

BRIEFING – BILL OF RIGHTS FORUM, CRIMINAL JUSTICE
WORKING GROUP MEETING 19TH OCTOBER 2007
CHILDREN'S RIGHTS IN THE JUVENILE JUSTICE SYSTEM

1. UN Convention on Rights of the Child – Core Principles
2. The Rights of Children regarding the Criminal Justice system
3. UN Committee on the Rights of the Child – comments on UK
4. Particular circumstances of Northern Ireland – some key issues

(1) UN Convention on the Rights of the Child (the Convention)
– Core Principles

The UK has ratified the Convention but it is not part of domestic law. It is thus not directly enforceable and does not bind the court or public authorities. The core principles of the UN Convention on the Rights of the Child are as follows:

- Article 1 – The right to childhood – identifies all under-18 year olds as children.
- Article 2 – The principle of non-discrimination.
- Article 3 – The primacy of the child's best interests.
- Article 6 - The right to survival.
- Article 12 – The right to be heard and to participate.
- Article 19 – The right to protection.

(2) Rights of Children with regard to the Criminal Justice system

In addition to the Convention and the ECHR the following are key human rights instruments giving children rights with regard to the Criminal Justice system:

- UN Rules for the Protection of Juveniles Deprived of their Liberty;
- United Nations Standard Minimum Rules for the Administration of Justice (Beijing Rules);
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines);
- UN Standard Minimum Rules for Non-custodial Measures (Tokyo Rules).

The CRC requires states to fix an 'age of criminal responsibility' that is 'a minimum age below which children shall be presumed not to have the capacity to infringe the penal law' (Art 40). The Beijing Rules suggest that this should not be fixed at too low an age 'bearing in mind the facts of emotional, mental and intellectual maturity.' (Rule 4). The commentary to the Rules state that the age should be consistent with other social rights and responsibilities such as marital status, civil majority etc. The Committee on the Rights of the Child published a General Comment on Juvenile Justice in February 2007 in which the Committee stated that it was unacceptable for the age to be set below 12. The Committee states that a higher age eg 14 – 16 renders the juvenile justice system more consistent with a human rights ethos. The European Network of Children's Ombudsmen propose that the age should be raised by all states with the aim of progressively reaching 18 as an age of criminal responsibility.

All children under 18 should be treated as children in the youth justice system (Art 1 CRC).

Right to life (Article 2 ECHR), right to be free from torture, inhuman and degrading treatment (Article 3 ECHR) right to a fair trial (ECHR Art 6) and right to private and family life (ECHR Article 8).

Children should be detained only as a last resort and for the minimum period of time (CRC Art 37). All efforts should be made to apply alternatives to detention before trial to ensure that it is limited to exceptional circumstances (Beijing Rules 13, UN Rules 17). Custody should be limited to exceptional cases and only be imposed if the child is adjudicated of a serious act involving violence against another person, or of persistence in committing other serious offences and if there is no other appropriate response (Beijing Rules 17).

Efforts should be made to provide 'semi-institutional arrangements' such as 'half way houses' (Beijing Rules 29.1). Differences between life outside and inside the detention facility should be minimised (UN Rules 87).

Girls and young women shall receive 'special attention as to their personal needs and problems' and shall be treated fairly (Beijing Rules 26.4).

Personnel in the youth justice system shall 'reflect the diversity of juveniles who come into contact with the juvenile justice system' (Beijing Rules 26.4).

In detention, disciplinary measures constituting cruel, inhuman or degrading treatment are strictly prohibited including 'corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health' of the young person concerned (UN Rules 67).

Use of force or instruments of restraint can only be used in exceptional cases 'where all other control methods have been exhausted and failed'. Physical restraint and the use of force should not cause humiliation or degradation, and should only be used for the shortest period of time (UN Rules 64).

International human rights standards promote the importance of reintegration children into society and carrying out rehabilitative and restorative work (Beijing Rules, Tokyo Rules, Riyadh Guidelines).

(3) UN CRC Comments on UK state (Concluding Observations 2002)

The Committee has criticised the low age of criminal responsibility in England, Wales and NI. In response to changes in the legal system in 1998 which removed both the presumption of *doli incapax* and the right to silence without inferences being drawn, the Committee noted with 'serious concern that the situation of children in conflict with the law has worsened since consideration of the initial report.' The Committee welcomed developments in restorative justice and community based disposals. However, it expressed profound concern regarding conditions for detained children, the lack of protection against bullying in young offenders centres, high levels of violence, self-harm and suicide and the use of solitary confinement. It recommended that detention is used as a measure of last resort and for the shortest appropriate period of time and that children are separated from adults in detention. It stated that no child should be tried as an adult no matter how serious their alleged offence. The Committee encouraged the use of alternatives to custody and called for an urgent review of conditions of detention, focusing particularly on children's right to education, health and child protection.

Making comment specifically about Northern Ireland the Committee remained concerned at the 'negative impact of the conflict situation in

Northern Ireland on children, including the use of emergency and other legislation in force ...'. The Committee stated that following the recommendations of the Committee against Torture the state should "abolish the use of plastic bullets as a means of riot control."

(4) Particular circumstances of Northern Ireland – some key issues relating to criminal justice & children

- Impact on conflict on criminal justice system – process of transition?
- Impact of conflict on communities and on children and young people;
- Legacy of punishment in communities;
- Poverty, trauma and mental health issues;
- Relationships between police and young people;
- Use of informers,
- Police technologies and weaponry;
- Impact of emergency and 'anti terrorism' law;
- Low age criminal responsibility;
- Distinctive youth justice system including unique custodial institutions;
- Development of restorative justice in communities;
- Children as victims and as witnesses;
- Conditions of detention – children held with adults in prison, use of restraint;
- Children of prisoners and ex-prisoners;
- Children of criminal justice agency personnel;
- Parades;
- Distinctive process of immigration detention
- Equality and representation issues.