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***CAJ response to the  
Draft Criminal Justice  
(Children) (Northern Ireland) Order 1997***

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## **Response from the Committee on the Administration of Justice (CAJ) to the Draft Criminal Justice (Children) (Northern Ireland) Order 1997.**

### **Introduction**

The Committee on the Administration of Justice (CAJ) is an independent civil liberties organisation working to secure the highest standards in the administration of justice in Northern Ireland. We are pleased to have the opportunity to respond to the draft Criminal Justice (Children) (NI) Order 1997.

CAJ welcomes the proposed establishment of youth courts; the inclusion of 17 year olds in the definition of a child; the introduction of more determinate sentencing; and the increased involvement of the Probation Service. Forty two of the sixty six articles are, however, simply re-enactments (some with amendments) of sections of the Children and Young Persons Act (NI) 1968. Coupled with the assertion in the explanatory notes that "the implementation of the provisions of the Order should be cost neutral" it gives the impression that in many respects young people can expect to be treated much as before under this "new" system.

In its concluding observations on the government's first report to the United Nations Committee on the Rights of the Child (UNCRC) the Committee recommended (1995:7) that "the system of administration of juvenile justice presently in operation in Northern Ireland should be reviewed for (its) consistency with the principles and provisions of the Convention."<sup>1</sup> It is our view that, in certain key aspects, the proposed legislation does not meet the standards set in the Convention and that some of its provisions may, in fact, increase the disadvantage and vulnerability experienced by some children.

### **Principles**

The "Crime and the Community"<sup>2</sup> discussion paper upon which this proposal is based sets out five principles by which the government's approach is to be guided. They are public protection; proportionality; personal responsibility; fairness; and responsiveness (to community concerns). There is no mention of rehabilitation and social reintegration, nor is this addressed directly in the proposal. This is regrettable given the child's special vulnerability. Few theories on the causation of delinquency suggest that such behaviour is wholly the child's individual responsibility. The government's own Black Report<sup>3</sup> says that "most explanations suggest that delinquency arises from the interaction between an individual and his social environment. The economic, environmental and social conditions in which the delinquent develops all play a part" (1979:35).

We believe rehabilitation should be explicitly addressed and recommend changes in particular to Article 40 (supervision under a juvenile offenders centre order). This

<sup>1</sup> Committee on the Rights of the Child, Eighth Session, Consideration of Reports submitted by State Parties under article 44 of the Convention ...concluding observations of the CRC on the United Kingdom of G.B and N.I., Jan 1995.

<sup>2</sup> "Crime and the Community. A discussion paper on criminal justice policy in Northern Ireland", N.I.O, April 1993.

<sup>3</sup> Legislation and services for Children and Young Persons in Northern Ireland. Report of the Children and Young Persons Review Group, December 1979, known as the Black Report.

gives Probation Officers a monitoring role in respect of child offenders. CAJ has every confidence that the Probation Service will wish to promote the welfare of child offenders. We believe however, that a legal obligation on probation services to (a) act in the child's best interests and (b) promote his/her social reintegration and rehabilitation would assure the public that government was committed to these principles and likely to provide the Probation Service with the resources to meet identified needs.

## **Youth Courts**

CAJ welcomes the introduction of youth courts, in that their remit now includes 17 year olds, as 'children' in line with the UNCRC definitions of a child as "...every human being below the age of eighteen years". This will be a cosmetic exercise, however, unless the court can apply disposals available to it in respect of other children, to children aged 17 years.

The proposal suggests that while 17 years olds are to be tried before a youth court the disposals available to that court in respect of them are to remain those for young adults. The explanatory notes (p5) argue that "including 17 year olds within (the scope of Juvenile Offender Centre Orders) could result in too wide an age span in the Juvenile Offender Centres". This fails to acknowledge 17 year olds as children. If the courts must continue to be able to treat 17 year olds as adults, and we believe this view is highly questionable, the Youth Court should at least have the option of applying the less stringent custodial sentence available to other children. CAJ recommends that Article 39(1) be amended to delete "who is under the age of 17..." and read simply "where a child is found guilty by or before any court... the court subject to article 32(1) should have power to make a Juvenile Offenders Centre Order..."

