



DEFENSA DE NIÑAS Y NIÑOS INTERNACIONAL DNI  
DEFENSE DES ENFANTS INTERNATIONAL DEI  
DEFENCE FOR CHILDREN INTERNATIONAL DCI

# **49<sup>th</sup> session of the UN Committee on the Rights of the Child**

## **Information Notes on Juvenile Justice related issues**

Defence for Children International  
October 2008



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## FOREWORD

The Committee on the Rights of the Child is the UN body responsible for monitoring the implementation, by States Parties, of the Convention on the Rights of the Child, as well as its two optional protocols, namely: the optional protocol on the involvement of children in armed conflict and the optional protocol on the sale of children, child prostitution and child pornography.

Every year, the Committee on the Rights of the Child holds three sessions in January, May-June and September.

States Parties are expected to submit reports to the Committee on the implementation of the Convention. The reporting cycle is as follows: 2 years after ratification, a State Party has to submit an initial report. After this initial report, additional reports are due every five years.

After reviewing the reports submitted by States Parties, the members of the Committee on the Rights of the Child address their concerns and recommendations in the form of concluding observations.

The 49<sup>th</sup> session was held in Geneva from September 15<sup>th</sup> to October 3<sup>rd</sup>, 2008. During the three-week session, the Committee on the Rights of the Child considered reports on how the Convention on the Rights of the Child is being implemented in each of the following States Parties: Bhutan, Djibouti, and the United Kingdom of Great Britain and Northern Ireland. Under the optional protocol on the sale of children, child prostitution and child pornography, members of the Committee reviewed the reports of Austria, Lithuania, Tanzania and Uganda. Under the optional protocol on the involvement of children in armed conflict, the Committee on the Rights of the Child considered the reports of Tanzania, Uganda, and of the United Kingdom of Great Britain and Northern Ireland.

As on previous occasions, the International Secretariat of Defence for Children International attended the sessions of the Committee on the Rights of the Child in order to follow the presentation of country reports from Bhutan, Djibouti, and the United Kingdom of Great Britain and Northern Ireland.

Defence for Children International is pleased to present the following information notes on issues concerning juvenile justice. These notes are intended to provide the reader with relevant information on the state of juvenile justice in the countries under review, in a clear and concise manner.

Geneva, October 2008



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## INFORMATION NOTE

### 2<sup>nd</sup> periodic report of Bhutan during the 49<sup>th</sup> session of the United Nations Committee on the Rights of the Child

#### Summary of juvenile justice related issues

**Ratification of the Convention on the Rights of the Child by Bhutan:** August 1<sup>st</sup>, 1990

**Previous report presented in:** June 2001 (27<sup>th</sup> session of the Committee on the Rights of the Child).

#### 1. COUNTRY PROFILE:

Bhutan has an area of approximately 46'500 km<sup>2</sup>, and the terrain is among the most rugged and mountainous in the world, as much of the country lies within the Himalayas.

Bhutan is a one of the newest democracies in the world. Since 2001 it has adopted significant measures in the field of child rights, particularly on legislation relating to children. Bhutan's first Constitution, the overarching legal framework was adopted on 18 July 2008, wherein 3 out of 35 articles relate to children's rights.

23% of the population lives in poverty, most of them being children. Almost ¼ of the annual budget is allocated to health and education.

The Government continues to place top priority on human development and capacity building and the protection and preservation of the environment.

#### 2. JUVENILE JUSTICE KEY ISSUES IN BHUTAN

##### 2.1. ISSUE BY ISSUE:

###### I) Legislation:

**Current situation:** Child related issues have been included in the Penal Code (2004) and the Civil and Criminal Procedure Code (2001). The draft Juvenile Justice Act has been amended as a draft Child Care and Protection Act, which is expected to be tabled for discussion by the National Assembly at the end of 2008. The act is developed to institute a comprehensive child justice system and to address remaining gaps.

The Committee appreciated these positive efforts to align legislation and administrative practices with the provisions and principles of the Convention on the Rights of the Child (CRC).

###### II) Minimum age of criminal responsibility:

**Issues of concern:** The Committee is concerned that the minimum age for criminal responsibility is 10 years. The Bhutanese delegation said that there had been a request to raise the minimum age from 10 to 13 years in 2001. However, due to national



restraints, it had not been possible to table it to the parliament, and the question would now be tabled as a package with the Child Care and Protection Act.

