followed by the authorities for disturbing behaviours or pursued for advocacy of terrorism.

The **committed group**, for which the commitment to violence is the strongest, encompasses minors involved in family trajectories more in line with dominant norms. That is families mostly unknown to social services, with working parents, parents who invest heavily in the schooling of children, control their children's relationships, and whose children are good students in school. Among this group, there is a higher percentage of girls.

This actually goes against the binary explanations of the radical commitment and the use of terrorism by the dispossessed and very poorly endowed populations.

It was also noted that there are many common characteristics and specific social conditions that lead to one kind of radicalization type rather than another.

It is precisely on the basis of the identification of the difficulties encountered by these minors and their families, that it should be possible to define appropriate methods of intervention and care to prevent radicalisation as well as the imprisonment of minors for AMT.

To fully understand all these dynamics, we invite you to read the report of this research:

<https://www.afmjf.fr/Radicalite-engagee-radicalites.html>

Mme Madeleine Mathieu, General Director, Protection judiciaire de la jeunesse director, Ministry of Justice, France presented the results of this research conducted by Laurent Bonelli and Fabien Carrié in the first Plenary session in Paris..

A Yazida girl's experience of ISIS**Farida Abbas Khalaf**

Ladies and Gentlemen,

My name is Farida Abbas Khalaf, an ISIS survivor, and a member of Yazida Organisation which was set up to defend Yazidis and other minorities. I thank you for organizing this event which discusses how to achieve justice for children and families, I am also happy to thank the French government and people for hosting this congress, and for their obvious role in fighting ISIS, in addition to offering assistance to vulnerable groups including women and children.

When we talk about challenges and difficulties that face children and their families, we should compare those who live in the Middle East, specifically in Iraq and Syria, with those in Europe and other advanced countries. There are hundreds of thousands of children in Iraq and Syria who do not receive support or care and thus are subjected to killing, kidnapping, religious extremism, weapon training and suicide operations, instead of looking for better living, health and educational health care like those in the advanced countries.

I will talk to you about part of my story when I was kidnapped by ISIS. I will show you how they used children for enslavement and terrorism acts. I lived in a small village called Koju, south of a town called Sinjar in Nenwa district in Iraq, with four of my siblings, mother and father. I was an elementary student. On the 3rd of August 2014, ISIS attacked the Yazidi areas in Sinjar and my village was a target for occupation.

They succeeded in occupying the Yazidi areas after the Kurdish forces withdrew without fighting. They imposed a siege on the village for 13 days--imposed as a time limit for us to change our beliefs and enter Islam. Then they gathered all the villagers -among them my parents- in a school building.

The villagers refused to convert to Islam, so they separated women from men, took all the men in their cars to the outskirts of the village and brutally killed them. My father and two of my brothers included.

We, women girls and children, were led to a Soulay Institute building in Sinjar village, and after that we were transferred to Mousel and from Mousel to Rakka city in Syria. We were 48 females (girls, women and children). We were put into one of their jails and every day, they would come and choose whoever they liked, using force and beating.

One day, they led me with another three girls to a deserted house in Syria and they brutally hit us, one of them demanded that we shower so they could rape us but we refused, they also demanded that I blow up myself and I also refused.

Children were separated from their families and put in training camps so they could work on brainwashing them to turn them into terrorists. My story of suffering is way too long and there is no time to go into detail here. What I want to say is that there are thousands of Yazidi children and other children in Iraq and Syria who became victims of extreme terrorism organizations, with no efforts made to release them.

Amjad and Asaad are two Yazidi brothers. Isis kidnapped them along with their families on the 3rd of August 2014. They were brain washed and trained to use weapons, fight and commit suicide operations; ISIS used these children as explosives against the Iraqi security forces in February 2017, and there are many other similar cases. Up to today, thousands of unknown Yazidi children are in the hands of ISIS. Imagine this is happening to your children in your countries; what would your reaction be? The international community is not doing enough to save the future of these children in Iraq and Syria.

There are thousands of dead bodies of children women and men in mass graves due to ISIS which have not been investigated for at least 4 years. No thought has been given to their families who are waiting to bury their dead.

There are also many Yazidi children, ISIS survivors, who have lost their language and traditions, have suffered violence, are in shock, and without support.

In the end, I call upon each one of you to help save these children, to find rehabilitation programmes for them in your countries. Countries like Canada and Australia gave much hope in resettling some of those children and their families. I hope that the French government will follow their steps and offer resettlement treatment of ISIS children survivors and their families.

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

I also hope that the international community will move more seriously in re-construction of the areas that ISIS destroyed. Hundreds of thousands of children, women, disabled and widows have been living in miserable conditions, in dumpsters for refugees for the past four years without receiving humanitarian such as health care and education.

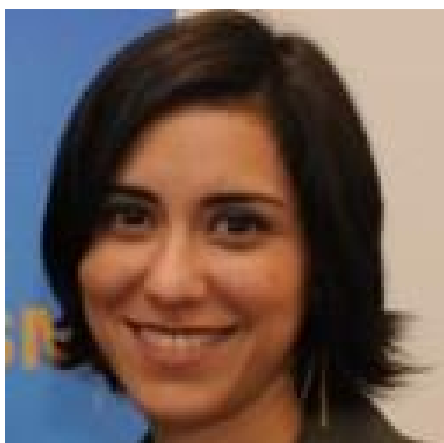
Thank you.

Farida Abbas Khalaf, is one of more than 6500 Yazidi survivors of ISIS. She was born in Kocho,- Sinjar, Northern Iraq. She was a high school student when ISIS attacked her village, killing men and taking women and children hostages.

Since her escape, Farida has been an effective part of Yazida global advocacy campaign to bring ISIS militants to justice, raise awareness and bring international attention to the Genocide. So far, Farida has spoken in several countries, published her book, *The Girls Who Beat ISIS*, in more than 14 countries and has been recognised by Poland, the UK Foreign and Commonwealth Office and Liber Press for her humanitarian work.

Children recruited by terrorist and violent extremist groups: paths to overcome the challenges

Alexandra Martins



Introduction: global war on terrorism and violent extremist

During the past twenty years, terrorism has become a part of our daily lives, often defined as the greatest threat to contemporary societies. Yet, its relevance is not due to its mortality. Terrorism does not kill more than cardiovascular diseases, malaria, or traffic incidents. Its prominence is due to its nature: targeting random innocents to pursue political objectives. In this sense, brutality is not a by-product of terrorist action, but lies at its very core and it is the easiest way to ensure global, undivided attention to their cause.

In the past two decades, terrorist strategies have grown in sophistication, and proved the vulnerability of any society to indiscriminate attacks. The international community has thus responded with unanimous condemnation of terrorism and violent extremism and has addressed coordinated efforts to fighting them.

While development, human rights promotion, and safeguard of vulnerable groups continue to be upheld as key pillars of democracy, security concerns have increasingly dominated the public debate and have shaped law and policy making to a considerable extent.

The recruitment and exploitation of children by terrorist groups is a crucial part of their ruthless tactics. All of you will no doubt remember the abduction of the Chibok girls by Boko Haram or the ISIL diffused propaganda images showing children used as executioners of the groups' prisoners. We remember these images because of their shock factor, but we forget numbers a lot more easily. Numbers, however, are crucial to assess the real extent and impact of a phenomenon.

Despite the limitations to data collection in conflict-ridden areas, the United Nations were able to verify thousands of instances of child recruitment in the past years.

Estimates indicate that, since 2009, around 8000 children have been recruited and used by Boko Haram, in Nigeria. In May 2015, for example, a 12-year old girl was used to detonate a bomb at a bus station in Damaturu, killing seven people. In 2015 alone, 274 cases of child recruitment perpetrated by ISIL in Syria were verified. Over 1000 children were abducted from the Mosul district in just two incidents. The existence of military training centres for children was also confirmed in rural Aleppo, Dayr al-Zawr and rural Raqqah. It is estimated that at least 124 boys between 10 and 15 attended them.

Of course, child recruitment is not a new phenomenon. 20 years ago, the Machel report highlighted how widespread child recruitment was among armed forces and armed groups. Yet, contemporary terrorist groups have broader reach than ever before, and more and more children, traveling alone or with their families, are crossing national frontiers to join them. Studies show that children who have died fighting with ISIL are not only nationals of Iraq and the Syrian Arab Republic, but also of Australia, France, Lebanon, Libya, Morocco, Nigeria, Saudi Arabia, Sudan, Tajikistan, Tunisia, the United Kingdom, and Yemen.

Child recruitment is not specific to any particular ideology, religion, or ethnic group. Child recruitment occurs across the ideological, political and religious spectrum, as demonstrated by the conduct of Neo-Nazi groups, the Lord's Resistance Army (LRA), and the Revolutionary Armed Forces of Colombia (FARC). Indeed, child recruitment presents multiple strategic advantages: they are cheaper, they tend to attract less suspicion; they are quicker to show loyalty to authority figures.

While in the hands of the groups, children are exposed to continuous, often extreme violence, including enslavement, sexual exploitation, indoctrination, serving as human shields or to detonate bombs. At the same time, because of their psychological malleability, children can be normalised to violence or exploited for the perpetration of terrorism-related acts.

So the key point here is: regardless of phenomenological variations, the recruitment and exploitation of children by terrorist groups is a serious form of violence, and its short and long-term implications for both children and society as a whole are severe.

Challenges faced by countries regarding the recruitment and exploitation of children by terrorist and violent extremist groups

Accordingly, child recruitment and exploitation by terrorist groups has become a key concern for States and society at large and a priority on the international agenda. Indeed, States have the primary responsibility to take all measures to counter terrorism. At the same time, they hold the primary responsibility to protect children from violence, including recruitment and exploitation by terrorist and violent extremist groups. But how? And how can these different public interests be combined?

So State authorities and practitioners legitimately started raising a number of questions,

such as:

~ How can child recruitment be prevented?

~ When children have been associated with these groups, should they be considered as victims?

~ And if so, would the child's victim status exonerate the child from being held criminally liable for the commission of terrorism-related offences?

~ If children are more vulnerable to indoctrination, are they more dangerous potential terrorists?

~ If so, wouldn't counter-terrorism specialized authorities and institutions be better placed to assess if these children pose risks? And in this context where security concerns often dominate global and national policymaking, children who are involved with these groups, regardless of the reasons, tend to be perceived mainly as a threat. This has even led to questioning the notion of 'child':

~ Should someone who is 16 years old and who has 'chosen' to be involved with a terrorist group be really considered a 'child'?

These questions and challenges led the international community to engage in an interesting debate about 'juvenile justice in a counter-terrorism context'. All of a sudden, a number of expert group meetings, seminars, high level debates were held to discuss how children involved with terrorism should be treated and what rights and standards should be applied to them.

When I attended the first meeting on this topic in 2015, I confess I didn't see the reason for that debate and struggled to understand why the proposal was to discuss the rights of the child who are alleged of having committed a terrorism related offence. Should a child who commits murder be treated differently from the one who commits a terrorist act? If the world will be faced with a new phenomenon of children committing corruption, are

we going to question what are the rights of children in an anti-corruption context? I confess I felt uncomfortable with reiterating the rights set forth in the Convention on the Rights of Child - which entered into force in 1990 - but I realized that there was and there is an urgent need to participate in this debate.

The underlying question of this debate was: should safety interests prevail over child rights?

This debate brought together experts from two different areas of work: child rights or juvenile justice experts and counter-terrorist experts. Those two groups had a very different understanding of the phenomenon and not always spoke the same language.

To make a long story simple: on the one side child rights experts, normally with limited knowledge of counter-terrorism, would animatedly say NO, we have to protect child rights in any circumstance. On the other hand, counter-terrorism experts, usually with limited knowledge of child rights would defend a position that preserving public safety must always prevail even at the expense of respecting the universally accepted child rights.

And one would honestly remember Norberto Bobbio and ask: is the 'age of rights' taken over by the 'war against terrorism and violent extremism'?

Ways to overcome the challenges

So what are the answers? How can we overcome these challenges in our work?

In order to provide adequate answers we should 1) contextualize this phenomenon 2) acknowledge its complexity and the need for multidisciplinary.

By contextualizing I mean that we need to address the root causes: Whether a child is kidnapped, or whether she falls prey to an online indoctrinator, it would be *naïf* to think that the answers found in the crime prevention and criminal justice field would be enough. Regardless of different circumstances, child recruitment is not a crime problem, but rather a developmental issue. These two children may live far from one another, but in both cases we have failed to provide them with a different option. It is about RESILIENCE. It is about DEVELOPMENT.

Or as Amartya Sen would have said: it is about valuable capabilities. As he wrote: 'Capability reflects a person's freedom to choose between different ways of living (ö) Valuable capabilities vary from such elementary freedoms as being free from hunger and undernourishment to such complex abilities as achieving self-respect and social participation'.

So, development is not merely fighting poverty: it is aiming at universal access to meaningful participation. This is what the sustainable development goals push us to do. They represent

an audacious commitment, pushing us to look forward, and realize our full potential as human beings.

This brings us to the next point: we have a shared responsibility to address the problem.

But how?

One common tendency in dealing with security-related concerns is to address them as stand-alone issues. At the same time, the human rights community also is tempted to frame this phenomenon only in terms of child rights violations. Neither approach can prove effective.

We are dealing with a very complex phenomenon for which multi-disciplinarity plays a key role. We must make an effort to reach beyond the comfortable boundaries of own expertise and rely on the substantial body of international law relevant to this problem.

This includes multiple international legal regimes, beyond international human rights law and the universal legal framework on counter-terrorism. In international humanitarian law we will find the bases to define what is acceptable conduct during conflict; through international criminal law we will be able to determine in which circumstances terrorist tactics amount to war crimes and crimes against humanity, and who are their victims; the Palermo Protocol to prevent, suppress and punish trafficking in persons is an invaluable tool to improve accountability for transnational crimes. Understanding their interplay is certainly not simple, but we should be aware of what we leave behind when we fail to do so. These are the rules that represent the shared values of the international community, and the very bases for its international peaceful coexistence. Every time we disregard them, we undermine them, making them more vulnerable to violations.

And it will be a detailed analysis of the complex multiple international laws relevant to this problem that will guide us to understand what countries can do to 1) prevent child recruitment; 2) treat children appropriately, and 3) promote rehabilitation and reintegration.

So what are the KEY CONSIDERATIONS AND RECOMMENDATIONS that emerge from the analysis of the international legal framework?

First of all, it is essential to recognize that any form of recruitment of children is a violation of their rights. This recognition is essential for coherent and more effective policy-making in this area. Indeed, it serves multiple purposes: i) it strengthens the moral sanction for acts of recruitment; ii) it points the blame on terrorist and violent extremist groups, facilitating their prosecution and accountability; iii) it eliminates the fictitious distinction between voluntary and forced forms of recruitment.

So, our first key recommendation is to promote comprehensive criminalization of child recruitment.

By comprehensive I mean that recruitment should be defined as:

- i) concerning all children below 18 (so eliminating other age thresholds);
- ii) comprising both %compulsory+ and %voluntary+ processes;
- iii) including children recruited for active or support roles; and
- iv) including recruitment by armed forces or any non-State criminal or armed groups.

The second key consideration . which derives from the need to criminalise recruitment . is the need to recognize that ALL children recruited and exploited by terrorist and violent extremist groups are primarily victims. This notion has proved sometimes controversial, and often misunderstood, but it is of vital importance. Acknowledging the status of these children as primarily victims does not entail that no distinction will be made on the basis of the type of involvement with the group, and it also does not mean that potential risks of future violence should not be assessed. But it does have other concrete consequences:

- i) it reinforces the understanding that recruitment and exploitation are serious forms of violence against children and highlights the need for early prevention measures, ii) it promotes the access of children to their rights, including effective assistance, support, and rehabilitation, iii) it supports shifts in society's perceptions of these children, undermining stigma and fostering reintegration.

The recognition of primarily a victim's status leads us to other recommendations for action:

- call for comprehensive approach in prevention: while prevention of child recruitment will require specialized measures (for instance innovative communication campaigns and the use of counter-narratives targeting specifically children) these should be integrated into broader crime prevention policies, and in particular in programs and policies aimed at tackling violence against children.

- addressing the impact of violence and trauma: scientific research, especially in the area of neurodevelopmental science, psychology, has provided us with a set of instruments to address the impact of violence on a child life. Providing a broad array of services and support will be crucial also in view of preventing recidivism. Policies focusing on the consequences of so-called radicalization phenomenon can highly benefit from the evidence and practices collected over decades of experience in this area.

And, last but not least, when children are alleged as having infringed the domestic laws in relation to terrorism, we have strongly advocated for the adoption of a justice for children approach. Juvenile justice standards and norms are often overlooked, especially in this context. This is based on the wrong assumption that they constitute a soft option, unfit in such serious circumstances. But justice for children is not a lesser form of justice: it is about an appropriate, child-sensitive response by a justice system that is geared towards rehabilitation and reintegration. Indeed, juvenile justice has a dual role: it is aimed at preserving public safety and holding a perpetrator accountable, and at the same time at protecting the rights of a child alleged offender and promote his or her reintegration into society.

Here I feel the need to go back to the underlying question that lighted the debate on this topic: Should safety interests prevail over child rights?

And the answer is: we should stop looking at this as an either/or choice. It is possible to promote and protect the rights of children involved with terrorist and violent extremist groups, and at the same time to be effective in addressing security risks. Let me give some examples through concrete recommendations:

- Promote individual assessment: the policies aimed at preventing violent extremism have brought renewed attention to the need for standardized risk assessment tools. However, child protection and juvenile justice have a rich tradition of individualized assessment tools (from best interests determination to social enquiry reports), which take into account risk factors but emphasize the need for individualized approaches to children's cases. These tools can be especially effective in preventing risk while at the same time avoiding distortions caused by standardized practices.

These are just a few examples, but they are significant to illustrate that when we advocate for a justice for children approach, we are not denying or undermining the need to fight terrorism.

We have built on the complementarity of these two areas of expertise to develop the UNODC Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups. And we are using this tool to support countries in overcoming the challenges regarding prevention of child recruitment; justice responses; reintegration and rehabilitation.

I invite you to read it for more details on the relevant legal framework and on promising practices. We are now in the process of developing training tools for practitioners on each of these areas. They will be the opportunity to move from ~~what to do~~, addressed by the Handbook, to ~~how to do it~~.

This World Congress is a crucial opportunity to reach out to the juvenile justice community and call on you to reach out to us and share examples, case-studies, data. All together, we have the opportunity to make our experience relevant and useful.

Conclusion

Allow me to conclude with a personal consideration. I have spent almost the past twenty years working to promote and defend justice for children. I can tell you that this is more than a job to me, it is a passion, a privilege, and a source of inspiration. So, it is not with a light heart that I say this: the crisis that our child rights community is facing in confronting the challenges connected with terrorism and violent extremism is symptomatic of a failure.

We have failed to raise an appropriate level of awareness on the relevance and the role of juvenile justice. We have failed to claim that child-appropriate justice has a vital role to play in broader child protection and development strategies. But most importantly, we have failed to prove that human-rights based institutions are not a burden, they are more effective.

But every failure should provide an opportunity for growth. This will require, of course, an honest analysis of our shortcomings, but also a strong defence of our core values. The urgency and visibility of the terrorism-related crisis provides a platform for us to rise to the challenge, and it is a strong call to our shared responsibilities. It reminds us that we cannot afford to fail anymore.

Dr Alexandra Martins works as a Crime Prevention and Criminal Justice Officer with the Justice Section at the Headquarters of the United Nations Office on Drugs and Crime (UNODC) in Vienna, Austria where she acts as the focal point on Justice for Children and manager of the UNODC Global programme on Violence against Children. She holds a postgraduate qualification in Criminal Procedural Law and a Ph.D. in Criminal Law from the University of Florence, Italy. The focus of her Ph.D. thesis was on juvenile justice, particularly on alternatives to detention for children in conflict with the law.

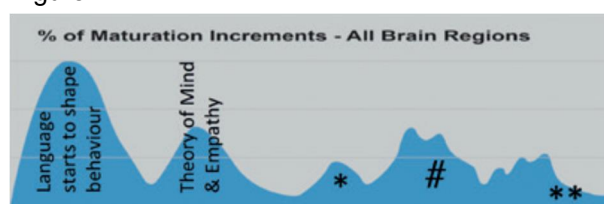
Neuro-developmental maturity, trauma and violence: causal links and interventions

Huw Williams



The brain . the source of your memory, your plans, and dreams - is not fully formed as a child. Nor as an adolescent. It's only in the early twenties that it evolves to be %adult like+. With a system that %eels+ and a system that manages such feeling states. The mid teenage brain may know %want+ but not how to %wait+. It's a time of life where risk taking is more likely and therefore of getting into trouble. Not only is the brain maturing still in the teenage years - it is also . because of the risk taking . more likely to be injured (see Figure 1). Indeed, people who end up in the criminal justice system often have mental and physical health problems that may contribute to them having ending up in the system.(1) And one key, and often invisible problem, is Traumatic Brain Injury (TBI). A health issue that directly affects behaviour. As its common in childhood and adolescence, typically affects young people in such a way that their whole life trajectory is changed . for the worse.

Figure 1:



Age 1-4 7-9 11-15 17-21
R. Savage . see
www.internationalbrain.org/articles/the-developing-brain-after-tbi/

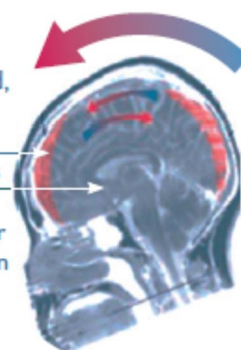
The Justice Select Committee of the UK Parliament recently noted %compelling evidence+ that %those who persist in criminal behaviour into adulthood are more likely to have neuro-psychological deficits, including cognitive difficulties with thinking, acting, and solving problems, emotional literacy and regulation, learning difficulties and language problems

associated [often due to] traumatic brain injury+. They added that: %Neurological impairments impact on [the] capacity [of affected individuals] to desist from crime+.

Figure 2:

Traumatic Brain Injury (TBI) alters developmental trajectory

- Caused by a blow to the head, such as in a fall, assault, road traffic accident etc.
- **FRONTAL** and **TEMPORAL** lobes usually injured
- Connections being sheared or compromised across the brain
- Problems with attention, memory, impulse control, social reasoning and Theory of Mind (ToM).

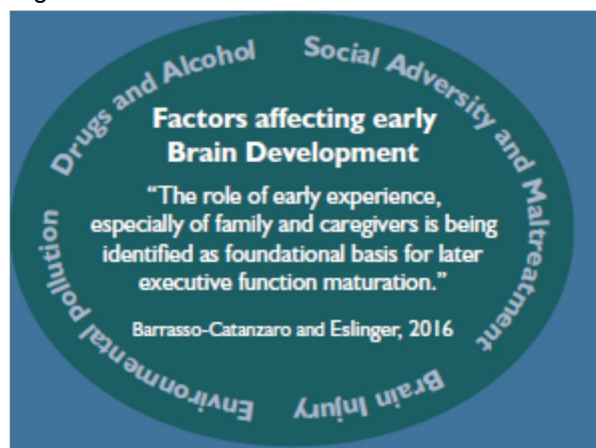


TBI results from external mechanical force such as a blow to the head in an assault, or car crash (see Figure 2) It can be mild (brief loss of consciousness (LoC) or up to 30 minutes of LoC) through to moderate and severe forms (more than 30 minutes of LOC). The longer LoC . or more frequent . the greater the chance of ongoing problems . and the more severe the problems. Usually up to 5 minutes there is little effects, but after 10 minutes of LoC it is more common to have problems . (complicated Mild TBI) or if there are 3 or more TBIs or any kind. It is the biggest cause of death and disability in children and young people (3). In a general population, over a lifetime, TBI with some LoC across all severities (from mild to severe) - has been estimated to happen to around 8%(4) and 12%(5) of people .(5) In contrast, rates of TBI in young people in custody have been found to be typically around 50-80%.

TBI can affect the brain systems important for emotional self-control and social behaviour . and often leads to problems with memory, attention, concentration, and planning. Impulsiveness, aggression, poor social judgment and problems are common in children and young people after TBI.(6) With an increased risk of neuro-psychiatric problems.

Many children and young people who end up in the criminal justice systems have had adverse life events (witnessed deaths, being abused/assaulted etc. (see Figure 3)). TBI could happen within these situations. And could amplify any neuro-cognitive problems due to such experiences.

Figure 3:



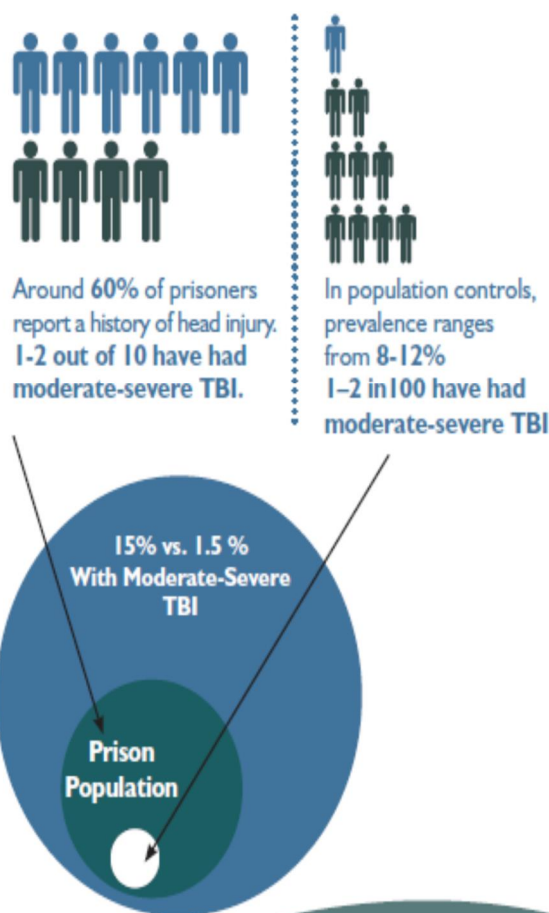
Such patterns of behaviour could be a factor in a drift from the classroom to the courtroom. Indeed, TBI is a factor in poor educational outcomes, including a heightened risk of exclusion. This is compounded by challenges for parents in supporting a young person with emotional and behaviour difficulties resulting from TBI.

In various jurisdictions (UK, France, USA, Canada, Australia, Germany, New Zealand) TBI has been linked to crime. TBI is linked to earlier age of incarceration, greater violence, and more convictions. In those in custody, complicated Mild TBI and/or moderate to severe injury seems likely in 1-2 in 10. With another 3 or 4 in 10 having milder form of TBI - many with repeated injury. There is also evidence of higher levels of violence and infractions in prison among those who have experienced TBI, and links to poorer treatment gains, and re-conviction.

Figure 4:

Prevalence of TBI

Research all around the world has shown that **TBI** is very common in youth offenders in custody



The Centre for Mental Health recently calculated that, on average, the lifetime costs of TBI in a fifteen year old would be around £155,000 per case, including £95,000 for non-crime costs (health care, lost earnings etc.) and £60,000 for the costs of additional offending. For a young person already in the criminal justice system, the lifetime costs increase to around £345,000 per case, reflecting the much higher costs in those already on a likely trajectory into persistent offending.

