CAJ
Committee on the Administration of Justice

Promoting Justice / Protecting Rights

CAJ's submission no. S300

CAJ's response to the Youth Justice Review Team

March 2011

2nd Floor, Sturgen Building
9-15 Queen Street
Belfast BT1 6EA

Tel – 028 9031 6000
Email – info@caj.org.uk
Web – www.caj.org.uk

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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Joseph Rowntree Charitable Trust and the Oak Foundation.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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Youth Justice Review Team
Room A41
Block A, Castle Buildings
Stormont
Belfast
BT4 3SG

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Review of how children and young people are processed at all stages of the criminal justice system, including detention, to ensure compliance with international obligations and best practice. – Hillsborough Agreement

We would like to thank you for the letter dated 9th December which invited us to comment on issues which the Youth Justice Review Team (hereafter, 'Review Team') should explore.

We maintain that the youth justice system should not only involve the Department of Justice but needs clear and systematic cooperation and synchronisation with various other relevant government departments. One of the most critical issues at hand is the very fact that youth justice entails much more than the justice system, and for long-lasting significant changes to be made, there is the need for 'buy in' from various governmental departments, including health and education. Moreover, in the current times of budgetary restraint, there may be further benefit to cross-departmental coordination. We would strongly urge the Review Team to consider its remit as broadly as possible, acknowledging youth justice as beyond 'young people caught up in the justice system' and considering a holistic view of justice.

With this in mind, we strongly advocate that the Review Team coordinates and shares information with relevant departments and public authorities, the Prison Review Team, the Access to Justice Review Team and those civil servants working in relation to the Community Safety Strategy, as these issues are intrinsically linked.

Although Northern Ireland has recently been commended by the Independent Commission on Youth Crime and Antisocial Behaviour and a great deal of work has been done since the Criminal Justice Review (CJR) more than ten years ago, there is still much to do. The CJR stated,

> It is the responsibility of society as a whole to provide the opportunities and mechanisms that minimise the likelihood of young people committing

> offences, and to provide an effective and helpful means to deal with offending that does occur. That is why most countries have developed criminal justice systems and *processes which take account of the special needs of juveniles and which emphasise and uphold their fundamental rights* (our emphasis).

Bearing in mind international human rights obligations and best practice standards, CAJ offers the following comments for consideration. In addition to the United Nations *Convention on The Rights of the Child*[1]*;* United Nations *Standard Minimum Rules for the Administration of Juvenile Justice*[2] ('*The Beijing Rules*')*;* United Nations *Guidelines for the Prevention of Juvenile Delinquency*[3] ('*The Riyadh Guidelines*'); United Nations *Rules for the Protection of Juveniles Deprived of their Liberty*[4] ('*the Havana Rules*'); also borne in mind are the Committee of Ministers of the Council of Europe *Guidelines on child-friendly justice*[5] (the '*Guidelines'*) and *Recommendation for Juvenile Offenders subject to sanctions or measures*[6], and finally, the Guidance Note of the Secretary-General: *United Nations Approach to Justice for Children*[7].

The *Guidelines on child-friendly justice* gives the following fundamental principles: **participation; best interests of the child; dignity; protection from discrimination; and rule of law.** Northern Ireland would do well to measure its policies and practices relating to youth justice against the contents of the '*Guidelines'*, notably Section IV Child-friendly justice before, during and after judicial proceedings.

In forming its recommendations for the Final Report, we urge the Review Team to incorporate the guiding principles of the *Approach to Justice for Children*, which include:

- **Ensuring that the best interests of the child is given primary consideration**
- **Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination**
- **Advancing the right of the child to express his or her views freely and**

[1] Available at: http://www2.ohchr.org/english/law/crc.htm
[2] Available at: http://www.un.org/documents/ga/res/40/a40r033.htm
[3] Available at: http://www2.ohchr.org/english/law/juvenile.htm
[4] Available at: http://www.un.org/documents/ga/res/45/a45r113.htm
[5] Available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1705197&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383
[6] Available at: https://wcd.coe.int/wcd/ViewDoc.jsp?id=1367113&Site=CM
[7] Available at: http://www.unrol.org/files/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf

to be heard
- **Protecting every child from abuse, exploitation and violence**
- **Treating every child with dignity and compassion**
- **Respecting legal guarantees and safeguards in all processes**
- **Preventing conflict with the law as a crucial element of any juvenile justice policy**
- **Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time**
- **Mainstreaming children's issues in all rule of law efforts**

Age of criminal responsibility

For many years the children and human rights sectors have called upon the government to increase the age of criminal responsibility. The present age of 10 is surely in contradiction with the real meaning of *Convention on the Rights of the Child* (CRC). Indeed, the Committee on the Rights of the Child recommends that all State parties should set the minimum age of criminal responsibility to no younger than 12 years of age.[8] In response to the various recommendations by the Committee on the Rights of the Child specifically to the United Kingdom, OFMDFM identified the youth justice recommendations, which included a recommendation to increase the age of criminal responsibility, as a 'priority area for action'.[9] Efforts should be made to encourage the government to follow through with this recommendation.

