**COMMITTEE ON THE RIGHTS OF THE CHILD
DRAFT GENERAL COMMENT NO. 24 REPLACING GENERAL COMMENT**

**NO. 10 (2007) ON CHILDREN’S RIGHTS IN JUVENILE JUSTICE**

**Submission of Comments by Professor Huw Williams (A/Professor in Clinical Neuropsychology, Co-Director - Centre for Clinical Neuropsychology Research, University of Exeter), Professor Nathan Hughes (Professorial Fellow, University of Sheffield), Dr Prathiba Chitsabesan (Offender Health Research Network, University of Manchester) and Frances Sheahan (Independent Consultant)**

**General Remarks**

1. We would like to congratulate the Committee on producing an excellent draft revision of General Comment No. 10 on Children’s Rights in Juvenile Justice. We also extend our thanks to the Committee for providing the opportunity to comment on the revised General Comment with a specific focus on inclusion of responses to children with neuro-disabilities who are in conflict with the law.
2. Neuro-disability – also referred to as neurodevelopmental disorders or disabilities -encompass a range of conditions, including attention deficit hyperactivity disorder (ADHD), autism spectrum disorders (ASD), learning / intellectual disability, foetal alcohol spectrum disorders (FASD), and acquired brain injuries.  They are caused by a wide range of factors that compromise brain development and function. These can include genetic factors, pregnancy related complications, including in-utero alcohol and drug exposure, birth trauma, acute injury and illness.
3. Neuro-disabilities can result in problems with cognition, memory and concentration, emotional functioning, impulse control and social judgement, and communication. These associated problems have been frequently identified as factors that: increase risk of childhood crime; create barriers to effective engagement in judicial proceedings (for example, due to difficulties in understanding rights or engaging in interviews); and limit the effectiveness of many rehabilitative interventions.[[1]](#footnote-1)
4. Research regarding the prevalence of such disabilities consistently demonstrates disproportionately higher rates among young people in youth justice custodial institutions than in the general population[[2]](#footnote-2).For example, while the prevalence of ADHD among young people in the general population in Western countries is typically reported to be between 3% and 7%[[3]](#footnote-3), a meta-analysis reviewing 25 studies of incarcerated youth, with a total sample size of 16,750 young people, found a rate of 11.7% among males and 18.5% among females[[4]](#footnote-4). Similarly, while reported rates of learning or intellectual disability among incarcerated young people vary greatly, from 10% to 32%[[5]](#footnote-5), such rates are much greater than the 2-4% reported in comparable general population studies[[6]](#footnote-6).
5. Experiences of traumatic brain injury (TBI) appear to be particularly common among incarcerated youth. A recent systematic review[[7]](#footnote-7) suggests 32-50% of young people in custody report experience of a TBI resulting in loss of consciousness at some point in their childhood, compared to 5-24% within the general population. The disparity in prevalence is more pronounced as the severity of injury increases. Earlier childhood injury has been associated with: earlier incarceration; greater violence; greater drug misuse; repeat offending; and higher risk of suicidality and self-harm when in custody.[[8]](#footnote-8)
6. Higher rates of FASD have also been identified among incarcerated young people. Four Canadian studies suggest rates of 11% to 23%[[9]](#footnote-9), while a recent study in Western Australia suggests a prevalence of 36%[[10]](#footnote-10). This compares to estimates that 2–5% of children in Western countries are born with FASD.[[11]](#footnote-11) Each of these five studies report particularly high rates among incarcerated Aboriginal youth (19-47%), indicating that FASD cannot be readily separated from complex issues of intergenerational disadvantage, poor access to health care, and risk of parental mental health difficulties.
7. Children with neuro-disabilities face a “double disadvantage” in the justice system – they are both children and individuals with disabilities. They are particularly vulnerable to violations of their rights and have additional needs which need to be protected through stringent and effective safeguards.
8. The Committee is reminded of key provisions of General Comment No. 9 (2006) which recommends:

“73. In the light of article 2 States parties have the obligation to ensure that children with disabilities who are in conflict with the law (as described in article 40, paragraph 1) will be protected not only by the provisions of the Convention which specifically relate to juvenile justice (arts. 40, 37 and 39) but by all other relevant provisions and guarantees contained in the Convention, for example in the area of health care and education. In addition, States parties should take where necessary specific measures to ensure that children with disabilities de facto are protected by and do benefit from the rights mentioned above.

74. With reference to the rights enshrined in article 23 and given the high level of vulnerability of children with disabilities, the Committee recommends – in addition to the general recommendation made in paragraph 73 above – that the following elements of the treatment of children with disabilities (allegedly) in conflict with the law be taken into account:

1. A child with disability who comes in conflict with the law should be interviewed using appropriate languages and otherwise dealt with by professionals such as police officers, attorneys/advocates/social workers, prosecutors and/or judges, who have received proper training in this regard;
2. Governments should develop and implement alternative measures with a variety and a flexibility that allow for an adjustment of the measure to the individual capacities and abilities of the child in order to avoid the use of judicial proceedings. Children with disabilities in conflict with the law should be dealt with as much as possible without resorting to formal/legal procedures. Such procedures should only be considered when necessary in the interest of public order. In those cases special efforts have to be made to inform the child about the juvenile justice procedure and his or her rights therein;
3. Children with disabilities in conflict with the law should not be placed in a regular juvenile detention centre by way of pre-trial detention nor by way of a punishment. Deprivation of liberty should only be applied if necessary with a view to providing the child with adequate treatment for addressing his or her problems which have resulted in the commission of a crime and the child should be placed in an institution that has the specially trained staff and other facilities to provide this specific treatment. In making such decisions the competent authority should make sure that the human rights and legal safeguards are fully respected.”
4. Developments in research on the prevalence, incidence and impact of neuro-disability on children in conflict with the law have important implications for the ways in which child justice systems respond to these children, as they respond to any children with disabilities[[12]](#footnote-12):
5. Children in conflict with the law should be screened for the presence of neuro-disability and justice professionals should be supported to identify the indicators of prominent neurodevelopmental disorders and to understand the implications for behaviour and engagement.
6. Judicial officers responsible for sentencing should take account of the relevance of identified neuro-disability to offending behaviour, including the potential impact on the child of difficulties with reading, processing and memory, maturity of judgement, impulsivity and an understanding of the perspectives of others. Judicial officers should be trained and supported to understand the ways in which neuro-disability might affect a child’s capacity to engage in justice processes, and the appropriateness of particular sentences and interventions. Diversion and/or community-based sentences should be preferred.
7. Detention facility employees, probation officers, social workers and others engaged in a child’s rehabilitation and reintegration should be aware of a child’s neuro-disability and provide appropriate management and rehabilitation support to ensure that their rights are respected, protected and fulfilled.
8. The following are some recommendations for text to include in the revised draft to reflect these requirements:

**Para 77**

Recommendation to add "The Committee also wishes to draw the attention of States parties to the **importance of identifying, recognizing and addressing the needs of children with disabilities affecting communication, learning and emotional functioning.”**

**Para 85**

Recommendation to add: "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 **and the impact of any neurodisability**, as well as to the various and particularly long‑term needs of the society."

**Para 108**

Recommendation to add: "**Children with a neuro-disability will require appropriate education, training and care while in detention, and during reintegration after detention, in order to make a successful transition back into the community**."

End./

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7. Hughes N, Williams W, et al. The prevalence of traumatic brain injury among young offenders in custody: a systematic review. *Journal of head trauma rehabilitation* 2015; **30**(2): 94-105. [↑](#footnote-ref-7)
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