

STATEMENT ON CHILDREN'S RIGHTS IN NORTHERN IRELAND 2

CHILDREN AND YOUNG PEOPLE'S RESOURCE PACK



YOUTH JUSTICE

What does the UNCRC say?

Article 3: Best interests of the child

When adults make decisions, they should think about how their decisions will affect children. All adults should do what is best for children. Governments should make sure children are protected and looked after by their parents, or by other people when this is needed. Governments should make sure that people and places responsible for looking after children are doing a good job.

Article 37: Children in detention

Children who are accused of breaking the law should not be killed, tortured, treated cruelly, put in prison forever, or put in prison with adults. Prison should always be the last choice and only for the shortest possible time. Children in prison should have legal help and be able to stay in contact with their family.

Article 40: Children who break the law

Children accused of breaking the law have the right to legal help and fair treatment. There should be lots of solutions to help these children become good members of their communities. Prison should only be the last choice.

Article 16 (Protection of privacy) is particularly important when thinking about stop and search by Police.

What does the UNCRC Committee say?

The Government should make sure that the youth justice system is properly in line with the UNCRC and other international standards.

- At the moment children aged 10 and above are held responsible for crimes they may take part in. The Committee thinks this is far too young, and recommends that the minimum age is raised to at least 14.
- If you break the law you should be dealt with within the youth justice system until you are 18. When authorities have found ways of addressing your behaviour without detaining you, this should not be kept on your permanent criminal record.
- If you commit a crime when you are under 18, you should not be sentenced to life in prison.
- Young people should only be detained as a last resort and for the shortest amount of time as possible. Government should make sure that detention isn't used more with some groups of young people than others because of discrimination.
- Young people under 18 should not be detained in the same place as adults.
- You should not be subjected to solitary confinement, this means being kept alone, under any circumstances.



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- Government should keep a check on how segregation and isolation is used in detention centres.

Right to Privacy

The government should:

- Make sure you aren't stopped and searched unless there is a proper reason, and if allowed to by law.
- Collect stop and search information and facts, and break it down by different groups, to make sure you are not being discriminated against.

What's the situation in NI?

Following international children rights standards, the Youth Justice System in Northern Ireland recognises that children have a different status to adults and so has separate policies and processes. The purpose of the Youth Justice System in NI is also clear that whilst its main aim is to protect the public through the prevention of offending by under 18s, a primary aim must be acting in the best interests of children. There have been significant and positive developments in the Youth Justice system in Northern Ireland since 1998, although developments have slowed considerably in recent years.

Following the devolution of Justice to the NI Assembly the independent "Review of the Youth Justice System in NI" was established. In 2011, it made 31 recommendations, the majority of which were accepted, and in 2015, the Criminal Justice Inspectorate NI found that 59% of the recommendations had been achieved. However, some of the most important recommendations have still not been achieved, i.e.;

- Raising the age of criminal responsibility;
- Reducing the number of non-sentenced young people in custody;
- Ensuring equity between looked after and non-looked after children when entering custody; and
- Reducing delay and introducing statutory time limits for disposal of cases.

Attempts to address these outstanding issues have not gone far enough and this has been slowed down by the lack of an NI Assembly for 3 years.



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In 2018 we asked the government to:

1. Ensure the youth justice system shows how it meets its statutory obligations to consider the best interests of the child at all times. Every year, it must also explain how its work is contributing to the reduction of offending by children and young people. This should include how children and young people are involved in the design and delivery of services;
2. Publish proposals to raise the minimum age of criminal responsibility to 14 years at once; and
3. The PSNI must show the purpose and outcomes of all Stop and Search operations involving children and young people and must also improve the quality of engagement with young people.

So how is NI doing with Youth Justice?

A child rights approach to Youth Justice requires the State to see the whole child, taking a tailored approach to children and young people in a way that protects their dignity and well-being. Those working with children and young people know that trauma during childhood can have a significant impact on that person and this should be considered when making decisions about all children and young people, including those in the justice system. It is important to view all parties as rights holders, not just victim and offender, as this is more likely to reduce offending and re-offending by children.

In 2018/19 the Youth Justice Agency (YJA) worked with 1,137 young people. 160 individual young people were held in Woodlands Juvenile Justice Centre, and there were 1,712 referrals (these were for 977 individual young people) to the community based youth justice services. 78% of all young people involved with the Youth Justice community services and 91% in custody were males.