### III) Number of children and length of detention:

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### IV) Trial conditions:

**Issues of concern:** Several questions or comments were made by the Committee concerning the issue of children being heard in courts and the fact that despite the existence of many provisions, adequate means are still absent in practice.

The Committee also asked if specific courts for juveniles are planned for the future. This question was not answered by the delegation.

### V) Detention conditions

#### a) In general (condition in detention centres):

- **Issues of concern:** The Committee asked if there are plans for the abolishment of corporal punishment in correctional institutions and in detention in general, and if there is legislation planned. This question was not answered by the delegation.

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#### b) Pre-trial detention:

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#### c) Separation from adults:

**Issues of concern:** A Committee member asked if children are also separated from adults in “normal facilities”, as is the case in youth detention facilities.

This question was not answered by the delegation.

### VI) Alternative measures:

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### VII) Re-adaptation / reinsertion of children:

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### VIII) Training of professionals:

**Current situation:** A series of training workshops, consultations, and advocacy campaigns, has proved to be particularly effective in promoting greater awareness of the Convention. Such initiatives have involved the judiciary, law enforcement officials, the education system, monastic institutions, the media, and individual parents. Trainings on Child and Women friendly justice systems are being planned.

**Issues of concern:** There is a need to continue strengthening the skills of police and judiciary officials in dealing with victims of violence and developing child-friendly procedures.



### 3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:

- Expedite the adoption of the Child Care and Protection Act
- Ensure that a system of juvenile justice is fully integrated into legislation and practice, in particular articles 37, 39 and 40, as well as other relevant international standards in this area
- Raise the minimum age of criminal responsibility in accordance with the CRC's General Comment N. 10.
- Ensure that deprivation of liberty is used only as a measure of last resort, for the shortest period of time, is expressly authorised by a court, and that juveniles are separated from adults during such deprivation
- Provide children, both victims and accused, with adequate legal assistance throughout the legal proceedings
- Ensure that children have the free assistance of an interpreter if the child cannot understand or speak the language used
- Conduct training programmes on relevant international standards for all professionals involved with the system of juvenile justice
- Be guided in this respect by the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime
- Seek technical assistance and other cooperation from the UN Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.

#### Sources:

- United Nations Committee on the Rights of the Child. 2<sup>nd</sup>/3<sup>rd</sup> periodic reports of *Bhutan* (State reports).
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the 2<sup>nd</sup>/3<sup>rd</sup> periodic report of *Bhutan*.
- United Nations Committee on the Rights of the Child. List of Issues and Written Replies by *Bhutan*.
- Opening Statement of H.E. Lyonpo Thakur S. Powdyel, Minister of Education, Leader of the Delegation of *Bhutan*.

### 5. ANNEX:

#### 5.1. CRC members present

Mrs. Aidoo, Ms. Al-Thani, Ms. Aluoch, Mr. Citarella, Mr. Filali, Ms. Herczog (co-rapporteur), Ms. Khattab, Mr. Kotrane, Mr. Krappmann, Mrs. Lee (Chair), Ms. Ortiz, Mr. Parfitt, Mr. Pollar, Mr. Puras, Mr. Siddiqui, Ms. Smith, Mrs. Vuckovic-Sahovic, Mr. Zermatten



## 5.2. Composition of country delegation

H.E. Lyonpo Thakur S. Powdyel (Hon'ble Minister of Education, Leader of the Delegation), H.E. Ambassador Sonam T. Rabgye (Permanent Representative, Permanent Mission of Bhutan to the UN and other International Organizations, Geneva), Mr. Pema Wangda (Director General, Department of Labour, Ministry of Labour and Human Resources, Thimphu), Ms. Doma Tshering (Deputy Permanent Representative, Permanent Mission of Bhutan to the UN and other International Organizations, Geneva), Mr. Sonam Tobgay (Head, Policy Planning Division, Ministry of Foreign Affairs, Thimphu), Mr. Pema Rinzin (Head, Legal Services Division, Office of the Attorney General, Thimphu), Mr. Phuntsho Norbu (Second Secretary, Permanent Mission of Bhutan to the UN and Other International Organizations, Geneva), Dr. Rinchen Chopel (Ex.Dir., National Commission for Women and Children (NCWC), Thimphu), Ms. Chhoek Penjore (Programme Officer, NCWC, Thimphu), Mrs. Yandey Penjore (Ex.Dir., Youth Development Fund, Thimphu).



