**Association of Youth Offending Team Managers (AYM) response to:**

**The United Nations Committee on the Rights of the Child Revised General Comment No. 10 (2007) on Children’s Rights in Juvenile Justice.**

**About the AYM**

The AYM is a professional association representing the majority of youth offending teams (YOT) and their managers in England.

Section 39 (1) of the Crime and Disorder Act 1998 requires the co-operation of the named statutory partners to form a YOT. Section 38 (1, 2) identifies the statutory partners and places upon them a duty to co-operate in order to secure youth justice services appropriate to their area. These statutory partners are the local authority, police, the probation service, and health. To support the YOT, additional partners may also be recruited to the joint strategic effort to prevent offending by children and young people.

The Association is able to draw on the wealth of knowledge and the breadth of members’ experience to promote public understanding of youth crime issues and to play its part in shaping the youth crime agenda.

Our members run services providing community-based supervision for children and young people who offend. We also work closely with staff in secure units and young offender institutions to ensure that young people in custody have as smooth a transition as possible back in to the community.

The AYM welcomes the opportunity to provide a response to the revision of General Comment No. 10 which reflect some of the principles of the AYM[[1]](#footnote-1), namely:

* an increase to the minimum age of criminal responsibility,
* the appreciation of children who offend as children, not offenders, juveniles or young adults,
* the importance of not detaining young children,
* the acknowledgment of the harmful effect of stigmatisation against children who have offended and the negative effect of this on their futures.

**Comments on Revision**

We appreciate the child friendly approach to this document and welcome the minimum standards sets for State parties and higher standards parties should pursue. In particular we welcome the call for more progress by State parties to increase and align the minimum age of criminal responsibility, assure their rights to a fair trial, restrict the deprivation of liberty of children and increase the prevention and diversion of children from entering the criminal justice system.

**Leading Principles**

We note that in paragraph 9 you recognize that *“Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market”.* However, it would be useful to include the fact that they are also discriminated against whilst in contact with the criminal justice system.

**Terminology**

The AYM welcomes that the General Comment now refers only to children and the move toward more child friendly terminology such as child justice but consider that you could go further by removing terms such as juvenile justice, vagrancy and recidivists etc. which are more prejudicial.

**Prevention and Diversion**

We welcome the fact that you distinguish between prevention (Section A) more aligned to the ‘public health approach’, which could ensure that all agencies understand their responsibilities better, and diversion as the preferred response to criminal justice disposals for the majority of children, including the removal of mentioning minor offences and first time entrants. In both sections however, we would encourageyou to consider changing your terminology. In paragraph 18 you define certain exploitation types, we would suggest you do not make such distinctions. In paragraph 19 which discusses ‘dropping out of school’ we would suggest your replace this with ‘excluded from school’ which better reflects the reality of most children’s experiences.

We welcome your assertions in paragraph 28

*“…to strictly limit the use of deprivation of liberty, and in particular pre-trial detention, as a measure of last resort. From the moment of arrest, and during the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b))”*

Whilst we recognize that there is a desire not to duplicate too much throughout this document we feel that at this point in the General Comment it would be beneficial to refer to the content of paragraphs 98 and 99 which note that the:

*“Use of pre-trial detention as a punishment violates the presumption of innocence”* (para 98) and, *“There should be a discretion to release with or without conditions, such as reporting to a police station or probation officer, and the payment of monetary bail should generally not be a requirement”.*

We feel this would place emphasis on the equality of treatment of a child being considered for diversion.

Similarly the content of Section D paragraphs 67 – 81 relate as much to children arrested and diverted as they do for those prosecuted and appearing in court. In particular paragraph 65:

*“The Committee reiterates that, for children in conflict with the law, the time between the commission of the offence and the final response to this act should be as short as possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized”.*

We welcome your statement that “without delay” (art. 40 (2) (b) (iii) of CRC) relating to determination of matter, are both stronger than the term “without undue delay” of article 14 (3) (c) of ICCPR. The current practice of police releasing children for further investigation is observed by YOTs as increasing nationally.

We would encourage the General Comment to include the requirement for regulation and review in diversion. In particular this would protect a child from discrimination which the report on Black and Minority Ethnic Children. For example, the proportion of BAME young offenders in custody rose from 25% to 41% between 2006 and 2016, despite the overall number of young offenders falling; 54%, of children in custodial remand are BAME[[2]](#footnote-2).

**Age and Children in conflict with the law/Guarantees for a fair trial**

The AYM agrees that the minimum age of criminal responsibility (MARC) should be raised from the low age of 10 in England and Wales. We therefore welcome your statement in paragraph 33 that the absolute MARC considered internationally acceptable is now 14 rather than 12, and that the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age. We would encourage you to strengthen this statement to place more pressure on States parties to increase their MACR in line with, or preferably above, UNCRC recommendations.

