



"Reducing incarceration of children: good practices from the UK and overseas"

Event Report

On 16 May the Interagency Panel on Juvenile Justice (IPJJ), Penal Reform International (PRI), and Child Rights International Network (CRIN) welcomed over 50 guests to a Seminar on *Reducing Incarceration of Children: good practices from the UK and overseas*. Panel guests represented leading agencies working with the UK and abroad including:

- Juliet Lyon, Director, Prison Reform Trust;
- Tabitha Kassem, Legal Director, Howard League for Penal Reform;
- Lisa Messina-Harvey, Youth Justice Board;
- Valérie Lebaux, Chief of Justice Section, UN Office on Drugs and Crime; and
- Bernard Boëton, Child Rights Advisor, Terre des Hommes.

The Seminar was chaired by Nikhil Roy, PRI's Programme Development Director with closing remarks and reflections by Veronica Yates of CRIN.

Preliminary remarks outlined the key questions to be tackled through the seminar discussions:

- 1) Why look at incarceration and what does it mean with reference to children and the UN CRC? What does detention as a last resort mean in practice?
- 2) What are the exact numbers of children in detention? What are the difficulties in data gathering?
- 3) What are the good practice examples of alternatives to detention of children?
- 4) In the case of serious offending what are the appropriate responses? What lessons can be learned from the past and what, if any, good practice examples exist?

Juliet Lyon opened the event with a short clip from PRT's video, [*Talking Justice, Talking Sense*](#), before discussing [*Out of Trouble*](#), the Prison Reform Trust's five year programme to reduce child and youth imprisonment, which ran between 2007-2012 funded by The Diana, Princess of Wales Memorial Fund.

The project was launched with an opinion poll in 2007 which indicated that the public knew that high levels of detention of young people in conflict with the law was not the answer and that family support systems, improved health and education would address the needs of children and society at large.

PRT identified the 19 local authorities in England and Wales with the highest levels of child custody and offered them intensive technical assistance and support over the 5 year programme to establish why levels were so high compared to similar local authorities and

how they could address this. The project showed marked success rates as by 2012 the rates for the 19 authorities were well below the national average. The project also produced over 15 reports, briefing and research papers including [*Making Amends: restorative youth justice in Northern Ireland*](#), a study of the introduction of restorative justice into the youth justice system of Northern Ireland in 2003, and [*Punishing Disadvantage - a profile of children in custody*](#). At any given time, between 2,000-3,000 children are in custody, under sentence or on remand, in England and Wales and this study, which undertook a census of nearly 6,000 children imprisoned in the second half of 2008 asked: who are these children, and why and how do they come to be in custody. Another result for the project is that pre-sentence restorative justice options are now on the statute in England and Wales. The project contributed to a decrease in the number of children in detention in England and Wales and thanks to changes in police targets this number continues to decrease.

Tabitha Kassem spoke on how article 37 of the UN Convention on the Rights of the Child currently applies to the criminal justice system of England and Wales. She highlighted that to fulfil the requirements of Article 37, that detention should be a last resort **at the pre-charge stage**, it is essential that all practicalities necessary for alternative measures are in place. Therefore, the local authority is obliged to ensure suitable accommodation is available for children and the police are required to only detain children and young people if it is absolutely necessary and to make referrals to social care if the children appear to lack appropriate accommodation and support. However, due to a breakdown in the referral process between police custody and local authority accommodation, children are often unnecessarily detained overnight in police cells. In December 2012, the Howard League published a report [*Overnight detention of children in Police Cells*](#). Key facts on this issue included:

- Between 2008 and 2011, over 1 million children were arrested in England and Wales. This number includes 2,117 arrests of children who were aged 10 or 11.
- Of the 53,000 children detained overnight in 2008 and 2009:
 - 10,845 were girls (21%).
 - 10,050 were black and minority ethnic children (20%).
 - Four children were under the age of 10, the age of criminal responsibility.
 - 1,674 were aged 10 and 11 years.
- Police training on the overnight detention of children is limited, police policies relating to children in custody are inadequate and laws designed to safeguard children are ineffective.

“The criminal justice system recognises that children must be treated differently from adults, but in reality, the power imbalance is so overwhelming for children, that to ensure all these principles have meaning, we have to make explicit adaptations at every stage of the process.”

The Howard League recently participated in the case *R(C) v. SSHD and Metropolitan Police*, which resulted in the ruling by the High Court that treating 17-year-olds at the police station in the same way as adults is unlawful. The case involved HC, a 17 year old who was held in a London police station for 12 hours overnight on suspicion of robbery. The boy, with no previous convictions, was not allowed to ring his mother to explain where he was or ask her to come to the police station. Crucially, he was not offered the services of an Appropriate Adult. The boy was released without charge when the police checked his oyster card which showed that he had not been at the scene of the crime. It was argued that not only was it clearly unnecessary for this boy to have been detained – given that he was released without charge – but as a child, he was not afforded the protections he should have been. This is a

good example of how, even in 2013, it takes an action in the High Court or above to protect children's rights.