Article 4 (Child's Welfare) re-enacts Schedule 48 of the 1968 Act in giving the court an obligation to "have regard to the welfare of any child" before it. This is a lower standard than that set out in Article 3 of the UN Convention on the Rights of the Child which suggests that "the best interests of the child shall be the primary consideration in all matters affecting him or her." CAJ recommends that this wording should replace "have regard to the welfare of any child" in Article 4. It is our view that such an obligation could have the additional benefit of encouraging courts to consider custody only for the shortest possible period of time, as required by Article 40 of the UN Convention on the Rights of the Child and rule 17 of the Beijing Rules.<sup>4</sup>

CAJ believes that all custodial sentences must therefore be justified in open court and to this end we recommend that Article 39 (4) of the proposal be amended to read "where a court makes a Juvenile Offender's Centre Order, it should state in open court its reasons for doing so".

We welcome the general principle set out in Article 4 that "any delay in dealing with the child is likely to prejudice the child's welfare" and the obligation of the court to have regard to this.

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<sup>4</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice known as the Beijing Rules.

## **Age of Criminal Responsibility**

The UN Committee on the Rights of the Child has already expressed concern to government that the age of criminal responsibility is too low (UNCRC 1995:4) and has since suggested that even 12 years is too young.<sup>5</sup> Rule 4 of the Beijing Rules suggests that in setting the age of criminal responsibility government should bear in mind the impact of "emotional, mental and intellectual maturity on whether a child can live up to the moral and psychological components of criminal responsibility". The Rules note that "In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority) etc..".

In this context it is clearly inconsistent that, for example, a child from age 10 years can be deemed to be as capable as an adult of committing murder but incapable of taking any of the decisions relating to his or her own health and welfare. Children under 14 years have been afforded some limited protection by the doctrine of *doli incapax* (the presumption that they do not know right from wrong). However, this doctrine has been challenged and in a recent judgement, the House of Lords<sup>6</sup> suggested that the law was unsatisfactory and invited parliament to clarify it by legislation. CAJ recommends that this should be done in favour of the child, raising the age of criminal responsibility to at least 14 years as is the case in Germany. We regard this as a minimum, however, and would point out that in some other countries, such as Spain, children under 16 years are not deemed criminally responsible.

Irrespective of debates on the appropriate lowest age limit, in a fundamental way, justice requires that the notion of capacity is the important principle in estimating criminal responsibility. Children committing delinquent acts should, however, be considered in need of support and rehabilitation and facilities and resources provided accordingly. There may be occasions when such children would require secure accommodation, if a danger to themselves or others, but such judgements should not be based on estimates of 'intent' or culpability'.

## **The Role of Parents and Guardians**

The proposal addresses the role of parents and guardians in a number of unhelpful ways. Article 35 re-enacts and amends Section 76 of the 1968 Act (power or duty to order parents to pay fines etc.) to oblige courts to place a duty on parents to pay fines imposed on children under 16 years and allow them to do so in respect of older children. We have concerns about the appropriateness of applying fines in this way for the following reasons: (a) it suggests that the parent is responsible for the child's behaviour, and so calls into question whether the child is genuinely capable of being criminally responsible, (b) it will exacerbate the financial problems of poorer families when this is known to contribute to the development of childhood delinquency, and (c) it will aggravate or introduce tensions between the child and his/her parent or guardian. CAJ believes that fining should not be used as a disposal except in exceptional circumstances, for example, where an older child is able to pay him/herself.

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<sup>5</sup> Cited in Children and Violence: Report of the Guelbenkian Foundation, 1995:176.

<sup>6</sup> C v DPP [1995]

We would recommend that if fines are to continue to be imposed Article 35(4) be amended to state that "...guardian" does not include Boards having parental responsibility". There is no consistency in obliging Boards (through the Trusts) to pay fines, while exempting the managers of Juvenile Offender Centres who will also have parental responsibility (Article 54). This policy of fining is likely to have a negative impact on the care and treatment of disturbed and distressed young people, who may now be viewed as a financial liability. At worst, there may be a preference in some Trusts that these children are channelled directly into the custodial justice system. At best, it will unnecessarily sap resources of the Trusts and may impact on services to other children.