Figure 5:



TBI is one of the key Neuro-Disabilities that commonly affect young people in contact with the law. Often they may have other NDs such as Attention Deficit and Hyperactivity disorder, or Autism and so on. Crucially these NDs mean that they, more often than not, have difficulties in language communication and therefore may not follow what is being said to, or done to, them. Which exacerbates their problems.

Table 1. The prevalence of neurodevelopmental disorders

Neurodevelopmental disorder	Reported prevalence rates amongst young people in the general population	Reported prevalence rates amongst young people in custody
Learning disabilities ¹	2 - 4% ⁴	23 - 32% ⁵
Dyslexia	10% ⁶	43 - 57% ⁷
Communication disorders	5 - 7% ⁸	60 - 90% ⁹
Attention deficit hyperactive disorder	1.7 - 9% ¹⁰	12% ¹¹
Autistic spectrum disorder	0.6 - 1.2% ¹²	15% ¹³
Traumatic brain injury	24 - 31.6% ¹⁴	65.1 - 72.1% ¹⁵
Epilepsy	0.45 - 1% ¹⁶	0.7 - 0.8% ¹⁷
Foetal alcohol syndrome	0.1 - 5% ¹⁸	10.9 - 11.7% ¹⁹

What, then, can be done?

First, any form of neuro-rehabilitation early after a TBI could offset the risk of violent crime.⁽⁷⁾ A study in Spain showed that adults in prisons with TBI, who had had some kind of rehabilitation after their TBI, were less likely than those who had not had rehabilitation, to be violent.

Second, improved linkage between Emergency Departments, Child and Adolescent Mental Health Services, Family Doctors and school systems might lead to early identification management of TBI in children and young people, particularly in lower socio-economic areas. This may reduce chances of school exclusion and social isolation.

Third, entry into the justice system (police, courts, or admission to probation or secure care) may provide an opportunity to deliver routine screening for TBI and providing treatment options. IN the UK there is now recognition that TBI should be taken into account in sentencing young people.⁽⁸⁾ In England all young people (under 18) coming into secure care are screened for neurodisability .

Fourth, provision of Brain Injury link-workers within prisons to enable improved screening and support for those with TBI, and training and support for staff.⁽⁹⁾ Through such initiatives forensic rehabilitation could be improved to manage such issues as impulsiveness. One illustration of how this might be beneficial is a non-TBI study where medication for attention deficit hyperactivity disorder in offenders led to a 30% reduction in criminality on release, ⁽¹⁰⁾ possibly owing to improved impulse control.

Judges and magistrates are at the key make or break-points in a young person's life. The options available to them need to include ways to bring in more knowledge, experience and solutions for supporting vulnerable young people - from health, social and education colleagues. To build more effective means to address the issues that lead to crime, but also, enable change to happen. To lessen chances of future crime, and promote better lives.

Huw Williams, is Associate Professor in Clinical Neuropsychology, Exeter University, UK

w.h.williams@exeter.ac.uk

For reports:

Overview for practitioners and policy makers and practitioners on TBI & Crime, Repairing shattered lives (French version also available);

http://psychology.exeter.ac.uk/documents/Repairing_Shattered_Lives_Report

http://psychology.exeter.ac.uk/documents/Repairing_Shattered_Lives_Report_French_Version.pdf

Report for the British Psychological Society (BPS) working group on Neuro-Disability in children and young people in custody;

http://psychology.exeter.ac.uk/documents/CYP_with_Neurodisabilities_in_the_CJS.pdf

Report with Nathan Hughes a report on Neuro-disability and TBI in young offenders in children in custody for the Office of the Children's Commissioner (England);

http://psychology.exeter.ac.uk/documents/Nobody_made_the_connection_Neurodevelopment%20Report_OCC_October2012.pdf

Report with Dr Prathiba Chitasabesan, a report on the use of linkworkers for young offenders to manage TBI in custody,

http://psychology.exeter.ac.uk/documents/Disability_Trust_linkworker_2016Lores.pdf

Report from Centre for mental health in producing a report on the economic costs of crime due to TBI.

http://psychology.exeter.ac.uk/documents/CMH_Traumatic_brain_injury_and_offending_July2016.pdf

- Lancet Neurology - Traumatic Brain Injury: Integrated approaches to improve prevention, clinical care, and research
<http://www.thelancet.com/commissions/traumatic-brain-injury>

References

1. The L. Health care for prisoners and young offenders. *The Lancet*.373(9664):603.
2. Hutchinson P, Kirkpatrick P. ACUTE HEAD INJURY FOR THE NEUROLOGIST. *Journal of Neurology, Neurosurgery, and Psychiatry*. 2002;73(Suppl 1):i3-i7.
3. Williams WH Fazel, S., McMillan, T., Parsoanage, M., Chitasabesan, P., Hughes, N & Tonks, J. T Traumatic brain injury: a potential cause of violent crime?. *Lancet Psychiatry*.2018 DOI: [https://doi.org/10.1016/S2215-0366\(18\)30062-2](https://doi.org/10.1016/S2215-0366(18)30062-2)

4. Silver JM, Kramer R, Greenwald S, Weissman M. The association between head injuries and psychiatric disorders: findings from the New Haven NIMH Epidemiologic Catchment Area Study. *Brain injury*. 2001;15(11):935-45.

5. Frost RB, Farrer TJ, Primosch M, Hedges DW. Prevalence of traumatic brain injury in the general adult population: a meta-analysis. *Neuroepidemiology*. 2013;40(3):154-9.

6. Wall SE, Williams WH, Cartwright-Hatton S, Kelly TP, Murray J, Murray M, et al. Neuropsychological dysfunction following repeat concussions in jockeys. *Journal of Neurology, Neurosurgery & Psychiatry*. 2006;77(4):518.

7. LeÓN-Carrión J, Ramos FJC. Blows to the head during development can predispose to violent criminal behaviour: rehabilitation of consequences of head injury is a measure for crime prevention. *Brain Injury*. 2003;17(3):207-16.

8. Council S. Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery
Definitive Guideline.

9. Chitsabesan P, Lennox C, Williams H, Tariq O, Shaw J. Traumatic brain injury in juvenile offenders: Findings from the comprehensive health assessment tool study and the development of a specialist linkworker service. *The Journal of Head Trauma Rehabilitation*. 2015;30(2):106-15.

10. Lichtenstein P, Halldner L, Zetterqvist J, Sjölander A, Serlachius E, Fazel S, et al. Medication for Attention Deficit. Hyperactivity Disorder and Criminality. *New England Journal of Medicine*. 2012;367(21):2006-1

Preventing engagement in all forms of violence including extreme behaviour

Manfred Nowak



There have been different Global Studies before, in particular in 1996, on the impact of armed conflict on children, and in 2006, on violence against children. These Global Studies had a major impact and a closer follow-up, and this was the main reason why in 2014 we asked the Secretary General to commission another Global Study, this time on children deprived of liberty, which is very related with violence against children.

The Secretary-General established a task force. A number of UN agencies are involved, as well as Special Representatives, and the Committee on the Rights of the Child. We also made a fundraising appeal to States because the Global Study needs to be paid out of voluntary contributions and unfortunately only very few States have responded. I just talked with Graeme Simpson, who is leading a special study on Youth, Peace and Security of the Security Council and we both found out that we encountered similar difficulties . must of our time is fundraising for the UN.

This was before I was appointed in 2016 as the Independent Expert leading the Study. We have 144 non-governmental organisations in our panel, academic institutions, and many others. Originally, I had to report this year, but it was extended so I have to report back to the secretary-General in October of next year, so we are a little bit under time pressure.

Why do we need this? On the one hand, we have the very high standards of the UN Convention on the Rights of the Child (CRC) which clearly says that, in principle, children should not be detained, and if so, only as a measure of last resort, if there are no other alternatives, and for the shortest time possible. We all know that the reality is completely different: far too many children are behind bars, in police custody, in prisons, in special institutions, in migration-related detention places, in the context of terrorism and security-related crimes, and even in administrative or preventive detention.

But we do not really know, no one knows, how many children are behind bars. There is a 1 million figure of UNICEF that was used in the late 90s simply based on an estimate and not on evidence. The main reason for the Global Study is that we want to find out how many children are deprived of liberty. Putting children behind bars not only deprives them of their liberty but has also a deep mark in the society we are living in.

I served for 6 years as a Special Rapporteur on Torture, carried out 18 fact-finding missions to all parts of the world, saw hundreds of detention centres, and the most difficult was always when I encountered children in police custody, like the African example, or in pre-trial detention like the Asian one, or in administrative detention, as the example showed by the European Union. Often it is heart-breaking if you see kids of 6, 7, 8 years-old being behind bars for whatever reason. That is why I am very happy that I was appointed as the Independent Expert, so that I can build up on my previous experience as the Special Rapporteur on Torture.

We want to know how many boys, girls, which ages, which types of institutions and other detention facilities, what are the main reasons, but also what are the alternatives, what are the non-custodial measures that should be applied if the Convention on the Rights of the Child is taken seriously. We would like to document good practices, many of them have already been applied, and I think we should give children a voice. As we should give children a voice in the Global Study. We do whatever we can for them to be involved, with the very limited funds that are available. We are already preparing the Global Study by means of organising Regional Consultations, speaking to different stakeholders, to governments, sending out the questionnaire, asking governments to fill in the questionnaire. This is already an awareness-raising exercise, as we have seen already in other Global Studies. There should also be clear recommendations, but this time, based on evidence, as it is much easier this way to come up with these recommendations.

We are dealing with 6 different focal areas: children deprived of liberty in the administration of justice . that is what we are talking about in this Congress, again, this is from an African country where I went to see 70 or 80 children already convicted of a minor crime simply because the minimum age of criminal responsibility is very low. We also have children living with incarcerated parents, usually mothers. We have children deprived of liberty in armed conflict, such as child soldiers.

There are also children deprived of liberty for migration reasons and this is obviously a priority in the northern States of Europe, the United States, Australia, etc. Then we have children deprived of liberty in institutions, this is a very broad field, we are talking about special institutions such as child homes, orphanages, centres where children with disabilities are detained, drug detention centres or others. Not everybody is deprived of liberty in institutions, but many are, and much has been achieved by means of deinstitutionalisation. And finally, there is a chapter for children deprived of liberty on national security grounds, specially terrorism.

This brings me to the second part of my presentation: how to prevent radicalisation in detention, either persons who are suspect of having committed terrorist crimes or those who might be radicalised in the prison environment. I am offering 6 short ideas about that.

The first is to prevent detention as much as possible, as I said Article 37 of the Convention on the Rights of the Child is very clear. Only as a measure of last resort, for the shortest possible period of time. This means that for all 6 different areas there are always different custodial measures available that should always be considered first, of course, always in cases where children are accused of terrorist crimes, membership of a terrorist organisation. We heard this morning a very positive example by the Minister of Justice of Georgia, Thea Tsulukiani, who told us that by a new Juvenile Justice Act and a reform agenda you can reduce very considerably the number of children who are deprived of liberty in the administration of criminal justice.

I think I do not need to tell anyone here that prison environments are always a breeding ground for all kind of negative influences of children. Very often, from my experience, children are not separated, as they should, from adults; pre-trial detainees are not separated by convicted prisoners; and they are subjected to all kinds of negative influences in relation to drugs, arms, violence, radicalisation, and of course, from recidivism.

We also heard today several times, particularly by Alexandra Martins, that we should treat children, in general, not as perpetrators but as victims, and as victims they are in need of special social and psychological assistance, and not locking and punishing them.

Using Human Rights to counter Terrorism is the title of a book that was just now edited by Anne Charbord, who is with us today, and myself, where we used the experience of various Special Rapporteurs on Human Rights and Counterterrorism, Special Rapporteurs on Extra-Judicial Executions, and Special Rapporteurs on Torture. Today's main message was that the war on drugs, the war on crime, or the war on terror,

and in particular if we look at what happened in the United States after the 9/11, there are all these measures taken that are clearly violating international human rights standards, whether it is the detention facility in the Guantanamo Bay, extraordinary renditions, CIA black sites in so many different countries, torture, etc. The final outcome is that the threat of terrorism has not decreased but rather increased, so we are bringing more terrorists - it is this kind of security-oriented reaction to any kind of phenomenon like drugs, terrorism, or crime in general.

The principal of normalisation is a very important principle that we find in the European Prison Rules, in the UN Mandela Rules, and in certain governments. In my case in the philosophy of incarceration in Denmark and Nordic countries, which means that life behind bars should resemble as much as life outside prison, in order to prepare children, as well as adults, for a life after prison. It means that it can only be done by the higher standards of detention and, of course, a child-friendly environment. This means open prisons. Do not lock children in cells. Children have a much higher need to move around than adults and it is one of the worst thing that you can do to children. Access to education, health, sports, recreation is extremely important, as well as individual counselling, you need enough social workers and others to deal with kids deprived of liberty if they are in a prison environment, in order to assist them in the rehabilitation and resocialisation efforts. It is very important that they are not locked away from their families and from friends and other in the outside world. It means that prisons staff - that is everybody, not only prison directors and guards, but also social workers, health professionals, psychologists, prison chaplains, and others - need to treat children as their clients. In many countries it sounds completely utopian but there are countries that when you speak with the prison director, and he does not speak about inmates or other terms but says clients. It makes a difference because we want to assist them in their life after prison, resocialise them, and we do not want to see them again afterwards. We have heard from Huw Williams about the high radicalisation rate, which also has to do with the prison environment.

Children are still in a formative stage and can easily be influenced in a negative way, but also in a positive way, if they feel they are treated in a way respecting their human dignity and they are assisted, it might be much easier following this than others who try to radicalise them in prison. That means that the staff cost money. One of my final conclusions as a Special Rapporteur on Torture was that there is a global prison crisis and this prison crisis actually got worst in this last 5 or 6 years. It has to do with austerity measures, there is less and less staff, rather than more staff, in particular social workers and others. Prison staff

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

needs to speak different languages . in all prisons that I visited there are always so many people from different backgrounds and if you cannot communicate then it is a very easy way to be radicalised by your peers. Inclusion of diasporas, also bringing prisoners to peer persons who they trust, for instance religious leaders from their particular communities.

That brings me to the conclusion. On the one hand, the Global Study is also dealing with terrorism and national security grounds forms of detention and is aimed at reducing the number of children behind bars as much as possible. As higher the standards of detention, as lower is the risk of violent radicalisation extremism, and terrorism, and it can be best prevented by the principle of normalisation, child-friendly prison principles, but also strict separation of children from adults and pre-trial

detainees from convicted prisoners . it is a very important principle and it is violated by the overall majority of countries all over the world . and the individual treatment with the inclusion of diasporas aimed at resocialisation of children in their societies.

Thank you very much.

Manfred Novak is a human rights lawyer and the Scientific Director at the Ludwig Boltzman Institute for Human Rights in Vienna. Since 2016 he has been leading, as the Independent Expert, the Global Study on Children Deprived of their Liberty, Office of the United Nations High Commissioner for Human Rights (OHCHR, Geneva).



It is a pleasure to be here.

I think this is a very important opportunity and I would like to bring to you some reflections based on the work I have done over the last two years as a special rapporteur.

To do so, I should like to talk about two case studies related to this topic of justice for children and prevention in a global context.

The first case study is from El Salvador and relates to the so-called war against gangs. The origin of the gangs is a very complex matter. I should like to highlight factors which play a part in their formation. Factors such as economic, armed conflict, family disintegration and mass deportation of a large number of young men from the USA in the 1990s. The story is that the gangs were created on the west coast of the US and were then, through deportation, exported to El Salvador. El Salvador, at that time was coming out of a bloody civil war.

There are two lessons to be learned.

The first is that it is necessary to place prevention in a global context and to understand that everyone has a responsibility in terms of prevention, including prevention of violence and so-called radicalisation, occurring outside one's own jurisdiction.

To return to the situation in El Salvador, the gangs are mostly young men. They may be children. They number 60,000. They exercise territorial control. People speak of borders, the unauthorised crossing of which may result in death. Gangs themselves and their members, as described by the National Human Rights Institute, engage in systematic, serious human rights violations including forced recruitment basically of children recruiting children, restrictions on freedom of movement, rape and sexual violence and organised killings.

I want to highlight the almost systematic nature of violence against girls in the context of the gangs. The body of the girl is basically a territory for revenge and a territory to control. I just want to mention that because we haven't been very gender

specific in what we have said so far today except for the reference to Iraq.

Gangs are heavily male-dominated. The young men are driven by a violent concept of masculinity. This has to be placed, however, in a general context in El Salvador where, every 3 hours, someone is sexually assaulted. 70% of the victims are under 18 years of age.

While gang members are victims, because they may, but not always, have been forcibly recruited, they are also perpetrators of the most awful violations. This combination of victim and perpetrator in one body makes an effective response particularly difficult.

A succession of El Salvador governments has pursued iron fist policies characterised by mass detention and militarisation of policy and use of extraordinary measures. The pictures of places of detention shown by Manfred Novak are similar to the ones I saw in El Salvador. The young men . it is sometimes difficult to say if some were children . , were incarcerated in such a way that they could never sit down, they had to stand for days and had to take turns to sleep. Someone within the government said to me that you get out of the prison either mad or dead. That was very much in my head.

The El Salvadorian government is trying to find a different way and has an ambitious 5-year plan . Plan El Salvador Seguro . to curb violence through prevention, improvement of the Criminal Prosecution System, social programmes, employment, education, training and also support for victims of the crimes. The Plan is being implemented at National level and by Municipalities which are most affected by gang violence. I met with Municipalities which are trying to reshape the public space and therefore public policy as a form of reintegration and taking a pride in one's environment.

Unfortunately, the second lesson is that 70% of the plan's budget goes at the moment into financing the police and army and mostly repressive policies. One of the factors, not the only one, is that the good plan is hostage to politics and elections. The population of El Salvador has been beaten up over 30 years of internal conflict and a very high level of interpersonal violence, and politicians are looking for a quick fix. They pretend they have solutions, but all they have is repression and objectively problematising one group, the youth.

And we are forgetting too much of the quiet extremism . that of the ballot box and populism which eats at our societies and our own values. There is a large population that is also tempted by a contempt for others, and that can be symbolised too often by hatred for others, by youth and by youth who are often from a different community.

So quiet extremism needs attention and our intervention.

Last month (April 2018), the USA repealed the Temporary Protective Statute for people from El Salvador who had found refuge in the USA after an earthquake. By the end of next year 200,000 Salvadorians will have to return to El Salvador. This is on top of the other forced repatriation of migrants entering irregularly. To give a sense of the implications, in 2017, remittances to El Salvador from the USA amounted to 18% of the Gross Domestic Product of El Salvador. Take that out and imagine the state of a country that is already battling with so many difficulties, including in trying to respond to the violence and the gang violence itself, which is probably also an American export.

There is another dimension of youth and justice for children and youth that I would like to address now. It is about the use of anti-terrorist laws.

According to me and based on my observations, anti-terrorist law has interfered in every aspect of life. I see it as a little monster, or rather a big one, with tentacles, introducing itself everywhere, in penal law, in human rights law, in humanitarian law, in society and civil society. It seems that boundaries no longer exist, especially in political discourse.

We are witnessing, in my observations, the creation of a new legal space that conceals its true nature. It falls somewhere between humanitarian law, in case of conflicts, and ordinary and penal law, as well as human rights law in case of societies at peace. In the middle, we have been seeing for several years the creation of a new legal space resulting from anti-terrorist laws. It is characterised by extraordinary powers, a long-lasting state of urgency and the establishment of the state of emergency in ordinary law, which translates into the standardisation of extraordinary powers. In this legal space, the fact of belonging to a terrorist organisation is considered as a main charge against a suspected terrorist, which is in my opinion a shortcut, and leads to temporary detention; in some States, civilians are tried by military courts. This legal space also involves blurry and flexible definitions. Many youth . maybe not all are children but youth, at least young adults . , activists, journalists, have been imprisoned under anti-terrorist laws.

This legal space is also characterised by the almost entire neglect of victims. There are exceptions, in France for instance, but in the vast majority of cases, the anti-terrorist strategy is not at all focused on the rights of victims of terrorist acts. In general, victims do not exist in anti-terrorist law. But let me say again that there are exceptions. When it comes to accountability for terrorist acts, it is clear that children, youth in particular, are answerable under anti-terrorist law and, in my view, they are made accountable to the State but not to their victims.

I think that the fact that this link between the youth who committed a crime and the victim is lost, the fact that it is not there in many circumstances, makes the scope for prevention much more difficult.

Therefore, my recommendations are: first of all, prevention is everyone's business, including all States . I have already shared the case of El Salvador with you.

Second, I wish that when we talk about children and youth, we also put forward youth's inherent skills and capacities. It might be a bit off topic but we should note that those young people are part of another generation, the Cyber Generation, and that we, in contrast, are the dinosaurs' generation compared to what they can bring forward. Let us remember that this generation who was born with the technological revolution has skills and capacities that we do not have and that we should really put forward.

Third, let us not forget to educate others. Much has been done to objectify youth, children, etc., but we should not forget to educate leaders, the public and those who bring extremism through the ballot box.

Fourth, we have to stop using that language that objectifies children and youth. In my opinion, it is absolutely necessary to reject the counter-terrorism framework.

Finally, I would also like to make a suggestion . and this is a slightly sensitive topic . based on what I have said about the fact that youth are generally both victims, without a doubt, and sometimes perpetrators of crime. How should we handle the fact that they have committed crimes, sometimes awful crimes, such as in Iraq? My suggestion is that when we are talking about extremely serious crimes, such as war crimes, crimes against humanity or the crime of genocide, perpetrators should still be held accountable. But, of course, we must take into account the age of the person who committed the crime, as well as the circumstances. We should also note that adults are generally the ones who have incited to the commission of these crimes.

It is hard to believe that for five, six or seven years, we have been bombarded by political slogans about Islamic State, who is guilty beyond any doubt of the most horrific crimes, some of which I witnessed in Iraq a few months ago. Today, we have the opportunity to do something, we can conduct trials at a national, regional or international level, in relation to war crimes, crimes against humanity and the crime of genocide that have been perpetrated by Islamic State. This has yet to take place. In fact, according to my research, most of the people who have been involved in Islamic State's activities, for example in Iraq, some of whom being the so-called foreign fighters are currently being tried under anti-terrorist law. They are generally tried under the sole charge of

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

belonging to a terrorist group, which can lead to the death penalty. Victims are not involved in these trials which are usually held very quickly.

It seems to me that there is a great deal of hypocrisy, at least at the international level, in not seriously investigating further those crimes that have been denounced by politicians for more than five years, and in failing to bring the adults responsible for these crimes to justice. I think that

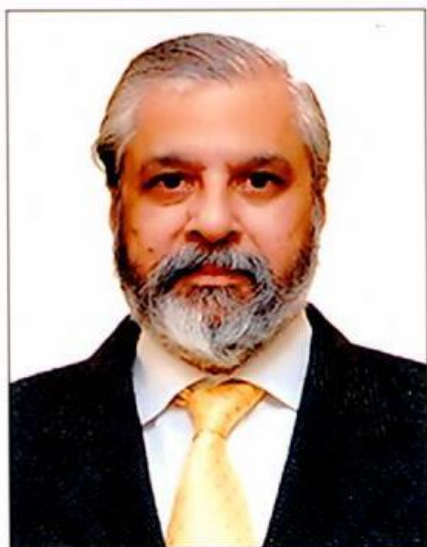
we are missing out on an opportunity to enhance prevention.

Thank you very much.

Agnes Callamard is Special Rapporteur on extrajudicial, summary or arbitrary executions, Office of the UN High Commissioner for Human Rights, France.

Insurgency, Extremism, Terrorism and the Rule of Law

Madan B. Lokur



Like most parts of the world, India has also been a victim of extremist violence and terror-related incidents. While all such incidents deserve unequivocal condemnation and have horrendous consequences, special mention is being made of three of them that really shook India. The first such incident took place in Bombay (now Mumbai) on 12 March 1993 when a series of bomb blasts took place simultaneously in different parts of the city, resulting in the death of over 250 persons and injuries to more than 700 persons. The handlers are still at large. The second incident was an attack on Parliament House, which occurred on 13 December 2001. The terrorists belonged to Pakistan based organisations and were killed in action. The third incident was a massive attack, again in Bombay, on 26 November 2008 when terrorists (again) of a Pakistan-based organisation carried out armed attacks in various places in the city in a coordinated manner and virtually paralysed the city for about four days. This terrorist attack resulted in the death and injury to a few hundred people of over 20 different nationalities. The handlers are still at large.

These and a few other terror-related incidents persuaded Parliament to establish the National Investigation Agency in 2008 by enacting a law to investigate and prosecute offences affecting the sovereignty, security and integrity of the country. In the process, the National Investigation Agency utilises its expertise to prevent terror-related incidents from occurring.

This is only one of the few preventive steps taken by the government of the day for the safety and security of the people of the country.

However, what is of equal concern is home-grown extremism. Reference may be made to three movements that have taken place over the years in different parts of the country.

The first such movement worth recounting is the insurgency (now quelled) in the north-east part of the country. The insurgents wished to establish a separate identity, which perhaps included a separate State. This movement resulted in the enactment of a law called the Armed Forces Special Powers Act. The law is rather draconian and confers special powers on the armed forces in dealing with insurgency and, to an extent, granting the personnel a degree of impunity. The origin of the law can be traced back to an Ordinance enacted during the British colonial rule over India to suppress the Quit India Movement started by Mahatma Gandhi in 1942. The insurgency led to the formation of several groups and splinter groups to achieve their objective, which in some cases was rather hazy. Some of these groups later turned to extortion and terrorising the local populace for their financial survival and over time lost their *raison d'être*.

Unfortunately, during the period of insurgency, a large number of insurgents and alleged insurgents were killed. It is estimated that in the north eastern state of Manipur over 1500 were killed as being insurgents, including unfortunately a child of about 12 years. According to an NGO, these were extra-judicial killings, amounting to murder and the provisions of the Armed Forces Special Powers Act did not provide those responsible for the killings from any immunity from prosecution. The Supreme Court of India had occasion to deal with the allegations made by the NGO and the contentions urged on behalf of the NGO as well as on behalf of the Government of India. A series of guidelines and directions have been issued by the Supreme Court, which has also formed a Special Investigating Team (SIT) to examine and investigate the death, for the time being, of more than 80 persons.¹

¹ Extra-Judicial Execution Victims Families Association v. Union of India, (2016) 14 SCC 536

The SIT has completed investigations in respect of some of the deaths and has launched prosecutions. Of course, there is still a very long way to go, considering that the NGO has documentation with regard to about 600 alleged extra-judicial killings, but at least a beginning has been made and it has been laid down as a principle of law that no one can act with impunity. The Supreme Court is monitoring the functioning of the SIT and hopefully it will establish that the rule of law must always prevail.

The second such movement started in the 1960s in a small town called Naxalbari in the eastern part of the country. This movement consists of left-wing extremists who are called Naxalites and follow what is commonly, described as a Maoist philosophy. The broad philosophy of this left-wing extremist movement is that power flows out of the barrel of a gun. Over the years, the movement has shifted from its place of origin to some districts in a few States in central India. These left-wing extremists have caused the death of a large number of innocent civilians as well as personnel from the armed forces. In some places these left-wing extremists exercise considerable influence and they are believed to be carrying on a parallel system of governance, apparently through the power of the gun.

