



# 邁向公義

被提控青少年在司法過程中的經歷

## **Access to Justice**

An Exploratory Study of Juvenile Offenders  
in the Juvenile Justice System

青少年問題研究系列(十一)

Youth Study Series No.11

香港青年協會

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## **Youth Study No. 11**

### ***Access to Justice An Exploratory Study on Juvenile Offenders in the Juvenile Justice System***

#### **SUMMARY REPORT**

##### **1. Introduction**

Juvenile offenders, particularly first offenders, cause much concern. Society's tendency to opt for a rehabilitative rather than a punitive approach in treating them now seems to be the mainstream line of thinking. To this end, the operation of the juvenile justice system in a fair and just manner is of tremendous significance. The perception that juvenile offenders have of the juvenile justice system and their own treatment is undoubtedly strongly linked to their own motivation to reform. Through a case study of juvenile offenders at various stages from prosecution to conviction or acquittal, we hope to shed light on the issue.

The main objectives of this study are to examine the personal experience of juvenile offenders, the available support and services, be they legal, social, psychological or informational, and the practical applicability of some of the fundamental freedoms for suspects under the rule of law of our current legal system. It also aims to improve our understanding of the situation before the sentencing of juvenile offenders and to highlight the services that are needed.

##### **2. Methodology**

A case-study approach was adopted so that the researchers had an in-depth interview with each respondent. Consent to be interviewed was obtained from 25 teenagers who had been prosecuted within the last two years and who were under 21 at the time of prosecution. Respondents were referred by other social service agencies as well as service units of the Federation. The interviews were conducted from 30 July 1996 to 2 November 1996. Thirteen professional social workers interviewed the youths face-to-face for one to two hours using uniform sets of open-ended questionnaires. Throughout the interviews, respondents were encouraged to express their opinions and feelings freely.

Obviously, the small number of cases in this study may not represent the overall number of juvenile offenders in Hong Kong. Nevertheless a qualitative analysis of their experience and opinions can shed light on the issue in a way that can never solely be done quantitatively. Since the respondents showed no hesitation in answering the questions, we are confident that their replies are honest and reliable.

##### **3. Respondents' Profile**

3.1 The 25 young respondents were 23 males and 2 females.

- 3.2 The age range of the respondents was from 14 to 20. All were under 21 at the time of prosecution.
- 3.3 Eleven of the respondents were first offenders, thirteen had been prosecuted more than once and one respondent was under the caution of the Police Superintendents' Discretion Scheme.
- 3.4 Most of the respondents had been charged with minor offences such as fighting in public, disorderly conduct, selling fake CDs, being unable to produce a Hong Kong Identity Card in a public place, being a member of a triad society or theft. Some had been prosecuted for more serious offences such as possession of an instrument fit for unlawful purposes, possession of dangerous drugs, battery, blackmail, criminal intimidation, arson, robbery, assaulting or obstructing a police officer on duty.
- 3.5 The status of the prosecution of the 25 respondents was: 18 were convicted, 2 acquitted, 4 were on bail pending the hearing and 1 was on bail pending sentence.
- 3.6 Eighteen of the respondents had used the Duty Lawyers Scheme, two respondents used lawyers from private law firms, one switched from the Duty Lawyers Scheme to a private legal practitioner, three had no legal representation and one did not provide information on this.

#### **4. What had Happened Before the Trial?**

##### **Stop, Search and Arrest.**

- 4.1 A number of respondents claimed that they were stopped and searched by police in a public place without justification. They accused the police officers of being discriminative and selective. Some respondents claimed that some police officers labeled them marginal youths.
- 4.2 Some of the respondents mentioned that they were afraid to be searched by police in a secluded part of a public place. One respondent claimed that a police officer had charged him with possession of an instrument fit for unlawful purposes after putting the "evidence" into his pocket.
- 4.3 One respondent complained of the unnecessary force used by the police officer when arresting him at the police station. He was handcuffed and was hurt.

##### **Taking a Statement of Confession**

- 4.4 One respondent accepted the police practice of taking a confession statement as appropriate and fair. He said he had understood what was happening and had not been maltreated or beaten by any police officer.

- 4.5 More respondents, on the other hand, accused the police of abuse of power or malpractice when taking the confession statement. The accusations against the police included battery, the threat of assault, maltreatment or undue influence while testifying. A majority of this group of respondents eventually signed the confession statement under duress, they claimed.
- 4.6 One respondent, aged 16, indicated that he was denied the right to inform his parents of his arrest. He was told by the police officer he might leave if he signed the confession statement.
- 4.7 One respondent was upset when he saw a posted notice of his "rights entitlement" in the police station when he was in custody. He felt particularly frustrated when he was denied boiled water or food. He was only allowed un-boiled tap water and had been given food the following morning.

### **On Bail**

- 4.8 Most respondents were granted bail before trial. They were required to report to a particular police station on a specified date. Some had had to renew bail several times for as long as four months. This had disrupted their study plans or career opportunities.

