



# General Assembly

Distr.: General  
13 August 2012

Original: English

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## Human Rights Council

### Twenty-first session

Agenda items 2 and 3

### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development

## Report of the High Commissioner for Human Rights on the protection of human rights of juveniles deprived of their liberty

### *Summary*

The present report is submitted pursuant to resolution 18/12 of the Human Rights Council. It provides an analysis of the human rights legal framework applicable to children deprived of their liberty. On the basis of the work of relevant human rights mechanisms, it further reviews the implementation by States of their legal obligations and concludes that, while international human rights law provides a comprehensive legal framework regulating the rights of children in the administration of justice, in particular when deprived of their liberty, a number of implementation gaps remain.

Among the gaps, the report identifies in particular the lack of adequate conditions of detention; the imposition of certain penalties prohibited in international human rights law; the lack of monitoring and complaint mechanisms; and the inadequacy of training of personnel dealing with children deprived of their liberty. The report concludes that States should comply with their human rights obligations to protect children from ill-treatment and to respect the dignity and needs of children deprived of their liberty. States should also observe their obligation to ensure that children are not subjected to death penalty, life imprisonment without parole, or corporal punishment. Furthermore, the report concludes that States should establish or strengthen monitoring, complaint and other safeguard procedures in accordance with international norms and standards. Finally, it highlights that States must ensure that professionals working with children are competent and well-trained, in line with international standards on the qualification, selection, recruitment, training and remuneration of such personnel.

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## I. Introduction

1. The Human Rights Council, in its resolution 18/12, entitled “Human rights in the administration of justice, in particular juvenile justice”, requested the High Commissioner to submit an analytical report to the Council at its twenty-first session on the protection of human rights of juveniles deprived of their liberty, mindful of all applicable human rights standards and taking into account the work of all relevant human rights mechanisms of the United Nations.

2. The present report provides an analysis of the human rights legal framework applicable to the issue of children<sup>1</sup> deprived of their liberty. The report also addresses challenges related to the implementation of human rights norms in relation to children deprived of their liberty, in particular issues related to conditions of detention. It further highlights the main principles underlying the juvenile justice system, in particular issues related to the exercise of juvenile criminal jurisdiction *ratione personae*, the application of certain penalties and the use of alternative measures.<sup>2</sup>

## II. Applicable human rights legal framework

3. Human rights standards relevant to the protection of human rights of children deprived of their liberty are set out in a series of legally binding international human rights instruments, including the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; the Second Optional Protocol to the International Covenant on Civil and Political Rights; the Optional Protocol to the Convention against Torture; the International Convention on the Elimination of All Forms of Racial Discrimination; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

4. A number of other standard-setting instruments regulate issues related to deprivation of liberty of persons, including children, in particular: the Standard Minimum Rules for the Treatment of Prisoners;<sup>3</sup> the Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power;<sup>4</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;<sup>5</sup> the Basic Principles for the Treatment of Prisoners;<sup>6</sup> the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);<sup>7</sup> the Basic Principles on the Use of Restorative Justice Programmes in Criminal

<sup>1</sup> The various relevant international instruments, rules and guidelines refer to persons not considered as adults using either the term “child(ren)” or the term “juvenile(s)”. For reasons of clarity, the term used throughout this report will be “children” unless a specific provision of an instrument, rule or guideline using the term “juvenile” is being quoted.

<sup>2</sup> The present report has taken into account relevant standards developed in the context of the human rights as well as in the criminal justice sectors. It has taken into account relevant public information from treaty bodies, special procedures, and relevant United Nations agencies, in particular the United Nations Office on Drugs and Crime (UNODC) and UNICEF, as well as civil society organizations.

<sup>3</sup> Economic and Social Council resolution 663 C (XXIV) and 2076 (LXII).

<sup>4</sup> General Assembly resolution 40/34.

<sup>5</sup> General Assembly resolution 43/173.

<sup>6</sup> General Assembly resolution 45/111.

<sup>7</sup> General Assembly resolution 45/110.

Matters;<sup>8</sup> and the United Nations Rules for the Treatment of Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).<sup>9</sup>

5. Furthermore, specific guidelines and rules regulating the detention of children have also been adopted, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);<sup>10</sup> the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines);<sup>11</sup> the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules);<sup>12</sup> the Guidelines for Action on Children in the Criminal Justice System (the Vienna Guidelines);<sup>13</sup> and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.<sup>14</sup>

#### *Age limits*

6. Article 1 of the Convention on the Rights of the Child defines a child as every human being below the age of 18 unless under the law applicable to the child, majority is attained earlier. Rule 11(a) of the Havana Rules provides that a juvenile is every person under the age of 18 without any limitation.<sup>15</sup> According to the Beijing Rules, in the context of the administration of justice, a juvenile is a person who may be dealt with for an offence in a manner which is different from an adult.<sup>16</sup>

7. In general comment No. 10, the Committee on the Rights of the Child states that the special rules of juvenile justice should apply for all children who, at the time of the commission of the offence, have not yet reached the age of 18.<sup>17</sup> The Human Rights Committee, in general comment No. 21, has also stated with regard to deprivation of liberty that all persons under the age of 18 should be treated as children, at least in matters relating to criminal justice.<sup>18</sup>

8. Article 40, paragraph 3, of the Convention on the Rights of the Child provides that State parties must seek to promote a minimum age of criminal responsibility below which children shall be presumed not to have the capacity to infringe the penal law. Neither the Convention nor other standard-setting instruments prescribe a specific minimum age of criminal responsibility. Rule 4 of the Beijing Rules specifies that if the concept of the age of criminal responsibility is accepted within a State, the beginning of that age should not be fixed at too low a level. Furthermore, article 41 of the Convention on the Rights of the Child provides that States may always set a higher standard. Rule 3.3 of the Beijing Rules further recommends making efforts to extend juvenile justice rules to young adult offenders.

#### *Juvenile justice system*

9. Article 40, paragraph 3, of the Convention on the Rights of the Child, as well as rule 11.1 of the Beijing Rules, require States to establish measures for dealing with children

<sup>8</sup> Economic and Social Council resolution 2002/12.

<sup>9</sup> General Assembly resolution 65/229.

<sup>10</sup> General Assembly resolution 40/33.

<sup>11</sup> General Assembly resolution 45/112.

<sup>12</sup> General Assembly resolution 45/113.