To counter the influence of the Naxalites, the State surprisingly claimed ²a constitutional sanction to perpetrate, indefinitely, a regime of gross violation of human rights in a manner, and by adopting the same modes, as done by Maoist/Naxalite extremists.² An army of ³Special Police Officers called the *Salwa Judum* consisting of illiterate tribals was mobilized some time in 2005 as a counter-insurgency vigilante group. The legitimacy of the *Salwa Judum* and its Special Police Officers to tackle left-wing extremism was the subject of discussion in a case decided by the Supreme Court of India.

Needless to say, the Supreme Court declared the appointment of the so-called Special Police Officers as unconstitutional and the State was directed to immediately cease and desist from using them in any manner for the ostensible purpose of eliminating Maoist/Naxalite activities. It could be argued (unsuccessfully, in my opinion) that desperate situations caused by extremists require desperate responses.

However, the rule of law must always prevail and human rights must be protected and it is in keeping with this philosophy that the Supreme Court outlawed the *Salwa Judum*. Unfortunately, recent events have shown that the *Salwa Judum* is gradually reappearing in a different form as an auxiliary armed police force.

That India still believes in the rule of law, even in the face of grave challenges caused by extremists and terrorists, is evident from the manner in which the third incident, of 26 November 2008, was dealt with by the justice delivery system.

The incident was a terror attack by an Islamic terrorist organisation called Lashkar-e-Taiba who spread terror in Mumbai, over a period of four days through widespread shooting and bombing attacks. The fact that the terrorists could carry on their battle over a period of four days is a clear indication of how heavily they were armed and their intention. The terrorist organisation was responsible for the death of more than 160 people and the wounding of more than 300 people, as mentioned above, of more than 20 nationalities. The victims also included personnel of the anti-terrorist squad and commandos. All but one of the terrorists were killed in action and the sole surviving terrorist was given a fair trial, according to the laws of India. His appeal was heard and dismissed by the Bombay High Court and Special Leave to Appeal was granted by the Supreme Court, which also heard his appeal in great detail. The Supreme Court noted that the case ⁴has the element of waging war against the Government of India and the magnitude of the war is of a degree as in no other case. And the appellant is convicted on the charge, among others, of waging war against the Government of India.⁴ The terrorist, Ajmal Kasab, was found guilty and eventually executed.

India is at the receiving end of extremist violence and terrorism. Only three incidents or movements have been briefly described, but there are several other such incidents that have taken place in different parts of the country. Of immediate concern, however, is the inroad that has been made, to a limited extent, by the ISIS. The number of those linked to the ISIS has steadily grown over the years, but its influence now seems to have plateaued or diminished. The association of Indians with the ISIS began sometime between 2011 and 2012. Reports from the National Investigation Agency and the media suggest that more than 100 persons are being investigated as having been influenced by the ISIS over the years.³

² Nandini Sundar v. State of Chhattisgarh, (2011) 7 SCC 547

³ ORF Occasional Paper: Uncovering the influence of ISIS in India by Kabir Taneja

Fortunately, there have not been any virulent attacks on Indian society by these sympathisers and hopefully the present peace will prevail. Those who have been radicalised by the ISIS have received propaganda material through cyberspace and from underground or banned domestic organisations and from organisations outside India. Though the number of Indians influenced by the ISIS is not particularly large, given the population of India, the presence of even a few radicalised persons is a matter of grave concern and we need to be on guard against any untoward incident, some of which have already occurred in India through trained and highly motivated terrorists.

Justice Madan B. Lokur is a judge of the Supreme Court of India, a third-generation judge. Recently described as a judge having liberal values, he is an ardent supporter of judicial reforms in India. He has been actively involved in introducing computerization and information technology in courts, case management, mediation and judicial education. His commitment to provide access to justice to the underprivileged, prompted the Chief Justice of India to form a Social Justice Bench presided over by Justice Lokur to deal with public interest litigation and human rights issues. The Chief Justice of India also appointed him as a one-man committee for the implementation of child rights which has brought remarkable changes in the lives of children and an understanding in their rights.

The challenges of child protection on the DarkNet

Chafica Haddad



To reduce the digital divide is the first objective for building peaceful and inclusive knowledge societies. The Internet is nowadays the medium for exchanges between cultures and for sharing knowledge, a place of extraordinary discoveries where freedom of expression thrives and develops.

At the same time, the Internet is also a darker place where crime and extremism can flourish and easily influence vulnerable or fragile individuals, especially children and adolescents.

As outlined in the concept note of this World Congress on Justice for Children, violent extremism is neither new nor exclusive to any region, nationality or system of belief. However, little consideration has been given to children or underage juveniles and their families' involvement, perhaps because procedures and policies have to be adapted to fit their particular needs and risk factors. Research in criminology, psychology and neuroscience are suggesting that active participation of children in judicial proceedings is key steering them away from extremism and recidivism as well as protecting them from harm and to promote inclusion. UNESCO's Intergovernmental Information for All Programme (IFAP) is contributing to this World Congress by practical approaches to reducing violent extremism and by effective responses.

IFAP seeks to create equal and fair societies through better access to information. IFAP is UNESCO's response to the challenges and opportunities of the knowledge societies. Its six priority areas are: Information Ethics, Information Access, Information Literacy, Information for Development, Information Preservation, and Multilingualism in Cyberspace.

IFAP advocates for all people on the wrong side of the information divide, to improve their access to knowledge, whether they are in developed or developing countries. Of special concern are the

needs of women, youth and the elderly, as well as persons with disabilities.

IFAP aims to promote international reflection and debate on the ethical, legal and societal challenges of the knowledge societies; to widen access to information in the public domain; to support training, continuing education and lifelong learning in the fields of communication, information and informatics; to promote information and knowledge networking at local, national, regional and international levels.

When we talk about DarkNet, Internet and the prevention of violent extremism is one of the fundamental issues related to youth and appropriate policies.

Young people are key to reducing and eliminating radicalization. We need to get them involved, seek out their opinions, listen to them and, above all, give them the tools they need to become involved and vigilant users of the Internet. We need to encourage them to build a future where tolerance, universal human rights and dignity prevail.

The Information for All Programme and the Knowledge Societies Division of UNESCO organized the consultative meeting in September 2017 in Paris with the title 'DarkNet: the New Societal, Legal, Technological and Ethical Challenges'. We can build on discussed challenges of cyber threats and ways to improve national strategies through innovative and global solutions, for example involving in youth projects.

The DarkNet as an online parallel world is in reality the part of the Internet that can be accessed anonymously and is frequently used for the purpose of illegal activities, including exchanges of sensitive data, pornography, drug hubs, weapons trafficking, illegal wildlife trade, even scheduled killer services are offered etc. It is more and more used by terrorist and extremist groups promoting racism, hatred and violent extremism.

The 2017 event on the DarkNet also reflected UNESCO/IFAP active engagement in the field of fighting radicalization leading to violence of youth in cyberspace. In order to raise awareness about this problem, IFAP has organized several major international conferences that resulted in specific outcome documents and initiatives relevant for establishing effective measures to preventing online radicalization, and stimulate the use of Internet for peace, understanding and inter-cultural dialogue.

The fight against radicalization of youth in cyberspace has become a major threat for the entire international community. UNESCO and IFAP have decided to put this issue as one of their main

priorities. IFAP is determined to stand-up against youth radicalization in an active, holistic and efficient manner. Committed to the United Nations Secretary-General's Plan of Action to Prevent Violent Extremism, the Programme has taken a lead in addressing this global phenomenon through its numerous initiatives and by promoting peaceful and inclusive knowledge societies:

In the framework of IFAP, UNESCO and the Government of Québec organized the international conference (in Québec City in 2016, with the support of the Government of Canada), entitled *Internet and the Radicalization of Youth: Preventing, Acting and Living Together*. The participants discussed the role of the Internet as a recruitment tool for youth radicalization and extremism. The conference endorsed the *Call of Quebec* and encouraged countering the narratives and ideas propagated online by various extremist groups. It also identified innovative and collaborative projects both at the national and international level to prevent radicalization leading to violence namely through the improvement of media and information literacy skills schemes directed to youth.

The Quebec Call of Action is considering that radicalization leading to violence is an evolving multi-faceted global phenomenon which is not associated with a single Religion, ideology or people and is highlighting that the prevention of radicalization leading to violence is a common responsibility in respect of the principles and values enshrined in numerous international human rights instruments. The Quebec Call is emphasizing that new technologies are also a tool for preventing radicalization leading to violence especially by making it possible to propose a counternarrative on the Internet to encourage citizen education and critical thinking in support of human rights dialogue mutual understanding and tolerance.

Finally, the Call for Action invites governments to engage and empower youth to lead new digital projects in favor of peace, tolerance and mutual understanding and to spread the message as far as possible.

One example is the youth project on preventing violent extremism in Jordan, Libya, Morocco and Tunisia, co-funded by Canada. It was launched at UNESCO in April 2018, in the presence of UNESCO Director-General and the Deputy Secretary General of the United Nations Office for the Suppression of Terrorism.

Further important steps by UNESCO/IFAP towards awareness raising for Member States on Violent Extremism in Cyberspace were:

The international conference *Youth and ICT: Towards Countering Violent Extremism in Cyberspace* (in May 2017) in Beirut, Lebanon in collaboration with the Lebanese National Commission for UNESCO. The participants explored ways to counter the online propagation of violence and stressed the urgency of tackling the issue of violent extremism in cyberspace, which is affecting lives of many young people including children and called for using the Internet to promote a culture of peace.

During the high-level session in the World Summit on Information Society (WSIS) Forum 2017 on *Countering Radicalization and Violent Extremism Online*, UNESCO shared the major outcomes from the related conferences 2015 in Paris and 2016 in Quebec.

During the additional session of the WSIS Action line C-10 the use of the Internet for radicalization of youth leading to violent extremism was further discussed in a more in-depth regarding the Ethical and Legal Dimensions of DarkNet. This session explored the ways and means of this deeper layer of the internet that has been used by extremist groups and for illicit international activities and addressed the challenges in sensitizing about the balanced need to regulate the DarkNet.

A special IFAP session entitled *The cultural dimensions of countering extremism in cyberspace: The radicalization of youth leading to violence* was organized in May 2017 at the fourth World Forum on Intercultural Dialogue in Baku, Azerbaijan. The panellists expressed the view that the violent extremist groups have considerably extended the outreach and recruitment by using a large number of websites, social media devices and interactive fora especially amongst young people.

Further engaged workshops with the IFAP Chair followed in 2018 on "Dealing with the DarkNet: Measures to Prevent Violent Extremism", in February in Quezon City, Philippines, organized by the Department of National Defense, in coordination with the Department of Foreign Affairs, and in Turkey on *Migration and the Media* organized by Kadir Has University and the Turkish National Commission for UNESCO, in March in Istanbul.

The threats and shelter in anonymity

The conventional Surface Web is becoming too risky for anonymity-seeking entities. In contrast, on the DarkNet, decentralized and anonymous network facilitates evading arrest and the closure of terrorist platforms. The hidden networks are used to distribute material for recruitment, to provide training and information to fellow terrorists, to radicalize and spread propaganda, to raise funds and to coordinate actions and attacks. The DarkNet had become ISIS's number one recruiting platform.

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

But there is also a potential positive side of DarkNet for the protection of privacy for example for:

- whistle blowers with anonymity on DarkNet, and
- protection of journalists against repressive regimes,

Ethical implications of the DarkNet deal with the anonymity providing cover for people in repressive regimes that need the protection of technology in order to surf the Web, access censored content and otherwise exercise their genuine right to free expression. Thus, an international search for a solution to combat illegal activities should be triggered, but one that should not shutter anonymity networks as it will be costly to those people that genuinely benefit from these encrypted systems.

During the first UNESCO conference 2015 in Paris on Youth and the Internet: Fighting Radicalization and Extremism+the report Countering Online Hate Speech+ was launched. As with freedom of expression, on- or offline, IFAP defends the position that the free flow of information should always be the norm. As complementary to any legal limitations enforced by a state, social responses may be considered as:

Monitoring and analysis by civil society

Individuals promoting peer-to-peer counter-speech
Organized action by NGOs to report cases to the authorities

Campaigning for actions by Internet companies hosting the particular content

Empowering users through education and training about the knowledge, ethics and skills to use the right to freedom of expression on the Internet

Actions ahead regarding the DarkNet:

The way forward is increasing international cooperation to set a legal framework for DarkNet. Additional legal regulation to protect privacy is needed, based on principles of the Budapest Convention on Cybercrime+ which is today the global standard on cybercrime. Promising solutions following the Budapest+ Convention as a model have to be further elaborated and implemented.

The UNESCO/IFAP study entitled Youth and violent extremism on social media: Mapping the research+(2017) suggests as actions and solutions for Member States:

Reinforce a global dialogue about proportionate positive actions to counter radicalization, and place it within the remit of UNESCO's Internet Universality Principles: the four R.O.A.M. principles that stand for Rights-based, Openness, Accessibility, and Multistakeholder participation

The study underlines that education is a key stone for reaching solutions. Suggested actions are therefore:

Strengthening the overall education sector responses to violent extremism, including through human-rights based Global Citizenship Education (GCED) programmes and teachers and other youth mediators trainings.

Promoting and evaluating Media and Information Literacy (MIL) strategies, recognizing that new technologies are also a tool that can be used for:

- preventing violent extremism;
- encouraging counter and alternative narratives;
- advancing citizen education;
- developing critical thinking.

By strengthening educational efforts, Global Citizenship Education and Media and Information Literacy can reinforce and focus on human rights, dialogue, mutual understanding and tolerance, and empower children and young people to be masters of their own identity and to detect and resist online radicalization efforts.

Thank you for your attention.

Chafica Haddad Chairperson of the Intergovernmental Council for the Information for All Programme (IFAP), UNESCO and the Deputy Permanent Delegate of Grenada to UNESCO. Mme Haddad's term of office ended subsequent to the World Congress.

Keeping children and youths out of the system

Daniela Mie Murata

This work was presented at the World Congress on Justice for Children, which took place in Paris, in May 2018. It was a workshop organized to debate the following theme: *Reducing offending at all stages: primary, secondary and tertiary prevention approaches*, and I spoke about the challenge on reintegrating juveniles after being incarcerated in (juvenile) detention facilities.

Brazilian Juvenile Justice – Legal Structure

Brazilian judiciary system is based in civil statutory law. This means cases are decided mainly based on statutory law rather than on judicial precedents. The most important laws are federal, which is binding for the whole country and in all the federation States. There is a broad range of law, and judges have to decide according to Federal Constitution and laws. In Brazil, from time to time, judges face unconstitutional laws, which are so declared in that specific case (at lower courts) and then have to decide according to general principles and rules of fairness and rights. Also, it is possible to face situations that were not predicted and no existing law is applicable to the situation, then, judges have to decide according to general principles and rules of fairness and rights, too.

In Brazilian Juvenile Justice system, the *integral protection* doctrine is adopted in order to grant minors all their needs so that they can develop properly. This profile has not always been like this. In the past, juveniles used to face a stricter and more repressive approach from the State.

Theoretically, children and juveniles are priorities to the government and society, so the *best interest* doctrine is also adopted. Both doctrines largely stress that the best interest of the child is above all other interests.

Nowadays, due process rights are granted by the Constitution (1988) and by all the infraconstitutional legislation. The Children and Juvenile Statute of 1990¹, is one of the most important pieces of legislation regarding Juvenile rights², besides, all Brazilian legislation has been issued according to the international valid rules³.

The main legal documents regarding Juvenile Justice, in Brazil, are the Federal Constitution and the Childhood and Juvenile Statute. The Federal Constitution establishes the broad principles that must be applied when dealing with minors in articles 5 and 226 to 230.

Special Concerns of Juvenile Justice

Internal and External Interference on “mens rea”

Mens rea is the term used to define the capacity to form a criminal intent. Because juveniles suffer from peculiar biological and psychological conditions of underdevelopment, some factors are relevant and somehow interfere in the consciousness of the offender, which does not happen with adults frequently:

- **Reckless Behavior:** During juveniles' teen-age years, many factors interfere with their capacity of making proper decisions, resisting external pressure, and thinking about the consequences of their *bad behavior*. Reckless behavior in adolescents may be more common due to intense and novel sensations seeking (adolescents sometimes are involved in dangerous situations trying to experiment thrilling sensations). Also, this reckless behavior may be linked to hormones: testosterone produces a similar sensation-seeking feeling, and it starts declining in an individual's early to mid-20s⁴.
- **Peer influence:** Adolescence is a period of life of great susceptibility to peer influence and interpersonal interactions. In adolescence, friends have great influence over juveniles' decision making, even more so than their parents. Kids choose friends who are similar in behavior and values. The quality of peer relationships and the activities peers are engaged will indicate what track the adolescent will follow.
- **Adolescent Egocentrism:** Adolescents believe that others are as preoccupied with their behavior and appearance as they are. They often construct an imaginary audience who is constantly monitoring and evaluating them⁵.

¹ ESTATUTO DA CRIANÇA E DO ADOLESCENTE [E.C.A.]. Lei 8069 de 13 de Julho de 1990, *DIÁRIO OFICIAL DA UNIÃO [D.O.U.]* de 16.4.2008 (Braz.) [hereinafter ESTATUTO DA CRIANÇA E DO ADOLESCENTE].

² Valéria Cabreira Cabrera, *Direito da Infância e da Juventude, uma Breve Análise histórica e principiológica constitucional e legal*, *Âmbito Jurídico* (Mar. 17, 2016, 3:15 PM). http://ambito-juridico.com.br/site/?n_link=revista_artigos_leitura&artigo_id=13574&revista_caderno=12

³ The most important rules regulating the subject, internationally, are: The Convention on the Rights of the Child

1989 (not ratified by Somalia and the United States of America); United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules); United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (JDLs); United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines). Regarding this, many reservations can be registered by the ratifying countries, which is why the same convention or treaty can be applied differently in various countries.

⁴ [16] pages 354-359 (1992).

⁵ *Id.* at pages 354-359.

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

- Psychologically they do not have impulse control and are much more influenced by environmental factors⁶.
- Naïve risk takers: Adolescents lack the understanding of the consequences of crime⁷.

Definition of Juvenile according to the law

Basically, for law purposes, the definition of a juvenile is objective: the age. Determining the age and adopting objective, legal criteria is important to avoid arbitrariness.

Despite the age criteria, it is important to point that researches show that an adolescent's brain is not completely developed; he/she is still developing his/her character and the relevant parts of the brain that helps us control impulses and reflect on our behavior is still developing. That is why adolescents cannot be treated like adults or little adults⁸. Adolescents differ from adults because: (1) they have less capacity of self-regulation in emotionally tough situations; (2) they have high sensitivity to proximal external influences; (3) adolescents show poor ability to make judgments and decisions that require future orientation⁹.

Puberty involves important physical changes to the body initiated by gonad hormones to which the adolescent must adjust. These hormones also impact brain and behavior by binding to testosterone and estrogen receptors in brain¹⁰.

According to the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") 2(a) "A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence¹¹ in a manner which is different from an adult+ and %c) A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence+¹².

And the Beijing Rules continue: %1. In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity+¹³.

As we can notice the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") provided rules to prevent anyone too young from being taken to court for committing an act described legally as a crime.

The Convention on the Rights of the Children establishes that %States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law+(rule 40.3)¹⁴.

In sum, there is the need to fix a minimum age for a juvenile to be taken to juvenile justice and a minimum age to take a youth from the juvenile court.

In Brazil, juveniles older than 12 years old are accountable for acts classified as criminal. Minors younger than 12 cannot be held accountable and receive punishment for that, they can only be supervised, supported, and %helped+¹⁵ (Children younger than 12 years old are given social, health, scholar, familiar and psychological assistance, no matter how heinous is his/her act).

Definition of Delinquent Act and Accountability

Article 228 of the Federal Constitution, and article 104 of the Juvenile Statute, establish that people younger than 18 years old are not criminally imputable, but are accountable according to a special system, no matter how serious the act¹⁶. So, we say that a person under 18 years old commits a delinquent act (not a crime) even though the act has to include all the elements of the criminal law. For example, to be charged for robbery, the person must have acted with the intention to take away something from other one, and there must be violence or a serious threat against the victim. If any of these objective elements, such as the intent and the consciousness of the offender are not present; we cannot say he/she committed a crime or a delinquent act.

⁶ [11] page 43.

⁷ [10] page 215 (2010).

⁸ National Juvenile Justice Network, Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates, Create Solutions <http://www.createsolutions.org/unicef/Documents/resources/theme/childdevtandpsych/overviewbrainresearchNJJN.pdf>

⁹ [11] page 2, The National Academies Press, 2013.

¹⁰ [11] page 99, The National Academies Press, 2013.

¹¹ (b) An offence is any behavior (act or omission) that is punishable by law under the respective legal systems.

12 Beijing Rules, rule 2. <http://www.un.org/documents/ga/res/40/a40r033.htm> (United Nations General Assembly).

13 Beijing Rules, rule 4. <http://www.un.org/documents/ga/res/40/a40r033.htm> (United Nations General Assembly).

¹⁴ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

¹⁵ Constituição Federal [C.F.] [CONSTITUTION] article 228 (Braz.) and Estatuto da Criança e do Adolescente, articles 104 and 105.

¹⁶ Constituição Federal [C.F.] [CONSTITUTION] art. 228 (Braz.).

The conduct has to be described by law, according to a legal principle; law establishes the necessity of an accurate description of the conduct to avoid arbitrariness. The crimes are described and established by the (federal) Penal Code and other (federal) criminal laws¹⁷.

The Civil Code provides that when someone is 18 years old, this person is considered an adult. Though, it is possible to carry on the process after the age of 18, if the act was committed when the minor was under that age. This is advisable due to the attempt of rehabilitation and reeducation¹⁸.

Once adjudicated, the minor is not punished (*stricto sensu*). The judge imposes disciplinary measures. The target measures in the Juvenile System is rehabilitation and reeducation and not retribution for the bad thing he/she has done¹⁹.

If the delinquent²⁰ is younger than 12 years old, then no punishment or measure can be imposed²¹. Instead, protective measures are adopted, where the child receives treatment and help because he/she is neglected or he/she has problems in his/her families (article 101, CJS)²². Also, if the youth suffers from mental disease that makes him/her unable to understand the essence of the act or to act according to this understanding, his/her act cannot be considered totally reprehensible, in the criminal aspect. In this case, the minor has to be treated, and not incarcerated.

Finally, it is important to note that after becoming 18 years old, even if the minor has committed many infractions, this cannot be reason to punish more severely the adult criminal²³.

Juvenile Safeguard in Court

In Brazil, in Criminal law we adopt the Finalist theory, that means it protects legal interests and the key for a more efficient protection is the threaten of sanctions. This prevention is the highest purpose of the criminal law²⁴. In sum, we could say people are refrained of committing

crimes because of the threaten of being punished, besides the principle of never doing harm.

Also, in Brazil is adopted the *Ultima ratio* Doctrine, that means, a situation is only taken to criminal court if it cannot be addressed in other ways. The Penal system intervention is the last resort, and so is the option of sending someone to jail²⁵.

When talking about Juvenile Justice, the approach is quite different, it focuses on the rehabilitation of the juveniles, though, *Ultima ratio* doctrine and the progressive system are adopted. Juveniles are kept from courts as much as possible, avoiding stigmatization (see VI.A infra) and the entrance in the environment of juvenile courts. Some strict discipline is necessary with adolescents, but education, psychological and psychiatric treatments, sports support and other opportunities are provided to grant juveniles favorable development.

Disciplinary Measures ("Penalties")

Disciplinary measures provided by the Juvenile Statute have a hybrid nature due to focuses established: reeducation (rehabilitation) and also proper retribution to a wrongdoing. Since primarily rehabilitation is the target and liberty deprivation is considered the last resource, when imposing a disciplinary measure, judges have to consider: (1) capacity to fulfillment (financial, psychological, psychiatric, intelligence); (2) in which circumstances the delinquent act was performed; (3) consequences of the delinquent act; (4) seriousness of the act; (5) previous records (recidivism) and (6) juveniles' familiar background²⁶.

¹⁷ [2] pages 795, 796 (2010).

¹⁸ R.S.T.J. No. 38.019 - RJ 2004/0124145-5, Relator: Helio Quaglia Barbosa, 27.6.2005, DIARIO DA JUSTICA [D.J.] 27.06.2005, 1 (Braz.), available at https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sLink=ATC&sSeq=1872177&sReg=200401241455&sData=20050627&sTipo=5&formato=PDF. And R.S.T.J. No. 39.201/RJ, Relator José Arnaldo da Fonca, Quinta Turma, Diario da Justiça [D.J.] 01.02.2005 (Braz.), available at https://ww2.stj.jus.br/revistaeletronica/Abre_Documento.asp?sLink=ATC&sSeq=1571470&sReg=200401540570&sData=20050201&sTipo=5&formato=PDF.

¹⁹ Rule number 5, of the Beijing rules avoids merely punitive sanctions against juveniles (the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence).

²⁰ It is interesting to note that the Riyadh Guidelines strongly warns against the use of the term *delinquent* to describe a

Young person. The drafters of the Beijing rules opted to use the expression *juvenile offenders* (Juvenile Justice, *Innocenti Digest* no. 3, International Child Development Centre, Florence, 1998, page 3).

²¹ Estatuto da Criança e do Adolescente, art. 105.

²² [5], page 801 (2010).

²³ Id. at page 797.

²⁴ [20] page 24 (1994).

²⁵ Patrícia Veloso de Gusmão Santana Rassi, Direito Penal Mínimo, Âmbito Jurídico (May 22, 2016, 11:15 PM). http://www.ambito-juridico.com.br/site/?n_link=revista_artigos_leitura&artigo_id=4498&revista_caderno=3

²⁶ [5] pages 828-832 (2010).

In Brazil, a graduated sanction system is adopted, that means disciplinary measures imposed to juveniles adjudicated delinquent should evolve from little interventions to more restrictive ones²⁷; the more serious the act the more severe and restrictive the measure. Youths should be dealt with the least restrictive environment necessary to achieve desired goals. Prior records, youth personality, seriousness of the act social and psychological data, recidivism are relevant factors when imposing a disciplinary measure. According to the "**legality principle**", just the measures established in article 112²⁸, Juvenile Statute, can be imposed, in other words, other kind of disciplinary measures are not permissible and, if so, deemed illegal.

According to the frequency the juvenile offends and the seriousness of the act, stricter measures are imposed. When a judge delivers a sentence, he/she does not specify the length of time the juvenile is going to serve it. Correctional officers decide when the juvenile is ready to return to society, according to his/her performance while under the supervision of a correctional officer²⁹.

Once proved the youth has committed the delinquent act, judge can impose the following measures: warning; financial penalties; compensation and restitution; community service; supervised freedom; semi-liberty; incarceration. Each of them can be imposed with "protective measures", provided by article 101, Childhood and Juvenile Statute. And, if the youth is mentally ill, then he/she should be medically treated³⁰.

Incarceration

The sanction of incarceration is exceptional (exceptionality principle - Federal Constitution, article 227, § 3º, V) and has to be imposed according to "proportionality principle". External activities depend on judicial authorization. Confinement must take place in special entities and there must be separation by age, seriousness of the acts and the physical attributes (article 123, CJS³¹). All rights guaranteed to confined youths are provided

by Article 124, Childhood and Juvenile Statute: access to the prosecutor (the juvenile has the right of full knowledge of the charges); talk privately to counselor (receive proper orientation and information about the charges and the trial); stay in an entity close to his/her family (to grant the juveniles regular contact with his/her relatives); be treated with dignity and respect (basic fundamental rights for all human beings).

