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CHAPTER 9

What Should be Done?

Public opinion does not demand harsher punishment for child crime, but does require something that works. ... child crime can only be cut effectively if we are courageous enough to recognize the failings of present provision and look for the widest range of non-custodial alternatives, with custody only when no alternative is realistic.

Lord Carlile of Berriew QC (NACRO 2005: 3)

Both society and government officials ought to have information to reflect upon ... the preparation of draft legislation on juvenile justice, and on juvenile courts, is under discussion at present but there's still a lack of understanding and opposition to the idea.

Judge, Russia

A humane and effective approach to youth crime, we suggest, should aim:

To create an environment in which people recognize that the great majority of children break rules and grow out of it, one in which informal mechanisms treat misdemeanours, and 'crime' is reserved for a small minority of acts by 16-year-olds and older which cause serious damage to other individuals or the community; an environment where measures exist to help the individual recognize the offence, restore damage, and learn strategies not to reoffend; where detention is used as a measure of last resort, for serious or violent offenders who are a danger to the community, and during which they are decently treated; and where ways exist to reintegrate the offender into the community, psychologically and practically.

While not easy to achieve, such an environment would include several elements that Russian and English scholars and politicians deemed feasible a century ago. There is nothing here that the Russian or the English inheritance rules out as impossible. Neither does today's twenty-first-century environment make such an aim any less achievable. There may be new

problems but there is a century's experience to draw upon and opportunities to realize strategies that did not exist before. Some of these practices exist in countries that share features in common with Russia, and some have been successfully applied in England and Wales in the recent past. There is new thinking, and a creative reform community in both countries.

We must start by recognizing that the economic depression will raise levels of poverty for the disadvantaged families and children in both societies. Youth crime will surely rise. Hungry children steal food, clothes, and anything they can sell. They may come under greater pressure to work for the drug dealers or pimps. What is important is that society has mechanisms for responding to this that do not include detention. A test for all our societies will be how well their youth justice systems stand up a rise in youth crime.

In this final chapter we address the second of our questions: 'how can the present system be changed to ensure that few end up behind bars?' How best to limit the use of detention because it is so damaging to children and to society as a whole? And to answer this, I begin by taking up the findings of the comparative exercise.

Priorities in a reform agenda to reduce detention

What have we learnt from others who use detention sparingly? How do they achieve it? The crude answer is: by restricting the role of the criminal justice system, diverting as many cases as possible away from it, while making social services, specialized youth agencies and/or voluntary organizations the key institutions for dealing with troublesome or law-offending youth and, for the minority who come before the courts, by using a variety of sanctions. This does not 'solve' crime – but, as Lord Carlile, chair of NACRO's Committee on Children and Crime, observed in his conclusions, limiting custody and replacing it by other measures is one effective measure to reduce crime. His statement above would be echoed by many professionals and members of the public in Russia. We group our suggestions under three main headings.

1. Amendment of the Criminal Code (Russia) or of criminal justice legislation (England and Wales) as regards crime when the offender is a child

The Russian reformers are right to recognize that the existing criminal justice system, designed for adults, is inappropriate for children. But the provision

of juvenile or youth courts does not necessarily bring down numbers sentenced to custody. For that other measures are required. Certainly, for those cases where a child should come before a court, it is preferable to have a court, where procedures are simplified, where the judge specializes in cases involving children and works closely with the child's social worker. From this point of view, the draft legislation on juvenile courts, and the experiments in Rostov and other cities are only to be welcomed. However, there is a danger that legislation on juvenile courts, backed by social workers, may be seen as 'solving the problem', rather than as only one piece in a much more far-reaching agenda of reform, which would curtail the role of the criminal justice system.

The lesson, over the past hundred years from several societies, is that juvenile courts do not hold the key to a humane and effective response to young people's criminal behaviour. As we have argued, and seen in the German and Italian cases, judges, juvenile or otherwise, *sentence*. Judges are not doctors or teachers; they are playing by rules that include deterring, punishing, compensating for damage, as well as helping an offender to improve his ways. If one thinks that a juvenile judge ought to be behaving like a doctor or a teacher (as did the early reformers), then, logically, it would make sense for the police to refer all cases to the local polyclinic or school. In other words, inherent in the use of a criminal justice system for children, regardless of whether it has a youth justice section or not, is the assumption that 'a crime is a crime' and that penalties follow if the guilt is proved.

