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2021 World Congress on Justice With Children

“Ensuring access to justice for all children: towards non-discriminatory and inclusive child justice systems”

PREPARATORY MEETING REPORT PAKISTAN

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Acronyms

Cr. C.P	Criminal Code of Procedure
CSO	Civil Society Organisations
GDP	Group Development Pakistan
JJSA	Juvenile Justice System Act 2018
KP	Khyber Pakhtunkhwa
LLB	Legum Baccalaureus
NJPMC	National Judicial Policy Making Committee
PPC	Pakistan Penal Code
SDGs	Sustainable Development Goals
UNCRC	United Nations Convention on the Rights of the Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNSRSG	United Nations Special Rapporteur to the Secretary-General
VAC	Violence Against Children

SUMMARY REPORT OF THE DISCUSSIONS

14th January 2021

Virtual - Zoom and Facebook

The preparatory national consultation in Pakistan for the World Congress on Justice with Children caught a lot of interest: it was viewed live online via Facebook by 1200 people and attended by approximately 87 participants via Zoom.

The viewers and participants included Civil Society Organizations (CSOs), lawyers, mental health specialists, judicial officers, children and youth¹ involved in promoting child justice in Pakistan in collaboration with the higher judiciary, the Federal Ministry of Law and Justice, the federal Ministry of Human Rights, the KP Child Protection & Welfare Commission, members of the National Commission on the Rights of the Child, concerned government officers from the Federal Ministry of Law and Justice, Federal Ministry of Human Rights, Khyber Pakhtunkhwa Child Protection and Welfare Commission as well as the Punjab Child Protection and Welfare Bureau, and the police.

The consultation held on 14th January 2021 aimed to create links and synergies at regional and national levels.

It mainly focused on two main topics:

- a)** equal access to justice for all children; and, related,
- b)** the right of the child to non-discrimination.

The panelists presented the context of the consultation, why Justice with Children was so important during the Covid19 pandemic, the legal framework prevailing in Pakistan, the challenges and the examples of good practices.

A question-answers session followed and the way forward was discussed.

Overall, the consultation highlighted that:

- a)** The array of laws that Pakistan has enacted pertaining to children's rights and processes concerning them present still some challenges in law enforcement that are to be tackled appropriately.
- b)** There is an unprecedented agenda and momentum for access to justice for children in Pakistan. The formation of the child courts, the willingness of the government and Civil Society to work on this and the fact that children are engaged in this reformative agenda is really important.

¹ One child panelist was also one of the advisory members for the CovidUnder19 child participatory global survey.

- c) The importance of the direct involvement of children in this Justice with Children reformative agenda. The opinions and insights of the children who participated in the consultation were particularly thanked.
- d) There is room and willingness from all concerned for improvement on the justice for children sector in country.

Welcome Address

Welcoming Participants

Ali Abbas, Communication Coordinator, Group Development Pakistan (GDP), welcomed the participants and introduced Barrister Jugnoo Kazmi, who moderated the consultation. He mentioned that Barrister Jugnoo Kazmi was an advocate in the High Court and the head of the Islamabad Chapter, Women in Law (WIL) initiative, a network promoting women's access to the legal profession and the justice sector. Barrister Jugnoo Kazmi then presented all the panellists and declared the consultation opened.

Introduction

Cédric Foussard, Advocacy and Global Learning Advisor, Terre des hommes (TDH)

"I'm delighted to be here with all of you today for this National Preparatory Meeting in Pakistan, for the next World Congress on Justice with Children. The next World Congress will take place in November 2021 and will be mainly online, co-hosted by the Mexican Supreme Court to give you an update. This event is organized by a consortium of organizations, in particular, the International Association of Youth and Family Judges and Magistrates, Penal Reform International, Institute of Children Rights (IDE) and our friends from United Nations Children's Fund (UNICEF) and from the Office of the UN Special Rapporteur on Violence Against Children (UNSRSG on VAC).

The last World Congress took place in Paris in 2018 and was co-organised by United Nations Educational, Scientific and Cultural Organization (UNESCO). It focused on the topic of children's involvement in violent extremism. This was the first time Civil Society Organisations (CSOs), policymakers and academics met together to speak about this topic. As a result of the Paris World Congress, we developed a Declaration of Paris² which feeds reflections of the Committee of the Rights of the Child and contributes to the United Nations global study on Children Deprived of Liberty.

In 2019, with the group of organisations mentioned before, we decided to launch a global initiative on Justice with Children³. This initiative aims to create links and synergies at regional and national levels. One of our main achievements was the launch of a global campaign on accelerating the release of children in the time of the Covid-19 pandemic⁴. We developed several recommendations and analysed practices from all over the world on the situation of children in detention during the Covid-19 pandemic.

The main result of the Preparatory Meetings at the international level gives us a strong interest in two main topics:

- a)** equal access to justice for all children; and, related,
- b)** the right of the child to non-discrimination.

Today, we are expecting your input on these main issues to bring it to the World Congress in November 2021."

² <https://www.tdh.ch/en/media-library/documents/world-congress-justice-children-2018-final-declaration>

³ <https://justicewithchildren.org/>

⁴ <https://justicewithchildren.org/covid-19-advocacy/>

Importance of Justice for Children in the Current Covid-19 Context

Dr Najat Maalla M'jid, United Nations Special Rapporteur to the Secretary-General on VAC

“Dear children, Excellences, Ladies and Gentlemen,

Thank you for this opportunity to join you in this national consultation to strengthen and advance justice for and with children, in preparation of the World Congress on Justice With Children. In my remarks today, I will focus on the importance of ensuring justice for children in the context of Covid 19.

The world is facing an unprecedented global health, humanitarian and socio-economic crisis. The pandemic and its mitigation measures have impacted children worldwide. In the words of the UNSG: what began as a health crisis risks evolving in a broader child rights crisis.