As noted by Thomas Hammarberg, the Council of Europe Commissioner for Human Rights: 'though the message of the [CRC] is that criminalisation of children should be avoided, this does not mean that young offenders should be treated as if they have no responsibility.'[10] Accordingly, those children who come into contact with the justice system should be 'treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society' (CRC Article 40(1)).

[8] Committee on the Rights of the Child. General Comment No. 10: Children's rights in juvenile justice. CRC/C/GC/10. 25 April 2007
http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf
[9] *UNCRC: Northern Ireland's Priorities and Plans, OFMDFM response to the Concluding Observations of the UN Committee on the Rights of the Child*, OFMDFM, November 2009,
http://www.ofmdfmni.gov.uk/uncrc_statement_northern_ireland_annex_to_executive_5.11.2009-2.pdf
[10] Thomas Hammarberg, 'Juvenile Justice Approach Built on Human Rights Principles', *National Association for Youth Justice* Vol 8(3). 2008.

What do these standards and guidelines mean in practice?

Prevention

CAJ believes that a youth justice system should begin with a set of measures that aim to prevent children and young people coming into the justice system and the above-mentioned international standards should be the basis for that system. Prevention is perhaps that most fundamental starting point and requires a holistic approach to youth justice. That parents have responsibility for the upbringing and development of their children is acknowledged in the United Nations *Convention on The Rights of the Child* (CRC)(Articles 18 & 27), yet it is vital that parents have the support they need in order to do so. For this reason, we emphasise that an effective youth justice system needs buy-in from departments and agencies other than the Department of Justice.

When visiting Belfast in February 2010, Prof. Barry Goldson argued that international evidence demonstrates that diversion and minimum-necessary intervention are key to preventing youth (re)offending. Universal services, holistic approaches and 'decriminalising' responses comprise the most effective and least damaging forms of intervention. Furthermore, custodial sanctions comprise the least effective and most damaging forms of intervention.[11]

Diversion

Although there are 10 year olds who engage in anti-social behaviour (ASB) and who commit offences, some of which are quite serious, this should not suggest that the answer to combat this lies in maintaining a young age of criminal responsibility. We believe that the answer is not to bring the children into the criminal justice system but rather to divert them away from both the ASB and the criminal justice system. It is a well-known fact that once children are in the system it is difficult to get them out. It would seem that prevention would prove to be more cost effective in the long run.

Effective diversion requires that various agencies and government departments work together to provide 'wrap around care'. There is a clear link in this instance between the education system, the justice system and family/child support services.

[11] Professor Barry Goldson, speaking at a seminar at the Northern Ireland Assembly, organised by NIACRO and All Party Group on Children, Stormont, Belfast, 1 February 2011. This opinion is also re-iterated by Thomas Hammarberg, see note 2.

A great deal has been said of late about the positive aspects of youth conferencing. Indeed, the UK Ministry of Justice is presently aiming to increase the use of restorative justice, citing Northern Ireland as a positive example: 'we want to encourage [restorative justice] across the youth justice sentencing framework as a whole, drawing on the experience of youth conferencing in Northern Ireland'.[12] Similarly, the Independent Commission on Youth Crime and Antisocial Behaviour in England and Wales reported:

> We have been impressed by the restorative Youth Conferencing Service introduced in Northern Ireland five years ago and believe that its professionally co-ordinated approach provides a suitable model for England and Wales. Reconviction rates among young offenders involved in restorative justice processes are relatively low and youth conferencing in Northern Ireland has been accompanied by lower use of custody. Approval ratings among victims and all those involved are high. No one there suggests it is in any sense a 'soft' or easy option. Young offenders themselves acknowledge just how tough it has been to have to face up to the harm and misery they have caused their victims, their families and the community. Restorative justice is an approach whose time has come, and the results, when professionally managed, speak for themselves.[13]

While there is room for improvement in relation to the youth conferencing system, there is significant evidence that this approach can be effective: 70.7% of those released from custody reoffended within one year. This is in contrast to a reoffending rate of 37.7% for those subject to youth conferencing, with a 47.4% reoffending rate for those who participate in court-ordered conferences and 28.3% for diversionary conferences.[14] This also compares to 52.1% re-offending rate for those given community-based disposals such as community service orders, probation orders, attendance centre orders, community responsibility orders and reparations orders.

