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# Children in Prison

An independent submission to United Nations Committee on the Rights of the Child

the **Howard League** for **Penal Reform**

## Introduction

- The Howard League for Penal Reform is the leading non-governmental organisation in England and Wales concerned with penal issues and policy. In 1947 we became one of the first non-governmental organisations to be granted consultative status with the United Nations. We have many years experience of monitoring the application of international treaties ratified by the UK government.

The Howard League for Penal Reform has contributed to the NGO coalition report to the United Nations Committee on the Rights of the Child. This additional report draws on our expertise with regard to children in the criminal justice system and specific children in conflict with the law.

The evidence in this report focuses on the situation with regard to children in the penal system in England and Wales.

## General measures of implementation

The Howard League for Penal Reform welcomes the concluding observations of the United Nations Committee on the Rights of the Child in 1995 and 2002.

We note with concern that the Committee raised particular issues regarding the UK government's lack of compliance with the United Nations Convention on the Rights of the Child in policy and practice responses to children in conflict with the law.

Our submission shows that since 2002, the situation has deteriorated in key and significant ways and this will form the substance of this report.

### Article 1: Definition of the child

The definition of a child in the juvenile justice system in England and Wales departs significantly from the spirit and meaning of the United Nations Convention on the Rights of the Child.

- Children are considered fully culpable for offences at the age of 10
- There are provisions in statute for the routine imprisonment of children as young as 12 years old, who are detained in privately owned and managed penal facilities
- 17 year old children are treated as adults under the Police and Criminal Evidence Act 1984 and for the purposes of remand

The Howard League for Penal Reform recommends that the age of criminal responsibility be raised to 16. The criminal justice and youth justice systems should only deal with children over the age of 16. In such cases the child's welfare should be a primary consideration.

## General principles

### Article 3: Best interests of the child

The Howard League for Penal Reform submits that the principle of primary consideration for the best interests of the child is not reflected in the UK's criminal justice legislation and policies, and this particularly applies in England and Wales.

- During 2006, the average population of children in penal custody in England and Wales was 2,904. On 20 April 2007 there were 2,955 children in penal custody. The majority (83%) are routinely held in prison service accommodation, referred to as young offender institutions (YOIs); two of which are privately managed. Around 9% are held in privately managed secure training centres (STCs) and 8% are held in local authority secure children's homes (LASCHs). The Howard League for Penal Reform believes that children should not be held in YOIs or STCs.
- Prisons are institutions designed for security rather than care. The Howard League for Penal Reform (2002) found that the basic structure of a prison, such as the size of units and low levels of staffing mitigates against delivering child-centred care. The staff child ratio in prisons ranges from three to six staff to between 40 and 60 children. The Howard League for Penal Reform was informed that boys at Feltham YOI were not allowed outside because of security considerations.
- There is a lack of training for staff working with children in prison and the only compulsory component of prison officer training is physical control and restraint. Her majesty's inspectorate of prisons (2006) stated that the training was not adequate to equip staff with the skills and expertise to manage challenging adolescent behaviour. The Howard League for Penal Reform (2006) suggested that compulsory training should focus on children's human rights, communicating positively with children and child protection.
- An independent inquiry commissioned by the Howard League for Penal Reform (ibid) found that some of the treatment experienced by children in prisons and secure training centres would, in any other setting, be considered abusive and trigger a child protection investigation, and could be unlawful. One example cited by the inquiry was the use of methods of restraint that deliberately inflict pain on children. Between November 2005 and October 2006, pain compliant methods of restraint were used 3,732 times on boys in prisons and 3,036 times on boys and girls in STCs (HL Deb, Col WA178, 11 Dec 2006 and HL Deb, Col WA260, 18 Dec 2006).
- Children are subject to adult rules and procedures in prison. For example, strip-searching is standard practice when children are first received into prison. Children are also liable to be strip-searched on discharge from prison, following a room search or after a visit. Between January 2005 and October 2006, a total of 6,832 strip-searches were carried out on boys at Huntercombe YOI, which holds up to 368 boys (HC Deb, Col 416W, 27 Nov 2006).
- Vulnerable children are being placed in prison custody. The Howard League for Penal Reform obtained figures from the Youth Justice Board (YJB), which showed that during the period April 2004 to March 2005, 3,370 children who had been assessed as vulnerable by the YJB were nevertheless placed in prison.