Restricting the role of the criminal justice system can be achieved in different ways or by a combination of strategies:

- remove less serious actions from the Criminal Code (and, if there is one, transfer some of these to the Administrative Code) or from criminal justice legislation;
- raise the age of criminal responsibility.

The Scandinavian or Scottish approach, which excludes anyone under the age of 16 from attention by the criminal justice system, and then uses adult courts for the older children, may achieve the aims of reformers more successfully than a system of youth courts. As we saw from our country studies, even where there is a youth court system it is critically important that police, prosecutors and judges strive to divert as many as possible

young people away from coming to trial and sentencing. Perhaps this, more than anything, indicates the flaw in trying to adapt criminal justice to serve other aims. It should not be used to correct the failings of other agencies: families, schools, social services, or the government's policy towards social deprivation. Yes, one needs a court system for a small minority of very serious offences where detention may be necessary for the sake of the public and where the youngster must be assured of professional defence by a well-trained advocate specializing in youth cases. With a more limited and focused role, the courts could work better. This, we argue, holds equally for Russia and for England and Wales.

Unless one can count on police, prosecutors and judges to divert young people from the criminal justice system (either because they are obliged to or because they see that as their role), it is best to focus on strategies that will keep youngsters out of their reach from the start. Russia is fortunate in having an Administrative Code. This could be used to much greater effect for the kind of actions that children engage in but grow out of: theft and vandalism for a start. As first priority, the focus in Russia should be on changing, quite radically, the existing legislation on what constitutes a crime (and its seriousness) when the offender is a child. Raising the age of criminal responsibility to 16 for all crimes would also help. The aim would not simply be to get more young people out of the grasp of the criminal justice system. Of equal importance would be the effect on the way all those involved think about youthful misbehaving. Radically amending the Codes would be the first step in a strategy to persuade police, prosecutors and judges to rethink their present roles.

We have drawn attention to the importance of the attitudes or ethos of those who staff the justice system. This too makes one sceptical that creating juvenile courts in Russia today will signal much change. Yes, judges would need to be retrained (and their responses quoted in chapter 5 are not encouraging), but much more than that would be required to reduce substantially the number of young people convicted and sentenced. Police and prosecutors would need to behave differently. It is not the case that the police in Russia detain more children than do their colleagues in neighbouring countries. Rather it is that most of those charged remain trapped within the criminal justice system, the great majority stand trial, and are convicted. In both the Italian and German cases we saw how prosecutors and/or magistrates devoted most of their attention to *dismissing* cases, passing

them to social services; in Finland how the social services are brought in, and mediation used. Without a change in attitude on the part of police and prosecutors, the courts in Russia, juvenile or not, will continue to be overloaded with cases that never should have been there in the first place.

With alternatives in place, the police in Russia would have fewer responsibilities – not the present confused set of tasks, which include maintaining order, detaining, arresting, investigating, reporting and engaging in preventive work for a great number of children. Prosecutors and investigators would have far fewer cases to deal with, far fewer children would be held on remand, investigations could proceed much more quickly, and the judges (now juvenile judges) could pay more attention to the (serious) individual cases. All would benefit.

In England and Wales the age of criminal responsibility should be raised to 16 for all crimes, and a return made to the pre-1994 procedures regarding police use of cautions or equivalent powers to divert cases out of the system. Perhaps the new Youth Cautions will help but it could be introduced more quickly and widely. Legislation on custody for the breaking of conditions of an ASBO, and on ‘automatic’ custody (including on remand) for repeat offences should be repealed. England and Wales have the advantage of recent experience of effective alternatives to present policies and, despite evidence of racism and regional differences, the police force has a reputation, in the eyes of the public, that is at present out of reach for the Russian police. What is needed, as in Russia, is the making of a statement loud and clear – through radical amendments to the legislation on crime by young people and appropriate measures to deal with it – that will send a message to judges, media, the public (including young people themselves) that there is to be a drastic change in attitudes and policies towards children.