Best interests

- (1) *The principal aim of the youth justice system is to protect the public by preventing offending by children.*
- (2) *All persons and bodies exercising functions in relation to the youth justice system must have regard to that principal aim in exercising their functions, with a view (in particular) to encouraging children to recognise the effects of crime and to take responsibility for their actions.*
- (3) *But all such persons and bodies must also—*
 - (a) *have the best interests of children as a primary consideration; and*



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(b) have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development.

The above is the 2015 amendment to the Justice (NI) Act which was warmly welcomed by NICCY. However, there is still very little evidence as to how this has been effectively implemented across all the relevant criminal justice agencies. Regardless of the number of times that this has been raised with them, the Youth Justice Agency statement of purpose and values does not include this statutory obligation on best interests or a commitment to children's rights. This should be amended as a matter of urgency.

It is reassuring that other agencies in the criminal justice system do recognise their responsibility to Article 3 of the UNCRC and that the Department of Justice continue to engage with NICCY to progress this. However, putting this in place needs to be showed consistently.

Stop and Search

Many young people continue to believe that they are discriminated against when they are stopped and searched or questioned and are treated with disrespect; this may make an already tense situation worse. While PSNI have a clear policy commitment to children's rights, this means nothing if it isn't seen in their routine engagement with young people. It is these experiences that shape young people's views, and will affect confidence in the PSNI, if they are victims of crime in the future.

PSNI have improved the quality of their reporting of stop and search power to include more information on the demographics (age, background etc) of people stopped and what the outcome was. This information shows that while the numbers of Stop and Search operations have reduced, Northern Ireland still has some of the highest rates in the UK. 13% of all Stop and Search activities involved young people under the age of 18. The PSNI should give more evidence that Stop and Search is an effective way not only to prevent and deter crime but also support young people at risk of drug or alcohol misuse.



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PSNI data shows that of the 3,211 young people stop, searched or questioned, in 2019/20, 146 (4.5%) were arrested. These are the second lowest rates when compared with Police Services in England and Wales. However, the figures rise to 20% (for all ages) when other outcomes such as community resolution and fixed penalty notices are taken into account. Whilst information has improved, it has done little to show that Stop and Search is an effective policing tool, or that it meets a range of aims and certainly not that it is in the best interests of the child.

Minimum Age of Criminal Responsibility

UN General Comment 24 encourages Governments to take scientific evidence on children's development into account and set a minimum age of criminal responsibility of 14 years of age. Regardless of all the evidence and rights standards, children are held to be criminally responsible at 10 years of age in Northern Ireland (as well as in England and Wales). The UK and NI Government continues to not act where the UN Committee on the Rights of the Child have consistently highlighted the issue of the age of criminal responsibility across the UK.

NICCY would now like to see the Minister of Justice taking the recommendations from the UN Committee on the Rights of the Child and the Youth Justice Review to raise the Minimum Age of Criminal Responsibility.

Diversion

According to article 40 of the UNCRC, governments should aim to deal with children in conflict with the law without resorting to the formal justice system whenever appropriate. In addition to avoiding stigma, this approach has good results for children, is in the interests of public safety, and is more cost-effective.

The Youth Justice Agency shows that a significant amount of their work is diversionary activity such as youth engagement clinics, community resolution notices and diversionary youth conferences. While this emphasis in early intervention and diversion must be applauded, NICCY queries whether this is the best use of YJA resources and expertise. Consideration should be given to whether such work can be more efficiently and effectively undertaken by the voluntary and community sector.



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General Comment 24 states that the completion of the diversion activity by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as “criminal records” and a child who has been previously diverted must not be seen as having a previous conviction. It is most welcome that from March 2020 no diversionary disposal given to a child will be automatically disclosed on an Access NI certificate and we look forward to further developments with regard to criminal records.

Delay in resolving cases

The UNCRC Committee is clear that when a child or young person commits a crime the time taken to process it should be as quick as possible. The Youth Justice Review Group recommended that it should take no longer than 120 days from the start of the police investigation to the charge either being dismissed or dealt with through the Juvenile Justice System. At the moment young people wait longer than adults going to Magistrates Court. These delays are not acceptable and Department for Justice should act quickly with the relevant agencies to resolve this issue.