The challenges of ending violence against children were already immense before COVID-19 struck. The direct impact of the pandemic as well as mitigation measures taken are putting us even further behind.

Today, I want to share with you three messages:

The first message is that the pandemic and the responses from States' are harming children worldwide, with the poorest and vulnerable being affected the hardest.

- We know that the risk of children being exposed to violence both at home and online has increased.
- We know that children who are already vulnerable – including the poor, minorities/indigenous, refugees, migrants, children living on the street, internally displaced children, disabled children, children deprived of family care and deprived of liberty, children living in conflict-affected areas and humanitarian settings are more at risk to have no access to basic services and /or to be victims of violence, discrimination, and exploitation
- We know that children are arrested and detained because they are living/and working on streets because they are migrants, refugees because they are participating in unrest and social movements calling for governments to address inequality, injustice.
- We know that this pandemic is creating added family stresses related to job loss, isolation, and anxieties over health and finances.
- We know that this pandemic is having significant negative effects on children's mental health and wellbeing.

- We know that the mid and longer-term socio-economic crisis caused by COVID-19 will increase poverty and the risks of children experiencing violence and exploitation, with the most vulnerable being hit hardest.

Secondly, the pandemic and its mitigation measures are impacting the functioning of justice systems globally.

- The pandemic and its mitigation measures are impacting the timely, fair, and effective access to child-sensitive justice. Many justice institutions are already struggling to function as growing numbers of staff are forced to take time off work, courts are closing and reducing their operations which contributes to increased case backlogs and increasingly lengthy judicial and administrative proceedings.
- The rise in violence against children and GBV puts further demand on justice systems already limited and disrupted. And, the economic impacts of the pandemic will increase the burden on justice systems.
- The difficulty to access to justice services, in many countries, acutely affect children at risk or victims of violence, undocumented migrants, refugees and asylum seekers, children in detention including migrants and pretrial detainees.
- Additionally, the lack of functioning judicial oversight reduces monitoring and preventing torture and other ill-treatment in detention facilities.
- In conflict and crisis contexts, justice and security-related concerns are even more acute in the context of COVID-19. While specific guidance exists to address protection issues in humanitarian contexts during the pandemic, there is a need to review how justice and security institutions are functioning across the humanitarian-development nexus.

My third message is that the COVID-19 crisis is significantly affecting progress on the 2030 Agenda for Sustainable Development and calls for a renewed and sustainable investment on SDG 16 to achieve more peaceful, just and inclusive societies.

- The pandemic has revealed and exacerbated inequalities and injustices around the globe. It has given rise to justice challenges faced by vulnerable and marginalized children
- At the same time, the current situation has also spurred innovation, such as strengthening child helplines, solving cases online or over the phone instead of in court, releasing children who were deprived of liberty.
- I would like to commend the ongoing work in Pakistan in advancing justice for children, especially with piloting the 'child-friendly court' even during this pandemic. As the government of Pakistan prepares its second Voluntary National Review during the upcoming High-level Political Forum in July, I hope that these good examples will be shared in the report with the other

MemberStates.

- This crisis provides an opportunity to rethink and invest in new ways of building with and for children peaceful, just and inclusive societies.
- As we take stock of responses to the pandemic so far and look ahead to building back better afterwards, we can make justice systems more gender and child-sensitive and accessible to all children.
- We must start by learning the lessons from the first phase of the pandemic and integrating them into emergency preparedness plans now, including protocols for inter-agency cooperation and for how the administration of justice can continue to operate under such challenging conditions.
- We must ensure that justice and child protection services are identified as essential and life-saving – along with physical health, mental health, education – as part of a multisectoral and child rights-based response built on a solid and sustainable social protection system that will protect children and their caregivers from economic risks.
- We must recognize that strengthening justice for and with children is an investment and will be key to the recovery phase as we build back.
- More broadly, every State requires sustained and high levels of political commitment to implement justice for children at the national and local level. This needs to be underpinned by the establishment of a comprehensive and child-centred justice framework, including: securing and defending rights of children left behind; equal access to a child- and gender-sensitive social and justice services and remedies; deprivation of liberty only used as a matter of last resort, in exceptional circumstances and for the shortest possible period; priority given to alternatives to detention and institutionalization; tackling structural injustices and corruption; ending impunity, and empowering communities and children through access to appropriate information, legal aid and increasing participation within the justice system.
- Justice sector actors – from judges to police to legal aid providers – need to work together and with key actors of child protection and social systems.
- Justice sector actors can help change attitudes and behaviours, through promoting a switch from approaches that are quick to stigmatize and criminalize children – especially children from marginalized or poor backgrounds – to an approach where their rights are respected and their voices are heard.
- Empowering children and their families and enhancing their capacities to seek out redress for grievances is also critical to achieving access to justice for all children.

As a conclusion, this year the HLPF will review Sustainable Development Goal 16. It is a key moment for advocating and mobilizing all key stakeholders to ensure that all children without discrimination have equal access to justice and that justice in all its forms (penal, civil, social) meets the rights and needs of children, as enshrined in international human rights standards

As the UN Secretary-General has reminded us, the seriousness of the threats the world faces should not prevent us from seizing this “watershed moment for investment in critical public services and global public goods.”

Pakistan's Legal Framework for Justice with Children

Syed Miqdad Mehdi, Advocate High Court, Child Rights Specialist

“If we talk about the child protection system in Pakistan, unfortunately, we don't have a very comprehensive one. We have some laws and provisions so we will discuss these briefly.

If we look at the constitution, there are only a few provisions which are on fundamental rights. These concern slavery, children in hazardous places, and the right to education. There is no standard definition of a child.

In the Pakistan Penal Code, we have some provisions which protect children from abuse and exploitation. Offences against children include child pornography, cruelty to children, and sexual abuse. Again, there is no definition of the child in the Penal Code, which is unfortunate. A standard definition is necessary for both clarity and justice.