<sup>13</sup> Economic and Social Council resolution 1997/30.

<sup>14</sup> Economic and Social Council resolution 2005/20.

<sup>15</sup> Rule 11(a), Havana Rules.

<sup>16</sup> Rule 2.2(a), Beijing Rules.

<sup>17</sup> Committee on the Rights of the Child, general comment No. 10, para. 36.

<sup>18</sup> Human Rights Committee, General Comment No. 21, para. 13.

without resorting to formal judicial proceedings, whenever appropriate and desirable, while ensuring that human rights and legal safeguards are fully respected. When diversion measures are not possible, the Convention provides that States parties should seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children accused of an infringement of criminal law. The Beijing Rules confirm the necessity of specific national legislation as well as institutions and bodies entrusted with the functions of the administration of juvenile justice and specify that the whole system should be designed to meet the varying needs of children in conflict with the law, while protecting their human rights.<sup>19</sup>

#### *Fair trial guarantees*

10. While all the procedural guarantees provided in article 14 of the International Covenant on Civil and Political rights are equally applicable to children, the Convention on the Rights of the Child also provides a list of fundamental procedural safeguards to ensure fair treatment and trial of children accused of committing a crime. For instance, in line with article 15 of the International Covenant on Civil and Political Right, article 40, paragraph 2)(a), of the Convention on the Rights of the Child prohibits the retroactive application of criminal law. Moreover, the Convention provides that children accused of a criminal act are entitled, at all stages of proceedings, to be presumed innocent until proven guilty;<sup>20</sup> to obtain prompt and direct information of the charges and to have legal or other appropriate assistance in the preparation and presentation of their defence;<sup>21</sup> to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law; to obtain legal assistance; to enjoy the presence of parents or legal guardians in the proceedings unless their presence is considered adverse to the best interest of the child;<sup>22</sup> and the right not be compelled to give testimony or to confess guilt.<sup>23</sup>

11. The Convention on the Rights of the Child requires that children be provided with the opportunity to be heard in any judicial and administrative proceedings affecting them, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.<sup>24</sup> Moreover, children may examine or have examined adverse witnesses and obtain the participation and examination of witnesses on their behalf.<sup>25</sup> If the child does not understand or speak the language, he or she has the right to get free assistance of an interpreter.<sup>26</sup>

12. Children are accorded the right to have the decision by which they were found guilty or any measures imposed in consequence thereof reviewed. The appeal shall be carried out by a higher competent, independent and impartial judicial body according to law.<sup>27</sup> The Convention on the Rights of the Child requires that the privacy of the child is respected at all stages of the proceedings.<sup>28</sup>

13. According to the Beijing Rules, when judicial proceedings are required, children must be dealt with by the competent authority in accordance with the principles of a fair

<sup>19</sup> Rule 2.3, *ibid.*

<sup>20</sup> Art. 40, para. 2 (b)(i), Convention on the Rights of the Child.

<sup>21</sup> Art. 40, para. 2 (b)(ii), *ibid.*

<sup>22</sup> Art. 40, para. 2 (b)(iii), *ibid.*

<sup>23</sup> Art. 40, para. 2 (b)(iv), *ibid.*

<sup>24</sup> Article 12, *ibid.*, rule 14.2, Beijing Rules.

<sup>25</sup> Art. 40, para. 2 (b)(iv), Convention on the Rights of the Child.

<sup>26</sup> Art. 40, para. 2 (b)(vi), *ibid.*

<sup>27</sup> Art. 40, para. 2 (b)(v), *ibid.*

<sup>28</sup> Art. 40, para. 2 (b)(vii), *ibid.*; art. 16, *ibid.*

trial.<sup>29</sup> Such proceedings shall be conducive to the best interests of the child and be conducted in an atmosphere of understanding, which shall allow the children to participate therein and to express themselves freely.<sup>30</sup> Furthermore, the Beijing Rules establish that the competent authority shall have the power to discontinue the proceedings at any time.<sup>31</sup>

#### *Alternative measures*

14. According to the Havana and the Beijing Rules, all efforts should be made to apply alternative measures to detention of children.<sup>32</sup> Article 40, paragraph 4, of the Convention on the Rights of the Child provides a non-exhaustive enumeration of dispositions that shall be made available to ensure that children are dealt with in a manner appropriate with their well-being and proportionate both to their circumstances and the offence, such as counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care.<sup>33</sup>

15. In addition, the Tokyo Rules provide a set of basic principles for the use of non-custodial measures and minimum safeguards for persons subject to alternatives to imprisonment. In particular, rule 3 of the Tokyo Rules provides legal safeguards when applying non-custodial measures.

#### *Prohibited penalties*

16. Several international instruments prohibit the imposition of the death penalty.<sup>34</sup> Furthermore, life imprisonment without the possibility of parole should not be imposed for offences committed by children.<sup>35</sup> In addition, the Beijing Rules provide that children shall not be subjected to corporal punishment.<sup>36</sup> In various decisions, the Human Rights Committee established that corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the International Covenant on Civil and Political Rights.<sup>37</sup>

#### *Deprivation of liberty*

17. The right to liberty and security of the person, including children, is embodied in article 9 of the International Covenant on Civil and Political Rights. Paragraph 1 of article 9 prohibits unlawful or arbitrary arrest or detention and requires deprivation of liberty to be in conformity with the law.<sup>38</sup>

<sup>29</sup> Rule 14.1, *ibid.*

<sup>30</sup> Rule 14.2, Beijing Rules.

<sup>31</sup> *Ibid.*, Rule 17.4.

<sup>32</sup> Rule 17, Havana Rules; Rule 18.1, Beijing Rules.

<sup>33</sup> See also rule 18, Beijing Rules.

<sup>34</sup> Art. 37(a), Convention on the Rights of the Child; art. 6, para. 5, International Covenant on Civil and Political Rights; art. 1, Second Optional Protocol to the International Covenant on Civil and Political Rights; rule 17.2, Beijing Rules.

<sup>35</sup> Art. 37(a), Convention on the Rights of the Child.

<sup>36</sup> Rule 17.3.

<sup>37</sup> See Human Rights Committee, *Osbourne vs Jamaica*, Communication No. 759/1997 (CCPR/C/68/D/759/1997), para. 9.1; *Higginson vs Jamaica*, Communication No. 792/1998 (CCPR/C/74/D/792/1998), para. 4.6; *Sooklal vs Trinidad and Tobago*, Communication No. 928/2000 (CCPR/C/73/D/928/2000), para. 4.6; Human Rights Committee, General Comment No. 7, para. 2.