Children in Custody

All children imprisoned in Northern Ireland are accommodated in the Woodlands Juvenile Justice Centre (JJC). In 2018, the Criminal Justice Inspection NI (CJINI) describes the JJC as the “jewel in the crown of the DoJ and the envy of neighbouring jurisdictions.” The CJINI has continued to be impressed by the level of care in the centre.

Article 37 of the UNCRC states that imprisonment and detention of children shall be as ‘a measure of last resort’, however it is deeply frustrating that evidence indicates that there is considerable work still to be done in this area in Northern Ireland. In 2019-20, only 7% young people in the JJC were sentenced to be there by a court, with the remaining 93% either there because they were still under PSNI investigation or waiting to go to court. We look forward to DoJ taking action on this issue.



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It is also of concern that cared for children are over-represented in the JJC - the proportion of children who are cared for is still unacceptably high at 39%. NICCY is broadly supportive of the joint work being progressed by the DoJ and the Department of Health to Reform the Regional Facilities for Children and Young People and the proposal to bring secure care and justice into a shared facility. While there is still a lot of detail to clarify, this is a promising approach that will ensure there is no return to earlier systems, and one which must be given fresh impetus post-Covid.

Outcomes and data

In June 2017, the NI Audit Office published "Managing Children who Offend" which examined the cost of youth justice alongside the strategies and interventions used to address offending by children. The Auditor General found that whilst first time offending by children had reduced, a lack of reliable data, including reoffending statistics, make long term analysis of effectiveness of the Youth Justice System difficult. He also found that there was a lack of strategic direction and collaboration across government. Crucially, the report found that the Youth Justice Agency could not "assess their cost-effectiveness and cannot currently demonstrate that the interventions to reduce offending by young people represent value for money". At the time of writing, we await the outcome of follow work undertaken by NIAO.

The Youth Justice Agency publishes helpful statistics on their workload but it is disappointing that they have yet to provide evidence of outcomes or that they examine their own data and try to understand and respond to trends, e.g., it has consistently been reported that there is a disproportionate number (67%) of children who identify as Catholic in the Juvenile Justice Centre. The Agency should also be able to show how they support young people to reduce or stop offending, both in custody and in the community.

NICCY would like to see a stronger commitment from the YJA to acting in the best interests of children and young people and also how they will meet the Programme for Government (PfG) Outcome 12 – Giving our Children the Best Start. YJA needs to take a more holistic approach to the children and young people involved with them and not just focus on PfG Outcome 7 – We have a Safe Community Where We Respect the Law and Each other.



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Covid-19 Pandemic

NICCY engaged both with Hydebank Wood YOC and Woodlands JJC (meeting with young people and visiting the JJC) during the Covid response period to review new arrangements and the impact on children and young people. Appropriate sanitising procedures were put in place; visiting restricted and socially distancing guidelines implemented. In both institutions, external services were reduced and kept to a minimum and all family visits and court appearances conducted remotely. It was reassuring that every effort appears to have been made to enable young people to experience as few restrictions as possible in the daily routine. However, there were concerns with regard to the levels of education made available to the young people during the lockdown which must be addressed by both the Education Authority and the Youth Justice Agency.

The PSNI issued 102 Community Resolution Notices against children and young people who broke Covid Restrictions up to August, 2020.

The temporary use of 'Spit and Bite Guards' were introduced by the PSNI in March 2020 for use during the Covid period. Since this time the PSNI have accepted that these Guards do not protect Staff against Covid-19. NICCY has yet to see evidence as to why these measures have been introduced for use with children and young people (aged 10 and above) nor how their best interests are being taken into account as is required by the service procedure.

The lack of a NI Assembly and Executive since the first 'SOCRNI' report in 2018 until it's resumption in January 2020, has meant that there has been little significant progress in the implementation of children's rights in the Youth Justice System. There must be push now to make sure the system is child rights compliant.



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Our recommendations to Government:

1. The Youth Justice System must make the principle of 'Best Interests' a priority. This must include:
 - a. Custody as a last resort and for the least possible time.
 - b. Tracking the impacts on and changes in the lives of young people who have received services from the Youth Justice Agency to see what has the most positive impact.
 - c. Diversion that prevents young people going in to the formal system.
 - d. Compulsory time limits for processing of youth court cases of 120 days.
 - e. Participation of children and young people in design and delivery of services.
2. Make plans to raise the minimum age of criminal responsibility to 14 years at once.
3. The PSNI must show the purpose and outcomes of all Stop and Search operations involving children and young people, and must also improve the quality of engagement with young people.