

General Comment No. 24 (201x), replacing General Comment No. 10 (2007)

Children's rights in child justice systems

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I. Introduction

1. This general comment is a revision of general comment No. 10, which was adopted in 2007. It reflects the developments that have occurred during the intervening decade through the promulgation of various resolutions and other guiding documents on violence against children in child justice, the knowledge about child and adolescent development, the Committee's own jurisprudence and various concerns, including negative trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty, and emerging issues, such as children recruited and used by non-State armed groups, or terrorist or violent extremist groups, and children in contexts of legal pluralism.
2. The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system, including the child justice system. However, in the Committee's view this aim is best served by full respect for and implementation of the principles of child justice as enshrined in the Convention on the Rights of the Child (hereafter: CRC). The present general comment replaces the original general comment No. 10 (2007), and preserves the same spirit and philosophy.
3. The Committee notes with appreciation the many efforts to establish child justice systems in compliance with CRC. However, it is also clear that many States parties still have a long way to go in achieving full compliance, in particular in the areas of prevention, the development and expansive implementation of diversion measures and a multi-disciplinary approach, the setting of an appropriate minimum age of criminal responsibility, and ensuring the use of deprivation of liberty only as a measure of last resort and for the shortest appropriate period of time.
4. In the years since general comment No. 10 (2007) was adopted, several declarations and guidelines have been adopted by international and regional bodies, which promote access to justice, procedural safeguards, and child-friendly justice. These frameworks are broader in scope than children in conflict with the law, as they include children in all aspects of the justice systems, including child victims and witnesses of crime, and children in welfare proceedings and before administrative tribunals. These developments, valuable though they are provided they do not have the effect of penalising a child without due safeguards, fall outside of the scope of this revised general comment.

II. The objectives of the present general comment

5. The objectives of the present general comment are:
 - To underscore that the CRC requirement to develop and implement a comprehensive child justice policy should not be limited to the implementation of the specific provisions contained in articles 37 and 40 of CRC, but should also take into account the general principles enshrined in articles 2, 3, 6 and 12, and in all other relevant articles of CRC, such as articles 4, 16, 19, 24, 27 and 39;
 - To provide clarity on the setting of a minimum age of criminal responsibility, the upper age limit of the child justice system, and related matters;
 - To encourage the establishment and full implementation of alternative procedures and measures that can be applied at all stages of the process;
 - To ensure the guarantees for a fair trial for those children who are not diverted to alternative procedures and measures and to ensure the application of appropriate dispositions for children who are convicted and the avoidance of deprivation of liberty, except as a measure of last resort, and if used, for the shortest appropriate period of time and in appropriate conditions.

III. Terminology

6. The Committee encourages States to use language that avoids stigmatizing children and/or defining children by their acts and circumstances, in accordance with the principle of the best interests of the child. This includes avoiding terms such as “offender” or “runaways”. Terms such as “vagrancy” and “delinquency” that also cast a value judgement on the child should be avoided. This general comment uses alternative words in recognition of an evolution in thinking.

7. The main terms used in the international normative framework of child justice:

Children in conflict with the law: children alleged as, accused of, or recognized as having infringed the penal law;

Children in contact with the justice system: All children who come into contact with the justice system, as witnesses, victims, and as someone who has committed – or is alleged to have committed – a crime;

Non-custodial measures: any decision made by a competent authority to submit a person suspected or accused of or sentenced for an offence to certain conditions and obligations that do not include imprisonment; such decision can be made at any stage of the administration of criminal justice¹

Deprivation of liberty: any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority;²

Diversion: measures for dealing with children in conflict with the law, taken by designated authorities, without resorting to judicial proceedings;

Child justice: refers to legislation, norms and standards, procedures, mechanisms and provisions, institutions and bodies specifically applicable to children in contact with the justice system. This revised general comment does not refer to children as ‘juveniles’. The Committee acknowledges and strongly urges States Parties to continue the trend towards using terms such as ‘youth justice’ and ‘child justice’, which are positive developments as they aim to reinforce the dignity and worth of children in conflict with the law;

Minimum age of criminal responsibility: the minimum age below which children shall be presumed not to have the capacity to infringe the criminal law;

Age of criminal majority: the criminal majority is the upper age limit beyond which the child justice system does not apply and a person who commits a crime is treated as an adult in the ordinary criminal justice system;

Plural legal orders : Legal orders are the norms, rules and institutions formed by a society or group of people to ensure social stability. Plural legal orders exist when multiple norms, laws or forums co-exist within a particular jurisdiction or country.

Restorative approaches are processes that involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible.³ This can include appropriate justice measures. Examples of restorative approaches include mediation, family conferencing and sentencing circles.

¹ Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), 1993, ST/CSDHA/22, <https://www.ncjrs.gov/pdffiles1/Digitization/147416NCJRS.pdf> (accessed December 20, 2018), p. 3.

² See, United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), December 14, 1990, A/RES/45/113, <http://www.un.org/documents/ga/res/45/a45r113.htm> (accessed January 3, 2019), art. 11 lit. b.

³ See, Howard Zehr, *The Little Book of Restorative Justice: Revised and Updated*, Skyhorse Publishing, Inc., 2015.

Status offence: act that is considered illegal when committed by a child, but not when committed by an adult (e.g., acts such as running away, not attending school, disobeying parents).

IV. Child justice: the leading principles of a comprehensive policy

8. Before elaborating on the requirements of CRC in more detail, the Committee will first mention the leading principles of a comprehensive policy for child justice. In the administration of child justice, States parties have to apply systematically the general principles contained in articles 2, 3, 6 and 12 of CRC, as well as all other relevant articles of CRC, such as articles 4, 16, 19, 24, 27 and 39, alongside the fundamental principles of child justice enshrined in articles 37 and 40.

Non-discrimination (art. 2)

9. States parties have to take all necessary measures to ensure that all children in conflict with the law are treated without discrimination.⁴ Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve children in vulnerable circumstances, such as children in street situations, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girls, children in the care of the state, children with disabilities, children discriminated against on the basis of their sexual orientation or gender identity, children on the move,⁵ and children who are repeatedly in conflict with the law. In this regard, training of all professionals involved in the administration of child justice is important (see paragraph 123 below), as well as the establishment of rules, regulations or protocols which enhance equal treatment of children in contact with the justice system and provide redress, remedies and compensation. State Parties are urged to collect, analyse, and publicly report on data concerning the treatment of children with these characteristics or in these circumstances with a view to developing policy and practice to prevent discrimination.

10. Many children in conflict with the law are also victims of discrimination, e.g. when they try to get access to education or to the labour market. It is necessary that measures are taken to prevent such discrimination, inter alia, as by providing children formerly in contact with the justice system with appropriate support and assistance in their efforts to reintegrate in society, removing barriers to their effective reintegration and to conduct public campaigns emphasizing their right to assume a constructive role in society (art. 40 (1)).

11. It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as children in street situations, truancy, runaways, child sexual exploitation, consensual sexual activity, and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and children in street situations are often victims of this criminalization. These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee recommends that the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person."

⁴ This includes all grounds for discrimination and groups of children affected by discrimination as identified in the Implementation Handbook for the Convention on the Rights of the Child at pages 24-25. United Nations Emergency Children's Fund (UNICEF), Implementation Handbook for the Convention on the Rights of the Child: Fully Revised Third Edition, https://www.unicef.org/publications/index_43110.html (accessed December 20, 2018), pp. 24-25.

⁵ Including migrant, asylum-seeking, refugee, internally-displaced, undocumented, and stateless children as well as child victims of trafficking etc.

12. In addition, behaviour by children in street situations or who have run away should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour.

Best interests of the child (art. 3)

13. In all decisions taken within the context of the administration of child justice, the best interests of the child must be a primary consideration. This applies to all children regardless of the seriousness of the alleged or actual crimes. Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. For these reasons children require a separate child justice system that treats children differently from adults. The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with children in contact with the justice system. This can be done in concert with attention to effective public safety.