At post charge and point of sentencing stages, the welfare principle set out in the Children and Young Persons Act 1933 also protects Article 37 rights and requires every court to consider the welfare of the child or young person, and specifically to take steps to remove that young person from undesirable surroundings. The development of the welfare principle in recent years has represented a sea change in the way we deal with children from lip service to stepping back and thinking about the child's needs. So instead of adopting a traditional formulaic approach to sentencing, by following the welfare principle, the court is then able to step back – look at the welfare of child – and determine what was the most appropriate sentence considering their welfare long term.

Ultimately, Tabitha highlighted the current **threat to access to justice in the UK**, referring to the Ministry of Justice's current proposals to 'Transform Legal Aid', and how this will hinder organisations such as the Howard League from providing vital legal aid to children in detention. She identified that these proposals effectively, by limiting the access that prisoners have to a solicitor, dramatically limit their access to the courts. In particular, children are not a protected group in these proposals and some of the areas of prison law that will no longer be covered by legal aid are *categorisation, segregation, close supervision centre and dangerous and severe personality disorder referrals and assessments, resettlement issues and planning and licence conditions*.

The Rule of Law cannot exist without a transparent legal system, the main components of which are a clear set of laws that are freely and easily accessible to all, strong enforcement structures, and an independent judiciary to protect citizens against the arbitrary use of power by the state. If these proposals come in, there will be no transparency to the decision making process on sentence cases; prisoners will only have the internal complaints system to address their concerns.

Lisa Messina-Harvey discussed the major priorities for the Youth Justice Board. She began by highlighting that at present there are 1300 children in secure estate in England and Wales and while this is the lowest figure in a long time, with the reoffending rates at 70% the Youth Justice Board recognises that work still needs to be done. Specifically, from this reoffending rate it is clear that prison doesn't work for young people and there is a need to move further towards reducing the numbers detained, decommission facilities and put the money into effective alternative sanctions.

Lisa noted the 30% reduction in the number of young people in custody since 2011 and that with this, the profile of the young people being detained has changed. For example, the number of new entrants to the system has reduced significantly, however this means that those that are in the system are those with the most significant risks and needs. The YJB recognises the need to work collaboratively across agencies and departments, including the secure estate, police, health care providers, and education authorities to meet these needs.

The need to scrutinise the discrepancies within the system was discussed. For example, it is known that there is a disproportional level of custody of young black men, vulnerable girls and 'looked after' children within the system. It was also found that there was a disproportionate use of secure remand and that there is a need to promote greater responsibility for these children, for example, by transferring the budget for this to the local authorities. Over the last 9 months there has been a 26% reduction in secure remand, hopefully the change in budget will continue this trend, but there is also a need to analyse why the reduction began initially.

Valérie Lebaux spoke on two main topics:

1. *The lack of, and need for, improved data collection, research and analysis on the incarceration of children worldwide, as a basis for advocacy and policy decision making to reduce incarceration of children:* Valérie noted a common challenge faced by many countries is the lack of data and statistics available on the situation of children in contact with the law and in particular, the status of children deprived of their liberty. However, there are indications of a global trend towards increasing numbers of children being drawn into the criminal justice system and being deprived of their liberty, rather than diverted from the criminal justice system and dealt with alternatives to detention and imprisonment.

UNODC collects statistics on crime at the international level and maintains and develops crime-related databases. It conducts in particular the United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems (UNCTS), collecting data on the incidence of reported crime and the operations of criminal justice systems, with the aim of improving the analysis and dissemination of that information globally and promoting informed policy-making, nationally and internationally.

In 2011 the UNCTS included a module on juvenile justice systems, gathering data on crime trends among children and their treatment by the criminal justice system. However, inconsistencies in definitions used by different countries as well as general lack of relevant data limited the reliability and comparability of the data obtained and conclusions drawn from them. The lack of available data is a major challenge to tackling incarceration of youth.

Valerie then provided examples of technical assistance provided by UNODC to assist national authorities in analysing trends in crime committed by children in the country, including the profile of children in conflict with the law and deprived of their liberty, the types of offences committed and the performance of the justice system.

“Once the data is available, it is the basis for provision of informed policy and legislative advice and provision of assistance to build the capacity of the system effectively.”

She underlined the need for an in-depth global study on children deprived of their liberty.

2. *Provision of legal aid*, in particular at early stages of contact with the criminal justice system, as an enabler of measures to reduce incarceration of children. Valérie underlined the importance of access to legal aid as an effective way to ensure that incarceration of children is a measure of last resort, that diversion from judicial proceedings, avoidance of pre-trial detention, and use of alternatives to imprisonment are promoted. Importantly, in 2012, the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems were adopted by the UN General Assembly, including a principle relating to the provision of legal aid in the best interests of the child and a guideline on child-friendly legal aid systems.

Early access to legal aid, i.e. at the time of arrest or questioning and before the first appearance before a judge is crucial to prevent risks of ill-treatment, coerced confessions and unlawful detentions. Decisions taken at that point include decisions on detention, prosecution or diversion from the criminal justice system and also determine future developments including the length of detention. In this regard, UNODC and UNDP are developing a handbook on early access to legal aid based on the new principles and guidelines, aimed at police and legal aid providers.

