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**The United Nations, Children's Rights and Juvenile Justice**  
(in *Youth Justice Handbook* edited by Taylor, Earle and Hester, published  
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In 1989 the United Nations resolved to recognise specific children's rights worldwide. The 1989 Convention on the Rights of the Child (CRC) came into force in September 1990 and was ratified by the UK, for example, in 1991. The child is defined as anyone under the age of 18 years. The CRC (article 2) entitles every child, 'without regard to race, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status', to have resort to 40 specific rights. In particular it advocates special protection for 'children in conflict with the law'. The most pertinent articles of the CRC (United Nations, 1989) specifically for juvenile justice policy and practice are:

- In all actions concerning children...the best interests of the child shall be a primary consideration (article 3)
- State Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly (article 15)
- No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence (article 16)
- No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. (Article 37 a )
- No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (Article 37 b)
- Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child

deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so ... (Article 37 c)

- Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action (Article 37 d).
- States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to 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 and fundamental freedoms 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 (Article 40 (1)).
- States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
  - (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
  - (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected (Article 40 (3))

Consistently restating, promoting and defending these principles is a vital first step for governments (States Parties) if they are to move towards child-centred and rights compliant systems of youth and juvenile justice (see for example, United Nations Committee on the Rights of the Child, 2007). To date the CRC had been ratified by 191 countries making it the most recognised international human rights Convention in history. The only countries not to have ratified are the USA (which claims it would interfere with parental rights) and Somalia (which has no internationally recognised government). After a government has ratified the CRC, it must report to the United Nations Committee on the Rights of the Child at five year intervals outlining how it is applying the Convention's provisions within domestic law, policy and practice. The

Committee then issues a series of ‘concluding observations’ detailing each country’s record of compliance (or violation). It is through the study of such reports that we can begin to make some assessment of the disjuncture between rights rhetoric and children’s rights in policy and practice in various jurisdictions.

### **The UN Committee: Assessing implementation**

In 2007 the Committee focussed its attention specifically on juvenile justice and concluded that:

‘many States Parties still have a long way to go in achieving full compliance with the CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort’ (United Nations Committee on the Rights of the Child, 2007, p.1).

The CRC is binding under international law and carries a clear obligation for nation states to ensure its full implementation. However the CRC holds no sanctioning powers and the Committee has to rely on persuasion and admonishment rather than enforcement. Most worryingly, various pressure groups (see for example Abramson, 2000; 2006) have concluded that even within the ‘children’s rights movement’ itself, juvenile justice reform is the most marginalised, disregarded and ‘unwanted’ issue. The reasons are probably not too hard to find. Whilst most governments are keen to see themselves aligned against child abuse and exploitation, this logic disappears when those same children are deemed to be ‘offenders’. Ironically the rolling out of the CRC has been alongside a growing politicisation of the ‘youth problem’ and of ‘problem youth’ in particular. A punitive mentality evident in many western societies – albeit differentially expressed - has shifted juvenile justice agendas away from protecting ‘best interests’ and towards criminalisation and retribution (Muncie, 2008). For example in the UK when the Secretary of State for Justice was asked what he might do to reduce the trend of demonising children and young people, his response was unequivocal: ‘these are not children; they are often large unpleasant thugs’. (Hansard 10 June 2008).

Abramson's (2000) analysis of Committee observations on the implementation of juvenile justice in 141 countries noted a widespread lack of 'sympathetic understanding' necessary for compliance with the CRC. He argued that a complete overhaul of juvenile justice was required in 21 countries and that in others torture, inhumane treatment, lack of separation from adults, police brutality, poor conditions in detention facilities, overcrowding, lack of rehabilitation, failure to develop alternatives to incarceration, inadequate contact between minors and their families, lack of training of judges, police, and prison authorities, lack of speedy trial, no legal assistance, disproportionate sentences, insufficient respect for the rule of law and improper use of the juvenile justice system to tackle other social problems, were rife. In addition the Committee has long complained that there is a notable lack of reliable statistics or documentation as to who is held in juvenile justice systems and where they are. Disproportionate sentences, insufficient respect for the rule of law, excessive use of custody and a general failure to take children's rights seriously appear widespread.

The recurring issues raised by the Committee focus in particular on sections 37 and 40 of the CRC. Analysis of the 'concluding observations' for 15 western European countries (Muncie, 2008) found that every state (except Norway) had been asked to give more consideration to implementing the CRC's core principles. Despite almost 20 years in which to put the CRC into effect, most of these European states appear to have failed to recognize the centrality of such issues as distinctive needs, dignity, humane treatment and so on as core to the realization of children's rights. Eight states (Finland, Denmark, Switzerland, Austria, Ireland, UK, Germany, and Portugal) were specifically criticized for failing to separate children from adults in custody or because they were beginning to break down distinctions between adult and juvenile systems allowing for easier movement between the two (as is characteristic of the widely used juvenile transfer to adult court in USA).

