



THE ROLE OF LAWYERS BEFORE THE ICC IN CASES INVOLVING CHILDREN AFFECTED BY ARMED CONFLICTS

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◇ *What is Justice for Children?*

This lesson will examine how children are becoming targets of recruitment, attacks, and subject to SGBC in modern warfare. Children are involved in criminal activity as well. Mechanisms put in place to deliver justice may face significant challenges. Although national courts bear the primary responsibility for prosecuting international crimes, in many States affected by armed conflict the infrastructure of the judicial system is often either virtually non-existent or inadequate. Judges, prosecutors, lawyers, and court administrators may have fled, or been victims of the conflict themselves, or cannot be trusted to be independent. By the time the judicial system is functioning again, many years may have passed and the children’s recollection of the details of the crimes they have witnessed may be less clear. Also, other aspects can affect justice like the tension between the State’s search for reconciliation and the need for accountability for human rights violations; a lack of both, financial and human, compensation or reparation for children’s loss of childhood and for the harms suffered. Moreover, children’s accountability addresses a contentious issue: where should children be placed on the spectrum between total impunity on one end and total responsibility on the other?



What is the ICC and is it effective for child justice?

- ◆ [What is the role of the International Criminal Court? - YouTube](#)
- ◆ The International Criminal Court in The Hague was set up in 2002 to bring to justice those accused of the most serious crimes.

<https://www.youtube.com/watch?v=bGY28NKfLcE&t=14s>

- ◆ [Why is the International Criminal Court under attack? - BBC News](#)
- ◆ The International Criminal Court (ICC) has come in for strong criticism.

<https://www.youtube.com/watch?v=CxfHYjg6MOU>



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The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression.

Where are children as victims or perpetrators of crimes?



PLEASE REVIEW THE UNCRC & PROTOCOL

- ◆ **UN CRC**
- ◆ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

**Optional Protocol to the
CRC Child on the
involvement of children in
armed conflict**

<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children>



Different types of lawyers - What kind are YOU?

- ◇ Criminal, Property, Business, Family law, Labor, etc.
- ◇ *What is your specialty and how well equipped are you to serve war challenged children?*
- ◇ No one size fits all
- ◇ What are your professional strengths and limitations?
- ◇ What are your personal strengths and limitations?
- ◇ Who do you refer them to?



Different types of child lawyers

- ◇ **Child abuse attorney**
- ◇ **Child custody**
- ◇ **Child defense**
- ◇ **Child pornography**
- ◇ **Children's lawyer**
- ◇ **Divorce lawyer**
- ◇ **Adoption lawyer**
- ◇ **Child advocate lawyer**
- ◇ **Child Ombudsperson**



1.1. Challenges to justice for children

Justice for Victims

Finding Them

No access to legal systems

Legal systems that aren't functioning

Costs

Lack of social systems to support children

Implementing legal actions

Assessing effectiveness of legal decisions

Justice for Child Perpetrators of Crimes

Conflicting definitions of child

Conflicting understandings of why the child engaged in criminal actions

Child-focused alternatives

Role of adult recruiters

Issue of fairness

Restorative Justice



Ratification of the CRC & Protocol requires state implementation to be in compliance

- ◇ ***What does it mean if they cannot, or will not, comply?***
- ◇ There is no over-arching compulsory judicial system or coercive penal system to address breaches of the provisions set out in treaties or to settle disputes.
- ◇ In order to create justice states parties to the Convention commit to:
 - ◇ • Respect the rights of children
 - ◇ • Protect the rights of children
 - ◇ • Fulfill the rights of children



According to *Medecines San Frontieres* (2021)

- ◆ Children are persons who do not have an individual legal personality, meaning **they are not recognized as independent persons before the law**. The *protection and defense of children's interests are entrusted by law to their parents and relatives; when they fail to do so, social and judicial services take charge.*
- ◆ *Are children able to be recognized as an independent person in your court or not?*
- ◆ *If so, how are parents held responsible?*
- ◆ *If not, how will your social and judicial services take charge?*



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BREAK: End of Module 1



1.2. Addressing impunity and children accountability

What is Impunity?