In November 2002, the Howard League for Penal Reform was successful in bringing a judicial review against the Home Office to ensure that the Children Act 1989 applied to children in prison (*The Queen (on the application of the Howard League) v Secretary of State for the Home Department and the Department of Health [2002]*). As a result of the judgment, local authorities retained their statutory duties to safeguard the welfare of children even if they are in custody. Prison Service Order 4950 relating to children in prisons was re-written to reflect the change in the law and the Youth Justice Board placed social workers in YOIs to oversee the protection of children.

Nonetheless, the Howard League for Penal Reform remains particularly concerned about the treatment and conditions for children held in prison service accommodation. We consider that children continue to be at risk of bullying, assault and self-injury in prison and should not be held there.

### Article 6: Right to life

- Since January 2002, 6 children have died in penal custody. This includes 4 children in prison and 2 children in private secure training centres. The youngest child to die was 14 years old and hanged himself in a private secure training centre. One child died following restraint by staff, again in one of the private centres.
- The Howard League for Penal Reform has legally represented children who self-harm in prison. We have evidence that the prison service fails to protect the children in its care and this failure has placed children at risk of death. To this end we have been granted a public inquiry by government (*The Queen (SP) v Secretary of State for the Home Department [2004]*).
- There is no system for fully independent inquiries following the death of a child in penal custody (Goldson and Coles, 2005).
- A study published in the *Lancet* on 15 September 2005 suggested that children in prison are 18 times more likely to commit suicide than children in the community (Fazel, Benning, Danesh, 2005).
- The Howard League for Penal Reform has legally represented vulnerable children leaving custody. We have evidence that local authorities are failing to provide suitable accommodation and support on release, thus placing the child's life at risk.

The Howard League for Penal Reform believes that placing children in prison can increase both the likelihood of self-harm and its severity. Children who are suicidal or self-harming should not be held in prison conditions and denied the care, support and help they need.

### Article 12: Respect for the views of the child

Children in custody only have exceptionally limited access to an independent advocate.

- The Howard League for Penal Reform (2006) found that children in custody are rarely aware of their rights under the law. Even when they are aware of their rights, they encounter difficulties in accessing legal advice in custody.
- Many professionals working with children in custody are either ignorant of children's rights or ignore them.

- In a judicial review brought by the Howard League for Penal Reform (The Queen (K) -v- The Parole Board, [2006], the court held that children must be informed of their right to seek an oral hearing before the parole board and that adult assistance should be offered in formulating and reviewing any written representations, including representations asking for an oral hearing if that appears desirable.
- The consolidated annual report from the National Youth Advocacy Service (NYAS) and VOICE, charities who are contracted to provide advocacy services to children in custody, stated that advocates working in prisons were often unable to include the young person directly in personal discussion or discussions with outside agencies. *“The restricted access to young people can place a severe limitation on the extent and effectiveness of the advocacy service. The quality of contact advocates can have may be very restricted when it is only possible to talk to young people through the grill on the cell door”* (NYAS and VOICE, 2005 unpublished).
- A survey by Her Majesty’s Inspectorate of Prisons and the Youth Justice Board found only a quarter of boys and around a third of girls in YOIs had spoken to an independent advocate since their arrival (Her Majesty’s Inspectorate of Prisons and the Youth Justice Board, 2006).
- Children are not being informed that they have a right to have an independent advocate at adjudications (NYAS and VOICE, 2005).
- The Howard League for Penal Reform (2005) found that children in prison are often concerned that there will be implications if they make a complaint about mistreatment. There is little evidence in the annual reports from NYAS and VOICE that children are making complaints about mistreatment such as injuries following restraint or forcible strip-searching, despite evidence that such practices occur in prisons (HC Deb, Col 416W, 27 Nov 2006 and HC Deb, Col WA56, Jan 8 2007).

## Civil rights and freedoms

### Article 8: Right to family relations

Children in prison are being inhibited from maintaining contact with their families, due to the difficulties of visiting and restricted access to the telephone.