## INFORMATION NOTE

### Second periodic report of Djibouti during the 49th session of the United Nations Committee on the Rights of the Child

#### Summary of juvenile justice related issues

**Ratification of the Convention on the Rights of the Child by Djibouti:** August 1<sup>st</sup>, 1990

**Previous report presented in:** 1998

## 1. COUNTRY PROFILE

Djibouti's location is the main economic asset of a country that is mostly barren. The capital, Djibouti city, handles Ethiopian imports and exports. The population is roughly 833,000 and the major religion is Islam.

Over the past few years Djibouti has done much to further improve on conditions in accordance with the CRC however much is still needed to be done.

In addition to the country's efforts to improve on juvenile justice issues, many efforts have been made for health and benefits of the child. These are improvements in sanitation of drinking water, education of health, education of street children. Birth registration has improved, female genital mutilation has decreased, malnutrition has been cut, and parent to child HIV has decreased.

## 2. JUVENILE JUSTICE KEY ISSUES IN DJIBOUTI

### 2.1. ISSUE BY ISSUE:

#### I) Legislation:

**Current Situation:** The promulgation of the Family Code has helped strengthen the rights of the child and the rights of women. When a child between the ages of 13-18 commits the same crime as an adult, their prison sentence is cut in half. Prison is considered a last resort.

#### II) Minimum age of criminal responsibility:

**Current Situation:** The minimal age of criminal responsibility in Djibouti is 13.

#### III) Number of children and length of detention:

**Current Situation:** Of a prison of 800, about 3 are minors between the ages of 16-18.



**Issues of concern:** By the age of 13 a child can be kept in prison for up to 10 years.

#### **IV) Trial conditions:**

**Current Situation:** There is no separate court for minors. Children are tried in the same court as adults. In the case of criminal proceedings, the court will appoint a lawyer to the child. In other cases the parents, or the child, is responsible for legal assistance.

The Committee asked if there were specific provisions that have to be followed when pertaining to a juvenile, or if this is left entirely to a judge. The delegation replied that, since a specific juvenile court is not available, most decisions come from the judge. It is the same as any criminal procedure. The sentences are determined by a penal code that says that the penalty must be reduced by half.

**Issues of concern:** The government stated that it is infeasible to develop a juvenile justice court in Djibouti with such a low number of juvenile crimes, so children are tried just as adults would be. However, there are some favourable conditions where a child's protection is top priority, and he or she will be given assistance and will be monitored during the time of trial.

#### **V) Detention conditions**

##### **a) In general (condition in detention centres):**

**Current Situation:** Children have more favourable prison conditions than adults. If the child has been attending school the law provides for him/her to receive schooling in prison. The monitored education centre has been built with national funds. Also prison surveillance has been set up so that the child can be monitored and staff may be made aware of the child's special needs. The health and well-being of the child has come to the forefront of juvenile justice.

**Issues of concern:** Observations on the juvenile justice system of Djibouti stressed that there is no separate court for children. Since there is a low number of child offenders, issues concerning juvenile justice continue to be brushed aside as unimportant.

##### **b) Pre-trial detention:**

**Current Situation:** The law requires that no person can be held over 48 hours without an examination of the formal charge. 6 months is the longest one can be held in detention before trial, although children have their cases processed more quickly. The law provides for bail and expeditious trial.

The Committee asked the delegation if a child had been held in pre-trial detention for more than 6 months. The delegation replied that the code of criminal procedure provides for a special situation. If a child is held under detention it can only be done if by a justified decision. Normally these warrants are not valid for more than 6 months. The aim is always to protect the child.

**Issues of concern:** Although law holds that children not be held for long periods, it is not always enforced by police. Bail can be denied and an individual (including a child) could theoretically be held in detention longer than 6 months. However, there is no record of this happening with a juvenile.



**c) Separation from adults:**

**Current Situation:** Children have their own wing of the prison where they are given special attention to their educational and developmental needs.

**Issues of concern:** The Committee said that they have records of children being detained with adults and asked if this information was true. The delegation replied that, from the information they have, there are no special arrangements made for detained children in this regard.

**VI) Alternative measures:**

**Current Situation:** Often there is a mediator between the victim and the delinquent to facilitate dialogue, healing and reparation. Judges are responsible for this procedure.

**Issues of concern:** There is little legislation that specifically handles juvenile cases, especially concerning mediation between juvenile and victim. The judge maintains responsibility for these matters and judges have discretion over their actions.

