Comments by UNICEF LACRO Child Protection Section to the draft revised General Comment N°10

**. Para 6.** We welcome the inclusion of this new section with appropriate terminology for addressing juvenile justice. However, we are concerned about the translation of this section into the final Spanish version and expressly request that the translation not only be literal, but also include those expressions that should not be used in the Spanish language, such as the term ‘menores’ to refer to children in conflict with the law. This, moreover, should be reflected throughout the document.

**. Para 19, 20 y 21**. While we understand the Committee's need to maintain the GC in a generic manner so that it can be adopted in a diversity of contexts and cultures, we understand that, in the paragraphs referring to prevention, States should receive clear guidance on the need for prevention programs to cover situations in which children are exposed to and coerced by criminal organizations to commit, participate in or be complicit in crimes. Without an express call to States to work from a preventive (and not only punitive) approach and to protect these children exposed to organized crime, other preventive actions at the family or educational level will not achieve their purpose.

**. Para 23.** On the implementation of diversionary measures, we understand that in paragraph 23 the Committee could be more emphatic about the need and urgency for juvenile justice systems to shift in that direction. Expressions such as ‘whenever appropriate’ remain too vague. In the next sentence of the same paragraph, ‘has proven to be more’ could be extended for all the reasons given, as there is enough international evidence to prove that diversionary measures work best for children, for the public safety interest and not just in terms of cost-efficiency.

**. Para 31**. In the case of children who commit criminal offences before the minimum age of criminal responsibility, the paragraph states that civil or administrative authorities may adopt special protection measures ‘on a case by case basis’. This formulation is excessively vague and leaves it to the discretion of these authorities to decide on a case-by-case basis whether to send that child to a home or some other type of center, whether to send him or her home, or what. This leaves the door open for poor and vulnerable children to be punished through these special protection measures. We suggest that instead of 'case by case', reference be made to the best interests principle to determine the best response and that it be made explicit that special protection measures cannot be imposed by way of sanctions (especially internment).

**. Para 33**. The formulation of this paragraph on the minimum age of criminal responsibility is confusing and requires greater precision and emphasis. The Committee would provide better guidance to States if the recommendation were formulated as in the previous GC, i.e. that it is unacceptable for the MACR to be set below the age of 14.

**. Para 34.** This paragraph requires States that children below the minimum age be treated with the same legal safeguards, in a fair manner, as those above the minimum age. We welcome this incorporation, since it is key that there are guarantees for those who commit infractions below the minimum age, but it is disconnected from what is established in point 31. We suggest moving this paragraph to follow 31 once the formulation of 31 has been improved as we suggest above.

**. Para 50.** Although this provision did not change its formulation with respect to the previous GC N°10, we understand that it does not fully reflect the specific needs of girls in conflict with the law. We understand that 'prior abuse' does not include other types of gender-based violence that a girl may experience and for which she requires special measures. ‘Special health' is also an imprecise term in this paragraph. Terms such as 'menstrual hygiene', 'sexual and reproductive health' make the specific needs of girls and adolescents more visible. We also suggest that the paragraph refers to the Bangkok Rules, especially rule 5 on personal hygiene and rule 6 on health care services.

**. Para 55**. While the spirit of the paragraph and of the entire section on Article 12 is to ensure the participation of children in all phases of the judicial process as active subjects and not as objects, the following phrase: 'A child who is considered to be criminally responsible should be considered competent to effectively participate in all aspects of the trial' does not reflect the responsibility of a State to provide that child with the information, preparation necessary to deal with a process, nor does it refer to the responsibility of a State to make the institutions and mechanisms involved in a juvenile justice process child friendly. Just as a child has diminished guilt with respect to adults, by the state of development and maturity according to his age also his capacities to participate and be an active subject in a judicial process are different from those of an adult person and this must be considered by the institutions and processes in which he has the right to participate.

**. Para 85**. 'In cases of serious offences by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions'. The wording of the sentence remains confusing and repetitive with the first sentence of the paragraph as in GC n°10. We suggest that the wording specify that, in all cases, even for the most serious crimes, the measures must have double proportionality in addition to considering the best interests of the child and promoting his or her reintegration. Nor do we share the deletion from the paragraph of the provisions on the prohibition of corporal punishment and other forms of cruel, inhuman or degrading treatment that we suggest being reinserted in the paragraph.

**. Para 86**. The last sentence of this paragraph leaves the door open to exceptions to the maximum duration of deprivation of liberty. As a result, the recommendation that deprivation of liberty for children be considerably less than that of adults for similar offences loses all its force. In its wording 'should be considerably shorter' the Committee is already leaving sufficient leeway for States to determine sanctions, so we strongly suggest removing the possibility of any possibility of exception and deleting that last sentence.

**. Para 101**. Regarding this paragraph, we would like to express our concern, not with the content, but with the form of the paragraph, since, just as it can be used by those who understand that adolescents in conflict with the law are unpunished or do not face consequences for their actions. We therefore suggest that its formulation be reconsidered in order, on the one hand, to bring arguments (deprivation of liberty as a measure of last resort, exceptional and for the shortest possible time, international evidence of the harm it inflicts on people at that stage of development and on their future individual and community possibilities) to the understanding of States of establishing that limit. On the other hand, we suggest making it clear that children and adolescents under the age of 16 are not exempt from criminal responsibility, but that States have a range of non-custodial options to demand that responsibility from a child or adolescent and to repair any harm that may have been caused.