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# Restaurative juvenile justice

## 20 years of Tdh's intervention



## Terre des hommes Foundation

Terre des hommes Foundation (Tdh) is the leading Swiss organization for child relief. Founded in 1960, Terre des hommes helps to build a better future for disadvantaged children and their communities, with an innovative approach and practical, sustainable solutions. Active in more than 30 countries, Tdh develops and implements field projects to allow every year a better life for over 2.3 million children and their close relatives.

***“The opposite of poverty is not wealth, it is justice”*** Bryan Stevenson

While crimes and disputes lead to profound suffering among victims, alleged offenders and the wider community; deficient justice systems exacerbate this hardship and distress, particularly for the most vulnerable in society.

Over two decades since the widespread ratification of the Convention on the Rights of the Child (CRC), many countries have reformed their legislation to incorporate provisions for child-friendly justice systems. Unfortunately, too often these laws are not enacted in practice, leaving too many children denied the right to due process and fair trial, too many children detained with adults and in inhumane conditions, too many children spending months in prison when they could be rehabilitated in their communities.

UNICEF estimates that 1.1 million children are deprived of liberty around the world, either pre-trial or serving sentences.<sup>1</sup> The detrimental effects of detention on children are well-known: disturbance of cognitive development, exposure to physical maltreatment, and aggravation of mental health problems.<sup>2</sup> In some contexts, victims of gender-based violence are treated as offenders, subjected to liberty-depriving measures, or ostracized from their communities. The dominance of retributive criminal justice models means that the importance of repairing the harm done to victims and communities is often forgotten.

Meanwhile, practices that fall short of international standards are particularly apparent in developing countries or during humanitarian crisis, and in both cases, communities often turn to customary justice mechanisms to resolve disputes. While the literature identifies several advantages of these mechanisms, including the possibility that they constitute an effective mechanism for access to justice, particularly amongst poor, vulnerable and marginalized groups or in post-conflict situations;<sup>3</sup> customary justice systems have also been associated with corruption, abuse of power, lack of accountability, and non-compliance with international human rights standards leading to harsh punishments, unfair trials and discrimination against women, children and minorities.<sup>4</sup>

## Tdh's Intervention in juvenile Justice

Tdh works in the field of juvenile justice to increase access to justice for all children regardless of their nationality or refugee status. Tdh's actions are based on a “child-friendly approach to justice” which means that justice is adapted to children, rather than just adults.

What distinguishes Tdh's work in juvenile justice from that of other organizations is that it is informed by the principles of restorative justice.<sup>5</sup> In a retributive justice model, incarceration is seen as an effective solution to the problem of juvenile violence. However, Tdh's expertise spanning over 20

<sup>1</sup> UNICEF, *Progress for Children, A report card on child protection*, No.8, September 2009.

<sup>2</sup> International Detention Coalition, *Captured Childhood*, 2012.

<sup>3</sup> E. Wojkowska, *Doing Justice: How Informal Systems can Contribute*, UNDP, 2006

<sup>4</sup> UNDP, UNICEF and UNWOMEN, *Informal Justice Systems: Charting a course for human rights based engagement*, 2012.

<sup>5</sup> ECOSOC resolution 2002/12, “Basic principles on the use of restorative justice programmes in criminal matters”

years, along with insights from criminological research, have shown that the detention of children is actually a factor that increases recidivism: detention facilities become "schools of crime" that entrench young people in a vicious circle of offending. In contrast, the restorative characteristics of a justice system appear in both the outcome and the processes: it seeks to repair the damage caused to the individuals, the affected parties and the wider society, and to that end requires active participation of the child offender, the victim and other involved parties. Cross-cutting throughout this approach is a gender-sensitive lens, that ensures the experiences and needs of girls and boys are taken into consideration throughout.

From its first actions in the field of juvenile justice in the 1990s, geared towards supporting children in contact with the criminal justice system who had suffered from violations of their rights, today, Tdh's programmatic approach to restorative juvenile justice involves two main pillars: systems-strengthening and direct service provision. This development has been supported by over twenty years of ongoing capitalization and action-oriented research.

A groundbreaking aspect of Tdh's action in juvenile justice is its work with customary justice actors, whereby the objective is to harness the positive aspects of customary processes while also reforming them to become more in-line with international child rights and juvenile justice standards.

The intervention of Tdh is distinct from other NGOs: it does not seek to publicly denounce the malfunction in the justice system but to support States, their institutions, the communities and the families to become agents of their own development. This, in turn, sustains the transformation of the system itself, creating long-term outcomes.

## Terre des hommes' Impact

Between 2012 and 2015, Tdh's work touched the lives 232,120 individuals in the field of juvenile justice. This includes improving the well-being of 149,163 children and building capacities of 39,293 justice stakeholders. The relevance of Tdh's work has been recognized by several awards, such as the Veillard-Cybulski prize (from the International Association of Youth and Family Judges and Magistrates<sup>6</sup>), a Hill Foundation nomination for Using community involvement and policy change as a tool to prevent violence among the youth,<sup>7</sup> and a Human Rights prize given by the French embassy in Perú.<sup>8</sup>

Tdh's dynamic international advocacy work has led juvenile justice to be considered by numerous States to be an indicator of good governance. Through the extension of its work, the Foundation has become a key reference in this field.