2. The creation of alternative services or institutions to assume responsibility for law-breaking by children

In both Russia and England and Wales the existing arrangements between social services and schools fail to support young people who are at risk of slipping into drugs and crime. Russia has, relative to its size, far more ‘social orphans’ than do England and Wales. Its social services are woefully inadequate and underfunded; its children’s homes can be appalling. Neither the police youth inspectorate nor FSIN’s Inspectorate for the Implementation of Sentences have the personnel or resources to work with young people;

their case loads, and those of poorly trained social workers, are simply unmanageable. There is no probation service. Charitable organizations are few and far between. In England and Wales the situation is different: a variety of institutions, both state and volunteer (charitable) exists; all – from schools to the police – are better funded; qualified social workers, psychologists, youth workers, probation officers are part of the landscape. From a Russian perspective, it is difficult to understand why, given this, damaged children in England and Wales are ending up in prison. And this perspective is important: why is that, despite an infrastructure that should be able to support children at risk, we have opted for imposing a punitive, exclusionist, framework that works against its efforts? It is difficult to find excuses for a rich society, with highly skilled professionals, and a wealth of voluntary experiences, treating its children in this way. The responsibility lies with a government that believes tough policies will cure youth crime, or that such policies are popular, rather than addressing the causes (deprivation in a rich society, social exclusion, adult violence and drugs), and seeking alternatives.

In its turn, the English and Welsh experience holds out a lesson for Russia: it is not simply a question of a society's spending more resources on its state institutions, on skilled professional employees, and its members being prepared to support charitable organizations and engage in voluntary work. While the Russian government could (and should) spend part of its oil money on improving its social services, children's homes, on providing professional training for all who work with children, and should encourage, not hinder, the non-governmental sector, this has to be accompanied by restricting the use of the criminal justice system. The KDN exists, and in England and Wales the YOTs. In neither case do they perform the role they could. In England and Wales the YOTs, little known by the public, have not come to play a significant role as institutions, offering an alternative to the criminal justice system. Indeed, how could they, given the ever more extensive use of criminal justice legislation to 'deal' with youth crime? But, if the role of the courts was sharply reduced, and the funding system revised, YOTs could begin to emerge as alternative community-based institutions – given a wider brief, backed by greater resources. The *Youth Crime Action Plan* suggests the YOTs should play a more significant role but stops short of any commitment to replacing the present emphasis on punishment with, for example, mediation and

restorative justice measures that include recompense for damage and compensation for the victim.

The absence of a network of welfare agencies, social workers or probation officers, voluntary organizations or foster parents persuades some in Russia that it is preferable to stick with the procuracy and courts as they are, and encourage them to work better, provide them with aides. But why should they work better? If they are left with their present roles and responsibilities, and their present understanding of youth crime, while being told to 'work differently', very little will change. The present *system* is punitive; unless it is changed, you cannot expect its practitioners to follow a new set of principles. But, even if its contours are softened, why try to improve a system that is inherently unsuitable for dealing with the great majority of children's offences rather than devising a better alternative?

In part because of the ineffective way in which welfare agencies and government departments operate today in Russia, there is a potential for change. Discontent among those who work in schools and government departments with the present system is audible. It is not simply that they are poorly paid and continually subject to new demands from above, but that they cannot do what they feel they ought to be doing. We have tried to provide a representative sample of their views in our account. The tendency to blame inadequate families, the incompetence of other agencies, and policies designed at federal level, is both quite marked and what one would expect. These are the kinds of complaints or justifications to be expected from underpaid and undervalued professionals, unable to see any positive results from their work. Their dissatisfaction with the present system and with the role they are expected to play comes out very clearly in the interviews.

There is a strong tradition in society and government, inherited from the Soviet period, of paternalistic state welfare. This, at times, leads to systems of control from which there is no escape and which are damaging to young people, but it provides a basis on which to create a slimmed-down, more focused and integrated system of state welfare agencies to work with children who have fallen foul of the law. Welfare ideology is alive and well among governmental employees, working on the ground, and among the general public. It should be drawn upon. To imagine that, at present, voluntary organizations could take on the role that they do in some societies is not realistic, as the authors of the 1997 concept paper recognized. But this makes it all the more important that they should be encouraged, not hindered in

their activities. The NGO sector has shown itself to be far more innovative in devising programmes or new models for working with children, either at risk or in trouble with the law, than has its state counterparts. At times charitable or voluntary organizations are described, approvingly, as organizations who fill in gaps left by state institutions but, as we have seen from the work of the NGOs involved in the juvenile justice area, their efforts to change the way state institutions work are no less important. This may take the form of proposing legislative changes but it may be by monitoring and checking practices and procedures of government institutions, in particular closed institutions. The absence of *independent* commissions to review the work of government agencies or institutions makes this even more important. The procuracy has shown itself sadly inadequate as a guardian of legality, in many areas, not only those where the citizen is in trouble with the law. Unless, as an institution, it is subject to a major overhaul, it should be kept as far away as possible from issues involving children. The strong statist tradition in Russia can be drawn upon – to society's benefit – but it has to be tempered by oversight and control by society itself, both through elected representatives, independent media, courts and non-governmental organizations and associations.

