Submission to the

United Nations Committee on the Rights of the Child

Comments on Revised General Comment No. 10 (2007) on

Children’s Rights in Juvenile Justice

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*Introduction:*

The interdisciplinary Working Group on Human Rights and the Civic Media Lab at The American University of Paris welcome the Committee’s initiative to revise General Comment No. 10 (2007) on Children’s Rights in Juvenile Justice. We believe it is critical that the revised General Comment articulate the responsibilities of State parties to respect and protect the rights of vulnerable refugee, migrant, and asylum-seeking children, particularly those held on the grounds of state protective custody and/or pre-removal or removal in state-operated facilities. We are honored to have the opportunity to share our first-hand experience concerning the treatment of children in these situations and to provide the Committee with this information in the view that it may be considered for inclusion in the revised General Comment as a new issue. While they are not criminals under international law or subject to a juvenile justice system in the traditional sense, **refugee and asylum-seeking children in detention facilities are treated as though they were criminals and their detention conditions are often tantamount, if not worse, than criminal detention facilities**.

Our work has focused primarily on unaccompanied refugee and asylum-seeking children in state-run immigration processing centers (registration and identification centers, or RICs), particularly those arriving in the Aegean Islands, most typically from Turkey. Many are detained immediately in RICs, local police stations, port authority holding cells or other improvised holding facilities. The justification for detention is their “irregular arrival,” even though it is not a crime under Greek law.

Furthermore, the conditions inside RICs and other holding facilities are of great concern, especially as vulnerable refugee and asylum-seeking children are particularly at risk. There are often severe deficiencies of basic services and support necessary for a child’s health, wellness, and development. Additionally, children are frequently mistreated, and detained with non-relative adults. Unaccompanied minors are at a particularly high risk, as they are deprived of liberty upon contact with the Greek authorities regardless of country of origin and can be held under the auspices of protective custody for prolonged periods of time. This process is not unique to Greece; similar situations are well documented around the world.

These conditions can hardly be considered to be in the best interest of the child (art. 3), nor are they conducive to the guarantee of a child’s right to life, survival and development (art. 6) or right to dignity (art. 40(1)), and as such we believe they merit the attention the Committee.

*Recommendation to Existing Draft Language:*

1. In reference to draft General Comment No. 24, paragraph 8, particular attention must be paid to both *de jure* and *de facto* discrimination of refugee, migrant, and asylum-seeking children. The revised General Comment should remind State parties that the immediate obligation to not discriminate on any basis includes on the basis of nationality and legal status, and that **vulnerable groups of children include refugee, migrant, and asylum-seeking children.**

*Recommendation that “Refugee and Asylum-Seeking Children” be Added to*

*Section G as a “Specific Issue”:*

*2.* The revised General Comment should include language reminding State parties that it is a violation of international law to arbitrarily detain a person seeking asylum, and that **refugee and asylum-seeking children must not be treated as criminals when no crime has been committed.**

In reference to draft General Comment No. 24, paragraph 52, refugee and asylum-seeking children should not be detained or treated as criminals for seeking asylum outside their country of origin. Under international law, seeking asylum is not a crime. Therefore, the detention of refugee and asylum-seeking children on this basis is arbitrary and in violation of international law.

Upon making first contact with authorities or border enforcement units, many asylum-seekers possessing nationality from “low-recognition rate” countries, including children, are automatically and immediately detained on the basis of their “irregular arrival.” All detained are treated as if they had received an order for deportation. While “irregular arrival” is not necessarily a crime under domestic jurisdictions, the treatment of individuals detained in RICs and other improvised holding facilities, especially police stations, is analogous to detention in a criminal facility. Furthermore, asylum-seekers are often presumed to have entered illegally or to otherwise be criminals, as is frequently argued in public statements made by government officials.

As there is not a lawful basis for these children’s detention in prison-like conditions, the detention is arbitrary and in violation of art. 37(b). The Committee should recommend that State parties ensure that the measures in place for addressing the influxes of refugees and asylum-seekers are lawful and do not result in the unintended punishment of children.

3. The revised General Comment should include language encouraging State parties to **only detain children in refugee and immigration camps in exceptional circumstances and for the shortest amount of time possible**. In exceptional circumstances where children are detained, the revised General Comment should include language reminding State parties that there must be **protections in place to guarantee conditions are in best interest of the child.**

In reference to draft General Comment No. 24, paragraphs 104-108, every child deprived of liberty must be treated with dignity and detained in conformity with international principles and rules of detention. This must include guarantees of basic safety, protection from violence, medical care, education, and an adequate standard of living.

The treatment of individuals detained is tantamount to detention in a criminal facility, and the conditions are frequently much worse. There are often severe deficiencies of basic necessities and support, including medical and psychological care, legal representation, adequate food and water, access to outdoor time, as well as basic hygiene facilities. Children are frequently mistreated and suffer from acts of violence by authorities as well as others held in these facilities, in clear violation of art. 37(a). For example, the Greek Ombudsman has reported on several instances of children being handcuffed with their hands behind their backs and feet shackled for days within police holding facilities after crossing into Greek territory from Turkey. Additionally, children are often held in cells with adults, in violation of art. 37(c).

Unaccompanied minors arriving in Greece are at a particularly high risk both during and after the asylum process, as they can be held under the auspices of protective custody for months in inhumane living conditions due to an acute lack of appropriate accommodation.

In exceptional circumstances where is it absolutely necessary to detain refugee and asylum-seeking children, the detention should be for the shortest amount of time possible and in conditions that are safe, dignified, and guarantee the best interests of the child.