<sup>38</sup> Art. 9, para. 1, International Covenant on Civil and Political Rights; also arts. 37(b), Convention on the Rights of the Child; principle 2, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

18. The Convention on the Rights of the Child does not contain a definition of the term deprivation of liberty. In its general comment No. 8 on the right to liberty and security of persons, the Human Rights Committee concluded that the term covers all deprivation of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, among others.<sup>39</sup> The Havana Rules provide that deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.<sup>40</sup> The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contains an almost identical definition of deprivation of liberty.<sup>41</sup>

19. The Convention on the Rights of the Child lays down a clear obligation to reduce the use of deprivation of liberty for children to the minimum possible. It requires that arrest, detention or imprisonment of a child should only be used as a measure of last resort and it should be applied for the shortest appropriate period of time.<sup>42</sup> The Havana Rules confirm this obligation and add that deprivation of liberty should be limited to exceptional circumstances.<sup>43</sup>

20. Rule 17 of the Beijing Rules provides that restrictions on the personal liberty of children shall be imposed only after careful consideration and shall be limited to the possible minimum; that deprivation of liberty of children should not be imposed except for serious offences and unless there is no other appropriate response; that the reaction shall always be in proportion not only to the circumstances and the gravity of the offence, but also to the circumstances and the needs of the child as well as of society; and that the well-being of the child shall be a guiding factor in the consideration of his or her case.

#### *Procedural safeguards*

21. Article 37 of the Convention on the Rights of the Child defines the standards and procedural safeguards applicable to cases where children are deprived of their liberty. In line with article 9, paragraph 1, of the International Covenant on Civil and Political Rights,<sup>44</sup> the Convention prohibits unlawful and arbitrary arrest, detention and imprisonment of a child. Furthermore, it establishes that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance when deprived of liberty, as well as the right to challenge the legality of deprivation of liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.<sup>45</sup> In cases where a child is detained, her or his parents or guardian shall be immediately notified.<sup>46</sup> Moreover, the Havana Rules and the Standard Minimum Rules for the Treatment of Prisoners provide additional guidelines on the

<sup>39</sup> Human Rights Committee, general comment No. 8, para. 1.

<sup>40</sup> Rule 11 (b), Havana Rules.

<sup>41</sup> Art. 4, para. 2, Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>42</sup> Art. 37 (b), Convention on the Rights of the Child; rules 17.1(b) and 19.1, Beijing Rules.

<sup>43</sup> Rule 2, Havana Rules.

<sup>44</sup> Art. 37 (b), Convention on the Rights of the Child.

<sup>45</sup> Art. 37 (d), *ibid.*

<sup>46</sup> Rule 10.2, Beijing Rules; rule 92, Standard Minimum Rules for the Treatment of Prisoners.

treatment of children under arrest or awaiting trial.<sup>47</sup> In general, accused persons must be treated in a manner that takes into account their status as non-convicted persons.<sup>48</sup>

*Conditions of detention*

22. International norms and standards lay down a set of rules and standards regulating the conditions of detention and treatment of children. It should be noted that all persons, adults as well as children, deprived of their liberty are entitled to be treated with humanity and respect for the inherent dignity of the human person.<sup>49</sup> Article 37 (c) of the Convention on the Rights of the Child further provides that children have to be treated in a manner which takes into account their special needs.

23. In its general comment No. 21 on article 10 of the International Covenant on Civil and Political Rights, the Human Rights Committee points out that the respect for the dignity of persons deprived of their liberty must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty shall enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.<sup>50</sup> The Havana Rules provides that children deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights which they are entitled under national or international law, and which are compatible with the deprivation of liberty.<sup>51</sup>

24. The International Covenant on Civil and Political Rights<sup>52</sup> and the Convention on the Rights of the Child<sup>53</sup> require that children be separated from adults.<sup>54</sup> Moreover, accused and convicted persons<sup>55</sup> as well as boys and girls should be separated.<sup>56</sup> The only permitted exception is laid down in article 37 (c) of the Convention of the Rights of the Child in cases where it is in the best interest of the child speaks not to proceed to such separation. However, according to the Committee on the Rights of the Child, this exception should be interpreted narrowly.<sup>57</sup>

25. The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>58</sup> Likewise, the

<sup>47</sup> Rules 17 and 18, Havana Rules; rules 84-93 Standard Minimum Rules for the Treatment of Prisoners.

<sup>48</sup> Art. 10, para. 2(a), International Covenant on Civil and Political Rights; see also art. 11, Universal Declaration of Human Rights; art. 40, para. 2 (b)(i), Convention on the Rights of the Child; art. 14(2), International Covenant on Civil and Political Rights; rule 17, Havana Rules; rule 84(2), Standard Minimum Rules for the Treatment of Prisoners.

<sup>49</sup> Arts. 37 (c) and 40, para. 1, Convention on the Rights of the Child; art. 10(1) and (3), International Covenant on Civil and Political Rights; art. 2, para. 2, International Covenant on Economic, Social and Cultural Rights; rule 12, Havana Rules; principle 1, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; rule 1, Basic Principles for the Treatment of Prisoners.

<sup>50</sup> Human Rights Committee, general comment No. 21, para. 3.

<sup>51</sup> Rule 13, Havana Rules.

<sup>52</sup> Art. 10, para. 2, International Covenant on Civil and Political Rights.

<sup>53</sup> Art. 37 (c), Convention on the Rights of the Child.

<sup>54</sup> Rule 29, Havana Rules; rules 13.4 and 26.3, Beijing Rules; rule 8(d), Standard Minimum Rules for the Treatment of Prisoners.

<sup>55</sup> Art. 10, para. 2 (a), International Covenant on Civil and Political Rights; rule 17, Havana Rules; rule 8(b), Standard Minimum Rules for the Treatment of Prisoners; principle 8, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>56</sup> Rule 8 (a), Standard Minimum Rules for the Treatment of Prisoners.

<sup>57</sup> Committee on the Rights of the Child, general comment No 10.

<sup>58</sup> Art. 11, para. 1, International Covenant on Economic, Social and Cultural Rights.

