

# **The Role of Statistics and Public Opinion in the Implementation of International Juvenile Justice Standards**

Carolyn Hamilton and Rachel Harvey

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**The Role of Statistics and Public Opinion in the Implementation of International  
Juvenile Justice Standards<sup>1</sup>**

Carolyn Hamilton\* and Rachel Harvey\*\*

\* Professor of Law, University of Essex; Director, Children's Legal Centre.

\*\* LL.B., LL.M.; Assistant-Director, International Policy and Programmes, Children's Legal Centre.

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HEUNI  
The European Institute for Crime Prevention and Control,  
affiliated with the United Nations  
P.O.Box 444  
FIN-00531 Helsinki  
Finland  
Tel: +358-(0)10 366 5280  
Fax: +358-(0)10 366 5290  
e-mail: [heuni@om.fi](mailto:heuni@om.fi)  
<http://www.heuni.fi>

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# Contents

<b>Statistics: Their Role in the Implantation of International Juvenile Justice Standards .....</b>	<b>9</b>
<b>Statistics on Juvenile Offenders and the Juvenile Justice System .....</b>	<b>10</b>
Providing statistics to the Committee on the Rights of the Child: the current position .....	10
Information submitted to the Committee on the Rights of the Child .....	11
Why is statistical information useful? .....	12
What statistics do we want? .....	14
Too much information? .....	14
The wrong sort of information? .....	14
Difficult to analyse? .....	15
Data collection .....	16
Problems in collecting crime statistics .....	17
Arrest rates .....	17
Victim surveys .....	17
Self-reporting data .....	18
National systems for data collection .....	18
Regional data collection .....	19
<b>International Data Collection: The Way Forward .....</b>	<b>20</b>
UN Centre for Crime Prevention and Criminal Justice .....	20
<b>Conclusion .....</b>	<b>22</b>
<b>Bibliography .....</b>	<b>23</b>
<b>The Role of Public Opinion in the Implementation of International Juvenile Justice Standards .....</b>	<b>24</b>
How is public opinion formed? .....	24
What is the public perception of juvenile offending? .....	25
Why doesn't public opinion reflect statistical reality? .....	26
Public opinion polls .....	27
Influences on public opinion .....	29
Media .....	29
Day to day coverage .....	29

The impact of individual cases .....	31
The influence of politicians .....	31
Changing public opinion to implement reform .....	33
Gauging true public opinion .....	33
Changing the approach of the media .....	35
Educating and informing the public - the role of the State .....	36

<b>Conclusion .....</b>	<b>37</b>
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<b>Bibliography .....</b>	<b>38</b>
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## **Annex**

<b>Case Study 1: South Africa - The Fragility of the Children's Rights Agenda .....</b>	<b>2</b>
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<b>Case Study 2: Bulger and the UK: The Media, the Public and the Government's Reaction .....</b>	<b>12</b>
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## STATISTICS: THEIR ROLE IN THE IMPLANTATION OF INTERNATIONAL JUVENILE JUSTICE STANDARDS

Article 40 of the UN Convention on the Rights of the Child requires that every child accused or recognised as having infringed the criminal law be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society. These requirements are explained and interpreted in Arts 40 (2) and (3). In essence, Articles 37, 39 and 40 require ratifying States to put in place a juvenile justice system that ensures the rights contained in both the UNCRC and the UN Minimum Standards and Norms on Juvenile Justice.

States have, however, been notoriously slow at implementing Articles 37, 39 and 40. It is, indeed, arguable that no one State has fully implemented these Articles, and that virtually all States have been criticised by the Committee on the Rights of the Child for their failure to fully implement them. It has been noted that: *'The rights, norms and principles involved (in the CRC) are regularly ignored and seriously violated virtually throughout the world ... on a scale ... unmatched in the field of civil rights implementation.'* (Innocenti Digest 3, 1998, 2) Whilst this was not said specifically of Articles 37, 39 and 40, it is especially true of the Articles of the Convention relating to juvenile justice.

At its 10th session, in 1995, the Committee on the Rights of the Child devoted a general discussion day to the theme of "Administration of juvenile justice",<sup>2</sup> emphasising the need to implement

existing international standards and to strengthen international cooperation. More recently, during its 22nd Session, the Committee issued a recommendation on the administration of juvenile justice<sup>3</sup> calling on States to give urgent attention towards fully implementing Articles 37, 39 and 40 of the Convention and existing international standards in this area, and requesting the UN High Commissioner for Human Rights to give priority to promoting the implementation of these standards; consider what steps might be taken to identify obstacles preventing the full implementation of standards; and design ways and means to overcome these obstacles.

There are a considerable number of obstacles to the implementation of Articles 37, 39 and 40. In many States, particularly those in developing countries, there has been little attempt to implement a juvenile justice system. The State response to offending children is often one of secrecy, and public debate about the treatment of such children takes place in the absence of full information or is discouraged. In the West, public attitudes have not been conducive to a wholesale implementation of Arts. 37, 39 and 40, such an approach often being seen as 'soft' and failing to address the level of offending by children.

It has been suggested that the advantage of the UNCRC *'is that, as a human rights treaty, it removes the debate about child criminal justice from the bitter sphere of party politics and places the discussions and campaigns firmly in the arena of legal commitments which a country is under a binding duty to implement.'* (Van Bueren 1999, 1) While in theory this is true, in practice it has not been possible to remove the influence of politics from juvenile justice. The lack of empirical data and a good understanding of the political background and public attitude towards juvenile justice policy have hampered those seeking better implementation of the Convention. This paper seeks to address two

<sup>2</sup> Report on the tenth session, CRC/C/46, 18 December 1995 (Sessional/Annual Report of the Committee).

<sup>3</sup> Report on the 22<sup>nd</sup> session, CRC/C/90, 7 December 1999 (Sessional/Annual Report of the Committee).

inter-related obstacles. Part I will explore the collection and analysis of data concerning juvenile offenders and Part II, public perceptions on the administration of juvenile justice. This paper is not intended as a definitive discussion of the literature in this area, but as a document to stimulate discussion.

## **STATISTICS ON JUVENILE OFFENDERS AND THE JUVENILE JUSTICE SYSTEM**

It has been suggested that better collection of data at a national and international level would aid the Committee on the Rights of the Child in its role of monitoring and promoting the implementation of the CRC. The first part of this paper will discuss the present availability of statistics on juvenile offending, the benefits of better data collection and the problems inherent in the collection of statistics both at national and international level.

### **Providing statistics to the Committee on the Rights of the Child: the current position**

The General Guidelines for periodic reports<sup>4</sup> require States to provide detailed information on the administration of juvenile justice. This includes not only information on the legislative and other measures taken to implement the Convention and information on the policies and practices of the States' juvenile justice system, but also statistical information. States are requested to provide a considerable amount of statistical information in their periodic reports to the Committee. In relation to juvenile justice the following information is sought:<sup>5</sup>

- In relation to Article 40, disaggregated data on the children concerned by age, gender, region, rural/urban area, national, social and ethnic origin, offence and disposition made available
- The existing alternatives to deprivation of liberty, the frequency with which they are used and the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin
- The number of children deprived of their liberty, unlawfully, arbitrarily and within the law, as well as on the period of deprivation of liberty, including data disaggregated by gender, age, region, rural/urban area, and national, social and ethnic origin
- In pursuance of Art 37(d), the percentage of cases where legal or other assistance has been provided, and where the legality of the deprivation of liberty has been confirmed, including disaggregated data on the children concerned, including by age, gender, region, rural/urban area, and social and ethnic origin
- In respect of Article 39, relevant disaggregated data on the children concerned, including the age, gender, region, rural/urban area, and social and ethnic origin

The author has been unable to find a State report that complies with this request and provides this level of statistical information. When faced with State failure to provide the required statistical information on juvenile justice in their State Report, the Committee on the Rights of the Child regularly includes a request for further statistical information in the List of Issues sent to the State prior to the Committee's examination of the report. Interestingly, the statistical information requested in the List of

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<sup>4</sup> General Guidelines for Periodic Reports, CRC/C/58, 20 November 1996.

<sup>5</sup> *ibid.*

Issues is less than that contained in the Reporting Guidelines. Perhaps in recognition of the futility of requesting information that has not been compiled by the State, the Committee asks for more basic information, covering the following:

- The number of minors who have allegedly committed a crime reported to the police
- The number who were sentenced by the courts
- The nature of any sanctions imposed (fines, detention, community service, other)
- The number of suspended sentences
- The percentage of recidivism cases, and
- The number of reported cases of abuse and maltreatment of children occurring during their arrest and detention.

The results give an interesting, if depressing, view of the difficulties in seeking to obtain statistics, uniform or otherwise. To provide background information to the workshop, the author has examined State reports and concluding observations in relation to the 26th and 27th Session of the Committee on the Rights of the Child.<sup>6</sup> The inevitable conclusion from these reports is the consistent lack of adequate statistical information in relation to the implementation of Articles 37, 39 and 40. Of the nine State reports considered at the 26th Session (the Dominican Republic, Egypt, Ethiopia, Latvia, Lesotho, Liechtenstein, Lithuania, Palau and Saudi Arabia), none had the full information sought in the List of Issues nor the information required by the Reporting Guidelines. The information that each State was able to provide is listed below. As the Committee only considered one European State (that of Liechtenstein) in the 26th session, the information provided by Denmark (considered in the 27th session) is included below to provide a more complete picture of the information that States usually provide.

## Information submitted to the Committee on the Rights of the Child

### **Denmark**

Although statistics were available, including number of males and females charged with certain offences, dispositions for juveniles by age and type of disposition and length of prison sentence, the Committee criticised the government for the general lack of disaggregated data on juvenile justice.

### **Dominican Republic**

The State was only able to provide figures on how many children were committed, tried, released or awaiting trial.

### **Ethiopia**

Statistics available on the number of crimes committed by juveniles aged 9 -18 reported to the police. No statistics kept on the nature of the offences committed or reported. Minors are given the opportunity to stay with their own community instead of custody. However, there were 500 boys serving sentences in remand homes – information on length of sentence and nature of offence not provided.

### **Latvia**

Limited statistics in the State Report on the number of crimes committed by juveniles. Further, though still limited statistics were provided in response to the List of Issues on: the number of criminal offences committed by juveniles, the number of arrests of minors, the number of children in re-educational facilities, number of sanctions imposed by type and the number of minors in prison. The statistics do not show the length of prison sentences, nor a breakdown of the crimes committed by type and age.

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<sup>6</sup> Not all of the State reports in the 27th session were examined. Only those States, which had provided answers to the list of issues at the time of writing this paper, were included.