The right to life, survival and development (art. 6)

14. This inherent right of every child should guide and inspire States parties in the development of effective national policies and programmes for the prevention of criminal activity, because it goes without saying that such behaviour has a very negative impact on the child's development. Furthermore, this basic right should result in a policy of responding to criminal activity in ways that support the child's development. The death penalty and a life sentence without parole are explicitly prohibited under article 37 (a) of CRC (see paragraphs 90-92 below). The use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37 (b) explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child's right to development is fully respected and ensured (see paragraphs 95-107 below).⁶

The right to be heard (art. 12)

15. The right of the child to express his/her views freely in all matters affecting the child should be fully respected and implemented throughout every stage of the process of child justice, including through specialist legal representation (see paragraphs 54-56 below). The Committee notes that the voices of children involved in the child justice system are increasingly becoming a powerful force for improvements and reform, and for the fulfilment of their rights.

Dignity (art. 40 (1))

16. CRC provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law:

- *Treatment that is consistent with the child's sense of dignity and worth.* This principle reflects the fundamental human right enshrined in article 1 of UDHR, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child;
- *Treatment that reinforces the child's respect for the human rights and freedoms of others.* This principle is in line with the consideration in the preamble that a child

⁶ Note that the rights of a child deprived of his/her liberty, as recognized in CRC, apply with respect to children in conflict with the law, and to children placed in institutions for the purposes of care, protection or treatment, including mental health, educational, drug treatment, child protection or immigration institutions.

should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations. It also means that, within the child justice system, the treatment and education of children shall be directed to the development of respect for human rights and freedoms (art. 29 (1) (b) of CRC and general comment No. 1 on the aims of education). It is obvious that this principle of child justice requires a full respect for and implementation of the guarantees for a fair trial recognized in article 40 (2) (see paragraphs 49-81 below). If the key actors in child justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?;

- *Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society.* This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of child justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children;
- *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.* Reports received by the Committee show that violence occurs in all phases of the child justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other facilities for children sentenced to deprivation of liberty. The committee urges the States parties to take effective measures to prevent such violence and to make sure that the perpetrators are brought to justice and to give effective follow-up to the recommendations made in the report on the United Nations Study on Violence Against Children presented to the General Assembly in October 2006 (A/61/299).

17. The Committee acknowledges that the preservation of public safety is a legitimate aim of the justice system. However, it is of the opinion that this aim is best served by a full respect for and implementation of the leading and overarching principles of child justice as enshrined in CRC. Empirical evidence shows that a punitive response does not strengthen public safety and the best way to achieve public safety is for a child to assume a constructive role in society in accordance with Article 40.⁷

V. Child justice: the core elements of a comprehensive policy

18. A comprehensive policy for child justice must deal with the following core elements: the prevention of criminal activity; interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings; the minimum age of criminal responsibility and the age of criminal majority/ upper age limit of the child justice system; the guarantees for a fair trial; the deprivation of liberty including pre-trial and post-trial custodial measures; the after care and reintegration services and the monitoring of these measures.

19. : In every case and at every stage, restorative approaches, which are consistent with the best interests and rights of the child, should be considered. This does not apply solely to first time offences.

⁷ See for instance, McAra, L and McVie, S (2010) 'Youth crime and justice: key messages from the Edinburgh Study of Youth Transitions and Crime' in *Criminology and Criminal Justice* 10(2): 179-209

A. Prevention of criminal activity -

20. Reducing system contact is the best way to prevent criminal activity. States should be encouraged to take active steps to reduce contact of children with the justice system.

21. One of the most important goals of the implementation of CRC is to promote the full and harmonious development of the child and to prepare him or her to live an individual and responsible life in a free society, in which he/she can assume a constructive role with respect for human rights and fundamental freedoms (preamble, arts 6, 29 and 40). In this regard, parents have the responsibility to provide the child, in a manner consistent with his/her evolving capacities, with appropriate direction and guidance in the exercise of his/her rights as recognized in the Convention. In the light of these and other provisions of CRC, it is obviously not in the best interests of the child if he/she grows up in circumstances that may cause an increased or serious risk of becoming involved in criminal activities. States should recognize the root causes and the impact of the environment in which a child lives, that can lead to criminal activity, and take positive steps to address this. Various measures should be taken for the full and equal implementation of the rights to an adequate standard of living (art. 27), to the highest attainable standard of health and access to health care (art. 24), to education (arts. 28 and 29), to protection from all forms of physical or mental violence, injury or abuse (art. 19), and from economic or sexual exploitation (arts. 32 and 34), and to other appropriate services for the care or protection of children.

22. A child justice policy without a set of measures aimed at preventing criminal activity suffers from serious shortcomings. States parties should fully integrate into their comprehensive national policy for child justice the Riyadh Guidelines (1990), which emphasise prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. Prevention programmes should focus on support for families in particular those in vulnerable situations, the involvement of schools in teaching basic values, and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.

23. Articles 18 and 27 of the Convention confirm the importance of the responsibility of parents or legal guardians for the upbringing of their children, but at the same time CRC requires States parties to provide the necessary assistance to parents (or other caregivers), in the performance of their parental responsibilities. The measures of assistance should not only focus on the prevention of negative situations, but should also emphasise the promotion of the social potential of parents. There is a wealth of information on home- and family-based prevention programmes, such as parent training, programmes to enhance parent-child interaction and home visitation programmes, which can commence when the child is very young. In addition, investment in early childhood development and education correlates with a lower rate of future violence and crime.

24. States parties should fully promote and support the involvement of children, parents, community leaders and other key actors (e.g. representatives of NGOs, probation services and social workers) in the development and implementation of prevention programmes. The quality of this involvement is a key factor in the success of these programmes.

B. Interventions/diversion (see also section E below)

25. All interventions and diversionary measures should entail minimal contact with the justice system. Procedural rights should not be compromised by diversion.

26. Two kinds of interventions can be used by State authorities for dealing with children in conflict with the law:

1. measures without resorting to judicial proceedings (diversion); and
2. measures in the context of judicial proceedings.

In both interventions, the Committee reminds States parties that utmost care must be taken to ensure that the child's human rights and legal safeguards are thereby fully respected and protected.

Interventions without resorting to judicial proceedings (diversion)

27. According to article 40 (3) of the CRC, the States parties shall seek to promote measures for dealing with children in conflict with the law without resorting to judicial proceedings, whenever appropriate. In addition to avoiding stigmatization, this approach has good results for children and is in the interests of public safety, and has proven to be more cost-effective.
28. The diversion of matters away from the criminal/child justice processing to a range of appropriate programmes should be the preferred manner of dealing with children in contact with the justice system in the majority of cases. States parties should continually extend the range of offences for which diversion is possible, including serious offences where appropriate.
29. It is left to the discretion of States parties to decide on the exact nature and content of the measures of diversion, and to take the necessary legislative and other measures for their implementation. Nonetheless, on the basis of the information provided in the reports from some States parties, it is clear that a variety of community-based programmes have been developed, such as community service, supervision and guidance by social workers or probation officers, family conferencing and other forms of restorative justice including restitution to and compensation of victims.
30. States parties should take measures of diversion as an integral part of their child justice system, and ensure that children's human rights and legal safeguards are thereby fully respected and protected (art. 40 (3) (b)).
31. The Committee emphasizes the following:
 - Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility, and that no intimidation or pressure has been used to obtain that admission and, finally, that the admission will not be used against him/her in any subsequent legal proceeding;
 - The child must freely and voluntarily give consent to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure.;
 - The law should indicate the cases in which diversion is possible, and the powers of the police, prosecutors and/or other agencies to make decisions in this regard should be regulated and reviewed. All State officials and actors participating in the diversion process should receive the necessary training and support;
 - The child must be given the opportunity to seek legal or other appropriate assistance on the appropriateness of the diversion offered by the competent authorities, and on the possibility of review of the measure;
 - The completion of the diversion by the child should result in a definite and final closure of the case. Although confidential records can be kept of diversion for administrative and review purposes, they should not be viewed as "criminal records" and a child who has been previously diverted must not be seen as having a previous conviction. If any registration takes place of this event, access to that information should be given exclusively and for a limited period of time, e.g. for a maximum of one year, to the competent authorities authorized to deal with children in conflict with the law.

