



changing lives
reducing crime

Youth Crime briefing

Children's human rights and the youth justice system

the Howard League for Penal Reform

Contents

- Introduction *page 1*
- The Convention on the Rights of the Child *page 1*
- Positive observations *page 2*
- General areas of concern and recommendations *page 3*
- The youth justice system *page 5*
- Conclusion and the future *page 7*
- References *page 8*

Youth Crime mailings

If you do not already subscribe, contact Nacro Youth Crime about our quarterly mailing of briefings. Thanks to a generous donation from the Howard League, we offer a free subscription with each paid for subscription – spreading the word about youth justice.

Nacro Youth Crime: training, consultancy, research and information

Park Place, 10-12 Lawn Lane
London SW8 1UD
tel: 020 7840 1203
fax: 020 7840 1213
email: youth.crime@nacro.org.uk
www.nacro.org.uk

Nacro is a registered charity. Registration no. 226171.

Nacro Youth Crime briefings are produced in partnership with the Howard League for Penal Reform. Contact www.howardleague.org

the Howard League for Penal Reform

Introduction

The United Nations Committee on the Rights of the Child (the Committee) has recently scrutinised the UK's compliance with its legal obligations regarding children's human rights. The concluding observations and recommendations of the Committee were published in October 2008 (the report).¹ The report commends some developments but in the context of the youth justice system there is strong criticism. The UK ratified the United Nations Convention on the Rights of the Child² (CRC) in 1991 and is required to make periodic reports to the Committee. In its previous observations, in 2002, the Committee found that the UK's record on compliance with the CRC in the youth justice system was '*worsening*'.³ The current report notes that many of those previous concerns remain and makes a considerable number of new comments and recommendations. Recurring concerns include the low age of criminal responsibility and a failure to use detention as a measure of last resort and for the shortest appropriate period. Notable amongst new recommendations is for anti-social behaviour orders to be reviewed with a view to abolition of their use for children.

The Committee's concluding observations are detailed and discussed in this briefing so far as they relate to the youth justice system, youth crime and anti-social behaviour, together with

relevant recommendations. Along with a poor record regarding the rights of some other specially protected groups (such as refugee and asylum seeking children), it is the youth justice system that attracts most concern and as a consequence this briefing may seem more negative than would be the case if the report as a whole was under consideration.

The report covers other UK jurisdictions and dependencies but this briefing maintains a focus on England and Wales which, in general, share the same youth justice law and policy (although there is justification in suggesting that the Welsh Assembly Government has shown a greater commitment to children's human rights in recent years).

The Convention on the Rights of the Child

The CRC has been the most ratified international convention in history. It recognises the special consideration and protection that is required for children (under the age of 18). It provides rights for children as well as obligations on adults and government to provide for children and to implement the principles and provisions of the CRC in law and policy. It also requires dissemination, training and monitoring.

The UK has been criticised on each occasion that the Committee has scrutinised its record (1995, 2002, 2008) and youth justice has been the subject of serious

Do you need this briefing in another format?
Tel: 020 7840 1203

concern. In England and Wales, the government has not enshrined the CRC into law despite the repeated recommendation to do so. The media and public opinion have often been derisive regarding human rights conventions and in particular where those rights relate to people who have committed offences. Thus, a human rights 'culture' has not been fully developed domestically. There is at best ambivalence with regard to children's human rights:

Few would dispute that some aspects of children's human rights have been crucial in helping to protect children from, for example, torture, abduction and trafficking And few would wish to deprive children of the right to primary education, play and recreation or state sponsored care when separated from parents. Yet, in the UK, there has been no systematic attempt to incorporate such rights into law, policy or practice, particularly in the sphere of youth justice.

