

Chapter 1

Children's Rights

The Effective Implementation of Rights-based Standards

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Introduction

This chapter illustrates how children's rights continue to be breached in the UK despite ratification of the *United Nations Convention on the Rights of the Child* (UNCRC) on 16 December 1991. The views and experiences of young people involved with Include Youth – a non-government organisation (NGO) working to promote and protect the rights of children in conflict with the law in Northern Ireland – provide evidence of the impacts of structural inequalities and how these limit realisation of their rights for some of the most 'vulnerable' and 'disadvantaged' children and young people in this UK jurisdiction. The chapter concludes with an outline of the legal, ideological and political changes required for more effective implementation of rights-based standards.

UNCRC general principles

In 1989 the UNCRC established children (under-18s) as 'rights-holders' in every aspect of their lives. According to the UNCRC Preamble, signatories to the Convention affirm the principles agreed by the United Nations in various Charters, Declarations, Covenants and Rules. These include: recognising the 'equal and inalienable rights of all members of the human family' without distinction of any kind, as well as 'the dignity and worth of the human person'; acknowledging children's entitlement to 'special care and assistance' and that every

child 'should be fully prepared to live an individual life in society... brought up in the spirit...of peace, dignity, tolerance, freedom, equality and solidarity'; recognising that, 'in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration'; and affording the family 'the necessary protection and assistance' to 'fully assume its responsibilities within the community' (UN General Assembly 1989, p.1).

The UNCRC is 'the most comprehensive, legally binding document on the treatment of children' (Kilkelly 2008, p.188). An 'easily understood advocacy tool', it 'promotes children's welfare as an issue of justice rather than one of charity' (Veerman 1992, p.184). UNCRC Articles provide 'a directional framework' for institutionally based policies and practices, 'recognising the role of the state in supporting families and carers in the development, socialisation and welfare of children' (Scruton and Haydon 2002, p.313). The UNCRC outlines general principles that should underpin policy and practice: guaranteeing rights to each child 'without discrimination of any kind' (Article 2); ensuring 'the best interests of the child' are a primary consideration in all actions concerning children (Article 3); recognising every child has the 'inherent right to life', ensuring 'to the maximum extent possible the survival and development of the child' (Article 6); and assuring the child's 'right to express...views freely in all matters', her/his views being given due weight in accordance with the child's age and maturity (Article 12). The UN Committee on the Rights of the Child (2001) recognises the importance of a holistic approach to human rights, which is lived as well as learned.

Assessing realisation of children's rights in the UK

The UN Committee notes that, through ratification, a State takes on obligations under international law to implement the UNCRC including action 'to ensure the realisation of all rights in the Convention for all children in their jurisdiction' (UN Committee on the Rights of the Child 2003, paragraph 1). In July 2007, the UK Government submitted its third and fourth consolidated periodic reports to the UN Committee. The devolved administrations of Northern Ireland, Scotland and Wales produced information for inclusion in the UK Government report. The Children and Young People's Unit in Northern Ireland's Office of the First Minister and Deputy First Minister (OFMDFM) commissioned consultations with children and young people to inform the Northern Ireland report (Haydon 2007) and reports were submitted by youth-

led organisations in Scotland and Northern Ireland (Children's Rights International Network 2008; report by the four UK Children's Rights Organisations in Northern Ireland Human Rights Commission 2008; Croke and Crowle 2008; Children's Rights 2008).

Alongside significant NGO alliances raised several general principles, the 'welfare of the child' is prioritised in UK legislation. Children are perceived as a principle of non-discrimination. High levels of child poverty, especially among the richest and poorest children, and negative outcomes for children and young people (especially those who are looked after) receive lower weight than adults. Jurisdiction-against discrimination on grounds of race, ethnicity, religion, sexual orientation, disability, and other characteristics, especially those who have been looked after and provision of services for children and young people from minority ethnic groups, including lesbian, gay, bisexual, and transgender children and young people, are not routinely considered in legislation, policy and practice. Children's views are not routinely sought, especially in the current low age of criminal responsibility in Wales and Northern Ireland. The minimum age of prosecution is not compliant with the UN Committee on the Rights of the Child, which is a measure of last resort.