### **Lesotho**

Provides statistics on the number and nature of offences committed by children and the numbers in detention. However, prison statistics are unhelpful because there are two categories – under 15s (for which the number is small) and 15-20. There is no way of determining how many 15-18 year olds make up the latter figure.

### **Liechtenstein**

No breakdown of crimes committed by juveniles, no disaggregation according to gender. No data on the nature of the sanctions imposed on conviction or the rate of recidivism.

### **Lithuania**

Unhelpful statistics. The number of crimes committed by children is over twice the number of children in the system. No information on whether the crimes are property crimes or crimes against the person. No information on rate of offending or sanctions applied to children convicted of offences.

### **Palau**

Able to provide very limited information: that in 1999 13 juveniles came before the court. In November 2000 there were 25 juveniles taking part in the community justice programme, of which five were there for truancy, one for a curfew violation and three for malicious mischief.

### **Saudi Arabia**

In response to a request for statistical data on children (disaggregated by sex, age, type of crime, type of sanction) who had committed a crime reported to the police, Saudi Arabia did not have the information to hand, but replied that they would provide a report at a later date containing these figures. The Supplementary Report provides the number of children placed in institutions (all of whom were convicted of committing offences after being tried by courts) and the reasons for their placement. This included family break-up, morals, damage to property, drug offences, traffic offences, theft and others. The figures are not clear on the extent to which children are deprived of their liberty,

and whether this includes preventive detention or juveniles liable to social reform measures.

In their concluding observations, the Committee expressed concern at the lack of a data collection system covering children in conflict with the law in relation to all these States.

### **Why is statistical information useful?**

The collection of statistics requires a considerable input, both in terms of infrastructure and personnel from what may be very limited State resources. The expenditure to set up such a structure needs to represent ‘good value’ and contribute towards implementation of the Convention. Therefore, it is important to determine the purpose that statistics on juvenile justice can serve. From the point of view of the Committee on the Rights of the Child, one could postulate two major reasons (although there are a plethora of sub-reasons) for the compilation of statistical data on juvenile justice. The first would be to assist the Committee and the State to determine whether the Convention is being implemented within that State. Where the Convention is not being fully implemented, the data could aid the formulation of policies and programmes for its more effective implementation. The second would be to allow for cross-national comparison. The purpose of this once again would be to determine whether there are statistical anomalies and whether juvenile justice in that State could be enhanced by reforms to the legal framework, policy and practice. The statistics required for these two tasks might not be the same, and need to be clearly identified.

Governments, international bodies, inter-governmental bodies and NGOs might want juvenile justice statistics for different purposes. Apart from using the statistics to demonstrate their implementation of the Convention, Governments should also be using them to inform the development of policies, especially in relation to crime prevention and reintegration of offenders, as empirical evidence on which to base legislative reform and as a basis

for the effective allocation of resources. Statistics, which provide data broken down by age group, would also assist States in the development of specific programmes for under-18s, and to move from a reactive to a more pro-active, preventive juvenile justice system.

However, juvenile justice statistics are not just about collecting information on crime. Detailed collection of wider data on children in conflict with the law has proved helpful in identifying “*the extent of substance abuse, mental health disorders and related personal and family circumstances vital for better research and development of legal and clinical support programmes*”. (Levy 1999)

Other bodies, especially non-governmental organisations, can use statistics to lobby for change and monitor the working of the criminal justice system. International bodies use criminal justice statistics primarily to monitor trends in crime. However, the UN Crime and Justice Surveys<sup>7</sup>, which started in 1977, had higher aspirations than the determination of crime trends. The Surveys, never provided, and never sought to provide, an accurate account of worldwide crime. “*The early rationale for collecting and comparing statistics at higher than the national level was originally, and continued to be until relatively recently, a part of criminological aetiology, the search for the causes of crime.*” (Global Report on Crime and Justice 1999, 2)

This rationale changed at the beginning of the 1980s and the focus of the Surveys shifted away from the causes of crime to the operation of criminal justice systems (see Global Report on Crime and Justice 1999) and to assisting governments in the management of criminal justice. This change of focus, however, produced its own problems. The Surveys became highly detailed, requesting data on every level and aspect of a State’s criminal justice system. The Survey questionnaire became excessively large and was a burden on the officials

of participating States. It also became clear, fairly quickly, that no single national government department in a State had access to the variety of information requested. In fact, some governments established whole departments, whose function was to compile judicial statistics, in order primarily to respond to the UN Survey.

Early Surveys produced limited State responses, both in the number of replies and the information provided in the completed questionnaire. This was due to the difficulties faced by States in providing a new range of statistical information. Recognising the burden placed on States by the early Surveys, the lack of response from a large number of States and the limited use of obtaining incomplete data, the scope of later survey questionnaires was reduced. This has been effective, and over time more and more States have responded to the Survey. It is expected that subsequent Surveys will be shorter still, administered more often (every two years rather than 5 years<sup>8</sup>), with special topic surveys added to the core Survey every five years.

The Global Report on Crime and Justice 1999, which analysed the UN Crime and Justice Surveys<sup>9</sup>, concluded that despite the problems faced in obtaining uniform international data, there is nevertheless a valid rationale for collecting statistics on crime and criminal justice at the international level. The statistics have provided States with information on the workload faced by the criminal justice system and the response of that system to that need. “*Cross-national comparisons of different patterns of case-processing may generate limited, but useful, pictures of criminal justice in action.*” (Global Report on Crime and Justice 1999, 2 Box 0.1) In addition, the UN believes that it has successfully challenged States, to “*develop national crime and justice recording systems that are systematic, coherent and predictable*” (Global Report on Crime and Justice 1999, 3).

<sup>7</sup> The United Nations Surveys of Crime Trends and Operation of Criminal Justice Systems (UNCJS)

<sup>8</sup> The 7th and 8th Surveys already applied three-year intervals (K.A.).

<sup>9</sup> As well as all other international data collection, e.g. the International Crime Victims Survey

## What statistics do we want?

It is relatively easy to reach a conclusion that the collection of statistical data on juvenile justice, even if limited, is beneficial. It is more difficult, though, to determine what statistics it would be practical, useful and feasible for States to provide.

## Too much information?

As noted above, the Reporting Guidelines to the Committee on the Rights of the Child provide for the collection of detailed statistics on juvenile justice. Given the failure of States to provide the required level of statistical information over the last 10 years, it might be timely to reconsider the information sought.

- The first question is whether States should be encouraged and assisted to provide statistics in the form requested by the Reporting Guidelines, or should more limited statistics be requested?
- The second question is whether the statistical information sought by the Reporting Guidelines really assists the Committee in determining the extent of implementation of the Convention, or would it benefit from rather different information?
- The third question is what would be feasible and reasonable to expect a State to provide, taking into account the costs and difficulties of collecting statistics?

## The wrong sort of information?

It could be argued that the information sought in the Reporting Guidelines is too tied to the actual terms of the Articles of the Convention. So, for example, the Guidelines addressing Article 37(b) '*No child*

*shall be deprived of his liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time'* dutifully requires States to produce statistics on the existing alternatives to deprivation of liberty and the frequency with which they are used. It also requires statistics on the children concerned, including by age, gender, region, rural or urban area and social and ethnic origin. States are further asked to indicate how many children were deprived of their liberty, unlawfully, arbitrarily and within the law<sup>10</sup>, as well as on the period of deprivation of liberty etc.

While useful in and of itself to give a general overview of the percentage of the child population deprived of their liberty, rather different information is necessary if it is to assist the Committee in determining the level of implementation of the Convention.

For example, to determine whether deprivation of liberty is used as a last resort (i.e. being the most appropriate sentence) and for the shortest appropriate period, the Committee needs to know not just the number of children detained, but the nature of crime for which they are detained and the length of sentence for different offences. It needs to know at what stage in the juvenile justice process they are being detained, whether pre-trial or post-trial, following an appearance in court or not, following legal representation or not. If a child has been deprived of his liberty pre-trial, the Committee would be helped by information on the length of the detention cross-tabulated against the sentence received, and the number of children receiving no sentence. It would be useful to know how many children deprived of their liberty had been detained previously and for how long, and how many children detained for a second offence received a sentence that did not involve deprivation of liberty at a previous trial (i.e. whether non-custodial measures had been tried). In addition, the statistics currently

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<sup>10</sup> It is highly unlikely that States will provide this particular piece of information for public consumption unless, perhaps, it relates to the practices of a former regime.

required fail to inform us as to whether the detention of juveniles is consistent with good practice as contained in the UN Juvenile Justice Standards and Norms.<sup>11</sup>

In addition, the statistics, as requested by the Reporting Guidelines, cannot help us in assessing the situation for children who are deprived of their liberty without coming into contact with the criminal justice system, i.e. administrative detention. In many countries, a child's criminal offending behaviour is the subject of sanction within civil or administrative law, despite the child being *below* the age of criminal responsibility. Alternatively, the specific offences are considered to be administrative rather than criminal matters, despite the fact that the child in question is *above* the age of criminal responsibility. The statistics should include such children, if they are sent to closed institutions as a consequence of their criminal behaviour, as they are being deprived of their liberty.

However, in some States administrative institutions are not viewed as closed institutions (and so a deprivation of liberty). Rather, children placed in a closed institution are regarded as being there for their welfare and not as a punishment. For instance, in Saudi Arabia preventive detention in 'social guidance centres' is used for children who are classified as at risk of offending. In China, the use of what are, in effect, closed boarding schools can be found as a measure to combat 'anti-social' behaviour. States do not indicate clearly whether their statistics include such children as children deprived of their liberty. Neither do the Reporting Guidelines or statistics inform us whether, if there is parental consent to a 'closed' placement, children deprived of their liberty without trial or even charge, should be included in the statistics of children deprived of their liberty. The result of operating a system of administrative sanctions alongside a juvenile justice system can make data opaque. It is

possible to give a deceptive picture of the number of children deprived of their liberty.

### Difficult to analyse?

Much of the statistical data provided by States to the Committee is not easily analysed and may not be helpful in determining the level of implementation of the Convention. Much of the statistical information provided by States is incomplete, unclear or without explanation.

