

Girls in Conflict with the Law: Voices from Africa and the Middle East

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Speakers:

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Taghreed Jaber, Regional Director for Penal Reform International in the Middle East and North Africa

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- Beginning of Recording -

John Kamm:

Well, welcome to the fourth of our series of webinars in the International Symposium on Girls in Conflict with the Law. We have had three previous webinars. The first two are what I call introduction webinars. One of the challenges we faced, which others face as well, I think, especially Ann, given her position on the Committee on the Rights of the Child, is working around time zones. So, in the first webinar, we covered in effect, North America and Europe, Africa, Middle East. Then, the second, we looked at Hong Kong, given the whole situation there. Then, the third was Pathways Into and Out of Offending for girls, which was moderated by one of our partners. Patty Lee.

Again, let me go over our partners first. First of all, Dui Hua Foundation. I'm the executive director. We were established in 1999. We specialize in detainees at risk. We look at different groups of detainees at risk, and one of those groups is juveniles. Another is women in the prison system. So, that's our work. Personally, I've been at this about 30 years. Next, our other partner here in the United States is Patricia Lee. She's the managing attorney of the Juvenile Unit at the San Francisco Public Defender's Office. She is very experienced in this subject, is a recognized expert, and has won a number of awards for her work in this area, especially on girls. Penal Reform International has long been a partner of ours. We partnered back in 2014,

when we did an international symposium on the Bangkok Rules. We're very happy to have them join us.

Finally, we have two bodies at the University of Hong Kong. One is the Centre for Criminology and the second is the Centre for Cooperative and Public Law. Those are our partners, and we're very grateful. Now, next slide. Before going to that, I would like to say that we're also supported by colleagues, our staff who've done a lot of work. Joshua, of course, is our control tower guy. Then, then we have other folks like Joy Henry. For instance, Joy did our banner, which you've just seen, and we have our technical expert, Kevin Li. We're backed up by a full staff of people, and I express my thanks to them. These webinars would not be possible without the generous support of the Government of Canada, The Canada Fund for Local Initiatives based out of the Canadian embassy in Beijing. We're also supported by the Ministry of Foreign Affairs of the Netherlands. Then, we have two private funders here in the Bay Area: Alice Lam Memorial Fund and Mark Headley & Christina Pehl. Finally, Dui Hua has a Special Program Development Fund, and we enjoy core grants from the Swiss Federal Department for Foreign Affairs, the Ministry of Foreign Affairs of Denmark, Swedish International Development and Cooperation Agency, and finally, the Ministry of Foreign Affairs of Norway. Thank you all.

Now, here are today's speakers. Unfortunately, as Joshua just mentioned, due to some last-minute complications, it appears that Nafula Wafula will not be able to join us today unless she somehow can join us later in the program. We will endeavor to reschedule her presentation. We have eight more webinars to go, and I'm confident we can find a way. So, now we have professor Ann Skelton, who is a professor at the University of Pretoria in South Africa. As mentioned, she is a distinguished member of the Committee on the Rights of the Child. She has led law reform efforts in South Africa, and that includes the Committees on South African Law Reform Commission that drafted the Child Justice Act and the Children's Act in South Africa. Welcome, Ann. Thank you again to Taghreed Jaber. This is her second webinar. She has been of great assistance, not only in pulling all this together, but also in finding other people who would be interested to join us. Now, again, these webinars are being recorded with the permission of

everyone. Both the audio and the video will be available. They will be put up on our website, and so, stay tuned for that. Finally, I just want to look at the rest of the schedule.

So, the next one on January 14 will be on international perspectives. We will be joined by a Meda Chesney-Lind from Hawaii and Manfred Nowak, who should be known to all of you, as the author of the Global Study on Children Deprived of Liberty. Now, on the 15th, we have juvenile incarceration alternatives. We'll be exploring alternatives to juvenile incarceration, and we'll have a speaker from mainland China. Then, we will do a special program on Hong Kong and Guangzhou. Then, we'll have a special presentation from Richard Ross, who has done a lot of work in this area. He's a photographer. That should be riveting. Then, we're going to look at how girls in Canada, Indigenous girls, are treated in the Canadian justice system. Finally, the last three, there will be a session on sex trafficking. Well, I have to give you all the good news and that is, as of today, China's Supreme People's Court will be making a presentation and that's really unusual. We're very grateful for the court. That would be in March. Finally, we'll have two experts based in Glasgow on sexual violence. So, without further ado, I would like to turn the program over to Taghreed Jaber. Taghreed, welcome.