Not being punished for a crime or misdemeanor committed.

Citation: A Law Dictionary, Adapted to the Constitution and Laws of the United States. By John Bouvier. Published 1856.

What is Accountability?

Accountability is generally the state of being liable, answerable, or accountable. When applied to a legal context, accountability means that some legal rule(s) exists under which a theory or claim can be made to find one liable in a civil law suit or culpable in a criminal matter. Under state laws, a person must reach a certain age before they can be held accountable in both civil and criminal matters. That minimum age is known as the age of majority.



Conflicting Definitions of Children

- ◆ **Human Being vs Human Becoming**
- ◆ **Citizen Issues: Are children citizens from birth, if they live there, or do they only become entitled citizens at certain ages or citizenship statuses?**
- ◆ **Chronological Age**
- ◆ **Biological Age**
- ◆ **Marital Status**
- ◆ **Parental Status**
- ◆ **Legal Status**
- ◆ **Employment Status**
- ◆ **Status**
- ◆ **Cognitive Status**
- ◆ **Maturity**
- ◆ **Agency**
- ◆ **Behavior**
- ◆ **Political Involvement**
- ◆ **Criminal Involvement**



Child Accountability Options

Age 18 - Age of Majority

This position is that no child should be prosecuted if they are a minor.

Do the crime, do the time standard

This position holds that if someone breaks the law they should be held responsible for it and punished in some way to deter future law breaking.

There are variable factors that must be considered

This position holds that youth should receive less penalty because of immaturity or trauma factors.



Chronological
Age

Biological &
Maturity
Status

Victim or
Criminal
Status

Legal & Court
Actions

Work,
Education &
Knowledge

Relationship
Status

Community
Standards &
Options



Is age a constant or should there be variable considerations for accountability?

- ◆ **In the study of deviant behavior, deviance is defined as a behavior that exceeds the tolerance level of the community**
- ◆ **What are tolerable and acceptable behaviors in the community?**
- ◆ **What are intolerable and unacceptable ones?**
- ◆ **What reinforcements or sanctions are in place currently – and how effective are they?**



Many factors influence youth behavior that should be taken into consideration when deciding issues of impunity and accountability

◆ Brain development

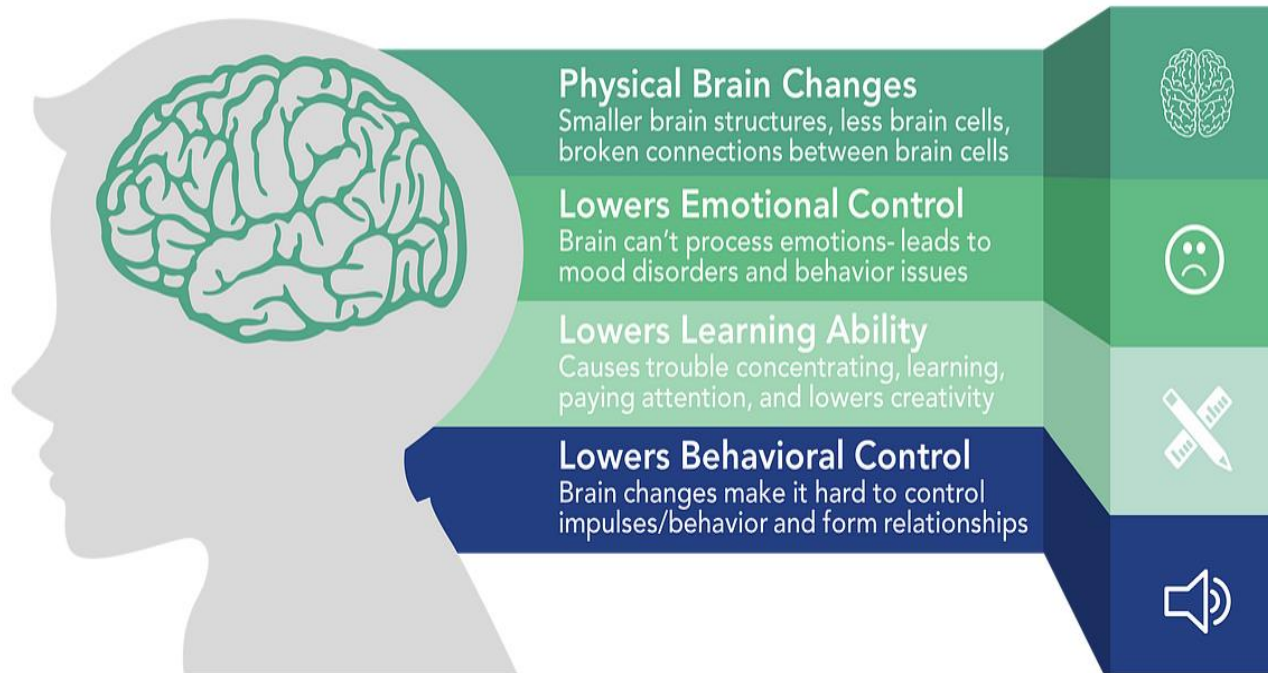
- ◆ **Inceased Sympathetic Nervous System response:** “fight or flight” system made up of short neurons that fire quickly to help you evade threats on sight
- ◆ Release of norepinephrine & adrenaline
- ◆ Electrical impulse response, fast heart rate & breath, ready for action