The data submitted by Lesotho demonstrates the problems of incomplete or unexplained statistics. According to the statistics provided in Lesotho's Supplementary Report, there were 758 murders committed by children in 1996-1997, 863 in 1997-1998 and 1130 in 1998-1999. Interestingly, only one child was in detention for culpable homicide in 1997, 2 in 1998 and 1 in 1999. The Supplementary Report indicates that as a matter of operational procedure, police do not keep children in custody, but place them back with the parents. There is no information as to how many children were *arrested* for murder, nor how many were charged, tried or convicted of murder. We are not told how murder is defined in Lesotho, the age of children committing the offence of murder or the age at which the child was tried. Nor are we informed of the length of time between arrest and trial and whether if the gap is long, the 'children' are over 18 when tried and thus no longer enter the statistics. There is no information as to whether Lesotho has an alternative sanction to deprivation of liberty in murder cases. Thus, apart from amazement at the total number of murders allegedly committed by juveniles, the reader is none the wiser about the implementation of the Convention. It is unclear whether this is a highly enlightened juvenile justice system that deals with juveniles committing homicide in a restorative, non-custodial manner or a revenge system, such that few

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<sup>11</sup> The UN Standard Minimum Rules for the Administration of Justice (UN Res. 40/33 – Beijing Rules), the UN Rules for the Protection of juveniles Deprived of their Liberty (UN Res. 45/113 – JDLs 1990 Annex 4), the UN Guidelines for the Prevention of Juvenile Delinquency (UN Res. 45/112 – Riyadh Guidelines 1990 Annex 3), Guidelines for Action on Children in the Criminal Justice System (ECOSOC Res. 1997/30, Administration of Juvenile Justice).

juveniles are tried for murder because they are themselves killed by the victim's family. Alternatively, mistaken definitions or entry of statistics could be responsible for what appears to be a statistical aberration.

Statistical aberrations may also be caused by legislation. For instance, the Juvenile Justice Act 1986 in India defines a juvenile as a male below 16 years of age and a female below 18 years of age. This will inevitably affect the gender balance in the statistics. In addition, statistics that are sent to the Committee are sometimes hard to decipher. For example, Lithuania provides detailed juvenile crime statistics. However, due to either inaccurate translation and/or poor display of information, the reader must spend some considerable time determining to what the figures refer, before being able to analyse them<sup>12</sup>. In such instances, the statistics provided can be a blunt and not a particularly helpful instrument for determining whether there has been implementation of the juvenile justice provisions.

The statistics sought in the List of Issues might be regarded as providing the most basic of data on a juvenile justice system. Such statistics, if provided, would give us a rough idea of the number of children caught up in the juvenile justice system, but little more. The lack of information on the nature of offences committed, the number of children deprived of their liberty and the lack of information about diversion make these statistics of dubious worth in terms of the implementation of the Convention. It is easy to criticise States for failure to provide statistical information and easy to have a 'wish list' of statistical information. It is rather more difficult to formulate exactly what information should be collected and why, and in what form.

## Data Collection

The difficulties in obtaining accurate and meaningful statistics on the operation of criminal justice systems

are well known. It has been argued that assessing the exact amount of crime in either the national or international context is beyond the capacity of current measurement techniques and probably always will be, given the inherently secretive nature of crime. (Global Report on Crime and Justice 1999) The difficulties are augmented in the case of juvenile justice due to the variations in ages of criminal responsibility, the use of administrative sanctions and procedures in relation to juveniles and the very different nature of laws, policies and practices applied across States. Perhaps then the best that can be achieved is the development of systematic, coherent and predictable statistics on a regular basis (one of the primary goals of the UN Crime Surveys). In collecting adult criminal justice statistics, it is regarded as good practice to concentrate on only a small number of different crime types, generally excluding petty or administrative offences. In the case of juvenile justice, this may not be helpful as the very fact of criminalisation is itself important, as are the number of cases dealt with by administrative rather than judicial measures.

If cross-national statistics are to be meaningful to the Committee, States need a more uniform system of data collection. This is not an easy task. Early attempts by the UN Surveys of Crime Trends and Operation of Criminal Justice Systems to produce standard definitions for offences failed because each State asserted its right to codify its own crimes, in a way that was specific to its culture and legal system. However, over time, a standard classification of crime definitions and justice categories have been developed and more and more countries have adapted their own crime and criminal justice statistical definitions and procedures to the standard UN categories. (Global Report on Crime and Justice, 1999)

Expectations of what might be achieved by the collation of cross-national statistics should not be too high. The experience of the UN Crime and

<sup>12</sup> Written replies by the Government of Lithuania concerning the List of Issues (CRC/C/Q/LIT/1), A.4. Crime of minors.

Justice Surveys demonstrate that “countries are best prepared to provide information about criminal events and are somewhat less prepared to answer questions about offenders and criminal justice personnel” (Global Report on Crime and Justice 1999, 4). The Global Report also suggests that criminal justice statistics do not measure crime as such, but reflect the activities of the agencies that record the crimes.

## Problems in collecting crime statistics

There are three main methods of measuring crime, each with its own pitfalls. Levels and types of crimes, as well as the level of offending by certain groups (e.g. juveniles, women etc) can be measured, with varying accuracy, through arrest rates, rates of police-recorded crime, victim surveys and self-reporting data.

### Arrest rates

A widespread method of measuring crime is through arrest rates, although this can lead to inaccurate results, and cannot provide a clear picture of the number of crimes committed in a country. Some people may be arrested more than once, other perpetrators may not be arrested at all and others who are arrested may be released later without charge. Arrest statistics are also not able to reflect the fact that juveniles tend to commit crimes in groups, and thus the arrest rate may not reflect the actual number of crimes being committed. On an international scale, the variation in ages of criminal responsibility between States, and the presence in some States of status offences or the practice of treating some criminal offences as administrative offences, will all have an impact on arrest statistics.

An alternative to arrest rates, the measurement of ‘crimes known to the police’, is also problematic as for a variety of reasons<sup>13</sup>, victims do not always

report crime; and, if reported, recording practices and counting rules are not uniform. In terms of measuring juvenile offending, this method does not provide an accurate breakdown on the age of perpetrators, (Crowell et al. 2001) as even where a description of the offender can be provided, victims and witnesses can only make a ‘best guess’ as to the age of the person committing the crime.

### Victim surveys

Victim surveys, a less utilised method of data collection on offending, can complement statistics on arrest or police-recorded crime, and go some way to providing a more accurate picture of crime.

Surveys are carried out on a cross section of society and figures are collected on how many of those interviewed have been a victim of crime, and the frequency of different types of offences. These figures are then extrapolated to provide regional or national crime statistics. The advantage of this method of measuring crime is that crimes that have not been reported to the police (or other bodies of the judicial system which can receive denunciations/complaints) are included in the figures. However, those surveyed may still remain silent about being victims of crimes<sup>14</sup>.

Gleaning statistics on juvenile offending through this method is also problematic as, once again, the victims can only estimate the age of the perpetrator. Further, victims can only give information on the age of an offender where they have had direct contact with him or her. While victims will have direct contact in offences against the person (which form the minority of offences committed by juveniles), they are unlikely to have direct contact with an offender who commits a property offence against them. As property offences dominate the criminal activity of under-18s, this method of data collection tends to underestimate levels of juvenile crime.

<sup>13</sup> For example, fear of retribution, or lack of faith in the police or the judicial system.

<sup>14</sup> Furthermore, the method is only able to measure events with victims (K.A.).

## Self-reporting data

Surveying young people to discover what crimes they have committed is another method of crime data collection. However, as much of this information is gathered at schools, it excludes data from those children who are absent, playing truant and those who have been expelled or suspended: in other words those children who are often juvenile offenders. The accuracy of self-reporting is also dubious. Although, young people tend to be forthcoming about minor infringements of the law, they are not so open when questioned about more serious crimes.

Although each method of data collection is flawed, the interpretation of 'arrest rate' or police-recorded crime data can be enhanced when read with victim surveys and self-report studies. Some help can also be obtained from the experience of those countries that invest considerable effort in the collection of juvenile statistics.

## National systems for data collection

### U.S.A.

The USA<sup>15</sup> has some of the most comprehensive statistics of any country. The Office of Juvenile Justice and Delinquency Prevention (U.S. Department of Justice) Statistical Briefing book provides statistics on arrests, court cases, dispositions, number of children in detention and juveniles as victims.

These statistics are collected centrally in the USA. The crime figures (Uniform Crime Reports) are compiled through reports to the FBI by police agencies around the USA. The statistics give figures for crime as a whole in the country as well as for regions, States, counties, cities and towns. It also provides information on crimes known to the police, crimes cleared by arrest and characteristics of persons arrested. However, despite the volume of

statistics, the USA statistics are problematic in a number of ways. (Crowell et al. 2001) Police agencies report figures on a voluntary basis, and the number of reports filed vary from year to year. This inevitably affects the accuracy of national statistics. Further, where a police agency for a particular area fails to provide the requested statistical information, the FBI provide an estimated figure, thus adding to the inaccuracy. Predictions of future crime rates based on this centrally collected data have often been flawed.

This system of data collection - Uniform Crime Reports - took 30 years to develop, and relied heavily on arrest figures to indicate the level of crime. To address the inaccuracies inherent in arrest figures, the FBI began implementing a new reporting system – the National Incident-Based Reporting System. This seeks to provide more detailed information about offenders, victims and crimes, and thus to give a fuller picture of crime in America. However, concerns have been raised that the new system is time consuming for officers and that the benefits for reporting agencies, and in fact for any party other than researchers and federal agencies, are uncertain. Further, the implementation of this new scheme may take decades to complete, as with the Uniform Crime Reports. (Crowell et al. 2001)

### Australia<sup>16</sup>

Australia, in common with many other States, has a federal system of government. Collection of data is left to each State or territory. Different jurisdictions place varying levels of importance on this task, resulting in fragmented and incomplete data. The problems of collecting comparable statistics in a Federal system reflect those faced in the collection of international statistics: the eight States and territories each have their own laws, policies and legal definitions. For example, two States still use 17 as their maximum age for a 'juvenile', while the other six areas (the four States and two territories) use 18. Obtaining comparable statistics on

<sup>15</sup> The USA has not ratified the UN Convention on the Rights of the Child.

<sup>16</sup> Information on Australia provided by Peter Marshall of the Australian Institute of Criminology, January 2002.

diversionary dispositions is also difficult, as these vary significantly across the jurisdictions.

The numbers of persons in Juvenile Corrective Institutions are the only figures systematically kept. (Australian Institute of Criminology 2000) They are compiled from data collected in each jurisdiction on a quarterly basis. To avoid the difficulties posed by the fact that there are different cut off points for juveniles in the States and territories, the figures only show detainees aged 10-17. The final statistics, therefore, are not truly representative of the situation.

#### **South Africa** (Skelton, 2001)

South Africa does not have an effective data collection system, and the Government undertakes only a limited analysis of the statistics that it does have. However, the Department of Correctional Services is able to provide data on the number of children in prison, although this is not disaggregated data, and is not particularly informative.

Recognising the problem of poor data collection, the Government has initiated a major project, the 'Integrated Justice System', under which a computerised data collection system will be established. In addition, a new Child Justice Bill has been drafted. It intends to set up inter-sectoral structures at local, provincial and national levels to ensure continual monitoring of children in the juvenile justice system. Such monitoring will include the collection of statistics relating to the child justice system.