Taghreed Jaber:

Thank you. Thank you very much, John, for the introduction, actually, and for the great efforts that you and your foundation are really making to organize these very interesting debates and events that are focusing on a very important category of the society that is almost forgotten from the policies and from the actions of the work of different governments. Girls within the criminal justice system are a minority and the fact that they are a minority is really making them face double discrimination in many cases, with the lack of resources allocated to provide them with services and with creating, let's say, services that are child-friendly and gender-responsive to their needs and characteristics.

I would start my presentation by trying to provide more information about the MENA region so we can all understand what we are talking about and the situation on the ground. In general,

MENA region is relatively a very young region, where nearly half of the population in the Middle East and North Africa is aged under 24. One in five people in the region are between the age of 10 to 24, and this applies almost to all of the countries in the region. One in every five children in MENA, unfortunately, is not in school. Girls, due to their vulnerability, are twice as likely to drop out of school than their peers of boys. The armed conflict and ongoing conflicts that you are all aware of in the whole region have affected that dramatically by actually bringing more than 14.3 million children out of the educational system from schools, only in Syria, Iraq, and Yemen.

Gender inequalities and conservative societies continue and are increased and affected by the conflict. Crisis in general and armed conflicts increase the vulnerability of children and youth, with girls often more at risk of gender-based violence than boys. In MENA, we are suffering from a number of cultural traditional issues that girls are affected and impacted with, such as early child marriage, where many of the girls are married before the age of 18 with higher rates in some countries like Yemen, Palestine, and Syria. In addition to that, women and/or girls face other cultural issues that are related to protecting honor, like honor killing and also the genital mutilation that girls can be subject to in some countries like in Egypt. Unfortunately, the percentage is very high in Egypt despite all the efforts by local NGOs and women movements that are trying actually to change the practice. It has been criminalized in law in many contexts and in many countries, but unfortunately, as I said, the cultural practice is still revealing.

So, 92% of women and girls between the age of 15 to 49 have experienced genital mutilation. In general, women and girls make up to 70% of all known human trafficking victims. Adult women consist of 50% of the total number of trafficked people. Two in three child victims of human trafficking are young girls. We all know also the whole issue of migration and illegal immigration that the MENA region is suffering from. Illegal immigrants are very much in higher risk of being trafficked, especially for little girls, who lose their families in the middle of the sea and arrive to the shores of what they believe to be the safe land alone. Why am I mentioning this? Why am I giving you information about violence against children, dropping school, and all of this

information in relation? There's a huge and interrelated relation between dropping school and the tendency to delinquency. There's also a very strong interrelated relation between being a victim of domestic or sexual violence and having to get in touch and contact with the legal system as a victim or a survivor. The fact that the systems are not adequate enough to respond to the needs of these girls, either as victims or perpetrators of some offenses, is a huge challenge in the MENA region.

As I mentioned earlier, the percentage of girls who come in contact with the law is very low. If you look at the numbers, you will find that in Jordan, there are around 350 juvenile child who are placed in care centers. Only three of them are girls. In Algeria, there are only 11 girls. In Yemen, there are six girls in detention. It has two good two sides. One side is the fact that, "Okay, this is really good because we are having a few numbers of girls in detention," but the implication of these girls being few numbers in the system is not really encouraging the authorities to take measures to protect their rights in relation to accommodation inside detention facilities. In Yemen, these girls are kept in detention with adults, adult women actually. While in Jordan, they are kept in a tiny little care center that is not providing enough space to enable these girls to have proper rehabilitation and reintegration programs that can facilitate their reintegration into society. The investment in these programs is not really a priority at the top level of this government because they will tell you, "Why would I create and spend thousands on creating a vocational program where only around the year, 20 girls will benefit while if I compare that to boys, I would say that I have around 2,000 boys who come through the system around the year?" So, I need to prioritize working more and spending my scarce resources on boys more than girls.

We talked about the whole issue of the double discrimination in details. Another challenge that girls are really facing in MENA is the fact that we have something called the informal justice system, and it's a very strong justice system versus the official government, the criminal justice system. In many cases, many of the cases are sorted and dealt with through the tribal system that exists in many countries like Yemen, Jordan, Palestine, and Sudan. These systems that are

managed with the mentality of strong men, old-aged men do not really take the needs and are not sensitive towards girls or women in general. They are very much linked to the culture. They are very much linked to what the society accept as norms. They do not look at the human rights of these girls either as a victim, or if they come in contact with them as someone who committed an offense depending on how the system define crimes and offenses such as I said, the honor killing.

