

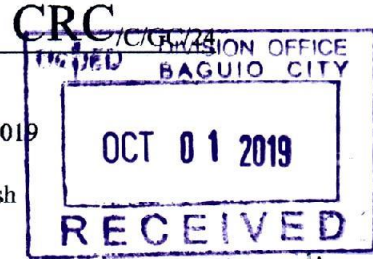
United Nations



Convention on the Rights of the Child

Distr.: General
18 September 2019

Original: English



Committee on the Rights of the Child

General comment No. 24 (2019) on children's rights in the child justice system



I. Introduction

1. The present general comment replaces general comment No. 10 (2007) on children's rights in juvenile justice. It reflects the developments that have occurred since 2007 as a result of the promulgation of international and regional standards, the Committee's jurisprudence, new knowledge about child and adolescent development, and evidence of effective practices, including those relating to restorative justice. It also reflects concerns such as the trends relating to the minimum age of criminal responsibility and the persistent use of deprivation of liberty. The general comment covers specific issues, such as issues relating to children recruited and used by non-State armed groups, including those designated as terrorist groups, and children in customary, indigenous or other non-State justice systems.

2. Children differ from adults in their physical and psychological development. Such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.

3. The Committee acknowledges that preservation of public safety is a legitimate aim of the justice system, including the child justice system. However, States parties should serve this aim subject to their obligations to respect and implement the principles of child justice as enshrined in the Convention on the Rights of the Child. As the Convention clearly states in article 40, every child alleged as, accused of or recognized as having infringed criminal law should always be treated in a manner consistent with the promotion of the child's sense of dignity and worth. Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles.

4. The Committee welcomes the many efforts made to establish child justice systems in compliance with the Convention. Those States having provisions that are more conducive to the rights of children than those contained in the Convention and the present general comment are commended, and reminded that, in accordance with article 41 of the Convention, they should not take any retrogressive steps. State party reports indicate that many States parties still require significant investment to achieve full compliance with the Convention, particularly regarding prevention, early intervention, the development and implementation of diversion measures, a multidisciplinary approach, the minimum age of criminal responsibility and the reduction of deprivation of liberty. The Committee draws States' attention to the report of the Independent Expert leading the United Nations global study on children deprived of their liberty (A/74/136), submitted pursuant to General Assembly resolution 69/157, which had been initiated by the Committee.

5. In the past decade, several declarations and guidelines that promote access to justice and child-friendly justice have been adopted by international and regional bodies. These frameworks cover children in all aspects of the justice systems, including child victims and witnesses of crime, children in welfare proceedings and children before administrative tribunals. These developments, valuable though they are, fall outside of the scope of the present general comment, which is focused on children alleged as, accused of or recognized as having infringed criminal law.

II. Objectives and scope

6. The objectives and scope of the present general comment are:

(a) To provide a contemporary consideration of the relevant articles and principles in the Convention on the Rights of the Child, and to guide States towards a holistic implementation of child justice systems that promote and protect children's rights;

(b) To reiterate the importance of prevention and early intervention, and of protecting children's rights at all stages of the system;

(c) To promote key strategies for reducing the especially harmful effects of contact with the criminal justice system, in line with increased knowledge about children's development, in particular:

- (i) Setting an appropriate minimum age of criminal responsibility and ensuring the appropriate treatment of children on either side of that age;
- (ii) Scaling up the diversion of children away from formal justice processes and to effective programmes;
- (iii) Expanding the use of non-custodial measures to ensure that detention of children is a measure of last resort;
- (iv) Ending the use of corporal punishment, capital punishment and life sentences;
- (v) For the few situations where deprivation of liberty is justified as a last resort, ensuring that its application is for older children only, is strictly time limited and is subject to regular review;

(d) To promote the strengthening of systems through improved organization, capacity-building, data collection, evaluation and research;

(e) To provide guidance on new developments in the field, in particular the recruitment and use of children by non-State armed groups, including those designated as terrorist groups, and children coming into contact with customary, indigenous and non-State justice systems.

III. Terminology

7. The Committee encourages the use of non-stigmatizing language relating to children alleged as, accused of or recognized as having infringed criminal law.

8. Important terms used in the present general comment are listed below:

- **Appropriate adult:** in situations where the parent or legal guardian is not available to assist the child, States parties should allow for an appropriate adult to assist the child. An appropriate adult may be a person who is nominated by the child and/or by the competent authority.
- **Child justice system:**¹ the legislation, norms and standards, procedures, mechanisms and provisions specifically applicable to, and institutions and bodies set up to deal with, children considered as offenders.
- **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 referring children away from the judicial system, at any time prior to or during the relevant proceedings.
- **Minimum age of criminal responsibility:** the minimum age below which the law determines that children do not have the capacity to infringe the criminal law.
- **Pretrial detention:** detention from the moment of the arrest to the stage of the disposition or sentence, including detention throughout the trial.
- **Restorative justice:** any process in which the victim, the offender and/or any other individual or community member affected by a crime actively participates together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party. Examples of restorative process include mediation, conferencing, conciliation and sentencing circles.³

¹ In the English version of the present general comment, the term "child justice system" is used in place of "juvenile justice".

² United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), art. 11 (b).

³ Basic principles on the use of restorative justice programmes in criminal matters, para. 2.