## Regional Data Collection

### **Europe**

Comparing juvenile justice statistics on a regional basis may seem to be one way of avoiding the problems associated with comparing widely differing criminal justice systems across the world, for instance, the United Kingdom to Lesotho. However, European studies indicate that many of the same problems encountered in worldwide international comparisons exist. (Pfeiffer 1998) For example, legal definitions of crimes used by European States vary, as does the manner in which statistics are collected. The first survey to provide comparable data on youth crime was the 1994 International Self-Report Delinquency Study (Junger-Tas et al. 1994). This study sought to compare the results of 13 separate surveys, in 13 western countries, on the prevalence of and reasons behind different types of delinquent behaviour. However, even in this limited survey, problems arose because some countries carried out national surveys, while others only looked at specific cities or schools, extrapolating the results for the whole country.<sup>17</sup>

Pre-trial detention figures pose a particularly difficult problem. The definition of pre-trial detention is not consistent: many of the States of mainland Europe count a prisoner as being on remand until the last possible date of appeal against conviction. In England and Wales, remand ends when an offender is convicted.

Even comparing crime rates poses a problem: *“simple comparisons of official juvenile crime figures do not provide reliable information on the frequency with which certain juvenile offences are committed. Put differently, these figures cannot be used to draw up a ‘league table’ of juvenile crime rates in European countries.”* (Pfeiffer 1998, 261)

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<sup>17</sup> However, conclusions and comparisons were able to be drawn e.g.

- The lower the educational level the more violent the behaviour is reported. In general property offences show no relationship to educational level;

- The stronger the bond with school, the less delinquent behaviour. School failure is found to be related to violent offences;

- The peak ages for property offences is 16-17; for vandalism 14-15; for violence against the person 18-19; and

- The less supervision the more delinquent behaviour, including alcohol consumption and drug use and problem behaviour.



However, cross-country comparisons are not without their value. While official statistics may not provide reliable figures on juvenile crime, they are generally sufficient, within an international context, for the longitudinal analyses of crime trends.<sup>18</sup> Indeed, Pfeiffer (1998), in his analysis of existing European data has produced some useful comparators.

Since the mid 1980s, police-recorded violent crime, especially robbery and serious forms of bodily harm, committed by under-18s, has increased in almost all of the countries surveyed. However, total recorded youth crime has risen less strongly, if at all, and in some countries has fallen slightly.

Since the mid 1980s crime committed by young adults (18-20) and by adults in general has increased far less rapidly than offending by juveniles, and in some countries has not increased at all. The increase in violence perpetrated by juveniles has been aimed mainly at people of their own age or younger. It is unclear whether the increase in violent youth crime is partly due to people being more willing to report crime, although this is unlikely to be the only reason.

The increase in juvenile violence occurs in areas of increased youth poverty and social disorganisation. Although poverty alone is not responsible, the factors that accompany poverty, such as family breakdown, neglect and inequalities in society, do contribute. Much of the increase in violent juvenile crime can be attributed to drug use and the need to finance the purchase of drugs.

## INTERNATIONAL DATA COLLECTION: THE WAY FORWARD

As has been noted above, the collection of crime statistics on an international level has focussed on 'crime figures', trends and prison populations. Very limited data is available through *these* studies on the situation for juveniles in the criminal justice system. Thus, international crime statistics are not of great assistance in determining implementation of the Convention. To be of use, the information provided would need to be far broader and more detailed, and would need to cover, for instance, information about the court process, the time taken between arrest and trial, the availability of legal representation, the affordability of such representation, whether a child was tried in a juvenile court etc. Prison statistics need to show the numbers of juveniles deprived of their liberty within all secure institutions, regardless of which administrative body has responsibility for them.

### UN Centre for Crime Prevention and Criminal Justice<sup>19</sup>

As well as the UN Surveys of Crime Trends and Operation of Criminal Justice Systems, the UN has carried out other surveys looking directly at the use and application of criminal justice standards and norms (i.e. 'soft' law) by States. The Economic and Social Council requested the Secretary-General to commence this process of information gathering in 1993<sup>20</sup>. Surveys were not focused directly on the implementation of international obligations by States, but rather on the extent to which Member States used the criminal justice instruments in

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<sup>18</sup> Provided that the general circumstances in which juvenile delinquency is recorded and registered remain substantially the same for a given period

<sup>19</sup> Now the UNODC (K.A.)

<sup>20</sup> ECOSOC Res. 1993/34, United Nations standards and norms in crime prevention and criminal justice, Section III, and the work was encouraged in ECOSOC resolutions 1997/32 and 1998/21.

practice and the extent to which they reflected those international standards in their national laws and regulations. The aim of the Survey was to inform future work in the field of criminal justice and crime prevention, to assist the reform of the administration of criminal justice and to target technical assistance. To avoid overburdening States, a staggered approach was decided upon. Twelve surveys have now been carried out. For each survey States were sent questionnaires on a small selection of international norms and standards and were given 2 years to respond.<sup>21</sup> Responses have been variable, but adequate (Report of the Secretary General, May 2001) and have been received from a wide range of States<sup>22</sup>.

One of the 12 surveys focused on the UN Minimum Standards and Norms in Juvenile Justice, namely, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLs res. 45/113, annex), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules res. 40/33, annex), and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, res. 45/112, annex).<sup>23</sup> Fifty-seven States responded to the very detailed questionnaire,<sup>24</sup> which required States to provide both quantitative and qualitative information.<sup>25</sup> States were asked to provide very detailed information on investigation of offences, prosecution of offenders, court process, detention facilities etc.

The number of responses to the survey was reasonable, and provided a degree of useful comparative material on the interpretation and implementation of the UN Minimum Standards and Norms. However, in evaluating the success and relevance of these detailed Surveys in 2001, the UN Commission on Crime Prevention and Criminal Justice were not convinced of their value. While recognising that the amount of information gathered had been substantial, it found that the time and resources spent by both the States in responding to the questionnaires, and the Secretary-General in reporting to the Commission, could have been more usefully and productively channelled elsewhere. (Report of the Secretary General, May 2001) Further, the evaluation did not support further periodic surveys, which it held would have dubious cost-benefit value. (Report of the Secretary General, May 2001) The Commission recommended that any further reporting obligations should be kept to a minimum, and should focus on specific themes of concern, rather than on individual instruments. Interestingly, and in a notable change of direction, the Commission were of the view that if a clearer and more detailed picture of criminal justice systems around the world were to be obtained, it would be necessary to gather information from professionals working in this field, rather than just States.<sup>26</sup>

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<sup>21</sup> Since 1994, information gathering has been carried out on: Standard Minimum Rules for the Treatment of Prisoners; Code of Conduct for Law Enforcement Officials (GA res. 34/169, Annex); Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power; Basic Principles on the Independence of the Judiciary; Juvenile Justice instruments - United Nations Rules for the Protection of Juveniles Deprived of their Liberty (res. 45/113, annex), United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (res. 40/33, annex), United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines, res. 45/112, annex); United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules) (GA res. 45/110, annex); Guidelines on the Role of Prosecutors; Basic Principles on the Role of Lawyers; United Nations Declaration against Corruption and Bribery in International Commercial transactions; United Nations Declaration on Crime and Public Security (GA res. 51/60, annex); International Code of Conduct for Public Officials (res. 51/59, annex).

<sup>22</sup> Subsequently, a new approach is being developed (cf. UNODC 2003) (K.A.).

<sup>23</sup> The survey was carried out pursuant to ECOSOC res. 1995/13. The results of the survey were presented in Use and application of United Nations standards and norms in crime prevention and criminal justice – Addendum, Use and application of United Nations standards and norms in juvenile justice, Report of the Secretary General, United Nations Commission on Crime Prevention and Criminal Justice Eighth Session, April 1998 E/CN.15/1998/8/Add.1.

<sup>24</sup> However, the responses of 6 States were not included in the report (ibid) because they were submitted after the report was completed

<sup>25</sup> The other UN surveys carried out also requested qualitative and quantitative data.

<sup>26</sup> Use and application of United Nations standards and norms in crime prevention and criminal justice – Addendum, Use and application of United Nations standards and norms in juvenile justice, Report of the Secretary General, United Nations Commission on Crime Prevention and Criminal Justice Eighth Session, April 1998 E/CN.15/1998/8/Add.1 para.103.

## CONCLUSION

States find it hard, and are often reluctant, to produce statistics on their criminal justice system, let alone their juvenile justice system, as required by the Committee on the Rights of the Child. The collection of uniform statistics on criminal justice systems, and especially on children in conflict with the law, is plagued with problems, both definitional and practical. Past studies have also shown that cross-national comparisons between criminal justice systems are hard to draw.

However, the experiences of the periodic UN Surveys of Crime Trends and Operation of Criminal Justice Systems have shown that over time, States can be encouraged to respond with increasingly useful statistics. The experience of surveys appears to indicate that States respond best when requested to provide a limited and focused amount of information. One-off surveys, such as the survey on the UN Minimum Standards and Norms demonstrate that requesting States to provide very detailed responses is not impossible. The Survey also showed that asking for qualitative responses can be extremely helpful in obtaining a more complete picture of a State's juvenile justice system.

The challenge facing the Committee on the Rights of the Child and those who seek to encourage States to produce uniform statistics on the implementation of the Convention on the Rights of the Child, is to determine the nature of the information required, and a practical, feasible and affordable method of collecting that data.

In conclusion, it is perhaps worthwhile noting that politics not only play a role in shaping the criminal justice policies of a State, but also influences a State's participation in international information sharing processes: *“one need only observe the ways in which the countries behave internationally as entities – the ritual care with which they make Statements in the international arena – to realize that a country's open announcement in the international arena of the*

*extent of its crime problem and its processing of offenders through the justice system is a major political event”*. (Global Report on Crime and Justice, 1999, 8) Countries do not reveal such information to other countries (and often their own citizens) unless the information has been rigorously checked, not only for its 'validity' but also for the impression it creates. (e.g. USSR, which refused to publish statistics for the UN Crime and Justice Surveys). Any attempt to gather statistical and substantive information on juvenile justice must bear in mind the political sensitivity with which Governments view this issue.

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## **THE ROLE OF PUBLIC OPINION IN THE IMPLEMENTATION OF INTERNATIONAL JUVENILE JUSTICE STANDARDS<sup>27</sup>**

Implementation of the juvenile justice articles of the UN Convention on the Rights of the Child requires political commitment to reform from States. It will also require, for many States, a radical change of law, policy and practice. It is clear from available research, however, that there has been little political or public enthusiasm for reform to implement the rights of children in conflict with the law. (Abramson 2000)

Political will does not, of course, exist in a vacuum. Democratic governments must take into account political and public pressures and available resources. Democratically elected governments must also obtain, and then retain, the support of the majority of the electorate. On the whole, public support for change to the administration of juvenile justice has been low. Indeed, it can be argued that public opinion is generally against the implementation of reforms that are seen as 'soft' on juvenile offenders.