Indeed, with regard to youth justice, there remains considerable ambiguity of commitment to rights and a significant level of infringement and outright denial.⁴

The CRC is binding on the UK under international law and there is an obligation to comply with its principles and provisions. However, the CRC has yet to be enshrined in domestic legislation. This was the case with the European Convention on Human Rights until the *Human Rights Act 1998* (HRA) made it enforceable in domestic courts. In other words, the UK is legally bound to comply with the Convention but there is no direct domestic sanction for failure and no direct means for enforcement, or challenge, in UK courts. The main sanction is international shaming which largely depends upon the periodic reporting requirements.

The CRC requires states to submit detailed reports periodically to the Committee, laying out progress in implementation and compliance. The report makes concluding observations on the latest of the UK's submitted reports,⁵ having benefited from additional written evidence and data and dialogue, in Geneva, with the UK government delegation, non-governmental organisations, the four UK children's commissioners and children and young people (who had conducted consultations among their peers around the UK).⁶

Positive observations

Some commendations

The report contains over 170 recommendations (many more than on previous occasions) and substantial criticism of both a general and specific nature. However, there are some commendations of action taken by the government since 2002. These include:

- The introduction of the Children Act 2004 (implementing aspects of the policies arising from Every Child Matters) and the Child Care Act 2006
- The reference to the CRC in the government's Children's Plan (although this is set against the general failure to embed the CRC in law and policy)
- The establishment of an Equalities and Human Rights Commission
- The creation of Children's Commissioners in each jurisdiction (although the limited powers and lack of full independence is noted in the report)
- The creation of a government department more clearly focused on children through the Department for Children, Schools and Families
- Establishing a Secretary of State for Children
- The fact that courts have been more regularly turning to the CRC in forming judgements and decisions (although this is set against the concern that the CRC has not been established in domestic law in the way that has occurred with the European Convention on Human Rights through the HRA).

Lifting of UK reservations

In addition, the lifting of the UK's two reservations is welcomed (reservations are parts of the CRC that states have not formally ratified). One of the reservations related to immigration and nationality. More pertinently for youth justice, the other reservation concerned the detention of children with adults which the CRC forbids (unless in the child's best interests).⁷ Thus, once this has been formally lifted, the UK guarantees that children will not be detained in facilities with those aged 18 or over (the new Mental Health Act 2007 contains provisions that are at least congruent with this, although there is a serious shortage of specialist facilities).

In a press statement announcing the lifting of the reservation, Jack Straw (Justice Secretary) praised the achievements made in reforming the juvenile secure estate, referring to policies that had been pursued to remove girls from prison service establishments (adult), to establish a distinct estate for boys and providing separate mother and baby facilities for those under the age of 18.⁸

Nevertheless, and welcome though the lifting of the reservation is amongst non-governmental organisations (NGOs), practitioners should perhaps be vigilant should the 'secure estate for children and young people' become overcrowded again in the future, when there may be difficulties in ensuring

this right. In addition, the issue of shared facilities (with adults) in some young offender institutions may attract scrutiny.

The converse assumption might be made that those who are detained in children's facilities (in the secure estate for children and young people or hospital) must be moved to adult facilities upon attaining the age of 18. The Committee states that this is not the intention in all cases:

This rule does not mean that a child placed in a facility for children has to be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the younger children in the facility.⁹

In practice, there are difficulties in administering any custodial sentence that takes a child beyond his or her eighteenth birthday if he or she is moved to an adult facility. Related to this, but not referred to in the report, is the common practice of moving those boys who attain 15 years from secure children's homes or secure training centres to young offender institutions.

General areas of concern and recommendations

The relevance of the CRC as a whole

Before turning to those observations and recommendations that relate most specifically to the youth justice system, it should be stressed that the CRC should be considered as a whole, rather than as a collection of individual articles and rights. Thus for example, the principles that relate to participatory rights (such as Article 12, the right to have a voice and for that voice to be given weight – most notably reflected in the Children Act 1989) apply equally to processes and decisions in the youth justice context as to all other settings and circumstances. As with all rights that are not **absolute** (eg protection from torture, cruelty or sexual exploitation), those that are **limited** (eg the right to liberty not applying when detained by a competent court) or **qualified** (rights that can be curtailed for specific purposes, such as maintaining public order) are subject to a principle of proportionality and should only be infringed to the extent that is absolutely necessary. An example of tension, noted in the report and detailed below, is the use of long prohibitions under anti-social behaviour law or if acceptable behaviour contracts are used in a coercive manner.