In general, there is little disaggregated data about girls within the criminal justice system. I found it very, very difficult to really find comprehensive research that would look at these phenomena and that will really analyze the actual problems the girls are facing and how they are treated within the system. You will find that they are always linked to major studies that look at women in general, but they do not really look in detail on this group. The juvenile justice systems, in general, are not child-friendly, which is reflected in girls. Few countries, and if you look at the legislations in many of the countries, you will find out they have something that mentions that they should have specialized police to deal with juveniles, specialized judiciary, and special and assigned detention facilities as we discussed earlier, but if you look at their actual practice, you will find that this exists only in the laws. So, what we need to work at is to move to make these laws and legislations active actually and implemented on the ground, so we can at least make sure that when girls have to come in contact with the law, there are certain measures and trained personnel who can deal with them and understand their characteristics and their needs and their rights in a better way to provide them with further protection while they go through the criminal justice system. This maybe will lead me to talk more about the effective responses that that we need.

We have a very valuable international resource in addition to all the international global resources that govern the management of the justice for children system and juvenile justice, which as an expert will be much better to talk about it than me. I would like to advocate, as we always advocate, for the implementation of the United Nations rules for the treatment of women prisoners and non-custodial measures. We just celebrated this month in December,

with the occasion of the Human Rights Day, 10 years of the implementation of the adoption of the Bangkok Rules.

Bangkok Rules provide articles of protection and guidelines of protections that can protect girls in detention and girls when they go through non-custodial measures, such as alternatives, community services, or when they are embedded in other measures. If you ask me 10 years from the implementation of Bangkok Rules, where are we, I will tell you that as a practitioner in this field, I am a little bit disappointed. The number of girls who are coming in contact with the law and are in detention facilities is increasing, and the measures taken by states towards creating a protective environment and having full compliance with the rules is really a shy, one is still at this at this level, and in particular, in my region, in MENA region.

What we need to do, we need to work more with governments and with authorities, alternatives, and John mentioned that there will be a whole session that is focusing on alternatives. Alternatives and early diversion for children from the criminal justice system is the key issue that we all as practitioners should advocate for. The right place for kids is to stay with their families. Definitely, if the family is a problem, then social protection systems should interact, and we should find a better place for children than staying in detention. Detention should be the last resort for children, and all measures that can put in place to avoid sending little girls and little boys to detention should be in place. The whole issue of mental health support also is another thing. When grown-ups go through the criminal justice system, they feel the stress and they feel the fear of having to deal with this rigid system. So, we can all imagine how it is for girls or little girls when they go through the criminal justice system.

Mental health for children while they are going through the criminal justice system and support is essential, in addition to legal support for sure and legal representation. If they ended up in detention, we'll have to focus our work on providing them with more psychological support to make sure that they leave this and they end this experience with good mental health. Rehabilitation and reintegration for children in detention including the girl child is also a key

issue. I have been reading quite a lot recently on using art and sports as an effective tool in helping children to reintegrate into society and to deal with all the distress, trauma that they have been subject to through their contact with the criminal justice system, either as victims or as someone who ended up in detention for committing an offense. I found out that there's a huge benefit of developing reintegration programs that focus on these areas that are very close to the hearts of children and kids because the normal thing for children to do is to play, actually, and to try to enjoy their time, feeding to their mind and well-being by really interacting positively and actively with others.

Preventing projects that focus on creating criminal gender-responsive justice systems. The problem that we're facing here in the MENA region is the fact that this is a challenge even for adult women. Up until now, women still report that they choose not to go to report the violence that they have suffered from because they do see that the justice system is not effective enough in providing them with protection or in helping them. It will contribute even to their stigmatization, or it will put them at a higher risk of revenge. We need to work further on creating criminal justice responsive system in all of the MENA our country, a system that upholds the role of women in policing and law enforcement and supporting them to get high ranks within the system and be able then to influence the decisions, the policies, the directions, the procedures, and the practices of the justice system itself and at the same time, enable women to trust and encourage them to seek justice through the criminal justice system in the different countries by making sure that it is responsive to their needs.