**VII) Re-adaptation / reinsertion of children:**

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**VIII) Training of professionals:**

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**IX. Other relevant areas:**

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**3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:**

- The Committee is concerned about the lack of specialised courts for juvenile offenders. The Committee is also concerned that juveniles as young as 13 years old can be detained for long periods of time, that there are no separate facilities to detain children apart from adults and that alternative responses to offences are at the discretionary power of the court;
- The Committee urges the State party to ensure that juvenile justice standards are fully implemented;
- The State party should take all measures to establish a specialised justice system for children;
- The State party should take all necessary steps to ensure that persons working with children in the justice system, juvenile judges, etc. receive appropriate training;
- The State party should take all necessary measures, including the development of a policy of alternative sanctions for juvenile offenders, to ensure that children are held in detention only as a last resort and for as short a time as possible;
- The State party should take all necessary measures to ensure that when detention is carried out, it is done in compliance with the law and respects the rights of the child as set out under the Convention and that children are held separately from



adults both in pre-trial detention and after being sentenced;

- The State party should take all necessary measures to ensure that children are not ill-treated in detention, that conditions in detention facilities are conducive, to the extent possible, to the child's development and that their rights, including visitation rights, are not violated, and that cases involving juveniles are brought to trial as quickly as possible; and
- The State party should seek technical assistance and other cooperation from the United Nations Interagency Panel on Juvenile Justice, which includes UNODC, UNICEF, OHCHR and NGOs.
- Protection of witnesses and victims of crimes: The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that it take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20 of 22 July 2005) and general comment No. 5 (2003) on general measures of implementation of the Convention on the Rights of the Child.

#### **Sources:**

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of Djibouti
- United Nations Committee on the Rights of the Child. Initial report and 2<sup>nd</sup>/3<sup>rd</sup> periodic reports of Djibouti (State reports).
- Djibouti NGOs' Working Group 'on Protection of Children Rights', (Alternative report

#### **5. ANNEX:**

##### **5.3. CRC members present**

Mrs. Aidoo, Ms. Al-Thani, Ms. Aluoch, Mr. Citarella, Mr. Filali, Ms. Herczog (co-rapporteur), Ms. Khattab, Mr. Kotrane, Mr. Krappmann, Mrs. Lee (Chair), Ms. Ortiz, Mr. Parfitt, Mr. Pollar, Mr. Puras, Mr. Siddiqui, Ms. Smith, Mrs. Vuckovic-Sahovic, Mr. Zermatten

##### **5.4. Composition of country delegation**

Head of delegation: Ms. Nimo Boulhan Houssein (Deputy Minister in charge of the promotion of Women, family well-being and social affairs);

Ms. Halo Aboubaker Houmed (Director of the Promotion of Women at the Ministry of the promotion of Women); Mr. Abdi Ismael Hersi (General Secretary of the Ministry of Justice); Mr. Ahmed Osman Hachi (Director of Legislation at the Ministry of



Justice); Mr. Mahdi Hamud Isse (Executive Secretary at the Ministry of Education);  
Ms. Mako Mahamoud Ali (Head of Service at the Ministry of Health); Ms Fathia Omar  
(Representative of UNICEF).



## INFORMATION NOTE

**3<sup>rd</sup> and 4<sup>th</sup> periodic report of United Kingdom of Great Britain and Northern Ireland**  
**during the 49<sup>th</sup> session of the United Nations Committee on the Rights of the Child**  
**Summary of juvenile justice related issues**

**Ratification of the Convention on the Rights of the Child UK:** December 16<sup>th</sup>, 1991

**Previous report presented in:** 1999

### 1. COUNTRY PROFILE :

The United Kingdom (UK) comprises England, Wales, Scotland and Northern Ireland. Scotland and Northern Ireland have separate legal systems from that of England and Wales, but similar statute and common law principles are applied throughout the UK. The UK also has 14 overseas Territories and Crown Dependencies spread across the globe, over which it has sovereignty but which are not formally considered part of the UK.

In his introductory words, the Head of delegation said that all four nations in the United Kingdom have developed – and have been implementing – far-reaching, long-term strategies to deliver improved outcomes. The Children’s Plan for England, published at the end of 2007, has built on the extensive reforms undertaken to improve children’s outcomes through the Every Child Matters programme and is explicitly aligned with the articles of the Convention. Similar plans have been developed in the devolved administrations. Other accomplishments include the creation of a Secretary of State for Children, Schools and Families, the first such Cabinet-level appointment, with similar arrangements put into place in Wales, Scotland, and Northern Ireland, and the recent development of the Children’s Commissioners.

