Researching Young People’s Experiences of Detention

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Abstract

Drawing upon research with children in custody, this paper discusses the detention of children within the youth justice system and the prison system in Northern Ireland. It focuses on relatively recent legislative developments which demonstrate the failure of the State to incorporate children’s rights, provided for in the United Nations Convention on the Rights of the Child and additional international instruments relating to the area of juvenile justice and the deprivation of children’s liberty, into provisions governing the custodial disposal of children. The significance of this failure is highlighted by the thoughts and experiences of children detained in custody in Northern Ireland, which they revealed to the author during semi-structured interviews. Key areas of concern include the failure of the State to explicitly recognise children’s rights in legislation, to acknowledge that the child’s best interests are paramount, to remove children from the prison system and to separate them from adults, and provision for the imprisonment of children at risk of self-harm within the prison system. It is argued that these issues clearly demonstrate the State’s failure to guarantee children their rights and children’s experiences of custody reveal the serious consequences of this failure.

Introduction

The custodial disposal of children is the most serious and restrictive response of the Northern Ireland Criminal Justice System to children charged or convicted of offending. In facilitating custody for children in the prison system and, since its inception in the nineteenth century, in the juvenile justice system, successive governments have supported the custodial disposal of children
in this dual system. The custodial disposal system for children within the youth justice system (formerly the juvenile justice system) and the prison system is briefly described below. This is followed by a discussion on relatively recent legislative developments relating to the custodial disposal of children within the context of children’s rights provided for in international instruments, in particular the United Nations Convention on the Rights of the Child, 1989. The significance of the key concerns identified in the discussion is highlighted in the subsequent section which documents how children in custody described their thoughts and experiences during semi-structured interviews with the author.

**The Custodial Disposal System for Children in Northern Ireland**

The minimum age of criminal responsibility in Northern Ireland, as has been the case since 1968, is ten years and thus, children who have reached this age can be proceeded against in the criminal courts for any behaviour which transgresses the law. Since the end of August 2005, seventeen year olds have been defined as children for the purposes of criminal justice. Custodial disposals available to the criminal courts in Northern Ireland for children include Woodlands Juvenile Justice Centre (hereafter, the JJC) within the youth justice system and Hydebank Wood Young Offenders’ Centre and Prison (hereafter, Hydebank) which is part of the prison estate.

The JJC situated in Bangor, about ten miles outside Belfast, provides for the detention of children as young as ten remanded or sentenced to custody by the courts. The use of the JJC for remanding children aged seventeen years to custody is restricted to those under seventeen and a half years old and who have not been sentenced to custody in the previous two years. The courts’ power to sentence seventeen year olds to the JJC is also restricted to those who will not reach the age of eighteen before their sentence is served and who have not been sentenced to custody in the
previous two years. Where the use of the JJC is restricted, seventeen year olds remanded or sentenced to custody are detained in Hydebank.

Hydebank, about five miles outside Belfast, provides for the detention of children as young as fifteen alongside adults. Boys may be detained along with young adults under the age of twenty-four and girls may be detained with adults in the only women’s prison in Northern Ireland, a former block of the male young offenders’ centre at Hydebank.

**Legislative Developments and the Incorporation of Children’s Rights**

Between the introduction of the Children and Young Persons Act 1968 (hereafter, CYPA68) and the late 1990s, there was a distinct lack of legislative developments relating to custodial provision for children in Northern Ireland. In the interim, a range of international instruments emphasising children’s rights, minimum principles concerning their treatment and standards concerning juvenile justice reflected a marked advance in the recognition of the rights of children as separate from and additional to those of adults.

The United Nations Convention on the Rights of the Child, 1989 (hereafter, CRC), ratified by the UK in 1991, and a combination of three United Nations’ (UN) instruments relating to the rights, interests and welfare of children are particularly important to the area of juvenile justice and the deprivation of children’s liberty. The UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (hereafter, Beijing Rules), the UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (hereafter, Riyadh Guidelines) and the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (hereafter, Havana Rules) enumerate the basic principles enshrined in the CRC. The framework provided for the juvenile
The justice system recognises the rights of all children, including those deprived of their liberty. It enshrines the primacy of the child’s best interests in all actions concerning him/her, the principle of only using custody as a last resort and for the shortest acceptable period and the separation of detained children from adults in detention. Additionally, it recognises that the administration of juvenile justice must provide for the care of children, their reintegration into the community and the prevention of reoffending, and all aspects of the system, including custodial measures must be based on the principles of re-education, development of a sense of responsibility and respect for the rights of others, and family and community involvement. The following discussion examines the extent to which key principles underpinning children’s rights are incorporated into relatively recent legislative developments relating to the custodial disposal of children in Northern Ireland.