Effective cooperation between different ministerial agencies, in any system, is difficult to achieve, and the vertical hierarchies and narrow departmentalism inherited from the Soviet period still dominate. However, at least there exists a candidate, the KDN, to whom schools, or police, could turn in the first instance. It would need to be radically restructured, be afforded with professional staff and resources, have the authority to enlist local government departments as providers of services or programmes. It could take the lead in communicating with the courts for the serious cases, and act, with authority, for all the lesser cases and those involving the younger children. It would be responsible for organizing mediation, choosing different types of services, and encourage the using of restorative justice techniques where possible. It would need to develop close ties with the voluntary organizations in the town or district, involving them in the processes of rehabilitation or education. Whether the KDN should be responsible for those older children, sentenced to 'community service' or serving a suspended sentence, or whether they should be the responsibility of a much-strengthened Inspectorate (under FSIN and hence the Ministry of Justice) is debatable. More important than jurisdiction (except of course that the police should not be made responsible) is that any such service be

professional, and well-trained, able to organize and supervise youngsters serving sentences in the community and those on parole.

The Finns created a professional probation service, with these responsibilities, placed under the Ministry of Justice. There is no reason why the Ministry of Justice could not do the same. Where are the resources and staff to come from, and what of the cost? The answer is straightforward. The cost, in Russia as in other countries, of locking people up is very high compared with giving them support or monitoring their activities when they remain in society. Quite apart from the cost of buildings, facilities and upkeep, at present there is roughly one adult employee in a children's colony for each child. There are also the costs of the SIZO (facilities and staff), and the guards responsible for transporting prisoners. It was calculated, in the early years of the new millennium, that each prisoner (adult) was costing the budget \$400 a year while only \$4 was being spent on those on suspended sentences or on parole (Уткин 2000). Of course, this is partly explained by the derisory funding of the Inspectorate compared with that of the prison system, and figures have risen substantially since. But the point holds. A child in a colony costs the country several times that of his or her peer who is serving an alternative sentence in the community. The savings from cutting numbers of those in remand and in custody would more than allow for a new, properly funded Inspectorate, for a social work service, and for alternative programmes for young people. Such programmes would not be cheap but, even if they were as costly as detention, they, in contrast, would benefit both the individual and society.

It would be illuminating to have a proper estimate of the average cost involved in detaining a child on remand, sentencing, transferring to a colony, and stay in colony, followed by an estimate of the cost for a young offender having a professional social worker, maybe attending an open special school, participating in a mediation or a community service programme, organized by a properly staffed KDN, and, in the case where it is appropriate, being monitored by a professional parole officer. Some of the colony staff, who have considerable experience of working with the children could be redeployed for retraining for such tasks.

In England and Wales the costs of custodial provision are exorbitant and, as we saw in chapter 6, the system of funding encourages its use. It is strange that a government that claims to be concerned to find alternatives to custody

supports a system that places obstacles in the path of finding and making use of alternatives. They should come high in a government agenda.

3. The introduction of a varied and effective array of alternatives to detention

In introducing the issue of the cost of detention, I am not suggesting that the case for restricting the use of custody rests on this. Quite the contrary. All that has been said previously on the damaging consequences of detention for the child and for society holds. Does it need repeating?

Our children and young people leave our penitentiary institutions as moral and physical cripples ... here they become beings who cannot adapt to a life of freedom. Russian 'crime factories' do not correct an individual but make him someone who destroys life. Not only his own, but others' too. (Абрамкин 2001: 22)

At worst, detaining damaged and difficult young people 24 hours a day, seven days a week for weeks, months or even years can interrupt the normal process of growing up, reinforce delinquent attitudes, and create the ingredients for bullying, intimidation and racism. (Allen 2006: 22)

The moral case for limiting detention to a small minority of violent, mentally ill, offenders remains the strongest argument. The consequences for society provide further arguments against its use: rather than reducing crime custody encourages recidivism, it creates a group among the future generation who cannot integrate into society, it creates a contingent of adult guards, overseers, themselves locked into, and part of, a harsh system. Financing schemes to compensate individuals or society for the damage caused, schemes to help children to recognize the damage, and to learn to live in society will not be cheap. They have to include providing job opportunities, the prospects of an adult life that looks attractive, and tackling – by new measures – an adult and school environment that puts a minority of young people at constant risk.