So, this also applies to the little girls, and massive work needs to be done in this regard in the MENA region. Enhancing childcare inside prisons, including education, and here I like to talk about a group of children and we were just revising with you on all this. We see a draft model for a law that should translate the minimum standards for treatment of prisoners, the Nelson Mandela Rules, on the ground. One of the issues for which we stopped as an expert and had lots of discussion is the definition of children in detention, where we were talking about juveniles as children under 18 in detention, and in many countries, they are kept in adult

facilities, as I mentioned, but we were also talking about babies and toddlers who stay with their parents or their mother or father, depending on what the system allows. In the MENA region, it only allows for the mother to keep her child with her until a certain age that varies between four to three to two, and unfortunately, in some countries, seven and eight.

There's a need to invest more on these kids because these kids and children in detention are there for nothing that they do. So, having more work towards creating an environment that can protect their well-being and upbringing is an essential point that should be taken into consideration in developing any interventions in the field of girls and boys in conflict with the law or in contact with the law because they did nothing to make them in conflict with the law, but they are living inside detention and they are in contact with the law institutions.

Humanitarian assistance, what COVID has done to all of us, and there's a need to remember that little girls should not be forgotten from emergency and the humanitarian assistance for them. We faced, as I said, lots of conflict in the region in Yemen, Sudan, in a transitional situation right now, Libya, Syria, where girls in hard or risky situations or in detention need more focus in terms of providing them with the needed humanitarian assistance stuff to let them live in dignity and protect their rights and reduce their vulnerability while they are there. There are so many things that can be done in this regard, and we do hope that with our partners in the future, we will be able to deliver a number of projects on ground that can respond to the needs and the challenges that exists in the MENA region and help little girls while they go through the criminal justice system. With that, I end. I will be looking forward to receive any questions that I will answer. Thank you.

Joshua Nederhood:

So, if we could have maybe John will introduce Ann again and then Ann will start her presentation.

John Kamm:

Well, thank you, Joshua, and thank you, Taghreed, for a fascinating presentation. I really learned a lot. Now, we turn to Professor Ann Skelton from the University of Pretoria in South Africa, a member of the UN Committee on the Rights of the Child and an activist in law reform for the last 25 years. She's done great work in this area. So, we are delighted to have Professor Skelton join us. Thank you, Ann.

Ann Skelton:

Thank you very much, John. It's wonderful to be here with everyone, and for us, it's evening. I know for you, it's morning. So, it really gives us that sense of being part of a global community when we're at different times of the day. I'm going to be talking about girls in the context of sexual offences, and in a sense, this is quite an unusual topic. Because as has been said already by Taghreed, girls are a minority in the criminal justice system as offenders, and they're also a minority in the sex offender population, but they're not absent from that population, and we need to look at whether, and this is really what I'm positing, some of the new generation sexual offenses legislation is having effects on girls that were not foreseen. I'm sure as my stories unfold, you will see what I mean, because I'm going to try and tell this narrative through cases of real-life children in South Africa, which I have been involved with as a legal practitioner.

So, let me just give you the background that South Africa passed a new Sexual Offences Act in 2007, which in many ways was an excellent piece of legislation, which took us from a very gender-biased perspective of sexual offenses. It was very limited, and so this new law actually took us into a different situation where traditions were broadened to capture a wider range of sexual offences within its ambit. Also, the act is gender neutral, which again, is a positive thing in many ways. In the sense that previously, we had a situation that if a boy child was sexually abused and even if there was penetration, that wasn't dealt with as rape or an anal penetration wasn't dealt with as rape.

So, this new Sexual Offences Act sorted out all those problems, and in that regard, it was very good, but it also did a few things, which I think the legislature did not foresee what the results of this would be. So, let me begin with the problems that were created around the criminalization of consensual sexual activity between adolescents. The group that I'm talking about are 12 to 16 years old because 16 is the age of consent to sex in South Africa, and below 12, we accept that children can never consent and it will always be a rape if the child is below 12. So, the question is what happens then between 12 and 16. Prior to our new Sexual Offences Act, if two adolescents between 12 and 16 engaged in sexual activity with one another and it was consensual, I must keep stressing I'm talking about consensual acts, then you don't use any criminal justice response to that. At parliament, when this new law was being passed, the legislature decided that because a child below 16 cannot consent to sex and they can't consent to sex with one another, and consequently, they were then drawn into the net of criminality because they could be charged. In fact, the act in its striving to be gender neutral said that if two adolescents are found to have engaged in consensual sexual behavior together, then both of them will be charged. So, it wasn't long before this new law started to show up some problems. For one thing, sexual activity is very broad. So, it went all the way, from kissing through to sexual intercourse was drawn into the net. The other thing was this problem of all the ones involved in consensual sex would have to be brought into the criminal justice system.