Interventions in the context of judicial proceedings (disposition)

32. When judicial proceedings are initiated by the competent authority, the principles of a fair and just trial must be applied (see section D below). At the same time, the child justice system should provide ample opportunities to deal with children in conflict with the law by using social and/or educational measures, and to strictly limit the use of deprivation of liberty, and in particular pre-trial detention, as a measure of last resort. From the moment of arrest, and during the disposition phase of the proceedings, deprivation of liberty must be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)). This means that States parties should have in place a well-trained probation service to allow for the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day report centres, and the possibility of early release from detention.
33. The Committee reminds States parties that, pursuant to article 40 (1) of CRC, promoting reintegration requires that a child who is or has been in conflict with the law should be protected from actions or attitudes that hamper the child's full participation in his/her community, such as stigmatization, social isolation, or negative publicity.

C. Age and children in conflict with the law

The minimum age of criminal responsibility

34. The minimum age of criminal responsibility is the age below which children are considered by law not to have the capacity to infringe the criminal law. Children who commit an offence at an age below that minimum cannot be held responsible in a criminal law process. Children at or above the minimum age at the time of the commission of an offence but younger than 18 years (see paragraph xx below) can be formally charged and subject to child justice procedures. However, these procedures, including the final outcome, must be in full compliance with the principles and provisions of the Convention as elaborated in the present general comment. The Committee reminds states parties that the relevant age is the age at the time of the commission of the offence.
35. It is a fact that even young children do commit offences, but if they do so when below the minimum age of criminal responsibility the operation of law dictates that they cannot be formally charged and held responsible in a criminal law process. For these children special protective measures can be considered on a case-by-case basis by the appropriate civil or administrative authorities.
36. Art. 40 (3) of CRC requires States parties to seek to promote, inter alia, the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law, but does not mention a specific minimum age in this regard. The Committee understands this provision as an obligation for States parties to set a minimum age of criminal responsibility. The reports submitted by States parties demonstrate a wide range of minimum ages of criminal responsibility, ranging from a very low level of age 7 or 8 to the commendably high level of age 14 or 16. In the light of this wide range of minimum ages for criminal responsibility, the Committee decided in general comment No. 10 (2007) to provide the States parties with clear guidance regarding the minimum age of criminal responsibility.
37. International standards recommend that the minimum age of criminal responsibility shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity. In line with this rule, the Committee recommended States parties not to set a minimum age at too low a level and to increase the existing low minimum age to an internationally acceptable level. In the original general comment No. 10 (2007), the Committee had considered 12 years as the absolute minimum age. However, the Committee finds that this age indication is still low. States parties are encouraged to increase their minimum age to at least 14 years of age. At the same time, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age. The Committee recommends that State parties should under no circumstances reduce the minimum age of

criminal responsibility, if its current penal law sets the minimum age of criminal responsibility at an age higher than 14 years.

38. States parties should provide detailed information in their reports to the Committee regarding how children below the minimum age of criminal responsibility set in their laws are treated when they are in conflict with the law, and what kind of legal safeguards are in place to ensure that their treatment is as fair and just as that of children at or above the minimum age.
39. The Committee wishes to express its concern about the practice of allowing exceptions to a minimum age of criminal responsibility, which permit the use of a lower minimum age of criminal responsibility in cases where the child, for example, is accused of committing a serious offence or where the child is considered mature enough to be held criminally responsible. The Committee strongly recommends that States parties set a minimum age of criminal responsibility that does not allow, by way of exception, the use of a lower age.
40. If there is no proof of age and it cannot be established that the child is at or above the minimum age of criminal responsibility, the child shall not be held criminally responsible (see also paragraph xx below).

The upper age limit of child justice (or age of criminal majority)

41. The upper age limit to the child justice system/ the age of criminal majority is the limit of age after which a person who commits a crime is considered an adult and answers of this offence before the adult criminal courts. The upper age limit of the child justice system/ criminal majority is universally fixed at 18 years of age and corresponds to the definition of a child contained in article 1 of the Convention. This means that every person under the age of 18 years at the time of the alleged commission of an offence has the right to be treated in accordance with the rules of child justice, in a specific and specialized system, different from the criminal one applicable to adults.
42. In addition to ensuring children's rights are fully respected, protected and fulfilled, the rights and distinct needs of young adults (from the age of 18 to their mid-twenties) should be recognised and protected in line with emerging scientific developments.

The application of child justice system

43. The child justice system should apply 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.
44. In relation with the upper age limit of the child justice system, the Committee wishes to remind States parties that they have recognized the right of every child in conflict with the law to be treated in accordance with the provisions of art. 40 of the Convention. These special rules – both in terms of special procedural rules and of rules for diversion and special measures – should apply, starting at the minimum age of criminal responsibility set in the States party, for all children who, at the time of their alleged commission of an offence, have not yet reached the age of 18 years.
45. The Committee, therefore, recommends that those States parties which limit the applicability of their child justice rules to children under the age of 16 years (or lower), or which allow by way of exception that certain children are treated as adults in contact with the justice system (for example, because of the category of the offence), should change their laws with a view to achieving a non-discriminatory full application of their child justice rules to all persons under the age of 18 years at the time of the offence (see also general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, paragraph 88).
46. Child justice systems should also extend protection to children in contact with the justice system who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or during the period of sentence.
47. The Committee notes with appreciation that some States parties allow for the application of the rules and regulations of child justice to persons aged 18 and older, usually until the age of 21, whether as a general rule or by way of exception.

Systems with two minimum ages of criminal responsibility

48. Several States parties use two minimum ages of criminal responsibility: children in conflict with the law who at the time of the commission of the crime are at or above the lower minimum age but below the higher minimum age are assumed to be criminally responsible only if they have the required maturity in that regard. The assessment of this maturity is often left to the court/judge, sometimes without the requirement of involving a psychological expert (who are often not available in developing states), and results in practice in the use of the lower minimum age in cases of serious crimes. The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices.

Birth certificates and age determination

49. A child who does not have a birth certificate must be provided with one promptly and free of charge, whenever it is required to prove age. If there is no proof of age by birth certificate, the authority, with the assistance of social workers, if available, should accept all documentation such as notification of birth, extracts from birth registries, baptismal or equivalent documents, or school reports. Documents that are available should be considered genuine unless there is proof to the contrary. Authorities should allow for interviews with parents or testimony by parents regarding age, or for permitting questionnaires to be filed by teachers or religious or community leaders who know the age of the child.
50. Only if these measures prove unsuccessful, the child may be subjected to a comprehensive assessment of the child's physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development. Such assessments should be carried out in a prompt, child- and gender-sensitive, and culturally appropriate manner, including interviews of children and, as appropriate, accompanying adults, in a language the child understands. States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes. In the case of inconclusive evidence, the child shall have the benefit of the doubt.

Continuation of the child justice measures after criminal majority

51. When a child in conflict with the law is the object of a measure of probation, education or curative treatment, or stays in a placement or is detained in a centre for children in conflict with the law, reaching 18 years does not mean the end of the child justice specialised measures. The Committee recommends to States parties to ensure that young persons over 18, who are typically still developing until their mid-twenties, can continue the completion of the programme or sentence in conditions suited to their age, maturity and needs and are not sent to centres for adults. When implementing such recommendations in centres for children, States parties should ensure the full respect of the principle of separation from adults, including young adults, who should be treated separately from children.

