Comments on the revision of the CRC General Comment No. 10 (2007) on Children’s Rights in Juvenile Justice from the State Party Sweden

Sweden welcomes the revised version of the CRC General Comment No. 10 (2007) on Children’s Rights in Juvenile Justice and appreciate the Committee on the Rights of the Childs work with the new version.

Please find our comments below.

Dignity (art. 40 (1))

15. CRC provides a set of fundamental principles for the treatment to be accorded to children in conflict with the law:

* *Treatment that is consistent with the child’s sense of dignity and worth*. This principle reflects the fundamental human right enshrined in article 1 of UDHR, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child;
* *Treatment that reinforces the child’s respect for the human rights and fundamental freedoms of others*. This principle is in line with the consideration in the preamble that a child should be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations. It also means that, within the juvenile justice system, the treatment and education of children shall be directed to the development of respect for human rights and fundamental freedoms (art. 29 (1) (b) of CRC and general comment No. 1 on the aims of education). It is obvious that this principle of juvenile justice requires a full respect for and implementation of the guarantees for a fair trial recognized in article 40 (2) (see paragraphs 49-81 below). If the key actors in juvenile justice, such as police officers, prosecutors, judges and probation officers, do not fully respect and protect these guarantees, how can they expect that with such poor examples the child will respect the human rights and fundamental freedom of others?;
* *Treatment that takes into account the child’s age and promotes the child’s reintegration and the child’s assuming a constructive role in society*. This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way to the implementation of all measures for dealing with the child. It requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children;
* *Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented*. Reports received by the Committee show that violence occurs in all phases of the juvenile justice process, from the first contact with the police, during pretrial detention and during the stay in treatment and other facilities for children sentenced to deprivation of liberty. The committee urges the States parties to take effective measures to prevent such violence and to make sure that the perpetrators are brought to justice and to give effective follow-up to the recommendations made in the report on the United Nations Study on Violence Against Children presented to the General Assembly in October 2006 (A/61/299).

B. Interventions/diversion (see also section E below)

22. Two kinds of interventions can be used by State authorities for dealing with children in conflict with the law:

1. measures without resorting to judicial proceedings (diversion); and
2. measures in the context of judicial proceedings.

In both interventions, the Committee reminds States parties that utmost care must be taken to ensure that the ~~child’s~~ human rights of the child and legal safeguards are thereby fully respected ~~and~~, protected and fulfilled.

Interventions without resorting to judicial proceedings (diversion)

26. States parties should take measures of diversion as an integral part of their juvenile justice system, and ensure that the human rights of the child~~ren´s human rights~~ and legal safeguards are thereby fully respected and protected (art. 40 (3) (b)).

Birth certificates and age determination

44. A child who does not have a birth certificate must be provided with one promptly and free of charge, whenever it is required to prove age, if the child is born in the State concerned. If there is no proof of age by birth certificate, the authority, with the assistance of social workers, if available, should ~~accept~~ look into and assess all documentation available such as notification of birth, extracts from birth registries, baptismal or equivalent documents, or school reports. ~~Documents that are available should be considered genuine unless there is proof to the contrary.~~ Authorities should allow for interviews with parents or testimony by parents regarding age, or for permitting questionnaires to be filed by teachers or religious or community leaders who know the age of the child.

***Comments:***

It must be the State in which a child is born that has the responsibility to provide the child with a birth certificate. The burden of proof lies with the individual to plausibly demonstrate his or her account, for example identity (including age). The principles of free examination of evidence and free submission of evidence are basic in the Swedish legal system.

45. Only if these measures prove unsuccessful, the child may be subjected to a comprehensive assessment of the child’s physical and psychological development, conducted by ~~specialist~~ ~~peadiatricians or other~~ specialists, that is professionals who are skilled in combining different aspects of development. Such assessments should be carried out in a prompt, child- and gender-sensitive, gender-sensitive and culturally appropriate manner, including interviews of children and, as appropriate, accompanying adults, in a language the child understands. States should ~~refrain from using~~ use medical methods based on~~, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error,~~ science and proven experience. States should refrain from examinations which may ~~and can also~~ be traumatic for the child and/or lead to unnecessary legal processes. In the case of inconclusive evidence, the child shall have the benefit of the doubt.