So, one of the early cases that raised the specter of a big problem was a girl called Kay and her boyfriend called Jay, who were in a romantic relationship which had become sexual and they were 15. They were both 15. The truth about their relationship came out within the family. The father called the police expecting that the boy would be the one that would be arrested, but in fact, the police told him that they would have to arrest his daughter as well. This crazy dad said, "Okay, well, it will teach her a lesson." She was taken in by police, questioned, and then they really felt they didn't want to go ahead with the prosecution, so they referred her to an organization called the Teddy Bear Clinic for Abused Children, which does counseling with child victims of sexual abuse and also with young child sex offenders.

The clinic noticed that it was very difficult to work with this girl because she didn't perceive herself as either a victim or an offender. She had simply been engaging in a consensual sexual relationship and now a whole lot of people were asking her a lot of very embarrassing and unnecessary questions. She felt it was extremely unfair what was happening to her. Teddy Bear Clinic approached the Center for Child Law where I was the director at the time and said, "Is this law constitutional because there seems to be a bit of a problem here?" You started looking at the constitutionality of the act, and then a big news story hit the news, which catapulted the case forward quicker.

This story happened around a school called the Jules High School where a group of children, adolescents, had been engaging in a party. They drank, and the initial news that came out was that a girl had been raped by two boys on the school premises. Another child or another adolescent had filmed that on the cell phone, and when the police looked at this footage, they noticed that this girl didn't look as though she was being victimized. She didn't look as though she was being raped. She appeared to be actively engaging in the sexual conduct. So, suddenly, she moved from being a victim into being an offender, and the prosecution were now dealing with her as though she had committed offense, which technically she had because she had consented. Well, there are some questions in my mind about whether she really consented because she actually was drunk at the time. They were all drunk, actually, but be that aside, she was then charged. Well, there was quite a public outcry about the way that the prosecuting authority was handling this case, and what was very interesting to me at the time was that the two boys continued to attend school throughout all of this embarrassing debacle, but the girl never returned to school. Ultimately, sometime later, she committed suicide. I think that shows us that although the legislature had thought they were being very clever to treat these children in a gender-neutral way, what they overlooked was the societal impact on what being involved in the sexual offense is for girls, so different from boys because adolescent boys are sort of expected by society to engage in sexual activity and girls are not. So, this girl's shame was just too much for her to bear.

Then, there was another case, around the same time in which a number of girls were pregnant at school, and they were then being questioned by the police about who had made them pregnant in order to determine whether they should be charged with a crime because if it was a consensual act, then they had committed an offense because they were under 16, they were pregnant, which again, shows us something special about girls because you can see the evidence written over their bodies, right? Sex had happened, question as to whether it was consensual or not it would still be a moot point, but boys, you'd never be able to tell whether they've been engaging in sex or not. If a girl gets pregnant, she's immediately then opened to the possibility of prosecution under this law.

So, armed with these horrific cases, all of which, by the way, did not go through to prosecution because of pressure and legal representation of the girls and what have you, led to the Teddy Bear Clinic judgment in which the constitutional court declared this law unconstitutional because of the impact that it had on adolescents. Justice Khampepe wrote brilliant judgment in my view, I'm not unbiased, I was with the applicant in this matter, but the case really showed us a number of things.

First of all, court centric, sexual debut is normative to happen in adolescents. It's normal. We might not like it. We might want to guide children differently, but it is not abnormal. So, why are we criminalizing children for this? She also said that the law put children into a state of disgrace, and in the court case, the women's legal center brought Amicus Curiae in which they pointed out how much worse this law was for girls than it was for boys because of the shame, even consensual sexual activity, when it comes to girls as opposed to boys. The court found, and it was a unanimous judgment, so there are 11 judges on the constitutional court for this and unanimous judgment, that found that this law had simply gone too far in drawing consensual sexual activity within its net. So, then the legislature had to make changes to the law, which they did. Now, in South Africa, it is no longer an offense for adolescents to consensually engage in sexual activity with one another if they are between 12 and 16. The law

also added that if the older party is 16 or 17, then there was a two year in age defense across the divide of legal age of sexual consent, which remained at 16.