Nonetheless, youth conferencing does not work for all individuals and for a child or young person to be repeatedly given youth conferencing orders is counter-productive. Whilst some children take on board the impact that the offending has had on the victim, others do not and after receiving four youth conference orders, for example, a new system should fall into place. It would appear necessary to further engage those who continue to re-offend in order to determine what would be a more effective mechanism to support desistance,

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[12] *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders,* Ministry of Justice, December 2010.
[13] *Time for a Fresh Start*. Independent Commission on Youth Crime and Antisocial Behaviour, 2010.
[14] *The Northern Ireland Youth Reoffending: Results from the 2006 Cohort, Research and Statistics Bulletin 4/2009*, S Tate and C O'Loan, Northern Ireland Office, 2009

given that there are apparent obstacles to cessation of committing crime which face the individual.

While youth conferencing has contributed to a decrease in the number of children and young people in custody, more could be done to adhere to the human rights standard of using custody as a last resort, particularly in relation to children and young people (CRC Article 37). As noted above, this is particularly important given that evidence demonstrates that reconviction rates of those released from custody are in fact very high.[15]

Significantly, the recent Northern Ireland Policing Board (NIPB) *Human Rights Thematic Review: Children and Young People* undertook to include anti-social behaviour in its remit 'not because it is perpetrated by children and young people but because society assumes falsely that young people are the main protagonists of anti-social behaviour'.[16]

Anti-Social Behaviours Orders (ASBOs) appear to be at odds with the 'restorative' ethos of justice which Northern Ireland has become increasingly known for across the UK, and further afield, as a result of the success of the youth conferencing (as noted above), particularly in light of the fact that a breach of an ASBO is a criminal offence and may result in detention.

CAJ believes that now is the time to rethink measures such as Anti-Social Behaviours Orders (ASBOs), which criminalise young people, and are in fact contrary to the idea of 'effective and *helpful* means' of dealing with youth offending, as was put forth in the Criminal Justice Review. In its 2008 examination of the UK government, the monitoring committee of the International Covenant on Civil and Political Rights (ICCPR) expressed concern that:
Despite anti-social behaviour orders (ASBOs) being civil orders, their breach constitutes a criminal offence which is punishable by up to five years in prison. The Committee is especially concerned with the fact that ASBOs can be imposed on children as young as 10 in England and Wales and 8 in Scotland, and with the fact that some of these children can subsequently be detained for up to two years for breaching them. The Committee is also concerned with the manner in which

[15] See also: O'Mahony, David and Catriona Campbell, 'Mainstreaming Restorative Justice for Young Offenders through Youth Conferencing - the experience of Northern Ireland', J. Junger-Tas and S. H. Decker (eds.), *International Handbook of Juvenile Justice*, 93–116.
[16] *Human Rights Thematic Review: Children and Young People*, Northern Ireland Policing Board, January 2011. This report addresses various important issues relating to policing and young people, which the YJR team should also consider.

the names and photographs of persons subject to ASBOs (including children) are frequently widely disseminated in the public domain.[17]

It further recommended that the government undertake to review ASBOS, as yet not done, and cease to apply them to children:

The State party should review its legislation on anti-social behaviour orders (ASBOs), including the definition of anti-social behaviour, in order to ensure that it complies with the provisions of the Covenant. In particular, the State party should ensure that young children are not detained as a result of breaching the conditions of their ASBOs and that the privacy rights of children and adults subject to ASBOs are respected.[18]

Furthermore, the United Nations Committee on the Rights of the Child, noting that most children subject to ASBOs are from disadvantaged backgrounds, voiced concern that rather than 'being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system'.[19]

We believe that the long-term answer to anti-social behaviour lies in addressing its root causes. Research in North Belfast demonstrates that people believe that alcohol, drugs and lack of parental discipline – more than poverty, lenient sentencing, or unemployment – are the three key factors influencing crime and anti-social behaviour.[20] If these perceptions are accurate, it suggests that in order to curb crime, there is a need to address the causes prior to the occurrence of crime. Again, evidence demonstrates that dealing with the causes of negative behaviour, in this case offending and ASB, is most beneficial and early intervention is crucial: 'abuse and neglect [of children] are major predictors of future victimisation and anti-social behaviour'.[21]

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[17] Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland. U.N. Doc. CCPR/C/GBR/CO/6 (2008).
[18] Concluding Observations of the Human Rights Committee, United Kingdom of Great Britain and Northern Ireland, U.N. Doc. CCPR/C/GBR/CO/6 (2008).
[19] Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: United Kingdom of Great Britain and Northern Ireland, CRC/C/GBR/CO/4, 20 October 2008.
[20] *Community Attitudes to Crime, Anti-Social Behaviour and Policing in the Greater New Lodge (unpublished),* Dr Peter Shirlow and Dr Graham Ellison, Sept 2008.
[21] *From Safe Child to Humane Adult*, Christina Enright, Kids Company (a London based NGO which offers support to vulnerable children) speech at 'Restoring Respect, a Youth Justice Agency Conference Belfast 12 November 2009 (citing Maas et al, 2008; Widom 1989, de Zuleuta 2006).

