

International Human Rights Standards and Youth Justice

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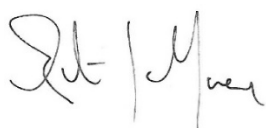
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Foreword

HMI Probation is committed to reviewing, developing and promoting the evidence base for high-quality probation and youth offending services. *Academic Insights* are aimed at all those with an interest in the evidence base. We commission leading academics to present their views on specific topics, assisting with informed debate and aiding understanding of what helps and what hinders probation and youth offending services.

This report was kindly produced by Professor Barry Goldson, reviewing the key international human rights standards which apply to youth justice. The standards provide a unifying framework for formulating youth justice policy and for guiding practice. Furthermore, they can be seen as entirely consistent with the evidence base and 'what works' principles, supporting the delivery of a high-quality, personalised and responsive service for all children and young people. Within HMI Probation, we will continue to monitor the evidence base and pay attention to the international standards when reviewing our own standards for inspecting youth offending services.



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Author's Profile

Professor Barry Goldson PhD FAcSS holds the Charles Booth Chair of Social Science at the University of Liverpool. He is also: Visiting Professorial Research Fellow at the Faculty of Law, University of New South Wales, Sydney; Adjunct Professor at the School of Justice, QUT, Brisbane; and Professorial Fellow in Social Science at Liverpool Hope University. He has researched and published extensively, and his most recent books include: *Youth Crime and Justice*, 2nd edition (Sage, 2015, with Muncie); *Justice and Penal Reform: Re-shaping the penal landscape* (Routledge, 2016, with Farrall, Loader and Dockley) and *Juvenile Justice in Europe: Past, Present and Future* (Routledge, 2019). Between 2010 and 2017 he was an appointed member of the Panel of European Youth Researchers (PEYR), an expert group established by the European Commission and the Council of Europe to advise on European youth policy and research. In 2018 he was awarded a 'Juvenile Justice Without Borders International Award' by the International Juvenile Justice Observatory. Currently, he is the Chair/Convenor of both the British Society of Criminology 'Youth Criminology/ Youth Justice Network' (YC/YJN) and the European Society of Criminology 'Thematic Working Group on Juvenile Justice' (TWGJJ) and he is a member of the Expert Advisory Board that is supporting the United Nations Global Study on Children Deprived of Liberty.

The views expressed in this publication do not necessarily reflect the policy position of HMI Probation.

1. Introduction

A range of international human rights standards apply to youth justice. This 'Academic Insights' paper maps the key standards that have been issued by both the United Nations and the Council of Europe. The core provisions of the respective standards are reviewed and, taken together, it is proposed that the standards provide a unifying framework for formulating youth justice policy and for guiding practice.

Moreover, there is a strong correspondence between the key provisions of the international human rights standards and what are known to be vital ingredients of effective practice. It follows, therefore, that observing human rights standards and applying them to youth justice is entirely consistent with the principles of 'what works' and evidence-based approaches.

Notwithstanding this, in monitoring compliance with international human rights standards, the United Nations Committee on the Rights of the Child has persistently raised concerns in respect of the incongruence between the provisions of the standards and core elements of youth justice policy and practice. The paper concludes, therefore, by suggesting that the Youth Justice Board's Strategic Plan and the new National Standards for Youth Justice provide an opportunity to address such incongruence, and to develop policies and practices that are both human rights-compliant and effective.

2. Human rights standards and adherence to the evidence base

2.1 International human rights standards and youth justice

United Nations rules, guidelines, standards and conventions

International human rights rules, guidelines, standards and conventions with specific regard to youth justice were initially formulated via three key United Nations instruments.

First, the [United Nations Standard Minimum Rules for the Administration of Juvenile Justice](#) (the 'Beijing Rules') were adopted by the United Nations General Assembly in 1985. The Rules provide guidance for the protection of children's¹ human rights in the development of separate and specialist youth justice systems. Rule 4.1 provides: 'juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles'.