So, there was a lot of misunderstanding about this case. A lot of people thought that we were trying to argue that children have a right to have sex, which is not what we were arguing. We're simply saying, they shouldn't be treated criminals if they engaged in consensual sex. Another thing was that we were not asking for the age of consent to be lowered, we thought it should remain at 16, but we just thought that the criminal law doesn't need to be engaged if we're talking about consensual activity when both are below the age of 16. So, I think you can see then what I mean when I say that this law, although it's intended to be gender neutral, it didn't work in a gender-neutral way, and also, it had bad impacts for both girls and boys. I think I've tried to point out the specific issues that arise for girls when they're treated as sex offenders in this way. I just mentioned that the Teddy Bear Clinic does seem to have set in motion a few cases on the African continent. There's a case in Kenya, called CKW, in which the Teddy Bear Clinic judgment was first deferred to. Actually, the offender in that case was a boy, but he had been engaging in sexual activity with his girlfriend, and so he was raising the constitutionality of the law. The Kenyan court did not strike down the law as unconstitutional, but I think the conversation around some of these issues of consensual sex are starting to now and come out. There are cases in Malawi and Zimbabwe, as well, and if anyone's interested in following up on those, I can make the judgment names and details available.

Another category of cases that I think affects girls a lot is the whole area of sexting, sending explicit messages by cell phone. Now, as we know, in Africa, many, many children do have smartphones. So, those of you who are not in Africa might be surprised and thinking that this sounds like a strange conversation to be having about Africa, but it's not. There are actually many, many children in Africa who do have access to smartphones and who are getting themselves in trouble using their smartphones, just as children in America are getting into trouble using their smartphones. So, we know that young people today tend to engage in online

sexual courtship using their cell phones and taking explicit photos of one another and sharing them.

Of course, there's always a danger that an image so shared consensually can be used to be sent on to a third party and then it's not consensual, and that is a very big problem. So, this is a very tricky area of the law because we don't want to say that it's okay to send images around because it's a very, very harmful and dangerous practice. On the other hand, we also don't really want to add further ignominy to children by making them criminals when they when they unwisely engage in this behavior. This behavior, of course, is something that adults do as well, but it's not unlawful for adults to do it in South Africa anyway. I mean, in some countries it possibly is, but in South Africa, it's not because consensual sharing of images even though they might be pornography is usually not considered unlawful when adults are involved. However, when children are involved, the pictures then become child pornography and that is because a lot of the new sexual offence laws broaden definition of child pornography to be any image that depicts a child and however created and whatever the intention, and even goes to include images of cartoons and all kinds of things. These are very, very broad, expansive definitions of child pornography.

Again, I understand what's driving those, it's the desire to try to close all the gaps and make sure that sex offenders who prey on children are caught. The problem is kids are doing this. They're making videos of themselves, pictures of themselves, and just because they are children, when they take pictures of themselves, they are creating child pornography. When they send that on to another child, a boy or a girl sending a picture to a boy—it's very common, it's actually more common than the other way around—then they are distributing child pornography. If they're showing it to another person who's under 18, they're showing child pornography to a child. So, in there are already three serious offenses that often attract long sentences, even that often attract inclusion on sex offender status and so on. Now, girls are doing this because very often it happens that the boy says to the girl, "Can you send me a picture of yourself naked from the waist up?" something like this, and she sends the picture to

him. It's not so often that he bombards her with pictures of his naked body. Sometimes, yes, but not as often as the other way around. Yet, then it's the girl that's creating the pornography.

Now, she may have been coerced or booked into that. I dealt with a case where the male in the in the whole process was an adult man, and he met a girl who was 16. So, she was above the age of sexual consent, but still a child. They met outside a pizza place and they exchanged telephone numbers, and then he started texting her and so on. He was 40, and she was 15. So, it was not an appropriate transaction, but they didn't actually see each other. They didn't meet. They never had sex with one another, but what happened was, he started to ask her for explicit photographs. She said, "I can't send them because I don't have Airtime." You can guess what he said, can't you? "I'll send you Airtime if you send me pictures." So, it was a transactional arrangement between them. So, she started sending pictures to him.