Although the Juvenile Justice System Act 2018 (JJSA 2018) has certain shortcomings, it is a very comprehensive law. It was developed after a long consultative process and has provisions to protect children who are in conflict with the law. Its special feature is that it provides for free legal aid to the victim and the accused child, both at the expense of the state. It also requests exclusive criminal courts, juvenile justice committees, a system of diversion, and the establishment of observation homes and rehabilitation centres. Some pilot child courts have been established as a result. The JJSA 2018 has provided a mechanism for the expedition of cases involving children in conflict with the law and allows for rapid justice.

In 2020, we passed the Zainab Alert Response and Recovery Act to protect children who go missing. It aims to expedite the process of complaint and early recovery of the child.

We also passed the Prevention of Trafficking in Persons Act 2018. This has a very good definition of trafficking and covers both internal and external trafficking.

Cyber-crimes and pornography:

- a)** We have the Prevention of Electronic Crimes Act 2016. This deals with cyber-crimes and pornography communicated through any medium.
- b)** Child pornography is also covered in the Pakistan Penal Code which holds liable those creating and those in possession of such material.

Our provinces have also come up with laws which are related to child protection:

- a)** The Punjab Destitute and Neglected Children Act 2004;
- b)** The Khyber Pakhtunkhwa Child Protection and Welfare Act 2010;
- c)** The Sindh Child Protection Authority Act 2011;
- d)** The Sindh Children Act 1955;
- e)** The Balochistan Child Protection Act 2016; and
- f)** The Islamabad Capital Territory Child Protection Act 2018.

Child labour and domestic issues:

- a)** Employment of Children Act 1991, recently amended to deal with child domestic labour; and
- b)** Provincial laws such as The Punjab Domestic Workers Act 2019 and The Sindh Prohibition of Employment of Children Act 2017. But in three provinces - Sindh, KP, Balochistan and Islamabad - we don't have any laws to specifically deal with child domestic labour. This is a relevant issue to be addressed.

Child marriage and corporal punishment:

- a)** The Child Marriage Restraint Act 1929 - this is an old piece of legislation. It has a difficult complaint process, light penalties and conviction under this law are rare. Sindh has, however, made more progressive laws.
- b)** Sindh is the only province with legislation dealing with the issue of corporal punishment. This issue has been linked with the high dropout rate from school systems."

Challenges related to Justice with Children

Ahmar Majeed, Advocate High Court, Child Rights Specialist

"I will be mostly discussing the practical side - the issues and challenges children face in the criminal justice system when they come to court and interact with police.

We now have the fantastic Juvenile Justice System Act 2018 which covers many issues. However, this Act poses issues of practicality because we do not have the necessary tools at federal or provincial government levels for the implementation of the Act. As a result, most of the law is not implemented.

- a)** The law provides a legal aid mechanism for juveniles but there are no tools to do this so legal aid is not being provided to children or victims as it should.
- b)** The law says that, within 24 hours of a child's arrest, a lawyer has to share the rights of the juvenile with him when he/she is in detention. However, we have no mechanism for doing so and lawyers have not been appointed for this purpose.
- c)** The law requires exclusive juvenile courts to be established. However, we do not have many of such courts and usually existing courts have been given additional power to act as juvenile courts. This does not provide the exclusivity which is required under the law.
- d)** The law requires the implementation of diversion. However, we only have a few juvenile justice committees notified in the provinces which means that diversion proceedings cannot take place and the justice system fails to implement the law.
- e)** The structures required under the law have not been established thus far. For example, the law says that a child cannot be kept inside a police station when he is arrested and must be sent to an observation room. Since we do not have a single observation room established in Pakistan, every arrested child is usually sent to the same police station as adults and there are no separate cells for juveniles.
- f)** The law requires juvenile rehabilitation centres to be established for convicted children. Unfortunately, none have been established so far.
- g)** The law is strict about the disclosure of the identity of the juvenile but the courts fail to take action when the identity of the juvenile is revealed in the media. Social media poses a serious problem because, although the intentions may be good, pictures of the juvenile are spread. This puts the juvenile at risk.
- h)** The role of probation officers has been enhanced under the law. They have also been given an additional role allowing for their participation during the investigation process. They are also able to provide a comprehensive report on the juvenile at the request of the judge. However,

probation officers are very far and few with very limited resources.

- i)** With regard to the victims, we have recently had the Anti-Rape (Investigation and Trial) Ordinance 2020 and a criminal amendment Act in which rape has been redefined as gender-neutral. But, unfortunately, the law has been passed through an ordinance, so the life of the law is only 120 days. Parliament has to pass an Act, otherwise, the law will lapse. Under this law, a lot of structures and systems have been introduced but nothing has been established. Special courts, anti-rape crisis cells and designated medical officers are required for immediate and speedy examinations, but none of these has been established.
- j)** Legal aid is to be provided under The Legal Aid and Justice Authority Act 2020. But this Act has not taken off yet.
- k)** Witness Protection, Security and Benefit Act 2017 provides for witness protection, but we have not seen any major programmes being run.
- l)** The medico-legal investigation is required for any sexual offence and rape offence. Though they are trying to address the issue under the new rape ordinance, medico-legal officers aren't always available around the clock in designated medical hospitals. Balochistan also does not have a DNA forensics lab.
- m)** The police investigation is a problem. They are not trained on how to handle cases relating to juveniles or how to get statements from a minor that has been sexually abused. They are not aware of the legislative developments happening in Pakistan. The police department does not have a system to regularly train their investigators."

Example of Good Practices

Valerie Khan, Executive Director, Group Development Pakistan

"In May 2018 a major law was enacted: the Juvenile Justice System Act. This legal reform set the tune for further taking into consideration the need of the children in conflict and in contact with the law.