Convention on the Rights of the Child guarantees the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.<sup>59</sup> The Standard Minimum Rules for the Treatment of Prisoners and the Havana Rules provide more detailed standards on the physical environment and accommodation in relation to children deprived of their liberty. Standards include, inter alia, guidelines on personal hygiene, clothing and bedding, food, clean drinking water and accommodation.<sup>60</sup>

26. The International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child provide that children deprived of their liberty have the right to receive education and vocational training, and the opportunity to perform labour.<sup>61</sup> Various international instruments provide further details on the standards in that regard.<sup>62</sup> The Beijing Rules provide that the objective of training and treatment of children placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.<sup>63</sup>

27. Closely linked to education and training of children deprived of their liberty is their right to rest and leisure and to have access to recreational activities.<sup>64</sup> Every child should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided. This right includes the provision of adequate space, installations and equipment.<sup>65</sup> A child should also have additional time for daily leisure activities, part of which should be devoted, if the child wishes, to arts and crafts skill development.<sup>66</sup> Furthermore, due regard must be given to a child's religious and cultural rights.<sup>67</sup>

28. Another key aspect is access to adequate health care and medical services. The International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>68</sup> The Convention on the Rights of the Child provides for the corresponding right of the child and adds the right to facilities for the treatment of illness and rehabilitation of health.<sup>69</sup> The Havana Rules, the Standard Minimum Rules for the Treatment of Prisoners and the Bangkok rules lay down a set of detailed standards for health care services for persons deprived of their liberty, including children.<sup>70</sup>

<sup>59</sup> Art. 27, Convention on the Rights of the Child.

<sup>60</sup> Rules 31 to 37, Havana Rules; rules 9 to 20, Standard Minimum Rules for the Treatment of Prisoners; rules 4 and 5, Bangkok Rules.

<sup>61</sup> Arts. 6 and 13, International Covenant on Economic, Social and Cultural Rights; art. 28, Convention on the Rights of the Child; see also art. 29, Convention on the Rights of the Child.

<sup>62</sup> Rules 38-46, Havana Rules; 26.1 and 26.6, Beijing Rules; rule 77, Standard Minimum Rules for the Treatment of Prisoners; principles 6 and 8, Basic Principles for the Treatment of Prisoners.

<sup>63</sup> Rule 26.1, Beijing Rules.

<sup>64</sup> Art. 31, Convention on the Rights of the Child.

<sup>65</sup> Rule 47, Havana Rules; rule 21, Standard Minimum Rules for the Treatment of Prisoners.

<sup>66</sup> Rule 47, Havana Rules; see also rules 40 and 78, Standard Minimum Rules for the Treatment of Prisoners.

<sup>67</sup> Arts 14, para. 1, and 30, Convention on the Rights of the Child; arts 18, paras. 1 and 27, International Covenant on Civil and Political Rights; rules 48, Havana Rules; 6(1), 41-42 Standard Minimum Rules for the Treatment of Prisoners; rule 3, Basic Principles for the Treatment of Prisoners.

<sup>68</sup> Art. 12, International Covenant on Economic, Social and Cultural Rights.

<sup>69</sup> Art. 24, Convention on the Rights of the Child.

<sup>70</sup> Rules 49-55, Havana Rules; rules 22-26, Standard Minimum Rules for the Treatment of Prisoners; rules 12-18, Bangkok Rules; see also principle 24, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; rule 9, Basic Principles for the Treatment of Prisoners.

29. Contact with the outside world and the wider community has to be allowed and made possible, which constitutes an integral part of the right to a fair and humane treatment and is essential to the preparation of children for their return to society.<sup>71</sup> Article 9, paragraph 3, of the Convention on the Rights of the Child contains the right to maintain personal relations and remain in contact with parents in case a child is separated from one or both parents.<sup>72</sup>

*Protection safeguards*

30. In order to prevent violations of the rights of children deprived of their liberty, States are required to establish certain safeguards. Upon admission to a detention facility, children have to be registered and records have to be kept.<sup>73</sup> Request and complaint mechanisms,<sup>74</sup> as well as regular and independent systems of inspection have to be in place.<sup>75</sup> The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment provides that States shall maintain, designate or establish one or several independent national preventive mechanisms for the prevention of torture.<sup>76</sup> The Havana Rules further require that qualified inspectors who do not belong to the administration of the facility should enjoy full guarantees of independence and should be able to conduct inspections on a regular basis as well as have the possibility to undertake unannounced inspections. Unrestricted access to all persons working in the facility, all children deprived of their liberty and all records of such facilities should be granted.<sup>77</sup> Moreover, supervisory bodies should include medical officers as well as women members.<sup>78</sup>

*Disciplinary measures*

31. The Convention on the Rights of the Child places the general duty on States to take all measures to protect children from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians or any other person who has the care of the child.<sup>79</sup> The protection of children from harm also includes the right to have their privacy respected when deprived of their liberty.<sup>80</sup>

<sup>71</sup> Rules 59 to 62, Havana Rules; rules 37-39, 79-81, Standard Minimum Rules for the Treatment of Prisoners; principles 15 and 16 and 19, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>72</sup> See also Human Rights Committee, general comment No. 21 (1992).

<sup>73</sup> Rules 19, 21, 23, 24, 27 and 70, Havana Rules; rule 21, Beijing Rules; rule 7, Standard Minimum Rules for the Treatment of Prisoners; principle 12, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; Rules 2 and 3, Bangkok Rules.

<sup>74</sup> Rules 69, 75-78, Havana Rules; rule 36, Standard Minimum Rules for the Treatment of Prisoners; principle 33, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>75</sup> Arts 3 and 4, parts III and IV, Optional Protocol to the Convention Against Torture; rules 72-74, Havana Rules; rule 55, Standard Minimum Rules for the Treatment of Prisoners; principle 29, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>76</sup> Article 17, Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>77</sup> Rule 72, Havana Rules.

<sup>78</sup> Rule 73, *ibid*; rule 25, Bangkok Rules.

<sup>79</sup> Art. 19, Convention on the Rights of the Child.

<sup>80</sup> Arts. 16 and 40, para. 2 (b)(vii), Convention on the Rights of the Child; rule 8, Beijing Rules.