### 2. JUVENILE JUSTICE KEY ISSUES IN UK

#### 2.1. ISSUE BY ISSUE:

##### I) Legislation:

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##### II) Minimum age of criminal responsibility:

**Current Situation:** The Crime and disorder Act 1998 (covering England and Wales) abolished the doctrine of “doli incapax” for children aged 10-14 (previously, a child aged 10-14 could be convicted of a criminal offence, but the prosecution had to prove



that the child had to know that what he or she was doing was seriously wrong).

A number of measures, such as the new out-of-court disposal, called the Youth Restorative Disposal, enable children to apologise for their behaviour at a young age. In addition, the Youth Conditional Caution is a means of dealing with bad behaviour short of bringing children into criminal proceedings, as part of a holistic and supportive approach.

**Issues of concern:** The age of criminal responsibility in England, Wales and Northern Ireland is 10. In Scotland it is 8. Committee members raised concerns about this reality and asked that the MACR be raised. Also, discrepancies in the minimum age of criminal responsibility in the four nations might be considered discriminatory. The delegation said that there is no commonly accepted age of criminal responsibility. In England, it is considered that a child at the age of 10 has the ability to identify poor behaviour, and should take responsibility for such behaviours. Where it is necessary for action to be taken, the aim is to rehabilitate and provide support rather than punish. There are no plans to raise the age of criminal responsibility.

### III) Number of children and length of detention:

**Current Situation:** The total number of children (aged 10-17) sentenced in 2005 was 96'200. 119'000 children (10-17) were given pre-court reprimands or final warnings of which 6'631 were 10 to 11 years old.

In England and Wales, about 200'000 young people receive reprimands, final warning or are found guilty each year. 97% of them are dealt with through community interventions or non-custodial sentences, while 3% (= 6'000) receive custodial sentences.

In Northern Ireland, legislative changes resulted in a large reduction in the number of children held in custody, from 100 to fewer than 30, and for shorter periods (from an average of 9 months in 1996 to current average of 4 months).

**Issues of concern:** The Youth Justice Board is aware that there has been a rise in juvenile remands to custody and in custodial sentences. At the end of January 2007, there were 2'853 under 18s in secure accommodation (Youth Offender Institutions 2'364, Secure Training Centres 269 and Secure Children's Homes 220. There were 2'643 males and 210 females in custody). According to the report, the Youth Justice Board is working to ensure that custodial sentences are only given when no other sentence is appropriate and that courts in all areas follow best practice.

### IV) Trial conditions:

**Current Situation:** In England and Wales, a defendant under 18 cannot be tried as an adult or receive an adult sentence though, in certain circumstances involving serious offences or where co-defendants are adults, may be tried in an adult court. The Youth Court has the power to sentence children aged 12-17 to Detention and Training Orders up to 24 months, as well as to a range of community sentences. Youth Courts are less formal than magistrates' courts and seek fully to engage with the children appearing in court and with their families. Magistrates are trained to engage directly with the child and ensure, so far as is possible and reasonable, that he or she is able to



participate fully in the proceedings. The court is, where possible, arranged to that all involved are on the same level and the child is able to sit with or near their parents (or guardians) and legal representative. Members of the public are not allowed to observe the court hearings. The victim(s) of the crime can attend the hearings of the court, which is required to consider the needs and wished of victims.

In Scotland, the Criminal Procedure (Scotland) Act 1995 provides that no child under than age of 15 should be prosecuted in Court except on the instruction of the Lord Advocate. When a child appears in court, the court retains the power to seek advice from or remit the case to a children's hearing. The Children's Hearings System, rather than the Courts, ordinarily deals with children who offend up to the age of 16. In addition, children who are subject to a supervision requirement when they reach 16 may continue to be dealt with by the Hearings System until age 18.

Concerning the provision of **legal support for children deprived of their liberty**, every child in custody has access to an independent advocacy service.

## V) Detention conditions

### a) In general (condition in detention centres):

#### **Current Situation:**

Secure establishments for children are required to provide a regime of purposeful activity and education, with a particular emphasis on safeguarding and child protection. Initiatives for children in custody continue to be developed to address offending behaviour and minimise the risk of re-offending. The acquisition of numeracy, literacy and vocational skills underpins this work. Since the juvenile estate was set up in April 2000, facilities and regimes for the under 18s have been transformed. The Youth Justice Board has helped to drive up standards, which has in part been achieved by placing a far stronger emphasis on education and training, cognitive behaviour programmes and the development of social skills. The Board for England and Wales continuously monitor the conditions in which young people under 18 are detained in custody. Custodial establishments are regularly inspected by independent statutory bodies.