In December 2017, the then Chief Justice of the Lahore High Court, Mr Mansoor Ali Shah, decided to pilot a juvenile court. To do that, he requested our support, and we asked for the help of schools. Roots IVY was the first school to respond. On 19 December 2019, the first juvenile court and the child-sensitive court under the JJSA 2018 was established in Lahore session court. Based on the performance assessment of that court - which was a positive one -, the National Judicial Policymaking Committee, in June 2019, decided to further establish and pilot child courts. Till date, we have so far seven pilot child courts that are established in the country and two more will be established in Karachi this month.

In addition to establishing those courts, the higher judiciary also decided that judicial officials should

betraigned on child rights, child protection and child justice, which we did. The result of this is that we really had a state-led process which was initially bolstered by the government through the introduction of legislation, and then by the judiciary through the enforcement of this legislation. Judges, lawyers, prosecutors, magistrates, police and child probation officers were trained. The result is that when we look at how those courts are functioning, there is a shift and we look at existing structures where secondary victimisation of the children does not occur. We see that practices within the court are in line with international child safeguarding standards. We are aware of the fact that those positive results are limited largely to the structures we have piloted in collaboration with the judiciary. But it has set up a model that is currently being studied by provincial governments to be improved upon and replicated further.

We see that the three pillars of democracy have worked together to improve the awareness of the population and decision-makers on child justice, the relevant legislation and its enforcement. To do this, we had the KP government synergise with us to make awareness messages against child abuse, how to report child abuse and what the relevant courts are. This allows for the provision of a kind of guide for both parents and children. We had musicians and celebrities who helped us guide parents on do's and don'ts. We also had the Federal Minister of Law and Justice partnering to listen to children's requests and to use arts such as movies, music or painting to discuss how to improve child justice. That has had a tangible effect as, when the children met the Federal Minister of Law and Justice in October 2019, they requested him to establish a child court in their city. We now have one approved by the Federal Cabinet.

There has been an unprecedented historical momentum from the judiciary and the government at a federal and provincial level to promote justice with children and to respond to cases of child abuse in a child and gender-sensitive manner in collaboration with the CSOs. Before this, no child rights organisation had been invited to sit in a meeting of the NJPMC and neither had they attempted to use arts for youth input on the topic. This ongoing training and capacity-building programme with the judicial academies is also critical to not only increase the level of knowledge among actors of justice but also to transform behaviour. To give you a tangible example, the judges that have been trained are issuing court orders demanding diversion, juvenile justice committees, observation homes and rehabilitation centres. KP has stated establishing child protection institutions and child courts, including virtual ones to ensure access to justice during the COVID-19 pandemic. The proactiveness exhibited by the state and judiciary and their communication with the executive, a tripartite synergy, for the development of domestic legislation and the enforcement of child rights in line with international commitments, is historical.

The government and the judiciary and the parliament have agreed to collaborate with the Civil Society and allow data collection. We have information to assess the performance of the piloted child courts and to assess the impact of the training. Based on that data, on scientific evidence, we can identify what is working well and what needs further improvement. This is called evidence-based and informed legal and policy reform. This is the only way forward.

Finally, the judiciary and the government have agreed to follow a child-participatory approach, which the children will tell you more about."

Child Participatory Processes to Establish Child Courts

Child & Youth Delegates

Ali Hassan, 17: “I was involved in the process of the making of child courts in KP. Our job was to find child-friendly spaces for a child court, to select a suitable colour scheme for it and to select play areas. The aim was to provide a child-friendly space in line with international standards. There are seven childcourts all over Pakistan. One was established in a newly revived area. Before its inauguration, these courts were in a miserable condition. Now they have been made so that children do not feel fearful and receive speedy justice. I also participated in an activism activity to which children and the Minister of Law and Justice were invited. This gave children an opportunity to ask questions and present concerns to the Minister with regards to child justice. I observed that the comments were appreciated, and we received a positive response as our suggestions were truly heard. I am determined to persevere in the struggle for child justice.”

Khadija Malik, 20: “I am a student of LLB Honours at Roots IVY. Back in December 2017, the first-ever specific juvenile court was established in Lahore in collaboration with the Lahore High Court. Back in 2017, we had arranged a collection of toys, books and food and sent them to Lahore. In 2018, we got invited to a human rights conference. After attending that, I realised that we needed to look for the most vulnerable members of society. I started looking after 5 orphan families. I got them admitted to schools and visited them every week. When I started working with them, I saw the problems. One girl was working at someone's house and she was being tortured. I took action against this and solved it and registered an FIR⁵. The Civil Society and the Pakistan government need to join hands in order to protect children.”

Asad Ullah, 19: “I am a student of Roots IVY. A fully positive environment can be made for children. Trained teachers should be appointed to help children in every phase. We should present real-life examples of people who were once involved in crime, living a happy and prosperous life now.”

⁵ First Information Report: this is the first piece of information recorded and documented by the Investigation Officer of the concerned police station whenever a citizen wants to file a complaint for an alleged offense. It also constitutes a critical piece of evidence.

Interactive Session, Way Forward

Questions/Answers session

- ❖ What efforts are being made to expand participatory processes in order to represent the voices of such children, so that the laws affecting them are passed based on their reality?

Valerie Khan: Currently, the state is following an evidence-based policy for legal reform with regards to justice with children. This entails the child courts performance assessment as well as interviewing children to assess their experience in courts. Community sessions have also been organized to collect feedback. This feedback is to be compiled as a report and a kind of technical brief to be shared with the policy and law-makers to improve and enforce the necessary changes.

- ❖ What efforts are being taken to ensure basic rights to children who are stateless? Due to the lack of identity, they are not enrolled in educational institutions; their families live in a dire situation; health and safety is an issue for them as well. Are there any measures to integrate them in a way they can access fundamental rights?

Sharafat Ali: Pakistan does not have an answer to this issue. This issue existed even in 2009 when a report on CRC was being written, and in 2016 as well. This has been one of the toughest questions because there is no clear answer. Another pertinent question related to this is of the third generation of Afghan refugees who are still refugees despite having been born here. And, so, the question is wider than one of the stateless individuals.