Juvenile Statute establishes that confinement can be imposed only in cases of violent acts; recidivism and if it is committed with serious threaten against the victim (Article 122)³². In cases of drug traffic, depending on the seriousness of the act, if it is the first time the youth is arrested or sued, other sanctions are imposed, according to the exceptionality of confinement³³. Brazilian Superior Justice Court issued statement # 492 (Súmula): "delinquent act similar to drug traffic crime, *per se*, does not implicate in Juvenile incarceration"³⁴.

Youths stay in special entities, accredited by government and that report directly to juvenile court. There is no determined term; though the time limit is 3 years and the youth must be released at the age of 21, even if the report is totally unfavorable to him/her. This is the exception to the rule that the statute is applicable for people younger than 18 years old. There is an evaluation every 6 months and then the responsible officer issues his/her opinion on the youth situation; recommending whether it is better to keep the confinement or release the youth. The final decision is delivered by the judge. United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), article 54³⁵, provides that the youth has to be treated proportionally to adults, that means it is not possible to incarcerate a minor if the delinquent act corresponds to a crime which imprisonment sanction is lower than 3 years.

Once in a correctional (detention) facility, the progressive system is adopted³⁶, which means that liberty deprivation is also the last option available.

²⁷ Estatuto da Criança e do Adolescente, art. 112.

²⁸ Constituição Federal [C.F.] [CONSTITUTION] art. 5, XXXIV (Braz.).

²⁹ SINASE, articles 42 and 43.

³⁰ STJ, quinta turma, HC 54.961/SP, relator Ministro Gilson Dipp, j. 25.04.2006, DJ 22.05.2006. The Superior Court held that a mentally ill juvenile sentenced with incarceration should not be kept in a detention facility, but be treated in a proper psychiatric hospital. He should not stay with delinquent juveniles and he does not have capacity to serve the sentence properly. In the case, the "protective measure" is suitable, available at https://ww2.stj.jus.br/revistaelectronica/Abre_Documento.asp?sLink=ATC&sSeq=2367293&sReg=200600360311&sData=20060522&sTipo=5&formato=PDF.

³¹ Estatuto da Criança e do Adolescente, art. 123.

³² STF, quinta turma, RHC 21.908/SP, rel. Min. Napoleão Nunes Maia Filho, j. 20.05.2008, DJe 09.06.2008. Brazilian

Superior Court held that, in case of rape, where the victim was only 8 years old it perfectly possible to impose the incarceration disciplinary measure, available at https://ww2.stj.jus.br/revistaelectronica/Abre_Documento.asp?sLink=ATC&sSeq=3928235&sReg=200702005654&sData=20080609&sTipo=5&formato=PDF.

³³ STJ, 6ª Turma, HC 81.122/SP, relator Ministro Hamilton Carvalhido, 11.09.200, DJ 22.10.2007, available at https://ww2.stj.jus.br/revistaelectronica/Abre_Documento.asp?sLink=ATC&sSeq=3319044&sReg=200700801549&sData=20071022&sTipo=5&formato=PDF.

³⁴ Superior Tribunal de Justiça [STJ] [Brazil], súmula 492.

³⁵ No child or young person should be subjected to harsh or degrading correction or punishment measures at schools or in any other institutions.

³⁶ Law number 12.594 [SINASE] de 18 de janeiro de 2012, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 19.1.2012 (Braz.).

We always seek for the most suitable treatment for the juvenile, looking for the least detrimental alternative available in order to foster the child's development.

Brazilian Childhood and Juvenile Statute is in consonance with United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), November 29, 1985, even though these rules are recommendatory and not binding. Certain of the principles enunciated within the rules, however, have been encompassed in provisions of the Convention on the Rights of the Child. The Beijing rules do not prevent the application of the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955). Those rules should be extended to juveniles in detention pending adjudication and in institutions to meet the particular needs of juveniles.

In São Paulo, since January, 2010, Fundação CASA . Centro de Atendimento Socioeducativo ao Adolescente (literally: Disciplinary Measures Support Foundation)³⁷ . is responsible for accompanying adjudicated juveniles who serve liberty deprivation disciplinary measures. There was a change in order to grant juveniles who were serving sentence closer contact with their families. Previously, incarceration facilities were located only in São Paulo city, far from many cities all over the State. Providing the creation of detention facilities over the State (approximately 60 units, with capacity for 60 juveniles³⁸) made it easier for relatives to keep in touch with their children, since many families are so poor and cannot even afford to buy a bus ticket. Also, the new model of facilities lowered recidivism and reduced violence inside the detention unit³⁹.

Also, incarceration can be imposed as a sanction for not serving the disciplinary measure imposed by sentence properly, more than once, and with no justification⁴⁰; for example: juvenile does not attend the appointments with probation officer; juvenile fails to attend school, even though advised to do so. In this case, incarceration is imposed as a sanction due to misbehavior for up to three months. It is a governmental response to the minor that does not fulfill the original measure imposed. This sanction, so, is imposed after sentence⁴¹. Sanctioning is only possible after the youth is given

opportunity to justify his failure to serve sentence and defend him/herself in a hearing.

Death penalty and life imprisonment (with or without parole) are constitutionally forbidden in Brazilian Juvenile system.

Challenge After Leaving the Detention Facility

In my presentation, I focused on incarceration due to the debate about how to avoid recidivism after leaving the facilities.

In Limeira, the city I work as a criminal and juvenile judge (around 300,000 inhabitants), there are two model units where juveniles serve the incarceration sentence. The rules there are very well observed by the youths and they are closely followed up by the staff (social workers, psychologists, healthcare workers, educational workers). They have scholar and extra curriculum activities (bakery, mechanics etc). They sleep in cells (even though they stay out of the dormitories all day) and keep them well organized and clean.

The major problem, when leaving the facility, is the fact that they go back to vicious scenery . drug addiction, alcohol abuse, prostitution, lack of parents attention, lack of love, school evasion, peer bad influence, lack of proper mental health follow-up etc.

These problems can be solved or reduced by the administration and not by the Judiciary. They demand social and political attention, and, what is more difficult, budget.

Daniela Mie Murata is a Judge in the State of São Paulo, Brazil

BIBLIOGRAPHY

- [1] JOHN T. WHITEHEAD AND STEVEN P. LAB, *JUVENILE JUSTICE - AN INTRODUCTION*, Lexis Nexis; Andersen Publishing, Sixth Edition, 2009.
- [2] KAREN M. HESS; CHRISTINE HESS ORTHMAN, JOHN PAUL WRIGHT, *JUVENILE JUSTICE*, Wadsworth Cengage Learning, Sixth Edition, 2013, 2010.
- [3] VALTER KENJI ISHIDA, *ESTATUTO DA CRIANÇA E DO ADOLESCENTE, DOCTRINA E*

³⁷ State government entity responsible to manage, coordinate and supervise the facilities and fulfilling of disciplinary measures that comprehend liberty deprivation all over the state.

³⁸ There are about 9,000 juveniles are incarcerated, in São Paulo State. The facilities are overwhelmed. 44% of the juveniles are in countryside, 38% are in Capital (São Paulo city), 12% in the metropolitan area, and 5% are in cities along the coast. (<http://www.fundacaocasa.sp.gov.br/index.php/a-fundacao>).

³⁹In 2006, 29% of the juveniles were reincident; that percentage lowered to 13% in 2009 (according to data provided

by Fundação CASA . São Paulo State). Though, data from Conselho Nacional de Justiça (nationwide information, available at <http://www.cnj.jus.br/noticias/cnj/25034-fonajuv-vai-priorizar-investimento-em-medida-socioeducativa-no-meio-aberto>) was: 54% of the juveniles were reincident (particularly, due to my day-by-day experience, the latter is more reliable). Rebellions in the facilities reduced from 80 to only one a year.

⁴⁰ Estatuto da Criança e do Adolescente, art. 122, III.

⁴¹ [5] pages 876, 877 (2010).

JURISPRUDÊNCIA, Editora Atlas, 12ª Edição atualizada, 2012.

[4] PAULO HENRIQUE ARANDA FULLER; GUILHERME MADEIRA DEZEM; FLÁVIO MARTINS ALVES NUNES JUNIOR, COORDENAÇÃO MARCO ANTONIO ARAÚJO JR E DARLAN BARROSO; *ESTATUTO DA CRIANÇA E DO ADOLESCENTE - DIFUSOS*; Editora Revista dos Tribunais; 2ª edição; 2009.

[5] KATIA REGINA FERREIRA LOBO ANDRADE MACIEL . COORDENADORA, 2010, ANDRÉA RODRIGUES AMIN, ANGELA MARIA SILVEIRA DOS SANTOS, BIANCA MOTA DE MORAES, CLÁUDIA CANTO CONDACK, GALDINO AUGUSTO COELHO BORDALLO, HELANE VIEIRA RAMOS, KÁTIA REGINA FERREIRA LOBO ANDRADE MACIEL, PATRÍCIA PIMENTEL DE OLIVEIRA CHAMBERS RAMOS E PATRÍCIA SILVEIRA TAVARES; *CURSO DE DIREITO DA CRIANÇA E DO ADOLESCENTE – ASPECTOS TEÓRICOS E PRÁTICOS*, 4ª edição, Editora Lumen Juris, 2010.

[6] JOÃO BATISTA COSTA SARAIVA; *COMPÊNDIO DE DIREITO PENAL JUVENIL: ADOLESCENTE E ATO INFRACIONAL*, Editora Livraria do Advogado, 4ª edição, 2010.

[7] JOÃO BATISTA COSTA SARAIVA; *ADOLESCENTE EM CONFLITO COM A LEI*, Editora Livraria do Advogado, 2009.

[8] SÉRGIO SALOMÃO SCHECAIRA - *SISTEMA DE GARANTIAS E O DIREITO PENAL JUVENIL*, Editora Revista dos Tribunais, 2008.

[9] ROBERTO JOÃO ELIAS; *COMENTÁRIOS AO ESTATUTO DA CRIANÇA E DO ADOLESCENTE*, Editora Saraiva; 4ª edição, 2010.

[10] RANDY HERTZ, MARTIN GUGGENHEIM, ANTHONY G. AMSTERDAM, *TRIAL MANUAL FOR DEFENSE ATTORNEYS IN JUVENILE DELINQUENCY CASES*, ABA Book Publishing, 2012.

[11] MARIA CHAVES DE MELLO, *DICIONÁRIO JURÍDICO: PORTUGUÊS, INGLÊS, INGLÊS-PORTUGUÊS*, Editora Método, 9ª edition, 2009.

[12] THEODORE L. KUBICEK, *ADVERSARIAL JUSTICE: AMERICA'S COURT SYSTEM ON TRIAL*, Algora Pub. 2006, eBook available at <http://ehis.ebscohost.com.ezproxy.samford.edu/ebscohost/detail?sid=0d3adae8-f555-4415-80ff-4d78559ddb8d%40sessionmgr13&vid=1&hid=2&bdata=JnNpdGU9ZWRzLWxpdmU%3d#db=nlebk&AN=185589>.

[13] BERNARD, THOMAS J. AND KURLYCHEK MEGAN C., *THE CYCLE OF JUVENILE JUSTICE*, Oxford University Press, Second Edition, 2010.

[14] RICHARD J. BONNIE, ROBERT L. JOHNSON, BETTY M. CHEMERS, AND JULIE A. SCHUCK, *JUVENILE JUSTICE – A DEVELOPMENTAL APPROACH*, Committee on Assessing Juvenile Justice Reform, Eds.

Committee on Law and Justice Division of Behavioral and Social Sciences and Education National Research Council, Washington, DC: The National Academies Press (2013).

[15] CARRABINE, EAMONN; COX, PAM; FUSSEY, PETE; HOBBS, DICK; SOUTH, NIGEL; THIEL, DARREN AND TURTON, JACKIE; *CRIMINOLOGY, A SOCIAL INTRODUCTION* (Kindle Edition); Routledge, Taylor and Francis Group, Third Edition, London and New York.

[16] OWEN B. HAHN, *PERSPECTIVES ON JUVENILE OFFENDERS - CRIMINAL JUSTICE, LAW ENFORCEMENT AND CORRECTIONS*, Nova Science Publishers, 2010.

[17] LARRY J. SIEGEL AND BRANDON C. WELSH, *JUVENILE DELINQUENCY – THEORY, PRACTICE AND LAW*, Cengage, 12th Edition, 2015.

[18] BARRY GLASSNER, MARGARET KSANDER, BRUCE BERG AND BRUCE D. JOHNSON, *A NOTE ON THE DETERRENT EFFECT OF JUVENILES VS. ADULT JURISDICTION*, Oxford University Press, Source: Social Problems, volume 31, Nº 2, December 1983, pages 219-221.

[19] JEFFREY ARNETT; *RECKLESS BEHAVIOR IN ADOLESCENT – A DEVELOPMENTAL PERSPECTIVE*; IN DEVELOPMENTAL REVIEW 12, University of Missouri . Columbia (<http://jeffreynett.com/articles/arnett1992recklessbehaviorinadulthood.pdf>)

[20] JULIO FABBRINI MIRABETE, *MANUAL DE DIREITO PENAL*, Editora Atlas, 8ª edição, 1994.

[21] ANTONIO CARLOS GOMES COSTA, *É POSSÍVEL MUDAR: A CRIANÇA, O ADOLESCENTE E A FAMÍLIA NA POLÍTICA SOCIAL DO MUNICÍPIO*, Editora Malheiros, 1993.

[22] ANTONIO CARLOS GOMES COSTA, *DE MENOR A CIDADÃO: NOTAS PARA UMA HISTÓRIA DO NOVO DIREITO DA INFÂNCIA E JUVENTUDE NO BRASIL*, Editora do Senado, 1993.

[23] MARY DEL PRIORE, *HISTÓRIA DAS CRIANÇAS NO BRASIL*, Editora Contexto, 1999.

[24] <http://www.promenino.org.br/noticias/arquivo/uma-breve-historia-dos-direitos-da-crianca-e-do-adolescente-no-brasil-14251>

[25] http://ambito-juridico.com.br/site/?n_link=revista_artigos_leitura&artigo_id=13574&revista_caderno=12

[26] JANINE BORGES SOARES, *A CONSTRUÇÃO DA RESPONSABILIDADE PENAL DO ADOLESCENTE NO BRASIL: UMA BREVE REFLEXÃO HISTÓRICA*, (<https://www.mprs.mp.br/infancia/doutrina/id186.htm>)

- [27] V.A. DE PAULA PESSÔA, *CÓDIGO CRIMINAL DO IMPÉRIO DO BRASIL ANOTADO*, Rio de Janeiro: Livraria Popular, 1877, p. 45.
- [28] IRENE RIZZINI, *A CRIANÇA E A LEI NO BRASIL – REVISITANDO A HISTÓRIA* (1822-2000), Brasília, DF: UNICEF, Rio de Janeiro: USU Ed. Universitária, 2000, p. 10.
- [29] JOÃO BATISTA COSTA SARAIVA, *ADOLESCENTE EM CONFLITO COM A LEI: DA INDIFERENÇA À PROTEÇÃO INTEGRAL: UMA ABORDAGEM SOBRE A RESPONSABILIDADE PENAL JUVENIL*. Porto Alegre: Livraria do Advogado, 2003, p. 25.
- [30] IRENE RIZZINI, *O SÉCULO PERDIDO: RAÍZES HISTÓRICAS DAS POLÍTICAS PÚBLICAS PARA A INFÂNCIA NO BRASIL*, Rio de Janeiro: USU Ed. Universitária: Amais, 1997, p. 26.
- [31] ANTONIO SÓLON RUDÁ, *BREVE HISTÓRIA DO DIREITO PENAL E DA CRIMINOLOGIA DO PRIMITIVISMO CRIMINAL À ERA DAS ESCOLAS PENAS*, Editora Lumen Juris/Direito, Rio de Janeiro. 2013.
- [32] CARLOS ROBERTO BACILA, *CRIMINOLOGIA E ESTIGMAS UM ESTUDO SOBRE PRECONCEITOS*, Editora Atlas, 4ª edição.
- [33] ALVINO AUGUSTO DE SÁ, *CRIMINOLOGIA CLÍNICA E PSCIOLOGIA CRIMINAL*, Thomson Reuters. Revista dos Tribunais 2014, 4ª edição revista.
- [34] PETER J. BENEKOS AND ALIDA V. MERLO, *CONTROVERSIES IN JUVENILE AND DELINQUENCY*, Anderson Publishing, 2nd edition, 2009.
- [35] KRISTIN A. BATES, RICHELLE S. SWAN, *JUVENILE DELINQUENCY IN A DIVERSE SOCIETY*, Sage Publications, 2014.
- [36] Juvenile Justice, *Innocenti Digest* no. 3, International Child Development Centre, Florence, 1998, at <http://www.unicef-irc.org/publications/pdf/digest3e.pdf>
- [37] DAVID DOBBS, TEENAGE BRAINS, BEAUTIFUL BRAINS, NATIONAL GEOGRAPHIC (March 7th, 2016, 2:54 PM), at <http://ngm.nationalgeographic.com/2011/10/teenage-brains/dobbs-text>
- [38] FUNDAÇÃO CASA, CENTRO DE ATENDIMENTO SOCIOEDUCATIVO AO ADOLESCENTE, written in April 7th, 2010, at <http://www.fundacaocasa.sp.gov.br/View.aspx?title=a-fundacao-historia&d=83>.
- [39] http://www.ojdp.gov/mpg/litreviews/Home_Confinedment_EM.pdf
- [40] Yale Law & Policy Review Volume 5 Issue 2 Yale Law & Policy Review Article 7 1986 The Role of Restitution in Juvenile Justice Systems Anne Larason Schneider Jean Shumway Warner <http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1107&context=ylpr>
- [41] PRESTON ELROD AND R. SCOTT RYDER, *JUVENILE JUSTICE – A SOCIAL, HISTORICAL, AND LEGAL PERSPECTIVE*, Jones and Bartlett Publishers, Third Edition, 2011.
- [42] Randy Hertz, Martin Guggenheim, Anthony G. Amsterdam, National TRIAL MANUAL FOR DEFENSE ATTORNEYS IN JUVENILE COURT, 783 (2012) (ebook)
- [43] Brasil. Ministério dos Direitos Humanos (MDH). LEVANTAMENTO ANUAL SINASE 2016. Brasília: Ministério dos Direitos Humanos, 2018. 1.Direitos Humanos. 2.Socioeducação. 3.Adolescentes.
- [44] <http://www.chegadetrabalho infantil.org.br/wp-content/uploads/2017/03/Cenario-2017-PDF.pdf>

Ministry actions in Argentina related to juvenile restorative justice

Mercedes Buratovich



The Ministry of Justice and Human Rights of the Argentine Republic has created the Justice 2020 Program that aims to achieve a comprehensive transformation of the institutions of the justice system through a reform process structured around plural participation. This Program functions from an open platform that enables citizen participation both digitally and in person. Within the platform there are several projects under development which follow the seven central concepts of the Program. One of those is the Criminal axis, which contains a specific proposal targeting the Juvenile Criminal System, specifically to provide and establish the use of alternative measures for the resolution of conflicts within those cases.

Taking into account the principles of the Iber-American Restorative Justice Declaration approved by the Conference of Ministers of Justice of the Iber-American Countries, the Ministry of Justice and Human Rights of the Argentine Republic set out to promote the implementation of juvenile criminal mediation with a restorative approach and restorative agreements in all jurisdictions of the country.

To this end, and aiming at a good practices protocol for country-wide use that establishes the essential standards that juvenile mediation must have, a survey was carried out at the federal level. The survey looked at alternative dispute resolution methods of a restorative nature comparing them to traditional judicial solutions and incarceration. The latter were already being applied in relation to juvenile offenders.

Consequently, the Ministry invited key operators that were already developing these restorative practices at the local level to participate in a workshop, together with specialists on the subject, in order to prepare a draft document that defined

the minimum characteristics that should be met when applying restorative practices.

To this end, in addition to having prominent speakers who laid the foundations for the discussion on the importance of restorative justice for juvenile offenders, as well as judges and prosecutors from other countries who contributed their own comparative experience, several thematic working groups were formed with operators of the juvenile criminal system of different provinces of the country that could account for their own good practices.

This debate was carried out bearing in mind that juvenile mediation and / or restorative agreements are not merely a procedural issue, but rather a different model regarding juvenile offenders. Among the main topics that were discussed on that occasion were, among other topics, the principles and objectives of the process, the methodology of work in juvenile criminal mediation, the delineation of various stages and their contents, the enforcement authority,

The conclusions that the participants reached on each of these issues were collected and reflected in a final draft of the protocol entitled Federal Protocol on Juvenile Criminal Mediation and Restorative Agreements. The objectives of this document include those of promoting restorative methods as transformative practices fostering the internalization of the sense of responsibility in young people, reducing the stigmatization of juvenile offenders, allowing restorative solutions and permitting victims and communitarian participation in that process.

Which are the main advances that this protocol is designed to achieve? First, it constitutes a set of core principles for all the jurisdictions in the country to implement these practices, based on the existing documents in the international sphere; regardless of whether their procedural rules are specifically foreseen by these institutes.

Second, it establishes a specialized methodology for operators, which differs from standard practices designed for mediation directed to adults both in the civil and criminal spheres. It takes into account that juvenile offenders are still in a developmental stage of their cognitive capabilities. Therefore, the mediator, in addition to respecting the principles of neutrality, orality, confidentiality and autonomy necessary at any mediation, the mediator must also follow the principles of

- " comprehensive protection,
- " the right of the child to be heard
- " the right of the child to information,
- " flexibility of approach,
- " agility (make simple),
- " gratuity (free of cost),

" specialty,
" self-composition, and
" the presence of the family or guardian in a humane working space.

It also emphasizes the need for an interdisciplinary approach, through the intervention of task groups formed by professionals, proposing a stronger link between the adolescent and the community, by encouraging the latter to participate actively in the process. It also sets the stage for the possibility of applying these restorative justice procedures in cases where there is no identified victim or when the latter does not want to actively participate directly in the process.

At this moment, the final version of the Protocol is already being circulated between all the specialists who participated on the workshop to eventually develop a final draft, while the superior courts of justice of the different provinces of Argentina are simultaneously taking steps towards the implementation of its principles in all jurisdictions. In the next phase, continuing with the collaborative basis in which this document was created, the Ministry is working to circulate this document directly to focus groups of adolescents to generate feedback on their perspective.

On the other hand, on the subject of conflict prevention and promotion of restorative justice as a method of conflict resolution, the Ministry is developing a project regarding mediation at educational environments. Particularly, the ministry seeks to train teachers or school personnel to replicate this training on restorative principles within the different learning institutions and train student-mediators, who will be the ones who finally carry out mediation among students.

On the subject of training, the Ministry has enabled the participation of juvenile justice system operators from different provinces in the training program offered by the University of Geneva together with the Terres des Hommes Foundation which grants them a Certificate of Advanced Studies in Juvenile Justice, aiming at delivering intensive training in the field of juvenile justice (particularly restorative justice) through the analysis of international, regional and national legal frameworks while also taking into account the current social and criminological context. Once concluded, these operators will replicate the knowledge acquired in their own fields of work, through courses and training that will be offered with the support of the local superior courts of justice, in order to spread the wide international *corpus iuris* that protects and promotes the rights of children, including the Iber-American Declaration of Restorative Juvenile Justice.

Finally, through the web platform of the Justice 2020 Program, the Ministry is also advancing public consultation of the draft bill regarding the implementation of a new Criminal Procedure Law for Juvenile Offenders, which is based on the

principles of the United Nations Convention on the Rights of the Child.

In this regard, it should be noted that this draft bill promotes juvenile restorative justice as the main approach when dealing with juvenile offenders (including juvenile criminal mediation, conciliation and restorative agreements). It establishes,

" standards for prosecutorial discretion to pursue criminal charges in certain situations,
" the possibility to refer juvenile offenders to community programs,
" shorter statute of limitations periods,
" offers a wider range of sanctions, and
" incorporates the possibility for the intervention of interdisciplinary teams.

Course of action in the protection of children victims of crime

Within the scope of the Ministry, the strengthening of access to justice and the promotion of the rights of victims of crime have been considered to be a fundamental policy.

For this reason, it is worth mentioning the sanction of Law No. 27,372 on the Rights of Victims of Crime and its regulation, which aims to "recognize the rights of victims of crime and human rights violations, especially, the right to legal assistance, legal representation, protection, truth, access to justice, fair treatment, reparation, speedy trial ... ". These regulations provide for the creation of the Federal Center for Assistance to Victims of Crime (CENAVID), which in addition to assist victims with needs related to security, housing, medical and psychological care, and legal representation, among others, promotes the creation of centers of similar characteristics at the local level.

In particular regarding children victims, the Ministry has been working through the Victims Against Violence Program, from which the national campaign against child sexual abuse "Talking is the First Step to Prevent" was launched in November 2016. It was spearheaded by the launch of the National Line against Child Sexual Abuse that operates 24 hours a day, 365 days a year, throughout Argentina. This phone line is operated by an interdisciplinary team with special training in children's rights and aims also to guide those who consult for third person referrals and / or to accompany victims of abuse. In its first year of operation, it received more than 5,000 calls.

In addition to strengthening access to justice for child victims of abuse, the implementation of the National Child Sexual Abuse Hotline allowed for an exhaustive and unprecedented collection of data related to behaviours that constitute a violation of the sexual integrity of girls, boys and adolescents. Although for the moment this information does not have statistical relevance due to the short time of operation, it is expected that in the coming years it will become an important source of information to develop public policies on this subject.

In addition, the National Program for the Rescue and Accompaniment of Victims of Trafficking has

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

also been strengthened. It is made up of an interdisciplinary team of psychologists, social workers, doctors, lawyers and exclusive specialized police personnel who provide psychological, social, medical, legal advice and personal safety to victims, from a gender and human rights perspective. The professionals intervene in the field operations carried out by law enforcement agencies, with the aim of being present when state officials first contact the victims of human trafficking, to offer support and assistance. When those victims are girls, boys or adolescents, the program works with other state agencies to activate the mechanisms of protection. The program is national in scope and permanent in operation and works with other agencies for immediate intervention.

These two programs also carry out training programs throughout the country directed at law enforcement agencies and community networks in the field of human rights, gender and children's rights.

Furthermore, the (Red Federal de Formadores para la Función Tutorial en la Educación Secundaria) has been created. It aims to train teachers and staff of secondary schools on a specific toolset to prevent the infringement of the rights of adolescents. In this framework, an online platform has been developed with various available resources while several training programs have been provided to different operators at the federal level both online and in person.

It is also worth mentioning the continued work done by the Ministry to strengthen and expand the services of the Centers for Access to Justice (CAJ), which are federal-scope offices that aim to promote, facilitate and strengthen access to justice by providing early responses to the socio-legal problems of communities, through consultations, awareness of rights and community mediation. In turn, the Free Legal Sponsorship Network has been created, which aims to provide free legal sponsorship service to the consultants of the CAJ through the Bar Associations of each jurisdiction.

Law N ° 24,436, of the penal code was also modified. It criminalizes the possession of child

pornography, according to the guidelines of the Budapest Convention; granting greater criminal protection to the sexual integrity of minors.

To conclude, work is underway on a draft bill to establish the crime of child sexual abuse as a crime that can be investigated directly by state prosecutors without a formal complaint from the child's legal guardian, in order to promote the criminal prosecution of the perpetrators.