IV. Core elements of a comprehensive child justice policy

A. Prevention of child offending, including early intervention directed at children below the minimum age of criminal responsibility

9. States parties should consult the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and comparative national and international research on root causes of children's involvement in the child justice system and undertake their own research to inform the development of a prevention strategy. Research has demonstrated that intensive family- and community-based treatment programmes designed to make positive changes in aspects of the various social systems (home, school, community, peer relations) that contribute to the serious behavioural difficulties of children reduce the risk of children coming into child justice systems. Prevention and early intervention programmes should be focused on support for families, in particular those in vulnerable situations or where violence occurs. Support should be provided to children at risk, particularly children who stop attending school, are excluded or otherwise do not complete their education. Peer group support and a strong involvement of parents are recommended. States parties should also develop community-based services and programmes that respond to the specific needs, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.

10. Articles 18 and 27 of the Convention confirm the importance of the responsibility of parents for the upbringing of their children, but at the same time the Convention requires States parties to provide the assistance to parents (or other caregivers) necessary to carry out their child-rearing responsibilities. Investment in early childhood care and education correlates with lower rates of future violence and crime. This can commence when the child is very young, for example with home visitation programmes to enhance parenting capacity. Measures of assistance should draw on the wealth of information on community and family-based prevention programmes, such as programmes to improve parent-child interaction, partnerships with schools, positive peer association and cultural and leisure activities.

11. Early intervention for children who are below the minimum age of criminal responsibility requires child-friendly and multidisciplinary responses to the first signs of behaviour that would, if the child were above the minimum age of criminal responsibility, be considered an offence. Evidence-based intervention programmes should be developed that reflect not only the multiple psychosocial causes of such behaviour, but also the protective factors that may strengthen resilience. Interventions must be preceded by a comprehensive and interdisciplinary assessment of the child's needs. As an absolute priority, children should be supported within their families and communities. In the exceptional cases that require an out-of-home placement, such alternative care should preferably be in a family setting, although placement in residential care may be appropriate in some instances, to provide the necessary array of professional services. It is to be used only as a measure of last resort and for the shortest appropriate period of time and should be subject to judicial review.

12. A systemic approach to prevention also includes closing pathways into the child justice system through the decriminalization of minor offences such as school absence, running away, begging or trespassing, which often are the result of poverty, homelessness or family violence. Child victims of sexual exploitation and adolescents who engage with one another in consensual sexual acts are also sometimes criminalized. These acts, also known as status offences, are not considered crimes if committed by adults. The Committee urges States parties to remove status offences from their statutes.

B. Interventions for children above the minimum age of criminal responsibility

⁴ See also section IV.E below.

13. Under article 40 (3) (b) of the Convention, States parties are required to promote the establishment of measures for dealing with children without resorting to judicial proceedings, whenever appropriate. In practice, the measures generally fall into two categories:

- (a) Measures referring children away from the judicial system, any time prior to or during the relevant proceedings (diversion);
- (b) Measures in the context of judicial proceedings.

14. The Committee reminds States parties that, in applying measures under both categories of intervention, utmost care should be taken to ensure that the child's human rights and legal safeguards are fully respected and protected.

Interventions that avoid resorting to judicial proceedings

15. Measures dealing with children that avoid resorting to judicial proceedings have been introduced into many systems around the world, and are generally referred to as diversion. Diversion involves the referral of matters away from the formal criminal justice system, usually to programmes or activities. In addition to avoiding stigmatization and criminal records, this approach yields good results for children, is congruent with public safety and has proved to be cost-effective.

16. Diversion should be the preferred manner of dealing with children in the majority of cases. States parties should continually extend the range of offences for which diversion is possible, including serious offences where appropriate. Opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process. Diversion should be an integral part of the child justice system, and, in accordance with art. 40 (3) (b) of the Convention, children's human rights and legal safeguards are to be fully respected and protected in all diversion processes and programmes.

17. It is left to the discretion of States parties to decide on the exact nature and content of measures of diversion, and to take the necessary legislative and other measures for their implementation. The Committee takes note that a variety of community-based programmes have been developed, such as community service, supervision and guidance by designated officials, family conferencing and other restorative justice options, including reparation to victims.

18. The Committee emphasizes the following:

- (a) Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he or she freely and voluntarily admits responsibility, without intimidation or pressure, and that the admission will not be used against the child in any subsequent legal proceeding;

- (b) The child's free and voluntary consent to diversion should be based on adequate and specific information on the nature, content and duration of the measure, and on an understanding of the consequences of a failure to cooperate or complete the measure;

- (c) The law should indicate the cases in which diversion is possible, and the relevant decisions of the police, prosecutors and/or other agencies should be regulated and reviewable. All State officials and actors participating in the diversion process should receive the necessary training and support;

- (d) The child is to be given the opportunity to seek legal or other appropriate assistance relating to the diversion offered by the competent authorities, and the possibility of review of the measure;

- (e) Diversion measures should not include the deprivation of liberty;

- (f) The completion of the diversion should result in a definite and final closure of the case. Although confidential records of diversion can be kept for administrative, review, investigative and research purposes, they should not be viewed as criminal convictions or result in criminal records.

Interventions in the context of judicial proceedings (disposition)

19. When judicial proceedings are initiated by the competent authority, the principles of a fair and just trial are applicable (see section D below). The child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing. States parties should have in place a probation service or similar agency with well-trained staff to ensure the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day reporting centres, and the possibility of early release from detention.