- ❖ How do you plan to address the lack of special treatment or attention with regards to the unavailability of special funds for child courts and the lack of stationary or separate staff employed?

Dr Tariq Hassan: Countries develop legislation consistently. It starts with having legislation and then building upon that. The problems you have mentioned are rooted in a resource issue. However, a lot of work is being done. as per Valerie and a lot more does, of course, need to be done. Research, manpower and other resources are required for this purpose?

- ❖ Dr Hassan's opinion was requested on restorative justice practices with child victims and offenders.

Dr Hassan: I cannot give a clear answer to Pakistan because I do not have enough knowledge of the local situation. However, there is a need to monitor practices on an ongoing-basis and perhaps select a number of cases on a 6 monthly basis. Judicial exams should require higher awareness on child justice by including more questions on juvenile laws and cases on issues such as the capacity to plead etc. Law conferences must have psychiatrists and other speakers present.

- ❖ "I want to share my experience. I have been working at Camp Jail with juveniles for the last 15 years. Their documents never mention the true age of children when they are clearly minors. This causes

them to lose all their rights under the JJSA. They have no liaison with probation officers and most children are street children with no support systems. They are usually arrested based on unknown FIRs. The issue in the system is that police officers are not penalized for any of this. As a result, courts do not consider their juvenile status, especially since the prosecutors do not discuss this issue in court when they do bother showing up. The judges also lack seriousness in their responses. This issue related to age is still being faced despite the JJSA”.

Sharafat Ali: We must understand that the JJSA is new and that the obligatory window of release or arrest for a juvenile is very limited. Almost every child below the age of 16 can get away from detention before the trial. Children between 16 and 18 years of age have a very small chance of being denied bail unless a major offence is in question.

Secondly, the police are certainly generally inclined towards penning down a majority age for children in order to avoid the procedures pertaining to juveniles. However, the JJSA keeps this issue in check as it imposes a duty on the police and on courts to assess the juvenile’s age under court supervision within 24 hours.

Thirdly, the JJSA provides for up to 3 years of imprisonment for a faulty investigation. There are penalties for police and public officers in cases of sexual offences as well.

So, even if the JJSA does not cover everything, it certainly addresses the issue of faulty investigations.

- ❖ Dr Hassan mentioned adverse childhood experiences. What exactly does the rehabilitation process for such experiences entail?

Dr Hassan: It is a matter of attempting to stabilize the individual. This includes the involvement of a social worker as well as educating the family on the issue and process. This becomes the government's duty. Families usually may not be aware of certain issues that can cause destabilization and how to help juveniles manage that trauma. It is above the ages of 3 or 4 that you can predict difficulties developing in children.

- ❖ This participant had 3 points to make:

- a) An unjust law is no law at all. The minimum age for crime is 7 and some say that it is the age of 14. But what does a 7-year-old child know about the nature of the act and the consequences? In Pakistan where some kids are not able to prove their ages because of the lack of documentation, children must go through trials.
- b) No specific time limit is given to courts for these cases.
- c) Education is limited so why has the government not made laws for children to be able to raise their voices and be aware of their rights?

Valerie Khan: As per the JJSA, and PPC, the minimum age for criminal responsibility is 10 years and then the second threshold is 10-14 years of age at the discretion of the judge based on the child's ability to have knowledge of the consequences of the act. There is a plan to suggest a

change of the minimum age to 14 as per international standards laid down in the general comment 24 of the UNCRC. In Mardan, for example, a child's case was not heard because he was less than 10 years of age. This shows that a change in judicial behaviour is slowly coming about.

Now, any document can be used to prove a child's age, it is not limited to a birth certificate anymore and Pakistan is working with UNICEF to improve birth registrations.

Attempts are being made to add child rights and child protection to the curriculum. The state, different education departments and the Ministry of Education must work together for this. Initiatives have been organised in schools where booklets and curricular from different child rights organizations have been distributed to teach children about their rights and the justice system.

❖ Does the JJSA include penalties for a person who incites a child to commit a crime?

Sharafat Ali: The JJSA only includes the punishment for a faulty investigation but otherwise it is meant to provide procedural information.

Way Forward

Dr Tariq Hassan, Forensic Psychiatrist

“My job is to be the liaison between mental health and the justice system. My job is to provide opinionsto the court in relation to people who have a mental health issue, who are in conflict with the law, and interpret that mental health issue and the offence in relation to legislation so that the judges can makean informed disposition. My job is to understand the law and psychiatry.

I've been working with the Pakistan Psychiatric Society for the last seven to eight years and we haverecently created a forensic section. I've been also working with the Islamabad High Court Bar Association and the Federal Judicial Academy in capacity-building with regards to forensic psychiatry and its application.

The issues around adverse childhood experiences are something which does not require too muchscience but there is plenty of evidence that physical, emotional, sexual abuse, neglect, household dysfunction, and substance abuse can all have a negative effect on the developing child. The formativeyears between 12-17 are the most seriously affected as it is the period during which the identity isformed. Hence, when you are looking at reformatory justice, it is important that the justice system is there to reduce and stabilise childhood adverse experiences, as opposed to aggravating them. This is necessary to ensure that children become healthy members of society.

The Juvenile Justice System Act 2018 lays a good framework. You are looking at rehabilitation, reintegration; you want fair and proportionate accountability, timely intervention and prompt enforcement. But even though we are looking at the needs of the child, we also need to keep in mind the victims in this process. When you are looking at any disposition, the jail has to always be a lastresort. We use other extrajudicial measures to try and divert children away from the criminal justicesystem. The measures proposed in the JJSA 2018 are the kind of diversion frameworks needed

to allow the child to develop the relevant positive education through rehabilitation, as opposed to getting them within the justice system. Managing this properly in their youth is an important investment for them to become productive members of society.”