32. The Havana Rules set forth a strict standard for permissible disciplinary measures and procedures for children deprived of their liberty.<sup>81</sup> These measures should maintain the interest of safety and an ordered community life and should be consistent with the upholding of the inherent dignity of the child and the fundamental objective of institutional care, namely, instilling a sense of justice, self-respect and respect for the basic rights of every person. The Havana Rules ban any measure constituting cruel, inhuman or degrading treatment, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the child concerned.<sup>82</sup> Moreover, the Havana Rules prohibit the reduction of diet and the restriction or denial of contact with family members for any purpose or labour imposed as a disciplinary sanction. As a general rule, children should not be sanctioned more than once for the same disciplinary infraction and collective sanctions should be prohibited.<sup>83</sup> Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as punishment.<sup>84</sup>

*Treatment of girls deprived of their liberty*

33. Girls placed in detention institutions deserve special attention as to their needs and problems.<sup>85</sup> In decision-making, their gender-based vulnerability must be taken into account.<sup>86</sup> Furthermore, prison authorities must put in place measures to meet the protection needs of girls deprived of their liberty. They must have equal access to education and vocational training that are available to boys,<sup>87</sup> have access to age- and gender-specific programmes and services, such as counselling for sexual abuse or violence, receive education on women's health care and have regular access to gynaecologists. In particular pregnant girls deprived of their liberty must receive support and medical care.<sup>88</sup>

*Juvenile justice personnel*

34. Special consideration also needs to be paid to ensuring that adequate personnel are recruited in detention facilities.<sup>89</sup> Article 10 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires that education and information regarding the prohibition against torture is included in training of law enforcement personnel. Additionally, the Havana Rules provide a set of rules on selection, recruitment, qualification, training and remuneration of personnel involved with children in conflict with the law.<sup>90</sup>

### III. Implementation gaps

35. While the legal framework applicable to the issue of human rights of children deprived of their liberty is extensive, human rights mechanisms, in particular the

<sup>81</sup> Rules 66-71, Havana Rules.

<sup>82</sup> See also rule 31, Standard Minimum Rules for the Treatment of Prisoners; principle 6, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

<sup>83</sup> Rule 67, Havana Rules.

<sup>84</sup> Rule 33, Standard Minimum Rules for the Treatment of Prisoners.

<sup>85</sup> Rule 26.4, Beijing Rules.

<sup>86</sup> Rule 65, Bangkok Rules.

<sup>87</sup> Arts. 10 and 11, Convention on the Elimination of All Forms of Discrimination against Women.

<sup>88</sup> Rules 36-39, Bangkok Rules

<sup>89</sup> Rules 81 and 85, Havana Rules; rules 46 to 54 Standard Minimum Rules for the Treatment of Prisoners.

<sup>90</sup> Rules 81-87, Havana Rules.

Committee on the Rights of the Child, have highlighted the persistence of a number of problems in practice in many parts of the world.

#### *Age limits*

36. In a number of States, the age of criminal responsibility is still between 7 and 10,<sup>91</sup> or no minimum age of criminal responsibility is established at all.<sup>92</sup> In recent years, other States have lowered, or started initiatives to lower, the age of criminal responsibility for children.<sup>93</sup> Occasionally, the age of criminal responsibility is determined according to apparent physical maturity, rather than actual age.<sup>94</sup>

37. In some States, children below the minimum age of criminal responsibility sometimes face the risk of prosecution, arrest, deprivation of liberty, or of administrative penalties being imposed.<sup>95</sup>

#### *Juvenile justice system*

38. The objective of any juvenile justice system should be to promote the well-being of the child and to ensure that measures adopted with respect to children in conflict with the law are proportional to the circumstances of both the offenders and the offence.<sup>96</sup> The juvenile justice system is based on a restorative justice approach focusing on the reintegration of children into society.<sup>97</sup> The Riyadh Guidelines stress the importance of prevention of juvenile delinquency in society.<sup>98</sup>

39. In a number of countries, however, a comprehensive juvenile justice system is either not in place, has not been developed in accordance with the relevant provisions of the Convention on the Rights of the Child, or the system in place lacks effectiveness.<sup>99</sup> Some States have failed to comply with the obligation to establish juvenile courts while in other countries, there is a lack of judges with the adequate specialization in juvenile justice.<sup>100</sup>

40. In some States, children in conflict with the law are often tried by the ordinary criminal justice system and treated as adults. They are, therefore, unable to benefit from the special measures of protection to which they are entitled.<sup>101</sup>

<sup>91</sup> Committee against Torture, concluding observations: Ethiopia (CAT/C/ETH/CO/1), para. 27; Jordan (CAT/C/JOR/CO/2), para. 26; Indonesia (CAT/C/IDN/CO/2), para. 17.

<sup>92</sup> Committee on the Rights of the Child, concluding observations: Nigeria (CRC/C/NGA/CO/3-4), para. 90; Marshall Islands (CRC/C/MHL/CO/2), para. 70.

<sup>93</sup> Committee on the Rights of the Child, concluding observations: Panama (CRC/C/PAN/CO/3-4), para. 74(a); Denmark (CRC/C/DNK/CO/4), para. 65(b); Japan (CRC/C/JPN/CO/3), para. 83.

<sup>94</sup> Committee on the Rights of the Child, concluding observations: Sudan (CRC/C/SDN/CO/3-4), paras 27, 89(a); Nigeria (CRC/C/NGA/CO/3-4), para. 32.

<sup>95</sup> Committee on the Rights of the Child, concluding observations: Cuba (CRC/C/CUB/CO/2), para. 54(a); Former Yugoslav Republic of Macedonia (CRC/C/MKD/CO/2), para. 79(a); Tajikistan (CRC/C/TJK/CO/2), para. 72.

<sup>96</sup> Rule 5, Beijing Rules.

<sup>97</sup> Art. 40, para. 1, Convention on the Rights of the Child.

<sup>98</sup> Paragraph 1, Riyadh Guidelines

<sup>99</sup> Committee on the Rights of the Child, concluding observations: Ecuador (CRC/C/ECU/CO/4), para. 78(c); Argentina (CRC/C/ARG/CO/3-4), para. 34; Belarus (CRC/C/BLR/CO/3-4), para. 71.

<sup>100</sup> Committee on the Rights of the Child, concluding observations: Cuba (CRC/C/CUB/CO/2), para. 54(c); Grenada (CRC/C/GRD/CO/2), para. 59; Bangladesh (CRC/C/BGD/CO/4), para. 92.

<sup>101</sup> Committee on the Rights of the Child, concluding observations: Qatar (CRC/C/QAT/CO/2), para. 70; Committee Against Torture, concluding observations: Syria (CAT/C/SYR/CO/1), para. 31; Belgium (CAT/C/BEL/CO/2), para. 17.