C. Age and child justice systems**Minimum age of criminal responsibility**

20. Children who are below the minimum age of criminal responsibility at the time of the commission of an offence cannot be held responsible in criminal law proceedings. Children at or above the minimum age at the time of the commission of an offence but younger than 18 years can be formally charged and subjected to child justice procedures, in full compliance with the Convention. The Committee reminds States parties that the relevant age is the age at the time of the commission of the offence.

21. Under article 40 (3) of the Convention, States parties are required to establish a minimum age of criminal responsibility, but the article does not specify the age. Over 50 States parties have raised the minimum age following ratification of the Convention, and the most common minimum age of criminal responsibility internationally is 14. Nevertheless, reports submitted by States parties indicate that some States retain an unacceptably low minimum age of criminal responsibility.

22. Documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence. As the Committee notes in its general comment No. 20 (2016) on the implementation of the rights of the child during adolescence, adolescence is a unique defining stage of human development characterized by rapid brain development, and this affects risk-taking, certain kinds of decision-making and the ability to control impulses. States parties are encouraged to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.

23. The Committee recognizes that although the setting of a minimum age of criminal responsibility at a reasonably high level is important, an effective approach also depends on how each State deals with children above and below that age. The Committee will continue to scrutinize this in reviews of State party reports. Children below the minimum age of criminal responsibility are to be provided with assistance and services according to their needs, by the appropriate authorities, and should not be viewed as children who have committed criminal offences.

24. If there is no proof of age and it cannot be established that the child is below or above the minimum age of criminal responsibility, the child is to be given the benefit of the doubt and is not to be held criminally responsible.

Systems with exceptions to the minimum age

25. The Committee is concerned about practices that permit exceptions to the use of a lower minimum age of criminal responsibility in cases where, for example, the child is

accused of committing a serious offence. Such practices are usually created to respond to public pressure and are not based on a rational understanding of children's development. The Committee strongly recommends that States parties abolish such approaches and set one standardized age below which children cannot be held responsible in criminal law, without exception.

Systems with two minimum ages

26. Several States parties apply two minimum ages of criminal responsibility (for example, 7 and 14 years), with a presumption that a child who is at or above the lower age but below the higher age lacks criminal responsibility unless sufficient maturity is demonstrated. Initially devised as a protective system, it has not proved so in practice. Although there is some support for the idea of individualized assessment of criminal responsibility, the Committee has observed that this leaves much to the discretion of the court and results in discriminatory practices.

27. States are urged to set one appropriate minimum age and to ensure that such legal reform does not result in a retrogressive position regarding the minimum age of criminal responsibility.

Children lacking criminal responsibility for reasons related to developmental delays or neurodevelopmental disorders or disabilities

28. Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.

Application of the child justice system

29. The child justice system should apply to all children above the minimum age of criminal responsibility but below the age of 18 years at the time of the commission of the offence.

30. The Committee recommends that those States parties that limit the applicability of their child justice system to children under the age of 16 years (or lower), or that allow by way of exception that certain children are treated as adult offenders (for example, because of the offence category), change their laws to ensure a non-discriminatory full application of their child justice system to all persons below the age of 18 years at the time of the offence (see also general comment No. 20, para. 88).

31. Child justice systems should also extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process.

32. The Committee commends States parties that allow the application of the child justice system to persons aged 18 and older whether as a general rule or by way of exception. This approach is in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties.

Birth certificates and age determination

33. A child who does not have a birth certificate should be provided with one promptly and free of charge by the State, whenever it is required to prove age. If there is no proof of age by birth certificate, the authority should accept all documentation that can prove age, such as notification of birth, extracts from birth registries, baptismal or equivalent documents or school reports. Documents should be considered genuine unless there is proof to the contrary. Authorities should allow for interviews with or testimony by parents regarding age, or for permitting affirmations to be filed by teachers or religious or community leaders who know the age of the child.

34. Only if these measures prove unsuccessful may there be an assessment of the child's physical and psychological development, conducted by specialist pediatricians or other

professionals skilled in evaluating 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 parents or caregivers in a language the child understands. States should refrain from using only medical methods based on, inter alia, bone and dental analysis, which is often inaccurate, due to wide margins of error, and can also be traumatic. The least invasive method of assessment should be applied. In the case of inconclusive evidence, the child or young person is to have the benefit of the doubt.

Continuation of child justice measures

35. The Committee recommends that children who turn 18 before completing a diversion programme or non-custodial or custodial measure be permitted to complete the programme, measure or sentence, and not be sent to centres for adults.

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

36. In cases where a young person commits several offences, some occurring before and some after the age of 18 years, States parties should consider providing for procedural rules that allow the child justice system to be applied in respect of all the offences when there are reasonable grounds to do so.

37. In cases where a child commits an offence together with one or more adults, the rules of the child justice system applies to the child, whether they are tried jointly or separately.

D. Guarantees for a fair trial

38. Article 40 (2) of the Convention contains an important list of rights and guarantees aimed at ensuring that every child receives fair treatment and trial (see also article 14 of the International Covenant on Civil and Political Rights). It should be noted that these are minimum standards. States parties can and should try to establish and observe higher standards.

