



North American Council for Juvenile Justice

Conclusions from the Second Meeting



*“From Theory to Practice:
How to Strengthen Juvenile Justice Restorative
Mechanisms in North America”*

Toronto, 5-6 November, 2015

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Introduction

Summary

The Second Meeting of the NACJJ, **‘From Theory to Practice: How to Strengthen Juvenile Justice Restorative Mechanisms in North America’** took place in Toronto in November, 2015. At this meeting, the need for a juvenile justice council was reiterated, as well as the need to expand membership and continue regular meetings of the NACJJ.

On the first day of the meeting, there was a co-working day for experts and professionals from North America and Europe to exchange evidence-based good practices on child-friendly justice and give an overview of restorative justice in North America. On the second day, there was a policy-oriented event directed toward the process of building the NACJJ. Throughout the event, Members gave overviews of the juvenile restorative justice legal framework and practices both within each North American country, and at the international level. Furthermore, Members discussed areas of common action and established priorities for the NACJJ in the upcoming year.



Participants at the Second Meeting of the NACJJ, in Toronto.

Acknowledgements

The NACJJ would like to thank and acknowledge the generous help of Cedric Foussard, Elizabeth Clarke and Dale Elliott for their help in preparing the report of the Conclusions from the Second Meeting.

Development of the NACJJ

Summary

In 2009, the International Juvenile Justice Observatory launched Continental Councils for Juvenile Justice in Europe, Asia-Pacific, Latin America, North America, and Africa as part of its commitment to promote the improvement of juvenile justice systems and policies at both regional and national levels. These Councils were created as cooperative working networks with the aim of generating space for analysis and reflection, developing initiatives, and investigating good practices across each continent. In this way, the Councils have been established as think-tanks which bring together professionals and representatives of public authorities, academia, the judiciary and civil society.

The North American Council for Juvenile Justice (NACJJ) is a regional initiative of the International Juvenile Justice Observatory (IJJO), with the mission to promote fair juvenile justice in North America. It aims to propose coordinated actions between experts and professionals from Canada, Mexico and the United States, in order to gather reports, best practices and policy considerations for the region. One of the primary objectives of the NACJJ is to improve the exchange of information between members, through regular meetings, newsletters and reports. The other primary objective is to raise awareness about juvenile justice issues to international and regional institutions on trans-national, regional and international levels.

First Meeting

The First Meeting of the NACJJ, was held in Washington, D.C., in December 2014, and was titled **‘Improving cooperation and exchange on juvenile justice in North America’**. The focus of the meeting was to endorse the need for a regional council on juvenile justice, as well as to develop mechanisms for cooperation between Canada, Mexico, and the United States.



On the first day, a public event was organised as a briefing before U.S. Congressional staff on international juvenile justice issues and the role of the NACJJ in North America. The formal meeting with all participants focused on the development of juvenile justice strategies between Canada, Mexico and the United States for research and common action programs. During the two days, professionals and experts from the

region emphasized the importance of a Council in North America, and identified the need for working papers on two juvenile justice topics: restorative justice and making deprivation of liberty a measure of last resort.

The First Meeting was organised through a joint effort between the IJJO, the Juvenile Justice Initiative and Loyola University School of Law.¹ Funding was provided through private funders, including the Woods Fund of Chicago and the Butler Family Fund, and participants from Mexico and Canada contributed to the meeting by covering their own costs of attendance. The NACJJ would like to thank each of the attendees of the First Meeting, which included representatives from academia, government, and civil society:

Canada

Dale Elliott, Ministry of Children and Youth Services, Ontario
Joel Kealey, Department of Justice, Canada

Mexico

Ana Aguilar Garcia, Criminal Procedural Justice Institute
Monica Daniela Ramirez Garcia, Red por los Derechos de la Infancia en México
Ruben Vasconcelos, Mexican Federal Ministry of Justice
Martha Frias, Universidad de Sonora
Benito Galaviz, Mexican Institute of Youth
Enrique Betancourt, National Center for Crime Prevention and Citizen Participation
Victor Uribe, Embassy of Mexico in the United States