The lack of support from the public for implementation of the juvenile justice provisions of the Convention poses a fundamental problem for States. It is compounded by the failure of many to adequately inform and educate their citizens about the level and nature of juvenile offending, the administration of juvenile justice, and the success and failure of attempts to address offending and rehabilitate offenders. Instead, public opinion, especially in the developed world, is largely informed and created by the media. However, if States are to change their policies and to implement

the juvenile justice provisions of the Convention, they must encourage and carry public support.

This part of the paper explores the impact of public opinion on juvenile justice. It examines how public opinion is formed and the impact that it has on the implementation of the Convention articles relating to juvenile justice.<sup>28</sup> It also examines the role of the media in forming public opinion and political response.

### **How is public opinion formed?**

There is a great deal of literature on the formation of public opinion. Given the limitations of space, this paper will not explore that literature in any depth. Nor will this paper seek to examine the factors that cause a particular individual to form his or her values, attitudes and opinions. Rather it will concentrate generally on the nature of public opinion in relation to juvenile justice, and the effect of this on the implementation of the Convention.

It is clear from the literature that there are a number of influences that cause the public to acquire their perception or opinion about juvenile offending and juvenile justice. Crime statistics showing increases and decreases in juvenile offending do not in themselves directly correlate with changes in public opinion or reforms in juvenile justice systems. The formation of public opinion is rather more complex. Influences on public opinion include the media, pressure groups, government, research bodies, the use of such instruments as opinion polls and the effect of particular cases. The impact of culture, tradition and demography must also be taken into account. Much of the literature relating to public opinion on juvenile justice suggests that the public are in fact misinformed rather than informed and

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<sup>27</sup> With thanks to Jyoti Bleur for her assistance in the preparation of this paper.

<sup>28</sup> Virtually all the research on public opinion and media influence on juvenile justice policies that we are aware of comes from, and focuses on, Western States. The analysis in this paper therefore inevitably focuses mainly on developed countries. However, it is argued that the analysis is equally applicable to developing countries.

that this misinformation is largely due to the media.<sup>29</sup> However, blame should not be allocated to the media entirely. Public opinion has also been influenced by the establishment of pressure groups representing victims in a number of States, and their vigorous campaigning to place the rights and needs of victims, especially 'the right to justice' over the rights and welfare of perpetrators. "*The causes of criminal conduct and rehabilitation are no longer at the top of the priority list – instead punishment... of the perpetrators [is] receiving the most emphasis*". (Hemmens et al. 1999, 681) It is also arguable that public opinion is influenced by acts of omission: in particular the failure of States to adequately inform its population (and often itself) about the levels and nature of juvenile offending and the administration of juvenile justice, and to address the misconceptions held by the public.

### What is the public perception of juvenile offending?

Opinion polls and research carried out in Western States, particularly in the USA,<sup>30</sup> UK, France and Canada, on the public's perception of juvenile offending have recorded a growing fear about youth crime. The 'public perception' of juvenile justice in Western countries is that juvenile crime is high (far higher than in reality) and that it is rising year on year. The public have displayed an increased disillusionment and disenchantment with their existing juvenile justice systems, which, in their view, are unable to control violent young offenders and young delinquents. The various juvenile justice systems are regarded as concentrating too heavily on rehabilitation and the welfare of offenders, rather than on punishment and justice. The prevailing view is that the present system is too lenient and that the correctional methods are far from satisfactory. Consequently there is an increase in support for

harsher methods to tackle juvenile offending. In the USA, in particular, there is also public support for greater flexibility to be given to the courts, to enable them to transfer juveniles to adult courts, especially in cases of violent crime.

The 1998 British Crime Survey (Budd et al. 1998) demonstrates the disparity between the public perception of crime and crime statistics. As part of their Survey, the British Crime Survey asked their respondents whether juvenile offending had changed over the preceding two years. Roughly two-thirds of respondents thought that the level of offending had increased. In fact, criminal statistics for the same period of time indicated that juvenile offending had fallen slightly.<sup>31</sup> There was also a general perception that violent crime made up a significantly higher proportion of the crime rate than it actually did (30% compared to the actual figure of 12%). "*Juveniles are widely perceived as being responsible for the majority of crime, or at least as equally involved in crime as adults. Although official statistics probably underestimate their involvement, juveniles account for a minority of cautioned or convicted offenders*". (Mattinson and Mirrlees-Black 2000, viii)

Public demand for tougher measures can also be attributed to a lack of confidence in the juvenile justice system, based on (or fuelled by) misconceptions. The 1998 British Crime Survey recorded that three out of four respondents thought that police and courts were too lenient in their treatment of juveniles. (Mattinson and Mirrlees-Black 2000, ix) However, this belief was found to be based on the perception that far fewer convicted juveniles were given custodial sentences than was the case, and that the sentences handed down were shorter than the juveniles actually received. (Mattinson and Mirrlees-Black 2000, vii) It was found that the public, in particular, underestimated the use of immediate custody for serious offences, such as burglary and rape.

<sup>29</sup> For an interesting discussion of public knowledge see Roberts and Stalin 2000 chapter 13.

<sup>30</sup> It is recognised that the United States of America has signed but not ratified the CRC. However, a substantial amount of research has been carried out on public perception and juvenile justice policies in the USA, the inclusion of which is vital for this paper.

<sup>31</sup> 'According to official statistics between 1995 and 1997 the number of known male juvenile offenders remained constant, while the number of female juvenile offenders fell' (Mattinson and Mirrlees-Black 2000, viii). In the US, juvenile offenders accounted for 13% of crime recorded by the police in 1992. (Roberts and Stalans 1997).

Such misconceptions regarding juvenile crime rates and the juvenile justice system are not unique to the UK. In a 1998 study in Canada, (John Howard Society of Alberta 1998) the public similarly believed that youth crime was increasing dramatically, as was the seriousness of the crimes committed. Such perceptions were not supported by the official data. The public also took the view that the Canadian Young Offenders Act<sup>32</sup> was lenient and unable to control the behaviour of young people effectively. Official statistics on youth court dispositions, however, indicated that compared to the treatment of adult offenders, the youth justice system was, in fact, highly punitive. (John Howard Society of Alberta 1998) The genesis of the belief that young people should be given more punitive sentences is not solely attributable to the public's desire to see juveniles treated more harshly. One detailed analysis showed that the wish to imprison young offenders was instead due, in part, to perceptions that the alternatives to prison were ineffective (Spratt 1995) and to a lack of understanding of how punitive current systems are. In Canada, sentences for youths tried in youth courts are often much tougher than sentences imposed for the same offence in adult courts.(Mallea 1995) Similar misconceptions can also be found in the civil law jurisdictions of Italy and France (Association Francaise des Magistrats de la Jeunesse et de la Famille Tribunal pour Enfants de Paris-Palais de Justice, 2002). In Italy, press coverage has focused on the employment of children to carry out criminal activities, particularly in relation to drugs and arms, by the Mafia. These reports fuelled widespread social alarm and demands for a more punitive justice system to deal with the 'child-monsters' and 'baby-killers'. (Lorenzo 1992) As with other countries, statistical data from the Ministry of Justice did not correlate with media portrayal and public perception of rising crime. The rate of juveniles "hired" by criminal organisations in the south was not as high

as the media portrayed. Further, the rate of homicide committed by minors had fallen significantly in the northern regions, and had remained fairly constant in the South. (Ministero di Grazia e Giustizia, Direzione Generale degli Affari Penali, 1994) The number of convictions for crimes committed "in concorso" (together or supporting) with an adult or another juvenile (the usual charge in cases of organised crime) was no higher in Palermo (an area of flourishing organised crime) than in Bologna (where organised crime is very low).<sup>33</sup>

### Why doesn't public opinion reflect statistical reality?

There is no one reason that explains existing public misconceptions about juvenile justice. Rather the reasons are multi-faceted. There are political, social and economic explanations for the phenomenon, as well as reasons relating to the methodologies used to assess public opinion and the role of the media in society.

A general explanation for these misconceptions from one commentator is that the public look at the past through rose tinted spectacles. Regardless of the decade, the public usually holds the belief that back in the 'good old days', juvenile crime was consistently low and that juvenile crime has only risen dramatically in recent times (Crowell et al. 2001)<sup>34</sup>. Therefore they see the current juvenile justice system, whatever that may be, as ineffectual and producing higher rates of offending – whether it currently has a tough approach or a more lenient approach. The public then demand that the system changes, so society can go back to the (fictional) good old days. (McCord J. et al. 2001) Many people currently associate the perceived high levels of crime with the introduction, over the past few decades, of 'soft' options for juvenile criminals.

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<sup>32</sup> Now replaced by Youth Criminal Justice Act

<sup>33</sup> Palermo 53.9%; Bologna 54.1% in 1990. (Ministero di Grazia e Giustizia, Direzione Generale degli Affari Penali, 1994).

<sup>34</sup> See the analysis of polls taken in America and Canada, showing that the public's perception of juvenile crime - that it is rising - is the same today as it was 40 years ago, and further, that this perception defies the generation gap, with young people believing that crime was worse now than when they were younger. (Roberts, forthcoming 2004)

Further, in many Western States, demographic patterns have changed, with a resultant growth in the relative size and influence of the older generation. It has been suggested that politicians have sought to appeal to older voters by using a 'get-tough' agenda as a "*rhetorical tool to rally aging voters with nostalgia for an idealized past*". (Bala and Jaremko Bromwich 2002, 15) This in turn fuels anti-youth sentiment and increases demands for more punitive approaches. The Western States have also seen an increase in the diversity of their populations in terms of race and nationality. It is conceivable that harking back to the perceived crime free past damages race relations, as the older generation equate less crime with less diversity in society.

However, it is too simplistic to dismiss public opinion as being merely the creature of political rhetoric. The reality of public opinion is complex. While it is suggested that the public overestimate juvenile crime in relation to actual statistics, the UK Home Office Study suggests that the public are basing their opinion on low-level visible crime and disorder, which is mostly committed by youth, such as graffiti and minor vandalism. (Mattinson and Mirrlees-Black 2000) These offences will often not be recorded in official crime statistics. However, this kind of disorder impacts heavily on a community and consequently those within the community will extrapolate their own local experience when giving their opinion on national crime. (Mattinson and Mirrlees-Black 2000) This in turn impacts negatively on the public perception of youth and of juvenile crime. Yet, a US study by Dorfman and Schiraldi (2001) found that most people actually have little or no personal experience with juvenile crime, forming their opinion on the basis of media representation alone. The public's opinion of the juvenile justice system as a whole is similarly informed and formed by media coverage. Consequently, the public's knowledge is often

limited to the aspects of the system that the media have chosen to cover. The public often base their opinion of the whole criminal justice system on these stories, which usually address the failings of the system rather than its successes.