- Children in prison are entitled to two visits every four weeks, plus an additional visit as a ‘privilege’ or if necessary for their welfare or that of their family (The Prison Service, 2000). Prison visits are normally no more than two hours long and take place in crowded visiting rooms with no privacy.
- The Howard League for Penal Reform (2004) found that 50% of girls in one prison were placed more than 50 miles from home, making family visits exceptionally difficult. We also found some children were being denied access to their family as a punishment for breaking prison rules, contrary to YJB policy (The Howard League for Penal Reform, 2005)
- Over 40% of the boys at Ashfield YOI were 100 miles or more from home (Her Majesty’s Inspectorate of Prisons, 2007)
- Only 14% of the boys at Huntercombe YOI and 17% of the boys at Castington YOI were able to use the phone daily to speak to their families (HMIP and YJB, 2006)

### Article 19: Protection from all forms of violence or abuse

Children in custody are in the care of the state, yet they are being subjected to emotional, psychological and/or physical abuse, by staff and/or by other prisoners (Goldson 2006: The Howard League for Penal Reform, 2006).

- 31% of the boys in prison had been insulted or assaulted by other prisoners, 13% reported having experienced physical abuse, 22% had been insulted or assaulted by a member of staff, at Castington YOI, 34% of the boys said they had been insulted or assaulted by staff (HMIP and YJB, 2006).
- Children continue to sustain injuries following the use of pain compliant methods of restraint. Between January 2005 and October 2006, restraint was used on 676 occasions on boys at Huntercombe YOI. On 134 occasions it resulted in injuries to the child. The rate of injury ranged from 5% to 40% (HC Deb, Col 416W, 27 Nov 2006).
- On Monday 19 April 2004, Gareth Myatt, a 15 year old, seven stone boy, less than five feet in height, died after being restrained by officers in the privately run Rainsbrook Secure Training Centre. An inquest is currently hearing this case.

The Howard League for Penal Reform (2006) believes there should be consistent standards of care, rules and conditions across all penal establishments for children. All staff working with children in custody should have training in child protection.

### Article 37: Torture or other cruel, inhuman or degrading treatment

The Howard League for Penal Reform believes that the use of pain compliant methods of restraint, the routine and sometimes forcible strip-searching of children, and the use of solitary confinement for children in custody amounts to inhuman and degrading treatment.

In February 2006, the Howard League for Penal Reform published an independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children’s homes.

Lord Carlile of Berriew, who conducted the independent inquiry with the assistance of an eminent expert advisory group, reported that *“some of the treatment children in custody experience would in any other setting be considered abusive and could trigger a child protection investigation”*. Key recommendations of the inquiry included:

- Mechanical restraints like handcuffs should never be used
- The use of physical interventions must be severely restricted
- Physical force should never be used to secure compliance or as punishment
- Stripping children during searches should end
- Prison segregation units should not be used for children
- Solitary confinement should never be used as a punishment
- The Children’s Minister, not the Home Office, should have overall responsibility for children in the penal system

Since the independent inquiry was published, the Howard League for Penal Reform has seen no evidence that much has been done to improve the treatment of children in penal custody.

Concerns about the use of physical restraint, strip-searching and segregation for children in custody have also been raised by Her Majesty's Chief Inspector of Prisons (HMIP, 2007) and by members of the House of Lords (HL Deb, 29 Jan 2007 and HL Deb, 19 February 2007).

Her Majesty's Chief Inspector of Prisons, Anne Owers, has expressed concern about behaviour management and the over-use of physical control, strip-searching and segregation of children in prison. In her most recent annual report (HMIP, 2007) she raised concerns about the application of adult strip-searching rules on children, forcible strip-searching and high levels of use of force.