Offences committed before and after 18 years and offences committed with adults

52. In cases where a young child in contact with the justice system commits several offences, some occurring before and some after the age of 18 years, States parties should consider providing for procedural rules which allow the child justice system to be applied in respect of all the offences when there are reasonable grounds to consider the author of these offences as being able to benefit from the specialized regime of the child justice system.
53. In cases where a child commits an offence together with an adult or a group of adults, the proceedings and provisions of the specialized regime of the child justice system applies to the child, whatever the conditions reserved for adults.

D. The guarantees for a fair trial

54. Art. 40 (2) of CRC contains an important list of rights and guarantees to ensure that every child in conflict with the law receives fair treatment and trial. Most of these guarantees can also be found in article 14 of the International Covenant on Civil and Political Rights (ICCPR). However, the implementation of these guarantees for children requires specific aspects. The Committee wishes to emphasize the importance of the quality of the persons involved in the administration of child justice for the implementation of the guarantees. Continuous and systematic training of professionals (police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers, psychologists and others) is crucial. These professionals should be able to work in interdisciplinary teams, be well informed about the child's, and particularly about the adolescent's physical, psychological, mental and social development, as well as about the special needs of the most vulnerable children (see paragraphs xx-xx above).
55. Since girls in the child justice system may be easily overlooked because they are a minority of children in contact with the justice system, special attention should be paid to the particular needs of girls, e.g. in relation to prior abuse, special health, including psychological and mental health needs.
56. All the guarantees recognized in article 40 (2) of CRC are minimum standards, meaning that States parties can and should try to establish and observe higher standards.

No retroactive child justice (art. 40 (2) (a))

57. Art. 40 (2) (a) of the Convention (see also article 15 of ICCPR) affirms that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time it was committed. This is also applicable to children meaning that no child can be charged with or sentenced under the criminal law for acts or omissions which at the time they were committed were not prohibited under national or international law. In the light of the fact that many States parties have recently strengthened and/or expanded their criminal law provisions to prevent and combat terrorism, the Committee recommends that States parties ensure that these changes do not result in retroactive or unintended punishment of children. No child shall be punished with a heavier penalty than the one applicable at the time of his/her infringement of the penal law. But if a change of law after the act provides for a lighter penalty, the child should benefit from this change.

The presumption of innocence (art. 40 (2) (b) (i))

58. The presumption of innocence is fundamental to the protection of the human rights of children in conflict with the law. It means that the burden of proof of the charge(s) brought against the child is on the prosecution. The child alleged as or accused of having infringed the criminal law is only guilty if the charges have been proved beyond reasonable doubt. The child has the right to be treated in accordance with this presumption and it is the duty of all public authorities or others involved to refrain from prejudging the outcome of the trial. States parties should provide information about child development to ensure that this presumption of innocence is respected in practice. Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt.

The right to be heard (art. 12)

59. Article 12 (2) of the Convention requires that a child be provided with the opportunity to be heard in any judicial or administrative proceedings affecting him/her, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.⁸
60. The child's right to be heard is fundamental for a fair trial. He or she has the right to be heard directly and not only through a representative or an appropriate body at all stages of the

⁸ See also general comment No. 12 (2009) on the right of the child to be heard, paragraphs 57-64.

process, starting with the pre-trial stage when the child has the right to remain silent and no adverse inference should be drawn if he or she elects not to testify; and applies throughout the stages of adjudication and of implementation of the imposed measures. A child who is considered to be criminally responsible should be considered competent to effectively participate in all aspects of the trial.

61. The child should be given the opportunity to express his/her views concerning the measures that may be imposed, and the specific concerns he/she may have should be given due weight. (see paragraph xx below). Treating the child as a participant rather than a passive object contributes to an effective response to his/her behaviour, and improves the possibility of successful completion of the measures and of reintegration.

The right to effective participation in the proceedings (art 40 (2) (b) (iv))

62. A fair trial requires that the child in conflict with the law is able to effectively participate in the trial, and the child therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. This includes a requirement that the proceedings be conducted in a language the child fully understands but if not, to be assisted by a free interpreter and a communications specialist. Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

Prompt and direct information of the charge(s) (art. 40 (2) (b) (ii))

63. Every child alleged as or accused of having infringed the criminal law has the right to be informed promptly and directly of the charges brought against him/her. Prompt and direct means as soon as possible, and that is when the police, the prosecutor or the judge initially takes procedural steps against the child. When the authorities decide to deal with the case with a diversion measure, the child must be informed of the charge(s) on which this is based, and must understand his or her legal options. This is part of the requirement of article 40 (3) (b) of CRC that legal safeguards should be fully respected. The child should be informed in a language he/she understands, including a "translation" of the formal legal jargon into child-friendly language.
64. Providing the child with an official document is insufficient and an oral explanation is necessary. Providing this information to parents/guardians/legal or other assistants is insufficient. The authorities should not leave the explanation of the charges to such persons. It is the responsibility of the authorities (police, prosecutor, judge) to ensure that the child understands each charge brought against him/her. It is most appropriate if both the child and the parents/ legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences.

Legal or other appropriate assistance (art. 40 (2) (b) (ii))

65. States shall ensure that the child is guaranteed legal or other appropriate assistance from the outset of the proceedings in the preparation and presentation of his/her defence. The CRC does require that the child be provided with assistance, which is not necessarily under all circumstances legal but it must be appropriate. A number of States parties have made reservations regarding this guarantee (art. 40 (2) (b) (ii) of CRC), apparently assuming that it requires exclusively the provision of legal assistance and therefore by a lawyer. In general comment No. 10 (2007), this Committee recommended such reservations should be withdrawn.
66. The Committee has become concerned, however, that many children in some States parties are facing charges in courts and being deprived of liberty, without having the benefit of legal representation and assistance. (See art. 65 above as stands currently). The Committee notes that in terms of 14 (3) (d) of ICCPR the right to legal representation is a minimum guarantee in the criminal justice system for all persons, and should equally apply to children. While this

article allows the person to defend him/herself in person in any case where “the interests of justice so require”, that person will be assigned legal assistance.

67. In light of this, the Committee is concerned that children are being provided with less protection than international law guarantees for adults. The Committee recommends that states provide legal representation and assistance for all children who are in contact with the law from the first stages of proceedings, including police interrogation and facing charges. The lawyer should have specialized training. In line with art. 37 (d), the right to legal assistance is absolute and should not be waived. If children are being diverted to programmes or are being assisted in a system which does not result in convictions, criminal records or deprivation of liberty, ‘other assistance’ may be an acceptable form of assistance, specially trained, although states that can provide legal representation for children during all processes should do so. Legal representation shall be provided free of charge to the child. Children should have a choice of legal representative, where possible.
68. Where other appropriate assistance is permissible (e.g. social worker or para-legal), that person must have sufficient knowledge and understanding of the various legal aspects of the process of child justice and must be trained to work with children in conflict with the law. It is left to the discretion of States parties to determine how this assistance is provided but it should be free of charge. The legal or other appropriate assistance should be present not only in the trial before the court or other judicial body but also in all other stages of the child justice process, beginning with the interviewing (interrogation) of the child by the police, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final decision by the court or other competent judicial body.
69. As required by article 14 (3) (b) of ICCPR, the child and his/her assistant must have adequate time and facilities for the preparation of his/her defence. Communications between the child and his/her assistant, either in writing or orally, should take place under such conditions that the confidentiality of such communications is fully respected in accordance with the guarantee provided for in article 40 (2) (b) (vii) of CRC, and the right of the child to be protected against interference with his/her privacy and correspondence (art. 16 of CRC)

Decisions without delay and with involvement of parents (art. 40 (2) (b) (iii))

70. The Committee reiterates that, for children in conflict with the law, the time between the commission of the offence and the final response to this act should be as short as possible. The longer this period, the more likely it is that the response loses its desired positive, pedagogical impact, and the more the child will be stigmatized. The term “promptly” relating to notification of charges (art. 40 (2) (b) (ii) of CRC) and the term “without delay” (art. 40 (2) (b) (iii) of CRC) relating to determination of matter, are both stronger than the term “without undue delay” of article 14 (3) (c) of ICCPR.
71. The Committee recommends that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults, but the shortened time frames should still allow for the child’s rights and the legal safeguards to be fully respected.
72. Parents or legal guardians should also be present at the proceedings. However, the judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance or because it is not in the best interests of the child (art. 3 paragraph 1 of CRC), to limit, restrict or exclude the presence of the parents from the proceedings.
73. The Committee recommends that States parties explicitly provide by law for the maximum possible involvement of parents or legal guardians in the proceedings against the child because they can provide general psychological and emotional assistance to the child. This involvement shall in general contribute to an effective response to the child’s infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible.
74. At the same time, the Committee urges States not to punish parents for the offences committed by their children ; this practice may operate to the detriment of the child and is

unlikely to contribute to their becoming active partners in the social reintegration of their child.