◆ Trauma

- Depression, Anxiety
- Anger
- Loss of impulse control
- Addiction
- Reactivity
- Lack of responsiveness, inability to feel
- Feelings of helplessness or hopelessness
- Social isolation
- Inability to have healthy relationships
- Easily recruited in hopes of acceptance



Youth brains are not developed until mid-20s





There are many different types of trauma

- ◆ **Shock/Acute trauma:** an event that happened too fast and too soon, and overwhelms our capacity to cope and respond
- ◆ **Developmental trauma:** due to an ongoing mis-attunement between a child and the primary caretaker.
- ◆ **Chronic trauma:** repetitive and occurs over a long period of time
- ◆ **Complex trauma:** Multiple traumatic experiences without the time to heal between them.
- ◆ **Intergenerational Trauma:** Dysregulated or negative beliefs, attitudes, world view passed from one generation to another; recent evidence of intergenerational genetic transmission (epi-genetics)
- ◆ **Systemic/Institutionalized trauma:** racism, sexism, ableism, homophobia, transphobia, societal oppression, slavery, trafficking...



What happens when youth experience trauma?

**They either release the experience
or**

**They retain it in their bodies and
our nervous systems**

**It will impact the way they see the
world, others, and how they will
act for the rest of their lives unless
something is done about it.**

***Trauma literally gets wired into
our brains.***

◆ **Joe Dispenza (Ted
Talk) to view on your
own time:**

<https://www.youtube.com/watch?v=W81CHn4l4AM>

Childhood Trauma

An event that a child finds overwhelmingly distressing or emotionally painful, often resulting in lasting mental and physical effects.

2x

more likely to develop
DEPRESSION

3x

more likely to develop
ANXIETY DISORDERS

Common causes:



Child abuse (physical, emotional, sexual)

Grief



Witness/victim of violence



War/Terrorism



Neglect



Medical trauma

Substance misuse



Mental illness



Bullying in school

Separation from loved ones



LONG-TERM IMPACTS:

Affects perception of reality



Takes away sense of safety



Wires brain to expect danger

Increases stress hormones flowing through the body



Triggers fight, fright or freeze response



Creates a sense of helplessness



Creates relationship problems



Results in serious behaviour problems



“The initial trauma of a young child may go underground but it will return to haunt us”
James Garbarino

PREFRONTAL CORTEX (PFC)
"Thinking Centre"

Underactivated

Difficulties concentrating & learning.