39. The Committee emphasizes that continuous and systematic training of professionals in the child justice system is crucial to uphold those guarantees. Such professionals should be able to work in interdisciplinary teams, and should be well informed about the physical, psychological, mental and social development of children and adolescents, as well as about the special needs of the most marginalized children.

40. Safeguards against discrimination are needed from the earliest contact with the criminal justice system and throughout the trial, and discrimination against any group of children requires active redress. In particular, gender-sensitive attention should be paid to girls and to children who are discriminated against on the basis of sexual orientation or gender identity. Accommodation should be made for children with disabilities, which may include physical access to court and other buildings, support for children with psychosocial disabilities, assistance with communication and the reading of documents, and procedural adjustments for testimony.

41. States parties should enact legislation and ensure practices that safeguard children's rights from the moment of contact with the system, including at the stopping, warning or arrest stage, while in custody of police or other law enforcement agencies, during transfers to and from police stations, places of detention and courts, and during questioning, searches and the taking of evidentiary samples. Records should be kept on the location and condition of the child in all phases and processes.

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

42. No child shall be held guilty of any criminal offence that did not constitute a criminal offence, under national or international law, at the time it was committed. States parties that expand their criminal law provisions to prevent and combat terrorism should ensure that those changes do not result in the retroactive or unintended punishment of

children. No child should be punished with a heavier penalty than the one applicable at the time of the offence, but if a change of law after the offence provides for a lighter penalty, the child should benefit.

Presumption of innocence (art. 40 (2) (b) (i))

43. The presumption of innocence requires that the burden of proof of the charge is on the prosecution, regardless of the nature of the offence. The child has the benefit of the doubt and is guilty only if the charges have been proved beyond reasonable doubt. Suspicious behaviour on the part of the child should not lead to assumptions of guilt, as it may be due to a lack of understanding of the process, immaturity, fear or other reasons.

Right to be heard (art. 12)

44. In paragraphs 57 to 64 of general comment No. 12 (2009) on the right of the child to be heard, the Committee explained the fundamental right of the child to be heard in the context of child justice.

45. Children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact. The child has the right to remain silent and no adverse inference should be drawn when children elect not to make statements.

Effective participation in the proceedings (art. 40 (2) (b) (iv))

46. A child who is above the minimum age of criminal responsibility should be considered competent to participate throughout the child justice process. To effectively participate, a child needs to be supported by all practitioners to comprehend the charges and possible consequences and options in order to direct the legal representative, challenge witnesses, provide an account of events and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed. Proceedings should be conducted in a language the child fully understands or an interpreter is to be provided free of charge. Proceedings should be conducted in an atmosphere of understanding to allow children to fully participate. Developments in child-friendly justice provide an impetus towards child-friendly language at all stages, child-friendly layouts of interviewing spaces and courts, support by appropriate adults, removal of intimidating legal attire and adaptation of proceedings, including accommodation for children with disabilities.

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

47. Every child has the right to be informed promptly and directly (or where appropriate through his or her parent or guardian) of the charges brought against him or her. Promptly means as soon as possible after the first contact of the child with the justice system. Notification of parents should not be neglected on the grounds of convenience or resources. Children who are diverted at the charge stage need to understand their legal options, and legal safeguards should be fully respected.

48. Authorities should ensure that the child understands the charges, options and processes. Providing the child with an official document is insufficient and an oral explanation is necessary. Although children should be assisted in understanding any document by a parent or appropriate adult, authorities should not leave the explanation of the charges to such persons.

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

49. States should ensure that the child is guaranteed legal or other appropriate assistance from the outset of the proceedings, in the preparation and presentation of the defence, and until all appeals and/or reviews are exhausted. The Committee requests States parties to withdraw any reservation made in respect of article 40 (2) (b) (ii).

50. The Committee remains concerned that many children face criminal charges before judicial, administrative or other public authorities, and are deprived of liberty, without having the benefit of legal representation. The Committee notes that in article 14 (3) (d) of

the International Covenant on Civil and Political Rights, the right to legal representation is a minimum guarantee in the criminal justice system for all persons, and this should equally apply to children. While the article allows the person to defend himself or herself in person, in any case where the interests of justice so require the person is to be assigned legal assistance.

51. In the light of the above, the Committee is concerned that children are provided less protection than international law guarantees for adults. The Committee recommends that States provide effective legal representation, free of charge, for all children who are facing criminal charges before judicial, administrative or other public authorities. Child justice systems should not permit children to waive legal representation unless the decision to waive is made voluntarily and under impartial judicial supervision.

52. If children are diverted to programmes or are in a system that does not result in convictions, criminal records or deprivation of liberty, "other appropriate assistance" by well-trained officers may be an acceptable form of assistance, although States that can provide legal representation for children during all processes should do so, in accordance with article 41. Where other appropriate assistance is permissible, the person providing the assistance is required to have sufficient knowledge of the legal aspects of the child justice process and receive appropriate training.

53. As required under article 14 (3) (b) of the International Covenant on Civil and Political Rights, there is to be adequate time and facilities for the preparation of the defence. Under the Convention on the Rights of the Child, the confidentiality of communications between the child and his or her legal representative or other assistant is to be guaranteed (art. 40 (2) (b) (vii)), and the child's right of protection against interference with his or her privacy and correspondence is to be respected (art. 16).

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

54. The Committee reiterates that the time between the commission of the offence and the conclusion of proceedings should be as short as possible. The longer this period, the more likely it is that the response loses its desired outcome.

