

Committee on the Rights of the Child (CRC)

Human Rights Treaties Division (HRTD)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

January 8, 2019

Dear members of the Committee on the Rights of the Child,

We welcome the revision of General Comment 10 on Children's Rights in Juvenile Justice, and particularly recognise significant progress made in a number of areas, such as the inclusion of definitions for key terms, for example, "deprivation of liberty," the move from change of wording from "alternatives to detention" to "non-custodial measures," the progress in respect of the minimum age of criminal responsibility and the inclusion of the involvement of the family.

In recognition of the importance of the revised General Comment, we convened an ad hoc working group to discuss the proposed changes. We spent a day considering the Comment in detail and attempted to identify broad areas of common agreement where we could agree ways in which the document could be strengthened further in line with emerging themes in the draft and developments in policy and practice in our various jurisdictions.

We enclose a document with suggested changes to that end. While not every single suggested change in the document is specifically endorsed by every member of the working group due to the short time available, the suggestions have been made in light of our discussions and reflect in so far as is possible a common position.

We hope the suggestions speak for themselves, but highlight a few key points:

- (i) **Language:** the overall language of the new General Comment should reflect a non-judgemental approach that avoids stigmatizing children and/or defining children by their acts and circumstances, in accordance with the principle of the best interests of the child. Consequently, and to keep pace with global momentum around child-centred approaches, we recommend that the General Comment adopt the term 'child justice' instead of 'juvenile justice'.
- (ii) **Defining terms:** The suggestion was raised to include other terms such as :- lawyer, legal assistance, legal representation, multi-disciplinary approach, non-custodial measures, pre-trial detention, and police custody, etc. We also recommend that language around the upper age limit should include reference to any scientific developments that may be relevant to adolescence.
- (iii) **Life sentences:** We strongly welcome the strengthening of the section on the prohibition of the death penalty (paras. 90-91) and the call for the abolition of life imprisonment but feel that this section should be strengthened to actively encourage States towards abolition, for example, by prohibiting mandatory life sentences as contrary to the principle of the best interests of the child (paras. 92-94).
- (iv) **Children in detention:** a number of recommendations are made to strengthen the section on children in detention and bring it into line with other international instruments such as the Mandela Rules.

- (v) **Customary or plural justice:** We welcome the mention of ‘customary justice’ in the revised General Comment, demonstrating recognition of emerging research and practice in this regard. However, we suggest that the term ‘customary justice’ is replaced by the broader term ‘plural legal orders’ in order to better capture the multiple forms of justice that co-exist in many contexts and with varying degrees of formality.
- (vi) **Data collection, evaluation and research:** We recommend that further research be conducted on emerging issues from a wide range of fields, including scientific developments and digital technologies, non-custodial measures to avoid the criminalization of children and the benefits of legal and rights-based knowledge for children.

The signatories of this submission welcome the progress made concerning the minimal age of criminal responsibility, particularly in the face of developing negative trends relating to the minimum age of criminal responsibility, such as states lowering the age. Given the complex nature of this topic, signatories will make a separate submission concerning this section (paragraphs 30-36).

We look forward to seeing the final version of the revised comment.

Sincerely,

- Bureau international catholique de l'enfance (International Catholic Child Bureau)
- Avril Calder, Independent Expert
- Children’s Rights Alliance for England
- Child Rights International Network
- Fabrice Crégut, Independent Expert
- Professor Jennifer Davidson, Executive Director – CELCIS, University of Strathclyde
- Defence for Children International
- European Forum for Restorative Justice
- Dr. Louise Forde, School of Law, University College Cork, Ireland
- Professor Barry Goldson PhD FAcSS, School of Law and Social Justice, The University of Liverpool, UK
- Howard League for Penal Reform
- International Association of Youth and Family Judges and Magistrates
- Just for Kids Law
- Justice Studio
- Prof. Ursula Kilkelly, School of Law, University College Cork, Ireland
- Leiden University, Department of Child Law
- Penal Reform International
- Marta Pascual, President, International Association of Youth and Family Judges and Magistrates
- Nikhil Roy, Independent Expert
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- Vivere