A traumatised brain is "bottom heavy"

AMYGDALA
"Fear Centre"

Overactivated

Difficulty feeling safe, calming down, sleeping

ANTERIOR CINGULATE CORTEX (ACC)

"Emotion Regulation Centre"

Underactivated

Difficulties with managing emotions.

Complex Trauma: a result of repetitive, prolonged trauma





Trauma Responses are Survival Responses

- ◆ Initial actions, responses are **ALWAYS** in service of survival. It's how the body is wired to respond. **Our neurophysiology and body chemistry dictate that the survival part of the brain operates first and faster than the “thinking” brain**
- ◆ Later, we may have the same responses to a perceived or real threat, especially if the stimulus is the same or similar (e.g.: PTSD) **The survival brain does not distinguish between real and perceived threat. The survival brain operates in ONLY in present moment – no past or future**
- ◆ That's why it's really important to understand what trauma looks like – **people's behavior is often misunderstood**



Discussion Questions

In a court of law, bringing a child to testify could re-traumatize a child.

How can we bring their testimony without re-traumatizing children?

How is this done in your country?



Young War Victims Common Responses

- ◆ **Physical Violence**
- ◆ **Emotional Violence**
- ◆ **Sexual Violence**
- ◆ **Verbal Violence**
- ◆ **Criminal Involvement**
- ◆ **Drug or weapons running/dealing**
- ◆ **Gang Involvement**
- ◆ **Vigilante Reaction**
- ◆ **Extremist Attitudes & Actions**
- ◆ **Unaccompanied, separation, flee**
- ◆ **Attachment disorders**
- ◆ **Drug or alcohol abuse – numb pain**
- ◆ **Victims of trafficking**
 - ◆ **Sex, Labor, Organs**
- ◆ **Relationship Changes**
- ◆ **Physical/emotional health overlap**
- ◆ **Personality and emotional response**
- ◆ **Homelessness**
- ◆ **Self-harm**




Accountability Issues

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◆ **Impunity Issues and child exemption from punishment, penalty, or harm**

◆ **Do they vary by**

- ◆ **Age of the child**
- ◆ **Gender of the child**
- ◆ **Size of the child**
- ◆ **Network of the child (family, peers, reputation)**
- ◆ **Behavior of the child, especially when it comes to**
 - ◆ **Criminal actions**
 - ◆ **Positivity**
 - ◆ **Agency**
 - ◆ **Intent**



*How do you perceive children in general
across their age span,
how do you contextualize your expectations for
their behavior, and
how do they impact your position on impunity for them?*

- ◆ **How does that fit with what THEY expect, need, and want?**
- ◆ **What will your response be to THEM?**



What does it mean for lawyers when different definitions of children exist?

- ◇ How do those designations impact expectations?
- ◇ How do those designations impact accountability?



1.3. Maximizing justice for children

Thought question

- ◇ What does it look like to have justice for child victims of war?



Interventions

- ◆ Individual
 - ◆ Family
 - ◆ Organization
 - ◆ Neighborhood
 - ◆ Community
 - ◆ Region
 - ◆ National
 - ◆ Global
- ◆ **How do lawyers network the needed services?**
 - ◆ Family model
 - ◆ Criminal model
 - ◆ Social service model
 - ◆ Education model
 - ◆ Public health model
 - ◆ CRC requires prevention treatment rehabilitation



War and Children Interventions

<https://psychiatryonline.org/doi/10.1176/appi.ajp-rj.2017.120702>

- ◆ The devastating effects of war and terrorism **call for a “multilayered” approach** to supporting communities, families, and individuals. Following a traumatic event such as bombing or invasion, the first interventions should target communities to **promote safety, self- and community efficacy, connectedness, and hope**. Priority should be given to **reunite families and restore infrastructure. Schools should have emergency plans. First responders**, such as police, firefighters, medical personnel, and teachers, should be trained regarding the effects of trauma on children and effective communication regarding traumatic events.