Children's rights violations

In June 2009, the Northern Ireland Human Rights Commission reported that 24.2 per cent (43%) of children and young people whom it had investigated had experienced a significant proportion of their rights being violated.

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Rights in the UK

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led organisations in Scotland (Article 12), Wales (Funky Dragon) and England (Children's Rights Alliance for England; see Child Rights International Network 2008). Other submissions included a combined report by the four UK Children's Commissioners, a report from the Northern Ireland Human Rights Commission and briefings by specific lobbying groups. Alliances of NGOs also submitted reports from each of the four UK jurisdictions (Children's Rights Alliance for England 2008; Croke and Crowley 2007; Haydon 2008a; Scottish Alliance for Children's Rights 2008).

Alongside significant issues within individual jurisdictions, the NGO alliances raised serious common concerns. Regarding UNCRC general principles, the 'welfare' of the child rather than 'best interests' is prioritised in UK legislation. This reinforces paternalism, in which children are perceived as vulnerable and dependent on adults. The principle of non-discrimination is undermined by the persistence of high levels of child poverty throughout the UK. Inequalities between the richest and poorest children are evident in the limited opportunities and negative outcomes experienced by children living in poverty. In addition, those who are under 18 years of age (including young parents) receive lower wages for paid work and less welfare benefits than adults. Jurisdiction-specific legislation does not protect effectively against discrimination or promote equal opportunities for all children, especially those who have consistently experienced unequal treatment and provision of services (such as children with disabilities; children from minority ethnic communities; asylum seekers and refugees; lesbian, gay, bisexual, trans-gendered (LGBT) young people; 'looked after' children and care leavers). Nor is Article 12 effectively realised in legislation, policy and practice impacting on children's lives, as their views are not routinely sought or acted on. Regarding juvenile justice, the current low age of criminal responsibility – ten years in England, Wales and Northern Ireland, and eight years in Scotland, although the minimum age of prosecution was raised to 12 years in August 2010 – is not compliant with the UNCRC or *General Comment No. 10* (UN Committee on the Rights of the Child 2007) and custody is not a measure of last resort.

Children's rights violations in Northern Ireland

In June 2009, the Northern Ireland population was 1,788,896, of whom 24.2 per cent (432,814) were aged under 18 (NISRA undated). A significant proportion of these children live in poverty – more than

122,000 (29%) in income poverty (DSD 2007); approximately 170,000 (38%) go without basic necessities (Save the Children 2007); and an estimated 44,000 (10%) live in severe poverty (Magadi and Middleton 2007). Between 2001 and 2004, persistent poverty affected 21 per cent of children in Northern Ireland compared with 9 per cent in Britain (Monteith, Lloyd and McKee 2008). Entitlement to free school meals is an indicator of economic deprivation, and in Northern Ireland 22 per cent of primary school pupils, 26 per cent of non-selective secondary school pupils and 7 per cent of those attending selective grammar schools are entitled to free school meals (DENI 2011).

Poverty negatively impacts on children's education, health and wellbeing, family relationships and social activities (Horgan 2009; Horgan and Monteith 2009; McLaughlin and Monteith 2004; Save the Children 2007). For example, the 'hidden' costs of education (uniforms, books and equipment, school trips, extra-curricular activities) disproportionately affect families living in poverty (Horgan 2007). Differences in educational attainment reflect socio-economic inequalities at every level – those entitled to free school meals leave school with fewer qualifications, are less likely to enter Further or Higher Education and are more likely to be unemployed than those who are not entitled to free school meals (DENI 2010). Infant mortality rates for children born to parents living in more deprived areas are a third higher than for Northern Ireland as a whole, and children living in these areas are almost twice as likely to have experienced dental decay (Chief Medical Officer 2007). Young people from poorer families are more likely to smoke, drink alcohol and abuse solvents or drugs than young people from wealthier backgrounds (Save the Children 2007). The rate of teenage pregnancy is highest in the areas of Northern Ireland with greatest social and economic deprivation (Kenway *et al.* 2006) and between 1999 and 2003 the suicide rate was 17.0 per 100,000 in economically deprived areas as opposed to 8.2 per 100,000 in wealthier communities (DHSSPS 2006).