***Comments:***

Paediatricians are generally specialised in medical matters and diseases of children, not necessarily age assessments. It is questionable whether there is any scientific basis for the statement that medical methods based on bone and dental exam analysis may be inaccurate, with wide margins of error.

D. The guarantees for a fair trial

51. All the rights and guarantees recognized in article 40 (2) of CRC are minimum standards, meaning that States parties can and should try to establish and observe higher standards.

Decisions without delay and with involvement of parents (art. 40 (2) (b) (iii))

66. The Committee recommends that the States parties set and implement time limits for the period between the commission of the offence and the completion of the police investigation, the decision of the prosecutor (or other competent body) to bring charges against the child, and the final decision by the court or other competent judicial body. These time limits should be much shorter than those set for adults, but the shortened time frames should still allow for the ~~child’s~~ rights of the child and the legal safeguards to be fully respected.

**Dispositions by the juvenile court/judge**

85. The Committee emphasizes that the reaction to an offence should always be in proportion not only to the circumstances and the gravity of the offence, but also to the personal circumstances (age, lesser culpability, circumstances and needs including if appropriate the mental health needs of the child), as well as to the various and particularly long‑term needs of the society. A strictly punitive approach is not in accordance with the leading principles for juvenile justice spelled out in article 40 (1) of CRC (see paragraphs xx-xx above). 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. In the case of children, such considerations must weigh in favour of the rights of the child~~´s right~~ to have his/her best interests considered as a primary consideration and to promote his/her reintegration.

Procedural rights (art. 37 (d))

101. 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, either~~ both at the pre-trial ~~or~~ and post-trial stage. Deprivation of liberty should only be used as a measure of last resort and for the shortest period of time with the child’s best interests as a primary consideration.

***Comments:***

We strongly support that State parties have an age limit for the use of deprivation of liberty for children and that deprivation of liberty should only be used as a measure of last resort and for the shortest period of time. It should however be each State’s responsibility to decide the age limit.

102. Every child arrested and deprived of his/her liberty should be brought before a competent authority to examine the legality of the deprivation of liberty or its continuation within 24 hours. The Committee also recommends that the States parties ensure by strict legal provisions that the legality of a pre-trial detention is reviewed regularly~~, preferably on a weekly basis~~. In cases where conditional release of the child, e.g. by applying non-custodial measures, is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority or judicial body not later than 30 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 months after they have been presented.

***Comments:***

It is important that the length of the pre-trial detention is kept as short as possible and that the reason behind the detention is reviewed regularly. When deciding if the detention should continue the competent authority should always take into consideration if the detention is proportionate or not. The meaning of “regularly” should however be at each State to determine. In addition, we suggest the wording in track changes.

**Children recruited and used by non-State armed groups, terrorist or violent extremist groups**

111. States parties authorities face a number of challenges when dealing with these children. Some States parties have adopted a punitive approach with no or limited consideration of the rights of the child~~ren’s rights~~, resulting in lasting consequences for the development of the child and having a negative impact on their opportunities for rehabilitation and social reintegration, which in turn may have serious consequences for the broader society. Often, these children are arrested, detained, prosecuted and put on trial for their actions, in conflict areas and, less so, also in their countries of origin or return.

Annex

Normative Framework

Juvenile Justice falls within the framework of the rights of the child~~ren’s rights~~. It is an area in which international instruments have been developed which provide a clear articulation of systemic solutions to the issues that arise in the context of children in conflict with the law. The list of the most important instruments bound to juvenile justice to which this general comment refers:

* United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), adopted by A/RES 40/33, 29 November 1985;
* United Nations Guidelines for the Prevention of Juvenile Delinquency (the “Riyadh Guidelines”), adopted by A/RES/45/112, 14 December 1990;
* United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by A/RES 45/113 of 14 December 1990;
* United Nations Minimum Standard Rules for Non-Custodial Measures (the “Tokyo Rules”), A/RES 45/110 of 14 December 1990;
* United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”) (ECOSOC 1977);
* Basic principles on the use of restorative justice programmes in criminal matters, adopted by ECOSOC resolution 2002/12;
* United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the “Bangkok Rules”**),** adopted by ECOSOC resolution 2010/16;
* United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by A/RES 67/458*,* 2012;
* Justice in Matters Involving Children in Conflict with the Law, Model Law on Juvenile Justice, UNODC, Vienna (2014) and its commentary.