

include YOUTH

**Response to the UN Committee on the
Rights of the Child Draft revised
General Comment No.10 (2007) on
children's rights in juvenile justice**
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Include Youth is an independent non-governmental organisation that actively promotes the rights, best interests of and best practice with disadvantaged and vulnerable children and young people. Many of these young people have experienced social exclusion, poverty or have other complex challenges in their lives and therefore need additional support to overcome these barriers and positively progress their education, training or employment needs. Seventy-five per cent of young people on the Scheme are care experienced, while over a third have a background in offending.

General Comments

We support the Committee's recognition of developments that have occurred in the area of juvenile justice since the original comment was written in 2007. For that reason we support a review of the content of General Comment No.10. We agree that in the intervening period there has been progression in our knowledge of child and adolescent development which has reinforced the damaging impact of a low age of criminal responsibility. We are also concerned about some of the narrative surrounding the minimum age of criminal responsibility and the move by some States to reduce the age of criminal responsibility. It is also deeply concerning that the profile of children within the justice system remains the same as it did when the original comment was written and we continue to see a situation where our most vulnerable and disadvantaged young people are more likely to be criminalised than the general population of young people. The continued over representation of care experienced young people within the criminal justice remains an issue of concern.

We believe the revised General Comment No.10 will support us in our efforts to continue to call for the rights of children and young people to be implemented and ultimately to reduce the numbers of children and young people within the criminal justice system. It will particularly strengthen our argument to increase the age of criminal responsibility in Northern Ireland, which currently stands at 10 years of age.

Specific Comments

Para 5: We welcome that one of the objectives of the general comment is 'to provide clarity on the setting of a minimum age of criminal responsibility'. We believe this clarity is needed and will benefit our advocacy work.

Para 33: We welcome the acknowledgement by the Committee that 12 years of age is still low for a minimum age of criminal responsibility and the proposal to encourage State parties to increase it to at least 14 years of age. As an organisation Include Youth support 16 years of age as a minimum age of criminal responsibility. We would encourage the Committee to amend the comment to read:

"State parties are encouraged to increase their minimum age to at least 16 years of age".

We also welcome the comment by the Committee that States must not reduce the minimum age of criminal responsibility if its current penal law set the minimum age of criminal responsibility at an age higher than 14 years and that they commend States that have a higher minimum age of 15 or 16 years.

Current situation of minimum age of criminal responsibility in NI: Despite numerous calls for change from a wide range of stakeholders, the minimum age of criminal responsibility remains at 10 years of age in Northern Ireland. Following the devolution of justice to the Northern Ireland Assembly, the Minister of Justice launched an independent review of the youth justice system in NI which was to take international human rights standards, including the UNCRC, into account. The Youth Justice Review made a recommendation with regard to the minimum age of criminal responsibility.¹ The Department of Justice accepted in principle the Youth Justice Review recommendation to raise the age of criminal responsibility to 12 with immediate effect and that consideration should be given to raising it to 14 over three years. While there is wide support for the recommendation, there has been no political consensus to move forward.² This situation has not been helped by the absence of a local Assembly in NI since 2016. The Criminal Justice Inspection for Northern Ireland reported in 2013 and 2015 that there has been no movement on the recommendation.³ A Scoping Study led by the Department of Justice made some proposals around the issue, although it was stated that further consultation was needed to move forward.⁴

In 2015, Include Youth launched an initiative called Raise the Age, to highlight the strong support for an increase in the minimum age of criminal responsibility. A number of leading advocates and organisations working with children and young people pledged their support to the campaign and called for an increase in the age of criminal responsibility in Northern Ireland. The Raise the Age collective has increased its membership in recent years and continues to highlight the damaging impact having such a low age of criminal responsibility has on our most vulnerable children and young people.⁵ The UN Committee's proposal to increase the

¹ Northern Ireland Department of Justice, A Review of the Youth Justice System in Northern Ireland, 2011, recommendation 29

² Northern Ireland Assembly Committee for Justice, Review of Youth Justice, Ministerial Briefing, Official Report (Hansard) 28th June 2012. ; Northern Ireland Assembly Committee for Justice, Official Report, (Hansard) 31st May 2012.

³ Criminal Justice Inspection for Northern Ireland, 2013, Monitoring of Progress on Implementation of the Youth Justice Review Recommendations; Criminal Justice Inspection for Northern Ireland, 2015, Monitoring of Progress on Implementation of the Youth Justice Review Recommendations.

⁴ Department of Justice for Northern Ireland, 2014, Youth Justice Review Implementation Plan, Update No.3, January 2014,; Northern Ireland Assembly, Ministerial Statement, Children in the Justice System Scoping Study, 14th March 2016.

⁵ Raise the Age collective includes the following organisations as its members: Children in NI, Probation Board NI, Start 360, NIACRO, Playboard, VOYPIC, NI Youth Forum, Barnardos, NICVA, Extern, Children's Law Centre

recommended minimum age of criminal responsibility from 12 years is therefore welcomed and will support us in our efforts to bring change in NI.