In 2004 the Committee's report on Germany condemned the increasing number of children placed in detention, especially affecting children of foreign origin, and that children in detention or custody are placed with persons up to the age of 25 years. The report on the Netherlands in the same year expressed concern that custody was no longer being used as a last resort. In its report on France the Committee reiterated its

concern about legislation and practice which tends to favour repressive over educational measures. It expressed concern about increases in the numbers of children in prison and the resulting worsening of conditions (Muncie, 2008, p.112).

Just as significantly most of these European jurisdictions were criticized for discriminating against minorities/asylum seekers and for having overrepresentations of immigrant and minority groups under arrest or in detention, particularly the Roma and traveller communities (in Italy; Switzerland, Finland, Germany, Greece, UK, Ireland, France, Spain, and Portugal), Moroccans and Surinamese (in the Netherlands), and North Africans (in Belgium, and Denmark). Some of the most punitive elements of juvenile justice do appear to be increasingly used/reserved for the punitive control of primarily immigrant populations (Muncie, 2008, p.113).

In 2006, the United Nations Secretary-General's *Study on Violence Against Children* revealed the existence of widespread global violence. Whilst some forms – such as the trafficking of children, the excesses of child labour, and the impact of war – appeared to be relatively high on international agendas, the report concluded that ‘attention to violence against children *in general* continues to be fragmented and very limited – different forms of violence in the home, schools, institutions and the community are largely ignored in current debates in the international community’. Moreover ‘much violence against children remains legal, state authorized and socially approved’ (Pinheiro 2006, p.3).

### **The UK: Compliance, Ambivalence and Violation**

The UK has been far from immune from such critique. The Committee (rather confusingly) chooses to report on Great Britain and Northern Ireland, as if one entity, even though there are significant differences in youth justice particularly between England and Scotland (and, to a lesser extent, between England and Wales). In all three UK jurisdictions, though, the CRC has not been incorporated into domestic legislation. As a result children's rights issues are typically heard legally with recourse to European rather than United Nations Conventions. The UK Human Rights Act 1998, which placed the European Convention on Human Rights (ECHR) into UK law, is the chief mechanism though which CRC principles can be articulated. The most notable case was the European Court of Human Rights ruling that hearing the

case of 11 year olds in adult courts was in violation of their right to a fair trial (V v United Kingdom and T v United Kingdom, 1999).

The UK's record has been scrutinised by the Committee on three occasions (1995, 2002, 2008). In 1995 the UN Committee was particularly critical of the low age of criminal responsibility. Set at age 8 in Scotland and at age 10 in England, Northern Ireland and Wales, the UK has to date the lowest ages of criminal responsibility in Europe. The low age of 8 in Scotland was placed under review in 2009; it being proposed that under 12 year olds be given immunity from prosecution. However if an offence is admitted then this can be considered a conviction and in these circumstances the possibility remains that 8 to 12 year olds can be deemed as fully criminal as an adult. The UN Committee has consistently advocated an age of criminal responsibility of 14 or 16 and considers a minimum below the age of 12 'not to be internationally acceptable' (United Nations Committee on the Rights of the Child, 2007, p.8). The UN Committee report of 1995 also condemned the (then proposed) introduction of secure training centres for 12 -15 year olds in England and Wales (for which there are no European equivalents) and a general failure to use custody as a measure of last resort.

In 2002 these concerns were reiterated alongside critical comment on: increasing numbers of children held in custody (despite decreases in the crime rate); at earlier ages for lesser offences and for longer periods (not as a 'last resort'); custodial conditions that do not adequately protect children from violence, bullying and self harm (failure to accord with 'best interests') as well as failure to move on the low age of criminal responsibility (indeed the 1998 Crime and Disorder Act had moved in the opposite direction by abolishing the principle of *doli incapax* for 10 to 14 year olds). The Committee concluded that the UK's record on compliance was 'worsening'. At that time, The Children's Rights Alliance for England (CRAE, 2005) declared that England and Wales had effectively 'torn up' the CRC.