In 2009, alongside the Public Prosecutor of Peru, Tdh organized the World Congress on Restorative Juvenile Justice in Lima. Some 1,000 individuals from 63 countries participated, representing the judiciary, civil society, NGOs and organizations of professionals working with children, the media, academics, and United Nations agencies. A significant outcome of this was the Lima Declaration on Restorative Juvenile Justice,<sup>9</sup> which has been instrumental in ensuring that restorative principles are located at the heart of juvenile justice sector reform strategies.

This momentum led, in 2015, to the organization of the World Congress on Juvenile Justice in Geneva, which was hosted by the Federal Department of Foreign Affairs of Switzerland, in collaboration with the Federal Office of Justice and Tdh.<sup>10</sup> For the first time ever, over 800 participants from 95 governments and civil society met to discuss the future of juvenile justice and share best

<sup>6</sup> <http://www.childsrights.org/actualites/prix-veillard-cybulski/834-prix-veillard-cybulski-2016>

<sup>7</sup> <https://innovatingjustice.com/en/projects/providing-restorative-juvenile-justice-in-peru/plan>

<sup>8</sup> <http://www.franceoea.org/spip.php?article762>

<sup>9</sup> <https://www.tdh.ch/en/news/peru-lima-declaration-restorative-juvenile-justice>

<sup>10</sup> <http://jj2015.ch/en>

practices. The final declaration of the Congress reminds governments about their obligations in the matter and has already yielded considerable political impact. Among the outcomes of this Congress Tdh received solicitations of cooperation by several states (Paraguay, Iran, Cape Verde).

As a follow-up of the World Congress, the Ibero-American Declaration on Restorative Juvenile Justice was adopted by the Conference of Ministers of Justice of Ibero-American Countries (COMJIB).<sup>11</sup> It brought together the Ministries of Justice of 21 countries in Latin America and Spain whose goal is to study and promote legal assistance and exchanges between member States. The adoption of this Declaration constitutes a fundamental step for strengthening juvenile justice systems across an entire sub-continent.

Tdh has also influenced the legislation of numerous countries, ensuring that full respect of child rights be integrated into the system. Tdh has also supported the extension of jurisdiction for minors by contributing to increasing the quality of social inquiry reports which help judges to make more informed decisions. In addition, Tdh has facilitated the introduction of probation officers in several countries and increased the number of judges for minors.

In Kosovo, for instance, Tdh contributed to the instauration of a law on community service as an alternative to imprisonment. In Burundi, Tdh contributed to increasing the minimum age of criminal responsibility from 13 to 15 years old. Participation in the development of sectorial policy reinforces the government's strategy in the field of juvenile justice and also creates connections with the systems of child protection. Similarly, in Palestine, the Foundation's advocacy work led to the adoption in 2016 of a new piece child rights legislation, the "Juvenile Protection Law", an important reform of an outdated law dating back to 1954. .

Capacity-building activities also constitutes one of Tdh's key pillars of intervention. The Foundation has trained tens of thousands of key players from the formal and informal judiciary sector. In Mauritania, for example, between 1998 and 2011, Tdh carried out a training program on international juvenile justice instruments and their implementation for approximately 3'000 staff from the administration of justice for minors. This training has had favorable repercussions at police station level, where police now request Tdh's involvement every time a minor is apprehended. The organization's support led to a significant decline of systematic incarceration of children in conflict with the law. In another context, Peru, together with the police Tdh pushed for the rehabilitation of young alleged offenders. Many of them were sentenced to community service instead liberty-depriving measures, and 94% of the target group did not reoffend. As a result, the Peruvian authorities requested Tdh to contribute to the capacity-building of justice professionals in the country.

Finally, Terre des hommes has provided direct assistance to children in conflict with the law. Prevention of delinquency, psychosocial support in detention centers, socio-juridical assistance, implementation of alternatives to detention, social reinsertion of children in conflict with the law. Since 2010, in Burkina Faso, Tdh has pushed for the adoption of community service as an alternative to incarceration. Consequently, 650 minors benefited from this measure instead of going to prison. Between 1998 and 2011 in Mauritania, Tdh directly supported 10'000 minors in conflict with the law. While more than 60% of them were assisted at police stations, 6'320 of them were liberated during the same period.

An illustration of Tdh's direct action concerns a 14 years old boy who was sentenced to death by a Court in Guinea. Tdh argued that this decision contravened article 37 and 40 of the CRC. Thanks to intense advocacy work by the Tdh representative, the boy was granted pardon a few minutes before being executed. The organization helped his reintegration into society after his jail sentence was completed. As a consequence of this work, Guinea accepted to cooperate with Tdh to improve the condition of children in jail and to reform their juvenile justice system.

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<sup>11</sup> [www.comjib.org/en](http://www.comjib.org/en).