United States

Elizabeth Clarke, Juvenile Justice Initiative of Illinois
Diane Geraghty, Civitas Law Center at Loyola Law School of Chicago
Wansley Walters, Former Secretary of the Florida Department of Juvenile Justice
Robert Listenbee, Office of Juvenile Justice and Delinquency Prevention
Raye Barbieri, Center for Court Innovation
Betsy Walters, The International legal Foundation

International Community

Cedric Foussard, International Juvenile Justice Observatory
Cristina Goñi, International Juvenile Justice Observatory
Andra Nicolescu, Center for Human Rights & Humanitarian Law
Adam Blackwell, Secretary for Multidimensional Security, OAS
Marisol Blanchard, OAS Inter-American Commission on Human Rights

¹ For more information, see: <http://www.nacjj.org/first-meeting-presentation>

Second Meeting of the NACJJ

Acknowledgements

The Second Meeting was organised by the IJJO, Ontario's Ministry of Children and Youth Services, the Illinois Juvenile Justice Initiative, Loyola University School of Law, and the Former Secretary of the Florida Department of Juvenile Justice. Funding was provided through private foundations, including the Butler Family Fund. The provincial Government of Ontario graciously hosted the meeting.

Immediately prior to the Second Convening, several of the participants met in Chicago for a Summit on Restorative Justice; special thanks to Cedric Foussard, Paula Jack, expert on Juvenile Justice and former Chief Executive of the Youth Justice Agency of Northern Ireland, and Yvonne Adair expert on Restorative Justice and former Assistant Director of the Youth Justice Agency, for their willingness to share their experience with restorative justice in Northern Ireland, and the conclusions of the European Council's reports on restorative justice.



The NACJJ would like to thank international experts such as Ton Liefaard from the University of Leiden and Cecilia Anicama from the Office of the Special Representative of the UN Secretary, as well as each of the attendees of the Second Meeting, which again included representatives from academia, government, and civil society:

Canada

Dale Elliott, Ontario Ministry of Children and Youth Services
Janet Briggs, Nova Scotia Department of Justice
Lynne Duff, Ontario Ministry of Children and Youth Services
Paula Kingston, Canada Department of Justice
Sophie Lavergne, Bureau des affaires de la jeunesse du Quebec
Miza Mathunny, Ontario Ministry of Children and Youth Services
Carolyn McCaffrey, Ontario Ministry of Children and Youth Services
Daniele Menard, Canada Department of Justice
Shawn Mitchell, Ontario Ministry of Children and Youth Services
Brian Smegal, Ontario Ministry of Children and Youth Services
Dale Tesarowski, Saskatchewan Ministry of Justice
Barbara Tomporowski, Saskatchewan Ministry of Justice

Mexico

Ana Aguilar Garcia, Presuncion de Inocencia
Hector Díaz Santana Castañeros, Consejo de Coordinación para Implementación del sistema de justicia penal
Jaume Guardans, Ideaborn Consultants
Maria Elena Hernandez Lara, Red por los Derechos de la Infancia
Graciela Jasa, Human Rights Research and Education Centre University of Ottawa
Elva Victoria Mata Carrasco, Justicia Adolescentes Chihuahua

Perla Guadalupe Rui Gonzalez, Supremo Tribunal de Justicia de Chihuahua

United States

Elizabeth Clarke, Juvenile Justice Initiative of Illinois
Diane Geraghty, Civitas Law Center at Loyola Law School of Chicago
Raye Barbieri, Center for Court Innovation
Michael Lindsey, Southern Methodist University Dallas
Patricia Puritz, National Juvenile Detention Center
Liane Rozzell, The Annie E. Casey Foundation
Miguel Blancarte, Volunteer Translator
James Bell, W. Haywood Burns Institute
George Timberlake, Illinois Juvenile Justice Commission
Seth Weiner, Porticus of North America

International Community

Cedric Foussard, International Juvenile Justice Observatory
Cristina Goñi, International Juvenile Justice Observatory
Cecilia Anicama, Office of the Special Representative of the UN Secretary
Yvonne Adair, University of Ulster
Paula Jack, Former Chief Executive of the Youth Justice Agency of Northern Ireland
Ton Liefwaard, University of Leiden

The PowerPoint presentations of all speakers who presented are [on the NACJJ website](#).