Some children in custody are at risk of self-harm. The Youth Justice Board has worked with the Prison Service to develop a range of measures to safeguard children in custody. This includes counselling and specialist psychological support and Suicide Prevention Coordinators in all establishments.

**Issues of concern:** Six children have died while in custody since 2002 and such tragic incidents are painstakingly investigated.

Another area of concern is the use of physical restraint. During the country review, CRC members observed that restraint should no longer be allowed. The delegation said that in dealing with children in juvenile custody it is necessary to intervene to protect those children and others around them at times. Restraints are only to be used following a risk assessment and as a means of last resort. There are measures for the monitoring of the use of restraints, through a board and panel which reviews such techniques and provided recommendations. The distraction technique and the double basket hold have been suspended as a technique as a result of those reviews and



recommendations.

**b) Pre-trial detention:**

**Issues of concern:** The Committee raised questions on procedural rules concerning pre-trial detention for minors, including time limits for such detentions and support provided while children were in custody. No answer was provided by the delegation.

**c) Separation from adults:**

**Current Situation:** Since the UK entered a Reservation against Article 27 (c) of the Convention in 1991, considerable progress has been made towards achieving full separation of children in custody from adults. Custodial establishments in England and Wales are now meeting the requirements of Article 27 (c).

In Northern Ireland, only in very exceptional circumstances are children ever accommodated with adults.

**VI) Alternative measures:**

**Current Situation:** When children do offend in England and Wales, where possible, they are dealt with outside the formal court system, often through reprimands and the Final Warning Scheme. During 2004, over half of all young offenders were dealt with outside the formal court system. In suitable cases, children aged 16-17 can be offered a Penalty Notice for Disorder. This means that the matter is dealt with quickly, the child is enabled to understand the consequences of their actions but do not acquire a conviction and linked criminal record. The total number of children (aged 10-17) sentenced in 2005 was 96'200. 119'000 children (10-17) were given pre-court reprimands or final warnings of which 6'631 were 10 to 11 years old. In addition, the Government has greatly strengthened and expanded the range of non-custodial sentencing options available to the courts. These include referral orders which are now the main intervention for young offenders who plead guilty on their first court appearance. Children are referred to a community led panel, which negotiates a contract with them covering reparation and steps to tackle their offending behaviour. Other interventions include the action plan order, a focused three month community sentence, and the reparation order, a court order which requires the young person to make specific reparation to either the individual victim of the crime (where the victim desires this) or to the community.

The Youth Justice Board has also developed the Intensive Supervision and Surveillance Programme (ISSP) to cater for serious and persistent young offenders who might otherwise be at risk of a custodial sentence. The programme consists of highly structured, individual programmes to tackle the causes of offending behaviour and intensive surveillance, consisting of tracking, electronic tagging, voice verification, or intelligence-led policing.

Further, there has been pioneering use of restorative justice, community payback and reparation in the Youth Justice System.

The Children's Hearings System, which has the best interests of children at its centre, is the primary forum for dealing with offending behaviour by children in Scotland. Before referral to the Hearings System is made, consideration should be given to



whether a voluntary or diversionary intervention would be an effective means of improving behaviour. When it is considered appropriate, a Children's Hearing may impose compulsory measures of supervision setting out what a child should do or refrain from doing.

The Police Service of Northern Ireland (PSNI) has, in recent years, developed a specific Strategy for Children and Young People which is based on the premise of Diversion, Education and Consultations.

### **VII) Re-adaptation / reinsertion of children:**

**Current Situation:** Support for young offender in England and Wales, following their departure from custody, is vital to minimise the risk of re-offending. The Youth Justice Board for England and Wales published a Resettlement Framework for action in February 2006, setting out key resettlement pathways, including health, education and substance misuse services, which can reduce re-offending and promote effective re-integration into society.

As part of this framework, an Accommodation Strategy for young offenders ensures that they have suitable and sustainable accommodation (the provision of suitable accommodation can mean a reduction of 20% in re-offending and, in many cases, will ensure that young offenders get access to the mainstream services they require for proper rehabilitation).

### **VIII) Training of professionals:**

**Current Situation:** A question was raised by a Committee member as to whether or not judges are trained in the CRC / Child Rights. The delegation replied that it is their responsibility to keep updated, and that everybody is informed (as a matter of principle).