The experiences of young people in conflict with the law illustrate their complex, often unaddressed, needs and the cumulative impacts of economic and social disadvantage. Many live in families where their parents' capacity to encourage and appropriately care for them is inhibited by poverty, trauma related to the armed conflict in Northern Ireland (which affected thousands of individuals, families and communities between 1969 and the beginning of the 'peace process' in 1998), and their personal experiences of compromised parenting.

When asked what support parental support:

Parenting classes...so and self-esteem. But s they never had it the (Haydon 2009, p.38)

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When asked what support families need, these young people emphasise parental support:

Parenting classes...so they can give kids more self-confidence and self-esteem. But some parents can't give it to their kids if they never had it themselves – they wouldn't know how to. (Haydon 2009, p.38)

Lack of support can lead to breakdown in family relationships, neglect and abuse, resulting in children being placed in care. As one young person describes, experiences of childhood trauma and separation from parents are often exacerbated by negative perceptions about 'looked after' children and their family situation:

I pretended to them [other kids] that my foster parents and family were my real family. It made me feel bad. I would have liked to have told them: 'I am in the care system.' I didn't because I was worried they would tease me and treat me badly or differently. (Haydon 2009, p.40)

Another young person's comment reflects how many 'looked after' children experience emotional instability and feelings of rejection by their parents: 'People don't think their family care about them, so they don't care about themselves' (Haydon 2009, p.42). Further, they feel that residential staff have minimal emotional attachment to the young people in their care, leading to less empathy and understanding of individuals' needs:

Your family would forgive you for things that care staff wouldn't.

If you do one thing wrong [when in residential care], they phone the peelers [police]. It's supposed to be a home, where you live. If you were living with your Mum and Dad, they wouldn't phone the police when you broke a cup!... [Care] staff call the police too quickly – for smashing cups, I was done for criminal damage. They could have just made me pay it back. (Haydon 2009, p.42)

The Criminal Justice Inspectorate (CJINI 2008, p.vii) notes that the over-representation of children from residential care placements is a 'longstanding feature of juvenile custody in Northern Ireland'. This over-representation extends throughout the criminal justice system. In 2006, 11 per cent of 'looked after' children aged ten and over were

cautioned or convicted, compared with 1 per cent of 10–17-year-olds found guilty of offences in Northern Ireland that year (NSPCC 2009). During 2006–2007, 30 per cent of all admissions to the Juvenile Justice Centre (where 10–17-year-olds are held in custody) came from ‘looked after’ care backgrounds. The percentage of ‘looked after’ children in the Centre fluctuated between 22 per cent and 58 per cent of all residents on any given day, and ‘looked after’ children had on average twice as many admissions as non-looked after children (CJINI 2008).

Most children in conflict with the law have had poor educational experiences. One young person explains how under-achievement often leads to disruptive behaviour in school:

If you feel you're not very smart in school. That makes you mess about, to take the notice off you not being smart. It takes the focus off it – you can say it's 'cos you've been messing about, that's why you're not doing well. (Haydon 2009, p.18)

Others highlight the significance of undiagnosed special educational needs: ‘I was told I was stupid, thick an’ all. I never found out I was dyslexic ‘til I came here [to a voluntary project]’; and how unidentified needs or lack of appropriate support can prompt truanting: ‘Left school at 14. They never gave me any support so I just left’ (Haydon 2009, p.29). Contrasting their experience of mainstream education with provision in the Juvenile Justice Centre, young people emphasise the smaller classes and individualised approach: ‘Outside teachers just write on a board and make you write it down. Here, they talk to you more, see what help you need’ (Haydon 2009, p.29).