Restorative Justice

At the First Meeting, the need for a working paper on restorative justice was identified, and was subsequently chosen as the topic of focus for the Second Meeting, where the draft paper on restorative justice was circulated and discussed.² The need to focus on best practices in the paper was emphasized, and it was decided that a working group of experts and key stakeholders should continue revising the paper, incorporating the knowledge and feedback gained from participants of the Second Meeting. It was acknowledged that all three countries have practices related to restorative justice, but that there are not currently common national systems that incorporate it across the board. Measures to increase alignment between best practices and domestic law and policy were discussed.

Two members of the IJJO European Council for Juvenile Justice, presented on the first day of the Second Meeting, discussing a European perspective on restorative justice and in particular the experience of Northern Ireland. This allowed for an exchange of ideas, information and best practices between the NACJJ and the ECJJ, facilitating the goal of international cooperation. ECJJ members have worked as a group on an in depth study of restorative justice, titled 'The European Model for Restorative Justice with Juveniles'. The European Model is composed of 3 volumes: snapshots of national policies in the 28

² The NACJJ Paper on Restorative Justice can be found at: <http://www.nacjj.org/second-meeting-policypapers>

EU countries, a restorative justice model of good practices, and a toolkit for professionals.³

The following is a brief overview of restorative justice mechanisms, law, and policy in each of the three countries, as discussed at the Second Meeting.

Canada

Canada has national youth justice legislation that incorporates both adolescent development and international human rights, and that supports restorative justice at various points of the youth justice system. The Canadian *Youth Criminal Justice Act (YCJA)* creates a standalone regime for youth, distinct from the adult criminal justice system. To varying degrees, restorative justice is also a significant component in the adult justice system. The strengths of restorative justice in Canada include extensive experience; support and leadership from communities, educational institutions, governments and justice agencies as well as different community-based models to meet individual needs.

An example of restorative justice programs is the Nova Scotia Restorative Justice Program (NSRJP) for youth from 12 to 17 years of age, launched in 1999 and funded by the provinces. The Nova Scotia Department of Justice's vision and aim through 2018 is to have "a people-centered justice system and the safest communities in the country,"⁴ and special attention will be given to improving access to justice and to working for better community safety and overall wellbeing. Other programs exist that are based on victim-offender reconciliation or mediation models, and there are also programs, such as 'A Different Street'⁵ that aim to prevent reoffending.

Mexico

In Mexico there is a legal system that recognizes restorative justice and prioritizes it over deprivation of liberty, and new legislation is underway. There is a move towards a system that facilitates reintegration and restorative justice over deprivation of liberty. Mexico also benefits from having centralized general criminal laws, since July 2015, including in the juvenile justice system.

According to the Constitution, only children over the age of twelve can have a trial. It establishes that there is a need to create a special jurisdiction that forces the use of alternative and restorative justice measures, as well as the need to reinforce the principle of proportionality. The Constitution also stresses the need to include social and family-focused reintegration, as being in the community and in the home is vital for the natural development of the child. However, even with the strong focus on restorative justice in the legal system, it was noted that the practical barriers are limiting the scope of implementation.

United States

The U.S. relies mainly on state-based justice systems, with widely varying laws and practices. Nationally, the federal Juvenile Justice and Delinquency Prevention Act (JJDP) applies some limited protections against jailing juveniles with adults and

³ For more information, see: <http://www.ejjc.org/eumodel>

⁴For more information, see: <https://novascotia.ca/treasuryboard/manuals/PDF/100/Justice.pdf>

⁵For more information, see: <http://www.youturn.ca/a-different-street/>

encourages alternative measures to detention, but fails to incorporate international human rights and does not include restorative justice. As a result, the U.S. falls outside basic international prohibitions against trying children in adult court and life sentences, and still relies heavily on incarceration. There is a great deal of advocacy underway in the U.S. to bring its juvenile justice systems into compliance with basic international human rights.

