

Magister Conference

Analysis of the Violence Present in Juvenile Justice Systems in the Region

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My warmest greetings to you all and my thanks for the honour of having been invited to reflect today upon violence in juvenile justice systems in our Americas.

For the Inter-American Human Rights System, the laws are very clear. The Inter-American Court has determined that the United Nations Convention on the Rights of the Child, together with the American Convention and the Declaration of Human Rights, make up the corpus juris or body of international legal regulations on the human rights of children, which must be used to establish the obligations of the States, among others, in the issue of prevention and protecting the rights of children.

At the same time, the Committee on the Rights of the Child, which interprets the Convention, adopts a very clear position in reminding the States that the Convention has changed the paradigm in which the State only appeared in children's lives when they dropped out of the system (what we used to refer to as the Irregular Situation Doctrine).

More extensive knowledge and awareness of the negative effects and new violations of rights that the welfare approach can produce with its traditional protection measures, was one of the reasons that led the States to adopt an international rights treaty for children. The States sought to ensure that children should be respected in their dignity as persons who, while small, are still full holders of human rights.

They also acknowledged that the family was the best environment in which to bring up children and that the State should therefore strengthen family and community coexistence, as a first and chief means of ensuring that children develop comprehensively and free from any kind of violence. The IACHR believed it necessary to place at the disposal of the States its Report on The Right of Boys and Girls to a Family, based on the legal standards that guide the

UN and Inter-American systems, as well as the good practices implemented in the States and their unresolved challenges, with their respective suggestions.

This report complements the report on corporal punishment, as this is the type of violence that leads to other forms of violence and often causes children to be separated from their families. The report on juvenile justice, in turn, complements the previous two, inasmuch as many institutionalized children are also victims of violence in institutions, or, at least, have not managed to be reintegrated into society and, therefore, constitute a significant proportion of teenagers who are deprived of their freedom; that is, those who come from the protection system.

Over the past few years of travelling around the region and exchanging ideas, this Rapporteurship has observed that despite institutional and legal changes to adjust to the CRC, the States still focus their attention on traditional and reactive programmes after a problem has arisen and that it is often the cooperation or opinion of the media which results in making certain issues a priority, to the detriment of the States' efforts to mainstream a new type of institutionality; in this case, for example, to the detriment of an incipient system for prevention, and the promotion and comprehensive protection of child rights. This does not mean that I am against specific programmes that address issues such as child labour, sexual exploitation, domestic violence and street children, but I have observed that if these programmes are not projected and executed through the structure of a system for the promotion and protection of rights, they contribute to weakening these rights.

The Convention and several of the existing international instruments on juvenile justice are very clear on the matter, as are the positions adopted by the Inter-American Court and the Commission on Human Rights in their sentences, reports and recommendations: a juvenile justice system begins before adolescents commit an offence against criminal law, and the States should be informed of the situation (by means of data gathering and analysis) and act upon the causes that lead young people to break the law. It is the pre-emptive approach followed by the CRC that as a rapporteur in this area I wish to underscore. In my travels throughout the region, I have observed that the States encounter a major challenge when attempting to assume the political will to break away from the old patterns and boldly enter the arena with the purpose of mastering universal and sectoral public policies.

To this end, the States should no longer resort to traditional welfare systems, but to a type of institutionality that calls upon all other stakeholders with the sufficient political power to legitimately coordinate other areas of government and become stronger; open to the contributions and criticism of organized

society, adding to a greater number of stakeholders, and decisively including the children themselves. Including them as what they are; children and teenagers, with their own features and ways of making contributions, which are very valuable and different to those made by adults.

Opportunities for linkage should not be viewed as opportunities to exert power or authority over others, but rather as areas of convergence leading to win-win situations, and this, at all levels. In its General Comment N° 13, the Committee states that it seeks: “To overcome isolated, fragmented and reactive initiatives to address child caregiving and protection which have had limited impact on the prevention and elimination of all forms of violence”. However, the American region (or a large part of it) has been noted for maintaining its reactive and punitive measures.

Neither the Committee nor the Commission can, of course, force the States to adopt one type of institutionality or another, but it is indispensable to bear in mind their suggestion that effective synchronization strategies and means should be found, and experts in child rights be made available, in order to break away from the previous paradigm. Some States even cling to the old practice of leaving child-related policies in the hands of the First Lady, whose actions are frequently associated with welfare programmes.

This Rapporteurship and the IACHR as a whole are also concerned about a further type of institutional weakness that involves the judicial branch. In the path towards the realization of child rights, this branch has not always been seen to collaborate with other branches and institutions. Also worrying is the institutional weakness caused by the militarization occurring in some countries, in several of their state services. The most complex of these scenarios is the role of the military police. The IACHR expressed its concern most emphatically on the occasion of its on-site visit to Honduras last week.

Before bringing this part of my address to a close, I wish to remind you that when we encourage institutional and systemic strengthening, we should not forget that the objective of these institutions is to work towards empowering citizens, and not empower themselves by weakening the population. Adolescents occupy a key position among the citizenry; in exercising their right to be heard, they also collaborate in the debates which are necessary in order to achieve a better understanding of their rights and improved interaction with their communities, parents, authorities and peers. The most significant debates on child rights should reach the population and not be limited to officials and specialists.

This is disempowering and runs counter to the objective of empowering children, families and communities. To achieve this, to include the media, is a challenge, but it is above all a challenge to trust and work with the children themselves, with their own means and forms of acting.