Limited access to age-appropriate, affordable play facilities and safe social space are priorities for children (Haydon 2007; Kilkelly *et al.* 2004; NICCY 2008). Young people in conflict with the law are clear that lack of provision increases the likelihood of involvement in risk-taking or ‘anti-social’ behaviour: ‘Most people get into crime at the start because they're bored and have nothing to do’ (Haydon 2009, p.32). But when spending time in their neighbourhood with friends, young people feel targeted by the police:

You're prevented from standing on the streets. If the cops come by, they know young people and start going at them... If you're in large groups, you're told to separate.

[Police] tell you to move on but there is nowhere to go. And then when you move on, they tell you to move on from there. You can't win. (Haydon 2009, p.60)

Young people define ‘police’ as someone who is questioned, moved on or given a warning or Order (McAlister, Scraton 2007). They consider that narcolepsy or other conditions exacerbates violent conflict and that this is an expression of their rage.

In some communities, young people are angry with severe punishment or the presence of Loyalist combatants in their area. The involvement of the police in their area is perceived ‘anti-social’ behaviour. One young person says: ‘People steal cars... But they put you out of the country...’ (Haydon 2007, 29 per cent of young people in the *Young Persons Behaviour Survey* 2007). In the previous 12 months, 2.8 per cent of young people had been in paramilitaries and 2.8 per cent had been in the previous 12 months. There is a correspondence between the involvement in paramilitaries and the punishments administered (Haydon and Scraton 2007).

What we need is a bit more support. What we get told is we're bad and we're bad and paramilitaries. (Young person cited by Haydon 2007, p.32)

Young people acknowledge that their involvement in offending is often a result of their environment:

People start stealing, they want to get money to pay for their drugs.

It's normal to do drug stuff, it's likely to do stuff, you know. (Young person cited by Haydon 2007, pp.18–19)

There is, however, a lack of awareness that mental health is a common problem. Young people cited by Haydon (2007) say that mental health services – self-harm, anxiety, depression, young people cited by Haydon (2007) say that anxiety about family circumstances, depression, bullying in school, and

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Young people define 'police harassment' as being continuously stopped, questioned, moved on and threatened with Anti-Social Behaviour Orders (McAlister, Scraton and Haydon 2009; Nelson *et al.* 2010). They consider that name-calling and ridicule by police officers exacerbates violent confrontations, maintaining that fighting the police is an expression of their resistance to age discrimination.

In some communities, young people are moved on and threatened with severe punishment or exiling by paramilitaries (former Republican or Loyalist combatants involved in the armed conflict) who resist the involvement of the police in their communities and informally regulate perceived 'anti-social' behaviour: 'There's not enough to do, so young people steal cars... But they shouldn't get knee-capped for doing that, or put out of the country [by paramilitaries]' (Haydon 2009, p.23). In 2007, 29 per cent of young people who completed the Northern Ireland *Young Persons Behaviour and Attitudes Survey* worried about threats by paramilitaries and 2.8 per cent had been threatened by paramilitaries in the previous 12 months (OFMDFM 2011). For many young people, there is a correspondence between the State's use of punitive measures and the punishments administered by members of their local community (Haydon and Scraton 2008; Lloyd 2009):

What we need is a bit of support and understanding – what we get told is we're bad and end up on the receiving end of police and paramilitaries. (Young person in Haydon 2009, p.8)

Young people acknowledge that alcohol and drug use can affect their behaviour – reducing inhibitions and providing the impetus for involvement in offending:

People start stealing, mugging people and doing robberies, to get money to pay for drugs.

It's normal to do drugs, everybody does – that makes you more likely to do stuff, you have no inhibitions. (Haydon 2009, pp.18–19)

There is, however, a lack of awareness about available health services: 'Loads don't know who their doctor is'... 'I haven't got a clue!'; and poor mental health is a common experience: 'There are not enough mental health services – self-harm and suicide are problems in Northern Ireland' (young people cited by Haydon 2009, p.34). Significant issues include: anxiety about family circumstances, domestic violence, bereavement, depression, bullying in school, and inter-generational trauma which

is a legacy of the conflict in Northern Ireland. The impacts of the circumstances described are evidenced in the recorded issues faced by those held in custody – of the 30 children in the Juvenile Justice Centre on 30 November 2007, eight were on the child protection register, 14 had a statement of educational needs, 20 had a diagnosed mental health disorder, 17 had a history of self-harm and eight had attempted suicide (CJINI 2008).

