Comments by Estonia

to the CRC General Comment No 24 replacing the General Comment No 10 on Children’s rights in juvenile justice

Estonia welcomes the Committee’s work on the revising the General Comment No 10 on Children’s rights in juvenile justice and would like to offer some comments to the text.

P 10 – „*…behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems“* – as the document does not contain a similar sentence regarding more serious offences, this sentence seems to imply that such lighter offences (behavioural problems) are *more* likely than serious offences to be the result of psychological or socio-economic problems; or, worse – that only lighter offences can be the result of such factors, while more serious offences cannot. While the existing sentence is commendable in how it increases empathy and understanding of children’s behaviour in the case of lighter offences, it would merit, if the scope of it would be widened to encompass also more serious offences; or a similar point about more serious offences would be included elsewhere in the document.

P 13 – *„it goes without saying that delinquency has a very negative impact on the child’s development*“ – it is not clear what is meant by this claim. Is it implied that delinquency has a negative impact on child’s development because of the consequences it ensues on the child via the societal response to the delinquent act, or is it implied that delinquency is by its own nature already harming to the child? We would see merit in emphasizing that delinquent behaviour is often a sign of a child’s deeper needs.

*“The use of deprivation of liberty has very negative consequences for the child’s harmonious development and seriously hampers his/her reintegration in society” –* this sentence seems to imply that deprivation of liberty has negative consequences not only statistically, in general (often because it is overused/ implemented in ways that harm the child), but in each and every case. However, as for example in a case when a child has developed a serious case of dependency on hard drugs and is not able to gather the motivation to undergo treatment otherwise, a treatment that includes the deprivation of liberty can have much less negative consequences than the alternative, which would mean that the child continues the ongoing life-threatening activity (hard drug use). The same point also applies to article 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 at the pre-trial or post-trial stage.”* When a child in need (who also happens to have committed an offence) truly needs help, which in some rare cases can be given to the child only in the form of some deprivation/limiting of liberty (because of the nature of the need, eg extreme drug dependency), then we certainly cannot set such an age limit that would deprive younger children of the help they truly need.

P 19 – *„A juvenile justice policy without a set of measures aimed at preventing child offending suffers from serious shortcomings.“* - depending on a specific country’s government/policy make-up, measures aimed at preventing child offending are not necessarily considered to be a part of „juvenile justice policy“, but it can be considered that a successful implementation of wider child rights/ child welfare policies is, what most successfully prevents child offending. Therefore, we would propose to use a wider wording, such as: „A juvenile justice policy, if it is not accompanied by wider policies for the full and equal implementation of child rights, suffers from serious shortcomings.”

P 27 – *„Diversion should be used only when there is compelling evidence that the child committed the alleged offence, that he/she freely and voluntarily admits responsibility“ –* the point of this sentence is understandable in the context when diversion includes an element of coercion. However, also the following situation is frequently encountered: as it is obligatory for every person who encounters a child in need to report it to child welfare agency, the police, upon encountering an offending child (who often also has unmet psychological/ family needs), notifies the child welfare agency, who then proceeds to open a casefile to look more closely into the child and family with the aim of helping them. In some ways, this sequence of activities could be considered to be called „diversion“ as the child came into the view of any authority firstly by the way of offending, and often, when the child welfare agency opens the casefile to help the child and family, the police closes the criminal proceedings. However, in such a situation, it is obvious that there does not need to be evidence of the offence having been committed or admission of responsibility, as the child needs to be helped anyway, regardless of whether suspicion of the offence will be found to have any grounds. Maybe the wording of the sentence could be altered to better reflect this reality. It might also be possible to address this point by specifying the definition of „diversion" in the glossary, by pointing out that reporting the needs of the child to a child welfare agency is not to be considered „diversion“ in this context. (It should be considered diversion in the positive sense – it is a very good reaction to the offending, compared to harsh punishments. But it should not be considered diversion in the sense that it would have as a prerequisite determination of the fact and guilt of offending).

P 104 „*The permitted exception to the separation of children from adults stated in article 37 (c) of CRC, “unless it is considered in the child’s best interests not to do so”, should be interpreted narrowly;“* – while the point of this sentence is understandable, it should also be emphasized in this context that solitary confinement is a practice that ought to be avoided as much as possible. In some contexts, if there is only one minor in a specific facility (or even in the whole country), the choice can be between two possibilities: placing the child in the same room with a (young) adult *or alone.* Considering the extremely harmful effects of solitary confinement, placement with an adult (especially if the adult is only few years older than the minor and is deemed to have a very low risk of harm to the minor) can be preferrable. The call to interpret exceptions to the separation principle narrowly is on the one hand understandable and correct, but on the other hand can lead to practices when this letter of the law is upheld at the expense of the child, by placing the child in a room alone, while being with an adult would be less harmful.