**Juvenile Justice Advocates International**

Proposed changes to General Comment 24 language are highlighted in yellow, additions are italicized, and removals are in strikethrough:

1. **Paragraph 5, 6, 22 & 25: Terminology / Diversion & Reentry:**

We are concerned that state practices of diversion in some instances include deprivation of liberty or combine measures with the deprivation of liberty of children. The Committee should make clear that by definition, “diversion” excludes any deprivation of liberty and any diversionary measure must be non-custodial by definition. The practice of combining “diversion” with custodial measures is particularly problematic as diversion takes children out of the legal process and thereby many of the legal protections that prevent discriminatory and abusive detention, and it is often obtained through a negotiation process that can become abusive if it is allowed to include custodial measures.

The committee also recognizes that one of the goals of the juvenile justice system is the reintegration into society of child offenders. State parties should be encouraged to implement re-entry efforts systematically as part of the juvenile justice system responsibility.

*Proposed language*: Paragraph 5…*To provide clarity on the meaning and purpose of pre-trial detention.*

*Proposed language*: Paragraph 6… Diversion*: non-custodial* measures for dealing with children in conflict with the law, taken by designated authorities, without resorting to judicial proceedings.

*Proposed language:* Paragraph 6*… Re-entry: Services available for children and juveniles after having complied with custodial and non-custodial measures with the purpose of full reintegration into society.*

*Proposed language:* Paragraph 22…1. *Non-custod*ial measures without resorting to judicial proceedings (diversion); and …

*Proposed language:* Paragraph 25: …to take the necessary legislative and other measures for their implementation. *However, the Committee notes that diversionary measures do not include custodial measures or deprivation of liberty.* Nonetheless, on the basis of ….

1. **Non-discrimination paragraphs 8-11**

The Committee should include language to specifically ensure that there is no discrimination in the application of non-custodial measures. Practices that effectively exclude children because they live far away from the court or the supervising agency, are unable to pay for transportation, their gender or status as a parent causes de facto discrimination. This often affects girls, children from poverty, indigenous children and children from minority groups disproportionately.

It is also a concern that State parties may utilize custodial measures when a child is in danger or threatened due to the nature of the offence. In such cases, State parties should activate child protection mechanisms or services for those children as opposed to custodial measures.

*Proposed language* (new paragraph or part of existing paragraph): *State parties must ensure equal access to services and particularly to non-custodial measures. In particular, the Committee is concerned that access to non-custodial measures is not accessible to children who are unable to pay for transportation, live far from the court or supervising agency, or because of their condition as parents are considered ineligible for non-custodial measures. Such practices disproportionately impact girls, children from poverty, indigenous and ethnic minority communities. States must ensure that decisions regarding non-custodial measures are not de facto discriminatory based on the economic situation of children or their families.*

1. **Paragraph 14: The right to be heard**

It has come to the attention of this organization that in cases where children in conflict with the law and with ties to organize crime, actors in the juvenile justice system may feel coerced to prioritize the children’s voices above the best interests of the child – such as requests made by children to be relocated within the detention system in order to be able to participate in illicit activities within the detention center. The committee should clarify that the right to be heard must be weighed with the guarantee of the best interests of the child.

*Proposed language:* Paragraph 14:…*Decisions taken within the context of administration of juvenile justice shall take into account the voices of children involved, in alignment with the best interests of the child.*

1. **Paragraph 17: Inclusion of non-custodial measures as a core element**

The Committee should explicitly include both pre and post-trial non-custodial measures as core elements of a comprehensive juvenile justice system. In addition, the committee should encourage State parties to implement anti corruption measures in order to assure compliance of all core elements.

*Proposed language*: Paragraph 17.…the guarantees for a fair trial; the deprivation of liberty including pre-trial detention and post-trial incarceration; *the supervision of non-custodial measures both pre and post-trial;* the after care and reintegration services and the monitoring of these measures. *State parties should have anti-corruption measures in place in order to assure compliance of these core elements.*

1. **Paragraph 27 & 82: Ensuring diversion is applied as early as possible in the process and without discrimination.**

The Committee should consider recommending that diversion alternatives be applied as early in the process as possible, especially in the cases of children in pre-trial detention. Delayed decisions regarding diversion alternatives decreases the benefits of destigmatization, cost-effectiveness, public safety and the principle of minimum intervention. While it is important that diversion is available as an option throughout the legal process, it is not uncommon for justice sector actors to wait to apply diversion alternatives until just before the trial commences as a rule, thereby losing much of the intended benefit of the practice.