There is no ready package of measures to adopt when dealing with law-breaking by children. Responses differ from one society or community to the next. But we can say that where children are committing trivial crimes or

stealing to assuage hunger, many, if treated with a proportionate response, will grow out of it. Help from social services, from school, a ticking-off from police or parents, may be all that is needed. For many offences, some trivial some more serious, the KDN or YOT should be able to recommend mediation, compensation for damage, attendance on a youth programme or at school, counselling, supervision by a social worker, a spell of community work. The guiding aim should be one of enabling the young person to recognize that such behaviour is damaging to others, to feel he or she has paid a fair price for anti-social behaviour and now is back on equal terms with others. Such measures would not end youth crime but they would almost certainly reduce it while, more importantly, they would begin to alter the perception of policy-makers and law and order officials of their own young people and of how they should be treated. They would have the support of many professionals working on the ground. They would be welcomed by the majority of the adult public in Russia and by at least a sizable proportion of the public in England and Wales.

Persistent young offenders need unremitting care and supervision. Those on drugs do too. Systems of curfew for young offenders, the use of ASBOs and of electronic tagging still have to prove their worth. More attractive alternatives include open residential institutions where the inmates get work qualifications and gradually learn the skills needed for living in society, without recourse to drugs and crime. But, whatever the sanction, most important of all is that it includes measures that increase the youngster's ability to cope with the world around him or her. Certain critical supports must be put in place: a roof over his or her head, employment or education and, if adequate family support is lacking, community support.

Now for the really serious cases: the persistent repeat offender, the violent unstable offender, or where a youngster, for any one of a number of reasons, commits a serious and damaging offence. These are the cases that will come to court. The guiding principle would be the same. A small minority will have to be isolated, at least for a while, from society. The judge should be able to recommend mediation, and to impose a combination of sanctions, if this seems appropriate. Fines, compensation for the damage done, community service, accompanied by monitoring of attendance on youth programmes – all these and more, tailored to the individual case, should be available to the judge. In Russia the use of suspended sentences,

which, on their own, do nothing to lessen the chances of a further offence, and thus lead, automatically, to custody next time should be drastically reduced.

In Russia the availability and effectiveness of the sanctions will depend upon the creation of new services, the willingness of government departments to rethink their roles and to cooperate with each other and with non-governmental organizations, and, most important, the willingness of all the law and order institutions – from police and prosecutors to judges and FSIN – to aim at changing their present level and type of involvement in young people's lives. In England and Wales many of the institutions, services, and means that could be used to implement new strategies already exist, but the existing criminal justice legislation, and the 'bang them up' rhetoric of leading politicians, which finds its echoes from some within the police and judiciary, prevents their appearance. In both cases political leadership is the critical factor.

Building support for a reform agenda

Political leadership, with a new vision, is what is needed most of all. With Putin's creation of a pliant legislature and judiciary, a reform agenda that happens to attract the President's attention stands a greater chance of being translated into legislation. But Putin blew hot and cold, and policy-making takes place according to criteria that are not made explicit and not based upon a coherent agenda. Kalinin hoed a lonely row as a reformer among the law and order agencies, but recently has adopted a more conservative position. However, Russia now has a new President, Medvedev, who claims to favour legal and court reform, a minister of internal affairs, R.G. Nurgaliev, and a new minister of justice, A.V. Konovalov, both of whom have recently supported the idea of juvenile courts. While the Supreme Court has been alarmingly indifferent, and the procuracy unenthusiastic, there are the regional experiments, there are ombudsmen, the Commissioners for Human Rights, experts and professionals, many with considerable experience, who, given support and media backing, could engage their conservative opponents from the law and order agencies in serious discussion. Compared with the situation ten years ago, there is a stronger community of reformers. In Russia an open debate would draw in the professionals, of all ranks, who could contribute their criticisms of the present system and proposals for change.

However, is an open debate relevant to the making of policy in today's Russia? Should one not recognize that all that really matters is to catch the ear of the President or those who advise him? This, I hear from many, is the way policy has always been made in Russia and still is today. It makes better sense, some argue, to use the Public Chamber, a selected, coopted body, chosen by the political leadership to act as an 'opinion-leader' of the non-governmental sector, even if one disapproves of the way it has been created. Zykov, from NAN, has opted for this. Others, for example Abramkin, use the Presidential councils or commissions to try to attract the attention of the President.¹ Without a doubt, it is the President who matters and, if there are channels of access to him, reformers should use them. However, participation in the Public Chamber raises a troubling issue. If one believes an independent non-governmental sector is vital for a healthy society and polity, then a coopted chamber is damaging for both present and future developments in Russia. Why? Because it suggests that the state has the right to determine 'which society' it will speak to or interact with. Its existence underlines the fact that the state-society 'partnership' is *not* one of equals. Zykov may be able to use his position to push a reform agenda forward, but at a cost to the future of a healthy state-society relationship. There's no easy answer here.