55. The Committee recommends that 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 institute charges, and the final decision by the court or other judicial body. These time limits should be much shorter than those set for adults, but should still allow legal safeguards to be fully respected. Similar speedy time limits should apply to diversion measures.

56. Parents or legal guardians should be present throughout the proceedings. However, the judge or competent authority may decide to limit, restrict or exclude their presence in the proceedings, at the request of the child or of his or her legal or other appropriate assistant or because it is not in the child's best interests.

57. The Committee recommends that States parties explicitly legislate for the maximum possible involvement of parents or legal guardians in the proceedings because they can provide general psychological and emotional assistance to the child and contribute to effective outcomes. The Committee also recognizes that many children are informally living with relatives who are neither parents nor legal guardians, and that laws should be adapted to allow genuine caregivers to assist children in proceedings, if parents are unavailable.

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

58. States parties must ensure that a child is not compelled to give testimony or to confess or acknowledge guilt. The commission of acts of torture or cruel, inhuman or degrading treatment in order to extract an admission or confession constitutes a grave violation of the child's rights (Convention on the Rights of the Child, art. 37 (a)). Any such admission or confession is inadmissible as evidence (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 15).

59. Coercion leading a child to a confession or self-incriminatory testimony is impermissible. The term “compelled” should be interpreted broadly and not be limited to physical force. The risk of false confession is increased by the child’s age and development, lack of understanding, and fear of unknown consequences, including a suggested possibility of imprisonment, as well as by the length and circumstances of the questioning.

60. The child must have access to legal or other appropriate assistance, and should be supported by a parent, legal guardian or other appropriate adult during questioning. The court or other judicial body, when considering the voluntariness and reliability of an admission or confession by a child, should take all factors into account, including the child’s age and maturity, the length of questioning or custody and the presence of legal or other independent assistance and of the parent(s), guardian or appropriate adult. Police officers and other investigating authorities should be well trained to avoid questioning techniques and practices that result in coerced or unreliable confessions or testimonies, and audiovisual techniques should be used where possible.

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

61. Children have the right to examine witnesses who testify against them and to involve witnesses to support their defence, and child justice processes should favour the child’s participation, under conditions of equality, with legal assistance.

Right of review or appeal (art. 40 (2) (b) (v))

62. The child has the right to have any finding of guilt or the measures imposed reviewed by a higher competent, independent and impartial authority or judicial body. This right of review is not limited to the most serious offences. States parties should consider introducing automatic measures of review, particularly in cases that result in criminal records or deprivation of liberty. Furthermore, access to justice requires a broader interpretation, allowing reviews or appeals on any procedural or substantive misdirection, and ensuring that effective remedies are available.⁵

63. The Committee recommends that States parties withdraw any reservation made in respect of article 40 (2) (b) (v).

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

64. A child who cannot understand or speak the language used in the child justice system has the right to the free assistance of an interpreter at all stages of the process. Such interpreters should be trained to work with children.

65. States parties should provide adequate and effective assistance by well-trained professionals to children who experience communication barriers.

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

66. The right of a child to have his or her privacy fully respected during all stages of the proceedings, set out in article 40 (2) (b) (vii), should be read with articles 16 and 40 (1).

67. States parties should respect the rule that child justice hearings are to be conducted behind closed doors. Exceptions should be very limited and clearly stated in the law. If the verdict and/or sentence is pronounced in public at a court session, the identity of the child should not be revealed. Furthermore, the right to privacy also means that the court files and records of children s 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.

68. Case-law reports relating to children should be anonymous, and such reports placed online should adhere to this rule.

69. The Committee recommends that States refrain from listing the details of any child, or person who was a child at the time of the commission of the offence, in any public

⁵ Human Rights Council resolution 25/6.

register of offenders. The inclusion of such details in other registers that are not public but impede access to opportunities for reintegration should be avoided.

70. In the Committee's view, there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media.

71. Furthermore, the Committee recommends that States parties introduce rules permitting the removal of children's criminal records when they reach the age of 18, automatically or, in exceptional cases, following independent review.

E. Measures⁶

Diversion throughout the proceedings

72. The decision to bring a child into the justice system does not mean the child must go through a formal court process. In line with the observations made above in section IV.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, diversion options should be offered from the earliest point of contact, before a trial commences, and be available throughout the proceedings. In the process of offering diversion, the child's human rights and legal safeguards should be fully respected, bearing in mind that the nature and duration of diversion measures may be demanding, and that legal or other appropriate assistance is therefore necessary. Diversion should be presented to the child as a way to suspend the formal court process, which will be terminated if the diversion programme is carried out in a satisfactory manner.

Dispositions by the child justice court

73. After proceedings in full compliance with article 40 of Convention are conducted (see section IV.D above), a decision on dispositions is made. The laws should contain a wide variety of non-custodial measures and should expressly prioritize the use of such measures to ensure that deprivation of liberty is used only as a measure of last resort and for the shortest appropriate period of time.

74. A wide range of experience with the use and implementation of non-custodial measures, including restorative justice measures, exists. 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 are to be explicitly prohibited and penalized.

75. The Committee reiterates that corporal punishment as a sanction is a violation of article 37 (a) of the Convention, 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).