On 1 January 1998, the Criminal Justice (Northern Ireland) Order 1996 (hereafter, CJO96) introduced a statutory framework for the sentencing of children as well as adults. The CJO96 replicated the statutory framework for the regulation of sentencing decisions, established at an earlier stage in England and Wales. The central principle of the legislation is the concept of proportionality in sentencing. As such, a sentence should primarily reflect the seriousness of the offence(s), with both children and adults who offend receiving their ‘just deserts’. According to O’Mahony and Deazley (2000: 60), the intention was to restrict custodial sentences to ‘genuinely serious offenders and not … petty, yet troublesome, young offenders’. However, despite evidence that legislative intent is not automatically translated into sentencing practice (Burney 1985; Parker et al 1989), the CJO96 was introduced in the absence of research on sentencing decisions in Northern Ireland and appears to defy concerns (see for example, Harding and Koffman 1995) about equivalent provisions in England and Wales. Moreover, in
advance of its implementation, the Government (NIO 1996: para.1.9, emphasis added), whilst continuing to espouse the minimum use of custody, stated that it would be used for ‘serious and persistent offenders’. This was accommodated, under the CJO96, by the admissibility of previous convictions in relation to adjudications of offence seriousness.

Following the introduction of the CJO96, the Criminal Justice (Children) (Northern Ireland) Order 1998 (hereafter, CJCO98) was brought into force on 31 January 1999. Rather than radically reform the response to children in the criminal justice system, the CJCO98 for the most part re-enacted the criminal justice provisions of the CYPA68. Where it did depart from provisions in the CYPA68, training schools were renamed juvenile justice centres and a determinate sentence replaced the previous indeterminate sentence to a training school. A further substantial change provides that the length of period of detention shall be reduced by any period spent on remand in custody for the offence(s). After the CJCO98 was implemented the juvenile justice centre estate was rationalised with the resulting provision of one juvenile justice centre, the JJC. Sentences to the JJC are subject to the provisions of the CJO96 regulating the use of custodial disposals, which as noted above, provide that custody only be used when any other punishment would depreciate the seriousness of the offence.

By introducing changes which emphasised principles of proportionality and determinacy at the sentencing stage, the legislation complies with international standards (Art.37(b) CRC; rr.17.1, 19.1 & 28.1 Beijing Rules; rr.1 & 2 Havana Rules; r.46 Riyadh Guidelines) and promotes greater procedural justice in the processing of children. However, as indicated by Rutherford (1986: 25), offering children greater protection in relation to procedural rights ‘does not rule out ending up in Hell’. Despite the apparent reductionist approach to custody for children, substantial controversial aspects of the custodial system were retained and the legislation failed to reflect a shift in
philosophy underpinning the approach to children in the criminal justice system. It reinforced the prevailing commitment to punishment as the means of dealing with children who offend and continued to adhere to the principle that children who have reached the age of ten should be held accountable for offending. The Government, in formulating legislative changes, failed to incorporate international standards for the protection of children’s rights. In brief, children’s rights were not explicitly recognised and the principle of the child’s best interests stipulated in Article 3 of the CRC was not included. Also, the CJCO98 rejected the definition of a child provided for in Article 1 of the CRC. It did not raise the age of criminal responsibility or the age at which a child is deemed an adult and until 2005, seventeen year olds were dealt with as adults in the criminal justice system. In addition, the juvenile court, renamed the youth court, was retained, changes did not extend to removing provisions for the trial of children in an adult court and, as has been the case since 1950, the courts are required to have regard to the child’s welfare, as opposed to their best interests.

Further issues of concern include that legislative developments were accompanied by an emphasis on secure custody within the youth justice system and, contrary to international children’s rights standards, the continued provision of custodial disposals for children as young as fifteen in the prison system. The Northern Ireland Office (NIACRO 1998: 13) justified the use of secure custody within the youth justice system by arguing that under the CJCO98, the offending behaviour of children ‘who find their way into custody ... will be at the serious end of the spectrum and public protection will be an important consideration’. Its preference for secure custody for children seems surprising, not least because research conducted in Northern Ireland by Curran et al (1995) found that children who committed offences which could be described as ‘at the serious end of the spectrum’ were less likely to be deemed to require secure custody than children whose
offences were less serious. It is all the more alarming given that Lockhart et al (1986) and Curran et al (1995) provided clear evidence that the more secure the institution the greater the possibility of re-offending on release. The emphasis on secure juvenile justice centre provision and the continued use of Prison Service custody under the CJCO98 also defied more extensive criticism of similar practices in England and Wales. A wide range of commentators there condemned the introduction of secure training centres (Penal Affairs Consortium 1993; 1994; Howard League 1995; Goldson 1997) and the use of the prison system for the custodial disposal of children (HMIP 1997; Howard League 1997).