*Fair trial guarantees*

41. The right of children to fair trial, including the right of the child to be heard, is often inadequately protected.<sup>102</sup> In particular, children are dealt with in the absence of their parents or guardians and rarely provided with legal assistance, including while in court, resulting, inter alia, in coerced confessions and unlawful investigative practices.<sup>103</sup> Moreover, parents are not always informed of the detention of their children, and children are not permitted to contact their families.<sup>104</sup>

*Prohibited penalties*

42. Sentencing of children remains severe and disproportionate in a number of States.<sup>105</sup> The death penalty is not explicitly prohibited in national law or is imposed on children or persons who were under the age of 18 at the time of the commission of the offence.<sup>106</sup> Furthermore, corporal punishment, including sentences such as whipping, amputation, flogging, caning, stoning and other forms of punishment, is still a sentencing option in some States.<sup>107</sup> Children are sometimes sentenced to life imprisonment or are detained for long periods of time.<sup>108</sup> It should be noted that, while international standards only prohibit the application of life imprisonment for children if it does not foresee the possibility of parole, the application of such penalty does in any case fail to meet the overall objective of reintegration and re-socialization that characterizes the juvenile justice system.

*Deprivation of liberty*

43. Deprivation of liberty is often not used as a measure of last resort.<sup>109</sup> Detention is regularly used against children in conflict with the law, as reflected by the high number of

<sup>102</sup> Committee on the Rights of the Child, concluding observations: Moldova (CRC/C/MDA/CO/3), para. 72; Timor-Leste (CRC/C/TLS/CO/1), para. 73; Cambodia (CAT/C/KHM/CO/2), para. 14.

<sup>103</sup> Committee against Torture, concluding observations: Austria (CAT/C/AUT/CO/4-5), para. 10; Israel (CAT/C/ISR/CO/4), para. 27; Human Rights Committee, concluding observations: Argentina (CCPR/C/ARG/CO/4), para. 23.

<sup>104</sup> Committee on the Rights of the Child, concluding observations: Suriname (CRC/C/SUR/CO/2), para. 69; Human Rights Committee, concluding observations: Israel (CCPR/C/ISR/CO/3), para. 21; report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico (CAT/OP/MEX/1), para. 245; Honduras (CAT/OP/HND/1), para. 42.

<sup>105</sup> Committee on the Rights of the Child, concluding observations: Sri Lanka (CRC/C/LKA/CO/3-4), para. 77(f); Moldova (CRC/C/MDA/CO/3), para. 72; Georgia (CRC/C/GEO/CO/3), para. 70(d).

<sup>106</sup> Committee on the Rights of the Child, concluding observations: Laos (CRC/C/LAO/CO/2), para. 71; Committee against Torture, concluding observations: Yemen (CAT/C/YEM/CO/2/Rev.1), para. 21; Human Rights Committee, concluding observations: Islamic Republic of Iran (CCPR/C/IRN/CO/3), para. 13.

<sup>107</sup> Committee on the Rights of the Child, concluding observations: Seychelles (CRC/C/SYC/CO/2-4), para. 42; Mauritania (CRC/C/MRT/CO/2), para. 40; Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Maldives (CAT/OP/MDV/1), para. 26.

<sup>108</sup> Committee on the Rights of the Child, concluding observations: Singapore (CRC/C/SGP/CO/2-3), para. 68 (d); Denmark (CRC/C/DNK/CO/4), para. 65 (c); Committee Against Torture, concluding observations: Turkey (CAT/C/TUR/CO/3), para. 21

<sup>109</sup> Committee on the Rights of the Child, concluding observations: Mozambique (CRC/C/MOZ/CO/2), para. 88; Bolivia (CRC/C/BOL/CO/4), para. 81; Eritrea (CRC/C/ERI/CO/3), para. 78.

children and adolescents deprived of their liberty in detention centres, penal or correctional-educational institutions or remanded in custody.<sup>110</sup>

44. In a number of States, children are detained for minor offences.<sup>111</sup> Status offences, such as running away from home, are regarded as abnormal behavior, are criminalized, and can lead to the detention of children charged with such offenses.<sup>112</sup> In some cases, girls who are victims of violence and abuse are made responsible for the criminal acts committed against them.<sup>113</sup> In other cases, children in need of care and attention are put in detention instead of social care.<sup>114</sup>

45. The frequent and systematic use of pretrial detention for children is also of serious concern.<sup>115</sup> Children are often held in pretrial detention for long periods.<sup>116</sup> At times, their pretrial detention exceeds the length of the maximum prison term that they could receive if found guilty. Furthermore, children are sometimes kept for weeks in police custody.<sup>117</sup>

#### *Conditions of detention*

46. Conditions of detention for children in conflict with the law, including in police stations while under arrest and in detention centres, are often poor and inadequate,<sup>118</sup> in some cases amounting to cruel, inhuman or degrading treatment.<sup>119</sup> In many States, children are not always held separately from adults or from convicted persons, exposing them to an increased risk of abuse.<sup>120</sup> In some cases, girls may be detained in mixed-sex prisons, where

<sup>110</sup> Committee on the Rights of the Child, concluding observations: Costa Rica (CRC/C/CRI/CO/4), para.83 (a); Committee Against Torture, concluding observations: Latvia (CAT/C/LVA/CO/2), para.11; Human Rights Committee, concluding observations: Moldova (CCPR/C/MDA/CO/2), para. 20.

<sup>111</sup> Committee on the Rights of the Child, concluding observations: Tajikistan (CRC/C/TJK/CO/2), para. 72; Committee against Torture, concluding observations: Indonesia (CAT/C/IDN/CO/2), para. 17.

<sup>112</sup> Committee on the Rights of the Child, concluding observations: Bahrain (CRC/C/BHR/CO/2-3), para. 69(c); Nigeria (CRC/C/NGA/CO/3-4), para. 30.

<sup>113</sup> Committee on the Rights of the Child, concluding observations: Afghanistan (CRC/C/AFG/CO/1), para. 74(b).

<sup>114</sup> Committee on the Rights of the Child, concluding observations: Malawi (CRC/C/MWI/CO/2), para. 75.