Conclusion

As a closing statement, it should be noted that this presentation briefly summarizes all the work the Ministry of Justice and Human Rights of the Argentine Republic is developing, in pursuit of juvenile restorative justice and in the protection of child victims of crime. This is without minimizing the enormous work carried out by the public agencies directly involved in this subject, since the Ministry and those organizations are coordinating actions and actively collaborating towards a common goal: the rights of children and adolescents.

Mercedes Buratovich is a Senior Advisor at the Secretary of Justice, of the Ministry of Justice and Human Rights of the Republic of Argentina. She works primarily on topics related to access to justice, vulnerable population and alternative methods of dispute resolution.

She began her career in the Judiciary of the province of Neuquén, in Argentina, where she worked on issues related to Civil, Commercial and Mining Law. There she gained experience working on family law and children's rights. Later, she was in charge of the Office of Legal Affairs of the Ministry of Foreign Affairs and Worship, working among others, on matters related to international cooperation, in criminal and civil law and international return of children. She also served as a Senior Advisor on public policy to different Counselors of the Council of Magistrates of the city of Buenos Aires.

She earned her degree as a lawyer from the School of Law of the University of Buenos Aires in 1987.

The impact of war on children in Yemen

Adel Dabwan



May 2018

Children in Yemen: General Overview and Indicators:

- The population of Yemen is about 26 million, 50% are children. A recent [UNICEF report states that nearly 2 million children now are out of school](#).
- The umbrella of social protection generally only covers about 16 million people (adults and children), either through the provision of salaries for staff or assistance and cash transfers through the Social Welfare Fund.
- For 10 years before the war started, there was a system for children's justice which provided care, rehabilitation and reintegration services for an average of 1,200 children in conflict with the law per year.
- The approximate number of street children in Yemen is 30,000.
- The phenomenon of child labour affects the lives of more than 1 million children, most of them in the age group (6-14 years). (91.4%) of these children work with their families, (83.1%) of them work in agriculture and hunting. As a result, there are significant health risks for children due to their work in spraying toxic pesticides, especially in khat cultivation.

Status of children up to December 2014 - before the war

- The number of orphaned children reached 1 million.
- The problem of human trafficking increased; 900 child victims of smuggling and trafficking were recorded annually in the years 2010-2014.
- There are challenges that confront the competent authorities in providing appropriate protection for children who are victims of violence and abuse. The issues of violence, abuse and illegal exploitation of children may

constitute one of the most difficult problems faced by Yemeni society.

- Even though there were up to (5) million people in need of access to services before the war, such as education health, environmental and sanitation, such programs have been kept to a minimum.

Status of children from March 2015 to March 2018 (during and post war in Yemen):

- 22.2 million people in need of humanitarian assistance 1.3 of them are children.
- The number of displaced children exceeds 1,000,000.
- About 4.1 million children need help in education, 66% of schools were destroyed by violence or shelling. 27% of schools were completely shut down, 7% of schools used to shelter displaced families or armed groups. The number of children not enrolled in education increased from 1 million in 2014 to 2 million children.
- Seven Million people in need of nutrition assistance 4.7 are children in need of food, of which 1.8 are malnourished children, 400,000 of whom are under five years of age with severe acute malnutrition. **An increase of 128% over the situation in 2014.**
- 16 million people need assistance in the field of water and environmental sanitation. Of these, 8.2 million need humanitarian assistance to reach or continue to have access to safe drinking water and adequate sanitation services.
- The number of people needing assistance to access health care tripled from 5 million before the war to 16.37 million people in need of basic health care services of which 8.4 million are children.
- The spreading of epidemics such as cholera, diarrhoea, and diphtheria. The cumulative number of suspected cholera cases during the period (2017 . March 2018) reached 1,085,205 cases, of which 2,270 were fatal cases, 28.8% were children.
- The number of possible cases of diphtheria up to 2018 was 1522 with 85 fatalities.
- About 80% of Yemenis live in poverty and need to be provided with food because of the collapse of the social protection system in general and the suspension of salaries of employees and the cessation of aid and cash transfers provided by the Social Welfare Fund.

Child protection programmes and wide violations of children's rights:

A breakdown in the child justice system in Yemen

- There is a weakness in child protection programs and increased cases of violence, abuse, trafficking in children and child recruitment which entails the following:
 - 2,241 children have been killed due to extreme violence and shelling
 - 3,450 children are suffering from physical injuries and war distortions
 - Since March 2015, at least 2,476 children have been recruited and exploited for combat and violent extremism
 - 279 children were abducted or exploited
 - 384 cases of attacks on schools or hospitals and the denial of aid
- **3 out of 4 girls in Yemen during the war period married before the age of 18, 44.5% were also married before the age of 15 years.**

Recommendations and call for support

" Despite the efforts exerted by international organizations to protect children in Yemen and to alleviate the effects of war on children, these programmes still need a lot of support to facilitate their access to children and their families as part of the humanitarian response plan. I will focus on the following: -

Increase the pressure by the international community to end the war and all serious violations against children

" Urgent action to pay the salaries of employees and provide cash aids for poor families

" Increase funding for education, health, water and sanitation programs

" Adopt programs to protect children from the effects of violence, abuse and reintegration of child victims of recruitment and violent extremism. Provide psychosocial support programs for displaced children

" Reinforcing and supporting child justice programs.

" Opening sea ports and airports and facilitating humanitarian access

Mr Adel Dabwan is the General Director of Social Defence in the Ministry of Social Affairs and Labour-Yemen. Head of Together Organization for Development and Human Rights- Yemen, and an expert working with Penal Reform International-Middle East and North Africa office since 2015.

At the crossroads of state law and customary justice

Baudouin Dupret



In most Middle East and North Africa countries, one can observe the coexistence of many sets of norms, some originating in the state and therefore called state law, others proceeding more or less independent of it and originating in local adjudicating practices, what can be designated as customary justice. Legal pluralism concerns cases in which different rules might have applied to the same set of facts. Sometimes, it seems that customary justice functions parallel to state law. Sometimes, it seems that State law acknowledges the authority of customary justice. Sometimes, it denies it. Indeed, in many parts of the Arab world, customary justice is still enforced, possibly to the exclusion of any State influence. More and more, however, one can observe various degrees of influence of, on the one hand, the State and its law on customary law and justice, but also, on the other hand, of principles inspired by customary law on the law of the State. Any research focusing on customary law without taking into account the expanding role of State law and judiciary definitely risks missing the phenomenon of the law itself, as practiced and transformed in its daily use by people and groups whose living is seldom autarchic. Any research that focuses on State law without taking into account its practice and the ways in which it is oriented to the existence of usages and *mores* common among the people of this or that stratum of the society risks missing also an important part of the phenomenon.

This note concerns the issue of customary justice in its relationship with State law. It contends that this relationship can be observed at different levels, around which this analysis will be organized. At a first level, where one can observe an instance of legal pluralism, customary justice integrates in its structuring and functioning bits and pieces of the State, its law and its staff. At a second level, the opposite holds true, i.e. the law of the State and its judiciary recognizes and integrates principles of

customary justice and gives them the force of State law. At a third level, which is the level of ordinary problems and informal adjudication, the practices of people are explicitly oriented to the State and its law and/or customary rules and proceedings for solving disputes.

In many places, one can observe the coexistence of parallel legal systems. There is, on the one hand, the State justice system, represented by the police and the Public Prosecution, whose functioning necessitates the opening of a file and a procedure as soon as some criminal act comes forward. Technically speaking, this system cannot enter into any negotiation with alternative justice systems without jeopardizing its claim to the monopoly of legitimate authority. Practically, it is often confronted to certain types of crimes which are known by its professionals as falling outside the scope of its jurisdiction. Policemen as well as prosecutors are very much aware of the existence of arbitration and conciliation authorities issuing rulings and covering what appears to state law as criminal liability beyond a collectively enforced solidarity (which results mainly in the unavailability of witnesses testifying to, and evidences substantiating, the crime and its individual author). On the other hand, there are customary justice systems which people identify as such, to which they orient and which issues rulings of its own on a large number of matters. This justice system, which runs parallel to the official system, can borrow many of its features to the latter (form of the procedures, explicit references to substantial provisions of positive law, written rulings, etc.) However, it clearly stands on its own feet and does neither depend nor is centered on the existence of State law. In other words, it constitutes an instance of a plural legal order.

In this case, customary justice constitutes an autonomous system of rules and adjudication. This notwithstanding, the respective paths of this system and that of the State can possibly come across each other at a certain point or at different levels. Very often, State officials (heads of administration departments, governors, even ministers) and professionals of its legal system (attorneys, former judges, but rarely active members of the judiciary) are on the bench of conciliation assemblies.

It is not rare that State officials be involved in tribal conflict resolution. The relationship between official courts and tribal courts depends on the local strength of the central State (al-`Âlîmî no date, pp.95-97; pp.108-109). When the latter is in a weak position, official judges tend to refer most cases to

customary notabilities. Moreover, members of the state apparatus and local officials personally participate in remote areas, in assemblies convened for settling conflicts, and they deal with the cases in a way that partly or totally contradicts or simply ignores the rules which they are supposed to implement. Often also, the arbitral sentence is issued on the basis of official documents produced by State authorities, in front of State officials or at their request, and the verdict of arbitration is acknowledged and even implemented by the Police and Public Prosecution. Beside the presence of officials in customary assemblies, the influence of the State manifests itself at a formal level: procedural organization, style in the writing of the ruling, submitting of convincing evidence, or even emergence of a rhetoric on the protection of the defence's rights and human rights. In itself, the writing indicates a recent evolution related to the growing number of literate people and the influence of positive law and its insistence on written documents. For instance, in Siwa, a Berber-speaking oasis area in the Egyptian Western desert, I witnessed in 1999 a meeting in which an illiterate man, whose conversation was conducted in Berber, dictated to a literate friend, in a very technical legal Arabic, the precise terms of a contract he intended to conclude on a piece of land. This was not done within the premises of the cadastre office, no lawyer was directly involved, and yet this document was written according to the style of officially sanctioned real estate contracts.

Nielsen (2005) witnessed many reconciliation meetings. He describes the procedures that were followed and insists on the importance of writing: "When the disputing parties have agreed to suggested members of the council, it is often then authorized by the parties. This latter part is central to the argument and shows a development which seems to have taken place within the last decades. An authorization is either granted by issuing a specific document which is completed before the case is taken up by the council called a mahdar tafwid (statement of authorizations), sometimes a specific meeting is held where this document is written and signed. As for the ruling itself, i.e. the statement of reconciliation or arbitration (mahdar al-sulh or mahdar al-tahkîm), it contains paragraphs describing the case. As seen by the council and based on an inspection of the site of dispute, documents pertaining to the case, statements made by the parties and other people involved and also the questioning of the parties and witnesses which takes place on the day of the final meeting the majlis al-sulh" (Nielsen 2005). It may also contain clauses specifying that the solution reached by the council holds valid vis-à-vis the authorities and that, if a party breaks with the decision taken by the council, the other party keeps its right to raise the case before a State court.

Beside the parallel existence of customary justice and state law, one can even so more observe the capacity of the former to permeate the legal system of the state and to impose its reality in the most positive form, i.e. legislation itself. Let us take the example of honour crimes. We know that sexual honour allows for someone (generally a man, the protector of the family name) to be seriously affected in his dignity or even to be stained by the sexual situation of another person (generally a woman). In other words, sexual honour is the process through which what A does to the body of B has an incidence on C because of his kinship with B (Ferrié 1998, p.133; Douglas 1981). By contrast, sexual morality is the situation where someone bears an individual responsibility for his/her own wilful sexual behaviour by virtue of external obligations (Ferrié 1998, p.135). The difference is mainly located in the fact that stain is quite independent from human agency and therefore from the action of the will, while morality depends on what someone does with regard to the norms, be it an active (i.e. fault) or a passive (i.e. omission) behaviour. It means that stain is impervious to the intention of people. This is particularly evident in criminal law. Customary justice (for example, blood feuds or crimes of honour) has little interest in the intention of people: it mainly ratifies that a certain fact has affected the status of a group and of its members. In statute law, to the contrary, it is the will of the one who commits an action that determines its legal characterization and the evidences documenting this will have to be found in the intention of the latter. Customary justice does not make anyone individually responsible, be it for claiming or for paying a right. Statute law, to the contrary, is based on the principle of the personality of penalties. Here we find the emergence of a certain concept of responsibility, which develops out of the articulation of the notions of causality, individual intention and ascription.

Obviously, customary and state systems can co-exist. In Syria, for instance, the Criminal Code makes crimes of honour a distinct category, the punishment of which is weaker. Moreover, legal practices show a very deep understanding of the judiciary towards this kind of behaviour (Ghazzal 1996). However, one must also consider the fact that Syrian law, though being lenient, punishes it as a crime that has its grounds of excuse, while to a certain extent customary justice can consider it a duty for people to kill those relatives who stain their kinship, although they may bear no responsibility in what happened to them. In Egypt, Mohsen (1990, p.22) gives the example of a young girl who was raped by her uncle and then killed by her brother who maintained before the court that he was defending the honour of the family and of his sister. Here, it is worth pointing out the fact that customary justice and state law. or, with regard to

our main concern, stain-centered systems and systems centered on the intentional individual . are partly reflecting and influencing each other. In Egypt, as in Syria, the law explicitly or implicitly recognizes the category of crimes of honour and gives a different treatment according to whether the offender is a man or a woman. Article 237 of the Egyptian Penal Code stipulates that a man who surprises his wife in the act of adultery and kills her and/or her partner is punishable with a maximum sentence of six months in prison instead of being sentenced to the legal punishment for willful homicide. However, if it is the wife who surprises her husband in the act of adultery and kills him and/or his partner, there is no ground of excuse allowing reducing the sentence. It must be added that the provision of Article 237 does not apply if the husband himself has been convicted of adultery or if he has not acted in circumstances of surprise. These provisions clearly reflect the incidence of customary law on statute law. Adultery itself has an ambiguous meaning. It is mainly considered a crime against privacy and not against society. Hence, the victim can stop the sentence against his/her spouse at any time. Moreover, privacy has a different meaning for men and women. As to the former, it means the husband's exclusive right to his wife's sexual activities (as a consequence, she can be punished up to two years in prison no matter where she has committed the crime), whereas, as to the latter, it means the wife's right to privacy and dignity within her domestic domain. In this field too, a stain-centered normative system seems to exert an influence on a criminal legal system based on the intentional individual (Mohsen 1990).

Parallel to the incorporation of principles linked to mores and customary practices into the legal system of the State, there are also authorities strategy of cooptation of customary law (Ben Nefissa et al. 2000; Haenni 2005). There are indeed cases of customary assemblies in which the presence of a judge, the head of the local police station or representatives of the administration is made compulsory. Records are made on a systematic basis and are transferred when necessary to the judiciary, through the police station, while the judiciary informally refers to the notabilities arbitration cases that are deemed manageable. In other words, the justice of the State not only acknowledges the existence of customary law, but also directly integrates it within its own functioning.

In strongly tribal societies, state courts have different types of attitude toward customary justice. In personal status matters, they evaluate the conformity of tribal rulings vis-à-vis the rules of the shari'a. Accordingly, they often cooperate in the implementation of tribal rulings. However, they tend to overrule these judgments when these are

considered as violating the shari'a, and they oppose their implementation when this is not beyond their material capacity. In other matters, state courts sustain tribal rulings, even in cases in which these rulings violate statutory rules, and cooperate to their implementation (al-`Âlimî no date) One can identify five different types of situations. First, there are these crimes that are not referred by the parties to State authorities. Second, the State may intervene in certain cases even though it was not informed by the parties. In a third type of situation, when at least one of the parties belongs to a tribe, the victim or his family turns to the judiciary because of the other party's lack of response and it becomes a legal case, while state authorities often use methods that have nothing to do with state law in order to press the parties for a solution. Fourthly, there are situations in which, although the State judiciary plays a bigger role, the solution remains customary. In this type of case, parallel state and customary procedures are followed, and when the customary ruling is issued, the victim's family desists from action and state authorities ratify the ruling. Finally, there are situations in which the case follows normal procedures, while the offender's family seeks conciliation with the victim's family (al-Muwadda` 2005).

Through the examination of the ways in which people orient to the supposedly many laws and norms, we get a much better picture of what law is and is not for these people. We also get a much better understanding of its plural sources and the non-pluralistic ways of its implementation, and of the many places where laws interfere with each other and the very few places where they remain totally autonomous. Norms, laws and legal practices cease to be confounded. Any set of norms is not necessarily law, and law is no more diluted in the all-encompassing and little-analyzed category of social control. Many practices can be characterized as legal practices, and not as parallel social, normative or legal fields. Legal practices are those practices that develop around an object of reference identified by the people as law (and that can be State law, tribal law, customary law or folk law, or any law recognized as such). In other words, a legal practice is everything that is done in a way in which it would not be done if the law of reference did not exist.

State law and customary justice influence each other in times where the autonomous functioning of legal systems belongs to vanished histories. It neither means that State law became the sole mode of legal regulation nor that it goes only from the State towards the customary system, in a one-way manner. To the contrary, we can observe how customary justice can stand on its own feet, albeit that it often bears the marks of the influence of the State and its legal systems in its procedures,

vocabulary, and adjudicating personnel. Customary rules also made their influence felt on the crafting of statutory laws that attempted to mirror some structures of the very society it was supposed to organize. Finally, there are many practices that orient toward the existence of customary justice without constituting in themselves instances of original or autonomous legal systems.

The rules that used to regulate customary societies tend to quickly transform. In the 21st century, these societies are subject to the influence of centralized authorities and laws that generally aim at reducing the jurisdiction of these competing legal systems. Consequently, customary legal systems are sometimes weakened, sometimes re-shaped, sometimes influenced. Customary systems that remain intact (but intact vis-à-vis what?) constitute a tiny exception. There is the threat that customary law in its classical form will be gone in a few decades. It is thus urgent to collect information and conduct research before it is too late. However, customary law transforms more than it vanishes. There is nothing like a pure system of law. Law is constantly changing, as a result of both internal and external demands and pressures. While these transformations and the ways in which they take place in tribal and popular contexts are very little studied, they represent a major phenomenon in the field of contemporary law.

From the above, we can draw a number of conclusions. The first one is obviously that state law is not the sole mode of regulation. Along it, many customs, practices, and norms coexist, which do influence each other to various degrees. However, the state and its law aim at reducing the competing systems' jurisdiction. They also influence customs and the ways they interfere in social life. If it ever existed, customary law in its pure or classical form vanished; customary legal systems weakened, were re-shaped, and were deeply influenced by state law. It is more accurate to say that customary law transformed more than it vanished. It borrows many of its features from state law, but it also lends it some of its characteristics and concerns. At this point, we must draw a distinction between customary law and legal practices, that is, informal practices that have the law as their point of reference, even if it is sometimes not to abide by it but to dodge it. Legal practices show flexibility and thus present advantages, like efficiency and rapidity, but they also present the risk of neglecting the due process of law and justice. In that respect, promoting customary law should not mean neglecting the rule of law. There is a balance to be found between customary law's and informal justice's virtues and state law's and formal justice's checks.

Baudouin Dupret is educated in Law, Islamic Sciences and Political Sciences. He spent many years as a National Centre of Scientific Research (CNRS, University of Louvain, Belgium) researcher in Egypt, Syria, and Morocco. He has published extensively on sociology and anthropology of law, and on legislation and non-legal normativities in the Middle East and North Africa. His recent publication is *What is Sharia?*. Please go to <https://www.youtube.com/watch?reload=9&v=mVxHWPPNMI4> to hear M. Dupret speak about it.

Bibliography

al-Ālīmī, Rashād., (n.d.) *al-Qadāq al-qabalī fiḍ-ḥujjāt al-yamanī* [Tribal Justice in Yemeni Society]. San'āq Dār al-wādī liḍ-ḥujjāt al-yamanī.

al-Muwadda', Abdel Nasser. 2005. *Carrefours de justices yéménites*, in Baudouin Dupret and François Burgat (eds.), *Le cheikh et le procureur: Systèmes coutumiers, centralisme étatique et pratiques juridiques au Yémen et en Egypte*. Cairo: CEDEJ (series Egypte . Monde arabe).

Ben Nefissa, Sarah, Sameh Eid and Patrick Haenni. 2000. *Pluralisme juridique et ordre politique urbain au Caire: les faux semblants des Majaliss Orfiya*, in Étienne Le Roy and Jacqueline Le Roy (eds.), *Un passeur entre les mondes: Le livre des anthropologues du droit en hommage au recteur Michel ALLIOT*. Paris: L'Harmattan.

Douglas, Mary, 1981. *De la souillure, essai sur les notions de pollution et de tabous*. Paris: Maspéro.

Ferrié, Jean-Noël. 1998. *Figures de la moralité en Egypte: typifications, conventions et publicité*, in Jocelyne Dakhli (ed.), *Urbanité arabe. Hommage à Bernard Lepetit*. Arles: Actes Sud / Sindbad.

Ghazzal, Zouhair, 1996. *Honor Crimes in Syrian Courts: The Art of Finding Good Reasons to Kill Your Wife*, Paper presented at the Middle East Studies Association, 30th Annual Meeting, November 21-24, Providence, Rhode Island.

Haenni, Patrick. 2005. *L'Ordre des caïds. Conjurer la dissidence urbaine au Caire*. Paris: Karthala (series Kalam).

Mohsen, Safia K., 1990. *Women and Criminal Justice in Egypt*, in Daisy Hilse Dwyer (ed.), *Law and Islam in the Middle East*. New York, Westport, London: Bergin and Garvey Publishers.

Nielsen, Hans Christian Korsholm. 2005. *Authority, Arbitration Councils and Civic Society*, in Baudouin Dupret and François Burgat (eds.), *Le cheikh et le procureur: Systèmes coutumiers, centralisme étatique et pratiques juridiques au Yémen et en Egypte*. Cairo: CEDEJ (series Egypte . Monde arabe).

Scientific developments in child and adolescent brain development, policy and the law

Shauneen Lambe



There is a developing consensus in the scientific world of neuroscience, psychiatry, psychology and endocrinology that the adolescent brain is fundamentally different, in structure and processing ability, from a functional mature adult brain. However, bringing the scientific understanding of adolescent brain differences into the law, whether through policy, legislation or litigation is still at a fairly nascent stage. Practice in the USA could be considered leading this field, practitioners there have been advancing the issue of adolescent brains for 15 years. What is not clear is where else in the world this scientific development is being effectively utilised by litigators and drawn to the attention of policy makers, decision makers and the judiciary.

The evolving science can be used to argue for changes to the way that children are dealt with by criminal justice systems. This paper will look at how the developing science has been used in the USA and the UK.

The USA and the UK have particularly punitive systems for children in contact with the criminal justice system, children in both countries are often transferred and handled within an adult system. The majority of the litigation has taken place against this background but the scientific knowledge has wider possibilities and professionals working with children in contact with the law should develop an understanding of the developing scientific knowledge so they can rely upon it in their own work whether working domestically or internationally.

The science of adolescent brain development is contained in many scientific papers and reports. For the benefit of legal practitioners, set out below is the science as it was presented to the UK Supreme Court in *Just for Kids Law* a third party intervention in the case *R v Jogee*. The intervention

referred mainly to UK based research, which cross-refers to US research.

Adolescence represents a phase of increased impulsivity, sensation seeking and risk-taking behavior a developing ability to empathize and a heightened vulnerability to peer influence, all of which might effect decision making in both a criminal and civil sense". This is something known to parents, more generally to society and well established within sociological and psychological research.

Behavioural scientists have observed the differences between adults, children and young people for some time, but only recently with the advancement of technology has there been a greater understanding of the neurobiological changes in the adolescent brain which indicate that the adolescent brain undergoes rapid change and does not fully develop adult capacity and cognitive functioning until the early twenties, becoming fully formed by the age of approximately 25.

One of the most significant changes in the adolescent brain concerns the frontal lobes and prefrontal cortex. It is these areas which control impulses, regulate aggression, calm emotions, consequential and abstract thinking, and allow reasoned, logical and rational decision making processes. Executive functioning, as part of this frontal lobe development, increases over the course of adolescence. The frontal lobe however is the slowest area to develop. Studies show that consequently throughout this period adolescents use an alternative part of the brain in their thought processing: the amygdala which develops during early adolescence. This area of the brain is associated with reward, emotional and gut responses. In adolescence, the imbalance may account for heightened emotional responses, increased arousal and the "risk taking behaviour characteristic of adolescence".

The brain functioning identified is in relation to a typical adolescent brain, these are compounded when the profile of young offenders is considered. It is uncontroversial that psychological consequences arise from exposure to violence, abuse, neglect, abandonment and other childhood trauma and that this often impacts upon decision making and behavioural responses. Such incidents also manifest in a different pattern of brain functioning and physiological changes in the brain, for example changes in the hypothalamic-pituitary-adrenal axis. This can result in increased impulsivity and aggression (over-activity) or a lack of empathy, non-responsiveness to punishment, and increased instrumental aggression (under activity).+

The science influencing policy

There has been much research on adolescent brain development in scientific and socio-scientific field, less on how and why it is being used effectively or not at all in legal proceedings and policy making. There are however some cross over resources that can be extremely helpful to professionals working in the area of childhood and adolescence.

In the USA the MacArthur Foundation created a Research Network on Adolescent Development and Juvenile Justice. The goals of this network are to communicate to policymakers, practitioners, journalists, other social scientists and legal scholars through the critical analysis of juvenile justice policies and practices, the design and implementation of new research on adolescent development and juvenile justice. This resource is an extremely useful starting place for the practitioner, policy maker or litigator to consider how to bring adolescent brain development into their own jurisdiction.

Dr Laurence Steinberg of Temple University Philadelphia is one of the leading experts in the field of adolescent brain development. A professor of psychology he has written many articles and books on the adolescent brain and has been involved in many court cases. His current research includes looking at the adolescent brain in countries outside of the USA to see if the findings in adolescent brains are globally comparable. Dr Steinberg's book *The Age of Opportunity* explains complex brain science in a clear-cut manner, using the latest research in neuroscience he argues for changes in the way we raise, teach and treat young people. In *Rethinking Juvenile Justice* Laurence Steinberg and Elizabeth Scott, as scholars in law and adolescent development argue that juvenile justice should be grounded in the best available psychological science, which shows that adolescence is a distinctive state of cognitive and emotional development.

In 2006 the Royal College of Psychiatrists in the UK published an Occasional paper on Child defendants. This paper identified that biological factors play an important role in the development of self-control and of other abilities. In 2011 The Royal Society published *Brainwaves*. Module 4 Neuroscience and the Law which considered a cutting edge neuroscientific perspective on brain development and criminal responsibility.

In 2011 the University of Birmingham Institute of Applied Social Studies School of Social Policy created a literature review of the evolving neuroscience in older adolescents (18-24 year olds). The review shows that emotional maturity is likely not to happen until the maturation of the cognitive processes and that rates of maturation differ amongst each individual and there may be

gender differences, these profound differences in the brain may account for teenage behaviour. While cautioning against jumping to policy conclusions, recognising that scanning the brain is different from real world performance, the review notes

the potentially progressive implications That Neuroscience could reasonably be conscripted in defence of a diversionary model of youth justice, one in which all but the most serious are routed out of the system due to a belief that their offending is likely to be adolescence limited reconfiguring the bulk of youth crime as developmental in nature and thus, by definition, transient.