How could international rights-based standards be more effectively implemented?

International standards articulate the principles that should underpin legislation, policy and practice. However, these are not implemented effectively in the UK, undermining realisation of their rights for many children in Northern Ireland and Britain. Following its examination of the UK Government, the *Concluding Observations* of the UN Committee on the Rights of the Child (2008) raised numerous concerns. In response, the UK Government produced a joint commitment to take action and each jurisdiction produced an action plan. But more fundamental changes are required.

Recognising the structural inequalities experienced by children

As stated by Scraton and Chadwick (1991, p.180):

In order to understand the dynamics of life in advanced capitalist societies and the institutionalisation of ideological relations within the state and other key agencies it is important to take account of the historical, political and economic contexts of classism, sexism, heterosexism and racism. These categories do not form hierarchies of oppression, they are neither absolute nor are they totally determining, but they do carry with them the weight and legitimacy of official discourse.

As individuals and as a social group, children also experience structural inequalities derived in the determining context of 'age'. Within this, there is a distinction between 'ageism' and 'adulthood'. While ageism may apply to both children and older people, adulthood 'as an oppressive material and intellectual force' is specific only to children and young people:

...adulthood becomes institutionalised and mediated through social structures and their processes and policies...material

power is complement and subjugation to sil young people... No c systematically ignorec

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Children and young per assumptions of adults (H: comment is that people because of your appearanc 2009, p.14). Adults' pow and time – expressed as a patriarchy' by Hendrick (and Scraton (2000, pp.4: 'the systemic and interper: exploitation, fear, rejectio: daily encounters with adu

power is complemented by persistent ideologies of subservience and subjugation to silence the voices and nullify the actions of young people... No other group of people could have been so systematically ignored... (Scruton 1997, p.xiii)

In research and consultation with children and young people, lack of participation is the most frequently raised concern. They resent that they are not encouraged to express their views, their opinions are not taken into account, and they are not involved in making decisions (Haydon 2007; Kilkelly *et al.* 2004; McAlister *et al.* 2009). This is particularly so for children deemed 'troublesome'. As one young person states: 'People think ones like us are just hoods. Nobody ever asks us what we think, or what we want' (Haydon 2009, p.13).

Power differentials between adults and children are manifested interpersonally (in relationships between children and parents, community members or adults working with them) and institutionally (through the reproduction of social and material inequalities in schools, colleges, health services, accommodation, welfare and employment). Consequently, children experience discrimination and marginalisation in personal, social and community interactions and have limited involvement in private or public decision-making processes. When asked how they are perceived, young people's responses reflect their experience of exclusion:

No adults treat young people with respect – I wear a hood, I am a hood.

Young people are not valued in our society. We are all labelled as bad news, as trouble, nagged at. (Haydon 2009, p.14)

Children and young people express frustration about the negative assumptions of adults (Haydon 2007; McAlister *et al.* 2009). A typical comment is that people 'Automatically think you're up to no good because of your appearance – clothes and age' (young person in Haydon 2009, p.14). Adults' power and control over children's space, bodies and time – expressed as a demand for obedience – is defined as 'age-patriarchy' by Hendrick (2005, p.398). More contentiously, Haydon and Scruton (2000, pp.447–448) use the term 'child hate' to reflect 'the systemic and interpersonal prevalence of harm, abuse, degradation, exploitation, fear, rejection and exclusion endured by children in their daily encounters with adult worlds'.

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Using international standards as a framework

Criticisms of the UNCRC tend to focus on its conceptualisation of 'rights' and the limitations imposed by language that circumscribes State responsibilities. Fortin (2003) acknowledges the contested relationship between moral/legal rights and social ideas about how children should be treated or the level of autonomy they should be granted, noting there is no 'test' providing guidance about what rights children have or should have. Alderson (2008, p.18) contends that UNCRC rights are aspirational as they are realisable only 'to the maximum extent of available resources' and conditional rather than absolute because they are affected by the 'evolving capacities of the child', the 'responsibilities, rights and duties of parents' and 'national law'.