### **Perception**

- 4.9 Most of the respondents had felt very angry though they were afraid to voice out their experience of violence encountered in the prosecution process. However, they did learn from these experiences that "violence could solve problems" and this reinforced their lack of respect for law and order.

## **5. What Happened in the Trials?**

### **Duty Lawyer Scheme**

- 5.1 The respondents' knowledge of the Duty Lawyer Scheme varied. Some had heard about the scheme before their trial from friends who had had a similar experience. Some had learnt about it from the police. Some of those who knew little about the scheme had been informed only on the morning of the trial day by the court liaison officer. One respondent even had to ask people at random in the magistrate's court itself before he could obtain relevant information.
- 5.2 Most of the respondents had sophisticated responses and mixed feelings about their charge and they hoped duty lawyers would appreciate the uniqueness of their case and feelings. However, almost all respondents who used Duty Lawyer Scheme were allocated only 5 to 10 minutes to meet with the duty lawyer. Most thought the time was inadequate for communication.
- 5.3 A number of respondents indicated that legal advice from duty lawyers did clarify some legal points and that subsequently they had changed their plea to not guilty. One

respondent did not appreciate his duty lawyer defending his case because he had already admitted that he had committed the crime. A couple of respondents said that they depended on legal advice from the duty lawyer for their cases.

- 5.4 As most of the respondents knew little about the law or about court procedures for criminal cases, they had various perceptions of their duty lawyers. Some were afraid that duty lawyers would not treat their cases seriously since they only met with them for a few minutes. One respondent felt his duty lawyer was not concentrating during the trial. Another was of the opinion that duty lawyers only worked to a routine. Some thought that duty lawyers just tried to persuade them to plead guilty and then mitigated their case to the judge. One respondent was dissatisfied that the duty lawyer kept changing his case on different trial days. Some felt that having the same duty lawyer assigned to represent three different defendants in the same case would lead to unfairness, particularly as, after police persuasion, two of the defendants became witnesses in the latter part of the trial.
- 5.5 However, most of the respondents admitted that legal representation in the court was indispensable. One respondent said a duty lawyer helps to work through the unfamiliar court procedures. Another thought a duty lawyer helps the mitigation in the court.

### **The Trials**

- 5.6 Since the trials were conducted in English, almost all of the respondents said that they did not understand what had happened in the court. One respondent indicated that he did not even understand what his duty lawyer had said in his defence. Another respondent was dissatisfied that the trial was conducted in English when he saw that the judge was Chinese.
- 5.7 A number of respondents had said that the confession statements were signed under duress or under threat of assault in the police station. Yet the judge believed evidence given by the police rather than the defendants. They felt the judges were biased and were prejudiced against them.
- 5.8 A significant proportion of the respondents had had similar experiences on the day of the trial. They had had to wait for a long time before being brought to the court, some for as long as 7 or 8 hours. The reasons given for this included a change of schedule for the hearing, an unclear notice from the reception of the court, going to the wrong court, police giving wrong information for the trial, etc.
- 5.9 Some of the respondents said that they appreciated that they had the opportunity for an open and fair trial. Compared with their experiences of giving confession statements in the police stations, they indicated that they had a much more positive experience of the trial process in the court.

## **6. Discussion and Recommendations**

### **6.1 The Juvenile Justice System Needs to Consider the Socio-psychological Characteristics of Minors**

In many countries, such as the United Kingdom, U.S.A., Germany or Singapore, there is a general belief that juveniles undergoing prosecution and trial should be treated differently from adults. This idea stems from the belief that minors are more vulnerable in the criminal justice system and that their fundamental rights should be ensured in order to protect them.

A juvenile justice system should be more responsive to the socio-psychological characteristics of young offenders. Most countries try juveniles under 18 in a special court (usually juvenile or youth court), in a more informal or relaxed environment, using language understandable to juvenile defendants, and conducting the trial in an expedient manner. Accordingly, personnel in the criminal justice system such as police officers, judges, lawyers, or other law enforcement agents are given additional training so that they can better understand the special needs of juveniles.

In Hong Kong, the legal age of adulthood is 18 and many legislation conform to this standard. The Police Superintendents' Discretion Scheme is also extended to minors under 18. In recognizing the socio-psychological characteristics of the minors, the jurisdiction of juvenile courts in Hong Kong should be extended to young offenders under 18. There is also a need for an examination of the juvenile justice system in Hong Kong to reflect the above underlining spirit.

### **6.2 Teenagers Know Little about Legal Procedures or Their Basic Legal Rights**

It is commonly accepted that a rule of law for needs to be backed up by an open and fair trial system as well as a reasonable standard of general knowledge of the law and of basic legal rights on the part of the citizens. Many important legal concepts or principles in a criminal justice system have been developed to ensure that the rule of law can be realized. To name a few: defendants have the right to remain silent, to have legal representation, to be presumed innocent until proved guilty ( the burden of proof being on the prosecution), and the right of access to free interpretation services. These important principles apply to everyone, adults and minors alike.

