

# Concluding Evaluation of the World Congress on Juvenile Justice, Geneva 2015

By Jean Zermatten\*

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

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

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

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

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

During that time, judicial systems have oscillated between retribution / repression and protection, swinging between the justice model and the protectionist model, depending on the political, ideological or humanitarian imperatives and the trends (not to say, fashions) of the moment.

Accordingly, the 20th century saw a long gyration between these two poles, driven by media sensationalism or the pretext of concern for public safety, on the one hand, and the need to protect the most vulnerable, on the other. A common outcome was social exclusion and the fatalistic conclusion: *'nothing works'*!

At this present juncture in the history of juvenile justice, all of us—whether we are acting on behalf of the state (as police officers, prosecutors, magistrates, social workers, prison

officers,...) or as private individuals (doctors, psychiatrists, lawyers,...) or on behalf of society or NGOs

(especially those who run open or closed institutions on behalf of the state or charities...)—must recognise that for a very long time we have been groping along by trial and error and that we have not acted in ways that were best for young people. **We must own up to our mistakes.**

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

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

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

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

It is our greatest challenge...

## **2. Some observations**

These five days of reflexion and discussion have shown us plenty of good things and some less good...we have seen advances, we have seen some questionable approaches, we have seen some pioneers, visionaries and dare-devils who have been opening up new avenues or building bridges—dare-devils, because you mustn't get vertigo when you're building a bridge.

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

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

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

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

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

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

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

We should certainly consider the role of the media, but not simply to attack journalists who promote the market over concern for human rights and to bemoan the fact that media professionals appear insensitive to issues of juvenile justice.

The *Riyadh Guidelines* maintain that it is the media's responsibility to avoid inflaming situations through the use of inappropriate language-- especially by labelling and

stigmatising—and that it is their duty, through objective reporting, to guide public opinion towards an understanding of the difficulties that a substantial number of young people face.

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

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

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

Yes, we can!

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

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

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

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

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

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

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

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

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

Another strand that I would like to mention is the importance (as Justice Winter showed) of using diversion or remission to avoid the justice system getting involved in minor offences, pre-delinquent behaviour or mere peccadilloes. This is a good way of avoiding stigmatising, exclusion and labelling. We should not deny ourselves this route.

There are many professionals who are better able than the criminal justice system to deal with actions that stem more from rudeness, poor behaviour or the adolescent temperament. Let us leave to the heavy machinery of the state only those offences that are really serious and, following this idea, take a different approach to a large proportion of the 'clients' now caught up in the official system of justice.

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

been done in a number of places, arising out of 'customary law', and let us draw on them, provided that we put these approaches within the framework of the rights of the child.

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

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

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

“ **girls** who continue to be discriminated against by the juvenile justice system: their small numbers mean that they are often denied a satisfactory response;

“ **migrants (whether accompanied or not)** who not only flood into some countries but are often exposed to crime and consequently are represented disproportionately in the criminal justice system. They have very special needs;

“ children in **situations of conflict or humanitarian crisis** who, as a result of their exposure to many dangers, are drawn into criminality often under pressure. They also deserve justice.

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

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

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