For a politician today to want to discuss the age of criminal liability is quite a challenge. Politicians are afraid; fear has become a commodity for the media, security companies and many other people involved in these issues, and the politicians, who could change things, need votes in order to win elections. In attempting to talk about ensuring that an assumed order exists, even at the cost of ignoring the rights of adolescents, we have heard a number of super-creative, if not incoherent, discussions.

The media have accepted restrictions to freedom of expression when the image and privacy of adolescents could be affected. However, as this is not usually defined as an offence, it does not generally incur any penalties; at least not in every State. Nonetheless, the CRC goes even further with regard to the role played by the media, and requires them not only to address children as recipients of programmes, but also to enable them to take part in their programming; that is, to be heard. It is now vital to discuss the role of the media and child rights. The rapporteurs on freedom of expression and on child rights are initiating procedures to draft a report on this subject, which will require to draw upon the experience of you all in this region.

In analysing violence in juvenile justice systems in the Americas, I shall refer to some of the issues of concern that my Rapporteurship has observed and addressed by means of various IACHR mechanisms.

1. With regard to age-related parameters:

1) **Upper age-limit:** international standards establish that any person who has not reached the age of 18 should be covered by a special criminal justice régime when he or she infringes any criminal law.

Several countries in the region have begun a process that threatens regression in attempting to **lower the age of criminal responsibility**, since adolescents will be excluded from the specialized juvenile justice system. The Commission has taken a number of actions in this regard.

2) **Regarding the lower age-limit:** international instruments do not establish a minimum age and they should be interpreted from the perspective of evolution, so that the minimum age at which adolescents can be held responsible increases gradually towards an age that draws closer to 18. It is a matter of

concern that 12 continues to be the internationally accepted minimum age and that the States are not increasing it, as one would hope, to an age closer to 18.

3) In addition, it should be remembered that the emphasis of all juvenile justice systems should be placed on **making alternatives to judicial action a priority**. It is increasingly important to underscore this focus, in view of the failure of most of the actions associated with judicial proceedings.

4) As regards the **General Principles for a Juvenile Justice System**, such as legality in juvenile justice, last resort, specialization, equality and non-discrimination, and non-regressivity, the following should be mentioned:

a. It is a matter of concern for the Commission that children are still being deprived of their freedom and subjected to a juvenile justice system even when **they have not infringed any criminal laws**.

b. This Rapporteurship has also visited **detention centres for migrant families with children and reception points for unaccompanied migrant children**. The Commission has pointed out that migration is not an offence and that detention is not called for in cases of irregular migration. It has also noted that appeals for refuge or asylum are not being met with the appropriate safeguards that children require.

We should mention at this point the timely adoption of the I/A Court's Advisory Opinion on Migrant Children, which was requested by the countries which at that time were part of the MERCOSUR's Niñ@sur programme; Argentina, Brazil, Paraguay and Uruguay. And which now also includes Venezuela. This is an example of the synergy between committed States that identify a matter of concern and the IACHR, which provides specific answers and clear standards to be borne in mind.

c. The Commission is extremely disturbed that the increase of violence should be used as an argument to promote repressive and regressive strategies against adolescents and young people throughout the region, instead of offering them protection from the increase of violence of which they are the main victims.

In many countries, "recruitment", or the use of children by organized crime has increased, mainly in drug peddling and to collect extortion payments.

The IACHR has issued a number of press releases on the subject this year, as a way of drawing the attention of the States to the need to implement social inclusion policies for youth and avoid their social stigmatization. As existing

evidence shows, it is young people who most suffer from and are most at risk of being victims of violence.

e. **There is an extremely pressing need to establish the boundaries of police action when faced with children charged with infringing criminal law.** In most countries in the region, the lengthy preventive detention of children in police premises is common; conditions are inadequate and children are subjected to a great deal of abuse and violence. The police does not tend to be regarded as a source of protection by adolescents and young people. Nonetheless, the States should promote the formation of a well-trained, specialized and controlled police force, avoiding impunity in cases showing links to organized crime or charges of human rights violations against children.

f. In order to comply with international regulations and standards, **the States should use custodial measures as a last resort and have alternatives to these measures available.**

However, there are a number of regressive legal reforms being introduced in the region that increase sentences or increase the offences that must be punished by custodial measures.

g. Juvenile justice systems should be particularly aware of the **proportionality and length of sentences, be they custodial or not.**

In addition to the length of the sentence, the differences between adolescents and adults should also be borne in mind. The imposition of punishments that do not take them into account amounts to cruel and inhuman treatment in the light of human rights international law.

h. **Some of the crucial aspects of custodial measures include detention conditions,** punishments imposed for disciplinary offences during detention and measures taken subsequent to detention.

i. **Mechanisms for supervision, monitoring, investigation and punishment.** Establishing measures for these actions is important in order to improve the administration of juvenile justice and enable it to be adequately supervised. They are also essential in planning, designing and evaluating public policies on the subject. Children are key stakeholders in assessment: their right to be heard and to express their views freely must be safeguarded.

One of the most important measures is regular visits and inspections systems for centres where children who have been deprived of their liberty are serving their sentences. These inspections should be performed by independent agencies, and should be evaluated by the State's administrative and judicial

authorities. The National Preventive Mechanisms Against Torture are showing positive outcomes in countries where they have been installed, but should not exclude other measures.

I acknowledge that this is merely a partial look at the subject of violence in juvenile justice systems, that there are a number of other aspects that should be analysed; among them, the means used to listen to children, their access to justice and the defence of their best interests. However, I chose to report on the issues that reach the IACHR, rather than describe all of the principles, which you can find in the Report on Juvenile Justice and other reports.

We should also bear in mind the recently adopted document mentioned by Marta Santos Pais: the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.

Thank you.