### **Punishment of Grave Crimes**

Articles 45 and 46 re-enact section 73 of the 1968 Act, prohibiting a sentence of death for children and providing for their detention for an indeterminate period, on conviction of grave crimes (e.g. murder) which carried the death penalty when this was introduced as a progressive provision in Section 103 of the Children Act 1908. The Secretary of State has wide powers to direct the place, conditions and duration of detention and discharge on licence. This has led to such sentences being known as S.O.S.P.s (Secretary of State's Pleasure). For lesser ordinary crimes, punishable in the case of an adult with imprisonment for 14 years or more, the court may specify the sentence. The SOSP provisions are clearly outdated and infringe Article 40 of the Convention on the Rights of the Child and Rule 17 of the Beijing Rules in not ensuring that custody is considered for the shortest possible period of time. There is no explicit indication of any requirement on the Secretary of State to apply any standard of fairness or proportionality in respect of his or her decisions regarding continued detention. These provisions, therefore, fail to satisfy the government's own guiding principles and may also infringe article 37 (d) of the Convention on the Rights of the Child as he/she has no effective right to challenge either his/her continued detention or the revocation of his/her discharge on licence. Significantly the deficiencies in this regard would almost certainly fall foul of the decisions of the European Court of Human Rights in *Singh v UK* and *Hussein v UK*.

Furthermore it is possible for someone convicted when a child to serve a longer sentence and be subject to more capricious decisions than an adult convicted of the same offence. This is clearly unfair, especially given the difficulties already discussed in establishing the intent and culpability of children and their special vulnerability. CAJ believes that the S.O.S.P. provisions should be repealed and a judicially controlled sentencing regime introduced. In a recent publication, "Justice" suggested (1996:21) that, for children the distinction between murder and manslaughter is "both unnecessary (given the need for flexible sentencing) and inappropriate (given the difficulty of assessing children's ability to foresee the consequences of their actions)." They propose "a single offence of homicide which is applicable to all children who kill". CAJ believes that government should give serious consideration to this proposal. The report also suggests (p13) that, a distinction should be drawn in cases of children under 14 years in relation to liability for trial and the trial process. It is proposed that children, at least under 14 years,

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7. Cited in *Children and Homicide: Appropriate procedures for juveniles in murder and manslaughter cases*, Justice, February 1996.

should not be liable for trial in adult criminal courts for offences of homicide and that hearings should take place in private for these young children.

### **Arrest, Detention and Questioning**

CAJ has a number of concerns regarding the process through which children are brought before the courts.

#### **(a) *Right to Silence***

The Committee on the Rights of the Child (1995:4) has expressed concern to government that "the Criminal Evidence (NI) Order 1988 appears to substantially erode the right to remain silent". Any 10 year old remaining silent, when questioned by police on arrest or during detention, may later have negative inferences drawn by the court as to their motives. This can then be used to support a conviction. Silence in court can similarly be used against a 14 year old. As the UN Committee against Torture pointed out "To all intents and purposes the United Kingdom was deliberately setting aside one of the basic protections guaranteed throughout the civilised world"<sup>8</sup>

The government claimed, when introducing this legislation that it was intended to bring more "terrorist" suspects to trial. There is no evidence that this has been the result. Northern Ireland Office research, however, "shows that 30% of (all) those remaining silent were charged compared to 37% of those who co-operated" (Weaver 1994:3).<sup>9</sup> It is clearly more advantageous to suspects to remain silent. While no separate figures are available for children, their lack of maturity and understanding is likely to make them especially vulnerable to confusion and self-incrimination. CAJ believes that no child should be subject to this legislation. We recommend that the Criminal Evidence Order be repealed and the right to silence restored for all. Failing this an additional article should be included in the proposal stating that the Criminal Evidence Order 1988 does not apply to children, who shall have an absolute right to silence during questioning and in court.