### **IX. Other relevant areas:**

- **Prevention:** The Government has invested over £100million in prevention since 1997-98. This funding has been for a range of programmes, but much of the spending has been on the Youth Inclusion Programmes (YIP) established in 2000. Prevention of crime is a big part of the government's strategy to tackle crime. YIP give at-risk children somewhere safe to learn new skills, take part in activities, get help with education and receive careers guidance. Another key element of prevention is working with the police (Safer School Partnership programme - schools and police collaborate together with school staff and local agencies to reduce victimisation, criminality and anti-social behaviour within the school and its community and support vulnerable children in periods of transition such as the move from primary to secondary school. Working with parents and carers is vital to the youth justice system's approach to preventing child offending. Each year Youth Offending Teams facilitate parenting interventions with over 11'000 young people.



## 2.2. TRANSVERSAL PROBLEMS / OBSTACLES:

- During the country review, a committee member raised concerns about the **lack of harmonization of the 4 juvenile justice systems** in the UK: while it is rather punitive in England and Wales, it is more restorative in Northern Ireland and more directed towards child welfare in Scotland.
- **Anti-social behaviour orders:** In England and Wales, “Anti-social behaviour orders” (ASBOs) have been introduced by the Crime and Disorder Act 1998. They are civil court orders which prohibit someone from engaging in specific anti-social behaviours. They can be used against anyone who is 10 years old or older (over 12 years old in Scotland) who has behaved in a manner that caused or was likely to cause harassment, alarm or distress to someone or some people who do not live in their own household. They can be issued for offences which are not criminal acts in and of themselves – however if not adhered to, they can have penal consequences.

This fact was a matter of concern for Committee members. Questions were raised to know whether they contribute to early criminalisation of children; on whether there are legal judicial guarantees for children; and to know if children have the right to express their opinions when an Anti-Social Behaviour Order is read out. An Expert was concerned that the Anti-Social Behaviour Orders were an overly punitive regulation and out of proportion with the situation it sought to address

- **Status of 17 year olds for the purpose of remand:** At present, 17 years old are treated as adults for court and police bail and remand purposes and they do not benefit from the youth court options and criteria. They are treated as children for sentencing purposes.
- **DNA retention** for children in conflict with the law: A Committee member raised concerns about the retention of DNA of children in conflict with the law.
- **Counter terrorism bill:** a Committee member observed that this bill contains very harsh rules about detention that are also applicable to children from 10 years.
- Another concern of the Committee was that, in England and Wales, the **use of ultrasound devices** to disperse groups of children (the devices emitted high pitched sounds that only children could hear), and this had been left to police discretion, which further infringed on children’s right to freedom of association.
- An Expert was also concerned that a high number of children from the care system ended up in the criminal justice system, and wondered why that was so and what preventive measures were envisaged.
- **Privacy protection:** in England and Wales, it is prohibited to publish any information which is likely to identify a person while they are under the age of 18, as being involved in an offence (including the perpetrator, a victim or a witness to the offence) while the criminal investigation is ongoing.



### 3. MAIN CONCLUSIONS AND RECOMMENDATIONS BY THE COMMITTEE:

The Committee is **concerned** that:

- the age of criminal responsibility is set at 8 years in Scotland and at 10 years for England, Wales and Northern Ireland;
- there are still cases where children, notably those aged between 16 and 18, can be tried in an adult court, including in the Overseas Territories of Antigua, Montserrat, Bermuda as well as on the Crown Dependency of the Isle of Man;
- 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;
- there is the practice, in the Overseas Territories, of holding persons below 18 in conflict with the law in the same places of deprivation of liberty for adults;
- the recently published Youth Crime Action Plan (July 2008) includes a proposal to remove reporting restrictions for 16 and 17 year-olds facing criminal proceedings “to improve the transparency of the youth justice system”;
- the provisions of the Counter-Terrorism Bill also apply to children suspected or charged with terrorism offences; in particular the Committee is concerned at the provisions for extended pre-charge detention and notification requirements;
- children deprived of liberty in Turks and Caicos, may end up in detention in Jamaica, due to the lack of detention facilities for children.