Waleed Mahmood, Roots Child Rights Society

“I would like to talk about child incarceration. According to a report published by UNICEF in 2016, there were over one million children imprisoned around the world. The biggest reason for this is the low age of criminal responsibility set across justice systems around the world. Furthermore, in many countries, many children are thrown into the labour force, are underpaid, overworked and often neglected. This leads to many of them joining gangs and criminal organisations as they do not have a support system. I would like to propose that youth correction institutions around the world need serious reform. There is not enough focus on rehabilitation and too much on punishment. These institutions should focus more on enlightenment and education, to make these children aware of their responsibilities as the youth of their respective nations.”

Waheed Ahmad, Advocate High Court, Child Justice Specialist

“I want to share my experience because for the last 15 years I have been working with juveniles. I have seen that in most cases, the police never mention the right age of the children in their identification papers. The juveniles are always stated to be older - usually 19-20. For this reason, they lose all their rights mentioned in the Juvenile Justice System Act. So, there is a big problem in our system as there is no penalty where the police do not mention the age of juveniles and do not inform probation officers. Even the courts are not going to consider the rights of juveniles as they do not see a child.”

Sharafat Ali, Advocate High Court, child rights and child justice expert

“I would differ with the previous speaker on a few points. Firstly, the window for not releasing a juvenile or arresting a juvenile is actually very limited. Below the age of 16, there are chances for every juvenile to get bail. Between the ages of 16 and 18, you would only not get bail in serious offences like murder, rape or terrorism. So, the law does allow for children to not be kept in remand.

Secondly, police are generally inclined towards stating juveniles as older so they do not have to go through all the processes required for a juvenile. But, at the same time, the Juvenile Justice System Act does have a check on the police. For instance, the Act empowers the court to give its findings on the age of a juvenile.

Finally, I would like to comment that the Act clearly provides for up to three years' imprisonment for faulty investigation. “

Barrister Jugnoo Kazmi

"I can summarise the recommendations for the way forward:

- a) Resource allocation;
- b) More capacity-building;
- c) More legal and policy reforms;
- d) Investment in mental health; and
- e) Strengthening children's participation."

Child Justice and Rule of Law

Angela Vigil, Pro-Bono Partner and Executive Director of Pro-Bono Practice, Baker McKenzie

"I come from a law firm that is focused on business, but our pro-bono work is very much focused on children. My purpose today is to talk about the connection between child rights and the rule of law.

I assume the following is very obvious: the improvement of the child rights system and the implementation of what we've been talking about all day, directly improve the rule of law for any country and contributes to the path towards meeting sustainable development goals that all nations have pledged to meet. That seems obvious, but when you look into how it is such a clear and easy way for all nations to improve their rule of law, it seems a really important statement to make.

The rights enshrined in the Convention of the Rights of the Child signed by Pakistan run through all the sustainable development goals. They all work together in building a strong, transparent and meaningful child rights system that does what it promises.

When you look at the rule of law indexes that examine all nations around the world, the number one factor that affects whether or not the rule of law goes up or down is fundamental rights. We are talking about basic statements of equal treatment, the absence of discrimination and access to justice. Sustainable development goals talk about due process, speedy trials, properly identifying the age of children and keeping them in youth justice systems. When rule of law indexes evaluate all of our systems, they look at criminal systems generally and that includes juvenile justice systems.

Here is our challenge. In child rights, it is not just laws, it is also evidentiary-based, multi-disciplinary work. It is not just laws and lawyers - you need the voice of children and youth; you need to look at the disciplines of psychology, medicine and others that need to be part of an active and positive juvenile justice system. So, better child rights systems, more evidence-based child rights systems, improve our fundamental rights and therefore the rule of law. Improvements in Pakistan are going in

that direction.”

Vote of Thanks

Marta Gil, MENA Regional Programme Coordinator – Access to Justice (A2J), *Terre des hommes*

“A thank you to everyone. I would like to share some of the highlights from each of the panellists.

- a) One advocate highlighted the array of laws that Pakistan has for children. It was highlighted by our lawyer panellist that there are still some challenges in law enforcement.
- b) There is an unprecedented agenda and momentum for access to justice for children. The formation of the child courts, the willingness of the government and Civil Society to work on this and the fact that children are engaged in this reformative agenda are really important.
- c) A special thanks to the children for their opinions and insights, without them, justice with children won’t make any sense.
- d) There are room and willingness for improvement. There are children and youth committed to working on access to justice.”



Annex 1: World Congress Concept Note

WORLD CONGRESS ON JUSTICE WITH CHILDREN

A one-week online event on child justice

15 to 20 November 2021

“Ensuring access to justice for all children: towards non-discriminatory and inclusive child justice systems”

ABOUT THE WORLD CONGRESSES ON JUSTICE WITH CHILDREN

World Congresses on Justice With Children provide dedicated and **interactive spaces for children and youth, policy makers and justice system stakeholders, academics, civil society and UN representatives**, and other experts and practitioners. They are designed to:

- **Promote fair and appropriate justice systems** for and with children worldwide.
- Provide space for professionals to **exchange best practices, foster scientific cooperation, formulate policy recommendations, and raise awareness of** justice for children.
- **Support the operational implementation of international instruments and standards** related to the rights of children and young people in conflict with the law.



The **last World Congress** took place at the UNESCO headquarters, in Paris-France (May 2018), with the theme “**Strengthening Justice Systems for children: Challenges, including disengagement from violent extremism**”.



Over 3 days, nearly 1,000 people from 100 different countries participated in 28 workshops and more than 10 plenary sessions. A key output was the Paris Declaration on the prevention of child involvement in violent extremism. See: <https://justicewithchildren.org/world-congress/>. Previous Congresses were held in Geneva (2015), co-organised by the Swiss Federal Ministry of Justice, and in Lima (2009), focusing on restorative justice for children.