The research above relates to the neuro-typical adolescent brain. However, the report *Nobody made the Connection* focuses on the prevalence of neuro-disabilities in young people who offend, commissioned by the Children's Commissioner in England and Wales the report considers how specific neurological disorders impact adolescents contact with the criminal justice system. The report looks at learning disabilities, specific learning difficulties, communication disorders, attention deficit hyperactivity disorder, autistic spectrum disorders, acquired/traumatic brain injury, epilepsy, and foetal alcohol syndrome disorders. The British Medical Association also published a report *Young Lives Behind Bars*: which focuses on the neurobiology of deprivation rather than neuro-typical adolescent brains. The report looks at the impacts of environmental stimuli on child brain development and concludes that when looked at neuro-developmentally it seems likely that early exposure to abuse or deprivation, particularly if it is sustained, can lead to brain alterations that are linked to emotional and behavioural difficulties.

In the UK the academic paper, *Youth Justice and Neuroscience* discusses the rapidly increasing comprehension of the human brain and its prospective relevance to youth justice policy in the UK. As referred to above, the paper theorises that in the United States neuroscientific findings have been utilised as a liberalizing tool and argues that the parallel of these studies in the United Kingdom is foreseeable. As does Dr Enys Delmage in his paper *The Minimum Age of Criminal Responsibility: A Medico-Legal Perspective*. Dr Delange provided expert evidence in the case of *R v Grant-Murray*, mentioned below.

Professor Sarah Jayne Blakemore leads the Cognitive Neuroscience department at University College London. Considered one of the leading neuroscientists in the study of adolescent brain development in the UK she has published many scientific articles over the years. Most recently she has published a book, *Inventing Ourselves*. The *Secret Life of the Teenage Brain*, a review by Sir Brian Leveson, Judge and President of the

Queen's Bench Division in England and Wales, says that the book "has made an extremely important contribution to the way in which society (and criminal justice in particular) should approach adolescent crime, in particular, gang or group related." Professor Blakemore also provided expert evidence in the case in the UK Court of Appeal in *R v Grant-Murray*.

How to bring the science into policy and litigation

With this body of research professionals working with children in contact with the law can bring this evidence to the attention of policymakers and the courts. Policy and law is often slow to change and this rapidly evolving scientific area should be integrated into lobbying and litigation. Some of the ways a practitioner can think about bringing the science into policy include;

1. Presenting the evidence to regulatory bodies
2. Presenting the evidence to legislators
3. Litigation

1. Regulatory Bodies

Regulatory bodies function is to guide, monitor and control a sector of industry. They can be extremely influential in persuading professional bodies. In relation to adolescent brain development regulatory bodies can lead the way in introducing changes in understanding which ultimately can lead to changes in law and policy for children and adolescents.

For example, in 2004 the American Bar Association published *Cruel and Unusual Punishment: The Juvenile Death Penalty: Adolescence, Brain Development and Legal Capacity*. This publication of the developing knowledge in adolescent brain development came out at a key period in time, before the US Supreme Court was to hear a seminal case relying on adolescent brain development to argue against the death penalty for those under the age of 18 in *Roper v Simmons*. This report, by the body that regulates all lawyers in the USA, was key, giving the scientific knowledge a credibility and platform in law. The report explains that; in the last five years, scientists, using new technologies, discovered that adolescent brains are far less developed than previously believed. Magnetic resonance imaging (MRI) allows scientists to safely scan and track development of brains. The scientists discovered that the teenage brain undergoes an intense overproduction of grey matter (the brain tissue that does the thinking). Then a period of pruning takes over, during which the brain discards grey matter at a rapid rate. In the brain, pruning is accompanied by myelination, a process in which white matter develops

These changes continue into a person's early 20s. Indeed, age 21 or 22 would be closer to the biological age of maturity. The American Bar Association report included that in addition to the profound physical changes of the brain, adolescents also undergo dramatic hormonal and emotional changes. One of the hormones which has the most dramatic effect on the body is testosterone. Testosterone, which is closely associated with aggression, increases tenfold in adolescent boys.

In the UK there is increasing recognition from the Bar Standards Board for England and Wales, the regulatory body for barristers, that adolescent brains are different from adults. Similarly the Law Commission, the statutory independent body whose function is to keep the law of England and Wales under review and to recommend reform where it is needed, published a report into Unfitness to Plead in 2016, which calls for a defence of developmental immaturity for child and adolescent defendants stating; Clinical advances in our understanding of the brains of children and adolescents reveal that the natural physical development of the brain continues throughout childhood and adolescence and may not be fully mature until the individual reaches their early twenties. Increasingly research findings confirm that juveniles aged under 16 demonstrate inadequate functional and decision making. In 2017 the Sentencing Council, an independent, non-departmental public body of the Ministry of Justice, issued Definitive Guideline for Sentencing Children which instructed the Courts that they must take into consideration, the emotional and developmental age and maturity of the child or young person [which] is of at least equal

importance as their chronological age.

2. Legislators

The scientific developments can be presented to legislators and policy makers. Reports such as those mentioned above can be referred to and filed as evidence in parliamentary committees or can be submitted to evidence gathering sessions. Experts can be encouraged to draft evidence to be presented to policymakers either orally or written. For example, in the UK there is an All Party Parliamentary Group for Acquired Brain Injury where evidence is presented and gathered. In 2014 in England and Wales there was an Independent Parliamentarians Inquiry into the Operation and Effectiveness of the Youth Court in 2014 which was presented with evidence that brain development is ongoing during adolescence.

3. Litigation

The scientific evidence of adolescent brain development can be brought into litigation in a number of ways in the form of; expert witness statements, Amicus briefs and third party interventions or via direct legal challenges. Some examples of where and how these have been used are set out below.

The United States Supreme Court recognized the unique characteristics of the adolescent brain in a series of seminal judgments on juvenile justice. The scientific evidence was introduced in a series of Amicus briefs, enabling the evidence to be more independent than expert witness statements, which are by their nature partisan, supporting the argument of whichever party files them. Amicus or third party interventions are often filed by independent, respected public entities that would not frequently be involved with litigation, such as; the American Medical Association.

In 2005 the United States Supreme Court heard argument as to whether it was unconstitutional for States to retain and use the death penalty for those who were under 18 at the time that they committed the offence. *Roper v Simmons* overturned the juvenile death penalty on the basis that it was cruel and unusual to give someone the death penalty who was a child at the time that they committed the offence. Justice Kennedy giving the decision of the Court, cited scientific and sociological studies about the underdeveloped sense of responsibility found in youth+ (at 569). Amicus briefs filed in *Roper v Simmons* included:

1. The American Medical Association - Science confirms that older adolescents behave differently to adults because their minds operate differently, their emotions are more volatile, and their brains are anatomically immature. Cutting-edge brain imaging technology reveals that regions of the adolescent brain do not reach a fully mature state until after the age of 18. These regions are precisely those associated with impulse control, regulation of emotions, risk, assessment, and moral reasoning. Researchers have found that the deficiencies in the adolescent mind and emotional and social development are especially pronounced when other factors - such as stress, emotions, and peer pressure - enter the equation. New research suggests that the limbic system is more active in adolescent brains than adult brains, particularly in the region of the amygdala. As teenagers grow into adults, they increasingly shift the overall focus of brain activity to the frontal lobes.

2. The American Psychological Association - Neuropsychological research demonstrates that the adolescent brain has not reached adult maturity. An offender may look like an adult - Impressions of the maturity and responsibility of adolescent offenders may also be impermissibly influenced by unconscious bias. Findings indicate that once the developmental changes of adolescence are complete, maturity of judgment may stabilize.+

The decision in *Roper v Simmons* led to a further series of cases in the US Supreme Court that have change the way adolescents are treated by the justice system. In *Graham v. Florida* in 2010 the US Supreme Court decided whether juvenile offenders can be sentenced to life without parole for a non-homicide offence. Justice Kennedy again wrote the judgment stating . developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds+, specifically, for example, in "parts of the brain involved in behaviour control.q Again *Amicus Briefs* were filed, included one from the American Medical Association Recent studies of the Brain have established a biological basis for the immaturities in adolescent behaviour. 1) Adolescent Brains are Structurally Immature in areas of the brain associated with enhanced abilities of executive behaviour control. 2) Adolescent brains more active than adult brains in regions associated with risky impulsive and sensation seeking behaviour.q

In 2012 in *Miller v Alabama* the US Supreme Court heard a case about the lawfulness of mandatory sentences of life without parole on juvenile offenders. Amicus Briefs were filed by the American Medical Association, the American Psychological Association and American Psychiatric Association . that document juvenilesq greater immaturity, vulnerability and changeability. Juveniles are less capable of mature judgment than adults, juveniles are more vulnerable to negative external influences, juveniles have a greater capacity for change and reform and that juvenilesq psychosocial immaturity is consistent with recent research regarding adolescent brain development.

The Juvenile Law Center in the USA has played a central role in the litigation in the US Supreme Court. Their work includes Amicus briefs and direct litigation in various states in the USA. In 2016 they provided an expert witness statement in the litigation in the UK Court of Appeal in *R v Grant-Murray*.

In England and Wales, the science around adolescent brain development is beginning to be introduced for children in the criminal justice system. For example, in 2015 the UK Supreme Court heard *R v Jogee*, a case as to whether the wrong legal standard was applied when convicting secondary parties of murder under the doctrine of joint enterprise. A third party intervention was made by Just for Kids Law on behalf of child defendants including arguments that young offenders present with a vast and complex array of needs and vulnerabilities, including physiological differences in their brains that meant their decision-making capacity was different from adults. (a summary of that scientific evidence is quoted above)

As mentioned, as well as Amicus briefs or interventions, evidence can be presented to the courts in the form of expert evidence. In a recent UK Criminal Court of Appeal case *Just for Kids Law* represented an appellant convicted of joint enterprise murder who was 14 years old at the time of the alleged offence. The issues of adolescent brain development were raised relying on scientific experts and cross-jurisdictional legal experts. The Court of Appeal ultimately denied the appeal, but reference was made to emerging scientific evidence and the decisions of the US Supreme Court; it was submitted that there is 'a strong base of emerging evidence highlighting consistent and universal differences in the judgment and consequential thinking processes between children and young people and adults'. The science has significant implications for traditional formulations of culpability. Adolescents, by virtue of their inherent psychological and neurobiological immaturity, are not as responsible for their behaviour as adults. *Roper v Simmons* 543 U.S. 551 (2005), *Graham v. Florida* 130 S. Ct. 2011 (2010), *Miller v Alabama*, 132 S. Ct. 2455, 2460 (2012). Just for Kids Law have filed an application in the European Court of Human Rights in this case against the refusal to allow the appeal.

Internationally

The European Court of Human Rights addressed the under-developed brain nearly 20 years ago in *V v. UK*. This was before the full picture of adolescent brain development had evolved. In a joint partly dissenting judgment there was concern that 'Bringing the whole weight of the adult criminal processes to bear on children as young as eleven is, in our view, a relic of times where the effect of the trial process and sentencing on a child's physical and psychological condition and development as a human being was scarcely considered, if at all.

he UN Convention on the Rights of the Child indirectly addresses adolescent brain development, although similarly the convention pre-dates the advancement in the scientific knowledge. See for example the United Nations Guidelines for the Prevention of Juvenile Delinquency . The Riyadh Guidelines . Adopted by the UN General Assembly 14th December 1990 5(e) which refers to, youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.q

Conclusion

There seems to be consensus in the scientific community that an expanded and more inclusive definition of adolescence is essential for developmentally appropriate framing of laws, social policies, and service systemsq. The issue is how to ensure that laws, policies and social systems adapt and change to include the advancements in scientific knowledge. There is an opportunity for professionals working in the child justice sector to raise these scientific developments to try to bring about policy changes that mirror the changes in scientific knowledge. It is hoped that some of the materials in this article can be used to help persuade policy makers, legislatures and the courts of a b scientific consensus..

Shauneen Lamb is a strategic litigation consultant, the co-founder and former executive director of Just for Kids Law, a UK charity providing holistic support and legal representation to vulnerable children and young people while using the law to drive systemic change. She is a barrister in England and Wales and an attorney in Louisiana, USA where she represented people facing the death penalty. She was a founding trustee of Reprieve and is a trustee of Ashoka UK, the Barings Foundation and the Centre for Justice Innovation. In 2017 Shauneen was runner up for the Veuve Clicquot Social Business Woman of the Year, in 2015 an Eisenhower Fellow, in 2012 an Ashoka Fellow, in 2011 a World Economic Forum Young Global Leader. Shauneen has been shortlisted as Legal Aid Lawyer of the Year and Liberty's Human Rights Lawyer of the Year

Minors allegedly associated with the Boko Haram terrorist group in Niger

Jean Etienne Ibrahim



First of all, I would like to pay my respects to all the participants at this Congress who have come from the four corners of the world to discuss juvenile justice in all its aspects.

I should also like to congratulate the organisers of this event for securing such a wide audience for the situation of children in contact with justice systems. This is proof, if any were needed, that for all countries- and particularly for those countries in my continent which are faced with many crises of many different kinds- these are issues that need to be considered from a holistic standpoint and in all their aspects.

Before I share with you our experience of dealing with young people suspected of involvement with terrorist groups, I should like to tell you a little about Niger. Niger is a West African country in the sahel-sahara region with an area of 1,267,000 sq kms and borders with many other countries- Algeria and Libya to the north, Nigeria and Benin to the south, Chad to the east and Mali and Burkina Faso to the west. Niger has about 21 million inhabitants drawn from nine ethnic groups.

Niger suffered the first terrorist attacks from Boko Haram in February 2015. in the Diffa region in the extreme south-east. The disturbances led to the displacement of people living on the shores of Lake Chad who were forced to flee from the violence and seek refuge in the main urban centres.

The fighting which developed in this area led to the arrest of hundreds of people, including children suspected by the defence and security forces of belonging to terrorist groups. It has to be acknowledged that the fears that had grown up in the region had led to considerable bad feeling between the defence and security forces and the local population.

It became clear that these arrests had not always respected the human rights of those suspected of being connected to Boko Haram. Arrests had occurred in fields with growing crops, in mosques, in market-places and even in some cases as the result of anonymous denunciations.

At the start of the hostilities people who had been arrested were transferred, without any initial screening, from Diffa to Niamey, the centre of anti-terrorist operations. Here they were interrogated and then referred to the anti-terrorist prosecutors. It should be noted that the two towns are 1,200 kms apart.

This disregard for human rights arose out of ignorance of the national law and of the relevant international instruments. It also revealed both the need to reconsider this framework with the aim of adapting it to the fight against terrorism and the need to train those involved so that respect for human rights would become an integral part of their methods during periods of conflict.

In meeting the need to establish a consistent framework to deal with children suspected of involvement with a terrorist group, we faced a situation with the following weaknesses:

- “ inappropriate national legislation in the context of the fight against terrorism and, in particular, the treatment of children suspected of involvement in terrorist groups;
- “ a lack of training of magistrates and investigators dealing with such children;
- “ a lack of appreciation by magistrates and investigators of the requirements of national and international law in times of conflict; and
- “ the absence of structures and institutional arrangements for case-management.

Reform of the legal and regulatory framework resulted in the amendment of some laws and regulations, the signing of a memorandum of understanding with the UN and the setting up of Transit and Orientation Centres.

The penal code was amended by Law 2016-22 of 16 June 2016 to establish, among other offences, those of combining to undertake an act of terror, harbouring terrorists and advocacy of terrorism.

The same Law brought in new rules for conducting investigations, particularly on the interception of telephone calls and infiltration of suspected terrorist networks.

Time limits for preventive detention and for undertaking public action have also been modified to take account of the complexity of proceedings.

Investigations are now undertaken by a central agency responsible for counter-terrorism and international crime and with jurisdiction over the whole country. It is under the direction and control of the Prosecutor in the central judiciary who specialises in counter-terrorism as well as the state Prosecutor in Niamey.

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

Consistent with these reforms, investigation of terrorist offences is entrusted to an examining magistrate especially appointed to the counter-terrorism agency. Judgement and sentencing of terrorist offences conform to the laws setting out the organisation and jurisdiction of courts in the Republic of Niger.

The Code of Criminal Procedure also provides for a control chamber and a trial chamber within the Court of Appeal at Niamey.

Unlike adult cases, those involving children are dealt with by juvenile judges especially appointed to the agency and the procedures are those set out in Law 2014-72 of 20 November 2014 regarding the jurisdiction, powers and procedures of juvenile courts.

Despite all these reforms, which were intended solely to ensure respect for the human rights of people suspected of wrong-doing--in particular the right to a defence and to a fair trial-- criticisms were directed at the government about the detention of young people who had been presumed guilty when they should have been treated as victims in the situation I described above which led to their arrest.

Moreover, at a session of the UN General Assembly, His Excellency the President of Niger responded to criticisms of this kind put forward by the Special Representative of the UN Secretary-General for children affected by conflict by making a commitment to give the fullest consideration to the handling of cases of children in these situations who find themselves in contact with the justice system.

This commitment was embodied in a memorandum of understanding signed by the Government of Niger and the United Nations. This demonstrates a strong political will to uphold the rights of the child in line with ratified international judicial instruments.

Under the terms of the agreement, the Government of Niger undertakes

to coordinate the identification and transfer of any children who have been associated with armed forces or armed groups, captured at the front, rounded up, wounded or found alone on a field of operation, to ensure the diligent handling of matters concerning those of them in contact with the justice system and to provide psychological support and reintegration in cooperation with UNICEF and its partner organisationsq

Following the reforms and commitments made by the Government, four transit and orientation centres have been established at Niamey to look after liberated young people.

Placement in a centre follows an interim order from the judge if he decides against custody, provisional release or discharge.

The placement is for three months, which can be extended after assessment of the child's situation by the juvenile judge.

The centres are staffed by qualified personnel, including five social workers, two psychiatrists, doctors, an educational psychologist, facilitators for educational activities and security staff. Financial support is provided by UNICEF.

The centres produce reports which are sent to DRPE which provides administrative support for the judges and for UNICEF.

The centres undertake the following programmes:

- " individual psychological monitoring and support of each child (with engagement in a life project);
- " discussion groups where themes such as juvenile offending can be talked through;
- " drugs and smoking;
- " living in society;
- " discussion of mutual respect and health issues.

The centres also offer sports, recreational and fun activities all designed to break away from the psychological conditioning the children experienced when they were part of an armed group.

None of these changes would have had any effect if there had not been increases in resources in the magistracy and law enforcement, including those in the field of operations. The aim was to increase their capability of taking care of young people suspected of terrorist associations.

With the help of UNODC, which organised all the required support and to which I offer my thanks here, magistrates and investigators were trained in a range of issues, such as:

- " knowledge of the national and international legal framework;
- " handling of child victims and perpetrators of terrorist acts;
- " how to listen to children and communicate with them;
- " the impact of being a victim and the signs of post-traumatic stress;
- " psychological support, referral mechanisms, treatment of victims according to their history;
- " reintegrating children, including child-soldiers, who have witnessed acts of extreme violence; and
- " alternatives to prosecution and custody.

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

The desire that all the changes should act in a coherent way led the Government to set up an inter-ministerial committee, under the aegis of the Prime Minister, to look into the issues surrounding young people suspected of terrorist involvement with the following terms of reference:

- " to make recommendations on the handling of cases;
- " to ensure a concerted follow through of the measures that have been put in place, especially those to do with placement of children and their reintegration;
- " to ensure respect for the rights of young people under arrest; and
- " to monitor regularly the progress on implementing the agreement with the UN.

Traditional chiefs and religious leaders have been fully involved by means of community-based protection programmes.

The changes to the legal and institutional framework have led to improvements in the conduct of investigations, which now respect the human rights of those suspected of involvement in terrorist groups.

Visible signs of improvement include the speeding up of judicial proceedings with regular sessions of the specialised judiciary held to pass judgement. So far, dozens of detainees have been tried and sentenced.

As for young suspects, I can assure you that at the present time, no young person suspected of allegiance to Boko Haram is in prison. This has been possible thanks to the efforts of the care providers in a coordinated cross-sectoral approach and, particularly, to the work of the centres.

Let me now turn briefly to a key part of the process: the reinsertion strategy for children involved with armed forces or groups, which has enabled children to return to or to be reunited with their families.

This strategy was conceived as a response to the division between communities and their children and is based on the fundamental principles of the Convention on the Rights of the Child:

- " the best interests of the child;
- " non-discrimination;
- " survival and development;
- " participation;
- " guidelines on children involved in armed forces and groups; and
- " a community-based approach, which has enabled us to involve the community and strengthen existing support systems.

The strategy is open and inclusive and so can establish a dialogue between stakeholders and the community on issues related to childhood, such as

violation of children's rights, gender-based violence and family separation.

It also involved working on social cohesion in communities weakened by violence by promoting peace education both within and between communities.

Finally, the strategy favours mediation and acceptance of responsibility by the community for events following reunification by avoiding the stigmatization of children. It also puts in place a basic package of services for children involving:

- " family reunification and alternative care;
- " psychological support;
- " education, professional training and reinsertion in the economy.

In the conflict zone the Regional Directorate for Child Protection is monitoring 28 children and has helped to reunite 34 others.

Finally, I should like to highlight the important role in reintegration played by CICR in supporting our operational arrangements. This NGO has been involved in searching for personal details about young people, their families, their places of origin and their contacts.

Whenever necessary, these searches have been extended to all the countries within the Lake Chad basin. Once a family has been found, contact is established between the young person and the family. Papers are drawn up for the return and a reintegration kit containing several items and a sum of money is sent to the young person.

Before the young person returns to his community, CICR draws up a certificate of return and sends it to the person in charge of the reception centre which will receive him.

Overall, within the framework that has been established, virtually all children suspected of terrorist involvement have been reunited with their families.

Although from this perspective one might be tempted to think that we have achieved the objectives that we set ourselves, the situation is not perfect. In practice, we have experienced some failures and one must have the courage and humility to acknowledge them.

There was a child who escaped from a centre and one who was radicalised in prison and in a centre. There have also been several cases where children have maintained contact with their groups with coded messages being intercepted.

All that demonstrates that there are still some weaknesses and, drawing lessons from this experience, we have rethought our care arrangements, taken steps to prevent radicalisation in places of detention and modified our approach to these cases.

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

In conclusion, based on our experience in Niger we think it is worthwhile drawing up a complete diagram of all those involved, showing who does what, with whom and how, using what methods. It is also valuable to establish a system of coordination with the roles and responsibilities of state and non-state organisations clearly set out. This avoids the dissipation of different approaches and helps to give an overall coherence.

These are the lessons we have drawn from our experience of handling cases of young people suspected of terrorist involvement. We are still constructing protection systems in our countries where young people form the vast majority and the challenges we face are those of youth.

Thank you.

Jean Etienne Ibrahim is a former Judge. He was Director of Juvenile Justice in the Ministry of Justice and currently holds the post of Deputy Secretary General, Ministry of Justice, Niger.



1. It is an honour and an opportunity to share my own experiences as an international Canadian lawyer before so many countries. My reflections will focus on the challenges facing national justice systems as we seek to serve the future leaders of our countries . the children. I will speak primarily about my Canadian-American experience . and you will see that I speak in unflattering terms about both countries.

2. Today, the world faces grave challenges to the Rule of Law and Human Rights. Distrust, bigotry and violence appear to dominate our everyday life. Previously well-established and accepted legal principles are now being called into question, in all regions of the world, through what I would suggest are ill-conceived responses to terrorism. Many of the achievements in the legal protection of human rights are under attack.

3. In the wake of the September 11, 2001 attacks in the United States, many States, responding to United Nations Security resolutions and public anxiety, began to adopt an increasing array of counter terrorism measures. While the Security Council failed to immediately refer to each States duty to respect human rights in their response to terrorism, it subsequently made it clear in a 2003 declaration that all States must ensure that any measure taken to combat terrorism must comply with all their obligations under international law, in particular international human rights law, refugee and humanitarian law.

4. Despite this guidance, government officials and policy makers in certain liberal democracies claimed that the rules had changed and dismissed the observance of certain basic human rights in confronting the new global terror. As a result, these states began violating human rights in the name of counter-terrorism. For other states that had routinely abused human rights in the past, counter-terrorism was simply the newest excuse behind which to hide.

5. Today, belief in an authoritarian version of national destiny is staging a powerful comeback. For years surveys have shown that strong authoritarian and populists positions on crime, immigration and Islam have hardened.

Immigrants:

6. We are at a critical juncture in world history. There are currently more people displaced by war, persecution and conflict than at anytime since World War Two . 62 million people.

7. A staggering statistic is that one out of every 113 people in the world today is now either a refugee, an asylum seeker or internally displaced . and half are children

8. Meanwhile, we are observing much of the world increasingly responding with xenophobia and racial intolerance.

9. The desire to scapegoat and abuse newcomers has become a virus that has affected many countries despite the fact the refugee crisis is one of the gravest humanitarian crises to unfold across the world in modern times.

10. Eroding the public confidence about their safety and encouraging increased fear has heightened public anxiety, which in turn creates intolerance, discrimination and bigotry. Additionally, when misinformed and fueled by fear, people are more likely to accept that such steps as the suspension of civil liberties, invasion of privacy and suspension of the Rule of Law must be taken to ensure national security. We rationalize that it is for the greater good of society.

Enforcement Policy:

11. The United States has embarked on an enforcement policy that willfully causes suffering to families desperately trying to escape dangerous situations.

12. Take for instance, the case of a 39-year-old woman (Ms. L.) who arrived in the United States several months ago, after fleeing with her daughter from the Democratic Republic of Congo. She made it all the way to the Mexican border, and as her lawful right, pleaded for asylum. She passed a so . called %credible fear+interview establishing that she was legitimately afraid of persecution if she returned to her home country.

13. Unfortunately, her troubles were far from over.

14. A few days after their arrival in the United States, Ms. L's 6-year-old daughter was taken away from her by immigration officials. It was recounted that %When the officers separated them, Ms. L. could hear her daughter in the next room frantically screaming that she wanted her mother+.

15. The daughter was soon transferred to a Chicago facility, while the mother (Ms. L) remained locked up in a San Diego Detention Centre, 3,343 kilometres away. The two have been separated for the past seven months and have spoken on the phone only a handful of times.

16. In early March, after a public outcry, Ms. L. was abruptly released, but her 6-year-old daughter remains in custody. It is unclear when or even if they will ever be reunited.

17. The United Nations revealed that U.S. authorities had separated several hundred children, including toddlers, from their parents. Since then, the American Civil Liberties Union (ACLU) says that, the pace of separation has accelerated sharply. In the past five weeks, close to 1,000 children may have been taken from their families.

18. Recently, Attorney General Sessions defended the policy stating %people don't want to be separated from their children, they should not bring them with them. We have to get this message out+.

19. Ms. L's story is not unique. The practice of separating children from migrant families entering the United States violates their rights and international law, despite the United States is the only country in the world that has not ratified the Convention on the Rights of the Child. It has signed onto other human rights conventions dealing with regards to the separation and detention of children.

Lack of Due Process:

20. The lack of due process is not limited to refugees.

21. When crimes are committed, governments have a duty to carry out impartial investigations; to identify those responsible; and to prosecute suspects before independent courts. These obligations require ensuring fairness and due process in investigations and prosecutions, as well as humane treatment of those in custody.