In the end, she was caught out. Her phone was confiscated by her father. He saw the images on the phone and assumed that she was the victim, and indeed, she was the victim of grooming, but he didn't realize that when he handed that phone over to the police, that they would come back to him and say, "Yes, we're charging that adult man with grooming and with possession of child pornography, but we're also charging your daughter with the creation and distribution of child pornography." She pleaded guilty. She wasn't sentenced to prison, but now she had a criminal record. The prosecution service was very proud of themselves because this was a famous case, the first case in South Africa where a girl had been convicted of sexting. Fortunately, her identity was not revealed, but they bragged about it in the media. The Center for Child Law where I was the director at the time, we picked this up and we got into contact...

So, what I said there was we approached the girl and we asked her if she would like us to help her to get rid of her criminal record, which meant that we had to take the case on appeal, which we did, and we won. We got her criminal record expunged. I was hoping though for a nice judgment on this matter, but unfortunately, we didn't get the judgment because the state threw in the towel at the last minute and conceded that the conviction was wrongful. So,

essentially, we haven't managed yet to add into the constitutionality of the sexting offenses when it comes to consensual activity between teenagers, but South Africa is now looking at some law reform in this area, to see if we can adjust our laws to make it so that it's not a crime for children to consensually exchange this material, although there might well be a referral to support services, counseling, and that kind of thing. I think I've taken up all my time, and I'll stop there. Just to say, though, that the Committee on the Rights of the Child has repeatedly, in a general comment on the Rights of Adolescents and recently in Guidelines on Child Prostitution, indicated that we don't believe it's appropriate to criminalize children for consensual sexual activity except where there is a marked age difference between the older one and the younger one, and where the older one is an adult, obviously then, that could give rise to the prosecution of the adult.

Joshua Nederhood:

Thank you very much. Audience, once again, now's the time that you can submit questions via the Q&A feature. John will be moderating these. I think, John, you've prepared a few questions you'd like to start with. You're on mute, John.

John Kamm:

Okay. Well, thank you very much. Taghreed and Ann for two excellent and thought-provoking presentations. As Joshua mentioned, I'm very curious, and this really applies, I must say, going forward with other events, I'm very curious how COVID-19 has impacted girls in the respective criminal justice systems. So, I'd like to toss that out first to Taghreed followed by Ann. Taghreed, how has COVID-19 affected girls in conflict with the law in Middle East and North Africa? Thank you.

Taghreed Jaber:

Thank you. Thank you, John. Indeed, it's a very good question. Yes, COVID-19 had a major impact on girls in the criminal justice system. Let me just start by saying that according to the WHO, the World Health Organization, that in general, domestic violence and violence against women has increased with 37% of them in the Mediterranean region, and this includes us, which is a very high percentage and an alarming one, if you would look at it. We all can understand the reasons that has led to that in terms of the increase of stress, the suspension of social and productive networks that were not able to operate at work, the increased economic hardship that makes men more aggressive towards women in general.

This means that more girls have been subjected to domestic violence, that would include sexual violence, but they have limited chances of really going to report and seek support and help against the violence that they have been subject to. This is why lots of work has been done globally and in MENA region to emphasize the role of health and care facilities and care and health staff in really trying to support women and girls during the COVID-19 time if they witness any signs of violence that these girls or women have been subjected to and try to provide them with services, and most importantly, report it to the authorities because many of these girls will lock down with the perpetrators, and they have no access or any means to report the violations.

At the same time, humanitarian organizations also have developed certain programs and interventions that while they were trying to provide their humanitarian services, that they had some groups looking at signs of violence that girls and women can be subject to. Courts were suspended for a long time. Many of the girls who were in detention and were supposed to leave, for example, they didn't leave because of that. At the same time, there were some major releases of adults from prisons and even juveniles from detention, but the question is, were there any proper follow-up on these girls or young boys when they are released and went back to their communities and in their societies and their houses? This is still a challenge that we need to study and research more to see what was the impact of that sudden release, let me say, on these girls and children and their adaptation back into society. Thank you.

Ann Skelton:

I can say that back in April, the committee issued a statement on the effects of COVID across a range of issues relating to children, and we definitely flagged children in detention as a category of children that we were very concerned about. I agree with everything that Taghreed just said. One of the tricky things when you're releasing children from custody, if it's adults calling for their release, it's so easy to just say, "Well, release them. Let them go home," but when it's children, you tend to have to also look at what are the circumstances that you're releasing them to. So, there's always a little bit of attention around the sudden release of children, which I think Taghreed is correctly raising. So, those are just some of the things that come to mind, but I think we'll be uncovering more and more as time goes on because we'll learn more about what has happened as state parties are going to come and report to the committee. We will certainly be asking them a lot of questions about what they did during COVID-19 on a range of issues related to children.