The Howard League for Penal Reform has evidence that:

- Methods of restraint that deliberately inflict pain on children are still widely used in prisons and secure training centres.
- Between 2004 and 2006, 27% of the boys and 19% of the girls in prison had been physically restrained by staff (HMIP and YJB, 2006).
- Between November 2005 and October 2006, restraint was used on 1,791 boys and 1,245 girls in the four privately run secure training centres, despite the fact that they only hold 250 children (HC Deb, Col WA 260, 18 Dec 2006).
- Between January 2005 and October 2006 100 boys were forcibly strip-searched under control and restraint while in prison (HC Deb Col WA56, Jan 8 2007 and HC Deb, Col WA108, Jan 10 2007). Her Majesty's Inspectorate of Prisons (2006) was concerned that force was being used on boys who did not agree to a routine strip-search in Huntercombe YOI.
- Between January 2005 and December 2006, 2,010 boys were held in segregation units in five prisons, Ashfield, Lancaster Farms, Warren Hill, Stoke Heath and Thorn Cross. Of these, 521 boys were held there for between 7 and 28 days and 29 boys were held for more than 28 days (HC Deb, Col 1684W, 23 Jan 2007 and HL Deb, Col WA114, 20 April 2007).
- The Howard League for Penal Reform legal team has evidence that children in YOIs spend more than 22 hours a day in isolation in other locations within the prison, such as healthcare, without being formerly segregated.
- Handcuffs were used by staff at the privately run Hassockfield STC and inspectors found one child who had had handcuffs on for five hours (CSCI 2006).
- Inspectors found that physical restraint was used to ensure compliance at Rainsbrook secure training centre and that staff locked children in their rooms as a punishment but failed to record the events (CSCI 2005).

## Basic health and welfare

Article 27: Standard of living adequate to physical, mental, spiritual, moral and social development

Children in custody still have very little access to fresh air and exercise.

- The major independent inquiry led by Lord Carlile of Berriew (2006) found that children in custody had little access to fresh air. Children were also being deprived of physical exercise and outdoor activity and there were few facilities for team sports or games. It concluded that this was a contributory factor to conflict.
- A report by the YJB and Her Majesty's Inspectorate of Prisons found that children were deprived of fresh air: only 26% of boys in prison could go outside for exercise every day. At Brinsford YOI, none of the boys could go outside (HMIP and YJB, 2006).
- Feltham YOI currently has no designated outside exercise area despite having held boys for over a decade. Boys will be offered one hour each day in the open air in Spring 2007, when an outdoor exercise area is due for completion (HL Deb, Col WA208, 19 Feb 2007).
- At Werrington YOI, boys' daily access to fresh air is limited to walking from one prison building to another (HL Deb, WA1767, Wed 18 April 2007).

The Howard League for Penal Reform (2006) stated that every establishment that detains children must have suitable facilities for outdoor exercise, and children should be encouraged to go outside every day and participate in outdoor exercise for at least one hour five times a week.

## Education, leisure and cultural activities

Article 28: Right to education

Children in custody do not have an equal statutory right to education.

- The YJB (2006) has set a secure estate performance indicator for the number of hours of education for children in custody. Children in STCs and LASCHs are entitled to receive 30 hours per week education but children in YOIs are only entitled to receive 25 hours per week.
- Children in YOIs have no entitlement to receive the full national curriculum available to children in state schools (The Howard League for Penal Reform, 2001).
- Some children in YOIs are not receiving education. Only 53% of the boys in Wetherby YOI were in education (HMIP and YJB, 2006)
- The Howard League for Penal Reform found that children placed in segregation were being deprived of education (The Queen (BP) v Secretary of State for the Home Department, 2003).

## Special protection measures

### Article 37: Children deprived of their liberty

The Howard League for Penal Reform believes that the situation of children in conflict with the law has worsened considerably since 2002.

- The deprivation of liberty is not being used as a measure of last resort, and for the shortest period of time
- Conditions for children in prison have not improved and remain a major cause for concern
- Some girls are still being held with adults in prisons

### Article 37: Detention as a last resort

- The Howard League for Penal Reform has found that England and Wales continues to lock up more children than any other country in western Europe (Council of Europe, 2005). There were 2,274 children in prisons in England and Wales compared to 628 children in France, 1,456 children in Germany, 73 children in the Netherlands and 9 children in Norway
- The Chair of the Youth Justice Board stated that twice as many children were locked up as a decade ago, despite the fact that the British Crime Survey recorded a 44% decline in crime and no evidence of an increase in crime committed by children (Guardian, 25 October 2006)

Rod Morgan, the former Chair of the Youth Justice Board, reported that the youth justice system was being 'swamped' by the growth in the number of children and young people in custody, and the substantial increases in the numbers of children and young people being criminalised and/or prosecuted (Morgan 2007).