Second, the [United Nations Guidelines on the Prevention of Delinquency](#) (the 'Riyadh Guidelines') were adopted by the United Nations General Assembly in 1990. The Guidelines are underpinned by diversionary and non-punitive imperatives:

- 'the successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents' (para. 2);
- 'formal agencies of social control should only be utilized as a means of last resort' (para. 5); and
- 'no child or young person should be subjected to harsh or degrading correction or punishment measures at home, in schools or in any other institutions' (para. 54).

Third, the [United Nations Rules for the Protection of Juveniles Deprived of their Liberty](#) (the 'Havana Rules') were also adopted by the United Nations General Assembly in 1990. The Rules set out a number of core principles including: deprivation of liberty should be a disposition of 'last resort' and used only 'for the minimum necessary period' and, in cases where children are deprived of their liberty, the principles, procedures and safeguards provided by international human rights law, standards, treaties, rules, guidelines and conventions must be seen to apply.

These core provisions were bolstered, in 1990, when the [United Nations Convention on the Rights of the Child](#) (UNCRC) came into force. The UNCRC is probably the most widely adopted human rights instrument in the world and the UK government signed it on 19 April 1990, ratified it on 16 December 1991 and implemented it on 15 January 1992.

The 'Articles' of the UNCRC that have most direct bearing on youth justice include (but are not limited to):

- A child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (Article 1)
- States Parties (governments) shall respect and ensure the rights set forth to each child within their jurisdiction without discrimination of any kind, irrespective of race,

¹ Throughout this paper the term 'child' is taken to mean any 'human being below the age of eighteen years' as provided by both international human rights standards and domestic statute.

colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (Article 2)

- In all actions concerning children... the best interests of the child shall be a primary consideration (Article 3)
- 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 37a)
- 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 37b)
- States Parties recognise the right of every child alleged as, accused of, or recognised 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 considers the child's age and the desirability of promoting the child's reintegration and the child 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 recognised 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)) (see, United Nations General Assembly, 1989: passim)

Council of Europe guidelines

In addition to the international human rights standards provided by the United Nations, in 2010 the Council of Europe issued [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#). The 'Guidelines' articulate a range of further human rights-based principles that serve both to frame the concept of 'child friendly justice' and echo the *general provisions* of the UNCRC. For example, they specify that 'a "child" means any person under the age of 18 years' (section II(a)) and they apply 'to all ways in which children are likely to be, for whatever reason and in whatever capacity, brought into contact with... bodies and services involved in implementing criminal, civil or administrative law' (section I: para. 2).

The 'Guidelines' also reiterate more *specific youth justice provisions* found within the United Nations instruments considered above, including:

- 'the minimum age of criminal responsibility should not be too low and should be determined by law';
- 'alternatives to judicial proceedings... should be encouraged whenever they may serve the child's best interests';

- 'respect for children's rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings' (section IV(B): paras. 23-26); and
- 'any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time' (section IV(A): para. 19).

2.2 Towards a human rights-compliant and effective youth justice

Collectively, the international human rights standards provide a unifying framework for formulating youth justice policy and guiding practice. Significantly, the standards also resonate with the evidence base and, as such, they point the way to a human rights-compliant and effective youth justice practice. A common misunderstanding relating to human rights discourse and youth justice is to imply that to respect 'best interest' principles and recognise the human rights of children in conflict with the law, is somehow tantamount to compromising effective practice, neglecting the public interest and undermining the imperatives of crime reduction. In actual fact, precisely the opposite obtains and there is strong correspondence between key provisions of international human rights standards and what are known to be vital ingredients of effective practice.

In other words, if youth justice policymakers, managers and practitioners are to observe the evidence base and conform to the principles of 'what works' they must necessarily take account of, and apply, human rights standards.