Despite these limitations, Kilkelly (2008, pp.188–191) outlines the benefits of international standards. They are a useful 'auditing tool', representing 'a common reference point against which progress can be usefully measured'. They provide the 'potential for legal argument based on standards that are international rather than national in character'. They are a framework for 'rights-based analysis that allows states' failings to be highlighted, but also comprise indicators of best practice as to how such shortcomings can be addressed'. While 'establishing minimum standards, on which states should build, they also have a wide universal application to states emerging from conflict and those apparently on the irreversible road to punitiveness'. Importantly, they are 'a constant reference point or benchmark, not susceptible to the vagaries of public opinion', which 'gives them both credibility and a sense of timeless value'.

Challenging resistance to 'rights'

Fortin (2003, p.18) argues that the language of rights 'is a politically useful tool to ensure achievement of certain goals for children'. Rights take on particular significance in protecting the weak, the vulnerable, the oppressed or the minority interest (Scruton and Haydon 2002). For Freeman (2007, p.7), children's rights are 'no more or less important than rights generally'. Regardless of age, rights 'recognise the respect their bearers are entitled to. To accord rights is to respect dignity: to deny rights is to cast doubt on humanity and on integrity.' As Freeman (2007, p.8) states:

Without rights the excluded can make requests, they can beg or implore, they can be troublesome; they can rely on, what has been called, *noblesse oblige*, or on others being charitable,

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Freeden (1991, p.11) proposes that a 'satisfactory theory of basic rights' has to meet three criteria: 'rational and logical standards' (philosophical); 'translatable into codes of enforceable action' (legal); and 'terms that are emotionally and culturally attractive' (ideological). UK Government ratification of international human rights standards implies acceptance of their principles and provisions as rational and logical, but the second and third criteria remain contested in terms of children's rights in the UK. Although the UNCRC is legally binding through ratification, it has not been incorporated into domestic law. The only statutorily available human rights instrument that can be utilised in cases of alleged rights violations is the *European Convention on Human Rights* (ECHR), as the *1998 Human Rights Act* made the ECHR domestically justiciable. The UNCRC has been cited in judgments in the High Court in Northern Ireland, although there has not been a consistent approach regarding its standing or applicability and Judges have ruled that the Northern Ireland Executive or UK Government are under no obligation to enforce international provisions or treaties not introduced into domestic law (Haydon 2008b).

In terms of ideology, Franklin (2002, p.3) argues:

...discussion of children's rights has achieved a degree of respectability. Instead of being dismissed as 'utopian nonsense' or mere 'political correctness' the idea that children possess rights which adults should respect and help to promote now informs aspects of government policy and legislation, the policy of voluntary sector and charitable organisations as well as the practice of welfare professionals.

Despite this shift, significant emotional and cultural resistance to children's rights continues. For example, in Northern Ireland the promotion of human rights has been a central element within 'peace' agreements. However, the long and disputed process of developing recommendations for a *Bill of Rights for Northern Ireland* highlighted major disparities in interpretation of 'rights' amongst political parties, disagreements over the role of the State in articulating and implementing rights, and lack of consensus about defining children's rights (Bill of Rights Forum 2008; NIHRC 2008).

Prioritising children's participation

There is a key ideological tension between a child's right to 'protection' (promoting their welfare and protecting them from harm, abuse and exploitation) and their right to 'autonomy' (recognising their evolving capacity for decision-making, self-determination, independence and responsible action). Protection is generally prioritised, albeit on the basis of questionable assumptions. Children are presumed vulnerable, dependent and not competent to take on responsibilities. They are dependent on adults to meet their basic needs, and their relative lack of knowledge or experience contributes to both physical and emotional vulnerabilities, but focusing on their need for care and protection as a result of 'incompetence' reinforces a deficit-based perception of children and young people as well as doubtful assumptions about adult competence.