Children are serving longer sentences. The average length of an immediate custodial sentence for children aged 10-17 at magistrates' court doubled from 3.5 months in 1995 to 6.4 months in 2005. The average length custodial sentence at crown court rose from 17.6 months to 22.1 months in the same period (excluding children serving indeterminate sentences) (Home Office, 2007).

More children are being sentenced to short custodial sentences. The number of children sentenced to a four month detention and training order rose from 2,360 in 2002/03 to 2,603 in 2005/06, an increase of 10 per cent (Youth Justice Board 2003; Youth Justice Board 2006).

The Howard League for Penal Reform has found through its legal work that some children are being remanded to custody because of insufficient community provision, such as suitable accommodation.

Children are being deprived of their liberty for longer than is necessary. The Howard League for Penal Reform (2006) has represented children who have been denied early release and served additional time in custody, solely for want of suitable accommodation in the community.

Prior to April 2005, only children sentenced to four years or more or the very few children given extended sentences were subject to the parole process. Most of them were over the age of 18 by the time their parole application came to be considered.

Since April 2005, the introduction of two new sentences allowing for indeterminate sentences and extended licence provisions under sections 226 and 228 of the Criminal Justice Act 2003, has seen an exponential rise in the number of children subject to the parole process. In July 2006 some 102 children had been sentenced under these provisions. By April 2007, this figure had risen to 133, representing a 30% increase in less than a year. The parole board has not been given any additional resources or guidance to assist them in dealing with this large increase in children.

### Article 37 (c) Children held separate from adults

Following legal challenges by the Howard League for Penal Reform, 17 year old girls are now held in separate units within prisons. However, the Chief Inspector of Prisons, Anne Owers, found that some girls were still mixing with adults in prisons. A 17 year old girl had been placed on an adult wing solely because staff on the juvenile wing were unable to manage her problematic behaviour (HMIP, Eastwood Park prison, March 2006). Girls were also being held alongside adults in the substance misuse unit in Eastwood Park prison and the detoxification unit at New Hall prison (HMIP, 2006).

The government has still not withdrawn its reservation to article 37(c) despite the then home office minister Fiona McTaggart announcing in May 2006 that the government would be considering this (HC Deb, Col 1631W, 3 May 2006).

## Conclusions

The Howard League for Penal Reform concludes that the UK government is not adhering to its obligations under the United Nations Convention on the Rights of the Child, with regard to children in the criminal justice system in England and Wales.

It is flouting article 37 and appears to have paid little or no regard to the concluding observations of the United Nations Committee on the Rights of the Child, published in 2002.

The juvenile justice system in England and Wales has failed to integrate the provisions and principles of the UN convention into legislation, policies or practices, in particular articles 3 and 37.

The deprivation of liberty is not being used as a measure of last resort and for the shortest appropriate period of time in England and Wales. Children are being deprived of their liberty at a younger age, for lesser offences and for longer.

Pain compliant restraint techniques continue to be widely used on children in penal custody. Children continue to sustain injuries following the use of control and restraint. One child has died after being restrained by staff. Children in prison continue to be placed in solitary confinement.

The Howard League for Penal Reform believes that the UK government needs to develop a coherent and co-ordinated policy towards all children, including those in the penal system. Overall policies and responsibilities for children should rest with the children's minister, who should be a secretary of state. Proper resources should be allocated to work with children who have infringed the law.

With regard to children in the penal system, immediate priorities must include raising the age of criminal responsibility to 16; reducing the numbers of children in penal custody; an end to the use of Prison Service custody for children and closing the privately run secure training centres.

There are only a small number of children whose offences are so serious that they require custody and local authority secure accommodation should be the only form of custody for young people, and should only be used as a last resort in order to protect the public.

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the Howard League for Penal Reform

1 Ardleigh Road  
London  
N1 4HS

**Tel** 0207 249 7373

**Fax** 0207 249 7788

**Email** [info@howardleague.org](mailto:info@howardleague.org)

[www.howardleague.org](http://www.howardleague.org)

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[barbed@howardleague.org](mailto:barbed@howardleague.org)

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