Another example of direct assistance is in Egypt, where girls are still a large minority within detention centres. Historically, girls have been neglected, not only in justice system reform, but also by non-governmental organizations working in the sector, particularly in terms of rehabilitation: while boys are stigmatized when returning to their communities, girls suffer even more from disgrace. By focusing on the specific needs of girls in detention and after release, this project has filled a gaping hole in juvenile justice in Egypt.

## Innovations

Tdh's work with customary actors is pioneering. For almost a decade, there has been a growing interest in the potential for customary justice to play a role for children in contact with the law.<sup>12</sup> While the dearth of research on this topic has been extensively acknowledged, only a handful of initiatives have sought to address this gap. In 2012 the Foundation decided to launch a structured action-oriented research process to build knowledge and understanding of the mechanisms and processes that deal with children in conflict with the law outside of formal judicial structures. Initially, the research was focused in the Middle East and North Africa, where tribal structures have informed administration of justice for centuries; and was subsequently extended to include countries from other geographical areas, including Burkina Faso and Colombia.

The research has generated numerous outcomes: detailed qualitative situation analyses that outline the characteristics and perceptions of customary proceedings in five contexts (Afghanistan, Egypt, Jordan and Palestine [West Bank and Gaza]); over 400 informal actors have been mapped, approximately one-quarter of whom have participated in sensitisation around child rights and national juvenile justice laws. The research has also brought together a Scientific Committee of internationally renowned experts in law, anthropology, criminology, and psychology to provide technical perspective and expertise from relevant disciplinary areas and is in the process of establishing country-specific communities of practice. Overall, by providing much-needed information to fill a lacuna of knowledge, this cutting-edge work is shifting the paradigm of access to justice for children beyond the realm of formal, state-based institutions, towards evidence-based strategies to engage customary actors in a restorative approach, thereby setting the agenda for juvenile justice sector reform in the 21<sup>st</sup> century.

Another indication of Tdh's innovative approach is the way in which Tdh incorporates the voice of the child into its juvenile justice projects. Child participation is almost systematically included so that children can express their views and experiences about the juvenile justice system and articulate the changes that they hope to see, as shown in the example of a drawing competition in Moldova.<sup>13</sup>

Lastly, Tdh's extensive expertise in juvenile justice has formed the basis for governmental decision-making in budgetary matters. In Peru, Tdh contributed in 2014 to the costing of the national plan of prevention and treatment of the children in conflict with the law (PNAPTA/PUEDO). This was used in 2015 in the budget negotiations with the Ministry of Finance.

In order to improve best practices in juvenile justice, Tdh systematically collaborates with numerous international organizations such as, AIAMP, AIDEF, COMJIB, IDLO, ILANUD, OIJ, UNEP, UNICEF, UNODC among others. This optimizes the impact of Tdh's actions and promotes integration among actors with similar goals. Partnerships have also been created and reinforced with the government and judiciary professionals. In Latin America - Brazil, Peru, Colombia, Ecuador, Paraguay and Nicaragua – capacity-building activities were jointly carried out for professionals in restorative juvenile justice. This collaboration has encouraged the establishment of norms and procedures in juvenile justice throughout the whole subcontinent. At country-level, Tdh has been instrumental in establishing coordination mechanisms amongst governmental and non-governmental juvenile justice stakeholders. In Mauritania, Tdh collaborated closely with the direction of judicial policy of the child, the special brigade in charge of minors, community health services, the magistrates and civil society to achieve a holistic

<sup>12</sup> UN *Guidance Note of the Secretary General: UN Approach to Justice for Children*, 2008, p.4

<sup>13</sup> <https://www.tdh.ch/en/news/moldova-children-draw-their-views-police>

response to the protection of children in conflict with the law. The impact of these partnerships are fruitful: acceptance of social workers and civil society organizations in the proceedings of minors' cases, constant collaboration between social workers and the police when dealing with minors and an improved aptitude of police and courts administration services to align with the ordinance for penal protection of the child.

## Scaling up and Sustainability

Capacity building of juvenile justice stakeholders worldwide is at the core of Tdh's strategy to scale up its impact. To that objective, the University of Geneva, the International Institute for the Rights of the Child and Tdh are creating a Certificate of Advanced Studies (CAS) in juvenile justice. These courses will be given online and will be translated into five languages for a broader international reach. The new training in juvenile justice is directed at all juvenile justice professionals such as police officers, judges, lawyers, social workers or detention officers. Its aim is to make a difference to thousands of children and young people in conflict with the law by promoting child rights and a restorative approach.

In Peru, the Public Prosecutor decided to scale up the pilot project executed by Tdh in 14 districts of 8 departments. Between October 2010 and March 2016, 4,176 young alleged offenders benefitted from alternative to detention. So far only 111 reoffended (2,66%). This percentage is far below the statistics of young offenders who didn't benefit of such project.

Following the same objective, Tdh created websites such as [www.justiciajuvenil.org](http://www.justiciajuvenil.org) and [www.jj2015.ch](http://www.jj2015.ch) to advocate for restorative juvenile justice and inform broadly about capacity building and lessons learned. In addition, Tdh published a magazine "Justicia para Crecer" available to the professional throughout Latin America through <http://justiciajuvenilrestaurativa.org/peru/revistas-jpc/>