Intolerance towards children

The Committee's comments about the way children are perceived in society have attracted considerable attention and publicity – although the popular media reports tended to focus on the mention of

children in television 'reality' programmes rather than intolerance towards children and young people more generally and towards specific minority groups. Under a general heading of anti-discrimination the Committee expresses concern at:

... the general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the State party, including in the media, and may be often the underlying cause of further infringements of their rights.

Clearly associating intolerance as a potential catalyst for wider failure to respect children's human rights, the Committee recommends urgent measures to address this intolerance and inappropriate characterisation of children (and especially adolescents). The stress on the adolescent would appear to indicate the Committee's perception that it is children in the upper age range who are most affected.

The Committee's observations are supported by a recent survey commissioned by Barnardo's from YouGov. This confirmed a worryingly negative public perception of children. The findings included that:

- Just under half (49%) of people agree that children are increasingly a danger to each other and adults
- Fifty four percent agreed that children are beginning to behave like animals
- Forty three percent agree something has to be done to protect us from children
- More than a third (35%) of people agree that nowadays it feels like the streets are infested with children
- Forty five percent of the public agree that people refer to children as feral because they behave this way (note that 49% disagreed with this).

The best interests of the child

The report refers to previous recommendations (2002) that the CRC, its principles and provisions, be implemented in domestic legislation. As before, the Committee is critical, in particular, of youth justice legislation in this respect:

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.

The reference to rights to freedom of movement and peaceful assembly are discussed further below.

Freedom of peaceful assembly

In many senses related to intolerant attitudes, the report condemns the use of dispersal orders, anti-social behaviour measures and, as a specific issue, the introduction of the so-called 'mosquito' device. The Committee notes that measures restricting freedom of movement and assembly are contrary to children's development and may be subject to very limited restrictions.

The 'mosquito' device is marketed commercially for discouraging young people from a vicinity by emitting a harsh electronic sound that is inaudible to the adult ear. It is however audible to not only adolescents but also babies and infants. The use of 'mosquitos' has mainly been around commercial and retail buildings but private householders have been fitting them on houses more recently. It has been noted that such targeting of other groups in society would not be tolerated in the way that it is for children. Commercial marketing of the Mosquito anti-vandal systems describes them as 'our most effective tool in the fight against anti-social behaviour'. Although campaigning against these devices is under way, there is currently no apparent law preventing their use.

Protection of privacy

The collection of a large database of children's DNA samples attracts concern particularly where there is no subsequent charge or finding of guilt. Since the report was published, following parliamentary questions recently, the Liberal Democrat party announced that the number of children whose DNA has been retained has risen to over one third of a million.¹¹

The accuracy of data is questionable and the actual figures may be considerably higher than this. A considerable proportion of those on the database have not been found guilty of an offence. Prominent in scrutinising the data and practice is the organisation *Action on Rights for Children*.¹²

In addition, the Committee comments on anti-social behaviour orders in the context of breach of privacy rights, also being contrary to children's best interests, stating that:

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'

The Committee, having had access to the recently published Youth Crime Action Plan, is concerned about proposals to increase the 'transparency of the youth justice system' by removing reporting restrictions on those aged 16 and 17.¹³

Right to life, survival and development

The Committee is very concerned that there have been more child deaths in custody and a high prevalence of self-injury. It welcomes that there has been the introduction of statutory child death reviews in England and Wales but there remains a lack of provision for full public inquiry into deaths in custody. Only in October 2008, the Council of Europe Commissioner for Human Rights observed:

*Remarkably, there is no obligation in [UK] domestic law to hold a public inquiry into a child's unexpected death in custody, although this is implicit in the case-law of the European Court of Human Rights In this respect, the Commissioner welcomes the recent recommendation of the Committee on the Rights of the Child that there should be an automatic, independent public review of all unexpected child deaths in custody.*¹⁴

Restraint and solitary confinement

The previous point regarding deaths in custody relates also to the use of restraint in custody. The Committee's deliberations were conducted at a time when restraint in custody has been a focus of attention, coroner's court proceedings and a government commissioned independent review. The publication of the review is overdue at the time of writing but the Committee considered a substantial body of evidence and data that exposed the treatment of children in custody and the use of painful restraint techniques. The Committee 'urged' the government to:

Ensure that restraint against children is used only as a last resort and exclusively to prevent harm to the child or others and that all methods of physical restraint for disciplinary purposes be abolished.

Mental health

The report highlights the significant proportion of children experiencing mental health problems and recommends an increase in provisions to meet need, including those in the youth justice system.

Asylum seeking and migrant children

Apart from the youth justice system, the immigration and asylum system attracts considerable criticism regarding compliance with children's human rights. Of the many concerns, several are pertinent to the youth justice system. These include the process of dealing with age disputed cases (relevant to jurisdiction considerations as well as remand and sentencing provisions according to age). Specifically, the Committee expresses concern about document offences being applicable to children as young as 10 years of age. It recommends giving the benefit of doubt in age disputed situations and seeking expert

guidance on how to determine age. It also recommends the amendment of section 2 of the *Asylum and Immigration (Treatment of Claimants etc) Act 2004*, to allow a 'guaranteed defence for unaccompanied children who enter the United Kingdom without valid immigration documents'.

Criminalisation of sexually exploited children

Although it is now rare for children involved in prostitution to face prosecution, the government has declined to follow earlier recommendations, including from prominent children's charities and penal reform organisations, to amend the law to prohibit criminal prosecution. In its report to the Committee, the government indicated that it intends to update its strategy on prostitution and the indication is for guidance that is more couched in terms of sexual exploitation and abuse, including 'abuse through prostitution'. Nevertheless, there is no apparent intention to decriminalise such children who are loitering or soliciting, although prosecution should only be used as a last resort when the offending is persistent and voluntary.

Thus, the Committee re-iterates its concerns and recommends:

The State party should always consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders. The Committee also recommends that the State party ratify the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

The youth justice system

Age of criminal responsibility

With the possible exception of the high numbers of children in custody and anti-social behaviour measures, it is the low age of criminal responsibility in the UK that stands out in most contrast to its neighbours in Europe, and across the wider world. Whilst in Scotland that low threshold is tempered by the more welfare based Children's Hearings system (at least for those under the age of 16), in England and Wales proceedings against children over the age of 10 who are alleged to have offended are in the criminal courts. Even those who are diverted by being dealt with by way of reprimand or final warning are, in effect, criminalised and their disposals administered by criminal justice agencies, police and youth offending teams.

The demand for a substantial raising of the age of criminal responsibility has a long history and the Committee, in the current report, repeats its previous recommendation for a substantial change. All of the major children's charities and penal

reform organisations support that recommendation. However, the government has not been inclined to comply. Indeed, with criminal justice agencies leading on crime and anti-social behaviour prevention initiatives aimed at children below the age of 10, there has been, if anything, downward pressure.

In its report to the Committee, the government defended the low age of responsibility, also referring to the abolition of the previous protection afforded to younger children by the ancient doctrine of *doli incapax* (an abolition that supported the tough, 'No More Excuses',¹⁵ stance taken against children in trouble in recent years):

The Crime and Disorder Act 1998 (covering England and Wales) abolished the doctrine of 'doli incapax' for children aged 10–14. Previously, for a child aged over ten but under 14 to be convicted of a criminal offence in England or Wales, the prosecution had to prove that the child not only committed the act in question, but that he or she knew that what they were doing was seriously wrong. This led to difficulties such as delaying cases or even making it impossible for the prosecution to proceed.