76. The Committee emphasizes that the reaction to an offence should always be proportionate 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 longterm needs of the society. A strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40 (1) of the Convention. Where serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of

⁶ See also section IV.B above.

the need for public safety and sanctions. Weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society.

77. Recognizing the harm caused to children and adolescents by deprivation of liberty, and its negative effects on their prospects for successful reintegration, the Committee recommends that States parties set a maximum penalty for children accused of crimes that reflects the principle of the "shortest appropriate period of time" (Convention on the Rights of the Child, art. 37 (b)).

78. Mandatory minimum sentences are incompatible with the child justice principle of proportionality and with the requirement that detention is to be a measure of last resort and for the shortest appropriate period of time. Courts sentencing children should start with a clean slate; even discretionary minimum sentence regimes impede proper application of international standards.

Prohibition of the death penalty

79. Article 37 (a) of the Convention reflects the customary international law prohibition of the imposition of the death penalty for a crime committed by a person who is under 18 years of age. A few States parties assume that the rule prohibits only the execution of persons who are below the age of 18 years at the time of execution. Other States defer the execution until the age of 18. The Committee reiterates that the explicit and decisive criterion is the age at the time of the commission of the offence. If there is no reliable and conclusive proof that the person was below the age of 18 at the time the crime was committed, he or she should have the benefit of the doubt and the death penalty cannot be imposed.

80. The Committee calls upon the few States parties that have not yet abolished the imposition of the death penalty for all offences committed by persons below the age of 18 years to do so urgently and without exceptions. Any death penalty imposed on a person who was below the age of 18 at the time of the commission of the offence should be commuted to a sanction that is in full conformity with Convention.

No life imprisonment without parole

81. No child who was below the age of 18 at the time he or she committed an offence should be sentenced to life imprisonment without the possibility of release or parole. The period to be served before consideration of parole should be substantially shorter than that for adults and should be realistic, and the possibility of parole should be regularly reconsidered. The Committee reminds States parties that sentence children to life imprisonment with the possibility of release or parole that in applying this sanction they should strive for the realization of the aims of article 40 (1) of the Convention. This means, *inter alia*, that a child sentenced to life imprisonment should receive education, treatment and care aiming at his or 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 or her possible release. Life imprisonment makes it very difficult, if not impossible, to achieve the aims of reintegration. The Committee notes the 2015 report in which the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment finds that life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child (A/HRC/28/68, para. 74). The Committee strongly recommends that States parties abolish all forms of life imprisonment, including indeterminate sentences, for all offences committed by persons who were below the age of 18 at the time of commission of the offence.

F. Deprivation of liberty, including pretrial detention and post-trial incarceration

82. Article 37 of the Convention contains important 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. The Committee draws the attention of States parties to the 2018 report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, in which the Special Rapporteur noted that the scale and magnitude of children's suffering in detention and confinement called for a global commitment to the abolition of child prisons and large care institutions, alongside scaled-up investment in community-based services (A/HRC/38/36, para. 53).

83. States parties should immediately embark on a process to reduce reliance on detention to a minimum.

84. Nothing in the present general comment should be construed as promoting or supporting the use of deprivation of liberty, but rather as providing correct procedures and conditions in the minority of cases where deprivation of liberty is deemed necessary.

Leading principles

85. The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child is to be used only in conformity with the law, only as a measure of last resort and for the shortest appropriate period of time; and (b) no child is to be deprived of his or her liberty unlawfully or arbitrarily. Arrest is often the starting point of pretrial detention, and States should ensure that the law places clear obligations on law enforcement officers to apply article 37 in the context of arrest. States should further ensure that children are not held in transportation or in police cells, except as a measure of last resort and for the shortest period of time, and that they are not held with adults, except where that is in their best interests. Mechanisms for swift release to parents or appropriate adults should be prioritized.

86. The Committee notes with concern that, in many countries, children languish in pretrial detention for months or even years, which constitutes a grave violation of article 37 (b) of the Convention. Pretrial detention should not be used except in the most serious cases, and even then only after community placement has been carefully considered. Diversion at the pretrial stage reduces the use of detention, but even where the child is to be tried in the child justice system, non-custodial measures should be carefully targeted to restrict the use of pretrial detention.

87. The law should clearly state the criteria for the use of pretrial detention, which should be primarily for ensuring appearance at the court proceedings and if the child poses an immediate danger to others. If the child is considered a danger (to himself or herself or others) child protection measures should be applied. Pretrial detention should be subject to regular review and its duration limited by law. All actors in the child justice system should prioritize cases of children in pretrial detention.

88. In application of the principle that deprivation of liberty should be imposed for the shortest appropriate period of time, States parties should provide regular opportunities to permit early release from custody, including police custody, into the care of parents or other appropriate adults. There should be discretion to release with or without conditions, such as reporting to an authorized person or place. The payment of monetary bail should not be a requirement, as most children cannot pay and because it discriminates against poor and marginalized families. Furthermore, where bail is set it means that there is a recognition in principle by the court that the child should be released, and other mechanisms can be used to secure attendance.

Procedural rights (art. 37 (d))

89. Every child deprived of his or 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 or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action. The Committee recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age.