If support from the President is crucial, equally crucial is his vision or understanding of what can and should be done. This, I would argue, is why an open debate is needed. I do not believe that today's political leadership, or those who head the law and order agencies, their deputies and advisors, have a clear view, backed up by evidence, of reforms and how to achieve them. I do not believe the Supreme Court judges do either. From none have we seen any evidence of this. Surprising and puzzling is the lack of authoritative and imaginative research from the institutes and academies attached to the law and order ministries. To take but one example: surely a priority for the Ministry of Internal Affairs (MVD) should be the in-depth review of the role of the police and police practices as regards children? A candidate (PhD) dissertation is defended for each day of the year at the MVD Academy in St Petersburg. How many of these focus on reforms to the present system for dealing with young offenders? More generally there is shortage of good research on youth crime and the existing system for dealing with it.

But, neither do I believe that any one NGO has the answers. Catching the President's ear – whether it is by the Procurator General, a professor or an

NGO activist – is a strategy for poor policy. For well-thought-out reforms, which will work, a discussion must range. How else can political leaders make informed decisions? Deputies in the Duma may vote in line with the wishes of the Kremlin but they could and should involve themselves in a debate, a debate that should include the voices of those who work with young offenders. Many working at local level in the justice agencies, as we have shown, are frustrated and critical, well aware of present shortcomings. It is difficult in hierarchical, almost military, institutions such as FSIN or the MVD for the voices of the lower ranks to be heard. But they need to be included in the debate, and not only because they will be responsible for implementing changes. Encouraged by Zykov, an association of governors of the *vospitatelnye* colonies has recently been created. This is a very welcome initiative. Professional associations should speak for their members and contribute their expertise.

And what of a role for public opinion? Many today insist that the government in Russia is not and never has been interested in what its people think. This does not mean it should not be. Any who are advocating a reform agenda, I would argue, should constantly try to enlist support from sections of the public, and professional communities, and to find ways to make politicians listen. It is not easy in Russia: there is no widely read ‘campaigning’ section of the press, serious television documentaries are out of fashion. Deputies, governors, political leaders do not see themselves as obliged first to learn and then represent the views of their constituents. And, among the reformers there are those who think that, on issues such as juvenile justice or the defence of rights, legislators have an obligation to lead, to be in advance of public opinion. The public, they argue, is badly informed and may hold very punitive views (although, as we saw, in relation to young offenders this is not so). Better to change public opinion by introducing progressive measures whose implementation will then influence attitudes within society.

In order not to be rejected or not understood, a legislator cannot be quite out of touch with the legal consciousness of the people but he should be ahead of it and exercise an educating, humanizing influence upon it. (Мапорулова 1992: 20)

A majority of members of the UK parliament vote consistently against the use of the death penalty, while aware that a majority of the public is

in favour, but they do this in the knowledge that their electors, if they feel strongly enough about the issue, can vote them out next time. Yet, when it comes to juvenile justice policies, it seems that the same politicians respond to the demands from a vocal section of the public, supported by some sections of the media, for tougher measures. Anxious to garner support, and with an eye on their rivals, politicians fear that 'soft' policies may affect their electoral chances. This is a sad reflection upon the politicians, the media and society more generally, but it does not justify removing the accountability of politicians to the public. How much easier it would be if wise, progressive, politicians were not obliged to listen to the public. But there is plenty of evidence that politicians are not usually wise nor progressive and that publics need to control those who hold power and influence their lives.

For these reasons, I would argue, the public in Russia needs to find its voice, and reformers and politicians should listen. And, if they listened, they might be surprised. While neither Medvedev, nor police and prosecutors, may be aware of it, Russia's adults, as we have seen, would prefer a more humane system, and much less use of detention, for young offenders. Today's system does not enjoy the support of the Russian public. On the contrary, it is seen as damaging to children and to society.