As part of the consultation prior to the 2008 report, the four children's commissioners for England, Scotland, Wales and Northern Ireland submitted a joint report to the Committee in which they made clear their concerns that the UK was continuing with some 'serious violations' of the Convention, including excessive criminalisation,

failure to distinguish adequately between adult and child offenders and the promotion of a general punitive ethos of ‘offender first, child second’ (UK Children’s Commissioners 2008, p.32). The Committee’s ‘concluding observations’ in 2008 commended some recent developments, such as the lifting of a reservation against detaining children with adults, but its overall tone, as regards juvenile justice, remained negative (Nacro, 2008).

In general:

*The Committee regrets that the principle of the best interests of the child is still not reflected as a primary consideration in all legislative and policy matters affecting children, especially in the area of juvenile justice, immigration and freedom of movement and peaceful assembly (UN Committee, 2008, p.7).*

Their assessment focused in particular on five core issues:

### **1. Intolerance and criminalisation**

Successive UK governments have not only resisted CRC demands that the age of criminal responsibility be raised but have introduced a range of civil powers and statutory orders (curfews, child safety orders, ASBOs and so on) that have targeted, or have been used disproportionately against, under 18 year olds, including in some cases those below the age of 10. Because such interventions are ‘pre-emptive’ or ‘preventive’ they can be applied without either the prosecution or commission of a criminal offence. The Committee reported that it was:

*concerned at the application to children of the Anti-Social Behaviour Orders (ASBOs), which are civil orders posing restrictions on children’s gathering, which may convert into criminal offences in case of their breach. The Committee is further concerned:*

- (a) At the ease of issuing such orders, the broad range of prohibited behaviour and the fact that the breach of an order is a criminal offence with potentially serious consequences;*
  - (b) That ASBOs, instead of being a measure in the best interests of children, may in practice contribute to their entry into contact with the criminal justice system;*
  - (c) That most children subject to them are from disadvantaged backgrounds.*
- (UN Committee, 2008, p.20)

In 2004 the Audit Commission had reported that too many minor offences were being brought to court, taking up time and expense. The current evidence suggests that the formalisation of early intervention, particularly through final warnings, has indeed led to a net widening where more children are being prosecuted for trivial offences and

with a subsequent related impact on the rate of custodial sentencing. Between 2003 and 2006 there was a 25 per cent increase in the numbers of 10 to 14 year olds receiving reprimands, final warnings or conviction: a rise that has been explained with reference to a greater willingness of the police to criminalise minor misdemeanours in order to meet government targets of increasing detections from 1.02 million in 2002 to 1.25 million in 2007/08 .

## **2. Failure to use custody as a last resort**

Age reductions in the detention of children coupled with increases in maximum sentence have always put the UK at odds with the CRC. On signing the CRC in the early 1990s around 1400 children were being held in the secure estate in England and Wales at any one time. In 2002 it reached a peak of almost 3200, and has not fallen below 2600 ever since. Most notable has been the incarceration of younger age groups. In 1992 one hundred under 15 year olds were held in custody – all under ‘grave crime’ provisions. In 2005-2006 there were over 800 but only 6 per cent of these were for ‘grave crimes’. Such data place England and Wales as one of the most punitive in Western Europe: incarcerating 5 times more than France and 10 times more than Italy (Both countries with roughly the same number of under 18 year olds in the general population (Muncie, 2008, p.116)). As a result:

*The Committee is concerned that:*

*-The number of children deprived of liberty is high, which indicates that detention is not always applied as a measure of last resort;*

*-The number of children on remand is high;*

*-Children in custody do not have a statutory right to education*

(UN Committee, 2008, p.19)

## **3. Inhumane and degrading treatment**

Children in custody are routinely drawn from some of the most disadvantaged families and neighbourhoods. They are already likely to have endured family discord and separation, ill health and physical and emotional abuse. The vast majority have been excluded from school and over a half have had previous contact with care and social services agencies. With high reconviction rates and increasing evidence of inappropriate and brutalizing regimes characterized by racism, bullying, self harm and suicide, it is widely acknowledged that child incarceration is an expensive failure (as well as rights-violating). One in every 20 children in custody has been reported as inflicting self injury during their sentence. Between 1990 and

2007, 30 children died whilst in penal custody. Excessive use of restraint techniques has been a recurring concern. For example, it has been estimated that ‘pain compliant’ distraction techniques were used over 10,000 times on children in custody between April 2007 and June 2008, causing over 1300 injuries. Youth Justice Board targets to reduce the use of custody, and thereby prevent further harm, have never been met.

*The Committee, while welcoming the introduction of statutory child death reviews in England and Wales, is very concerned that six more children have died in custody since the last examination as well as at the high prevalence of self-injurious behaviour among children in custody*

(UN Committee, 2008, p.7).