There are increasing calls for and growing evidence to support an increase in the minimum age of criminal responsibility in NI. In a 2016 a Kids Life and Times survey of over 5,000 children aged 10 – 11 years in Northern Ireland revealed support for increasing the age of criminal responsibility. 59% of the children supported the minimum age of criminal responsibility being raised with the majority supporting an increase to 14 or 16 years old.⁶ The Northern Ireland Human Rights Commission has called for urgent action to address the low minimum age of criminal responsibility in Northern Ireland and in the Chief Commissioner's most recent annual statement he calls on the Department of Justice to introduce legislation to the Northern Ireland Assembly which raises the minimum age of criminal responsibility to at least 12, in line with international human rights standards.⁷ There have been calls to raise the age of criminal responsibility to 14 years of age by the NI Children's Commissioner.⁸

The demand for change in NI has been further fuelled by the changes that have been evident in other jurisdictions notably Scotland. The Scottish Law Commission recommended that the age should be raised to 12 and in 2018 the Age of Criminal Responsibility (Scotland) Bill was introduced to raise the age.⁹ There have been calls in Scotland to go beyond raising the age to 12, with considerable support from key stakeholders to raise the age to 16. The Children's Commissioner for Scotland has called for the minimum age of criminal responsibility to be raised to 16 years old claiming that an increase to only 12 years of age is a significant missed opportunity.¹⁰

Children at risk of offending have complex problems: Children in areas of high deprivation are more likely to be at risk of offending and prosecution and in NI this is particularly true of communities affected by the conflict. There is no shortage of research linking criminal behaviour of young people with poverty, mental ill health, being in care or experience of neglect/ abuse within their families, misuse of drugs or alcohol, and having learning and behavioural difficulties.¹¹ It is often children who are

⁶ McAlister, S., Carr, N., Dwyer, C. and Lloyd, K., 2017, Raise the Age? Children's attitudes towards the minimum age of criminal responsibility, ARK.

⁷ Northern Ireland Human Rights Commission, Human Rights in Northern Ireland 2018, The 2018 Annual Statement.

⁸ Northern Ireland Commissioner for Children and Young People, 2018, Statement on Children's Rights in Northern Ireland.

⁹ Age of Criminal Responsibility (Scotland) Bill, 2018

¹⁰ Children and Young People's Commissioner Scotland, Age of Criminal Responsibility (Scotland) Bill, Evidence to the Equalities and Human Rights Committee, 2018

¹¹ Howard League for Penal Reform (2011), 'Response to Breaking the Cycle: Effective Punishment, rehabilitation and sentencing of offenders', London: The Howard League for Penal Reform; Prison Reform Trust, (2009), 'Seen and Heard, supporting vulnerable children in the youth justice system'.

in greatest social need that are swept up by youth justice systems.¹² Children in care are particularly over-represented in figures of children in custody in Northern Ireland.¹³ A low age of criminal responsibility that seeks a criminal justice solution to welfare and poverty issues simply accelerates already vulnerable children further into the system and ultimately custody.

Developmental psychology and neuroscience research: Neuroscience data has found that there are developmental differences in the brain's biochemistry and anatomy that may limit adolescents' ability to perceive risks, control impulses, understand consequences and control emotions.¹⁴ There is an argument that children are not capable of fully understanding the implications of their behaviour or know how to regulate their behaviour. Evidence on children's understanding of the criminal justice process suggests that 13 years old and younger are impaired in their ability to understand criminal proceedings and only begin to understand what it means to appear before a judge at around 14 or 15 years of age.¹⁵ Evidence also suggests that children who have experienced trauma, abuse or neglect are 'particularly poorly developed in the required capacities for criminal responsibility and are much more likely to come into conflict with the law'.¹⁶ Neuroscience evidence is central to the debate around what the proposed minimum age of criminal responsibility should be and there is a need for an increased focus on the research emerging from this field, to inform current debates.¹⁷

Damaging impact of criminalising children: A further argument to raise the age of criminal responsibility to at least 16 years is to acknowledge the harm that criminalising children causes. Research demonstrates that criminalisation of children tends to increase their risk of engaging in offending behaviour.¹⁸ It also stigmatises the child and alienates them from society. The Edinburgh Study of Youth Transitions and Crime (ESYTC) has further provided evidence on the impact of criminalisation on 12 – 15 years olds suggesting that a minimum age of at least 15 years is the most effective in terms of effectiveness in reducing offending.¹⁹

¹² Barry Goldson, (2013), 'Unsafe, Unjust and Harmful to Wider Society': Grounds for Raising the Minimum Age of Criminal Responsibility in England and Wales, *Youth Justice Series* 2013 13: 111.

¹³ Youth Justice Agency, *Annual Workload Statistics, 2016/2017*.

¹⁴ Enys Delmage, (2013), *The Minimum Age of Criminal Responsibility: A Medico Legal Perspective*, *Youth Justice*, 2013 13:102.

¹⁵ Children and Young People's Commissioner for Scotland, *Age of Criminal Responsibility(Scotland) Bill, Evidence to the Equalities and Human Rights Committee*, 2018.

¹⁶ *ibid*

¹⁷ Crozier, M. 2018, *Psychological Maturity and the Minimum Age of Criminal Responsibility in Northern Ireland*, a dissertation submitted as part of the requirements for the Degree of LLM in Human Rights and Criminal Justice, Queen's University Belfast.

¹⁸ McAra L and McVie S, (2007) *Youth Justice? The impact of system contact on patterns of desistance from offending*, *European Journal of Criminology* 4(3): 315-345.

¹⁹ *Ibid* 14 page 6



Para 35: We agree with the recommendation from the Committee that State parties set a minimum age of criminal responsibility that does not allow, by way of exception, the use of a lower age.

Para 58: Prompt and direct information of the charge(s). We welcome the insertion within this paragraph dealing with cases which are dealt with by a diversion measure. It is paramount that the child understands the legal options which are available in the case of a diversionary measure. We agree that in these cases legal safeguards should be fully respected.

Concluding Comment

We welcome the opportunity to comment on the revised draft and believe that the amendments are much needed and timely.