And in England and Wales? Here the topic of youth crime features high up the agenda of both leading political parties, and the media pays considerable attention to violent acts committed by young people. But can we say that an informed debate is taking place or has taken place over the past fifteen years? The puzzling fact is that, despite a great deal of data and analysis of different aspects of youth crime, of young offenders, and of the consequences of adopting different strategies to deter offending – data that are readily available to politicians and their advisors – there is no such debate. The government pays far less attention to falling crime rates than to the need to bring more children before the courts. Very little attempt is made to provide accessible information on the state of youth crime, or to understand the public's anxiety over crime and to find strategies to allay those fears where they are unfounded. There has been no serious investigation into the use of prison for either adults or children. Yet, in the words of Professor David Wilson, chair of a Commission on English Prisons Today, set up in 2007 by the Howard League of Penal Reform:

There is an urgent need for a proper discussion about the purpose and context of prison. Through such a discussion people can truly have a choice about what kind of criminal justice system and the role that prison should play in that system – and what kind of society – they want in twenty or thirty years' time.²

Despite falling crime levels, the crisis in the prisons has been accompanied (or caused) by the enactment of 'more criminal justice legislation in ten years than was passed in the previous hundred', the introduction of 'over 3,000 new criminal offences since 1997' and the spending of 'proportionally more money on law and order than just about any other country'. The government's lack of interest in setting up a Royal Commission to review the situation prompted the Howard League's action. The unofficial Commission set its own terms of reference:

1. To investigate the purpose and proper extent of the use of prison in the 21st Century.
2. To consider how best to make use of the range of community sentences that currently exist, the principles that should guide them and to explore new ideas.
3. To consider the role of the media – both broadcast and print – in helping to re-shape the debate about the reform and proper use of imprisonment.
4. To investigate those issues which drive up the prison population in an age of globalisation.
5. To place any recommendations within the broader workings of the criminal justice system of England and Wales, giving due consideration to international development.

At the time of writing it has still to report. In Wilson's words, one of its themes will be the importance of moderation,

[of] caution and restraint when we talk about and deliver punishment. It is about cultivating tolerance; a sense of fair play; and other qualities that we recognise as being characteristics of 'Englishness'. It recognises that prison as a form of punishment is destined to disappoint – that prison is, in the words of commission member Professor Ian Loader of

Oxford University, 'a perennially failing social institution'; one which is 'destined to disappoint because the levers that conduce individuals to conform lie mainly beyond its control'. In other words, prison may punish but it does not address the underlying causes of crime – indeed it can exacerbate these causes, from mental health needs to drug addiction.

Although the Commission's focus is primarily on prison for adults, these comments apply equally well to children. Whether the present government will pay heed to the Commission's findings remains to be seen. New Labour, picking up the cue from its Conservative predecessor, seems to have convinced itself that tough policies towards youth are good for its image, and that informed debate is not needed. This is irresponsible government, and the irony (or the tragedy) is that the politicians' reading of electoral preferences may not be right. There is no evidence that the majority of Labour Party supporters approve of the government's criminal justice policy towards children, or that the majority of the British public believes that building more prisons is the answer to criminal behaviour. Again, what is needed is an informed debate.

Conclusion

A vision is the starting point for reforms: a vision of Russia and of England and Wales with a few secure institutions for the small number of violent and unstable children who are a danger to society and who need special attention; institutions that are accessible, and monitored. A problem for Russia is its size. The idea of locally based and accessible institutions for those young people who really need to spend time in detention is difficult to implement – particularly when their numbers may be very few (girls are a case in point) or the young offenders come from rural areas. But such an idea should lie behind planning for the future, and some other use be sought for those colonies, far from anywhere, and hundreds or thousands of miles from their inmates' homes. In England and Wales priority should be given to local authority homes, and to local communities taking responsibility for any use of custody. The number of YOI and STCs should be drastically reduced. A variety of open and semi-open institutions should be experimented with.

For the other offenders, the great majority, a variety of programmes and sanctions should exist, administered by local agencies – in Russia welfare

departments with professional social workers, a youth inspectorate under the Ministry of Justice, mediation services and voluntary organizations; in England and Wales ‘more effective partnerships between schools and families, and between schools and police’ (Carlile, in NACRO 2005; *Youth Crime Action Plan* 2008), better coordination between local agencies, and funding for community programmes and for open children’s homes. In both countries local authorities should give much greater priority to identifying and responding to children with problems before they become victims of a hostile environment.