Crime statistics themselves can be at the root of the public's misconceptions. It is a paradox that while an objective analysis of crime statistics does not show a rise in juvenile crime in Western States, statistics have been used to promote the view that juvenile crime is rising and thus to support the introduction of harsher, more punitive policies for juveniles. Statistics are not always used in a responsible way to disseminate information to the wider public, but rather are used to support a political viewpoint or position or to gain political advantage, or quite simply to sell newspapers. Presentations in the form of percentages are particularly misleading. For example, headlines may trumpet that the rate of murders by children has risen by 100%. However, in real terms this may only mean a rise from two to four, which while a matter for concern, is not a cause for public alarm and panic. The absence of non-partisan information about juvenile crime, its causes and treatment, and the consequent public ignorance about juvenile justice, compounded by the failure of governments to counteract and address misleading information and wrongly formed public perception, allows for a distorted image and public perception of juvenile crime.

## Public Opinion Polls

The most common method of ascertaining public opinion on juvenile justice is through the use of public opinion polls.<sup>35</sup> It is accepted that such polls, whether accurate or not, can have a significant impact themselves on reinforcing public and political thinking, or reshaping views and policy on juvenile justice. While accurate public opinion polls

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<sup>35</sup> The idea of public opinion polls is that a randomly selected, small percentage of a population can represent the attitudes, opinions or projected behaviour of all of the people in a country or a community, if the sample is selected correctly. (See Moore et al. 1997).



are useful tools for policy makers seeking to reform juvenile justice practices, studies have shown that public opinion polls are not always entirely accurate in their reflection of current thinking. Opinion polls are not always carried out by reputable organisations and do not always ensure that a representative sample has been questioned. This is particularly true of 'phone-in' polls where a question is asked to the population at large. Listeners or readers are invited to 'phone-in' to the newspaper, radio or television station with their response.

The methodology of the survey may also effect and have an impact upon the views expressed. Gallup, one of the largest polling organisations in the world, has found that trying to gauge public opinion on policy, rather than specific issues (for example, which party will you vote for in the next election), is particularly difficult. The more complex the issue, the more difficulty polling organisations face in formulating questions that ensure public opinion is accurately reflected.

Research has shown that the content of surveys on attitudes to crime and punishment does not allow respondents to explore their more complex views, but only allows them to make sweeping judgments and statements:

- Respondents are often asked to react to crime and criminals as global, undifferentiated categories.

- There is lack of specificity with respect to the type of cases and offenders that respondents are asked to judge. *"A combination of the above two factors suggests that respondents may be reacting to stereotypical images that have been formed by media accounts of particularly heinous, and hence, unrepresentative offences."*

- *"Public opinion polls rarely provide respondents with information regarding the punitive content or behavioural impact of various sentencing options."*

- *"Public opinion polls present judicial sentencing as an activity lacking context and constraint"* (Ragona and Thomson 1987, 337-357) i.e. respondents are rarely asked to consider the varying fiscal impact of exercising different sentencing options, or to consider the availability of existing resources.

- When the issue at hand is a complex one, there is a tendency for such polls to generalise and oversimplify, resulting in a distorted picture of public opinion. Complex opinions cannot be measured if sophisticated questions are not asked. Juvenile justice, in particular, throws up difficult problems and policy issues, and it is highly likely that many polls fail to address these complexities.

Despite the flaws inherent in opinion polls, they remain a popular source of information on attitudes to juvenile crime and juvenile justice for politicians (both those in power and those in opposition) and for the media, which often quotes such polls extensively. Further, the media often misrepresents the findings of well-researched and representative polls. For example, a Canadian publication ran the headline – *"Schools are more violent: poll"*. While this headline suggested that violence in schools had risen, the poll actually recorded the rise in the number of *parents* who *believed* that violence was rising. The data on violence did not, in fact, show any rise in violence in schools. (Mallea 1999)

## Influences on public opinion

### Media

The media have probably the greatest influence in the formation of public opinion about juvenile justice in both the Western and the developing world. In his classic work, *Public Opinion*, published in 1922, Lippmann described the impossibility of knowing through direct experience everything that it was necessary to know to function as a citizen in a modern democracy. The vast majority of us rely on the media to provide easily accessible information. Indeed, a Canadian study<sup>36</sup> has found that due to lack of information from other sources, virtually everyone, other than those involved directly in the administration of youth justice, obtained their information about juvenile delinquents from the media. (Spratt, 1995) Surveys in the USA have produced similar results, with one study showing that 76% of the public say that they form their opinions about crime from what they see or read in the news. (Dorfman and Schiraldi 2001) The various studies indicate that the news media largely determine what issues we collectively think about, how we think about them, and what kinds of policy alternatives are considered viable. For those concerned with the implementation of the juvenile justice provisions of the Convention, the influence of the media should not be underestimated. The media have a pervasive influence both in their day to day reporting of juvenile justice and their coverage of individual cases.

## Day to day coverage

Studies of the media in Argentina<sup>37</sup>, Canada<sup>38</sup> and the USA<sup>39</sup> have shown that crime is hugely over reported. The space, time and coverage given by the media to crime, especially violent crime committed by a juvenile, on a day to day basis, is arguably disproportionate to the amount of crime committed. In *Off Balance: Youth, Race and Crime in the News*, a recent American analysis of the content of crime news, the author concluded that '*overall the studies taken together indicate that depictions of crime in the news are not reflective of either the rate of crime generally, the proportion of crime which is violent ... [or] the proportion of crime committed by youth. The problem is not the inaccuracy of individual stories, but that the cumulative choices of what is included – or not included – in the news presents the public with a false picture of higher frequency and severity of crime than is actually the case*'. (Dorfman and Schiraldi 2001, 7) Much of the coverage of violent crime tends towards the sensationalist and portrays a society in which youth crime is rampant and juveniles are out of control. In reporting on juvenile crime, the media frequently use rhetoric like 'super predators', 'one boy gang', 'one boy crime wave', 'teen killers', 'young thugs', 'yob culture' etc. Such use of language by the media has inevitably impacted negatively upon public perception.

The reasons for such a disproportionately high level of coverage of violent juvenile crime are not well understood. Some journalists would argue that they are merely providing coverage of the stories that the public want to hear about. Others, however, dispute this thesis. Dorfman and Schiraldi (2001) suggest that journalists in the USA report those

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<sup>36</sup> 96% of the public cited the news media as their source of information about the punishment of offenders. See (Roberts and Stalans 2000, 4)

<sup>37</sup> In a study of the Argentine press, it was found that in reality, crime and violent crime had only risen by a fraction of that depicted in the media, and that violent crime was relatively rare compared with property crime – a picture not conveyed by the media. (Global Report on Crime and Justice, 1999).

<sup>38</sup> In 1995, 94% of stories about youth crime, appearing in a sample of Toronto newspapers, involved violent crimes far outnumbering the figure for juvenile crime. (Spratt 1995)

<sup>39</sup> See Shepherd, 1998 and Dorfman and Schiraldi 2001.

crimes that are closest and most shocking to them, such as murders and violent crime in (white) suburban areas, school shootings, gang crimes, car-jacking. They argue that most news stories are based on the following criteria: controversy, conflict, novelty, proximity, significance, timeliness, visual appeal and practicality. Novelty of the crime is especially pertinent where children are involved in a serious offence.

The impact of much of the media reporting on juvenile crime and the administration of juvenile justice is a public perception that crime is more prevalent than it actually is, and that many more juveniles are involved in crime than actually are. The focus of the media on violent juvenile crime inevitably creates and feeds a feeling of insecurity in the general public, preying on *“people’s insecurities and the disconnectedness many members of the community feel from the public decision making process”*. (Cowdery 2001, 4)

Such reporting also has an impact on the way in which young people are depicted:

*“Some young people are also portrayed as not so much depraved as deprived, not necessarily of material wealth and power (usually true) but of moral standards, proper guidance, self restraint and responsibility... young people are typically viewed as being at a ‘vulnerable’ stage, capable of being corrupted by all manner of ‘evil’ influences, unless their behaviour is tightly regulated and controlled...[T]he notion that youth are a problem both to society and to themselves is a recurring theme in media and youth research”*.(Muncie 1999, 9)

It has been suggested that, due to the coverage of juvenile crime, at least in Western States, a strong sentiment of anti-youth has been growing. (Bala and Jaremko Bromwich 2002) In recent times, the Western media has been quick to ‘demonise’ children and decry the state of society and youth. It has, however, rarely been willing to publish any of the numerous good news stories about children, as these do not sell as many papers.<sup>40</sup> These negative stories exacerbate people’s concerns about deterioration of society, in particular the decline of morality and discipline within the family, and the deteriorating nature of societal values and moral cohesion (Boeckmann and Tyler 1997). These concerns are given credence not just from crime stories, but also by the release of statistics and news stories that show increased substance abuse among youth, increased teenage pregnancy and increased cases of STDs, in particular HIV/AIDS. Indeed, it has been suggested (Boeckmann and Tyler 1997), that concerns about the decline of the moral fabric of society, coupled with a person’s own values, cultivated over a lifetime, are far more decisive in people’s support for punitive measures than fears about crime. For such people, there is a necessity to retain symbolic punishments for rule-breakers.

The general public, bombarded with negative images and language about youth, and with little knowledge or understanding of the realities of juvenile offending and the juvenile justice system are unlikely to seek liberalisation or reform of laws relating to juvenile offending. The more probable outcome, and one that has been witnessed in Western States, is pressure from the public to be protected from what, they have been told, is a dangerous element in society. Such a perception impacts not only on the implementation of the juvenile justice articles of the UNCRC, but has the potential to spill over and affect implementation of all other aspects of children’s rights.

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<sup>40</sup> It is not just that the media over-represents youth crime and violence, but that stories about crime dominate coverage of children’s issues. In America, research focusing on the coverage of children and youth by the national news media found that television and newspapers devoted 47% and 40% respectively of coverage to youth crime and juvenile violence stories, but that other children’s issues were given very little coverage – the media only devoted 15-25% of coverage to schools and even less (4%) to child poverty, child care and child welfare stories. (Shepherd 1997).

## The impact of individual cases

In a number of Western States, the extensive and sensationalised coverage of a few incidents of violent juvenile offending has had a much more dramatic effect on public opinion than day-to-day media coverage. No crime has a more dramatic effect on the media and public opinion than a child who commits murder. Such a crime can create a media frenzy, especially when the child's name is released to the press (permitting 'background' and family revelations) or where a trial is televised.<sup>41</sup> The reason for the interest is partly due to novelty, partly due to the inability of the public to comprehend how a child could commit acts which are seen as the particular province of adults, and the dichotomy between public expectations of childhood (as innocence) and the particular child's behaviour (evil). Public fascination and interest, and that of the media, lessens as the age of the perpetrator and the victim rises.