<sup>115</sup> Committee on the Rights of the Child, concluding observations: Ukraine (CRC/C/UKR/CO/3-4), para. 84; Italy (CRC/C/ITA/CO/3-4), para. 76; Mozambique (CRC/C/MOZ/CO/2), para. 88.

<sup>116</sup> Committee on the Rights of the Child, concluding observations: Burundi (CRC/C/BDI/CO/2), para. 76(e); Committee Against Torture, concluding observations: Liechtenstein (CAT/C/LIE/CO/3), para. 27; Latvia (CAT/C/LVA/CO/2), para. 11.

<sup>117</sup> Committee on the Rights of the Child, concluding observations: Burkina Faso (CRC/C/BFA/CO/3-4), para. 76(c); Committee against Torture, concluding observations: Burundi (CAT/C/BDI/CO/1), para. 13.

<sup>118</sup> Committee against Torture, concluding observations: Nicaragua (CAT/C/NIC/CO/1), para. 24; Human Rights Committee, concluding observations: Norway (CCPR/C/NOR/CO/6), para 12; Committee on the Rights of the Child, concluding observations: Sierra Leone (CRC/C/SLE/CO/2), para. 76.

<sup>119</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico (CAT/OP/MEX/1), para. 246.

<sup>120</sup> Human Rights Committee, concluding observations: Jamaica (CCPR/C/JAM/CO/3), para. 23; Committee on Economic, Social and Cultural Rights, concluding observations: Sri Lanka (E/C.12/LKA/CO/2-4), para. 32; Committee on Migrant Workers, concluding observations: Senegal (CMW/C/SEN/CO/1), para. 15.

they are exposed to violence from adolescent male detainees or from male prison guards.<sup>121</sup> Furthermore, overcrowding is frequently a serious problem.<sup>122</sup>

47. Children deprived of their liberty not only face unsatisfactory material conditions and lack of adequate facilities, but also have limited access to fresh air, are not provided with adequate food and are faced with poor sanitary conditions.<sup>123</sup> Moreover, detention centres are sometimes centralized in the main cities, making children's regular contact with their families and communities difficult.<sup>124</sup>

48. Children deprived of their liberty lack access to adequate education and vocational training in a number of countries.<sup>125</sup> Moreover, children are not provided with sufficient recreational and learning activities or opportunities to engage in any kind of physical or cultural activity.<sup>126</sup> Facilities for physical and psychological recovery, assistance and social reintegration of children in conflict with the law before and after release are absent or insufficient.<sup>127</sup> In some cases, education is limited to male adolescent detainees and facilities and programmes for physical and psychological recovery and social reintegration of girls are not adequately provided.<sup>128</sup>

49. The fact that during their detention children are faced with high levels of violence, including sexual violence, and that protection from such violence is not always adequate, is of particular concern.<sup>129</sup> Children under police arrest and in pretrial detention are subjected to different forms of abuse, torture and ill-treatment, in particular with the aim of forcibly

<sup>121</sup> Committee on the Elimination of Discrimination Against Women, concluding observations: Canada (CEDAW/C/CAN/CO/7), para. 33.

<sup>122</sup> Committee on the Rights of the Child, concluding observations: Kenya (CRC/C/KEN/CO/2), para. 67; Committee against Torture, concluding observations: Nicaragua (CAT/C/NIC/CO/1), para. 22; Russian Federation (CAT/C/RUS/CO/4), para. 17.

<sup>123</sup> Committee on the Rights of the Child, concluding observations: Afghanistan (CRC/C/AFG/CO/1), para. 74(f); report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Benin (CAT/OP/BEN/1), para. 278; report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Uruguay (A/HRC/13/39/Add.2), para. 60.

<sup>124</sup> Committee on the Rights of the Child, concluding observations: Guatemala (CRC/C/GTM/CO/3-4), para. 98(d); Committee on the Elimination of Discrimination Against Women, concluding observations: Germany (CEDAW/C/DEU/CO/6), para. 57.

<sup>125</sup> Committee on the Rights of the Child, concluding observations: Slovenia (CRC/C/SLV/CO/3-4), para. 87(e); Burkina Faso (CRC/C/BFA/CO/3-4), para. 76(h); Romania (CRC/C/ROM/CO/4), para. 91(f).

<sup>126</sup> Committee on the Rights of the Child, concluding observations: Argentina (CRC/C/ARG/CO/3-4), para. 79; Sierra Leone (CRC/C/SLE/CO/2), para. 76; Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico (CAT/OP/MEX/1), para. 246.

<sup>127</sup> Committee on the Rights of the Child, concluding observations: Belarus (CRC/C/BLR/CO/3-4), para. 71; Mali (CRC/C/MLI/CO/2), para. 70; Committee on the Elimination of Discrimination against Women, concluding observations: United Kingdom (CEDAW/C/UK/CO/6), para. 266.

<sup>128</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Benin (CAT/OP/BEN/1), para. 275; Committee on the Elimination of Discrimination Against Women, concluding observations: Germany (CEDAW/C/DEU/CO/6), para. 57.

<sup>129</sup> Committee against Torture, concluding observations: Ethiopia (CAT/C/ETH/CO/1), para. 26; Committee on Economic, Social and Cultural Rights, concluding observations: Democratic Republic of Congo (E/C.12/COD/CO/4), para. 28; Committee on the Elimination of Discrimination Against Women, concluding observations: Zimbabwe (CEDAW/C/ZMB/CO/5-6), para. 21.

extracting confessions.<sup>130</sup> Furthermore, reports of children suffering abuse, ill-treatment or torture as a form of punishment or disciplinary measure are not uncommon.<sup>131</sup>

50. In a variety of States, corporal punishment, including caning or flogging, is considered as a form of lawful disciplinary measure, or is not explicitly prohibited under domestic law, and continues to be practised in a number of States.<sup>132</sup> Physical restraint, such as handcuffing and shacking, is practised in juvenile rehabilitation centres allegedly for security reasons or as a form of punishment.<sup>133</sup> At times, self-inflicted injuries or even suicide in detention have been recorded.<sup>134</sup> Furthermore, children's privacy is not always sufficiently respected.<sup>135</sup>

#### *Protection safeguards*

51. Another key challenge is the lack of appropriate and independent mechanisms to monitor conditions of children deprived of their liberty, including the effective application of pretrial detention.<sup>136</sup> Adequate control of detention centres is often not provided and there is no systematic inspection to investigate and evaluate actual conditions as well as violations to existing regulations.<sup>137</sup> Moreover, mechanisms may not be available to children deprived of liberty and children placed in institutions, through which they can file a complaint regarding their treatment.<sup>138</sup> Additionally, alleged cases of torture or ill-treatment are not always investigated adequately. Often, children do not file formal complaints for fear of reprisals.<sup>139</sup>

#### *Juvenile justice personnel*

52. A further important issue relates to training of personnel working with children deprived of their liberty. Complaints often concern the inadequacy and insufficiency of training of lawyers, judges, police, prison staff and other professionals, such as social

<sup>130</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Paraguay (CAT/OP/PRY/1), paras. 80, 81, 137; Honduras (CAT/OP/HND/1), para. 30; Committee against Torture, concluding observations: Turkey (CAT/C/TUR/CO/3), para. 21.