#### **(b) *Appropriate Adults***

Gudjonsson's research (1992)<sup>10</sup> which was carried out in England on suspects who had an absolute right to silence, suggests that even with this safeguard people may confess to crimes they did not commit, just to get out of custody and to get home. Children are particularly vulnerable to such influences and the government has recognised this by way of the P.A.C.E. Codes of Practice, which oblige police to await the attendance of an Appropriate Adult before questioning a juvenile. CAJ welcomes Article 11 of the proposal, which extends Part V of PACE to children aged 17, who are now to be defined as juveniles. They will therefore be entitled to the protection of an Appropriate Adult.

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<sup>8</sup>. UNCAC, Summary Record of 92nd meeting, November 1991 CAT/C/SR.92, para. 62

<sup>9</sup>. Cited in Weaver, E. (May 1994) *Right of Silence Debate*, The Northern Ireland Experience, Belfast, CAJ and Justice

<sup>10</sup>. Gudjonsson, Dr G. 1992, *the Psychology of Interrogations, Confessions and Testimony* published Wiley and Sons)

Nevertheless CAJ is concerned that Appropriate Adults may not currently be as effective a protection as was originally hoped. Research commissioned for the Royal Commission on Criminal Justice<sup>11</sup> (Evans 1993) indicated that Appropriate Adults were as likely to act in support of the police as the child, whether they were social workers or parents. A number of social workers, parents and others have reported to CAJ that they find it difficult to explain the cautions to children and feel confused about the system and their role within it. Some professionals inform us they have not had sufficient/any training.

While CAJ acknowledges that it will usually be helpful to the child to have a close supportive relative with them during questioning, we believe there are difficulties for adults in explaining something to a child which they do not fully understand themselves.

We recommend that independent Appropriate Adults, specifically trained for their role be available to all children in custody to ensure that (a) appropriate legal advice is sought; (b) the child understands the cautions and questions; (c) the process is fair and free from oppression; and (d) the child's welfare and best interests are secured. Parents would then be able to provide emotional support to their children without the uncertainty and confusion of monitoring a process they do not understand.

We are concerned, however, that some parents are reported to smack or threaten children during questioning in custody. The UN Committee on the Rights of the Child has already expressed concern that smacking continues to be a permissible form of disciplining children in the UK. CAJ contends that, in the context of police questioning, any verbal or physical assaults on the child should be considered duress, as it would be in the case of an adult. No one engaging in such behaviour should be permitted to continue as an Appropriate Adult or remain during the interview even if the threat or smack would otherwise be deemed within acceptable limits.

CAJ is gravely concerned that Appropriate Adults do not have a right to maintain confidentiality in situations where the child gives them information which might assist the police. We understand that a 1993 meeting with the Home Office was attended by the (English) Law Society, the British Association of Social Workers, the Association of Directors of Social Services and the Association of Chief Officers of Probation to clarify the situation regarding confidentiality, for social workers and their employing authorities.<sup>12</sup> The outcome was, we believe, unsatisfactory. Social workers were simply advised to interview suspects separately from solicitors and to indicate to children and vulnerable adults that they could not maintain confidentiality. This adds to the confusion for the child in understanding the appropriate adult's role and opens up a further avenue where the child's dependence and vulnerability can be exploited against him/her. CAJ believes that this position is unethical and unfair. We therefore recommend that the proposal be amended to allow appropriate adults advising children in custody the right to maintain client confidentiality.

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<sup>11</sup> Evans, R., 1993, *The Conduct of Police Interviews with Juveniles*, Research Study No 8, for the Royal Commission on Criminal Justice, London, HMSO.

<sup>12</sup> *Childright* magazine, November 1993, No 101, feature article 'Social Workers as appropriate adults: unwitting oppressors?' published by the Children's Legal Centre, London.