90. Every child arrested and deprived of his or her liberty should be brought before a competent authority within 24 hours to examine the legality of the deprivation of liberty or its continuation. The Committee also recommends that States parties ensure that pretrial detention is reviewed regularly with a view to ending it. In cases where conditional release of the child at or before the first appearance (within 24 hours) is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body for the case to be dealt with as soon as possible but not later than 30 days after pretrial detention takes effect. The Committee, conscious of the practice of adjourning court hearings many times and/or for long periods, urges States parties to adopt maximum limits for the number and length of postponements and introduce legal or administrative provisions to ensure that the court or other competent body makes a final decision on the charges not later than six months from the initial date of detention, failing which the child should be released.

91. The right to challenge the legality of the deprivation of liberty includes not only the right to appeal court decisions, but also the right of access to a court for review of an administrative decision (taken by, for example, the police, the prosecutor and other competent authorities). States parties should set short time limits for the finalization of appeals and reviews to ensure prompt decisions, as required by the Convention.

Treatment and conditions (art. 37 (c))

92. Every child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison for adults, as there is abundant evidence that this compromises their health and 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 the Convention – “unless it is considered in the child’s best interests not to do so” – should be interpreted narrowly and the convenience of the States parties should not override best interests. States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.

93. The above rule does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility.

94. Every child deprived of liberty has the right to maintain contact with his or her family through correspondence and visits. To facilitate visits, the child should be placed in a facility as close as possible to his or her family’s place of residence. Exceptional circumstances that may limit this contact should be clearly described in law and not be left to the discretion of the authorities.

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

- (a) Incommunicado detention is not permitted for persons below the age of 18;
- (b) Children should be provided with a physical environment and accommodation conducive to the reintegrative aims of residential placement. Due regard should be given to their needs for privacy, for sensory stimuli and for opportunities to associate with their peers and to participate in sports, physical exercise, arts and leisure-time activities;
- (c) Every child has the right to education suited to his or her needs and abilities, including with regard to undertaking exams, and designed to prepare him or her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him or her for future employment;
- (d) Every child has the right to be examined by a physician or a health practitioner upon admission to the detention or correctional facility and is to receive adequate physical and mental health care throughout his or her stay in the facility, which should be provided, where possible, by the health facilities and services of the community;

(e) The staff of the facility should promote and facilitate frequent contact by the child with the wider community, including communications with his or her family, friends and other persons, including representatives of reputable outside organizations, and the opportunity to visit his or her home and family. There is to be no restriction on the child's ability to communicate confidentially and at any time with his or her lawyer or other assistant;

(f) Restraint or force can be used only when the child poses an imminent threat of injury to himself or herself or others, and only when all other means of control have been exhausted. Restraint should not be used to secure compliance and should never involve deliberate infliction of pain. It is never to be used as a means of punishment. The use of restraint or force, including physical, mechanical and medical or pharmacological restraints, should be under close, direct and continuous control of a medical and/or psychological professional. 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 that it is reduced to a minimum;

(g) Any disciplinary measure is to 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 the Convention must be strictly forbidden, including corporal punishment, placement in a dark cell, solitary confinement or any other punishment that may compromise the physical or mental health or well-being of the child concerned, and disciplinary measures should not deprive children of their basic rights, such as visits by legal representative, family contact, food, water, clothing, bedding, education, exercise or meaningful daily contact with others;

(h) Solitary confinement should not be used for a child. Any separation of the child from others should be for the shortest possible time and used only as a measure of last resort for the protection of the child or others. Where it is deemed necessary to hold a child separately, this should be done in the presence or under the close supervision of a suitably trained staff member, and the reasons and duration should be recorded;

(i) 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 any other proper independent authority, and to be informed of the response without delay. Children need to know their rights and to know about and have easy access to request and complaints mechanisms;

(j) Independent and qualified inspectors should be empowered to conduct inspections on a regular basis and to undertake unannounced inspections on their own initiative; they should place special emphasis on holding conversations with children in the facilities, in a confidential setting;

(k) States parties should ensure that there are no incentives to deprive children of their liberty and no opportunities for corruption regarding placement, or regarding the provision of goods and services or contact with family.

G. Specific issues

Military courts and State security courts

96. There is an emerging view that trials of civilians by military tribunals and State security courts contravene the non-derogable right to a fair trial by a competent, independent and impartial court. This is an even more concerning breach of rights for children, who should always be dealt with in specialized child justice systems. The Committee has raised concerns about this in several concluding observations.

Children recruited and used by non-State armed groups, including those designated as terrorist groups, and children charged in counter-terrorism contexts

97. The United Nations has verified numerous cases of recruitment and exploitation of children by non-State armed groups, including those designated as terrorist groups, not only in conflict areas but also in non-conflict areas, including children's countries of origin and countries of transit or return.

98. When under the control of such groups, children may become victims of multiple forms of violations, such as conscription; military training; being used in hostilities and/or terrorist acts, including suicide attacks; being forced to carry out executions; being used as human shields; abduction; sale; trafficking; sexual exploitation; child marriage; being used for the transport or sale of drugs; or being exploited to carry out dangerous tasks, such as spying, conducting surveillance, guarding checkpoints, conducting patrols or transporting military equipment. It has been reported that non-State armed groups and those designated as terrorist groups 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.

99. The authorities of States parties 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 the opportunities for 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, to a lesser extent, also in their countries of origin or return.