Public Health Interventions

- ◆ **Primary Prevention** – prevent war, violence, and conflict in the first instance
- ◆ **Secondary Prevention** –
 - ◆ **Humanitarian Law Implementation**
 - ◆ Ensure that general economic sanctions against a country are never used again
 - ◆ Special consideration for children separated, in camps, reunification
 - ◆ Reduce opportunities/conditions for sexual and gender exploitation
 - ◆ Facilitate humanitarian assistance to ensure that the health infrastructure of children’s lives is not destroyed.
 - ◆ Perpetrators should be prosecuted for such actions as destroying clinics, schools, and hospitals – all of which are protected by international law.
- ◆ **Tertiary Prevention** - Treatment, Rehabilitation, Recovery
 - ◆ During the immediate humanitarian response to victims of war and in the longer-term attempts to reconstruct health services after war, there are attempts by both local and international actors to care for children’s needs for health care. Physical and psychological rehabilitation is instituted to varying degrees depending on the resources available. Sometimes these are minimal or absent. There have been many efforts to help the psychological impacts of war on children. Few have been evaluated
- ◆ *Santa Barbara J. Impact of war on children and imperative to end war. Croat Med J. 2006 Dec;47(6):891-4. PMID: 17167852; PMCID: PMC2080482*



Effects of War Must Be Considered

◆ **All aspects of child development are impacted by traumas like war:**

- **Cognitive development**
- **Executive decision-making**
- **Impulse control**
- **Emotional regulation**
- **Brain systems wiring**
- **Learning and memory**
- **Behavior**
- **Immune, hormonal development**
- **Genetics**

- ◆ **Not every child will react the same way**
- ◆ **Age of the child**
- ◆ **Whether child is with parents and family**
- ◆ **How the situation is explained and framed to the child**
- ◆ **Personal resilience**
- ◆ **Social support**
- ◆ **Community climate**
- ◆ **Health status**
- ◆ **Access to resources**
- ◆ **Isolation**
- ◆ **Previous trauma exposure, which may trigger PTSD response**



What To Do?

**MULTI-LEVEL PLAN TO Develop a Positive
COMMUNITY CLIMATE**

**POLICE GOVERNMENT LAWYERS PARENTS CIVIC
GROUPS FAITH BIZ
SCHOOLS**

**Availability
Accessibility
Affordability**

Youth Justice Considerations

- 35 How justified is it to hold traumatized youth accountable?
- Difference between punishment and discipline. DEFINE.
- What happens if interventions aren't put into place?
- How can lawyers interface with the support community and find the resources the children need?
- A legal approach is helpful in requiring access to care, but what if caregivers aren't available?
- It is important to hold adult recruiters and perpetrators accountable first in order to curb the escalation of more youth problems
- It is vital to rebuild the community infrastructure to put into place necessary resources
- These resources need to be located in places youth can easily access them
- Communities must be held accountable – not just youth victims of war
- Blaming the Victim (Ryan)



Whose side are you on?

- ◆ **Sociologist Howard Becker wrote a famous article by that title**
- ◆ **Pressures on lawyers:**
 - ◆ **Government officials**
 - ◆ **Healthcare officials**
 - ◆ **Social services**
 - ◆ **Parents**
 - ◆ **Political factions**
- ◆ **Funders**
- ◆ **Organizations or Businesses**
- ◆ **Own reputation**
- ◆ **Community pressures**
- ◆ **Own moral code**
- ◆ **Religion/spirituality**
- ◆ **Children**



Conclusions

- ◇ How should a lawyer be spending one's time of that person is interested in children and legal solutions?
- ◇ ICC as a resource
- ◇ Other resources are needed too

A faint, stylized illustration of space elements is centered in the background. It includes a rocket ship pointing upwards, a planet with rings (resembling Saturn), and several five-pointed stars of varying sizes scattered around the central elements.

Youth Justice Depends On YOU