Yet this research shows that teenagers understand little about legal procedures or their basic legal rights. They are in general unclear about their rights as a citizen in the process of stop and search in street, arrest without warrant, obtaining confession statements in a police station, conditions for bail, or prosecution. This ignorance of their own rights will increase possibilities for police officers who choose to abuse their power unlawfully.

### **6.3 Teenagers Encountered Unfair Treatment or Abuse of Police Powers.**

A majority of the respondents indicated that they had been treated unfairly or violently by police officers in different situations, be it stop and search in the street, giving confession statements in the police station, pending bail or the decision to charge the accused. These maltreatment have ranged from duress, threat to assault, battery or inhumane treating of the defendants.

Under current law, police officers are given powers to stop and search, arrest without a warrant anyone they have reason to believe is about to commit an arrestable criminal offence. The use of this discretionary power, however, is basically subject to the assessment of the police officers. Much concern has been raised on how to ensure that police officers properly exercise this lawful discretionary power in a standard and professional manner? How can police officers be prevented from abusing their power in circumstances when incorrect assessments have been made, emotions are involved, prejudice is projected or unlawful force is used because it is more convenient.

To clear up accusations of abuse of power in the police force, the increase of transparency in the criminal justice system is essential. It is recommended that the taking of confession statements in police stations should be video-taped. If the video-taping is done properly, it will certainly ensure a fair and open criminal justice system which every citizen will treasure. The resources involved, although they may be significant, are absolutely justified.

### **6.4 No Access to Legal Advice in the Police Stations; and Denial to Contact Parents or Guardians**

#### ***(a) No Access to Legal Services in the Police Stations***

Findings of the research indicate that all respondents have no access to legal services, be it legal advice, legal consultation or legal representation, in most earlier stages of the criminal procedures, except on the day of their trial in the court. There is apparently lack of a point of contact with legal services in the police stations.

It has been since August 1992 that the Hong Kong Law Reform Committee has clearly suggested in a report entitled "Arrest" that minors should be cared and protected in the juvenile justice system on account of their vulnerability. When a Duty Lawyers Scheme is available, the legal service should be extended to an earlier part of the judicial process, including inside police stations. These measures should be implemented as soon as possible.

#### ***(b) Denial of Access to Parents or Guardians***

A number of respondents were also not allowed to contact their parents or guardians after their arrest without being given a lawful explanation. The police officers involved

were either failing to perform their duties as prescribed by law or directives, or were abusing their discretionary powers and acting unlawfully.

In fact, bail should normally be granted, except in a serious case where there is a likelihood that the offender will abscond, will repeat the offence, interfere with witnesses, impede the investigation of the case or otherwise attempt to obstruct the course of justice. Judging from the nature of the cases and the circumstances of most of the respondents, it is hardly justified for police officers to restrict or deny the access of these young suspects to contact with their parents and guardians. This kind of situation should be avoided.

## **6.5 Duty Lawyer Scheme Should be Extended to The Earliest Stage of The Criminal Justice Process, Including Police Stations**

For most of the respondents free legal services were only accessible on the morning of the trial when they first met with their duty lawyers. It will be clear why this was the case when we look at the present operation of the Duty Lawyer Scheme.

Legal services of the scheme are currently provided in three different ways: (a) Duty Lawyers in the Magistrate's and Juvenile Court; (b) meeting with citizens by appointment via District Offices; and (c) taped legal information via telephone hotline. It is obvious that under current provisions the vast majority of young defendants can only see their lawyers on the day of their trial.

To ensure access to justice, legal advice or representation should be made accessible as early as possible in the criminal justice system. Since police officers are the front-line law enforcement agent, legal services should be available in the police stations. When shortage of money is a barrier, free legal services, usually in the form of legal aid or mandatory legal representation in court, should be provided by the taxpayers via the government. These legal services should also be provided in an expedient way in relation to the nature of the offence.

The Duty Lawyer Scheme, if judged by the above standards, obviously fails to meet the needs of minor offenders. Legal advice or legal representation is unavailable in police stations. An appointment with a duty lawyer for legal advice will take 3 to 4 weeks to arrange through the District Offices. A telephone hotline using pre-taped legal materials is also unable to respond to cases of different kinds. It is obvious that resources should be increased so as to improve the accessibility of the Duty Lawyer Scheme to minor offenders.



## 7. Recommendations

In view of the above discussion and analysis, the Federation recommends:

- 7.1 Socio-psychological Needs of Minors Needs to be Recognized in the Legal Procedures of Juvenile Justice System in Hong Kong;
- 7.2 Jurisdictions of Juvenile Courts Should be Extended to Young Offenders under 18;
- 7.3 Taking of Confession Statements in Police Stations should be Video-taped;
- 7.4 Resources should be Increased for Duty Lawyer Scheme In response to the Unmet Needs of the Minor Offenders. This includes:
  - (a) The accessibility of the Duty Lawyer Scheme should be extended to the earliest stage of the criminal justice process, including police stations;
  - (b) Appointments for legal advice to minor offenders in criminal trials should be arranged and made available via District Offices within a reasonable period of time.
- 7.5 The Provision of Effective Public Education of the Law and of Basic Legal Rights for Minors.