Should the political leadership decide that changes are imperative, a rigid system can change – as we saw in the case of Finland – and a few well-designed policies could bring numbers of young people in detention tumbling down. But they must be preceded by a debate, and by action from the political leadership. In this respect the political system in Russia today, with its strong emphasis on the President, has its advantages. If it is left to the government to organize yet another commission to report on the state of Russia’s children or, even more narrowly, on improvements to the current system for dealing with young offenders, nothing will happen. Each ministry, agency, justice institution (courts and procuracy) will defend its bailiwick, while proposing a few minor changes. The strength of the government bureaucracies must not be underestimated. Only clear and insistent leadership from above (coupled with support for those seeking change) can compel these lumbering institutions to change course. This is why the President is so important. There is a danger that federal legislation, in the strongly hierarchical Russian system, could stymie or create obstacles for local initiatives. Some argue that the gaps in or lack of federal legislation encourage regional legislative initiatives and that this movement from below will gradually change the landscape. The problem is that local experiments are dependent upon local heroes, and sympathetic governors, while the present Codes remain in place. At some point action from above will be needed to effect change.³

Supposing the President states that he favours the use of custody on remand and as a sentence only in exceptional cases and for that small minority of violent and unstable children. (In stating this, he would only be confirming the obligations that Russia has incurred in its signing of UN and Council of Europe conventions.) The President sets a date by which he should receive innovative and concrete proposals from key ministries, courts, justice agencies and social organizations. He sets up a *small* commission, headed by, for example, a

respected and retired judge, and including three or four well-known individuals with expert knowledge but not themselves proponents of one particular approach, whose task would be to request evidence and proposals, to ensure that all relevant institutions respond to them and that the debate reaches the public. The law and order ministries, the Supreme Court, the Procurator's office, the KDN, NGOs and experts will all be asked how they would envisage their role (and should they still have a role) in a system designed to reserve detention for a handful of exceptional cases. The commission would sum up the results of the inquiry and make its recommendations.

A fantasy? Not at all, other societies have managed such a rethinking. The time for a policy initiative is ripe in Russia today, and the need for new thinking will be accentuated by the economic crisis. Is the same true in England and Wales? We have a Prime Minister who states he has a vision he wishes to realize, which includes social justice. The government claims that it is important to keep children out of prison whenever possible and, like the Russian government, has signed international conventions to this effect. An (official) Commission for Prisons in Scotland, which reported recently, started with the statement that '[t]he Government refuses to believe that the Scottish people are inherently bad or that there is any genetic reason why we should be locking up twice as many offenders as Ireland or Norway'. Should not the government in Westminster have the courage to ask why Germany and France lock up far fewer of their children than do England and Wales, set the Home Office and academic community the task of devising an alternative agenda based on evidence, and campaign for change?

Expert opinion, and this includes the voices of leading judges, is strongly in favour of moving away from the policies of the past fifteen years, which continue to swell the numbers of prisoners, adult and children. In NACRO's words, there is 'a window of hope in a period of contradictory potential'. The politicians still seem to prefer 'punitive posturing' to a recognition that present policies are ineffective and damaging (NACRO 2005: 2; Goldson 2006; Morgan and Newburn 2006), but there are glimmers of change in the 2008 Act and the *Youth Crime Action Plan*. Perhaps the economic depression, which is already compelling a rethinking of some New Labour principles, will allow for a breathing space – now is not the time to claim that another Criminal Justice Act can tidy up the situation. Now is time for reflection, for new thinking on the state of English (and Welsh) society, and on the use of resources to ensure that custody moves off the agenda for children, as did

hanging in its time. Otherwise we shall have more children in prison, and in the future more adults, and an anxious and punitive society. All this could be avoided, if the politicians demonstrate sense and courage.

We leave the final word with the children.

Some of us have done bad things but I don't think it's right that we are locked up in here. Bad things are done in here as well. What's the point in just doing bad things to us 'cos we've done bad things? Some kids can't handle it and can't cope. The ones that cope just get worse, like. What good is that? (Boy aged 16, Eng)

... It seems to me that locking up children is terrible. Replace it by some sort of compulsory work or something else, but don't use imprisonment. After all a child's psyche is weak, even if s/he is a criminal. It can leave a child deeply scarred. ... And afterwards – where can they go – back to stealing potatoes, and back behind bars. I don't want to say that everyone is locked up for nothing. But there's not many of the others. Some steal a couple of thousand rubles, and people who steal millions, carry on living contentedly. So it seems to me that the justice system is not just. I wish so much that everything could be as it ought to be. (Ekaterina)