22. However, the United States government is failing to meet its international legal obligations with respect to its investigations and prosecutions of terrorism suspects, as well as in its treatment of terrorism suspects in custody, particularly Muslim youths.

23. In many cases, the FBI (Federal Bureau of Investigation) have created terrorists out of law abiding, vulnerable young men and youths grappling with mental health problems turning them into a manufactured threat by conducting sting operations that facilitated or invented the targets' willingness to act.

24. I am not the only one to raise the alarm. Human Rights Watch recently provided a report stating that %Americans have been told that their government is keeping them safe by preventing and prosecuting terrorism inside the US,+ said Andrea Prasow, deputy Washington director at Human Rights Watch %But take a closer look and you realize that many of these people would never have committed a crime if not for law enforcement encouraging, pressuring, and sometimes paying them to commit terrorist acts.+

Newborough Four:

25. Take the %Newburgh Four+, a terrorism case that became one of the most controversial FBI counterterrorism sting operations of the past decade. The government narrative seemed relatively straightforward:

%Four black Muslims were arrested in connection with a plot to shoot down military airplanes. The FBI thwarted the attack just in time and the terrorists were jailed. Police Commissioner Ray Kelly describes the operation a %textbook example of how a major investigation should be conducted.+

26. The reality is that an FBI undercover agent by the name of Hussain frequented a local mosque, in Newborough, seeking a target to manipulate. He chose an individual by the name of Cromitie who was unemployed, penniless and had a drug problem. The agent then engaged his target in hypothetical ideological conversations about plotting attacks in the name of Allah. Eventually Hussein was offered \$25,000 if he agreed to undertake an attack.

7. Two other targets were also recruited as part of the conspiracy. One was a youth who suffered from mental illness and the other was a part-time student trying to come up with enough money to pay for his brother's liver cancer treatment.

28. The two youths were offered money, cars, and prestige if they carried out the plan that the undercover agent had meticulously laid out for them. They all agreed, but not before stipulating: %We want to just destroy property. We don't want to take no lives.+

29. The trial Judge described the plot as a %fantasy terror operation+ and stated that the government %came up with the crime, provided the means, and removed all relevant obstacles, and had, in the process, made terrorists out of individuals whose buffoonery is positively Shakespearean in scope+.

30. Notwithstanding such pointed criticism, the judge then sentenced the so -called terrorists to 25 years in prison.

31. The Newburgh Four case is not unique to the world of domestic terrorism arrests. In fact, it is quite typical. At least half of the 500 domestic terrorism cases since 9/11 have been FBI informant-led sting operations. Often the undercover FBI agents are former murderers, thieves, rapists, or drug dealers offered a shorter sentence or immunity in exchange for cooperation with the FBI, making them especially motivated to landing an arrest.

32. In many of the sting operations, informants and undercover agents carefully lay out an ideological basis for a proposed terrorist attack, and then provide their targets with a range of options and the weapons necessary to carry out an attack. Instead of beginning a sting at the point where the target had taken steps to engage in illegal conduct, many terrorism stings facilitate or invent the target's willingness to act before presenting the means and tangible opportunity to do so. In this way, the FBI have created terrorists out of law-abiding individuals.

33. In these cases, the informants and agents often seemed to choose targets who were particularly vulnerable- whether because of mental disability, or because they were indigent and needed the money that the government offered them. In some cases- which have been particularly troubling for American Muslim communities- targets were seeking spiritual guidance, and the government informants or agents guided them towards violence.

Abdulrahman Elbahnasawy:

34. Consider the case of one of my clients, Abdulrahman, a Canadian youth, who has a long history of mental illness. He is diagnosed with a bipolar affective disorder, is obsessional and suffers from psychosis and drug addiction but has rarely been successfully treated for his conditions for long despite the efforts of his family. From the age of 14 he has used a panoply of illicit drugs including heroin and inhalants.

35. He is described as a lonely teen with no friends. Being a teenager is hard at the best of times. Loneliness, alienation, bullying, pressure to succeed, and the hunger for validation are typical pressures on a teenager. Combining Abdulrahman's mental illness, his drug addiction along with normal teenage pressures, left him most vulnerable to being exploited when not on his medication.

36. So, how did this 17-year-old Canadian teenager, with no history of violence or criminality, now 20 years of age, end up being arrested for plotting to bomb a target in downtown New York?

37. While off his medication, he would lose himself in an internet chat room, sometimes up to three days at a time, unaware that he was being targeted by an undercover FBI agent.

38. The undercover agent would engage Abdulrahman in radical discussions regarding the mistreatment of Muslims in the United States. The conversations eventually elevated to identifying suitable bomb targets in the United States. The undercover agent then identified bomb making materials that could be easily purchased over the counter. Following further instructions from the FBI agent, Abdulrahman was then encouraged to ship hydrogen peroxide to an address, in New York, provided by the FBI agent, unknowing that he would be arrested there on arrival.

39. What makes this story even more disturbing is that the Royal Canadian Mounted Police (RCMP) fully participated with the FBI in this conspiracy by illegally obtaining Abdulrahman's Canadian psychiatric records and provided them to the FBI. In doing so, the FBI were able to better profile and manipulate this damaged youth. There was clearly an opportunity for the Canadian authorities to alert his family to their troubled son's descent into the criminal world, rather than permitting, even facilitating a vulnerable individual to sink into criminality.

40. This raises serious human rights concerns of discriminatory investigations, targeting vulnerable youths such as Abdulrahman, who had no previous history of violence or criminality, until drawn in by a U.S. government actively involved in developing the plot and persuading and pressuring the target to participate. There are many unsettling stories of ordinary youths caught in the Government's dragnet. These are not just isolated mistakes in an otherwise sound program but are demonstrations of what can happen when constitutional protections against government abuse are abandoned and the Rule of Law is bypassed.

41. Abdulrahman will be sentenced next month. The Federal prosecutor is requesting a life sentence despite the existence of a profound mental illness. In the meantime, he has spent the past 2 years in solitary confinement in a U.S. high security prison.

42. Abdulrahman's case is not unique to the world of domestic terrorism arrests. In fact, it is quite typical. This case is one among many that raises troubling questions about the fairness and effectiveness of many of the policies, practices, and tactics employed by the FBI, the Justice Department, and the Bureau of Prisons in terrorism cases.

Guantanamo Bay:

43. We only have to consider Guantanamo Bay to understand how easy it is for a society to lose its way and slip into lawlessness when we ignore the Rule of Law.

44. Guantanamo Bay has been called everything from an off - shore concentration camp to a legal black hole. It is a complex of brutal

prisons where approximately a thousand Muslim men, from all over the world, have been held since 2002 by the U.S. government under incredibly inhuman conditions and incessant interrogations. All without any judicial oversight or access to a properly constituted legal system.

45. In January 2002 we witnessed the first shocking media images of detainees, hooded and shackled for transportation across the Atlantic to Guantanamo Bay, Cuba, much as, other human beings had been carried in slave ships 400 hundred years earlier.

46. On their arrival at Guantanamo Bay, we witnessed the humiliation of these anonymous beings, unloaded on the tarmac like so much human baggage to then be transported to open . air wire cages that would be their home for many years . all without access to family, friends, lawyers, human rights organizations or any semblance of due process or judicial oversight.

47. For the watching world, no knowledge of international humanitarian conventions was needed to understand that what was being witnessed was unlawful.

48. This was not a manifestation of the Geneva Conventions at work; nor was it an act of deportation or extradition. It was the unlawful transportation to a world outside the reach of law and intended to remain so. In that world, crimes against humanity were to be carried out.

49. There were simply no boundaries to the human rights violations carried out against these detainees. Organizations such as the International Red Cross, Amnesty International and Human Rights Watch as early as 2003 -2004 reported that torture, including sexual abuse, rape, sleep deprivation, and water boarding were standard procedure in Guantanamo.

50. And abandoned there, for ten years, from the age of fifteen, was a young boy, and my client, Omar Khadr.

51. In the early years after the opening of GTMO, Human Rights Watch was requested by the Bush administration to assist in the repatriation the children who had been transported to GTMO . that occurred. The only name that was not on the table was Omar Khadr.

52. I also recall my own struggle fighting for justice and freedom for Omar Khadr, detained in the wretched hell hole of Guantanamo Bay.

53. As the rule of law faded into indifference, I refused to back down to both the U.S. government and the Canadian government. I am a lawyer who believes the struggle for justice should never be abandoned because of the seemingly overwhelming power of those who have guns and money and who seem invincible in their determination to hold on to it.

54. But, little did I realize that my legal challenges on behalf of Omar would take up more than a decade of my life; that I would miss the high school graduations of both of my sons; or that I would appear in numerous courts, both North and South of the border, including the Supreme Court of Canada and the United States Supreme Court in *Rasul v. Bush*.

55. During his time in Guantanamo, Omar was interrogated repeatedly by a military interrogation team under the control of a Sgt Claus who later was charged with the death of two Guantanamo prisoners. One was a young taxi driver, named Daliwar, thought by most Americans to be innocent of terrorism, who was beaten so severely he couldn't bend his legs anymore before he died.

56. We had been unable to obtain access to Pentagon investigations into the mistreatment of detainees including Omar. But the Pentagon report on the deaths of Daliwar and another detainee was later obtained by the New York Times.

57. Claus used the same techniques on Omar to extract evidence through coercion and abuse.

58. Omar was beaten, water boarded and threatened with snarling dogs while a hood would be wrapped so tightly around his head that he could hardly breathe causing him to panic; which was the purpose of the exercise in the first place.

59. He would be taken into an interrogation room specifically designed for certain forms of torture, including what I call the "crucifixion". A former Army medic testified at his trial, that he once found Khadr chained to a five-foot-square wire cage, attached to a wall, with his arms suspended above his shoulders, naked, hooded and weeping. In preparing Omar for his crucifixion, he would be made to drink lots of water and then left hung on the five-foot-square wire cage for long periods of time until he would urinate on himself.

60. This would be the signal for his interrogators to untie him and use his hair as a mop to clean up the urine and then carry out various sexual perversions simply to humiliate him. Damien Corsetti who worked with Claus in torturing Omar, when interviewed on a CBC documentary stated, "we did terrible things to that kid".

61. Claus was given immunity for any abuse during Omar Khadr's interrogations, in return for his testimony at Omar's trial of what Omar confessed to him under duress and abuse.

62. Is there any better example of the perversion of the Rule of Law than the torturer being rewarded for the fruits of his interrogations?

63. I recall my first meeting with a young Omar Khadr in Guantanamo Bay. He was being held in one of the notorious secret prisons, called Camp 5, designated for enhanced interrogation techniques as described by the Pentagon, namely torture.

64. Shackled to the floor, in a freezing, concrete window-less cell with a harsh fluorescent light bulb on 24 hours per day was the tragic figure of Omar - blind in one eye; partially blind in his remaining good eye; partially paralysed on his right side; and his whole-body suffering from extensive shrapnel injuries. Meanwhile, his cell was purposely kept cold so that he would never be able to rest, spending much of his time trying to stay warm. In all my years visiting Omar in Guantanamo, he was always restrained by leg shackles.

65. I recall involuntary gasping at the sight of Omar and had difficulty in controlling my own emotions. I was not prepared for what I was witnessing. He looked like a broken bird. I felt like crying. I was a father. I had young boys at the time. I knew they were at home in safety and comfort with their mother and here was a young boy, abused and abandoned by all.

66. By then he had been locked away in solitary confinement for several years. Throughout his ten years in Guantanamo, he had never received a consular official visit or visits with his family, friends, human rights officials or government representatives.

67. And every time, I left Omar after a visit, I was aware that he would try to sleep the time away, and that the cold would prevent sleep and that incessant lighting had divested him of his feel for night and day. Over the course of any given month, Omar did not know whether he would get to see the sun or have a conversation with another human being.

68. At some point, I was able to obtain video footage showing American and Canadian intelligence agencies interrogating Omar while sleep deprived for three weeks at a time. In a major rebuke to the Canadian government, the Canadian Supreme Court ruled that the U.S. treatment of Omar contravened the International Convention on Torture and the Geneva Conventions and that Canada had been complicit in his torture.

69. There can be no greater rebuke levied against a government that purports to uphold the Rule of Law than to have participated in the torture of a youth.

70. And what greater betrayal can there be of Canadian values, when our reputation and good standing in the international community could be sold so cheaply.

71. Eventually, I was able to negotiate a deal that would allow Omar to return to Canada if he agreed to a sentence of 8 years, serving one more year in Guantanamo.

72. The Canadian court released Omar on bail. Later, the Canadian government publicly apologised for its treatment of Omar and settled his civil suit.

73. Today, he is married and attending University.

74. Those who would place security over civil liberty could have benefited from the words of former U.S. Supreme Court Justice William Brennan. He said:

¶There is considerably less to be proud about, and a good deal to be embarrassed about, when one reflects on the shabby treatment civil liberties have received in the United States during times of war and perceived threats to national security ¶ . After each perceived crisis ended, the United States has remorsefully realized the abrogation of civil liberties was unnecessary. But it has proven unable to prevent itself from repeating the error when the next crisis came along.q

Conclusion

75. Embedded in my talk today, has been the responsibility . the imperative . on all of us to speak out against the reality of inhumanity.

76. We all have a responsibility to uphold the rule of law. These two pillars of . promoting justice and restraining power . are crucial to defending Canadian values and the survival of our democracy.

77. Somehow, we have lost in our generation the idealism, sense of responsibility, and confidence that an individual can make a change.

78. So as I conclude, I am reminded of the play A MAN FOR ALL SEASONS where Thomas More states ¶He would even grant the Devil protection of the Law, for without law, we are all defenceless¶

Dennis Edney is a Canadian defence lawyer based in Edmonton, Alberta, Canada. Originally from Dundee, Scotland, he is noted for his involvement in high-profile cases, including that of Omar Kadhafi, who was detained at Guantanamo Bay both before and after the age of 18 years.

**I. A short introduction to counter-terrorism****What is terrorism?**

Since 1963, the international community has elaborated and adopted 19 sectoral United Nations (UN) conventions containing a number of very specific crimes. In the convention on the financing of terrorism, the crime of terrorism is defined *inter alia* as 'Any other act intended to cause death or serious bodily injury to a civilian, [...] when the purpose of such act [...] is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act'.

At the same time, discussions on an internationally agreed definition of terrorism have been on the UN agenda for over 20 years. So far, no consensus has emerged among States owing to divergent views on whether legitimate struggles for self-determination, State terrorism or acts complying with international humanitarian law should be included or excluded from the scope of application of this comprehensive convention.

The lessons learned from many years of counter-terrorism efforts are enshrined in the UN Global Counterterrorism Strategy adopted as an annex to a resolution by the General Assembly in 2006. Its four pillars are still an excellent roadmap today:

Addressing the conditions conducive to the spread of terrorism or what is known today mainly under the notion of 'preventing violent extremism'

Preventing and combating terrorism in a criminal justice sense

Developing national and international capacities

Ensuring the respect for human rights and the rule of law.

What is required is a comprehensive and balanced implementation of these four pillars.

Where are human rights?

Human rights in general occupy an important space within the UN Global Counter-Terrorism Strategy. The UN Global Counter-Terrorism Strategy states that 'the promotion and protection of human rights for all and the rule of law is essential to all components of the Strategy' and recognises that 'effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing'. Its biannual review resolution further stresses that 'when counter-terrorism efforts neglect the rule of law, at the national and international levels, and violate international law, including the Charter of the United Nations, international humanitarian law and refugee law, human rights and fundamental freedoms, they not only betray the values they seek to uphold, they may also further fuel violent extremism that can be conducive to terrorism'.

In addition to this, many relevant UN Security Council resolutions adopted since 9/11 state that counterterrorism measures are to be taken 'in accordance with international law, including international human rights law, international refugee law, and international humanitarian law'.

Despite these declarations recognising the importance of human rights in counterterrorism efforts, compliance with human rights obligations is often not ensured and States have little or no guidance on how to fulfil their various obligations.

Where are child rights?

Children are increasingly affected and associated to terrorist related activity. Recent research conducted by the UN Interregional Crime and Justice Research Institute (UNICRI) shows that 'international policy and law-making has struggled to keep up with the rapid changes. Therefore, the rights of children affected by terrorism and counter-terrorism have been largely overlooked. The lack of attention paid to the child rights framework has led to a treatment of children in a manner that runs counter to States' obligations'.

The phenomenon of foreign terrorist fighters, defined in UN Security Council resolution 2178 (2014) as 'individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training' has added multiple layers of complexity.

With the Islamic State group having lost most of its territories both in Syria and Iraq, the issue has shifted towards the prosecution of these individuals.

I. The Neuchâtel Memorandum

Rationale and Process

To adequately address the phenomenon of children being recruited or associated with terrorist groups and the applicable legal framework, Switzerland launched in April of 2015 an initiative within the Global Counterterrorism Forum (GCTF). The GCTF is an international forum comprising 29 States from the Global North and South and the EU, focused on civilian-led efforts to counter terrorism.

The International Institute for Justice and the Rule of Law (IJJ), an organisation based in Malta, was tasked with drawing up a document and received support from a wide range of individuals and organisations. In a carefully designed process, the document was discussed and consulted by GCTF members, counter-terrorism specialists and international child rights experts, leading to a fruitful exchange between them.

As a result of this process, the **Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context** was adopted by the GCTF members in September 2016 at a ministerial meeting with the aim of clarifying and operationalising the existing obligations of States when dealing with children alleged as, accused of or recognised as having infringed terrorism laws.

Content

The **Neuchâtel Memorandum** makes the following four main points:

First, it stresses the need for effective preventive measures. If further action is taken to prevent children from being radicalised and recruited by terrorist groups, States would be less compelled to deal with children who have engaged in criminal behaviour.

Second, there is no clear line between what is a perpetrator and what is a victim in this context. A child recruited by a terrorist group is at the same time a victim of a violation of international law and needs to be treated accordingly.

Third, the juvenile justice system for which the Neuchâtel Memorandum advocates should not be considered a soft option that would exclude the accountability for the wrong committed. It is about a child-sensitive response by a system that is geared towards rehabilitation and reintegration and that fully takes into account the rights and needs of children.

Lastly, the essence of the Neuchâtel Memorandum lies in the recognition that the protection of child rights and the preservation of public safety go hand in hand and are mutually reinforcing.

The Neuchâtel Memorandum is a call to States to respect not only human rights and the provisions specifically applicable to children, but also international humanitarian law, international

criminal law and the wide range of international juvenile justice standards. This protection applies regardless of the seriousness of the crime a child has allegedly committed.

Follow-up

The adoption of the Neuchâtel Memorandum in September 2016 was just a first step. Switzerland and other States and institutions are currently in the next phase, actively implementing the Neuchâtel Memorandum and further disseminating its content.

In 2017 and 2018, the IJJ conducted a series of workshops with prosecutors, judges, prison and law enforcement officials in the Middle East and North Africa, francophone Africa and the Horn of Africa to this end. Additional training sessions are planned in the Balkans and Southeast Asia as well as a culminating event at which participants from the previous workshops are expected to report on the progress made on the implementation of the Memorandum.

The UN Office on Drugs and Crime (UNODC) has done excellent work in drafting a handbook on children recruited and exploited by terrorist and violent extremist groups which will in the near future also be used in training courses and workshops.

To further strengthen compliance it is also important that the topic continue to be addressed by States within the UN. Until 2016, the review of the UN Global Counterterrorism Strategy did not explicitly mention the specific rights of children. Then in 2016, the General Assembly finally recognised that **effective, fair, humane, transparent and accountable criminal justice systems, taking into account, the rights and needs of children, in accordance with international law, [are] a fundamental basis of any strategy to counter terrorism**. The resolution goes on to state that **every child alleged as, accused of or recognized as having infringed the law [ö] should be treated in a manner consistent with his or her rights, dignity and needs**.

It is to be hoped that the discussions held at various levels will contribute to changing the perception within the counter-terrorism community on child rights and lastly strengthen child rights not only on paper but through concrete action and implementation.

Naïma Müller is a senior legal officer at the Directorate of International Law of the Swiss Federal Department of Foreign Affairs. She provides advice on counterterrorism issues from a human rights perspective, notably with regards to the work of the United Nations and the Global Counterterrorism Forum. Her areas of expertise include in particular children's rights, due process in the context of targeted sanctions of the UN Security Council and human rights-based approaches in preventing violent extremism. Before joining the Swiss Federal Department of Foreign Affairs in 2013, she was working in Brussels and Geneva with human rights organizations. n Geneva.

Child participation from theory to practice - listening to children and young people at J4C2018

For many years now, across the globe, professionals working with children and young people in social and legal fields have been trained on international laws and guidance on upholding the rights of children in contact with the law. Many of these are founded on ideas such as « best interest of the child » and ~~child participation~~. And, in theory, it works fine. But in a world where everything is in constant evolution, new ways and methods of working and building relationships with children and young people appear all the time. For the people reading this, who work with children in contact with the law: is it time to think more about the way you work with us, and what we think needs to change?

During the World Congress on Justice for Children in Paris in May 2018, a group of young people who have been in contact with the justice system, were able to speak and be listened to, by you the professionals and experts. We would like to thank you. But we ~~also~~ also like to remind you that it should not be an exception; listening to our views needs to become an everyday practice. We know our rights, and we have things to say. Here are some of the main messages that we felt were important to share with you.

“ Each one of us has come here over the past three days to listen, but also to speak. We have wanted to tell our stories if being in contact with the justice system, not because we want you to feel sorry for us, but because we are experts on this topic. Our experiences and our insights should be the starting point for your words and your actions.

“ We came together as a group of young people from different backgrounds and cultures to share our experiences of being in contact with the justice system. Despite the differences, we found many common points.

“ For example, in almost all of our experiences, we felt that we were not sufficiently listened to by justice professionals, such as judges, whose decisions directed the course of our lives, sometime for the worse.

“ We were glad to be able to share our views with a small group of adults and to have them really listen to us. Some people commented that we were brave for sharing our stories. But these sorts of comments show us that young people's voices are still rarely included. Young people's voices are still seen as the exception rather than the rule

“ One adult participant said that he had previously advocated for child and youth participation, but that, after listening to us, he would now be obliging participation. It is this shift in mentality that we would like to see.

“ As important as it is for you all to come together at events like this to learn and exchange, it is equally important for us young people who have been in contact with justice systems to be supported to come together, to learn from each other, and to think about new ways that we can be active in transforming the systems with you, working hand in hand.

“ On the basis of our personal experiences in the system, many of us have gone on to be actors in the system: educators, directors of associations, elected local representatives, young advocates. Our work is as much committed to transforming the system to make it better for children as yours is.

“ We don't only have to be a voice that shares our experiences, we have to enable actions for real change.

“ In this day and age, young people's involvement in events like this one should not be seen as radical or courageous. Including our presence and views should be routine, it should be planned from the beginning and not just an afterthought.

“ This event covered many new topics which were interesting to discover. But we feel that our presence was not enough, there should have been more opportunities for us to be seated at the table to share our views, instead of just sitting passively in the audience.

“ We feel that you here today need to involve young people in creating the spaces and approaches that seek to promote child and youth participation.

“ This includes everything from legislative reform, to training of professionals, to communicating about this work.

“ We feel that we have expertise in many of the topics discussed here over the past three days, but that this is not sufficiently acknowledged. We would like to see a shift in power relationships so that we are given the space and attention we deserve, and that is our right.

“ Children and young people are often spoken about as ~~the future~~ as the ~~voices~~

of tomorrow? We disagree. We think that we are the voices of today, we are the voices of now.

“ Child and youth participation can no longer be an empty concept or theory. It needs to become an everyday practice. ” It is clear for us that, as we approach the 30th anniversary of the Convention on the Rights of the Child, now is the time to move from theory to practice. If we want to change children's bad experiences tomorrow, we need to act today. The title of this year's World Congress is %Justice FOR Children+. Maybe next year's Congress will be entitled: %Justice WITH Children+.

In **conclusion**, we feel that it is important that children in contact with the justice system, can no longer be looked upon only sympathetically by the professionals, but seen as people with experience and supported to come together. We hope that this is the beginning of a new way of working together.

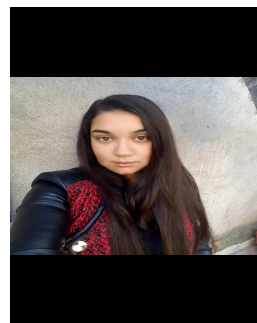
This article was written by the young people who follow and who held a workshop of their own. It was presented by them in the Closing Ceremony chaired by Professor Ton Liefwaard. *Editor*



Angela VASILE, is 18 years old and is from Romania. She loves to draw and wants to be one of the voices for her generation.



Fabio CAILLAUD worked in a social cooperative that aims to introduce people with social inconvenience into a working programme. After having lived during 4 years in a centre for minors and having been a user of this cooperative, Fabio has been involved with many projects in Italy with associations working with unaccompanied foreign minors in alternative care.



Georgiana MILITARU, is, from Romania and likes to read.



Joao BATEKA, 22 years old is a socio-educative trainer. Administrator for DCI France and REPAIRS. Président of Fertois Basket Ball.



Mamédi DIARRA, 24 years old is a Masters student in Law at Université Paris 1 Panthéon-Sorbonne - École de droit de la Sorbonne. He is a committed volunteer in many associations, including the President of the Association Générations d'Avenir ADEPAPE 94; president of the Association Appellation d'Origine Citoyenne (AOC) and Treasurer of the French Youth Forum.



Morven PETRIE, is a 21 year old professional from Scotland. She is involved in Vox Liminis's KIN project that uses creative arts to break down the stigma of family imprisonment.



Sandra KISSEL, 20 years old, is French. She studies languages and often visits museums and the theatre. She is convinced that we can make the world a better place by helping each other.

Closing address**Fatima Zaman**

Good Afternoon,

Distinguished guests, fellow speakers, Madam Parliamentarian, I am delighted to be with you all at this year's World Congress on Justice for Children.

The challenges facing young people and children, including disengagement from violent extremism, is not an issue we are unfamiliar with.

So much so, that many of us in this very room, have been children who have; witnessed, experienced, been subjected to or perpetrated extreme violence . perhaps?

Ladies and gentleman my name is Fatima Zaman and I am a counter extremist. I'd tell you what that means in just a moment, but first I'd like to tell you how I got here.

I'm British, I'm Bengali and I'm Muslim. For the intolerant of the world, I represent all that they despise. My very existence . a mixed national of Muslim heritage - is the cause of many forms of violence and terror, even on this continent.

So much so, that on Thursday 7 July 2005, I witnessed the most devastating terrorist attacks to ever face the United Kingdom.

It was a normal day, I had got up and gone to school. I remember it clearly because, that day I was already upset. My friend was going away for the summer. And so as I sat in my morning class dealing with the usual hum-drum of a school day, I heard the loudest roar, which can only be described as the sky tearing in half.

Then came the sirens. Repetitive, blaring and deafening. Then came the silence. I was yet to comprehend what had happened.

I watched the frenzy unfold around me. London had been bombed, simultaneously. I vaguely recall someone saying, the terrorists have finally invaded.

I had just seen terror at its peak. A direct attack on my community and my city. I saw the injured being carried away on stretchers and I saw what hate, anger and violence can do when materialized inside a bomb.

I alluded earlier that some of us in this auditorium may have witnessed violent extremism as a child. Really, I was speaking about myself.

Growing up I had already felt racial and gender based prejudice, but that day was the first day I felt the harsh hand of terror.