(c) *Emergency Law*

Children as young as ten can be held for up to seven days without being charged (s.14 Prevention of Terrorism Act 1989) and only have an absolute right to access to legal advice after 48 hours (s.47 Emergency Provisions Act 1996). Juvenile detainees have no right to have their lawyers present during interrogation. While the EPA Codes of Practice allow for the presence of an appropriate adult for children and vulnerable others, CAJ believes that it is not possible for an appropriate adult to ensure no oppression in these circumstances. Emergency law infringes Article 40 of UNCRC in not informing the child promptly and directly of the charges against him/her and in restricting access to legal assistance. The Beijing Rules are also flouted. Rule 7 demands the presumption of innocence, the right to counsel and the right to remain silent. Rule 10 states "Contacts between law enforcement agencies and a juvenile offender shall be managed in such a way as to... promote the well being of the juvenile and avoid harm to her or him". None of this is possible if our emergency laws are applied. The Diplock court system could not be said to be "conducive to the best interests of the juvenile" and "conducted in an atmosphere of understanding" as required by Rule 14. CAJ therefore recommends that the proposal include an additional article excluding children from arrest, detention and trial under emergency laws.

**Advice, Warnings and Cautioning**

The proposal's explanatory note (p3) suggests that informal warnings and formal police cautions are "an effective means of avoiding the need to process through the courts those who have offended". The sixth report of the Home Affairs Committee on Juvenile Offenders<sup>13</sup> notes that "It is clear that cautioning presents many problems, not the least of which is the arbitrary and inconsistent nature of its present operation". The Royal Commission on Criminal Justice<sup>14</sup> has recommended that "police cautioning should be governed by statute, under which national guidelines... should be laid down in regulations". The Home Affairs Committee endorsed this recommendation and CAJ would urge its speedy implementation. We have received a number of reports from young people that they accepted formal cautions for offences they did not commit just "to get home". Regulations should, as the Home Affairs Committee suggests<sup>15</sup> "also address the need for legal safeguards with regard to sufficiency of evidence and instant decision making by the police themselves."

In relation to monitoring the impact of the use of cautioning the Home Affairs Committee notes<sup>16</sup> that "section 95 of the Criminal Justice Act 1991 requires the government to publish annually "information ... facilitating the performance by persons engaged in the administration of criminal justice of their duty to avoid discriminating against any persons on the grounds of race or sex or any other improper ground" and that "the Inspector of Constabulary watch carefully for any

<sup>13</sup>. Home Affairs Committee, Sixth Report, Juvenile Offenders, Vol 1, Report together with the proceedings of the Committee, 1993, London, HMSO, para. 76.

<sup>14</sup>. Royal Commission on Criminal Justice, (CM 2263, para 5.57)

<sup>15</sup>. Home Affairs Committee, (HAC 1993 pxxxii-pxxiv, para. 76).

<sup>16</sup>. Ibid, pxxxiv - pxxxv, para 78

incidence of bias in cautioning on grounds of race or of gender". This does not appear to have been done by HMIC in relation to Northern Ireland and section 95 of the Criminal Justice Act 1991 does not appear to extend to this jurisdiction. CAJ is concerned that only statistics based on gender and age have been published in Northern Ireland.

CAJ is further concerned that the need for such statistical information extends beyond cautioning to the whole operation of the criminal justice system. An additional article requiring the annual publication of statistics on the basis of race, religion, gender and disability should be introduced given the relevance of the issues and the existence of anti-discrimination legislation in these areas. (See also Juvenile Offender Centre Orders and Disability below).

In principle we support the proposed extension of the Juvenile Liaison Bureaux throughout Northern Ireland.

## **Disposals**

CAJ welcomes the repeal of legislation allowing for the transfer of 15 year olds committed to custody, on Training School Orders, to the Young Offenders Centre for periods of 5 weeks or for the unexpired period of the Order. We also welcome the reduction in the period to be spent in custody under the new Juvenile Offenders Centre Orders, and as previously mentioned the increased involvement of the Probation Service. We do, however have a number of concerns about the new proposal.