The World Congresses are organised by the **Global Initiative on Justice With Children** to address the most current issues related to **children in contact and/or conflict with the law**. The **Global Initiative is led by** a consortium of international organisations, including **Terre des hommes, Penal Reform International, International Association of Youth and Family Judges and**

Magistrates and International Institute for the Rights of the Child (IDE). The Global Initiative is articulated through a double-pronged approach:

- a Justice With Children Global Milestone through the **World Congresses on Justice With Children**
- a global community of practitioners mobilised through the [Justice With Children online platform](#)

The next World Congress will take place online from the 15th to 20th of **November 2021** and is hosted by the federal Mexican Supreme Court of Justice, with technical support from UNICEF, the Office of the Special Representative of the Secretary-General on Violence Against Children (OSRSG-VAC), The Office of the High Commissioner for Human Rights (OHCHR); and the United Nations Office on Drugs and Crime (UNODC). The Congress receives Pro-bono support from Baker Mackenzie and is held under the auspices of the Council of Europe. Its theme is **“Ensuring access to justice for all children: towards non-discriminatory and inclusive child justice systems”**

“State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

- Article 2, United Nations Convention on the Rights of the Child

Context:

Children in contact with justice systems – as victims, witnesses, or offenders – need special care and protection. These children are amongst those who are the most vulnerable to having their rights violated. They may face deprivation of liberty that harms their physical and psychological well-being; be denied the right to legal representation and fair judicial proceedings; be separated from their parents, family, or guardians; and experience stigma from the communities that prevent their reintegration and healing. In addition, they may experience **discrimination from the justice system itself.**

Many children across the globe, in diverse contexts and settings, face multiple and intersecting forms of discrimination due to a range of factors, including ethnic and/or religious origins; disability; socio-economic status; gender, gender identity, and/or sexual orientation; migrant status; or their status as survivors of human trafficking. Discrimination typically results in social exclusion and the lack of access to services and resources.

Both the Universal Declaration of Human Rights (UDHR) and United Nations Convention on the Rights of the Child (UNCRC) identify equality and non-discrimination as fundamental principles for respecting, fulfilling, and protecting the rights of children. Non-discrimination is a common principle and foundation for almost all legal instruments, in both national and international law. However, structural discrimination, inequalities, and power dynamics act to constrain or restrain

equitable access to rights for all children. This is a daily reality for many children, who – not only excluded from basic services – are significantly more likely to be caught up in justice systems with weaker procedural safeguards, undermining the principles of equality and exposing them to a vicious cycle of social exclusion.

Discrimination also profoundly impacts children's rights to have their voices heard and their opinions listened to, particularly in matters that affect them. There is very little information about **children's perspectives or voices** in justice systems, on how they see or cope with discrimination and address it, and to what extent such discrimination impacts their ability to be treated equally with dignity and respect. Interviews with children undertaken to inform the UN Global Study on Children Deprived of Liberty revealed that children are acutely aware of discriminatory practices, with many reporting that they had faced harassment, stigmatisation, low self-esteem, and exclusion, all of which have negative consequences for the child's holistic development.

2021 World Congress Preparatory Meetings:

A total of 13 Preparatory meetings were held between 2019 and 2021, in person and virtually, both at the Regional level (including in North America, the Middle East and North Africa, Europe) and at the National level (including in Cambodia, China, India, Lebanon, Pakistan, Singapore, Thailand and the United States of America) to discuss and define the main topics and priorities for the 2021 World Congress. Participants demonstrated a particular interest in **the implementation of Article 2 of the UNCRC**, which focuses on the child's right to non-discrimination and equality. This will be the focus of the 2021 World Congress, which will explore the situation of children in contact with the law in the most vulnerable situations, such as children from religious and ethnic minorities, LGBTQIA+ children, girls, migrant children, children with disabilities, and all those who experience discrimination in the administration of justice.

2021 World Congress Main Objective:

To address this complex issue, the 2021 World Congress will focus on **exchanging practice-oriented strategies to:**

- Reduce discrimination that undermines access to – and the quality of – justice systems; and
- Ensure that all children are guaranteed equal treatment in the eyes of the law.

It will share **promising practices** from diverse contexts and settings that tackle discrimination, prevent situations that lead children and youth to commit offences, and reduce child and youth contact with the justice system. It will showcase examples of effective responses to prevent recidivism through programmes focused on restorative justice, rehabilitation, and reintegration.

The 2021 World Congress will offer a dedicated space for **policy makers and justice system stakeholders, academics, civil society and UN representatives, children and youth** and other

experts and practitioners to explore these challenging issues and to enhance our knowledge of – and commitment to the creation of – fair and appropriate child justice systems globally. It will provide technical expertise to support the operational implementation of international laws and standards related to the rights of children and youth in conflict with the law.

2021 World Congress Agenda:

Co-organised by the federal Mexican Supreme Court of Justice, the 2021 World Congress expects thousands of experts and child delegates to participate from all across the world. Over five days, academics, policy makers, judges and magistrates, and civil society representatives will participate in and contribute to global and regional plenary sessions and action-oriented workshops consisting of panel discussions, certified trainings, and policy-oriented working group meetings.

Based on the results of the different Preparatory Meetings, the 2021 World Congress will focus mainly, but not exclusively, on the following sub-themes:

- Systemic racism and the disproportionate criminalisation of children from indigenous, ethnic, and other minority groups;
- Discrimination due to gender, sexual orientation, and gender identity: fostering a gender justice approach;
- Discrimination experienced by children and young people affected by migration, including refugees, unaccompanied foreign children, and children of foreign parents;
- Discrimination due to disability and health conditions;
- Discrimination due to substance use and abuse;
- Criminalisation of children's online behaviour;
- Age limits and status offences;
- Ensuring that the voice of the child is heard in child justice systems;
- Fulfilling children's rights in the contexts of legal pluralism;
- Building resilient child justice systems in times of crises and pandemics; and
- Tackling violence within child justice systems and ensuring child-friendly approaches for child victims, offenders, and witnesses.