100. The Committee draws the attention of States parties to Security Council resolution 2427 (2018). In the resolution, the Council stressed the need to establish standard operating procedures for the rapid handover of children associated or allegedly associated with all non-State armed groups, including those who committed acts of terrorism, to relevant civilian child protection actors. The Council emphasized that children who had been recruited in violation of applicable international law by armed forces and armed groups and were accused of having committed crimes during armed conflicts should be treated primarily as victims of violations of international law. The Council also urged Member States to consider non-judicial measures as alternatives to prosecution and detention that were focused on reintegration, and called on them to apply due process for all children detained for association with armed forces and armed groups.

101. States parties should ensure that all children charged with offences, regardless of the gravity or the context, are dealt with in terms of articles 37 and 40 of the Convention, and should refrain from charging and prosecuting them for expressions of opinion or for mere association with a non-State armed group, including those designated as terrorist groups. In line with paragraph 88 of its general comment No. 20, the Committee further recommends that States parties adopt preventive interventions to tackle social factors and root causes, as well as social reintegration measures, including when implementing Security Council resolutions related to counter-terrorism, such as resolutions 1373 (2001), 2178 (2014), 2396 (2017) and 2427 (2018), and General Assembly resolution 72/284, in particular the recommendations contained in paragraph 18.

Customary, indigenous and non-State forms of justice

102. Many children come into contact with plural justice systems that operate parallel to or on the margins of the formal justice system. These may include customary, tribal, indigenous or other justice systems. They may be more accessible than the formal mechanisms and have the advantage of quickly and relatively inexpensively proposing responses tailored to cultural specificities. Such systems can serve as an alternative to official proceedings against children, and are likely to contribute favourably to the change of cultural attitudes concerning children and justice.

103. There is an emerging consensus that reforms of justice sector programmes should be attentive to such systems. Considering the potential tension between State and non-State justice, in addition to concerns about procedural rights and risks of discrimination or marginalization, reforms should proceed in stages, with a methodology that involves a full understanding of the comparative systems concerned and that is acceptable to all stakeholders. Customary justice processes and outcomes should be aligned with

constitutional law and with legal and procedural guarantees. It is important that unfair discrimination does not occur, if children committing similar crimes are being dealt with differently in parallel systems or forums.

104. The principles of the Convention should be infused into all justice mechanisms dealing with children, and States parties should ensure that the Convention is known and implemented. Restorative justice responses are often achievable through customary, indigenous or other non-State justice systems, and may provide opportunities for learning for the formal child justice system. Furthermore, recognition of such justice systems can contribute to increased respect for the traditions of indigenous societies, which could have benefits for indigenous children. Interventions, strategies and reforms should be designed for specific contexts and the process should be driven by national actors.

V. Organization of the child justice system

105. 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.

106. A comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.

107. The Committee recommends that States parties establish child justice courts either as separate units or as part of existing courts. Where that is not feasible for practical reasons, States parties should ensure the appointment of specialized judges for dealing with cases concerning child justice.

108. Specialized services such as probation, counselling or supervision should be established together with specialized facilities, for example day treatment centres and, where necessary, small-scale facilities for residential care and treatment of children referred by the child justice system. Effective inter-agency coordination of the activities of all these specialized units, services and facilities should be continuously promoted.

109. In addition, individual assessments of children and a multidisciplinary approach are encouraged. Particular attention should be paid to specialized community-based services for children who are below the age of criminal responsibility, but who are assessed to be in need of support.

110. Non-governmental organizations can and do play an important role in child justice. The Committee therefore recommends that States parties seek the active involvement of such organizations in the development and implementation of their comprehensive child justice policy and, where appropriate, provide them with the necessary resources for this involvement.

VI. Awareness-raising and training

111. Children who commit offences are often subjected to negative publicity in the media, which contributes to a discriminatory and negative stereotyping of those children. This negative presentation or criminalization of children is often based on a misrepresentation and/or misunderstanding of the causes of crime, and regularly results in calls for tougher approaches (zero-tolerance and "three strikes" approaches, mandatory sentences, trial in adult courts and other primarily punitive measures). States parties should seek the active and positive involvement of Members of Parliament, non-governmental organizations and the media to promote and support education and other campaigns to ensure that all aspects of the Convention are upheld for children who are in the child justice system. It is crucial for children, in particular those who have experience with the child justice system, to be involved in these awareness-raising efforts.

112. It is essential for the quality of the administration of child justice that all the professionals involved receive appropriate multidisciplinary training on the content and meaning of the Convention. The training should be systematic and continuous and should not be limited to information on the relevant national and international legal provisions. It should include established and emerging information from a variety of fields on, inter alia, the social and other causes of crime, the social and psychological development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalized groups such as 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 diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings. Consideration should also be given to the possible use of new technologies such as video “court appearances”, while noting the risks of others, such as DNA profiling. There should be a constant reappraisal of what works.

VII. Data collection, evaluation and research

113. The Committee urges States parties to systematically collect disaggregated data, including on 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, the nature of the sanctions imposed on them and the number of children deprived of their liberty.

114. The Committee recommends that States parties ensure regular evaluations of their child justice systems, in particular of the effectiveness of the measures taken, and in relation to matters such as discrimination, reintegration and patterns of offending, preferably carried out by independent academic institutions.

115. It is important that children are involved in this evaluation and research, in particular those who are or who have previously had contact with the system, and that the evaluation and research are undertaken in line with existing international guidelines on the involvement of children in research.