The news coverage is rarely neutral or detached, and is often inflammatory, causing a raised concern amongst the public about violent youths in society. This concern can, and often does, lead to a loud public and media outcry for government action. Public reaction to one case can affect their perceptions of the whole juvenile justice system, which they consequently view as ineffectual and insufficiently punitive. Public demands for action are frequently neither measured nor rational, but stem from an emotional reaction.

Individual stories, regarding treatment of offenders, can also spark fierce public debate. This is more often caused by public perception that the punishment given to juvenile offenders is too lenient. In Sweden, a fierce public debate followed a report that five boys aged 15 to 19 years, all with criminal backgrounds (the boys had committed burglaries and

in one case physical assault), were sent on a sailing trip to the Mediterranean by the social welfare department in Stockholm. What followed was not just a discussion on the particular boys and the trip, but a wider discussion about the concept of childhood and the responsibility of children for their actions, the social definition of juvenile delinquency (whether juvenile delinquents were and should be treated as social problems rather than criminals), and the appropriate forms of punishment (Hyden 1993). Public debate is an essential part of a democracy, and is valuable in encouraging the public to inform and be informed on issues of public policy. Unfortunately, in most countries where there is a debate about juvenile justice and individual cases, no information is provided on international standards, the reasons for those standards, the role of the UNCRC and the obligations of States.

## The influence of politicians

There are conflicting views on the impact of politics and politicians on the formation of public opinion about juvenile justice. It is arguable that on the one hand politicians manipulate public opinion for their own benefit but, at the same time, it is clear that politicians also respond to public opinion in their formulation of policies. Political parties may be either proactive or reactive in terms of public opinion, and sometimes there are elements of both in a political response.<sup>42</sup>

In a democracy, politicians must seek election and re-election. In seeking election they must place before the electorate policies with which the majority agree. They must 'sell' policies in a way that convinces the electorate that this is the right way forward. There are, as a general rule, a few key topics that form the basis of a political party's election platform. In Western States, and frequently in

<sup>41</sup> A child who is subject to a criminal trial should not be named in the media under the provisions of the Beijing Rules. Neither should a juvenile's trial be televised.

<sup>42</sup> Some commentators take the view that the link between public opinion and specific juvenile justice legislation is difficult to establish and the strength of the relationship is not always clear. (See Roberts, forthcoming 2004).

developing countries as well, one of these is 'law and order'. "Political leaders today are extraordinarily attuned to what they believe the public wants, often as reflected in public opinion polls or focus groups" (Shepherd 1997, 39). Based on these polls, politicians believe that the majority of the public want 'tough' policies to prevent juvenile offending and 'tough' action against those who have offended. Many take the view that emphasising preventive and rehabilitative measures for juveniles will not win them either popularity or votes.

More and more, juvenile delinquency in Western States is being tackled on a national level by 'fighting juvenile crime', rather than on the basis of promoting 'juvenile justice'. (Innocenti Digest 3, 1998)<sup>43</sup> In Canada, despite there being a low and progressively declining trend in juvenile crime rates, media concerns and public anxiety about the problem have escalated dramatically and juvenile justice has been an 'election issue' since 1993. (Bala 2002) Politicians rarely refer to the fact that in the Western States, juvenile offending had been falling over the last few years. There are a number of possible explanations for this. First, given public opinion, such an approach is unlikely to be a vote winner. More is to be gained from agreeing with, or even playing on public fears about crime and promising ever more punitive measures for juveniles. However, a more likely explanation is ignorance of the statistical reality, a characteristic shared by both politicians and the public.<sup>44</sup>

Interestingly, in Britain, criminal justice used to be a non-partisan issue, and politicians did not seek to take advantage of each other on this issue at election time. In the 1990s, however, this non-partisan attitude disappeared and, as in the USA and Canada, politicians "*now score points off each other, often using the lives of troubled youngsters as*

*ammunition*" (Mallea 1999). Civil law countries, which generally have a higher age of criminal responsibility than common law countries, are not immune from the negative influence and interaction of the media and the public with the political process. In 2002, for the first time in the history of the French Fifth Republic, juvenile crime was a key presidential election issue following public demands that punitive measures be introduced. While there was no evidence that serious crime by juveniles was on the rise or that juveniles had become more involved in criminal activity, coverage of youth issues in the run up to the 2002 election was dominated by crime stories, including sensationalist coverage of three murders committed by juveniles over the past two years linked to the film 'Scream'. The new centre-right Government, responding to public opinion has, since coming into power, introduced new measures for juveniles. In addition the Government has also announced plans to detain children as young as ten for serious offences and build 'closed education centres' attached to prisons which will hold persistent offenders aged 13-18. (Bremner 2002) There have also been calls to transfer young people aged 16-18 to the adult courts.

Interestingly, in Italy, although public opinion has been affected by media portrayal of a fictional rise in youth crime, politicians have not exploited public opinion for political gain. Public opinion supports a more punitive juvenile justice system, including the lowering of the minimum age of criminal responsibility (currently 14)<sup>45</sup>, but this has not been translated into legislation<sup>46</sup>. However, public opinion has not left the juvenile justice system unscathed. Its impact has been felt in the sentencing of juveniles. Figures show that between 1989 and 1993, there was an decrease in the number of

<sup>43</sup> It must be noted that governments do not always respond or 'give in' to public pressure to make laws more punitive.

<sup>44</sup> See Roberts and Stalans 2000, 269 et seq.

<sup>45</sup> Particularly striking seems the opinion of the Prosecutor for the Juvenile Court of Naples, who, in a newspaper article, suggested that lowering the minimum age from 14 to 12, was the only way to teach young people to respect the law and to encourage their families to control their children and keep them away from crime. In *La Stampa*, 1/8/1996 as quoted by A. Mestitz in A. Mestitz (ed.), *La Tutela Del Minore Tra Norme Psicologia ed Etica*, Milano, Giuffrè, 1996, at XII (prefazione). See also, L. Grasso, "Infraquattordicenni: Recrudescenza criminale e Prospettive di Modificazione della Normativa Penale Vigente", in *Diritto di Famiglia e delle Persone* 1993, at 747, arguing that the minimum age of criminal responsibility be lowered to 12 because a child of 12 is mature enough to understand right and wrong, and because there is no efficient system of rehabilitation of children below 14. The intervention of criminal justice would therefore offer the only effective response to this age group. See, on the other hand, F. Paziienza "Il Passo alla Depenalizzazione Sino alla Maggiore Eta'", *Rivista Italiana di diritto e procedura penale* 1996, at 511, suggesting that the minimum age of criminal responsibility should be raised to 16.

acquittals pronounced before trial (*archiviazione*), and in other measures to settle proceedings at pre-trial stage. There was a rise in the number of cases brought to trial. Thus, whereas the number of children charged in 1990 and in 1993 in Bologna and Palermo was stable, the number of children acquitted before trial in both cities was halved!<sup>47</sup>

## Changing public opinion to implement reform

For any government, the decision to reform their juvenile justice system and implement the relevant Articles of the UNCRC is an inherently political one. It is perhaps a truism to point out that no government is likely to sacrifice its popularity and its electability by implementing deeply unpopular juvenile justice reforms. If there is to be liberalisation and reform of juvenile justice to implement the UNCRC, governments must influence public opinion and persuade citizens that reform is beneficial both for the State, for the public and for children. However, as can be seen from the discussion above, public opinion in Western States is generally opposed to anything that can be seen as a liberalisation or 'softening' of the juvenile justice system. Although there is sparse data on public opinion to juvenile justice in developing countries, there is little reason to believe that it would be conspicuously different in these States.

The available research appears to indicate that public opinion is largely uninformed opinion. A number of studies indicate that there is a lack of knowledge or 'widespread ignorance' amongst the public about juvenile justice.<sup>48</sup> There is a lack of knowledge about crime trends, prevalence of violent crimes, recidivism rates, specific criminal laws, legal reforms, the alternatives to imprisonment, the cost of incarceration, the impact of rehabilitation and

restorative justice. (Cullen et al. 2000) This ignorance is compounded by the lack of awareness of developmental psychology of children, which results in the public often attributing the same culpability to a child as young as seven in some cases, as to an adult. It could be argued that governments have no-one but themselves to blame that the public are uninformed. But public opinion should not be regarded as an unassailable obstacle to the implementation of the juvenile justice articles of the Convention. Public opinion can be addressed on a number of levels.

*"There is every reason to believe that successful attempts to improve compliance with international standards... will have to incorporate efforts to change the balance of popular sentiment. Realistically, this will not happen simply through well-intentioned propaganda. It will require a multi-pronged thrust founded on a number of disparate, though coherent and coordinated, initiatives."* (Innocenti Digest 3, 998, 17)

## Gauging true public opinion

Many Western States assess the level of public support for proposed reforms through public opinion polls. (Shepherd 1997) As a result, a number of potentially promising policy options are buried before they have a chance to be born. However, research has shown that political leaders can misinterpret public opinion on crime and justice matters, tending to assume that the public are more conservative and resistant to innovations than they are in reality. (Flanagan 1996)

One reason for the misinterpretation of public opinion by politicians is that, as discussed above, public opinion surveys are often flawed. Questionnaires are too simplistic to allow an

<sup>46</sup> However, it seems somewhat worrying that law n. 216 of 19/7/91 1991 "First intervention in favour of minors at risk to be involved in criminal activities" that introduces a series of measures, with punitive and welfare aspects, to be applied as part of criminal justice intervention, targets children of age 11 to 18, thus expanding the scope of the intervention of the criminal law to children below the age of criminal responsibility.

<sup>47</sup> Bologna and Palermo were chosen as representative cities in the northern and southern regions respectively. Bologna 63,9 % acquittals in 1990 against 37,4 % in 1993; Palermo, 65,5 in 1990 against 33,9 in 1993. Ministero di Grazia e Giustizia, Direzione Generale degli Affari Penali, 1994.

<sup>48</sup> See, for instance, Roberts and Stalans 2000, 267, and Mattinson and Mirrlees-Black 2000.

accurate picture to be obtained. The public are frequently depicted as being in favour of ever more punitive juvenile justice systems. However, when participants are provided with detailed information about juvenile offending and juvenile justice, and asked more specific and sophisticated questions, their answers and 'opinion' can change. Studies show that while participants still retain a tendency to be punitive, they can also be progressive.