## **Training Schools**

For some years now we have had grave concerns as to the operation of the Training School system in Northern Ireland. The proposal's explanatory notes (page 5) suggest that Training School Orders authorised "detention for an indeterminate period of up to two years in an "open" residential care setting". In fact, one of the schools, Lisnevin, is a so-called "closed" facility. As noted by Curran et al (1995:100) "In open training schools, residential units are domestically designed; Lisnevin Special Unit conforms to the specifications of a Grade C prison with a central panopticon ".<sup>17</sup> This latter can hardly be described as 'open' residential care, yet no distinction has been made in the new legislation between Lisnevin a children's prison and the more open settings: all are to be called "Juvenile Offender Centres". Schedule 2 para. 5 of the new legislation allows for children to be 'transferred' from one Juvenile Offender Centre to another. Currently children may be transferred from the 'open' schools to Lisnevin with the agreement of a semi-independent admissions panel. As this "transfer" means the child will be imprisoned, CAJ believes that it constitutes arbitrary deprivation of liberty in breach of Article 37 of UNCRC and Rules 14 and 15 of the Beijing Rules. The child is not provided with legal representation and the admissions panel does not constitute a competent judicial authority operating according to the principles of a fair and just trial as these standards require.

<sup>17</sup> Curran D, Kilpatrick, R, Young, V, Wilson, D, 'Longitudinal Aspects of Reconviction: Secure and Open Intervention with Juvenile Offenders in Northern Ireland, 1994, in the Howard Journal of Criminal Justice- Vol 34, No 2, May 1995, Blackwell Publishers for the Howard League.

CAJ is further concerned that, contrary to what might be expected, it is not always the most serious offenders who are sent to Lisnevin. Research has shown that "there is a somewhat greater tendency for more serious offenders, who prior to admission were convicted of sexual crimes or crimes of violence against the person, to remain in open custody; proportionately more young offenders in secure custody have tended to crimes of burglary, robbery or motoring offences, primarily "taking and driving away". These findings confirm that seriousness of offence prior to admission is not a prime determinant of secure placement" (Curran et al, 1995:105). The research concludes "the function of Lisnevin is to provide secure containment of young offenders who are unmanageable in open settings by virtue of, usually, absconding and the risk of either further criminal misconduct, self-injury and /or presenting a danger to others". Article 44 of the Children (NI) Order 1995 regulates the use of secure accommodation for children in care who are a risk to themselves or others. CAJ recommends that there should be a similar Article in this legislation allowing the courts to regulate the use of 'secure' custody for children already found guilty of an offence.

### **Lisnevin**

Given that Lisnevin has care of some distressed and disturbed young people, CAJ believes that the austerity and autocratic nature of the current regime is inappropriate. A recent study carried out on behalf of the National Children's Bureau states "the physical surroundings in Lisnevin, in particular the absence of furniture and personal belongings in the cells may go some way to explaining why placement there is seen by young people as punitive as opposed to therapeutic. It must be asked if such bleak living quarters would be acceptable in many adult prisons, still less for accommodating children who need warmth and stimulation - whatever their crime or behaviour. It is also worth considering if such austerity is counter-productive in terms of helping a young person work to overcome offending behaviour".<sup>18</sup>

CAJ believes that the answer to this can be found in Curran et al's research which notes "offenders from secure custody (ie Lisnevin) are consistently reconvicted earlier and at a higher level than offenders from open custodial settings" (p106).

The Staff Handbook sets out the treatment of children in Lisnevin as follows:- "clients are not to address staff by their Christian names" (p45), the role of staff is to "supervise and control" (p45); room searches are to be carried out on a nightly basis (p30) and unit searches weekly but not at the same time or on the same day (p31); boys are to be "thoroughly searched at reception prior to joining their units" and "searched before leaving the visiting area" after each visit, and searched after court appearances. Boys may be searched at other times, if thought to have prohibited or dangerous articles. Prohibited articles are not defined but examples of "markers, felt tipped pens" are given on page 47. Visiting is by appointment only and on presentation of an allocated visiting card and some personal identification. All visits are supervised by staff and can comprise of two persons on any one occasion. While remandees may be brought confectionery, cigarettes, tobacco, fruit and/or money, boys in the special unit (ie those 'transferred') may only receive fruit or

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<sup>18</sup> . Planning for Children in Care in Northern Ireland p 158, Goretti Horgan and Ruth Sinclair, published by National Children's Bureau Enterprises Ltd, January 1997, ISBN 1 9000990 040.

money. Visits home are "privileges" to be earned. All boys are locked in their rooms at night. All boys "shall wear unit issue clothing/footwear."