Freedom from compulsory self-incrimination (art. 40 (2) (b) (iii))

75. In line with article 14 (3) (g) of ICCPR, CRC requires that a child is not compelled to give testimony or to confess or acknowledge guilt. Torture, cruel, inhuman or degrading treatment in order to extract an admission or a confession constitutes a grave violation of the rights of the child (art. 37 (a) of CRC) and is wholly unacceptable. No such admission or confession can be admissible as evidence (article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).
76. There are many other less violent ways to coerce or to lead the child to a confession or self-incriminatory testimony which are also to be avoided. The term “compelled” should be interpreted in a broad manner and not be limited to physical force or other clear violations of human rights. The age of the child, the child’s development, the length of the interrogation, the child’s lack of understanding, the fear of unknown consequences or of a suggested possibility of imprisonment may lead him/her to a confession that is not true.
77. The child being questioned must have access to legal or other appropriate assistance, and must be able to request and secure the presence of his/her parent(s) during questioning. The court or other judicial body, when considering the voluntary nature and reliability of an admission or confession by a child, must take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child. Police officers and other investigating authorities should be well trained to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies.

Presence and examination of witnesses (art. 40 (2) (b) (iv))

78. The guarantee in article 40 (2) (b) (iv) of CRC underscores that the principle of equality of arms (equality or parity between defence and prosecution) should be observed in the administration of child justice. The term “to examine or to have examined” refers to the fact that there are distinctions in the legal systems, particularly between the accusatorial and inquisitorial trials. In the latter, the defendant is often allowed to examine witnesses although he/she rarely uses this right, leaving examination of the witnesses to the lawyer or, in the case of children, to another appropriate body. However, it remains important that the lawyer or other representative informs the child of the possibility to examine witnesses and to allow him/her to express his/her views in that regard (art. 12 of CRC).

The right to appeal (art. 40 (2) (b) (v))

79. The child has the right to appeal against the decision finding him/her guilty of the charge(s) and against the measures imposed. This appeal should be decided by a higher, competent, independent and impartial authority or judicial body. This guarantee is similar to the one expressed in article 14 (5) of ICCPR. This right of appeal is not limited to the most serious offences.
80. Several States parties have made reservations regarding this provision in order to limit this right of appeal by the child to the more serious offences and/or imprisonment sentences. In the light of article 41 of CRC, the Committee recommends that the States parties withdraw their reservations to the provision in article 40 (2) (b) (v).

Free assistance of an interpreter (art. 40 (2) (vi))

81. If a child cannot understand or speak the language used by the child justice system, he/she has the right to have the free assistance of a competent interpreter. This assistance should not be limited to the court trial, but should also be available at all stages of the child justice process. It is also important that the interpreter has been trained to work with children, because the use and understanding of their mother tongue might be different from that of adults.

82. The Committee also wishes to draw the attention of States parties to children with communication disabilities. In accordance with the special protection measures provided to children with disabilities in article 23 of CRC, the Committee recommends that States parties ensure that such children provided with adequate and effective assistance by well-trained professionals. See also in this regard the Committee's general comment No. 9 (2006) on the rights of children with disabilities.

Full respect of privacy (arts. 16 and 40 (2) (b) (vii))

83. The right of a child to have his/her privacy fully respected during all stages of the proceedings as laid down in article 40 (2) (b) should be interpreted in light of articles 16 and 40 (1) which entails lifelong protection from publication of criminal activity committed during childhood. The rationale for the nonpublication rule, and its continuation following the child turning 18 years, is that publication causes ongoing stigmatization, which is likely to have a negative impact on his/her ability to have access to education, work, housing or to be safe. This means that the goals of child justice to promote the child's reintegration and assumption of a constructive role in society is seriously impeded. Consequently, public authorities should be most vigilant concerning press releases, articles and publications related to offences allegedly committed by persons who were children at the time of the offence, and limit them to very exceptional cases. They must take measures to guarantee that children are not identifiable via such releases, articles or publications. This should extend to all forms of social media. All persons who violate the right to privacy of a child in conflict with the law should be sanctioned with disciplinary and where necessary with criminal sanctions.
84. The Committee recommends that the States parties protect the identity of a person who committed a crime while still a child. In the case of registers of criminal activity in the interests of public safety, these details should not be made public and should only be available to the relevant authorities.
85. Furthermore, the Committee recommends to the State parties to introduce rules permitting automatic removal from the criminal records of children who committed an offence upon reaching the age of 18, and in the case of serious offences to allow removal at the request of the child, if necessary under certain conditions (e.g. not having committed an offence within two years after the last conviction).
86. The Committee recommends that all States parties introduce the rule that court and other hearings of a child in conflict with the law be conducted behind closed doors. Exceptions to this rule should be very limited and clearly stated in the law. If the verdict/sentence is pronounced in public at a court session, it should be done in such a way that the identity of the child is not revealed. Furthermore, the right to privacy also means that the court files and records of children in contact with the justice system should be kept strictly confidential and closed to third parties except for those directly involved in the investigation and adjudication of, and the ruling on, the case. With a view to avoiding stigmatization and/or prejudgements, records of children in contact with the justice systems should not be used in subsequent cases in adult proceedings involving the same individual (see the Beijing Rules, rules 21.1 and 21.2), or to enhance future sentencing.

E. Measures (see also section B above)

Diversion throughout the proceedings

87. The decision to take a child through the child justice system does not mean the child must go through a formal court process. In line with the observations made above in section B, the Committee emphasizes that the competent authorities - in most States the public prosecutor - should continuously explore the possibilities of avoiding a court process or conviction, through diversion and other measures. In other words, efforts to achieve an appropriate conclusion of the case by offering measures like the ones mentioned above in section B should start before a trial commences and should continue throughout the proceedings. The nature and duration of these measures offered by the police, the prosecution or the judge may still be demanding, and legal or other appropriate assistance for the child is then necessary. The performance of such a measure should be presented to the child as a way to suspend the

formal court process, which will be terminated if the measure has been carried out in a satisfactory manner.

88. In this process of offering diversion at the level of the police, prosecutor or investigating judge, the child's human rights and legal safeguards should be fully respected. In this regard, the Committee refers to the recommendations set out in paragraph xx above, which equally apply here.