The UK Government, in relation to England and Wales, believes that children of this age generally can differentiate between bad behaviour and serious wrongdoing, and that it is not in the interests of justice, of victims or the children themselves to prevent offending from being challenged through formal criminal justice processes. The Government is concerned about 10 and 11 year olds becoming drawn into offending behaviour, and believes that commencing criminal responsibility from the age of 10 helps children develop a sense of personal responsibility for their behaviour. However, interventions are intended to be rehabilitative rather than punitive. A large part of a youth offending team's role is to work closely with children beginning to display offending behaviour to prevent it escalating. The early teenage years are an important, high risk period when timely intervention can make a real difference.

The Government is keen to ensure that children are not prosecuted whenever an alternative can be found. The reprimands and final warning scheme is the most likely response to offending by this age group, and may include interventions to tackle offending behaviour and underlying problems. Local multi-agency youth offending teams include local authority children's services and health professionals, who help identify a child's needs and refer them to other statutory services.

This explanation may lack the robust evidence base that the government would normally subscribe to in policy formulation and the reference to rehabilitation rather than punishment stands in some tension with the inclusion of punishment as an aim of sentencing in statute, and as a permitted condition of the proposed youth conditional caution. In its general comments on juvenile justice,¹⁶ the Committee indicates the way in which the best interests of the child principle should be interpreted in this context:

The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice (repression/retribution) must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.

The CRC does not specify or recommend a minimum age of criminal responsibility. In line with the approach taken by the CRC, the intention is to allow each state to decide upon implementation according to its particular circumstances and cultures. Before increasing, or decreasing, the age of criminal responsibility a thorough review would be required with wide consultation and research. There are numerous sources of academic and policy debate about the age of criminal responsibility, but for the purposes of this briefing it may be most appropriate to consider what the position of the United Nations is. Thus, the Committee, in its guidance note on juvenile justice has made strong indications that the setting of the age below 12 is not acceptable and that it should ideally be considerably higher than that. The raising of the age of criminal responsibility can result in other breaches of children's human rights for those below that age if they are dealt with inappropriately for their behaviour, for example through indeterminate institutionalisation. The Committee indicates in its guidance that it would require detail of the provisions that apply for such younger children:

The States Parties reports show the existence of a wide variety of minimum ages of criminal responsibility (MACR). They range from a very low level of age 7 or 8 to the commendable high level of age 14 or 16.... In the light of these wide ranges of minimum ages for criminal responsibility the Committee feels the need to provide the States Parties with clear guidance and recommendations regarding the minimum age of criminal responsibility.

Article 40 (3) CRC requires that States Parties shall seek to promote inter alia (see under a) the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but does not mention a specific minimum age in this regard. ... [T]he Committee has recommended States Parties not to set a MACR at a too low level and to

increase an existing low MACR to an internationally acceptable level. From these recommendations, it can be concluded that a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States Parties are recommended to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level.

At the same time, the Committee urges States Parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40(3)(b) CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child's human rights and legal safeguards are fully respected. In this regard, States Parties should inform the Committee in their reports in specific detail how children below the MACR set in their laws are treated when they are recognized as having infringed the penal law, or are alleged as or accused of having done so, and what kinds of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above the MACR.

Detention as a measure of last resort

The Committee remains concerned that too many children are in custody having considered the substantial information and data provided by the government and NGOs in the reports submitted and referred to above.

Although the Committee concludes that too many children are detained on remand and that custodial sentences are at a level that indicates that the last resort principle is not complied with, the government submission maintains that this is not the case:

Children in the UK are made the subject of custodial sentences only as a last resort. Custody is only available where the seriousness or persistence of the offending makes its use unavoidable or where there is a risk of harm to the public. Under section 153 of the Criminal Justice Act 2003, covering England and Wales, a custodial sentence must be for the shortest term commensurate with the seriousness of the offence or offences.