One study in the US context, confirming previous academic findings has shown that: (Cullen et al. 2000):

- The public is punitive towards crime;
- Public punitiveness towards crime is *mushy* not rigid. In other words, when given more information about the offenders and more sentencing options, people tend to modify their harshness. This is because when the public are asked simplistic questions about crime and punishment they respond with the worst possible cases in mind i.e. recidivists.
- People must be given a good reason not to be punitive. Less punitive interventions will generally be endorsed if they are shown to have more 'utility'.
- Violent crime is the great divide between punitive and non-punitive attitudes.
- The public continues to believe that rehabilitation should be a goal of the correction system.
- The public strongly supports 'child saving' and early intervention programmes.
- The central tendency in public opinion is to be punitive and progressive.

An earlier study also demonstrated that: (Ragona and Thomson 1987)

- The public have a sense of proportionality with respect to the amount of harm caused, and with respect to the financial implications of sentencing.
- Restitutive rather than repressive sentiments characterised public opinion when basic facts about routine felonies and their potential sanction were presented.

Thus the public appear to want juveniles, who commit serious crimes, tried in adult courts and punished for their crimes, but at the same time want juvenile offenders to be treated and rehabilitated. Indeed, in one such study, when asked whether punishment or rehabilitation should be the main objective of a juvenile justice system, the majority favoured the latter. (Schwartz 1992) Ironically, while people do not view rehabilitation programmes as successful in reducing juvenile crime, there is general public support in increasing expenditure on a variety of rehabilitation programmes for young offenders. In the British Crime Survey 1998 there was a significant level of support for non-custodial sentences by victims of crimes who were asked about sentencing preferences. In an American study, even when questioned about youth gangs, non-punitive policies (e.g. employment and increased aid to youth centres) received the most support. (Triplett 1996) Further, in a study of Tennessee citizens, respondents overwhelmingly supported early intervention schemes over incarceration options in the allocation of their tax dollars. (Cullen et al. 1998)<sup>49</sup>

Whilst this analysis of public opinion polls is of necessity limited, it gives cause for hope. It must

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<sup>49</sup> However, while there is a belief that it is never too late for wayward youngsters, children who commit serious crimes are seen as having forfeited their status as a child, and needing the kind of control normally reserved for adult criminals.

be accepted, however, that more sophisticated public opinion polls are more expensive to undertake than simple ones, and are not likely to have the same ‘sensationalist’ impact as polls asking the public in the UK whether, for instance, ‘life should mean life’ imprisonment for the child murderers in the Bulger case.<sup>50</sup> The media are unlikely, on the whole, to undertake sophisticated public opinion polls. It is rather the responsibility of governments, research bodies and other organisations to ensure that good quality research on public perception is available to policy makers, both to inform them and counteract tabloid-journalism opinion polls. The employment of more imaginative techniques, such as citizens juries would also be of assistance. In such cases, a group of randomly chosen citizens are provided with information and policy options, hear witnesses and are then asked to make decisions about reforms and policy. Given the results of more in-depth public opinion polls, such a process could be invaluable for juvenile justice reform.

## Changing the approach of the media

The international community has recognised the role that the media plays and the obstacle that it has become in the implementation of children’s rights in juvenile justice systems. In its guidelines on juvenile justice, the UN suggested the following for mass media:

60. *“Ensure that the privacy of children is protected at all stages of the proceedings by ensuring that information leading to the identification of children is not disclosed.”*

61. *“Avoid demonising children and seek balanced reporting so that children are not portrayed only as perpetrators of crime.”*

62. *“Media personnel at all levels should receive training in human rights and the*

*rights of the child so as to ensure that mass media are more child-orientated”*

63. *“Include information on the existence of services, facilities and opportunities for children in the mass media”*<sup>51</sup>

It has also been suggested that reporters, editors and producers should expand their sources, should provide context for crime news, increase enterprise and investigative journalism, balance stories about crime and youth with stories about youth generally, conduct and discuss content audits of their own news; and examine the story selection process, adjusting it if necessary to achieve more balance and proportionality.<sup>52</sup>

While many may take a cynical view of the willingness of the media, particularly of populist newspapers, to take up such recommendations, there are newspapers, which have already taken a more balanced approach to reporting juvenile crime. In America, some sections of the media are taking a fresh look at crime reporting, focussing on the backgrounds of the perpetrators and the victims, exploring reasons for the crimes, rather than simply dissecting the event that took place. (Shepherd 1997)

While in a democratic society the leadership cannot and should not control which stories are published or the view taken by a particular part of the media, they can, by implementing the UN Minimum Standards and Norms of Juvenile Justice have an impact on the media and public opinion. In particular, States should ensure that juveniles are not named in the media. Such an approach does much to protect a juvenile offender. It has a considerable impact on media frenzy in relation to individual cases, and provides the offender with a greater chance of rehabilitation in the community.

<sup>50</sup> In this case two boys of 10 abducted and stoned to death a two year old. The abduction of the child was caught on CCTV camera and shown extensively on national television. The case attracted world-wide media attention.

<sup>51</sup> The United Nations and Juvenile Justice: A guide to international standards and best practice, 1998-1999.

<sup>52</sup> In a paper by French judges on juvenile delinquency in France, it was recommended that working groups should be established between journalists and professionals who work with children to encourage a more balanced view of the children in the press. Association Française de Magistrats de la Jeunesse et de la Famille Tribunal pour Enfants de Paris-Palais de Justice, 2002.



Governments, children's rights organisations and civil society must also, once again, take some responsibility for the poor coverage of the children's rights perspective in the media. If a UNCRC compliant juvenile justice system is to be implemented, governments etc, need to work with and encourage the media to produce a wider range of coverage of children's issues as well as explaining the need and benefits of reform.

### Educating and informing the public – the role of the State

As a general principle, Governments have an obligation to disseminate information on children's rights, including the right to a juvenile justice system that is compliant with the UNCRC and the UN International Standards and Norms on Juvenile Justice. Article 42 UNCRC requires that "*States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.*"

Responsible dissemination of crime statistics and court figures can contribute to the public's understanding of the juvenile justice system and a change in public opinion. "[C]orrecting public misconception of juvenile crime should promote greater public confidence in juvenile courts" (Mattinson and Mirrlees Black 2000, 45) and in the juvenile justice system as a whole. The UK Home Office have noted that '*dissemination of information on the nature and effectiveness of prevention programmes and new disposals for dealing with young offenders will further counter media presentations, based on a few failures where those on the schemes have re-offended, that juvenile criminals are not being dealt with properly*'. (Mattinson and Mirrlees Black 2000, 47) Such an approach requires, of course, that statistics be available, preferably covering all aspects of the juvenile justice system, including not only crime and sentencing statistics but also qualitative information about the juvenile justice system, e.g. existence and

effectiveness of all methods of disposition. Such statistical information would allow rational discussion of the juvenile justice system and would enable the public to make better-informed judgments.

In addition, it is important that the State inform the public of the rationale and benefits of treating children differently from adults in the criminal justice system. The perception that using age as a mitigating factor in imposing punishment is an example of the law being 'soft' on juvenile crime needs to be challenged. There is a plethora of research, showing that juveniles respond favourably to rehabilitation, that the threat of punishment is not as effective a deterrent as it is for adults. Such information could assist governments in introducing preventive measures and more appropriate rehabilitative sentences for young people, who come into conflict with the law. (NACRO, 2001)

Politicians need to take into account that public opinion is not homogenous and could consider targeting education at specific sections of the population. Factors affecting views on juvenile justice range from age, gender, race, geographical location, and fear of being a victim and whether or not they have children of their own. (Schwartz 1992) In the UK, it is known that those with the poorest knowledge of juvenile justice generally come from groups with low levels of education, low professional and financial status, they rent rather than own their homes and are middle aged or old. (Mattinson and Mirrlees-Black 2000) However, in formulating dissemination and education strategy, it must be remembered that the public can only be expected to absorb a certain level of information. To be knowledgeable about all public policy issues including juvenile justice is unrealistic for the 'man on the street'. (Cullen et al. 2000) What is important is to address the underlying punitiveness of society towards juveniles, which is, at least in part, based on misconceptions about levels of crime and the juvenile justice system.

## CONCLUSION

The latter part of this paper has explored public opinion on juvenile justice and the main actors in forming that opinion. It has also looked at approaches that might be taken to shift public opinion so that it supports a more welfare-based and less punitive juvenile justice structure, in line with the articles of the UNCRC. It must be recognised, however, that public opinion cannot be summarily dismissed as being either wrong or wholly misinterpreted. It has been argued that although individual citizens lack knowledge, public opinion appears to 'get things right' when aggregated or taken as a whole. (Kinder 1998) Crime *is* higher in Western countries than it was 25 years ago and juveniles *are* committing more crime than they were 25 years ago, although crime has fallen for adults and youths in the last 5 years. In Western countries and many Eastern European countries, juvenile drug use and teenage pregnancy has increased, indicating to many people that there has been a moral decline in society. There are problems within society and within the criminal justice system that need urgent attention in many countries. Without action, it will be hard to convince the general public that they are *wholly or even partly* mistaken when it comes to their perception of youth and juvenile crime.

The views of victims have taken on greater importance in the formulation of criminal justice policy in many Western countries over recent years. Supported by powerful campaigning organisations, victims have been airing their dissatisfaction with the treatment that they receive from the criminal justice system. The feeling of being sidelined during the process increases resentment for the system itself, which is seen as not delivering justice. While States should not respond to victims calls for punitive action against juvenile criminals in contravention of the UNCRC, there is a need to be seen responding more attentively to the victims of crime to increase public confidence and satisfaction with the criminal justice system.

In reacting to public opinion, governments should be encouraged to refrain from relying too heavily on unsophisticated opinion polls and should encourage independent research and evaluation of the juvenile justice system in the light of the public knowledge (or lack of knowledge) of the system. (Warr 1993) However, it must be recognised that even if the public are fully informed and possess a comprehensive appreciation of the nuances of the issues at hand, they may not necessarily support a UNCRC compliant juvenile justice system. Governments cannot rely on education and information alone to change public opinion on juvenile justice, but must take a more holistic approach. The public may need to see a reduction of offending before being convinced that a non-punitive system can benefit them. Thus, governments should, whilst at the same time seeking to change public opinion, establish programmes that support an effective non-punitive juvenile justice system. That would require, for instance, implementation of the Riyadh Guidelines and the development of effective prevention programmes, as well as wider measures, such as the development of social services, addressing the needs of vulnerable children, the unavailability of education and social exclusion.

Where a State is willing to implement the juvenile justice articles of the Convention on the Rights of the Child, they may have to overcome, or ignore, public resistance to reform. However, the UNCRC exists to protect the fundamental rights of children from violation by the State and to ensure the State protects children from the violations by others in its jurisdiction. Public opinion should not be an excuse for the violation of children's rights.

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