Just like non-custodial measures, diversion should not be granted on a discriminatory basis or because of the State’s lack of resources.

*Proposed language* (either part of paragraph 27 or paragraph 82): *While diversion measures should be accessible throughout the legal proceedings, it is in the best interest of the child and maintains the integrity of the nature of diversion when diversion alternatives are applied as early as possible in the proceedings. As such, juvenile justice actors should not wait weeks or months to determine if a diversion measure could be applied, especially in the case of children in pre-trial detention. State parties should not deprive eligible children from diversion measures because of the State’s lack of resources or the condition of poverty of child offenders.*

1. **Paragraph 31: Protections for children below the minimum age of criminal responsibility**

The Committee should clarify that children who are subject to non-judicial measures due to their age below the minimum age of criminal responsibility should receive protections equal or greater than those in the juvenile justice system including, access to non-custodial alternatives, services and treatment in their communities and families, and procedural protections that ensure their rights.

*Proposed language*: Paragraph 31…For these children special protective measures can be considered on a case-by-case basis by the appropriate civil or administrative authorities. *Such measures should provide as much or greater protections afforded to children in the juvenile justice system, including procedural rights, access to services and treatment in their communities and families, and ensure that deprivation of liberty in non-judicial settings is exceedingly rare.*

1. **Paragraph 41: The application of juvenile justice system**

It has come to the attention of the organization that recidivist children are often tried in an adult penal system while having a pending judicial proceeding in the juvenile justice system. Persons ages 18 up to 21 who are in conflict with the law and appeared to be accused of a different offence below age 18 should have the opportunity of the protections of the juvenile justice system.

*Proposed language:* Paragraph 41: In cases where a child commits an offence together with an adult or a group of adults, the proceedings and provisions of the specialized regime of the juvenile justice system applies to the child, whatever the conditions reserved for adults. *When a person aged 18 and older is undergoing a judicial process in the adult penal system and is accused of having committed a crime at an age below the upper limit, the juvenile justice system route should be privileged over the adult penal system after all judicial proceedings are completed.*

1. **Paragraph 48: Offences committed with adults**

Some State parties determine the use of pre-trial detention based on factors such as a child committing an offence with an adult or a group of adults. Sometimes these adults are persons aged 18 up to 21. Recognizing that the age gap between a child below the upper maximum age and a person aged 18 is minimal, State parties should be encouraged to focus their efforts in determining the use of pre-trial detention on other factors.

*Proposed language:* Paragraph 48: In cases where a…whatever the conditions reserved for adults. *States are encouraged to not condition pre-trial detention to the commission of an offence of a child together with an adult or group of adults.*

1. **Paragraph 50: Protection of girls in the juvenile justice system.**

The Committee should clarify that girls have equal access to services and treatment, adjusted to their particular needs as girls, including in both non-custodial measures and custodial measures.

*Proposed language*: Paragraph 50: …*Girls should have equal access to non-custodial measures as boys and should have equal access to services, education and treatment as boys in both custodial and non-custodial settings.*

1. **Paragraph 80, 81, 124 &125: Protection of children’s privacy and access to data.**

It is common for States to deny access to data or information based on the protection of children’s privacy in the juvenile justice system. As a result, information that could reveal recidivism statistics, the effectiveness of diversion or other non-custodial measures, among others, is not accessible. The Committee should recommend that states strike a more effective balance between children’s individual privacy and providing transparent data about the juvenile justice system.

*Proposed language:* Paragraph 81: The Committee recommends…involving the same offender (see the Beijing Rules, rules 21.1 and 21.2), or to enhance future sentencing. *State parties should maintain records that allow for aggregate data or non-individualized data to be collected either through the justice system or another administrative mechanism in accordance with section VIII (paragraphs 124-126).*

Paragraph 125: The Committee…such as effective diversion programmes or newly emerging juvenile delinquency activities, will indicate critical points of success and concern. *While privacy rights of individual children must be respected, as discussed in paragraphs 80-81, States parties should maintain adequate records so that this data can be collected.*

1. **Paragraphs 98-99, 102: Basic principles: Pre-trial detention & Duration of Pre-trial detention**

It is a main concern of the organization is that detention is used as a last resort and for the shortest appropriate period of time. In aiding State parties to accomplish these principles, pre-trial detention is used for prolonged periods of time. Some State parties do not have child-specific pre-trial detention limits and many even allow for non-defined extensions. Many countries limit child pre-trial detention based on the child’s age, gender, or crime accused of and allow prosecutors to request unlimited time exceptions. The Committee urgently needs to clarify the use and limits of child pre-trial detention. Furthermore, when the purpose of pre-trial detention is not clear and the criteria for deciding on pre-trial detention is not objective, pre-trial detention can easily violate the prohibition against arbitrary detention.