Dispositions by the juvenile court/judge

89. After a fair and just trial in full compliance with article 40 of CRC (see section D above), a decision is made regarding the measures which should be imposed on the child found guilty of the alleged offence(s). The laws must provide the court/judge, or other competent, independent and impartial authority or judicial body, with a wide variety of non-custodial measures to avoid institutional care and deprivation of liberty, which are listed in a non-exhaustive manner in article 40 (4) of CRC, to assure that deprivation of liberty be used only as a measure of last resort and for the shortest possible period of time (art. 37 (b) of CRC). This includes a variety of dispositions that are alternatives to institutional, care and that do not interfere with a child's access to care, guidance, counselling, education and vocational training programmes to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the criminal activity.
90. The Committee emphasizes that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs including if appropriate the mental health needs of the child), as well as to the various and particularly long-term needs of the society. A strictly punitive approach is not in accordance with the leading principles for child justice spelled out in article 40 (1) of CRC (see paragraphs xx-xx above). In cases of serious offences by children, measures proportionate to the circumstances of the child concerned and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions. In the case of children, such considerations must weigh in favour of the child's right to have his/her best interests considered as a primary consideration and to promote his/her reintegration.
91. Recognizing the harm caused by deprivation of liberty to children and adolescents, and its negative effects on their prospects for successful reintegration, the Committee recommends that States parties should set a maximum penalty for children accused of crimes, which should be considerably shorter than the duration of custodial sentences for adults for similar offences. Any exceptions to the maximum period should be kept to an absolute minimum, and must abide by the principle of proportionality.
92. As far as non-custodial measures are concerned, there is a wide range of experience with the use and implementation of such measures. States parties should benefit from this experience, and develop and implement such measures by adjusting them to their own culture and tradition. Measures amounting to forced labour or to torture or inhuman and degrading treatment must be explicitly prohibited, and those responsible for such illegal practices should be brought to justice.
93. The Committee reiterates that corporal punishment as a sanction is a violation of these principles as well as of article 37 of CRC which prohibits all forms of cruel, inhuman and degrading treatment or punishment (see also the Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)).
94. After these general remarks, the Committee wishes to draw attention to the measures prohibited under article 37 (a) of CRC, and to deprivation of liberty.

Prohibition of the death penalty

95. Article 37 (a) of CRC reaffirms the internationally accepted standard (see for example article 6 (5) of ICCPR) that the death penalty cannot be imposed for a crime committed by a person who was under 18 years of age. Although the text is clear, some States parties assume that the rule only prohibits the execution of persons below the age of 18 years. However, under

this rule the explicit and decisive criterion is the age at the time of the commission of the offence. It means that the death penalty may not be imposed for a crime committed by a person who was under 18 years at the time of the commission of the offence, regardless of his/her age at the time of the trial or sentencing or of the execution of the sanction.

96. The Committee recommends the few States parties that have not yet abolished the death penalty for all offences committed by persons below the age of 18 years to do so, and to suspend the execution of all death sentences for those persons until the necessary legislative measures abolishing the death penalty for children have been fully enacted, and measures taken for the commuting of sentences. The imposed death penalty should be changed to a sanction that is in full conformity with CRC.

No life imprisonment without parole

97. No child under the age of 18 at the time he/she committed criminal activity should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children, the possibility of release should be realistic and regularly considered. In this regard the Committee refers to article 25 and 37(b) of the CRC providing for the right to periodic review for all children placed for the purpose of care, protection, treatment and for any other reason. The Committee reminds States that sentence children to life imprisonment with the possibility of release or parole, that all sentencing of children must fully comply with and strive for the realisation of the aims of child justice and must be compliant with the best interests of the child. This means, inter alia, that the child sentenced to life imprisonment should receive education, treatment and care aiming at his/her release, reintegration and ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on his/her possible release. Life imprisonment of a child makes it impossible to achieve the aims of child justice despite the possibility of release and is contrary to the best interests of the child. The Committee strongly recommends that States parties abolish all forms of life imprisonment for offences committed while under the age of 18 which it considers to include all sentences where there is the life-long potential liability to be detained as part of that sentence. In particular, States should abolish mandatory life sentences for children.

Monitoring the execution of measures, including placements

98. Specialized services such as probation, counselling or supervision should be established together with specialized facilities including for example non-residential community centres. Where necessary, facilities for residential care and treatment of children in contact with the justice system may be established. Effective coordination, monitoring and quality control of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner. Monitoring and evaluation of all measures must be included. In particular in case of placement or of detention, States parties have to plan the conditions of implementation, in accordance with paragraphs xx-xx above.
99. In addition, States parties have to conduct regular evaluations of their practice of child justice, in particular of the effectiveness of, and compliance with, the measures taken, including those concerning discrimination, reintegration and recidivism, preferably carried out by independent academic institutions. Research, as for example on the disparities in the administration of child justice which may amount to discrimination, and developments in the field of child justice, such as effective diversion programmes or newly emerging juvenile justice strategies, will indicate critical points of success and concern.

F. Deprivation of liberty, including pre-trial and post-trial custodial measures

100. Article 37 of CRC contains the leading principles for the use of deprivation of liberty, the procedural rights of every child deprived of liberty, and provisions concerning the treatment of and conditions for children deprived of their liberty.

Basic principles

101. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure

of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily.

102. The Committee notes with concern that, in many countries, children languish in pre-trial detention for months or even years, which constitutes a grave violation of article 37 (b) of CRC. Pre-trial detention should be not be used for all but the most serious cases where community placement is demonstrably not possible. An effective wide range of diversion options to avoid criminal justice proceedings should be available (see sections B and D above), for the States parties to realize their obligation under article 37 (b) of CRC to use deprivation of liberty only as a measure of last resort. The use of non-custodial measures must be carefully structured to reduce the use of pre-trial detention rather than widening the net. In addition, even when children are to be tried in the child justice system the States parties should take adequate legislative and other measures to reduce the use of pre-trial detention.
103. Use of pre-trial detention as a punishment violates the presumption of innocence. The law should clearly state the conditions that are required to determine whether to place or keep a child in pre-trial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to himself/herself or others. The duration of pre-trial detention should be limited by law and be subject to regular review. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pre-trial detention is reviewed regularly and frequently, to limit the burden for children and their parents.
104. In application of the principle of the shortest period of time, States parties should provide regular opportunities in their specialized child justice system to permit early release from custody, including police custody, into the care of parents or other suitable adults. There should be a discretion to release with or without conditions, such as reporting to a police station or probation officer, and the payment of monetary bail should generally not be a requirement. Decisions regarding pre-trial detention, including its duration, should be accorded urgency and should be made as soon as possible by a competent, independent and impartial authority or a judicial body, and the child should be provided with the necessary legal and other appropriate assistance.

Procedural rights (art. 37 (d))

105. Every child deprived of his/her liberty has the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.
106. The Committee encourages the State parties to fix an age limit for the use of deprivation of liberty and recommends that no child in conflict with the law below the age of 16 years old be deprived of liberty, either at the pre-trial or post-trial stage. Even above that age, deprivation of liberty should only be used as a measure of last resort and for the shortest period of time with the child's best interests as a primary consideration. In light of the evolving capacity of children, minimum age for custodial measures should be higher than the minimum age of criminal responsibility.
107. Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of the deprivation of liberty or its continuation within 24 hours. In cases where conditional release of the child, e.g. by applying non-custodial measures, is not possible, the child should be brought before a court or other competent, independent and impartial authority or judicial body as soon as possible but not later than 30 days after his/her pre-trial detention takes effect. The Committee, conscious of the practice of adjourning court hearings many times and/or for long periods, urges the States parties to introduce legal provisions to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.
108. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal, but also the right to access the court, or other competent, independent and impartial authority or judicial body, in cases where the deprivation of liberty is an administrative decision (e.g. the police, the prosecutor and other competent authority). The right to a prompt decision

means that a decision must be rendered as soon as possible, e.g. within or not later than two weeks after the challenge is made.