7/7 and the immediate aftermath of the attacks, was the first time violent extremism invaded my life. It scarred me, it affected me and it formed the basis of every choice I would make in my formative years.

Earlier, I told you what I do for a living. I am a living, breathing counter extremist. I became an activist, not out of choice but out of necessity. Because the factors that led to the bombings on 7/7 also led to my being here today.

I was faced with a choice, chose my Muslim identity and side with the extremists or my British identity and stand firmly against the former.

The choice was easy, simply no to violence.

That being said, as a child when faced with the biggest identity crisis of your life and being told that the cultures that exist within you will always be war, was a damaging thing.

In every corner I heard radical voices, I saw violence and hatred. Today we see this manifest in almost every community where there are children who vulnerable or at risk.

I saw communities divided, cohesion disappear and pave the way for a type of populism that now flavours the political undercurrent of almost every nation.

I decided it was my duty to take action! Having experienced the very real, direct and devastating impacts of terror, I was compelled to act, for the sake of my community, for the sake of my country and for the sake of humanity.

The choices I have made . for example; to challenge negative stereotypes, to dispel misinformation and to work for a more cohesive community . have delivered me the title of a next generation counter extremist.

Today, I work on the frontline, across global communities to prevent violent extremism among young men and women. So the question really is, how did I go from being a young girl of violence to a woman of peace?

What lessons can be learned from my experience and how can we as a collective, take effective steps to ensure we are preventing violence against the child and not merely responding to it?

Over the last three days, colleagues around the table and in this room have ideated about what causes violent extremism and the solutions to disengaging children.

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

I won't dwell too much on the definition or roots causes of violent extremism, because I think over the sessions in this forum you have all come up with your own version. Instead what I will say is this; for me extremism is the violent denial of diversity.

And I say this because, extremists violently tried to deny me of my diversity.

To answer the exam question set to me by the organisers, I naturally did what any young person would do.

I asked my peers what they think the solutions are? I'd like to take this opportunity to voice their views. I issued an online consultation to my network of young leaders and here's what WE have to say:

- Any initiative aimed at moving young people away from violence and terror has to be meaningful, long-term and sustainable.
- It has to focus less on securitization of the child. And I echo Graeme Simpson's words from earlier this week, in that we need to stop the security based approach to youth and the problem and start to recognise the creativity, resourcefulness and resilience of young people.

Which brings me neatly onto my next point. Young people ARE a resource. Any approach to countering violent extremism has to be done and delivered through the youth. And I will touch on this in just a moment.

Thirdly, sustainable solutions to ending Violent extremism and thus achieving long-term peace and justice, will only be achieved if there are three D's:

1. We need to change behaviour (what I call Desistence);
2. We need to alter beliefs (also known as Disengagement), and;
3. We need to refocus our efforts on tailored De-radicalisation of youth who have already engaged in terrorism.

So if that's the solution (and you heard it directly from the youth), then the next question is HOW? Again, I've got an answer for that too!

My role at the Kofi Annan Foundations, Extremely Together programme seeks to bring young people's involvement in violent extremism to an end, using the most innovative and validated responses to this phenomenon.

At ET, our approach is based on peer-to-peer engagement. A comprehensive model, of the youth, for the youth and by youth; focusing on a positive narrative of being extremely together against violent extremism.

We do this by using education as a tool of inoculation and a method to resist indoctrination from extremist groups. We've developed training

programmes around the world to stimulate and encourage debate around issues of identity, build resilience within communities and strengthen the resolve of individuals to challenge and dispel extremist propaganda.

Last year we created the first ever countering violent extremism tool-kit. A step-by-step guide for young people to put their initiative into practice and inspire further work in this field. Since launching, we have grown our network to 10,000 members, had over 2.5 million engagements online and delivered workshops in every continent.

We have proved, that when you combine the resourcefulness of young people, with our unwavering resilience and you can rapidly remedy the roots causes of violent extremism.

In a way, just like I disengaged myself from the violence I had witnessed as a child, my work at Foundation allows me to do this, at pace and at scale for many other young people across the world.

So I hope I have inspired you with a very personal story of change. I hope I have shown you what the solution is and how to implement it, from the perspective of the most important people in this world . Youth.

While we have seen many advances towards Justice for the Child, there is still so much to do.

Youth justice systems now need to be strengthened to consolidate progress, we need to equip young people with the tools to achieve this and we need to invest in initiatives to address every child's unique situation and ensure their protection in line with international standards.

So a word of caution; issues of meaningful engagement with youth will fall short if continue to securitise them.

Disengagement will occur if we ignore the value of peer-to-peer engagement - my own mini consultation for today's address means myself and my peers are in a constant state of interconnectedness. Make use of this.

And finally, if we stifle the creativity of young people, then we are handing a victory to extreme organisations and are responsible for the marginalisation of an entire generation.

As my mentor Kofi Annan oft says, you are never too young to lead - so I as I stand before you today I have one final plea:

To our leaders - let us lead.

Madam Parliamentarian - let us be heard, and;

To my peers: let's us make it count!

Fatima Zaman

Extremely Together, Young Leader, Kofi Annan Foundation

Paris Declaration, 30 May 2018



STRENGTHENING JUSTICE SYSTEMS FOR CHILDREN

Preamble

The 2018 World Congress on Justice for Children: Gathered over 800 participants from approximately 95 countries including children and young people, government officials, members of the judiciary and experts of law enforcement, representatives of United Nations agencies and programmes, child rights expert bodies, other international and regional organisations, civil society groups, non-governmental organisations, academic institutions and organisations of professionals working with or for children, at the UNESCO House in Paris from 28th . 30th May 2018. The Congress was jointly convened by six complementary civil society organisations prominent in the fields of juvenile and family justice systems: International Association of Youth and Family Judges and Magistrates (IAYFJM), Terre des hommes Foundation (Tdh), Penal Reform International (PRI), Child Rights International Network (CRIN), Defence for Children International (DCI), and the Judicial Training Institute of Belgium (IGO-IFJ).

Acknowledged the haut patronage of the Secretary General of UNESCO, the Patronage of the Council of Europe, the support of the Information for All Programme (IFAP) of UNESCO, and the collaboration of the Belgian French speaking and German speaking Commission for UNESCO.

Noted that the objectives of the event were to review progress in making the rights of children effective globally; to hear the views, opinions and considerations of children and young people on child justice; to bring together professionals from all over the world working on and interested in this topic; to review global trends towards juvenile and family justice including children's involvement in extreme violence and violent extremism, and the most innovative responses to this phenomenon; to pay special attention to defining effective ways to reduce juvenile offending and reoffending; and to improve protection and early prevention mechanisms for vulnerable children.

Recognised several pressing concerns within Juvenile and Family Justice including the

phenomenon of extreme violence and the growing challenges of violent extremism. It further recognised that recent research in criminology, child development and neuroscience suggests that active participation of children in judicial proceedings, as well as reintegration programmes, is a key to steering and keeping them away from extremism and reoffending as well as protecting them from (further) harm. Research also suggests that adolescents in transition from childhood into adulthood require special attention.

Listened to the views of a number of individuals from 15 to 24 years of age, often referred to as children and young people, coming from France, Italy, Romania and Scotland who participated in a special workshop convened during the World Congress. Their opinions, views and considerations are reflected in this Declaration and in a commitment from adult participants to the World Congress to take them into consideration in organising future events as well as, to the extent possible, in our daily practice as justice professionals.

Noted the vital role of the family as a key actor in all interventions affecting children as clearly stated in the 2016-17 IAYFJM %Guidelines on Children in Contact with the Justice System+; and further noted the Tdh and WANA Institute publication %Reconceptualising the drivers of violent extremism: an agenda for child & youth resilience+; which offers new insights for understanding and addressing prevention of violent extremism.

Acknowledged Sustainable Development Goal 16 which aims to promote access to justice for all; the United Nations (UN) Global Study on Children Deprived of their Liberty; and the %Handbook on Children Recruited and Exploited by Terrorist and Violent Extremism Groups: the Role of the Justice System+; published by the UN Office on Drugs and Crime (UNODC).

Further acknowledged the Neuchâtel Memorandum on Good Practices for Juvenile Justice in a Counterterrorism Context, developed by the Global Counterterrorism Forum, which provides guidance on the administration of juvenile justice for children alleged of national security or terrorism offences.

Recalled the Universal Declaration of Human Rights and all relevant international human rights and humanitarian laws and treaties, as well as numerous other international norms and standards

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

in the administration of justice, and in particular of juvenile justice.

Affirmed the important role of the Committee on the Rights of the Child in reviewing the implementation by States Parties to the Convention on the Rights of the Child of their obligations under the Convention, including in the field of juvenile justice and we noted the work of the Committee on the Rights of the Child especially the adoption of a number of General Comments relevant for juvenile and family justice as well as preventing violent extremism.

Acknowledged with appreciation the work of UN agencies working in the field of juvenile justice as well as regional inter-governmental institutions and various non-governmental organisations and civil society bodies including academic and religious institutions and community groups.

Recognised the work of the Special Representative of the Secretary-General on Violence Against Children and welcomed the joint UNODC/UNICEF Global Programme on Violence Against Children in the Field of Crime Prevention and Criminal Justice as a concrete step to protect all children who are in contact with the justice system from violence.

Declaration

The 2018 World Congress on Justice for Children declares the pressing need and importance of strengthening and improving justice systems for children including adopting legislation and policies which protect and safeguard children from violence, abuse, neglect and exploitation. To that end, it seeks urgent action in the following areas.

With respect to child rights, the World Congress:

Urges that children accused or suspected of committing violent extremism should be treated as children and afforded all rights under the Convention on the Rights of the Child, including due process. There should be

- a) strict adherence to the minimum age of recruitment of 18 by armed groups and armed forces;
- b) measures to ensure that counter-terrorist laws (or states of emergency), including coercive measures, data collection and information sharing, do not negatively affect the fundamental rights of children in the name of security; and
- c) steps taken to ensure that the prevention of violent extremism does not affect the right to freedom of religion for all children.

Reaffirms that much more needs to be done in promoting children's rights around the world and we specifically call for the abolition of inhumane sentencing, including use of the death penalty under any circumstances, physical punishment and the use of life sentences in any form.

Recognises that for children's rights to be fully respected, there must be a remedy for every rights violation and children must be provided free advice, assistance and representation to enable them to properly access justice.

Insists that bringing about change involves listening to children and ensuring their experiences and insights are a starting point for all discussions relating to justice for children. Children and young people's voices need to be heard and greater opportunities provided to them for sharing experiences and providing inputs to develop transformative policies and programmes.

Further urges that voices of children being properly heard within all levels of the justice system from prevention through arrest, court proceedings, sentencing, and reintegration, should be a priority, implemented using regular reviews carried out with and by children, using trained facilitators and relevant experts.

Calls for the development and implementation of strategies and programmes for dealing with children accused of either extreme violence and violent extremism that provide for an active and inclusive role for children and young people.

With respect to prevention and response, the World Congress:

Supports greater investments in prevention programmes, including strengthening the role of the family, community and school-based interventions, addressing the causes of possible criminality including exclusion, discrimination, alienation, lack of education, economic deprivation and dysfunctional families.

Notes that prevention programmes to ensure children do not take recourse to violent extremism should be implemented working alongside families and communities. Such programmes must recognise the multifaceted causes of violent extremism: alienation, discrimination, and marginalisation.

Draws attention to the growing threats to children as a result of cyber violence and the phenomenon of grooming and urge protection measures to be put in place, working with Governments, large companies and civil society, to ensure cyber safety

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

for children. Meanwhile, it is important to recognise the potential of the online environment and digital technologies for children's enjoyment of rights and freedoms, including the rights to information, participation and freedom of expression.

Reiterates that reducing pre-trial and other forms of detention is an urgent priority around the world, with too many children, both boys and girls, often being sent to prison and/or held in custody for minor and non-violent offences.

Urges greater use of diversion measures, which are proven to reduce reoffending and to improve the prospects of reintegration and restoration; such measures must be tailored to children's needs and should use multi-stakeholder and multi-disciplinary approaches to maximise effectiveness.

Draws attention to the importance of aftercare and reintegration for children both within the family and within the community, always keeping in mind the best interests of the child. Where a child has been removed from the family as a result of an intervention by the juvenile/youth or family court, it is essential that work with the family be carried out to ensure future reintegration.

Notes that successful aftercare and reintegration into society comes from community development programmes, social awareness about re-entry practices and family capacity building. Investments are urgently needed in all of these areas.

Calls for reintegration efforts which focus on a holistic and gender sensitive approach which are also anchored in local sustainability and which recognise the role and vulnerability of children in post-conflict reconstruction, particularly the situation of large numbers of returnees.

Further notes that protection and compensation measures need to be put in place for children who are victims of extreme violence; at the same time measures should be developed working with families and communities to ensure opportunities for rehabilitation and reintegration of children who have been actively involved in extreme violence.

With respect to systems strengthening, the World Congress:

Reaffirms the importance of multi-agency actions and interventions, bringing together the family, child protection agencies, justice personnel, (physical and mental) health and education specialists, and the importance of working closely with all children in conflict/contact with the law and/or in need of care and protection.

Urges the creation of gender-responsive approaches for girls in the justice system, given that current systems are built to cater predominantly for male offenders and fail to recognise that girls in the system have different experiences and requirements; this imbalance needs to be addressed.

Urges greater scrutiny of both formal and informal justice systems, ensuring fair and gender appropriate justice for children in every context and taking into consideration hybridity between formal and informal justice where this is feasible and desired; in this context the role of the family is a key component in making such systems function properly.

Confirms that follow-up to the Paris World Congress is essential and urges organisers to facilitate next steps including promoting the Paris Declaration, publishing and widely disseminating World Congress proceedings, and ensuring further discussions as well as review of concrete steps taken during the 2020 Kyoto Crime Congress being organised by UNODC.



In this article I set out a few words about comparative law, its relationship to the IAYFJM's aims and a related proposal for the website. I also take the opportunity to explain on the development of the Events webpage, which should also help comparisons to be made.

IAYFJM and Comparative Law

At an international level the objectives of IAYFJM include:

- Studying problems raised by the functioning of judicial authorities and organizations involved in the protection of children and the family;
- Ensuring the application of national and international principles governing those authorities and making them more widely known; and
- Examining legislation and systems designed for the protection of children and the family with a view to improving such systems both nationally and internationally.

In studying legal issues and also child development and protection (which are universal issues not confined within national borders) our statutes clearly relate well to the underlying purposes of comparative law which:

- Creates an international perspective on legal problems and involves an understanding of similarities and differences;
- Promotes knowledge of other models of justice and encourages interpreters of national laws to import best practice into the decisions they make;
- Facilitates understanding of the different social and cultural institutions of our world, lessening prejudice and improving international good will;
- Stimulates analysis of one's own system of law, contributing to its better drafting and development; and

- Supports development of international guidelines and standards and the work of international courts.

Problems related to childhood and the evolution of the concepts of childhood and family are common across the world. Deeply rooted problems are not purely national. Domestic violence, child abuse, relationship break-up and breakdown of families are issues that face every State and every civilized community. However, the cultural and environmental contexts in different States have considerable influence on local perception of issues and responses to them. They also influence the way in which problems emerge within communities.

These cultural and environmental characteristics should not obscure an understanding of universal issues. Given the international nature of family problems, a comparative law approach allows those working in child and family justice systems to be aware of solutions adopted by other countries and can offer a broader view of the issues under consideration. Of course, no solution offered by a foreign law can be applied directly in national law without proper adjustment and a prior feasibility study. However, knowledge of alternative solutions can open the mind of the jurist and offer a variety of solutions upon which to draw.

A comparative law perspective produces an outlook and a communication system that can help to give effect to the rights of children and promote their healthy mental and physical development in a constantly changing world.

Initiatives and the website

In the light of the above, IAYFJM is aiming

- To give concrete expression to the objectives of comparative law; and
- To put into practice the vision expressed by our President in her Inaugural speech:

One of our advantages as an international organisation is that, within our membership, we encompass knowledge and experience of a wide range of different judicial systems and approaches. Each approach has its strengths and weaknesses. [ō] And having such a broad view can help us see what is really fundamental in our quest to make the lives of children, young people and their families better.

Jurisprudence

A special section of the website has been created to offer an online platform where members can share significant judgements and case law on children and the family. We are planning sections

dedicated to each State in which the Association has members.

So, we are calling for help from all members to submit material. We ask you to send it accompanied by a short **abstract** in one of the three languages of our Association (English, French or Spanish) to help members understand the context and content of the main text.

Once I have received the material, I will add it to the website as soon as possible. A topic sentence for the material will appear in the first Jurisprudence screen and material will then be organised according to country of origin.

Please note that I would also welcome material relevant to the **principles** of family or child law or an outline describing the judicial systems for children in your country.

Events

The Events section of our website was created in order to make initiatives relating to family and child law known to all members.

Events include those initiatives promoted and organized by our Association, the National Associations affiliated to IAYFJM, IAYFJM regional sections and by any other bodies that cover our interests.

This page will also include **reports** of events organised or attended by IAYFJM, particularly when they might usefully stimulate a debate on the topic within our Association.

The Events webpage aims to raise awareness of initiatives and topics being discussed around the world and to encourage our members' participation in those events. This will help build knowledge, direct or indirect, about how other countries are discussing and dealing with issues relevant to our Association.

Anyone wishing to publicise an event in their own country is invited to send us relevant information. I will upload the material as soon as possible and will also add it to the home page if the event is significant.

Anyone who would like to participate in these initiatives should send their material, in at least one of the three languages of the Association, to the email address: jurisprudence@aimjf.org .

***Andrea Conti** is a Lawyer with a Ph.D. in Criminal Law and Criminal Procedure, Editor-in-chief of IAYFJM's website and one of IAYFJM's Young Representatives at the United Nations Department of Public Information.

Subscriptions 2018

I will soon send out e-mail requests for subscriptions to individual members (GBP 30; Euros 35; CHF 50 for the year 2018 as agreed at the General Assembly in Tunis in April 2010) and to National Associations.

May I take this opportunity to remind you of the ways in which you may pay:

1. by going to the website of the IAYFJM. 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**Andrea Conti**

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. A full list of interesting website is available on <http://www.aimjf.org/en/?/links/>. Please feel free to let us have similar links for future editions.

From	Topic	Website link
Child Rights Connect	A global child rights network connecting the daily lives of children to the UN.	http://www.childrightsconnect.org
CRIN The Child Rights Information Network	Global research, monitoring, policy and advocacy organization. Provide extensive resources and world-wide legal database. Periodic email newsletters (CRINmail) available in English, French, Spanish, Russian and Arabic. Sign up: https://www.crin.org/en/home/what-we-do/crinmail	https://www.crin.org
Defence for Children International	Global NGO, research and monitoring reports, practice tools, campaigns and child advocacy services. DCI are leading the NGO panel for the UN Global Study Children Deprived of Liberty: https://childrendeprivedofliberty.info	http://www.defenceforchildren.org
European Commission . Child Rights	Period round-up news email provided by the Commission Coordinator for the Rights of the Child, contact Margaret Tuite: EC-CHILD-RIGHTS@ec.europa.eu European e-justice portal . rights of the child: resources and training materials: Find it here	http://ec.europa.eu/justice/fundamental-rights/rights-child/index_en.htm
European Schoolnet	Network of 30 European Ministries of Education, based in Brussels, Belgium. Not-for-profit organisation, aims to bring innovation in teaching and learning to key stakeholders.	http://www.eun.org
IAYFJM	Website	http://www.aimjf.org/en/
IDE International Institute for the Rights of the Child	Offer training, awareness raising, publications, news and networking. Training includes Master of Advanced Studies in Child Rights, Interdisciplinary Master's Degree in Child Rights, specialist diplomas and certificates. Training opportunities in Switzerland as well as China, Southern Asia and West Africa.	http://www.childsrights.org/en/
IJJO International Juvenile Justice Observatory	Website: working towards a global juvenile justice without borders. 2018 International conference. Contact for newsletter, become a user or collaborator: oiij@oiij.org	http://www.oiij.org
OHCHR Office of the High Commissioner for Human Rights	Website for the United Nations Human Rights Office of the High Commissioner. Website offers news and events, publications, resources, issues, human rights by country, where OHCHR work, and human rights bodies.	http://www.ohchr.org
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. Reports and briefing resources published. Sign up to receive the PRI e-newsletter: e-newsletter	https://www.penalreform.org

INTERNATIONAL ASSOCIATION OF YOUTH AND FAMILY JUDGES AND MAGISTRATES

Ratify CRC	OP3	International coalition campaign for the ratification of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP3 CRC). Provide information about the ratification process, news and resources, including for children.	http://ratifyop3crc.org
TdH Terre Hommes	des	Swiss child relief agency, providing responses to child protection (exploitation, juvenile justice and migration), children's health and children in humanitarian crises. Newsletter: https://www.tdh.ch/en/contact-us	https://www.tdh.ch/fr
UNICEF Office Research Innocenti	of	UNICEF's dedicated research centre, delivering cutting-edge, policy-relevant research to equip UNICEF and the wider global community to deliver results for children. Latest research program focuses on adolescence, including cross-country analyses of mental health, gender and education: https://www.unicef-irc.org/publications/908?utm_source=whatsnew&utm_medium=article&utm_campaign=researchdigest6	https://www.unicef-irc.org
Vivere		Non-government organisation campaigning to abolish the death penalty and life imprisonment of children. Contact Mike Hoffman, founder and coordinator of Vivere: contact@vivere.ch	http://www.vivere.ch
American University - Washington College of Law		Academy on Human Rights and Humanitarian Law	https://www.wcl.american.edu/hra/academy/
Crime, Victim, Psicantropos		Website dedicated to victimology, including information, prevention and training. Topics cover law and social sciences (e.g., criminology, human rights, anthropology, forensics). Website is mainly in Italian, however some English, Dutch and Portuguese translations are available.	http://www.crimevictimpsicantropos.com/en/

Chronicle Chronique Crónica**Voice of the Association**

The Chronicle is the voice of the Association. It is published bi-annually in the three official languages of the Association- English, French and Spanish. The aim of the Editorial Board has been to develop the Chronicle into a forum of debate amongst those concerned with child and family issues, in the area of civil law concerning children and families, throughout the world

The Chronicle is a great source of learning, informing us of how others deal with problems which are similar to our own, and is invaluable for the dissemination of information received from contributions world wide.

With the support of all members of the Association, a network of contributors from around the world who provide us with articles on a regular basis is being built up. Members are aware of research being undertaken in their own country into issues concerning children and families. Some are involved in the preparation of new legislation while others have contacts with colleagues in Universities who are willing to contribute articles.

A resource of articles has been built up for publication in forthcoming issues. Articles are not published in chronological order or in order of receipt. Priority tends to be given to articles arising from major IAYFJM conferences or seminars; an effort is made to present articles which give insights into how systems in various countries throughout the world deal with child and family issues; some issues of the Chronicle focus on particular themes so that articles dealing with that theme get priority; finally, articles which are longer than the recommended length and/or require extensive editing may be left to one side until an appropriate slot is found for them

Contributions from all readers are welcome. Articles for publication must be submitted in English, French or Spanish. Although the Editorial Board undertakes

to have articles translated into all three languages- it would obviously be a great help if contributors could supply translations. Articles should, preferably, be 2000 - 3000 words in length. Items of Interest including news items, should be up to 800 words in length. Comments on those articles already published are also welcome. Articles and comments should be sent directly to the Editor-in-Chief. However, if this is not convenient, articles may be sent to any member of the editorial board at the e-mail addresses listed below.

From the January 2019 issue onwards, the Editor in Chief will be Judge Eduardo Rezende Melo (Brazil).



Articles for the Chronicle should be sent directly to Eduardo after August 15th 2018 at chronicle@aimjf.org

Avril Calder, Editor-in-Chief 2006-2018,

Articles in the Chronicle reflect the opinion(s) of the author(s) and not necessarily those of the Association.

Editorial Board

Dra Aleksandra Deanoska
Judge Viviane Primeau
Dra Magdalena Arczewska
Prof. Jean Trépanier
Dra Gabriela Ureta

aleksandra_deanoska@yahoo.com
viviane.primeau@judex.qc.ca
magdalena.arczewska@uw.edu.pl
jean.trepanier.2@umontreal.ce
gureta@vtr.net

Eduardo Rezende Melo has been a Judge in Brazil since 1991. He has Master degrees in Philosophy (Pontifical Catholic University of São Paulo) and in Advanced Studies in Children's Rights (University of Fribourg, Switzerland). He is currently engaged on his PhD Studies in Human Rights at the University of São Paulo. Former secretary general of the International Association of Youth and Family Judges and Magistrates and former president of the Brazilian Association of Child Protection and Youth Magistrates. Coordinator for Children's Rights Studies at the São Paulo State School for Magistrates.

Bureau/Executive/Consejo Ejecutivo 2018-2022

President	Judge Marta Pascual	Argentina	president@aimjf.org
Vice President	Judge Davide Stucki	U.S.A.	vicepresident@aimjf.org
Secretary General	Andréa Santos Souza, D.A.	Brazil	secretarygeneral@aimjf.org
Vice Secretary General	Judge Lise Gagnon	Canada	vicesecretarygeneral@aimjf.org
Treasurer	Judge Anne-Catherine Hatt, e	Switzerland	treasurer@aimjf.org

Council—2014-2018

President · Marta Pascual (Argentina)	Marie Pratte (Canada)
Vice-president · Davide Stucki (U.S.A.)	Gabriela Ureta (Chile)
Secretary General · Andrea S. Souza (Brazil)	Hervé Hamon (France)
Vice Sec Gen · Lise Gagnon (Canada)	Theresia Höynck (Germany)
Treasurer —Anne-Catherine Hatt (Switzerland)	Francesca Pricoco (Italy)
M. Imman Ali (Bangladesh)	Aleksandra Deanoska (Macedonia)
Godfrey Allen (England)	Margareeth Dam (Netherlands)
Eduardo Rezende Melo (Brazil)	Andrew Becroft (New-Zealand)
Françoise Mainil (Belgium)	Katarzyna Kosciów-Kowalczyk (Poland)
Pierre Rans (Belgium)	Karabo Ozah (South Africa)

The immediate Past President, Avril Calder, is an ex-officio member and acts in an advisory capacity.

SAVE THE DATE!

Safeguarding children's rights in immigration law

On 23 November 2018 the Institute of Immigration Law and the Department of Child Law of Leiden University, the Netherlands are organising an international conference on ~~Safeguarding children's~~ rights in immigration lawq

Millions of children are on the move worldwide, to flee, with or without their parents, from conflicts and wars. Throughout the migration process, children find themselves in a vulnerable position and they are entitled to special protections in accordance with the UN Convention on the Rights of the Child. However, in times of the securitization of migration control, the danger exists that the best interests of the child are not a primary consideration for governments and policy makers. To address this challenge of safeguarding children's rights in immigration law, we convene this conference.

The morning programme consists of plenary sessions with renowned experts in the field. In the afternoon, various aspects of immigration law and the protection of children's rights therein will be discussed in parallel workshops. Therefore, you are invited to submit your paper abstract and short biography (max. 250 words) to immigrationlaw@law.leidenuniv.nl by 31 July 2018. More information on the conference can be found here: <https://www.universiteitleiden.nl/en/news/2018/05/call-for-papers-safeguarding-children%E2%80%99s-rights-in-immigration-law>