Given the authoritarian nature of the regime and the frequent intrusions and lack of privacy, it is difficult to imagine that Lisnevin could be described as treating children "in a manner consistent with the promotion of (their) sense of dignity and worth", as required by article 40 UNCRC, nor does it appear that the "best interests of the child" are the paramount consideration as required by Article 3 UNCRC.

CAJ has received a number of complaints of assaults, intimidation, and verbal abuse by staff of the children in Lisnevin. There were two serious riots in the institution in April and November 1994. We received some alarming but unsubstantiated allegations as to the role of some staff in these and called for a public enquiry. The Northern Ireland Office replied assuring us that staff had behaved appropriately in handling the difficulties. There has been no public analysis of what went wrong in Lisnevin and the events remain shrouded in secrecy. We understand many of the children were transferred to the Young Offenders Centre after hearings before specially convened courts.

We remain of the opinion that an independent review of the function and operation of Lisnevin should be undertaken to assess its suitability as a placement for children, and its conformity with internationally recognised standards. The results of such an investigation and its recommendations should be made public.

Irrrespective of any such enquiry, some external and independent complaints mechanism should be available to children in custody. Currently Independent Representatives (IRs) can visit children in Lisnevin and other Training Schools. Independent Representatives are however, dependent on Northern Ireland Office funding. The nature of complaints received by Independent Representatives are not made public and some children have reported that they lost privileges as a result of making a complaint to an Independent Representative.

CAJ recommends that an Article be added to the proposal giving Independent Representatives a statutory right of access to all Juvenile Offender Centres: an obligation to advise, assist and befriend children in custody; and the right of access to all appropriate information to facilitate the child in resolving conflicts or raising complaints regarding his or her care. Annual statistics should be published indicating the number and nature of complaints, the extent to which these were believed to be resolved, and a breakdown by way of gender, race, religion and disability.

In the interests of local accountability, we recommend that the new legislation extend the remit of the Ombudsman in Northern Ireland to investigate complaints of maladministration against the Criminal Justice Services division of the Northern Ireland Office.

Staff training is crucial if difficult, aggressive, or distressed children are to be assisted to resolve conflicts with others. While we have concerns that some staff in Lisnevin, and indeed other Training Schools, may not always have acted in the best professional manner in dealing with the children in their care, we are also concerned that they are not always trained to deal with the situations they face. We note the repeal of section 151 (grants for training in childcare) of the 1968 Act. We regard it as essential that this is at least re-enacted in the new legislation. We further

recommend that the Northern Ireland Office be given a statutory duty to provide training for staff to enable them to undertake duties they are allocated.

### **Juvenile Offender Centres**

Training Schools were originally used both for children deemed in need of care and those deemed guilty of offences. Section 83 of the 1968 Act (regard to be had to religious persuasion of persons sent to training schools) obliged courts making Training School Orders for 'care' or 'justice' reasons to "select a school for persons of the religious persuasion to which" the child belonged. As a result of this legislation voluntary Training Schools catered for Catholic children while the state schools catered for Protestant children. Notwithstanding recent attempts to rectify the situation, the staff profile of the respective schools reflect their clientele being predominantly Catholic or Protestant respectively. Consistently there have been more Catholic children in the training school system than would have been expected. Prior to the implementation of the Children (NI) Order 1995, "Rathgael Centre for Children and Young People (had) a capacity of 115 for Protestant boys and girls and St Patrick's Training School (had) a capacity of 111 places for Catholic boys (and) St Joseph's Training School (had) 32 care places for Catholic girls". (Curran et al 1995:99). In relation to criminal justice provision, in 1995 "The . . . capacity for juvenile offenders in St Patrick's Training School (was) 54 places and in Rathgael Centre 50 places". (p99).

There was no reduction in the number of Catholic boys committing offences, yet in 1995 the number of places available in St Patrick's Training School was reduced to 19. CAJ wrote to the Northern Ireland Office enquiring why this had occurred. In their response the NIO suggested that this was due to the need for new accommodation to be built in St. Patrick's and that in any case new legislation was to be introduced and the ". . . effect of (this) will be to reduce the need for Training School places".