Treatment and conditions (art. 37 (c))

109. Every child deprived of liberty shall be separated from adults. A child deprived of his/her liberty shall not be placed in a centre of prison for adults. There is abundant evidence that the placement of children in adult centres or prisons compromises their basic safety and their future ability to remain free of crime and to reintegrate. The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, “unless it is considered in the child’s best interests not to do so”, should be interpreted narrowly; the child’s best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include appropriately trained personnel, and operate according to child-friendly policies and practices.
110. This rule does not mean that a child placed in a facility for children must be moved to a facility for adults immediately after he/she turns 18. Continuation of his/her stay in the facility for children should be possible if that is in his/her best interest and not contrary to the best interests of the children in the facility.
111. Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. In order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities.
112. The Committee draws the attention of States parties to the Havana Rules for the Protection of Juveniles Deprived of their Liberty (1990) and encourages their full implementation, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) (see also rule 9 of the Beijing Rules). In this regard, the Committee recommends that the States parties incorporate these rules into their national laws and regulations, and make them available, in the national or regional language, to all professionals, NGOs and volunteers involved in the administration of child justice.
113. The Committee emphasizes that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:
- Incommunicado detention is not permitted for persons under the age of 18 years;⁹
 - Children should be provided with a physical environment and accommodation conducive to the rehabilitative and reintegrative aims of residential placement. Due regard must be given to their needs for privacy, sensory stimuli, opportunities to

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Incommunicado detention is defined as “Persons being held incommunicado do not have the right to notify a third party about their detention or whereabouts; to receive visits from family members, spiritual advisors, or a doctor of their own choosing; or to communication or correspondence of any kind (Art. 527, Spanish Code). Incommunicado detainees do not have the right to designate their own lawyer, but must be assisted by a legal aid attorney. Furthermore, these detainees do not have the right to a private consultation with their lawyer (Art. 527(a) and (c)). Every detainee is guaranteed the right to remain silent until brought before a judge; the right to not incriminate himself or herself or confess to guilt; to have access to a free interpreter if necessary, and, in the case of foreign nationals, to have their consulate informed (Art. 527, with reference to rights set out in Art. 520(2)(a-f)). See, e.g., Human Rights Watch, *Setting an Example: Counter-terrorism Measures* (January 2005), p. 23, FN, 58; Amnesty International, *Rights at risk: Amnesty International’s concerns regarding security legislation and law enforcement measures* (18 January 2002); UN Committee against Torture, “Conclusions and recommendations of the Committee against Torture: Spain 23/12/2002”, CAT/C/CR/29/3, paragraph 10; and the usage in the Spanish Code of Criminal Procedure. The UN Human Rights Commission has noted that “prolonged incommunicado detention may facilitate the perpetration of torture and can in itself constitute a form of cruel, inhuman or degrading treatment or even torture, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person;” U.N. Commission on Human Rights, *Resolution 2003/32 on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, April 23, 2003, E/CN.4/RES/2003/32 (accessed January 3, 2019), para. 14.

associate with their peers, and to participate in sports, physical exercise, in arts, and leisure time activities;

- Every child of school age has the right to education suited to the child's needs and abilities, delivered in such a way as to encourage the active participation of the child, including to undertake exams, and designed to prepare the child for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare the child for future employment;
- Every child deprived of liberty has the right to be examined by a physician or a physical and mental health practitioner upon arrival at the police station and/or admission to the detention facility. Children are entitled to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health in accordance with Article 24. States Parties shall strive to ensure that no such child is deprived of his or her right of access to such health care services, which should be provided, where possible, by health facilities and services of the community;
- The staff of the facility should promote and facilitate frequent contacts of the child with the wider community, including communications with his/her family, friends and other persons or representatives of reputable outside organizations, and the opportunity to visit his/her home and family. There must be no restriction on his or her ability to communicate confidentially and at any time with his or her lawyer or other assistant;
- Restraint or force can be used only when the child poses an imminent threat of injury to him or herself or others, and only when all other means of control have been exhausted. Restraint should never be used to secure compliance and should never involve deliberate infliction of pain. The use of restraint or force, including physical, mechanical and medical restraints, should be under close, direct and continuous control of a medical and/or psychological professional. It must never be used as a means of punishment. Staff of the facility should receive training on the applicable standards and members of the staff who use restraint or force in violation of the rules and standards should be punished appropriately. States should record, monitor, and evaluate all incidents of restraint or use of force, and ensure appropriate measures are taken to reduce its use to a minimum;
- Any disciplinary measure must be consistent with upholding the inherent dignity of the child and the fundamental objectives of institutional care; disciplinary measures in violation of article 37 of CRC shall be strictly forbidden, including corporal punishment, placement in a dark cell, closed or solitary confinement, or any other punishment that may compromise the physical or mental health or well-being of the child concerned. Children should never be punished in such a way as to infringe their rights under the articles of the CRC;
- Solitary confinement,¹⁰ recognised as creating a risk of irreversible psychological harm, must never be used on a child regardless of the reason. All other isolation should be for the shortest possible time and as a last resort. Where a child is isolated, the reasons should be recorded along and the continued necessity should be subject to regular reviews and monitoring;
- Given the potentially traumatising and degrading effect of strip-searching, children should never be routinely strip-searched. It should only ever be used as a last resort, and never as a punishment and conducted in a manner which respects the privacy and dignity of the child;

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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 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."

- Every child should have the right to make requests or complaints, without censorship as to the substance, to the central administration, the judicial authority or other proper independent authority, and to be informed of the response without delay. Children need to know about and have easy access to these mechanisms and need to be actively supported and encouraged to engage with these mechanisms;
- Independent and qualified inspectors with special expertise in children's rights, 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.

G. Specific issues

Children recruited and used by non-State armed groups, terrorist or violent extremist groups

114. The United Nations has verified numerous cases of recruitment and exploitation of children by non-State armed groups, terrorist and violent extremist organizations not only in conflict areas, but also in non-conflict areas, including children's countries of origin, transit or return.
115. When under the control of such groups, children may become victims of multiple forms of violations: conscription, military training, being used in hostilities and/or terrorist acts, including suicide attacks, forced to carry out executions, used as human shields, or being victims of abduction, sale, trafficking, child marriages, or exploitation to carry out dangerous tasks, such as spying, manning check points, conducting patrols, or transporting military equipment. It has been reported that non-State armed groups or terrorist and violent extremist organization also force children to commit acts of violence against their own families or within their own communities to demonstrate loyalty and to discourage future defection.
116. States parties authorities face a number of challenges when dealing with these children. Some States parties have adopted a punitive approach with no or limited consideration of children's rights, resulting in lasting consequences for the development of the child and having a negative impact on their opportunities for rehabilitation and social reintegration, which in turn may have serious consequences for the broader society. Often, these children are arrested, detained, prosecuted and put on trial for their actions, in conflict areas and, less so, also in their countries of origin or return.
117. Taking into account the detrimental impact of security-based approach to children's rights, States should adopt policies that avoid stigmatising or criminalising children. The Committee reminds States parties that they should treat these children primarily as victims and refrain from charging and prosecuting them for mere association with a non-State armed group or a terrorist or violent extremist organization. States should adopt a rehabilitative approach to children recruited by non-State armed groups and terrorist groups, avoiding prosecution. Where children were involved in alleged acts for a non-State armed group or a terrorist or violent extremist organization, serious consideration should be given as to whether charges should be laid. Where criminal charges are laid against children in this context – by their nature very serious ones – State parties should ensure that all children charged, regardless of the gravity or the context, are dealt with in terms of articles 37 and 40 of the CRC, and in line with this general comment. States parties should emphasize restorative justice, specialized rehabilitative measures, diversion from judicial proceedings and non-custodial measures. They should also adopt preventive interventions to tackle social factors and root causes as well as specialised rehabilitation and reintegration measures, including when implementing counter terrorism related Security Council resolutions, such as resolutions 1373 (2001), 2178 (2014), and 2396 (2017).

Plural Legal Orders

118. Many children come into contact with justice systems in different jurisdictions that operate parallel to or on the margins of formal justice systems. These may include customary, tribal, indigenous or other types of justice systems. In such situations, the alternative forms of dispute resolution offered in contexts of legal pluralism may prove more accessible than the formal mechanisms and have the advantage of quickly and relatively inexpensively

proposing responses tailored to cultural specificities, with particular impact on children. Plural legal orders can provide alternatives to official proceedings against children, and are likely to contribute favourably to the change of cultural attitude concerning children and justice.