<sup>131</sup> Committee on the Rights of the Child, concluding observations: Tunisia (CRC/C/TUN/CO/3), para. 38; Committee against Torture, concluding observations: Yemen (CAT/C/YEM/CO/2/Rev.1), para. 25; Human Rights Committee, concluding observations: Australia (CCPR/C/AUS/CO/5), para. 24.

<sup>132</sup> Committee Against Torture, concluding observations: Sri Lanka (CAT/C/LKA/CO/3-4), para. 30; Chad (CAT/C/TCD/CO/1), para. 32; Human Rights Committee, concluding observations: Bulgaria (CCPR/C/BGR/CO/3), para. 14.

<sup>133</sup> Committee on the Rights of the Child, concluding observations: Great Britain and Northern Ireland (CRC/C/GBR/CO/4), para. 38; Afghanistan (CRC/C/AFG/CO/1), para. 35.

<sup>134</sup> Committee on the Rights of the Child, concluding observations: Argentina (CRC/C/ARG/CO/3-4), para. 38; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Uruguay (A/HRC/13/39/Add.2), para. 61.

<sup>135</sup> Committee on the Rights of the Child, concluding observations: Azerbaijan (CRC/C/AZE/CO/3-4), para. 41; Honduras (CRC/C/HND/CO/3), para. 80(c).

<sup>136</sup> Committee on the Rights of the Child, concluding observations: Egypt (CRC/C/EGY/CO/3-4), para. 86 (e); Chad (CRC/C/TCD/CO/2), para. 85.

<sup>137</sup> Committee on the Rights of the Child, concluding observations: Panama (CRC/C/PAN/CO/3-4), para. 75; Guatemala (CRC/C/GTM/CO/3-4), para. 98 (g).

<sup>138</sup> Committee on the Rights of the Child, concluding observations: Montenegro (CRC/C/MNE/CO/1), para. 34; Romania (CRC/C/ROM/CO/), para. 43; Kazakhstan (CRC/C/KAZ/CO/3), para. 34.

<sup>139</sup> Committee on the Rights of the Child, concluding observations: Bahrain (CRC/C/BHR/CO/2-3), para. 42; Paraguay (CRC/C/PRY/CO/3), paras 29, 35; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Mission to Uruguay (A/HRC/13/39/Add.2), para. 62.

workers, involved in the juvenile justice system.<sup>140</sup> Judges and other professionals working with children in conflict with the law lack the necessary skills to effectively deal with these children.<sup>141</sup> In particular, law enforcement personnel are often not specialized in child-related investigations and in interrogation of children in conflict with the law. Therefore, States' obligation to ensure the necessary expertise in juvenile justice, including awareness regarding the rights of the child, sensitivity towards the needs of children, and eventually the protection of children in contact with the law, is often not met.<sup>142</sup>

## IV. Conclusions

53. **International human rights law provides a comprehensive legal framework regulating the rights of children in the administration of justice, in particular when deprived of their liberty. In particular, States have legal obligations related to the adequate protection of the human rights of children deprived of their liberty, as provided by the Convention on the Rights of the Child, which has attained almost universal ratification, as well as other internationally recognized standards.**

54. **Despite the existence of this normative framework, human rights mechanisms have identified a number of implementation gaps with respect to States' international legal obligations. This report has identified some of the main problems, in particular the lack of adequate conditions of detention; the imposition of prohibited penalties; the lack of monitoring and complaint mechanisms; and the inadequacy of training of personnel dealing with children deprived of their liberty.**

55. **Conditions of detention facilities and treatment of children in such facilities often fall short of international standards. The rights to be treated with dignity, to be free from torture or other cruel, inhuman or degrading treatment or punishment, as well as a number of economic, social and cultural rights, such as the right to education, are frequently violated. States should comply with their human rights obligations to protect children from ill-treatment and to respect the dignity and the needs of children deprived of their liberty. Moreover, they should ensure to the maximum possible extent the development of the child.**

56. **Even though the imposition of the death penalty, life imprisonment without parole, as well as corporal punishment are prohibited under international law and are contrary to the aims of juvenile justice, they are still used as penalties against children. States should observe their obligation to ensure that children are not subjected to such penalties.**

57. **International norms and standards require the establishment of appropriate independent monitoring and complaint mechanisms as well as of other safeguards in order to prevent violations of the rights of children deprived of their liberty. Nevertheless, systematic, independent internal and external oversight, as well as complaint mechanisms are lacking in a number of states. States should establish or**

<sup>140</sup> Committee on the Rights of the Child, concluding observations: Grenada (CRC/C/GRD/CO/2), para. 59; Nigeria (CRC/C/NGA/CO/3-4), para. 20; Committee against Torture, concluding observations: Burundi (CAT/C/BDI/CO/1), para. 16

<sup>141</sup> Committee on the Rights of the Child, concluding observations: Azerbaijan (CRC/C/AZE/CO/3-4), para. 75(b).

<sup>142</sup> Committee on the Rights of the Child, concluding observations: Lao (CRC/C/LAO/CO/2), para. 30; Committee against Torture, concluding observations: Nicaragua (CAT/C/NIC/CO/1), para. 23; report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico (CAT/OP/MEX/1), para. 244.

**strengthen monitoring, complaint and other safeguard procedures in accordance with international norms and standards.**

**58. Competent and well-trained professionals working with children are a necessary requirement for the effective functioning of a juvenile justice system which is sensitive towards, and takes into account, the specific needs of children. Clear international standards exist for the qualification, selection, recruitment, training and remuneration of personnel. States should ensure the full implementation of these obligations.**

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