In England and Wales, about 200,000 young people receive reprimands, final warnings or are found guilty each year. 97% of them are dealt with through community interventions or non-custodial sentences, while 3% receive custodial sentences.

Apart from the lack of clarity regarding thresholds for seriousness and persistence, the inclusion of reprimands and final warnings in the government's

submission tends to mask the much larger percentage of court disposals that are custodial. The stubbornly high rate of custodial remands and sentences was a concern for the Committee previously and there has been no progress in establishing the last resort principle. The introduction of indeterminate preventive custodial sentences (detention for public protection) based upon a risk of future offending has worsened the overall situation.

The report repeats a recommendation that the right to education in custody be put on a statutory footing. The government commented upon improvements to education for children in custody but provided no clear explanation as to why the near universal statutory right to education has not been extended to children in custody.

Adult courts

The Committee's observations on the inappropriate use of adult courts for children remain essentially the same as on previous occasions. Despite proposals for a new youth court that is able to deal with the most grave matters, the court system has not changed since the splitting of the juvenile court into family and criminal courts at the time of the *Children Act 1989*. The concern does not lay with the operation of the youth court (particularly since the participation and understanding of the child defendant has been given greater prominence) but with the higher, crown court, which is an adult court and those cases that find themselves in the (adult) magistrates' court. Regarding the latter, although most cases are remitted to a youth court prior to sentencing, many proceed to trial (if with adult co-accused) or are transferred to crown court. Most bail and remand hearings that fall when a youth court is not sitting, particularly at weekends and bank holidays, are in the adult court – often without the appropriate level of expertise, training and experience regarding dealing with children.

Abolishing ASBOs

When the Committee's scrutiny of the UK was undertaken in 2002, the impact of new anti-social behaviour legislation on children was not fully apparent and, other than recommending a review of new provisions introduced by the *Crime and Disorder Act 1998*, there was no specific observation of anti-social behaviour orders (ASBOs). Since that time, the use of ASBOs on children has snowballed and further legislation has been introduced that has extended powers to the youth court and reduced protection of privacy substantially. The Committee has taken a strong stance in the light of these developments, to the extent that the UK is urged to act with a view to abolishing ASBOs for children:

The Committee is 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.*

The Committee recommends that the State party conduct an independent review of ASBOs, with a view to abolishing their application to children.

The NGO report to the Committee did contain some detail of how a review of ASBOs should proceed:¹⁷

As a matter of urgency, an independent review should be undertaken on how ASBOs are used with regard to children. The review should cover: the numbers and characteristics of children who have been issued with these orders since 1999; the compatibility of ASBO legislation with welfare legislation and human rights requirements; and the effectiveness (and desirability) of using ASBOs to change children's behaviour and increase community safety. The review should make recommendations as to whether ASBOs should continue to be available for use with children. In the interim period, a local authority or other agency should only be able to apply to the court for an ASBO relating to a child once an assessment of need has been carried out for that child. Where a child's needs are evidently not being met by statutory agencies, or their parents/carers, the ASBO disposal should not be available to the court.

Conclusion and the future

The Committee's report, in respect of youth justice, serves to name and shame England and Wales with regard to a poor record in the implementation of, and compliance with, the United Nations Convention on the Rights of the Child. There has been insufficient action on the previous observations and recommendations from the Committee and in some respects it might be concluded that there has been deterioration, particularly in the light of the burgeoning use of anti-social behaviour measures and infringements of privacy rights.

Many issues are far from new, including the low age of criminal responsibility, custody not being used as a measure of last resort and failure to reform the

court system to be appropriate for children in all cases.

Thus, it is probable that the most significant observations of the Committee on this occasion have to do with the widespread intolerance and negative perceptions of children and, in particular, adolescents. This would appear to be the first occasion on which such an observation has been directed by the Committee at any European state and should be viewed with dismay and as a serious challenge. The Committee suggests that such an attitude to children may provide an environment in which other rights are more likely to be infringed or denied. In this sense, there is cause to investigate the extent to which the long-standing tensions with the CRC in youth justice are related to this phenomenon.