The Committee **recommends** that the State party fully implement international standards of juvenile justice. It also recommends that the State party:

- raise the minimum age of criminal responsibility in accordance with the Committee’s General Comment n° 10, and notably its paragraphs 32 and 33;
- develop a broad range of alternative measures to detention for children in conflict with the law; and establish the principle that detention should be used as a measure of last resort and for the shortest period of time as a statutory principle;
- children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts, irrespective of the gravity of the crime they are charged with;
- following the welcomed withdrawal of its reservation to article 37(c) of the Convention, ensure that, unless in his or her best interests, every child deprived of liberty is separated from adults in all places of deprivation of liberty;
- provide for a statutory right to education for all children deprived of their liberty;
- review the application of the Counter Terrorism Bill to children;
- ensure that, when children in the Overseas Territories are subject to deprivation of liberty in another country, all the guarantees enshrined in article 40 of the Convention are respected and that this respect is duly monitored; the State party should also ensure that those children have the right, unless it is considered in the child best interest not to do so, to maintain contact with their family through regular visits;
- adopt appropriate measures to protect the rights and interests of child victims or witnesses of crime at all stages of the criminal justice process.



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:

- 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;
- 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;
- that most children subject to them are from disadvantaged backgrounds.

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

#### **Sources:**

- United Nations Convention on the Rights of the Child
- United Nations Committee on the Rights of the Child. Concluding observations and recommendations to the Initial report of United Kingdom of Great Britain and Northern Ireland.
- United Nations Committee on the Rights of the Child. Initial report and 2<sup>nd</sup>/3<sup>rd</sup> periodic reports of United Kingdom of Great Britain and Northern Ireland (State reports).
- United Nation's "News and Media" section of the OHCHR website: news on "COMMITTEE ON RIGHTS OF CHILD CONSIDERS REPORT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND" (24 September 2008)

#### **5. ANNEX:**

##### **5.5. CRC members present**

Mrs. Aidoo, Ms. Al-Thani, Ms. Aluoch, Mr. Citarella, Mr. Filali, Ms. Herczog, Ms. Khattab, Mr. Kotrane, Mr. Krappmann, Mrs. Lee, Ms. Ortiz, Mr. Parfitt, Mr. Pollar, Mr. Puras, Mr. Siddiqui, Ms. Smith (country rapporteur), Mrs. Vuckovic-Sahovic, Mr. Zermatten.

##### **5.6. Composition of country delegation**

Head of Delegation: Tom Jeffery (Director General for Children and Families, Department for Children Schools and Families DCSF)

Tommy Sanmoogam (Desk Officer, Foreign and Commonwealth Office); Susan Dickson (Legal Counsellor, Foreign and Commonwealth Office); Helen Williams (Director of Curriculum and Pupil Wellbeing Group, DCSF); James Robson (DCSF); Sandra Walker (Deputy Director Legal Advisers Office, DCSF); Christine Stewart (Director of Law and Sentencing Policy, Ministry of Justice, MoJ); Anne Jackson (Director of Child Wellbeing Group DCSF); Jeanette Pugh (Director of Safeguarding Group DCSF); Shelia Scales (Director of Early Years, Extended Schools and Special



Needs Group DCSF); Shirley Trundle (Director of Families Group DCSF); Ella Joseph (Support, DCSF); Anne Mason (Support, DCSF); Shamsuz Oppenheim (Director of Organisational Design and Development and Children's Champion, UK Border Agency UKBA); Katerine Carr (UKBA); Colin MacLean (Director of Schools, Scottish Executive); Suzanne Chisholm (Head of Children and Young People's Rights and Entitlements, Welsh Assembly Government); Ian Butler (Specialist Policy Adviser to Cabinet Committee for Children and Young People, Welsh Assembly Government); Keith Ingham (Director of Children's Health & Social Services, Welsh Assembly Government); Paul Martin (Chief Social Services Officer - Department of Health, Social Services and Public Safety, Northern Ireland); Tony Kavanagh (Head of Youth Justice Policy Unit, Northern Ireland Office); Eddie Rooney (Director of Equality - Office of the First Minister and Deputy First Minister, Northern Ireland); Kit Wyeth (Head of Children's Rights, Scottish Executive); Col Nick Orr (Deputy Director Service Conditions, Directorate of Service Conditions, MOD); Eileen Viviani (Assistant Director of Policy and Strategy, Directorate of Training and Education, MOD); Kat Will (MOD); Andrew McCully (Director of Supporting Children and Young People Group, DCSF); Andrew Baxter (DCSF); Victoria Challacombe (Desk Officer, Foreign and Commonwealth Office); Kate Jones (Legal Adviser).