As we have stated to the government previously,[22] CAJ would welcome a genuine consultation on how to effectively address anti-social behaviour, particularly in those communities where it is most prevalent.

Rehabilitation

At a recent seminar in Dublin, Marsha Levick, a solicitor and founder of the Juvenile Law Centre in Pennsylvania, USA, demonstrated that children who commit crime are open to rehabilitation and are not, by default, destined for a life of crime. Ms Levick put forth the idea that:

> Young offenders' capacity to change and grow, combined with their reduced blameworthiness and inherent immaturity of judgment, sets them apart from adult offenders in fundamental ways. Medical, psychological, and sociological studies, all show that children under 18 are less culpable and more amenable to rehabilitation than adults who commit similar crimes.[23]

This message demonstrates that even within the justice system, 'children must be treated as children'[24] and offers insight for Northern Ireland when considering reform for the youth justice system. Significant improvements have been made over recent years to the Juvenile Justice Centre; there are still various reoccurring problems and recidivism remains an issue. [25]

Conclusion

It often appears that statutory bodies are driven by delivery and do not offer a sustainable approach to the problem. It is vital that the issues at hand are addressed in an inter-agency and cross-departmental manner and that a joined-up approach extends beyond the statutory sector to engage the numerous other stakeholders involved in this debate. Again, as we noted at the outset, the Youth Justice Review Team should interact with the other relevant Review Teams and outstanding consultations.

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[22] CAJ Response to the consultation: 'Together. Stronger. Safer. Community Safety In Northern Ireland' February 2009Available at: http://www.caj.org.uk/files/2000/01/03/S217_Response_to_Together._Stronger._Safer._Community_Safety_in_Northern_Ireland_February_2009.pdf

[23] *Strategic Juvenile Justice Litigation - the U.S. Experience* (seminar), co-hosted by the Irish Penal Reform Trust (IPRT) and the Public Interest Law Alliance (PILA), Dublin, 10 January 2011.

[24] *Young offenders' capacity to change and grow sets them apart from adult offenders in fundamental ways and presents a major opportunity for change*, Liam Herrick, Executive Director of Irish Penal Reform Trust, Joint PILA/IPRT Press Release: 10 January 2011.

[25] Committee on the Administration of Justice. *Prisons and Prisoners in Northern Ireland Putting human rights at the heart of prison reform.* December 2010. Available at: http://www.caj.org.uk/files/2011/01/17/prisons_report_web2.pdf

The Committee on the Rights of the Child, noting their concern that in Northern Ireland - due to the legacy of the conflict - the situation of children in respect to mental health is 'particularly delicate', recommended improvement in meeting the needs of children with mental health problems throughout the country, with particular attention to those at greater risk, including children deprived of parental care, children affected by conflict, those living in poverty and *those in conflict with the law*.[26]

As further demonstration of the need for joined-up approach to the youth justice issue, we draw the attention of the Review Team to the *Scoping Study of those young people Not in Education, Employment or Training (NEET)*[27] which was commissioned by the Department of Education and Learning but has significant relevance to the Youth Justice Review.

Finally, it is worth highlighting a statement made in the NIPB recent thematic review (see above): 'many of the young people in contact with the police and the criminal justice system have…had negative experiences, are learning disabled, have drug or alcohol dependencies, are from deprived neighbourhoods or have suffered physical or emotional abuse'…[and]…such young people need a variety of support and interventions before they need punishment.'[28]

[26] *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding observations: United Kingdom of Great Britain and Northern Ireland*, Committee on the Rights of the Child. CRC/C/GBR/CO/4. 20 October 2008.
[27] *Scoping Study of those young people Not in Education, Employment or Training (NEET),* Department of Education and Learning (DEL,) October 2010. http://www.delni.gov.uk/scoping-study-young-people-not-in-education_-employment-or-training-neet.pdf
[28] *Human Rights Thematic Review: Children and Young People,* Northern Ireland Policing Board, January 2011.