Of particular note, CJCO98 provisions for the imprisonment of children as young as fifteen alongside adults within the prison system are indicative of the State’s failure to apply Article 37(c) of the CRC which requires that children are separated from adults in detention unless it is in the child’s best interests. Prior to the introduction of the CJCO98, children as young as fourteen years old could have been remanded or committed to detention in a young offenders’ centre if certified ‘unruly or depraved’. Rather than remove provisions for the remand and committal of children to Hydebank, the CJCO98 raised the age limit for the detention of children in Prison Service custody from fourteen to fifteen and alternative criteria were introduced. Consequently, children aged fifteen and over may be remanded or committed to Hydebank. Indeed, the court must remand a child to Hydebank if s/he has attained the age of fifteen and it considers that s/he is likely to injure her/himself or others. Also, if the managers of the JJC consider that a child aged fifteen or over is likely to injure her/himself or other persons, s/he may be transferred via the court to Hydebank for the unexpired period of their term of detention in the JJC.

These provisions for the use of Prison Service custody for children at risk of harming themselves
were introduced within the context of extensive criticism of the inadequacy of prison systems, in England and Wales and Northern Ireland, in respect of addressing suicide and self-harm, and an increase in concern about the use of prison for people with mental health issues (see for example, HMCIP 1995; 1997a; 1997b; HMIP 1996; 1997; Prins 1998). Ignoring these criticisms was all the more absurd given that a twenty year old woman had hanged herself in her cell in 1996. The young woman had previously attempted to harm herself whilst in prison and it was reported (Irish News, 26 November 1996) that she committed suicide ‘after finding prison life difficult to cope with’. The controversy surrounding the women’s death has since been considered by Scraton and Moore (2005). It would clearly appear that the use of Prison Service custody for children who are at risk of injuring themselves provides a stark example of the State’s failure to incorporate international standards on the treatment of children into legislation. Article 27 of the CRC, for example, stipulates that children have the right to the highest attainable standard of health care and rule 54 of the Havana Rules stipulates that where possible children in custody should be provided with appropriate health care in the local community.

Children’s Experiences of Custody

The significance of the State’s failure to ensure that children are afforded their rights is highlighted in the lived experiences of the ‘pains of imprisonment’ evidenced in children’s descriptions of their experiences of detention in Northern Ireland. During research (Convery 2002, Kilkelly et al 2002, Convery and Moore 2006) involving semi-structured interviews with children, they reported feelings of fear, uncertainty, trauma, separation, loneliness, frustration, powerlessness, anxiety and depression. A selection of their thoughts, feelings and experiences highlights concerns relating to the use of Prison Service custody for children and provisions for the use of imprisonment for children who are at risk of harming themselves.
This quote succinctly describes a girl’s initial experience when she was sent to Prison Service custody:

“It was mad. It was vans and all, you were all locked in vans like being in a bin, you know a big long bin and you had a wee seat and all when you went in and you didn’t know where you were going and you went to reception ... Then you went in and you got a medical and all to just make sure everything was OK and all your scars and tattoos were noted down and then you went over with I think it was about three prison guards and I had to get my photo taken.”

The same scenario was described by another girl. Her poignant account conjures up images of the lonely and anxious reality of her experience when she was fifteen years old:

“The first day it was something rough, well when we first went in and we drove down and I couldn’t believe it here’s me I’m only a child and I’m going into an adult prison ... this other girl ... she’s sitting holding my arm and sobbing into my arm and of course that didn’t make things any better and I sort of felt well I didn’t want to break into tears ‘cause you know she needed my help and I needed to support her too, so she sat and she cried ... we’d went in through all these gates and all and into reception and we were put up front of the governor and told our prison number and then put into this wee tiny cubicle and we’d to sit in there and then they brought us out and brought us into another room and took our photographs.”

When asked about their initial feelings when they were sent to custody, some children indicated that they were relatively satisfied. However, it would appear that these feelings were a result of unfavourable previous experiences of children’s homes. For example, two girls sent to custody in the youth justice system said:

“It's what I wanted, I know that's stupid but I didn't like the children’s home I was in and I was used to this place because I was in a couple of times on remand. I thought this place was alright, it's alright sometimes”.

“I was happy at first because my friend was here but after about two weeks you get bored.”

Other children indicated that subsequent experiences of being sent to custody were not as difficult as the first time. On returning, boys and girls did not express feelings of fear or concerns about not
knowing others or not knowing what to expect. For example, a boy in custody in the youth justice system explained:

“The first time I was nervous but the second time it was alright.”

