**Committee on the Rights of the Child, General Comment No. 10 on Children’s Rights in Juvenile Justice**

**COMMENTS BY THE GOVERNMENT OF CANADA**

The Government of Canada appreciates the work of the Committee of the Rights of the Child in monitoring States Parties ‘implementation of the Convention on the Rights of a Child (the “Convention”) and the work on this General Comment. Canada wishes to thank the Committee for the opportunity to comment on Draft General Comment No. 10 on juvenile justice. Canada welcomes constructive dialogue and engagement between the United Nations treaty bodies and States Parties on issues such as the content of General Comments.

Canada recognizes the independence and impartiality of the Committee, and its ability to issue General Comments. Canada reiterates, however, that General Comments are capable only of providing guidance to States Parties in their interpretation of their obligations. The Comments do not create binding legal obligations in and of themselves, nor do they reflect an interpretation of the Covenant that is necessarily agreed upon by States Parties.

The specific comments below are not exhaustive, but rather highlight areas for potential further development and identify some areas of concern. Silence in respect of other areas does not constitute acquiescence in the Committee’s interpretation of States’ obligations.

Canada would suggest using non-gendered language where possible (for example, using the terms “they/them/their” instead of “he/she”, “his/her(s)” and “him/her”. Using binary gendered language excludes children who identify outside these binary distinctions.

As a general comment, the Committee may wish to add a brief discussion about the use of release and sentencing conditions for young offenders. As a best practice, States should curtail the use of release and sentencing conditions to ensure these are only imposed for valid criminal law purposes (such as securing a young person’s attendance, or protection of the public) and not for social welfare purposes. The overuse of conditions risks contributing to an increasing number of young persons (particularly those from vulnerable populations) facing the criminal justice system for behavior that in and of itself would not be criminal in nature.

With regards to the right to education (Article 28), paragraph 9 of the Draft General Comment discusses how youth in conflict with the law face discrimination in the education system. Many youth in conflict with the law are deprived of education through suspension and expulsion from school, or other forms of school exclusion. States should take steps to avoid denying access to education and should ensure that all actors in the justice system recognize the education and skills training needs of youth in conflict with the law.

***Comments on Specific Paragraphs***

1. Regarding the first sentence of paragraph 8, Canada notes that “treated equally” can be interpreted as “everyone must be treated the same”. A youth justice system that ensure everyone was treated the same could in fact lead to further discrimination for some youth, as it would not recognize the diversity of youth, their needs and the interventions/supports that may best fit their needs. Canada would therefore rephrase paragraph 8 as follows:

“States parties have to take all necessary measures to **respond to the diverse situations and needs of individual** children in conflict with the law.”

1. In the final sentence of paragraph 8, we recommend clarifying that any redress, remedies and compensation would be “for victims”.
2. Canada cautions against the broader implications of paragraph 10, which recommends ensuring “any conduct not considered an offence or not penalized if committed by an adult” not be “considered an offence and not penalized if committed by a young person”.in order to reduce future stigmatization/ discrimination against the child. The Draft General Comment cites vagrancy, truancy, and runaways. Canada agrees that this rule should be restricted to status offences and should not apply to measures that protect the well-being of children. Canada would therefore rephrase paragraph 10 as follows:

“The Committee recommends that States Parties establish an equal treatment under the law for children and adults by abolishing status offences that do not serve to protect children.”

1. In paragraph 18, Canada agrees that parents have the responsibility to provide their child with appropriate direction and guidance in the exercise of their rights, as recognized in the Convention. Canada suggests the addition of “parents and legal guardians” to recognize that children may not always benefit from the presence of parents in their lives.
2. Canada would highlight the importance of targeted programs for racialized or Indigenous groups, who are disproportionately represented in the justice system. Canada would therefore rephrase paragraph 19 as follows:

“Prevention programmes should focus on support for families in particular those in vulnerable situations **or belonging to a minority group, including Indigenous families**, the involvement of schools in teaching basic values, and extending special care and attention to young persons at risk.”