119. There is now an emerging understanding that, in order to be effective and comprehensive, reform of justice sector programmes must be attentive to and seek to encourage rapprochement between different systems in contexts of legal pluralisms. Considering the potential tension between state justice and some forms of non-state justice, in addition to concerns around procedural rights and discriminatory practices towards vulnerable or marginalised groups, reforms should proceed in stages and with a methodology that involves a full understanding of the comparative systems concerned, and which is acceptable to all stakeholders. Across all justice systems that operate and intersect in contexts of legal pluralism, processes and outcomes must be aligned with constitutional law and with legal and procedural guarantees. It is important that discrimination does not occur, if children committing similar crimes are being dealt with differently in parallel systems or fora.
120. Reducing the distance between different plural legal orders in a single jurisdiction may pose difficulties for adherence to human rights standards, but ways should be found to infuse the principles of the Convention into customary law justice mechanisms. Given that the roots of modern restorative approaches are located in indigenous and customary justice traditions, restorative justice responses are likely to be achievable through customary justice systems, and may provide opportunities for learning that can benefit the formal child justice system. Intervention strategies and reforms of plural legal orders should be designed for specific contexts and the process must be driven by national actors.

Military courts

121. Given the inherent lack of independent and impartiality, the violations of international law and the lack of respect for due process rights and consistent with the Committee's concluding observations,¹¹ individuals protected by international humanitarian law, i.e. civilians, specifically children, should not be prosecuted in military courts/tribunals.

VI. The organization of child justice

122. In order to ensure the full implementation of the principles and rights elaborated in the previous paragraphs, it is necessary to establish an effective organization for the administration of child justice, and a comprehensive child justice system. As stated in article 40 (3) of CRC, States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the penal law.
123. What the basic provisions of these laws and procedures are required to be, has been presented in the present general comment. More and other provisions are left to the discretion of States parties. This also applies to the form of these laws and procedures. They can be laid down in special chapters of the general criminal and procedural law, or be brought together in a separate act or law on child justice.
124. A comprehensive child justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

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UN Committee on the Rights of the Child, "Consideration of Reports Submitted by States Parties Under Article 8 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, Concluding Observations, United States of America," CRC/C/OPAC/USA/CO/1, June 25, 2008, <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.OPAC.USA.CO.1.pdf>, para. 30

125. The Committee recommends that the States parties establish juvenile courts either as separate units or as part of existing regional/district courts. Where that is not immediately feasible for practical reasons, the States parties should ensure the appointment of specialized judges or magistrates for dealing with cases of child justice.
126. In addition, specialized services such as probation, youth care, counselling or supervision should be established together with specialized facilities including for example day treatment centres and, where necessary, facilities for residential care and treatment of children in contact with the justice system. In this child justice system, an effective coordination of the activities of all these specialized units, services and facilities should be promoted in an ongoing manner, including an individual assessment, and a multi-disciplinary approach. It is important to guarantee procedural safeguards for all children and an approach that takes into account their age and needs. Particular attention should be paid to children who are arrested and are under the age of the minimum age of criminal responsibility.
127. It is clear from many States parties' reports that non-governmental organizations can and do play an important role not only in the prevention of criminal activity as such, but also in the administration of child justice. The Committee therefore recommends that States parties seek the active involvement of these organizations in the development and implementation of their comprehensive child justice policy and provide them with the necessary resources for this involvement.

VII. Awareness-raising and training

128. Children who commit offences are often subject to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of these children and often of children in general. This negative presentation or criminalization of children in contact with the justice system is often based on misrepresentation and/or misunderstanding of the causes of criminal activity, and results regularly in a call for a tougher approach (e.g. zero-tolerance, three strikes and you are out, mandatory sentences, trial in adult courts and other primarily punitive measures). To create a positive environment for a better understanding of the root causes of criminal activity and a rights-based approach to this social problem, the States parties should conduct, promote and/or support educational and other campaigns to raise awareness of the need and the obligation to deal with children alleged of violating the penal law in accordance with the spirit and the letter of CRC. In this regard, the States parties should seek the active and positive involvement of members of parliament, NGOs and the media, and support their efforts in the improvement of the understanding of a rights-based approach to children who have been or are in conflict with the penal law. It is crucial for children, in particular those who have experience with the child justice system, to be involved in these awareness-raising efforts.
129. It is essential for the quality of the administration of child justice that all the professionals involved, inter alia, in law enforcement and the judiciary receive appropriate training on the content and meaning of the provisions of CRC in general, particularly those directly relevant to their daily practice. This training should be organized in a systematic and ongoing manner and should not be limited to information on the relevant national and international legal provisions. It should include information on, inter alia, the social and other causes of criminal activity, psychological and other aspects of the development of children, with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures dealing with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see chapter V, section B and E, above).

VIII. Data collection, evaluation and research

130. The Committee is deeply concerned about the lack of even basic and disaggregated data on, inter alia, the number and nature of offences committed by children, the use and the average duration of pretrial detention, the number of children dealt with by resorting to measures other than judicial proceedings (diversion), the number of convicted children and the nature of the sanctions imposed on them, and the number of children deprived of liberty. The Committee urges the States

parties to systematically collect disaggregated data relevant to the information on the practice of the administration of child justice, and necessary for the development, implementation and evaluation of policies and programmes aiming at the prevention and effective responses to criminal activity in full accordance with the principles and provisions of CRC.

131. The Committee recommends that States parties conduct regular evaluations of their practice of child justice, in particular of the effectiveness of or the necessity for the measures taken, including those concerning discrimination, reintegration, recidivism and alternatives to traditional criminal justice responses such as the provision of multi-disciplinary support and guidance for children, preferably carried out by independent academic institutions. Research, for example on the disparities in the administration of child justice which may amount to discrimination, and developments in the field of criminal activity, such as effective diversion programmes or newly emerging criminal activities, will indicate critical points of success and concern and highlight areas that require States to either justify their actions or change them. Further research should draw on emerging insights from a wide range of fields, including scientific developments and digital technologies.
132. In accordance with article 12 of CRC and General Comment 12 (2009), it is important that children are involved in this evaluation and research, in particular those who have been in contact with parts of the child justice system. Specific attention and provisions should be made to ensure that such participation is transparent and informative, voluntary, respectful, relevant, child-friendly, inclusive, supported by training, and safe and sensible to risk. The privacy of children participating in this way and the confidentiality of their cooperation should be fully respected and protected. In this regard, the Committee refers the States parties to the existing international guidelines on the involvement of children in research.
133. The Committee recommends that in accordance with Articles 12 and 42, children should be empowered to understand and use the law, including promotion of knowledge of the Convention on the Rights of the Child and how it can be used to ensure the full enjoyment of children's human rights. Research as to the benefits and impact of a rights-based approach for children should be undertaken.

Annex

Normative Framework

Child justice falls within the framework of children's rights. It is an area in which international instruments have been developed which provide a clear articulation of systemic solutions to the issues that arise in the context of children in conflict with the law. The list of the most important instruments bound to child justice to which this general comment refers:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules"), adopted by A/RES 40/33, 29 November 1985;
 - United Nations Guidelines for the Prevention of Juvenile Delinquency (the "Riyadh Guidelines"), adopted by A/RES/45/112, 14 December 1990;
 - United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by A/RES 45/113 of 14 December 1990;
 - United Nations Minimum Standard Rules for Non-Custodial Measures (the "Tokyo Rules"), A/RES 45/110 of 14 December 1990;
 - United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules") (ECOSOC 1977);
 - Basic principles on the use of restorative justice programmes in criminal matters, adopted by ECOSOC resolution 2002/12;
 - United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the "Bangkok Rules"), adopted by ECOSOC resolution 2010/16;
 - United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by A/RES 67/458, 2012;
 - Justice in Matters Involving Children in Conflict with the Law, Model Law on Juvenile Justice, UNODC, Vienna (2014) and its commentary.
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