Specific topics of the sessions will be defined in collaboration with the Scientific Committee and the Child and Youth Advisory Group of the World Congress. The call for abstracts was launched in the summer of 2021.

How to Participate

For the first time, access to the Congress will be possible online, which will provide greater access to the programme for professionals who cannot travel and will facilitate greater participation of children. We hope to reach a wider audience and to allow greater participation and involvement via digital tools. A recording will also be made available.

Partners

Terre des hommes Foundation – Helping children worldwide



Terre des hommes Foundation (Lausanne) is the largest Swiss organisation for child relief. With delegations in over 30 countries and its expertise in the domains of health and child protection, Terre des hommes offers practical solutions and a better future for over one million children and their mothers each year. This engagement is financed by individual and institutional support, of which more than 85% flows directly into the programs. Terre des hommes was founded in Lausanne in 1960.

Penal Reform International



Penal Reform International (PRI) is an independent nongovernmental organisation that develops and promotes fair, effective and proportionate responses to criminal justice problems worldwide. It promotes the rights of detainees to fair and humane treatment, and campaigns for the prevention of torture and the abolition of the death penalty and works to ensure both just and appropriate responses for children and women who come into contact with the law.

International Association of Family and Youth Judges and Magistrates



IAYFJM is a worldwide organisation, dating to before the first World War and formally established in Belgium in 1928. It is dedicated to the study and exchange of information on issues concerning children and young people in need of care and protection and/or in conflict with the law, and their families. It aims to identify, publicise and promote best practice in these fields. The languages of the Association are French, English and Spanish.

International Institute for the Rights of the Child



The International Institute for the Rights of the Child (IDE) was created in 1995. It is a recognized training centre in children's rights for all professionals working for and with children in Switzerland and abroad. The IDE is active in numerous awareness-raising activities to promote children's rights and to enforce the Convention on the Rights of the Child. As a scientific centre, it is solicited by numerous networks of experts and institutions working for the respect of children's rights.

With technical support from:

The Special Representative of the Secretary-General on Violence Against Children is an independent global advocate in favour of the prevention and elimination of all forms of violence



OFFICE OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON
VIOLENCE AGAINST CHILDREN

against children, mobilizing action and political support to achieve progress across the world. The mandate of the SRSG is anchored in the Convention on the Rights of the Child and other international human rights instruments and framed by the UN Study.



UNICEF is mandated by the United Nations General Assembly to advocate for the protection of children's rights, to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children.

UNICEF works in the world's toughest places to reach the most disadvantaged children and adolescents – and to protect the rights of every child, everywhere. Across more than more than 190 countries and territories, we do whatever it takes to help children survive, thrive and fulfil their potential, from early childhood through adolescence.

Before, during and after humanitarian emergencies, UNICEF is on the ground, bringing lifesaving help and hope to children and families. Non-political and impartial, we are never neutral when it comes to defending children's rights and safeguarding their lives and futures.

And we never give up.

unicef | for every child



The Office of the High Commissioner for Human Rights (UN Human Rights) is the **leading UN entity on human rights**. The OHCHR represents the world's commitment to the promotion and protection of the full range of human rights and freedoms set out in the [Universal Declaration of Human Rights](#).

The mission of the OHCHR is to work for the protection of all human rights for all people; to help empower people to realise their rights; and to assist those responsible for upholding such rights in ensuring that they are implemented.

The United Nations Office on Drugs and Crime (UNODC) is a global leader in the fight against



illicit drugs, transnational organised crime, terrorism and corruption, and is the guardian of most of the related conventions. UNODC has the mandate to support Member States in preventing and responding to crime and violence and strengthening their justice systems, including the specific mandate to support Member States in ensuring that children are better served and protected by justice systems. Under the framework of the Global Programme to End Violence Against Children, UNODC provides technical assistance to Member States at global, regional and country levels in the areas of crime prevention, child victims and witnesses, juvenile justice as well as children recruited and exploited by terrorist and violent extremist groups.



The Organisation for Economic Co-operation and Development (OECD) is an international organisation that works to build better policies for better lives. Its goal is to shape policies that foster prosperity, equality, opportunity and well-being for all.

Together with governments, policy makers and citizens, the OECD works on establishing evidence-based international standards and finding solutions to a range of social, economic and environmental challenges.



The Pathfinders are a group of 39 UN member states, international organizations, global partnerships, civil society and the private sector. Their work is to accelerate action to implement the SDG targets for peace, justice and inclusion (SDG16+). The Sub-group "Justice for Children, Justice for All" offers a new starting point to place children at the heart of an emerging global movement for justice.

Hosted by:



The Supreme Court of the Nation of Mexico is one of the depositary bodies of the Judicial Power of the Federation, in terms of the provisions of Article 94 of the Political Constitution of the United Mexican States and the Organic Law of the Judicial Power of the Federation.

It is the highest Constitutional Court of the country and heads the Judicial Power of the Federation. One of its responsibilities is to defend the order established by the Political Constitution

of the United Mexican States; to maintain the balance between the different branches and spheres of government, through the judicial resolutions it issues; in addition to resolving, in a definitive manner, matters of importance to society.

Under the Auspices of:



The Council of Europe is the continent's leading human rights organisation. It works with its 47 member states to strengthen human rights, democracy and the rule of law throughout the continent and beyond.

It has successfully developed a rights protection system, the best-known mechanism of which is the European Court of Human Rights. The Court was established under the European Convention on Human Rights which has been ratified by all the member states of the Council of Europe.

With pro-bono support from:

**Baker
McKenzie.**

Baker McKenzie is an international law firm present in 47 countries. Its pro-bono department aims to deliver first-class legal services to the underserved and disadvantaged by fostering an environment that encourages and promotes service and promotes and sponsors activities that provide opportunities for all Firm personnel, independently, and in partnership with clients, in order to contribute to the well-being of the communities in which they practice and live.

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