Since the 1970s, there has been a drive in the U.S. for restorative juvenile justice, as opposed to the use of traditional retributive models. Since the 1990s, the number of restorative justice programs has increased and gained popularity. As with Canada and Mexico, the U.S. indigenous people practiced restorative justice, and there is an increasing emphasis on restorative justice pilots and practices. In March 2014, a study was carried out, and it was found that 32 states had statutory support for the use of restorative justice, the majority of which emphasize community involvement as an integral part of the process.

Making Deprivation of Liberty a Measure of Last Resort

Similar to restorative justice, the need for a working paper on making deprivation of liberty a measure of last resort was discussed at the First Meeting of the NACJJ. Although Article 37 of the Convention on the Rights of the Child makes it clear that deprivation of liberty should always be a measure of last resort and should only be applied for the shortest appropriate period of time, participants at the meeting identified the need for continued improvement of juvenile justice systems to achieve that goal. At the Second Meeting, the draft working paper was circulated, discussed, and revised.⁶ Similar to the paper on restorative justice, participants noted the desire for the paper to focus on best practices.

As previously mentioned, in order to encourage the exchange of best practices between IJJO regional councils, ECJJ member from the Netherlands, Ton Liefwaard, provided a global perspective on alternatives to deprivation of liberty using international standards and European models. The latest ECJJ research on alternatives to deprivation of liberty was also presented.⁷ Deprivation of liberty has been considered by NACJJ members as a clear priority to be addressed by the Council. The work of the NACJJ on this matter aims to contribute to the UN Global Study on Children Deprived of Liberty, which is being developed by the Special Representative of the Secretary-General on Violence Against Children, represented during the meeting by Cecilia Anicama.

In all three North American countries, much attention is given to social inclusion, which should be the aim of all juvenile justice measures and programmes. Alternative's to detention pending a court decision and to custody as a sentence following a finding of guilt should have a rehabilitative focus, in order to facilitate the young person's reintegration into society. Most participants at the Second Meeting suggested launching a study to evaluate the benefits of alternatives to deprivation of liberty for the community, the victim and the offender.

⁶ The NACJJ Paper on Making Deprivation of Liberty a Measure of Last Resort can be found at: <http://www.nacjj.org/second-meeting-policypapers>

⁷ For more information, see: <http://www.oijj.org/en/joda-introduction>

The following is a brief overview of mechanisms, law, and policy in each of the three countries, as discussed at the Second Meeting.

Canada

In Canada, experience with the federal *Young Offenders Act* (YOA) showed that there was an overreliance on incarceration in the country, particularly with minor, non violent offences. Introduction of the *Youth Criminal Justice Act* (YCJA) in 2003 set a policy direction for youth justice to reduce the use of custody, increase alternatives to custody and create more community based services and opportunities for diversion from formal court proceedings. Canada's federal legislation supports consistent, national approaches. For example, the YCJA established sentencing principles that emphasize consideration of alternatives to custody and sets limitations on when a custody sentence can be imposed.

Various Canadian examples of community based responses, which include both diversion and alternatives to custody were shared. The Ottawa Police Service Diversion Program was identified as a program that diverts youth who have committed minor crimes from police charges and formal court proceedings. Across Ontario, the Attendance Centre program provides youth community based supervision and programs matched to their assessed risks and needs. In Nova Scotia, the Restorative Justice Program places a strong emphasis on community-based sentences and increasing community engagement.

Mexico

In Mexico, the Constitution supports alternatives to detention, emphasizing reintegration, proportionality and involvement of the family. The national penal code includes alternatives to detention; there is a general law that stresses the importance of the rights of children and adolescents, and a national law that includes mediation, restoration and alternative measures. Currently, there are 38 identified measures that do not involve deprivation of liberty.