She further referred to UNODC provision of technical assistance in Afghanistan in the area of access to justice, in cooperation with local NGOs providing legal aid to women, children and indigent males, leading to a sharp increase in the number of released suspects and a shortening of the length of prison sentences for the ones convicted.

Bernard Boëton highlighted five key points taken from his experience in working on child justice globally:

- 1) Bernard used the meeting with the General Prosecutor of Mauritania who told him that for centuries Mauritians had been nomadic people who had mediation procedures and no prison to illustrate how international norms are often confronted with cultural practices. In many countries efforts can be made to reactivate informal justice models aligned to international best practice. International cooperation can facilitate a State to form its own system taking account of national contexts.
- 2) In June 1995, when he visited two prisons in Rwanda there were a total of 243 minors detained, which was a shock to him. When he later met with the Minister of Justice, Bernard started explaining the value and the objectives of alternatives to detention. The Minister explained to him that those children were there for their own protection due to the seriousness of the crimes they were accused of committing during the Genocide of 1994. However, as Bernard responded, who are we to judge those who had no choice?
- 3) In Romania, he learned about a programme which brought together a social worker and a lawyer appointed to deal with arrested (and sometimes already convicted) children. For a boy who had been in prison for three months, the judge decided, with the agreement of the parents and the social worker that he could leave the prison provided he entered a training programme prepared for him to gain his autonomy. The boy responded that he wanted to finish his prison term and then go back to the street with his friends. This example was used to highlight that a child changes only if s/he decides to, showing that child participation is essential in reintegration efforts.
- 4) Juvenile justice is a serious issue. In countries where 45% of the population is under 18 years of age, it is not an issue of humanitarian nature, it is a law applicable to half of the population.

“Law is not the solution, but there is no solution without the law. In the law we have to promote a restorative approach”

- 5) Finally, he noted that we must be careful of statistics, where they do exist, it is very easy to manipulate the statistics on juveniles and crime. Politicians and the media can use them in a wrong way. When a child is victim there is an easy consensus, when a child is an offender, there is no consensus.

The **discussion** was lively and addressed a variety of issues related to reducing incarceration of children globally, as well as more specifically in the context of England and Wales.

This included:

- Questions on the minimum age of criminal responsibility. It was discussed that whatever the age of criminal responsibility is, it is important to have a wide range of options and possibilities for the protection of a child, whatever his or her age. In addition there is often a failure to make the distinction between the minimum age of criminal responsibility and the age of deprivation of liberty.
- The Netherlands experienced a similar trend to that occurring in England and Wales currently - a reduction of the incarceration of children. However, looked at more closely

in the Netherlands, it seems that there was indeed a reduction of incarceration in the penal system but in the meantime there was an increase of children placed in care institutions, some of them being in closed centres. This was through an administrative decision; the children are now channelled through the civil system not the penal system. There was a feeling that the trend may have just replaced one kind of deprivation of liberty with another.

- Some expressed concerns related to child trafficking: sometimes children are criminalised as a result of that trafficking, they are considered offenders rather than victims. There is a lack of training and awareness on this particular issue that needs to be addressed globally.
 - Questions were raised around the high numbers of young black males in detention in England and Wales, with 90% affiliated with gangs and how the YJB were beginning to address this.
 - Finally, questions centered around remand fostering services. It was noted that while this is currently considered as an applicable sentencing option in England and Wales, the length of remands in the UK often make fostering during this time impractical.
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At the end of the event, **Veronica Yates** brought together the presentations and discussion, highlighting some of the key points from the seminar.

- Evidence is stronger than opinion, and therefore, this is needed for advocacy. For example, the figure of 1 million children arrested over a 3 year period in England and Wales is a shocking number. Looking at this globally, and with reference to the annual crime trends and criminal justice survey undertaken by the UNODC, the need for a Global Study on Juvenile Justice was reiterated.
 - Austerity measures: prisons cost a lot so we lock up less children. However, this could mean that the reduction in child incarceration may only be a short term trend, just because we are currently struggling economically. Once we no longer do, the trend may be reversed. Aside from welcoming the fact that the numbers of children detained are dropping, a lot of work on legal reform is needed. 'Law is not the solution, but there is no solution without the law'. Advocates and campaigners need to use a range of methods in order to effectively and permanently reduce the numbers of children deprived of their liberty.
 - There needs to be a serious debate on the minimum age of criminal responsibility; not focused on simply an age, but on the issues that surround the ideas of criminality and how to respond to behaviour that infringes the penal law.
 - Access to legal aid was highlighted as a real problem both in the UK and globally. It was noted that in the same year England and Wales has begun restricting legal aid for both adults and children, the UN General Assembly for the first time passed a resolution on the Guidelines and Principles on Access to Legal Aid.
 - Finally, the need for child participation in all aspects of work that affect children was highlighted. Positively, more and more organisations are beginning to implement this in their work, and this trend must be encouraged and continued.
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