Diversion

The practice of diversion in youth justice is promoted by international human rights standards. The United Nations Guidelines on the Prevention of Delinquency specify that formal agencies of social control should only be utilised as a last resort. Similarly, the UNCRC provides that the arrest of a child should only be applied as a measure of last resort and that addressing youthful transgressions should, whenever appropriate, avoid resorting to judicial proceedings. Equally, the Council of Europe Guidelines on child-friendly justice state that alternatives to judicial proceedings should be encouraged.

Promoting diversion in this way is entirely consistent with the evidence base. Indeed, the 'iatrogenic' effects of over-zealous youth justice intervention are increasingly being recognised (Gatti *et al*, 2009; Smith, 2017), and McAra and McVie (2019: 75) have noted that 'intensive forms of intervention are likely to be damaging, inhibiting the normal processes of desistance from offending'. It follows that the Youth Justice Board (2018: 10) has stated that reducing the number of children in the youth justice system is a strategic aim for 'the youth justice community as a whole'. Of course, the most effective diversionary strategy is literally to remove children from the reach of the youth justice system altogether, by significantly raising the minimum age of criminal responsibility. There are strong grounds to support this proposition, not least evidence from jurisdictions where the minimum age of criminal responsibility is set above the European mean and where there are no negative consequences in terms of inflated crime rates (Goldson, 2013; Goldson, 2019).

Community supervision

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice state that youth justice should be located within a comprehensive framework of social justice for all children, and the United Nations Guidelines on the Prevention of Delinquency observes that the successful prevention of youth crime requires efforts on the part of the entire society to ensure the harmonious development of children. The UNCRC specifies that the best interests of the child shall be a primary consideration and refers to the desirability of promoting the child's reintegration. Similarly, the Council of Europe Guidelines on child-friendly justice state best interest principles and emphasise the importance of enabling the participation of children and recognising their dignity.

Such human rights imperatives also chime with what we know to 'work'; McNeill (2006: 135) noting that evidence pertaining to effective community supervision:

'... conveys three key messages. First, relationships matter at least as much as "tools" and "programmes" in influencing the outcomes of supervision. Second, social contexts are at least as significant to offending and desistance as individual problems and resources. Third, in supporting desistance, social advocacy is at least as necessary as individualised responsabilisation'.

Similarly, Maruna and Mann (2019: 7) note that 'recognition of their worth from others, feelings of hope and self-efficacy and a sense of meaning and purpose in their lives' are vital if children are to desist from offending. Equally, recent evidence from the USA reveals that effective community supervision requires:

'transforming [it] into a focused intervention that promotes personal growth, positive behaviour changes and long-term success for youth... It means dramatically reducing the size of the [youth justice] population and [YOT] officer caseloads by diverting far more youth so they can mature without being pulled into the justice system. It means trying new interventions and letting go of outdated, ineffective ones: ditching compliance in favour of supports, sanctions in favour of incentives and court conditions in favour of individualized expectations and goals. Getting [community supervision] right means embracing families and community organizations as partners and motivating youth primarily through rewards, incentives and opportunities to explore their interests and develop skills, rather than by threats of punishment' (Annie E. Casey Foundation, 2018: 1)

In fact, strong echoes of the international human rights standards can be seen in the new National Standards for Youth Justice that state that practice pertaining to community supervision and the management of community disposals should 'prioritise children's best interests, constructively promote their potential and desistance, encourage their active engagement, and minimise the potential damage that contact with the system can bring' (Ministry of Justice and Youth Justice Board, 2019: 12). They can also be seen in HMI Probation's standards for inspecting youth offending services, which highlight:

- the importance of meaningful involvement and effective working relationships with children;
- the need to pay attention to wider familial and social contexts;
- the need to build upon strengths; and

- the need to promote opportunities for longer-term community integration (HMI Probation, 2018).

Penal detention

The principle that the deprivation of liberty should only ever be applied as a disposition of last resort and for the minimum necessary period of time, is etched deep into international human rights standards. In particular, the UNCRC provides that the arrest, detention or imprisonment of a child or young person shall be used only as a measure of last resort and for the shortest appropriate period of time and, that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner that takes into account the needs of persons of his or her age.