John Kamm:

Thank you very much, professor. Now, we're getting close on time, but we have time for one more or two more maybe very important questions. So, this is directed at Professor Skelton. It comes from Judge Len Edwards, a retired judge in the United States recognized as a leader in juvenile justice reform. So, Professor Skelton, what kind of sentences are judges giving for violations of the new law on sexual consent in South Africa? Do they receive detention?

Ann Skelton:

Well, as I've explained, that law was found unconstitutional, so adolescents engaging with each other in consensual acts is no longer an offence. There were a few prosecutions, and none of them resulted in detention. However, there are other consequences that we're very worried

about which is that if you are convicted of sexting, for example, even if you don't go to prison, which, usually if it was consensual sexting, you won't go to prison for that, but your name goes on the sex offenders register, and that has so many impacts going forward. So, when it comes to sexual offences, we have to think beyond the usual concerns because of the registration process for sex offenders. I'm actually against the idea of how the sentence is being placed on sex offenders' registers. It's certainly not as a default position, and we had another case in South Africa, where we challenged that as well, also once. So, now the position in South Africa is that child sex offenders are not automatically placed on the register. The prosecutors have to give an indication that they are going to ask for that placement, and then the children's lawyers can make arguments why they shouldn't go on the register.

John Kamm:

Thank you, Professor Skelton. Now, we have time for, I'm afraid, only one more question and it comes from Mr. William Simon in the United States. Actually, I think this can be addressed by both of our speakers. The question is this are other African governments as progressive as South Africa in their approach to juvenile sexual criminology? Taghreed, do you want to start there and then Professor Skelton? How about in North Africa? Are the governments as progressive?

Taghreed Jaber:

A very challenging question to answer. I would say unfortunately, no. North African countries are still conservative countries, where they deal with issues of I would say sexual relations outside marriage in a different way than other societies would. As I said, girls in these communities still face honor killing for getting enrolled in what they call unofficial relations with any man. So, I do really hope to see more progress in relation to looking at this issue. Definitely, child pornography is something that is very strict and penal codes have criminalized it really well and there's a harsh crime attitude towards the similar crimes in all of the MENA region.

John Kamm:

So, Ann, in your experience and given your position on the UN Committee on the Rights of the Child, are there other governments in Africa that are as progressive as the South African government?

Ann Skelton:

Let me say that I think our courts have been progressive in South Africa, actually, more than our government, but our government is also fairly progressive. I agree with Taghreed. Of course, most other African countries are not that progressive. I think in Eastern and Southern Africa, especially those countries that have got new constitutions with children's rights provisions, what we are seeing is the use of litigation to argue for more constitutional interpretation of laws. So, I'm hopeful that we are slowly, bit by bit, getting to build a jurisprudence that is more open-minded on some of these issues, but I do know that, as I said, the Kenyan case where the case was argued that the Kenyan judge in the end declined to find the law unconstitutional, but I do see that the judges are beginning to at least ask the right questions, and there is a force and a debate. I think there is a willingness to consider decriminalization and it's a feature that we see across Africa. I must say, while they were focusing on girls, there are a lot of boys in Africa as well who are serving sentences for consensual sex, for having statutory rape, as you might call it. I think the conversation is already starting about whether we really need the criminal justice system to deal with those kinds of things.

John Kamm:

Well, thank you. We've run out of time here, Joshua, so I would like to thank here both Taghreed Jaber and Ann Skelton for taking the time to present to us and the audience. Remember, all of these remarks are recorded with the consent of the presenters, and they will be online. Now I'll turn it over to Joshua for some final words. Joshua, take it away.

Joshua Nederhood:

Thank you, John. Thank you so much presenters and audience for your great questions. So, once again, this is the fourth of 12 webinars. It is the last one in 2020, but in exactly a month, we'll have another panel, international perspectives, and then the day after that, but at a different time. That makes it easier for people in Asia to join who will be a panel on alternatives to incarceration. You've sent links to register for those, but we will be sending invitations out again. I've put a link in the chat for you to sign up for Dui Hua publications, if you're not already signed up. That'll make it easier for us to get future invitations out. With that, thank you very much, and we'll look forward to seeing you in 2021, at the next webinar. All right. Bye, everybody.

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