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**Comments of the Government of the Netherlands to the Draft General Comment No. 24, replacing General Comment No. 10, on Children’s rights in juvenile justice**

1. The Government of the Netherlands welcomes the initiative by the Committee on the Rights of the Child to prepare a revised General Comment on Children’s rights in juvenile justice. In response to the Committee’s call for comments the Government of the Netherlands would submit the following comments on the draft text.

General

2. The Government of the Netherlands endorses many of the Committee’s recommendations in the draft text of the revised General Comment. The Government agrees for instance with the Committee that the guarantees for a fair trial are of great importance for minors and that regard should at all times be had for both the specific requirements and the general principles enshrined in various articles of the Convention.

3. The Government would point out, however, that the Draft General Comment on Children’s rights in juvenile justice addresses a wide range of issues that are relevant for quite a few articles of the Convention of the Rights of the Child (CRC). This runs the risk of contradicting General Comments already issued or making the provisions of the CRC codependent instead of independently interactive across the CRC as a whole. The Netherlands requests the Committee to pay special attention to this.

Specific

*Minimum age of criminal responsibility*

4. In paragraphs 30 – 36 the Committee addresses the minimum age of criminal responsibility. Whereas in General Comment No. 10 the Committee had considered the absolute minimum age of criminal responsibility to be 12 years, the Committee now encourages States to increase this to at least 14 years of age.

5. According to the Government of the Netherlands, the minimum age of criminal responsibility is an important but complex issue. The minimum age of criminal responsibility differs greatly between states, depending on historical and cultural factors. The minimum age ranges from as young as 8 to the age of majority. In light of this wide range, the Committee aims to provide guidance regarding the minimum age of criminal responsibility.[[1]](#footnote-1)

6. The Government agrees with the Committee that the minimum age of criminal responsibility should not be too low and the Government believes that the Committee could provide guidance to States in this regard. However, precisely because the minimum age range among States is so wide, setting the minimum age of criminal responsibility at 14 years rather than 12 years seems unrealistic.

7. The Government would note that other international instruments, such as the “Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice” and “Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures”, do not set any minimum age. Rather, they recommend that the minimum age of criminal responsibility should not be too low and should be determined by law, bearing in mind the facts of emotional, mental and intellectual maturity. The Government believes that a minimum age of criminal responsibility of 12 years is in line with these considerations. In this context increasing the minimum age from 12 to 14 years seems unnecessary.

8. The Government of the Netherlands therefore suggests to maintain the position as put forward in General Comment No. 10 in this regard and not to increase the minimum age of criminal responsibility from 12 to 14 years.

*Legal representation*

9. In paragraphs 60 – 64 the Committee recommends that States provide legal representation for all children who are facing charges in juvenile courts. This should be free of charge. According to the Committee, States that can provide legal representation for children during all processes should do so.

10. The Netherlands made a reservation to Article 40 of the Convention, which reads:

“*The Kingdom of the Netherlands accepts the provisions of article 40 of the Convention with the reservation that cases involving minor offences may be tried without the presence of legal assistance and that with respect to such offences the position remains that no provision is made in all cases for a review of the facts or of any measures imposed as a consequence.*”

11. This reservation leaves room to try cases involving minor offences without the presence of legal assistance. Under currently applicable international and European law,[[2]](#footnote-2) States are not required to provide legal representation for children at all times. Regard should be had for the seriousness of the offence, the complexity of the case and other relevant factors. Where deprivation of liberty may be imposed as a sanction, access to legal assistance must be guaranteed at all times, free of charge. The child’s best interests should always be a primary consideration.

12. The text of the Draft General Comment seems to be more far-reaching. In light of the foregoing, the Government of the Netherlands would suggest to amend the text of the General Comment to include the possibility to try cases involving minor offences without the presence of legal assistance.

*Deprivation of liberty*

13. In paragraphs 95 – 108 the Committee addresses deprivation of liberty, including pre-trial detention and post-trial incarceration. According to paragraph 104, no child deprived of liberty shall be placed in a center of prison for adults. States parties should establish separate facilities for children deprived of their liberty, which include appropriately trained personnel and operate according to child-friendly policies and practices.

14. The Netherlands made a reservation to Article 37 (c) of the Convention, which reads that this article “*shall not prevent the application of adult penal law to children of sixteen years and older, provided that certain criteria laid down by law have been met*”. For the former Netherlands Antilles the Convention was accepted subject to the following reservation regarding Article 37 (c) of the Convention:

“*The Kingdom of the Netherlands accepts the provisions of article 37 (c) of the Convention with the reservation that these provisions shall not prevent:*

*- the application of adult penal law to children of sixteen years and older, provided that certain criteria laid down by law have been met;*

*- that a child which has been detained will not always be accommodated separately from adults; if the number of children that has to be detained at a certain time is unexpectedly large, (temporary) accommodations together with adults may be unavoidable.*”

15. As becomes clear from the second indent of the reservation, the Government of the Netherlands believes that situations may occur where detaining children in the same detention facilities as adults cannot be avoided. Such a situation may arise if the number of children to be detained is unexpectedly large or if the number of children that has to be detained is very low (in small regions) or undetermined (for instance in regions where juvenile justice is newly introduced). In that particular situation it may be reasonable to (temporarily) detain those children in a special wing or a separated ward of a detention facility meant for adults. Also in this regard, the child’s best interests should be a primary consideration.

16. Paragraph 104 of the Draft text does not seem to leave room for such situations, as it is formulated in rather absolute terms. The Government would suggest an amendment of the text so as to acknowledge that these situations may occur.

1. Draft text para. 32. [↑](#footnote-ref-1)
2. See, for instance, Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. [↑](#footnote-ref-2)