The human rights directives to avoid the application of penal detention in youth justice are totally congruent with the evidence base. As stated elsewhere (in concluding a detailed analysis of the available evidence):

'penal institutions reliably and persistently fail to meet the needs of child prisoners, [to] prevent (or even reduce) youth crime and/or offer best value for public money... child imprisonment typically comprises a harmful, ineffective and expensive response to children in trouble' (Goldson, 2015: 184).

Penal detention is also a spectacularly ineffective intervention when measured in terms of recidivism. At the time of writing, the most up-to-date statistics available reveal that over two-thirds (68 per cent) of children released from the juvenile secure estate were proven to have committed further offences within a year (Ministry of Justice, 2019).

2.3 Monitoring compliance

Doob and Tonry (2004: 3) refer to the 'contrasts between law in books and law in action' and remind us that 'the distinction between law as it is written and law as it is administered... is crucial in understanding a youth justice system' (ibid: 17). The same principle can be applied to international human rights standards and, on close inspection, translational discrepancies are not uncommon between the standards as they are 'written' and the operational realities of youth justice policies and practices as they are 'administered'.

Fortin (2008: 60) has observed that although the UNCRC has been ratified in the UK, it has 'not been made part of domestic law' and, as such, it ultimately remains 'unincorporated'. What this means in practice is that although the government and, in this case youth justice agencies, are morally obliged to implement the provisions of the UNCRC and related international human rights standards, they are not legally compelled to do so. In short, strictly speaking the standards are not legally binding and, in this sense, they might be deemed to 'lack teeth' (ibid: 60). In reality, this has meant that the *potentialities* of the international human rights standards to drive a human rights-compliant and effective youth justice have, to-date, been compromised by a range of implementational *limitations* (Goldson and Kilkelly, 2013).

The United Nations Committee on the Rights of the Child is the key body with responsibility for monitoring compliance with the UNCRC and related international human rights standards, by periodically investigating the degree to which each 'State Party' (country) is implementing and observing them within the corpora of law, policy and practice. Two years

after a State Party ratifies the UNCRC and, after that at five yearly intervals, it is obliged to submit a report to the United Nations Committee outlining how it is applying the Convention. The Committee is then responsible for investigating the State Party's compliance with international human rights standards and the degree to which children are treated in accordance with the spirit, if not the word, of the UNCRC. The Committee then publishes a report containing its 'concluding observations' and recommendations.

The United Nations Committee has published reports in relation to compliance with the UNCRC and related international human rights standards in the UK on four occasions (United Nations Committee on the Rights of the Child, 1995; 2002; 2008; 2016). On each occasion it has raised serious concerns pertaining to perceived deficits in implementing human rights standards in the youth justice sphere. In particular, the Committee has expressed its disquiet regarding the following:

- the low minimum age of criminal responsibility;
- the abolition of the principle of *doli incapax*;
- the excessive numbers of children in the youth justice system;
- the implementation of Secure Training Centres;
- the over-use of custody;
- the conditions that children experience in penal detention; and
- evidence of discriminatory practices (for a detailed discussion see Cunneen et al, 2018).

3. Conclusion

The Youth Justice Board Strategic Plan for the period 2018-2021 specifies four core aims for the youth justice system:

- to reduce the number of children in the system;
- to reduce reoffending;
- to improve the safety and wellbeing of children in the system; and
- to improve outcomes (Youth Justice Board, 2018: 8).

Furthermore, the new 'National Standards' for the youth justice system aim to 'align with the YJBs "child first offender second" principle' (Ministry of Justice and Youth Justice Board, 2019: 3).

An obvious way to realise such aims is to purposefully apply the provisions found within international human rights standards and to develop corresponding policies and practices that are evidence-based. Going forward, the extent to which Youth Offending Teams comply with this objective will be of interest to Her Majesty's Inspectorate of Probation. As part of their standards framework, attention is given to whether evidence is being used effectively by youth offending services to drive improvement.

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