

Committee on the Rights of the Child (CRC)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

January 8, 2019

Dear members of the Committee on the Rights of the Child,

We welcome the revision of General Comment 10 on Children's Rights in Juvenile Justice and thank the Committee for the opportunity to provide input on the draft General Comment 24. Further to the joint submission we have sent in,¹ Defence for Children International (DCI) would like to share some additional comments on the proposed General Comment 24.

- (a) In paragraph 8, we would welcome more emphasis on the fact that discrimination may be direct or indirect; very often the global policy of a State is discriminatory and entails different treatment of some categories of the population, such as minorities: they face more police controls, are more frequently arrested, referred to a court, and are often more the subject of custodial measures. States must be encouraged to take all measures to address all kinds of direct and indirect discrimination. We encourage the Committee to reinforce the position taken in General Comment 14 that "appropriate proactive measures taken by the State to ensure effective equal opportunities for all children to enjoy the rights under the Convention. This may require positive measures aimed at redressing a situation of real inequality."²
- (b) Minimum Age of Criminal Responsibility: DCI approves the way this issue has been presented in this new General Comment but would suggest to:
 - a. In paragraph 31, replace the sentence: "For these children, special protective measures can be considered on a case-by-case basis by the appropriate civil or administrative authorities" with "For these children only special protective measures, aiming at their education, can be considered on a case-by-case basis by the appropriate civil or administrative authorities. Deprivation of liberty should be completely prohibited in their case."

¹ Defence for Children International and other civil society partners convened a meeting in London, England on December 19, 2018, in order to collectively discuss and propose improvements to the draft General Comment 24. We hope that this initiative facilitates the process.

² United Nations Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*," May 29, 2013, CRC/C/GC/14, https://www2.ohchr.org/English/bodies/crc/docs/GC/CRC_C_GC_14_ENG.pdf (accessed January 7, 2019), para. 41.

- b. In paragraph 32: Add a sentence after “The Committee understands this provision as an obligation for States parties to set a minimum age of criminal responsibility.” “Nevertheless, establishing this minimum age alone does not fulfil the obligations of article 40 if it is not clearly linked to all other guarantees that States have to implement”.
- c. In paragraph 38, delete “should” and word the sentence as follows: The juvenile justice system applies to children who are above the minimum age of criminal responsibility but below the age of 18 years at the time of the commission of the offence.
- (c) Ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol and establishment of National Preventive Mechanisms: [108]. Recognising the harm that deprivation of liberty of children can cause, we urge the Committee to reinforce the importance of ratifying the CAT, OPCAT, and the establishing of an NPM. Our proposed re-wording of the paragraph (108, p. 20) is as follows:

The Committee emphasizes that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

[...]

- Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting. The Committee urges States to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (OPCAT), and to establish a National Preventive Mechanism in line with their obligations under OPCAT.

- (d) Regarding solitary confinement and isolation of a child (paragraph 108), we suggest the Committee include the following wording:

Solitary confinement,³ recognised as creating a risk of irreversible psychological harm, must never be used on a child regardless of the reason. All other isolation

³ The accepted definition is set out in the Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007 at p 1. It is as follows: “Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a

should be for the shortest possible time and as a last resort. Where a child is isolated from the rest of the group, the reasons should not be related to a disciplinary measure and should be recorded along, and the continued necessity should be subject to regular reviews and monitoring in view of ending this measure as soon as the reason why it was applied has ended. The State has, in this regard, positive obligations to adopt a pedagogic approach.

(e) Under “**G – Specific Issues**,” we suggest two additional paragraphs recognising and addressing the link between the child justice and child protection system and the global economic situation of the State. Our suggested wording is as follows:

- “Child justice and child protection should be seen as interlinked structures and services. Formalized links between the child protection authorities and the justice sector are necessary in order to successfully conduct a multidisciplinary assessment of the best interests of the child and to ensure that a child in contact with the justice system receives adequate care when needed.”
- “Lack of resources shall never justify the infringement of the human rights of children in contact with the justice system.”

(f) Concerning the right to privacy (**Section “Full respect of privacy (arts. 16 and 40 (2) (b) (vii) at paras 78-81)**), we urge the Committee to support the position taken by the UN Human Rights Committee that DNA testing of people who are sentenced for a crime during their youth constituted an arbitrary interference in her private life, in violation of article 17 of the Covenant, and to reinforce this in General Comment 24.⁴

(g) We urge the Committee to highlight the need for States to implement preventive strategies to address the root causes of criminal activity by children. These include poverty, inequality, violence, social exclusion, unequal access to services and opportunities, including education, health, participation, work, recreation, and social welfare systems. It is important to note that child justice and child protection systems

day. In many jurisdictions, prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.”

⁴ United Nations Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2326/2013, CCPR/C/120/D/2326/2013 https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f120%2fD%2f2326%2f2013&Lang=en (accessed January 4, 2019).

and all other relevant actors at national and local level should coordinate to ensure these prevention strategies are concretely implemented.

- (h) We ask the Committee to reference the international standards surrounding the criminalisation of migration, particularly of children in the context of migration, and to reiterate its existing positions on this point.

We look forward to seeing the final version of the revised comment and we remain at the disposal of the Committee to further discuss all these suggestions.

Yours Sincerely,



Alex Kamarotos
Executive Director