We welcome the recognition in paragraph 46 that,

*“…reaching 18 years does not mean the end of the juvenile justice specialised measures. The Committee recommends to States parties to ensure that these young persons can continue the completion of the programme or sentence in conditions suited to their age, maturity and needs and are not sent to centres for adults”.*

This recognizes that maturity of children is not dependent on their chronological age. This is particularly relevant to children in conflict with the law who are more likely to suffer developmental delay and demonstrate behaviours more characteristic of younger children. The transition of children aged 18 years into adult provision has been demonstrated to significantly impact on their rehabilitation.[[3]](#footnote-3)

The removal of a sentence in paragraph 51 that reiterates article 40 (1) is concerning, removing an important emphasis on the need for children to be treated by professionals in a manner that promotes their sense of dignity and worth, respect for human rights, and reintegration.

The AYM welcomes paragraph 55 that the child,

“…*has the right to be heard directly and not only through a representative or an appropriate body at all stages of the process, starting with the pre-trial stage when the child has the right to remain silent and no adverse inference should be drawn if he or she elects not to testify; and applies throughout the stages of adjudication and of implementation of the imposed measures. A child who is considered to be criminally responsible should be considered competent to effectively participate in all aspects of the trial”.*

The AYM has for a long time been concerned about the ability of children to understand what is happening to them when in conflict with the law. We therefore welcome the comment in paragraph 57:

*“A fair trial requires that the child in conflict with the law is able to effectively participate in the trial, and the child therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. This includes a requirement that the proceedings be conducted in a language the child fully understands but if not, to be assisted by a free interpreter. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child’s age and maturity may also require modified courtroom procedures and practices”.*

However, we would recommend that you include in this the right to an intermediary as made available to vulnerable witnesses. If children are to be deemed innocent until proven guilty they should not be afforded less protection and support than other children, and vulnerable adults, would be.

**Anonymity**

The AYM is committed to treating children in conflict with the law as children first. This has also been adopted by the Youth Justice Board for England and Wales[[4]](#footnote-4). The AYM therefore welcomes paragraph 78 which states:

*“The right of a child to have his/her privacy fully respected during all stages of the proceedings reflects the right enshrined in article 16 of CRC”.*

We particularly welcome the clarification:

“All stages of the proceedings” includes from the initial contact with law enforcement (e.g. a request for information and identification) at least up until the final decision by a competent authority, or release from supervision, custody or deprivation of liberty, even if the child turns 18 during the course of the proceedings or release from custody”.

And the rationale for this:

“The rationale for the nonpublication rule, and its continuation following the child turning 18 years, is that publication causes ongoing stigmatization, which is likely to have a negative impact on his/her ability to have access to education, work, housing or to be safe.is document could be strengthened by reminding readers that children are entitled to anonymity by virtue of them being children (article 16), whether or not they are in contact with the law, and whether or not they are guilty of an alleged offence”.

We feel this makes it clear that in no circumstances should anonymity be forfeited, your call for any violations of this to result in sanctions and possibly prosecution is welcomed.

**Specific issues**

The AYM is concerned with the number of children being exploited in England and therefore welcome the recognition in paragraph 110 that children may become victims of multiple forms of violations. We also welcome the reminder to State parties in paragraph 112 that they should “treat these children primarily as victims and refrain from charging and prosecuting them – except for very serious offences.

**Final Comments.**

Paragraph 123 states:

*“…that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC.”*

We would suggest that this statement could be strengthened by requiring all professionals to be trained in child development, appropriate to their role.

The AYM is committed to ensuring that all children are able to access information and encouraging partners to use language and mediums that support this genuine access. We would therefore like to suggest that any documentation designed to reach children is produced in a variety of formats that enable a child with communication needs to access and understand what they are being advised.

And Peaden

Chair, Association of YOT Managers Ltd.

For further enquiries regarding this response please contact:

Lesley Tregear, AYM Policy and Communications Officer

[lesley.tregear@aym.org.uk](mailto:lesley.tregear@aym.org.uk)

www.aym.org.uk

1. http://aym.org.uk/about-us/where-we-stand/ [↑](#footnote-ref-1)
2. https://www.gov.uk/government/statistics/youth-custody-data [↑](#footnote-ref-2)
3. https://www.t2a.org.uk/wp-content/uploads/2016/02/T2A-Why-is-the-Criminal-Justice-System-Failing-Young-Adults.pdf [↑](#footnote-ref-3)
4. <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/706925/201804_YJB_Strategic_Plan_2018_21_Final.pdf> [↑](#footnote-ref-4)