Children’s comments tended to suggest that they came to the realisation that their impressions were ‘worse’ than the reality, and that they found being in custody relatively endurable. However, although such sentiments were initially expressed by many boys and girls, on talking with children further about their views and feelings of their overall experience of being in custody, they offered an alternative interpretation of their experience. It became clear that many of them harboured more negative feelings. On occasion, boys and girls described their experience of being in custody as ‘alright’ or as ‘a gift’, but at a later point they described it as ‘boring’ and ‘wil’ [terrible] and said that they would be ‘shattered’ if they had to return. For example, one girl who had initially said being in Prison Service custody was ‘alright’ later described it as ‘boring’, and when asked how she would feel if she had to return she said, ‘I don’t know, probably hang myself’.

The majority of children described the worst thing about being in custody as ‘being away from my family’ and acknowledged the distress experienced by some children. For example, a boy in custody in the youth justice system explained that girls in particular find it difficult to cope and pointed out that this had an impact on him:

“Some of the wee girls do your head in … some girls might be crying a lot. All the wee girls in here cry… they just cry, everything they do.”

When asked how she spent her day, a girl in Prison Service custody explained:

“Every day I sat, I would have been quiet, I wouldn’t have talked to nobody, I would have put my head down and I would have sat and thought about what I had done and what I’m going to do and you know, what’s things going to be like if this carries on sort of thing and most of the time I just sat and cried.”
The following comment provides an insight into how difficult one boy found it to cope in Prison Service custody:

“Overall I miss home and people. I get paranoid in the cell. When I’m outside at work, time flies in, in the cell it drags, I think of outside. It’s horrible when I’m in the cell, I get paranoid about my girlfriend.”

Another boy, in custody in the youth justice system, explained:

“When you’re in … your room, you can think about things. … like hanging yourself or something.”

The implications of such feelings are starkly demonstrated by deaths in custody. A fourteen year old girl in Prison Service custody who said “I feel trapped in here, you’ve no freedom”, died in the prison’s punishment block a few years later. Commenting on the inquest into her death, Scraton and Moore (2007: 24) describe how,

“[the jury] established that the Prison Service had been institutionally deficient at all levels … [and] noted, the lack of appropriate adolescent mental healthcare in Northern Ireland results in the imprisonment of vulnerable children and young people who require care and support relevant to their needs”.

For a number of children the custodial decision was seen to reflect injustice. This was particularly true for girls detained with adults and was most strongly expressed by a girl who was sentenced to Prison Service custody because she cut herself with razor blades whilst she was detained in the youth justice system:

“They got me in amongst criminals like and people said I should have got help instead of getting punished for what I was doing. That's why it's harder for me to get myself better. I was the only one in for self-harm, the rest were in for committing crimes. It was just punishment every time I harmed myself. I just felt it wasn't fair because I hadn't done nothing wrong. Well to me I hadn't done nothing wrong. It was only myself I was hurting and why should I be punished for that. They'd done burnings, theft, joyriding, stabbings, GBH and some of them were young and actually in for attempted murder”.
The serious questions raised about the State’s decision to use prison for the detention of children at risk of harming themselves were further highlighted by the girl when she was asked about the differences between her experience of being detained within the youth justice system and the prison system:

“To me it was the same ... only you knew it was definitely a prison but it was just the same, the only difference was it was easier to get razor blades in prison ... I just bought a packet of razor blades, ate five of them and cut my wrists with the other one. The thought of it now ... I ended up going over to the prison hospital and from then on it was no problem ... because I was the only female there I was on my own with the TV and all and the staff were dead on”.

When asked how she got on with staff when she was detained in the youth justice system, the girl said:

“They were OK until they sat on me. That's what they used to do physically hold you down. If I cut myself and all and they ended up and they seen the razor blades but they held me down and said ‘have you got another one?’ and I told them ‘no’, ‘have you got another one?’ ‘no’ and then they strip searched me and knew that I didn't have another one”.

**Conclusion**

The history of the custodial response to children demonstrates the success failure of the state to adequately and appropriately address the needs of children address the This paper has argued that the State has failed in its duty to guarantee children their rights in relation to legislative provisions for the custodial disposal of children. Legislation fails to explicitly recognise the rights of children and does not apply the principles underlying the CRC and other international treaties and conventions. Furthermore, it retains provisions for the disposal of children in the prison system alongside adults and the use of imprisonment for vulnerable children who are deemed to be at risk of harming themselves. The experiences of custody, as described by children, starkly demonstrate that fundamental reform of the custodial response to children is
required if the rights and welfare of children in the custodial disposal system are to be protected. At the very least, the imprisonment of all children in the adult penal system should be abolished and legislation should incorporate international standards for the protection of children’s rights.
References