*Proposed language:*

Paragraph 98. *All pre-trial measures, including pre-trial detention, are only justified in order to protect the legal process and they should be applied on an individualized basis.* Use of pre-trial detention as a punishment violates the presumption of innocence. The law should clearly state the ~~conditions that are required~~ *procedural risks that* *should be assessed in order* to determine whether to place or keep a child in pre-trial detention, in particular to ensure his/her appearance at the court proceedings, and whether he/she is an immediate danger to others. *The assessment of such procedural risks shall be based on objective criteria in order to prevent arbitrary deprivation of liberty. If the child is in danger or poses a risk to himself or herself, States parties should implement child protective measures instead of pre-trial detention.* The duration of pre-trial detention should be limited by law and be subject to regular review.

Paragraph 99. In application of the principle of the shortest period of time…the child should be provided with the necessary legal and other appropriate assistance. *All justice sector actors should prioritize cases of children in pre-trial detention – police, investigators, crime labs, judges, judicial calendars and appeals processes.*

Paragraph 102. Every child arrested and deprived of his/her…be brought before a court or other competent, independent and impartial authority or judicial body not later than ~~30~~ *15* days after his/her pre-trial detention takes effect. The Committee, conscious of the practice of adjourning court hearings many times and/or for long periods, urges the States parties ~~to introduce legal provisions to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six~~ *~~months30 days~~* ~~after they have been presented.~~ *adopt maximum time limits for children pre-trial detention of 30 days and allow only one extension to for up to 30 more days in cases where it is necessary and justified by the defense, prosecution, or exigent circumstances. Pre-trial detention durations should be individual determinations based on the procedural circumstances of the cases and shorter than the maximum whenever possible. These standards should be based on the understanding that pre-trial detention starts at the moment of arrest or initial detention and ends at the moment that the court establishes a final sentence. State parties should ensure that appeals and judicial review are available, but in accessing these resources, do not extend pre-trial detention beyond the legally established limit. Children in pre-trial detention for the maximum number of days should be placed in supervised release immediately and not re-detained for that same offence.*

1. **Paragraph 108: Deprivation of liberty and disciplinary measures**

We are concerned that children’s rights are not adequately protected while in detention and that some of the guidance provided by the Committee is not specific enough to prevent some of the most common forms of abuses. Children and their families are often subject to excessive punishments that deny their rights and are often subject to extortion or corruption by detention officials.

*Proposed language*: Paragraph 108. The Committee emphasizes that, inter alia, the following principles and rules need to be observed in all cases of deprivation of liberty:

…. • Any disciplinary measure…or any other punishment that may compromise the physical or mental health or well-being of the child concerned. *Disciplinary measures should not deny children of their basic rights such as denying visits by legal representation, family contact, food, clothing, shelter, bedding, educational opportunities, or daily and regular meaningful contact with other people.*

* *Children deprived of their liberty and their family or legal representation shall not be subject to extortion or paying bribes to other detainees or officials. To that end decisions regarding detention placement, family visits, phone calls and correspondence, food, clothing, bedding, access to recreational activities, access to education, access to legal assistance, access to medical and mental health care, decisions regarding work or vocational opportunities, exercise, and release from disciplinary measures, should be free of charge. States parties should implement transparent book keeping for detention commissaries or stores, or any time money is changing hands between children or their families and detention staff.*
* *Detention institutions should be entirely within the control of the government, including all sections, cell blocks or dormitories.*
1. **Paragraph 117-119: Specialized Juvenile Justice System**

While it is true that some State parties have taken efforts in establishing a separate justice system for child and juvenile offenders, often times such system is administered by actors and/or government agencies that serve the adult system as well and the juvenile justice system is not truly specialized.

*Proposed language: Paragraph 118*: …*and that personnel are exclusive to the specialized juvenile units.*

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