In all, it is incumbent on all who work in the youth justice, prevention and anti-social behaviour arenas to consider and defend children's human rights with vigour. Whilst it is the government that is confronted by the main challenge and criticisms, those who are engaged in youth justice and prevention should ensure that they are familiar with children's human rights, and frame practice around the principles and provisions of the CRC so far as is possible within the constraints of primary legislation. Where a right would be infringed by adhering to secondary legislation, official guidance and standards, there is a strong case for erring in favour of compliance with rights, as is required by the HRA.

Although issues such as the age of criminal responsibility can only be resolved by government action (and legislation), there are many areas of tension and rights infringements that are amenable to improvement in practice. These might include, for example, meaningful participation, ensuring consent is informed, advocating against overly intrusive or otherwise disproportionate responses and interventions, actively opposing inappropriate contraventions of privacy and family rights and subscribing to a 'whatever it takes' approach to reducing custody.

References

- 1 *Committee on the Rights of the Child (forty-ninth session). Consideration of reports submitted by states parties under article 44 of the convention. Concluding observations: the United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO.4)*. The report can be downloaded from www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf
- 2 United Nations (1989) *The United Nations Convention on the Rights of the Child*. New York: United Nations. For more information specific to England and Wales, related conventions and rules and downloadable copy of the CRC, go to www.crae.org.uk and/or www.childreninwales.org.uk/areasofwork/childrensrights.html
- 3 For further information and discussion, see Nacro (2002) *Children's rights – recommendations for youth justice*. Youth crime briefing, December 2002. Available at www.nacro.org.uk/publications/YouthBriefings.htm
- 4 Monaghan, G. (2005) *Children's Human Rights and Youth Justice* in Bateman, T and Pitts, J (Eds) *The RHP Companion to Youth Justice*. Lyme Regis: Russell House Publishing
- 5 The UK government's report is available at www.everychildmatters.gov.uk/strategy/uncrc/ukreport/
- 6 Reports, consultations and related documents, and discussion about the submitted reports from NGO groups in England and Wales, as well as reports from young people, are available on www.childreninwales.org.uk/6151.html (for Wales) and www.crae.org.uk (for England).
- 7 This reservation was to Article 37(c) of the CRC
- 8 Press statement issued on the website of the Department for Children, Schools and Families on 22 September 2008, the day prior to the Committee proceedings in Geneva
- 9 United Nations Committee on the Rights of the Child (2007) Forty-fourth session. Geneva, 15 January–2 February 2007. *General Comment No. 10 (2007) Children's rights in Juvenile Justice*. New York: United Nations
- 10 For detail, go to www.barnardos.org.uk/news_and_events/media_centre/press_releases.htm?ref=42088
- 11 Reported on the Liberal Democrat website at www.libdems.org.uk/home/a-million-children-on-the-dna-database-huhne-63893835;show
- 12 For detail on the database and comment, visit www.arch-ed.org/issues/dna/ndnad2.htm
- 13 The proposals appears at paragraph 4.19 of HM Government (2008) *Youth Crime Action Plan*. London: The stationery office
- 14 CommDH(2008)27, Strasbourg, 17 October 2008, Memorandum by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe following his visits to the United Kingdom (5–8 February and 31 March to 2 April 2008). *Issue reviewed: Rights of the child with a focus on juvenile justice*
- 15 Home Office (1997) *No more excuses: a new approach to tackling youth crime in England and Wales*. London: Home Office
- 16 United Nations Committee on the Rights of the Child (2007) Forty-fourth session. Geneva, 15 January–2 February 2007. *General Comment No. 10 (2007) Children's rights in Juvenile Justice*. New York: United Nations
- 17 From the England NGO submission, coordinated and published by the Children's Rights Alliance for England. Children's Rights Alliance for England (2008) *State of Children's Rights in England: Review of the UK Government's implementation of the Convention on the Rights of the Child – 2008*. London: CRAE