*The Committee remains concerned at the fact that, in practice, physical restraint on children is still used in places of deprivation of liberty .*

(UN Committee, 2008, p.9)

#### **4. Denial of freedom of movement**

In 2004 ‘dispersal zones’ were established in over 800 areas of the UK. The legality of one such zone in Richmond was successfully challenged in the High Court by a 15 year old in 2005 (BBC News 20 July 2005). The increasing use of ultrasonic devices to disperse young people – their sound is only audible to those under the age of 25 – explicitly degrades and discriminates against children rather than treating them with the principles of dignity and respect enshrined in the CRC. In 2008 new initiatives were announced giving police greater powers to stop and search without having to state a reason and encouraging the police to actively harass groups of children on the streets. This included ‘frame and shame’ operations (pioneered by Essex police in Basildon) to film and repeatedly follow and stop ‘persistently badly behaving youths’; and ‘voluntary’ curfews (pioneered by Devon and Cornwall police in Redruth) targeted at under 16 year olds during the school summer holidays but backed up by parenting and antisocial behaviour orders.

*The Committee is concerned at the restriction imposed on the freedom of movement and peaceful assembly of children by the anti-social behaviour orders (ASBOs) as well as by the use of the so-called “mosquito devices” and the introduction of the concept of “dispersed zones”.....*

(UN Committee, 2008, p.8)

#### **5. Failure to protect privacy**

It has been estimated that at least 1.1 million children had their DNA recorded between 1995 (when the database was established) and April 2007, with more than half a million being aged between 10 and 16, and including 100,000 under 18s who had subsequently been found not guilty or had charges dropped. No other country in Europe has adopted such a practice. In December 2008 the European Court of Human Rights ruled that the indefinite holding of DNA and fingerprints contravened the right to a private life (*S and Marper v the United Kingdom*). In addition the Committee noted that the then recently published *Youth Crime Action Plan* (July 2008) included a proposal to remove reporting restrictions for 16 and 17 year-olds facing criminal proceedings - justified by the government as a way of 'improving the transparency of the youth justice system'. As a result:

*The Committee is concerned that:*

*(a) DNA data regarding children is kept in the National DNA Database irrespective of whether the child is ultimately charged or found guilty;*

*(b) the State Party has not taken sufficient measures to protect children, notably those subject to ASBOs, from negative media representation and public "naming and shaming"*

(UN Committee, 2008, p.8)

### **Protecting Children's Rights**

Some countries, it seems, give lip service to children's rights simply to be granted recognition as a 'modern developed state' or for others, to gain acceptance into world monetary systems or entry into the EU. The pressure to ratify is both moral and economic. However, in many countries it is abundantly clear that it is possible to lay claim to upholding rights whilst simultaneously pursuing policies which exacerbate children's marginalization and criminalization and increase the punitiveness of institutional regimes. The USA case is indicative. Violations of the Convention appear built in to aspects of USA law which allow for life imprisonment without parole, prosecution in adult courts and which fail to specify a minimum age of criminal responsibility (Campaign for Youth Justice, 2007). Moreover relying on international statements of due process and procedural safeguards may do little to deliver 'justice' on the ground. Little attention, for example, has been given to the extent to which the notion of universal rights may itself be grounded in Western notions of *individualized justice* rather than as facilitating any movement towards global *social justice* (Muncie, 2008).

At the core of the contemporary governance of children in many western jurisdictions, including the UK, seems to be the view that they have already been fully (or over-) endowed with rights. Lawbreaking and transgression are used to circumvent argument that the state too has *responsibilities* – as in the UK ethos of *Every Child Matters* - for the welfare of *all* of its citizens. It is far from clear how a dismantling of many of the distinctions between juvenile and adult justice and how failure to incorporate the CRC into domestic agendas can be construed as acting in a child's 'best interests'.

Whilst it is important to acknowledge some of the limitations of rights discourses (as weak and open to interpretation), it is equally important to appreciate their continuing potential. In this respect, the CRC and related international directives (such as those established by the 142 Rules laid out by the European Committee on Crime Problems, 2008) provide a strong basis for *rethinking* juvenile justice (Goldson and Muncie, 2006). Global inequalities and social injustices may always impede the realisation of a universal and fully rights compliant juvenile justice. But this should not preclude the insistence that nation states move to comply with their international obligations and to uphold those measures to which they have put their name. Until then, there are so many examples of the rights of children in 'conflict with the law' being ignored, that nobody, whether policy makers, media, elected politicians, practitioners or citizens, can simply stand by with indifference.

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