1. With regard to paragraph 44, Canada agrees that a birth certificate should be provided free of charge in circumstances where there is an inability to pay. There is a cost to the government of producing birth certificates, and in many cases it is reasonable to charge a nominal fee for the provision or replacement of a birth certificate. Canada would therefore rephrase paragraph 44 as follows:

“A child who does not have a birth certificate must be provided with one promptly and **at a reasonable cost, or where the child does not have an ability to pay, free of charge**, whenever it is required to prove age.”

1. With regard to paragraph 80, while Canada agrees with the automatic removal of youth criminal records, it is not necessarily feasible to remove such records upon a child reaching the age of 18. There are instances where records may need to be kept beyond the age of 18, such as when a young person is still serving a sentence beyond the age of 18. In some cases, records may also be relevant for deciding on appropriate diversions or sentences in incidents of subsequent offending.
2. With regard to paragraph 81, Canada disagrees with the recommendation that youth justice court proceedings be conducted behind closed doors. Allowing members of the public to observe youth court proceedings is important and aligned with the notion that court proceedings should be open and transparent. Canada also notes that freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, is recognized as a human rights at international law. That being said, consistent with article 40 of the Convention, Canada agrees that children should have their privacy fully respected at all stages of the proceedings. Canada recommends that the Committee re-examine its recommendation at paragraph 81 in order to find a better balance between the right of the public to information and the privacy rights of young persons who come into contact with the law.
3. Canada would rephrase paragraph 87 to reflect that States may have multiple different cultures and traditions:

“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 cultures and traditions.”**

1. Canada recommends that paragraph 92 more closely mirror Article 37(a) of the Convention. It is Canada’s position that, in some exceptional circumstances, life sentences with possibility of parole for older adolescents are both appropriate and consistent with the Convention. Canada would therefore rephrase paragraph 92 as follows:

“Given the likelihood that life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends States parties to abolish all forms of life imprisonment **without eligibility for parole** for offences committed by persons who were under the age of 18 at the time of commission of the offence.”

1. In paragraph 101, Canada would be hesitant to specify an age below which deprivation of liberty could not be used. While we agree that in all cases the deprivation of liberty should only be used as a measure of last resort, it is our view that circumstances can arise where deprivation of liberty is required, even in cases involving young persons under 16, such as where deprivation of liberty may be necessary in order to ensure public safety. Canada would therefore rephrase paragraph 101 as follows:

“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 **or create a presumption against the use of deprivation of liberty, for any child in conflict with the law below the age of 16 years old, unless there are legitimate public safety concerns**, either at the pre-trial or post-trial stage.”

1. In paragraph 108, it is unclear what is meant by “close, direct, and continuous control”. Canada notes that situations can arise whereby the restraint of a child will not always be supervised by a medical or psychological professional. For example, in a group home setting, a child who is being violent may need to be restrained by on-site staff that is trained in conflict de-escalation techniques, but are not medical or psychological professionals. Canada understands that certain restraints may need to be exercised in emergency situations. It is not necessarily feasible to have medical and psychological personnel providing constant and continuous oversight. Canada agrees that staff should be trained and that failures to observe standards should be investigated and addressed.
2. Increased use of restorative justice and Indigenous justice could serve to reduce reliance on the formal justice system and on incarceration for young people, which is likely to be beneficial. Adding recognition of customary justice systems is also broadly consistent with Article 30. Canada would therefore rephrase paragraph 115 as follows:

“Reconciling custom with state justice may pose difficulties for adherence to human rights standards **in the formal justice system**, but ways should be found to infuse the principles of the Convention into customary law justice mechanisms. Restorative justice responses are likely to be achievable through customary justice systems, and may provide opportunities for learning that can benefit the formal juvenile justice system. In countries where customary justice systems are used by communities, interventions using such systems should be included in all strategies for holistic reform; strategies and reforms should be designed for specific contexts and the process must be driven by national actors. **Further, recognition of customary justice systems can contribute to increased respect for the traditions of Indigenous societies, which could have benefits for children from these societies.**”

***Conclusion***

1. In conclusion, Canada reiterates its appreciation of the opportunity to review the Draft General Comment, and more generally its support for the work of the Committee. Canada avails itself of the opportunity to renew to the Committee the assurances of its highest consideration.

Ottawa 16 January 2019