Rathgael's available capacity has, however, remained at 50 places. The new legislation repeals the requirement in section 83 of the 1968 Act to have regard to the religion of the child in placing him or her. Article 57 of the new legislation changes the name of the Rathgael Management Board to "the Juvenile Justice Board". This Board's functions are extended considerably. It is given power "to make and give effect to schemes for children who are subject to attendance centre orders or Juvenile Offenders Centre Orders and schemes for the prevention of crime by children".

This is a particularly radical change with major implications in relation to equal opportunities and fair employment practices. There is not a word of explanation in the 'explanatory notes' about the reasoning behind this decision. No Policy Appraisal and Fair Treatment (PAFT) analysis appears to have been done.

The impact of the reduction in the number of available places at St. Patrick's is already being felt. Lawyers and social workers report that a significant number of Catholic boys placed in Rathgael have been absconding, refusing to stay in what they perceive to be a 'Loyalist' Training School. As already discussed, absconding may lead to their transfer to Lisnevin. At least one boy has appealed against his placement through the courts. Some Catholic boys have reported receiving sectarian threats in Rathgael from other children.

CAJ believes that unless a neutral and supportive environment can be established, children and their families will suffer. Besides the experience of Catholic children already discussed, under the new legislation it will be possible for Protestant children to be committed to St. Patrick's. This is likely to have a similar impact on them as placement in Rathgael is currently having on some Catholic children. In both situations there is a not inconsiderable risk of sectarian assaults and bullying and the staff profile in each institution may create difficulties in relation to children's confidence in the staff's ability to deal impartially with this kind of problem.

The attempt to implement such radical changes to the Training School system without adequate discussion or debate is irresponsible.

CAJ recommends that if changes are to be made towards a non-denominational system then new staff structures must be established and a balanced workforce and a truly neutral environment created. In reaching decisions in this area the safety of the children must be the paramount consideration. Furthermore it is essential that a comprehensive impact analysis be carried out in order to assess all of the equality implications of these proposed changes.

Given that a very large proportion<sup>19</sup> of children in Training Schools have emotional and behavioural problems which require the implementation of anger management programmes, the risks of integration may be too great. In this event consideration should be given to the retention of section 83 of the 1968 Act which requires the court to have regard to the religious persuasion of persons when reaching decisions as to where they should be held.

## **Disability**

Recent research has shown that "Almost a third of young people in training schools have a physical or learning disability aside from emotional and behavioural difficulties (Horgan and Sinclair, 197:132). This figure refers to children admitted to training school for both care and justice reasons. Nevertheless the proportion of children with a disability is very high, and may indicate that, underlying factors influencing the behaviour of convicted children which are not being taken significantly into account in the criminal justice process. The research notes "one in five of the sample have a statement of special educational needs and . . . All but two of the young people in the sample are described by social workers as having emotional and behavioural difficulties". Training schools are not necessarily appropriate placements for children with disabilities, whether or not they have committed an offence. CAJ is concerned that there may be a failure to recognise or identify the disability either by the police during arrest and questioning; by social workers or probation officers writing Social Enquiry Reports and making recommendations to the court; or perhaps by the courts themselves at the point of sentencing. There is not sufficient statistical information collated on this matter to identify the reason why so many children with a disability are sent to Training Schools. Whatever the cause the result appears to disadvantage disabled children whose needs are not necessarily recognised by the criminal justice system. CAJ recommends that research be commissioned on this issue and that statistics be collated annually on the numbers of children in Training

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<sup>19</sup> Op. Cit. Horgan and Sinclair, page 132

Schools/Juvenile Offenders Centres who have a disability and the nature of their disability.

### **Children's Rights Commission**

Given the complexity of matters to be resolved in respect of children's rights within the criminal justice system, discussed above, and the range of other matters affecting children, CAJ finally recommends the establishment of a Children's Rights Commission which would have access to records and statistics and a role in ensuring/promoting good practice in all agencies working with or for children.

**March 1997**