Like any other 'stage' of life, childhood and youth are periods of dynamic change and adaptation as individuals gain experience and understanding, develop additional skills and negotiate relationships and events. Although children may resist responsibilities associated with adulthood, they do want to be involved in decision-making processes and to have access to age-appropriate information or support in making informed choices and establishing independence. Children are structurally vulnerable because they are socially and politically excluded and considered subordinate to adults. This structural vulnerability increases their physical and emotional vulnerability. Because children are not listened to, they are disempowered and vulnerable to exclusion, abuse or exploitation by adults.

A further assumption is that their evolving intellectual capacity defines children as 'less than adult'. In fact, children are often more competent than adults assume *if* issues are explained in language, or using examples, that they understand. Having less knowledge and experience does not invalidate children's views. They require opportunities to develop skills to express their views, listen, engage in reciprocal relationships with adults and make informed decisions. The final assumption is that adults, assumed to be competent, act in children's best interests. This is difficult to assess if the child's views and wishes are not taken into account in decision-making. Consequently, children consider participation central:

Adults think 'Kids should be seen and not heard' – in politics, the community, everywhere... They should be seen, and heard. But you have to be seen first to be heard. (Young person in Haydon 2009, p.8)

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Developing a positive rights-based agenda for children

Developing a positive rights-based agenda requires recognition that children are unique individuals and legitimate rights-holders, not dependent on acceptance of responsibility or attainment of adult status. International standards do not link children's rights to responsibilities. There is not a social contract between the child and the State, nor is there an expectation that the child should accept responsibilities to ensure realisation of their rights. For every child under 18 years of age, rights are universal entitlements, not rewards or privileges. The UN Committee on the Rights of the Child (2005, paragraph 1) 'wishes to encourage recognition that young children are holders of all rights enshrined in the Convention and that early childhood is a critical period for realisation of these rights'.

As duty-bearers, the State and its agencies are responsible for ensuring that every child has access to appropriate health care, education, play and leisure opportunities, an adequate standard of living, a supportive family or alternative care and protection from abuse or exploitation. In prioritising the child's wellbeing and personal development, responsibility for those deemed 'at risk of offending' should be located in children's services (education, health, social care), with provision of support through locally available community-based services which identify and address the needs articulated by children and their families (see: The Riyadh Guidelines, OHCHR 1990a). For those who have committed offences, the priority should be diversion from the criminal justice system and decriminalisation, with disposals focusing on rehabilitation rather than punishment and retribution. One young person with experience of custody suggests that 'Harsh punishment doesn't work. It makes you harder, it makes you feel like a bigger man. It's like, "I can take that, what do I care?"' (Haydon 2009, p.68).

Any reaction should be in proportion to the personal circumstances of the offender and the gravity of the offence (see: The Beijing Rules, OHCHR 1985). Community-based alternatives to custody (for example, supported accommodation, bail support schemes and remand fostering) should ensure that custody is used as a last resort, for the shortest possible period, and only for those presenting serious immediate risk to themselves or others (see: The Tokyo Rules, OHCHR 1990b; The Havana Rules, OHCHR 1990c). According to these international standards, the rights of those held in secure facilities should be protected and young people should receive care, protection, education and vocational training, programs and activities to help them assume

child's right to 'protection'
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recognising their evolving
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socially constructive and productive roles on release. As young people articulate, loss of liberty is the punishment for those in custody:

Prison shouldn't be about punishing – you shouldn't get punished by the people in prison. The staff aren't there to punish you, they're there just to look after you... They're there to correct you, help you change your ways.

You're not sent to prison for it to be hard – it's about taking your freedom. The punishment is not being able to go out in your community, being free. (Haydon 2009, p.67)

To conclude, the State should play a key role in bridging the gap between rhetoric and reality concerning children's rights. Achievement of this objective is dependent on recognition of the impacts of structural inequalities and development of child-focused, time-bound measures to address these. This requires provision of appropriate resources and articulation of political commitment to the promotion, protection and realisation of their rights for *all* children, including the most disadvantaged and marginalised:

Young people like us already get the blame for near enough everything. I suppose it's easy to do that – blame it on the teenagers. But people just don't know the lives we lead, the problems a lot of us have. (Young person in Haydon 2009, p.17)

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