Mexico is working to reduce recidivism by promoting positive outcomes such as increased school attendance, participation in therapy and communication with the family. So far, results have been positive and this system is being encouraged. Both an alternative justice centre and an institute have been established, where the culture of peace and justice is promoted. There is also a justice centre that serves as an 'open space' and has opened its doors to everyone in the society, as well as a centre for pre-trial assistance.

United States

Although youth confinement has decreased in recent years, there is still an overreliance on deprivation of liberty. The Juvenile Justice and Delinquency Prevention Act (JJDP) has few restrictions on deprivation of liberty. However, initiatives such as the Annie E. Casey Foundation's Juvenile Detention Alternative Initiative (JDAI), adopted in 39 states, aim to reduce the use of pre-trial detention. By 2014, there were 80,000 fewer youth admitted to detention, and the number of days spent in detention was reduced by 1.3 million. Some of the strategies in the JDAI include increasing collaboration and data driven decisions, creating alternatives to detention, improving conditions of confinement, reducing racial disparities and objectifying admission to detention.

Some states have reduced incarceration through a variety of mechanisms including fiscal re-alignment to shift fiscal incentives to community alternatives rather than incarceration, with programs such as Reclaim Ohio and Redeploy Illinois. In addition, initiatives launched by private foundations, such as the MacArthur Foundation's Models for Change, have resulted in fewer commitments by focusing on the success of evidence-based practices in the community. Many states have closed juvenile prisons as a result of legislative requirements to end incarceration for low level offenses amid concerns over the high cost of incarceration, and the federal government has questioned mass incarceration and urged states to end mandatory minimum sentences and lengthy terms of incarceration. The U.S. has an active campaign to end the use of life sentences for juveniles, and a series of other advocacy initiatives such as 'Youth First!'. Furthermore, an emerging advocacy campaign in the U.S. is focused on ending harsh conditions of confinement including the use of solitary confinement and the use of shackles on children.

Conclusions

The Second Meeting of the NACJJ resulted in six key takeaways:

1. The need and desire for a **regional Council** on juvenile justice was reaffirmed.
2. The goal of adding **more members** to the NACJJ was identified.
3. The Working Papers on **restorative justice** and **making deprivation of liberty a measure of last resort** were reviewed, discussed and proposed as a basis for a specialized working group within the NACJJ.
4. Separate papers on **solitary confinement** and the **connection between neuroscience and international standards** were proposed.
5. Support for the **United Nations Global Study on Children Deprived of Liberty** was expressed.
6. A commitment to **continue meeting as a Council** was made.

Next Steps of the NACJJ

Third Meeting

Planning for the Third Meeting of the NACJJ, to take place in early 2017, is currently underway, and Mexico has graciously offered to host it. More information and dates will be communicated as soon as they are available.

Communication

The NACJJ newsletter is a space for members to share developments, work and upcoming events with one another, and a way for all members to stay informed about juvenile justice topics in the North American region. If you have news to share, or any upcoming events of interest, please send them to northamericancouncil@oijj.org so they can be included in the next newsletter!

The [NACJJ website](#) is also an excellent resource for members and contacts to stay informed about the work of the NACJJ and developments throughout the region. Furthermore, the general [IJJO website](#) provides information, research and news about juvenile justice throughout the world.

Working Groups

At the Second Meeting, the creation of working groups on three specific issues was proposed, and at this time, the NACJJ would like to set up those groups. We hope to involve as many members as possible, and welcome each individual or organisation to join as many of the groups as they desire. Each group will be able to use the working paper as a starting point for further discussion and collaboration on the topic it covers. The three topics are as follows:

1. [Restorative Justice](#)
2. [Making Deprivation of Liberty a Measure of Last Resort](#)
3. Solitary Confinement (to be published)

The links above give access to the working papers on each topic, each of which gives an overview of the topic and proposals for future discussion and collaboration. We invite you to look at each paper in order to decide which of the groups you would like to join, and more information will be sent out shortly regarding the formation of the working groups.